

3-28-2008

Goodman Oil Co. v. Scotty's Duro-Bilt Generator Clerk's Record v. 1 Dckt. 34284

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LAW CLERK

Vol. 1 of 41

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

GOODMAN OIL COMPANY,

Petitioner-Appellant on Appeal,

-vs-

SCOTTY'S DURO-BILT GENERATOR, INC.,

Respondent-Respondent on Appeal,

and

**CITY OF NAMPA, a corporate body politic;
THE CITY COUNSEL of the CITY OF
NAMPA; MAYOR TOM DALE, in his
capacity as Mayor of the City of Nampa;
DIANA LAMBING, in her capacity as City
Clerk,**

Respondents.

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

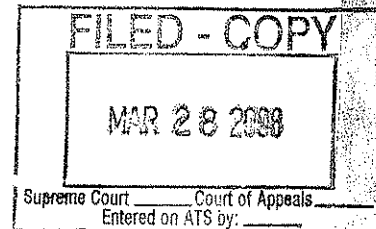
Honorable JAMES C. MORFITT, District Judge

Jon M. Steele and Karl J. Runft
1020 W. Main St., Ste. 400
Boise, Idaho 83702

Attorneys for Appellant

Tammy Zokan and Susan Buxton
MOORE SMITH BUXTON & TURCKE, CHTD.
950 W. Bannock, Ste. 520
Boise, Idaho 83702

Attorneys for Respondent



34284

IN THE SUPREME COURT OF THE
STATE OF IDAHO

GOODMAN OIL COMPANY,)
)
 Petitioner-Appellant on Appeal,)
) Supreme Court No. 34284
 -vs-)
)
 SCOTTY'S DURO BILT GENERATOR, INC.,)
 an Idaho corporation,)
)
 Respondent-Respondent on Appeal,)
)
 and)
)
 CITY OF NAMPA, a corporate body politic;)
 THE CITY COUNSEL of the CITY OF NAMPA;)
 MAYOR TOM DALE, in his capacity as Mayor)
 of the City of Nampa; DIANA LAMBING, in her)
 capacity as City Clerk,)
)
 Respondents.)

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE JAMES C. MORFITT, Presiding

Jon M. Steele and Karl J. Runft, 1020 W. Main St., Ste. 400, Boise, Idaho 83702

Attorneys for Appellant

Tammy Zokan and Susan Buxton, MOORE SMITH BUXTON & TURCKE, CHTD.,
950 W. Bannock, Ste. 520, Boise, Idaho 83702

Attorneys for Respondent

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Other Claims

Date		Judge
10/5/2004	New Case Filed-Other Claims	James C. Morfitt
	Filing: R2 - Appeals And Transfers For Judicial Review To The District Court Paid by: McCreedy, John (attorney for Goodman Oil Company) Receipt number: 0076519 Dated: 10/05/2004 Amount: \$72.00 (Check)	James C. Morfitt
	Summons Filed	James C. Morfitt
10/8/2004	Application for Writ of Mandate	James C. Morfitt
	Affidavit of John C McCreedy in Support of Application for Writ of Mandate	James C. Morfitt
	Affidavit of Charles D Conley in support of Application for Writ of Mandate	James C. Morfitt
	Brief in Support of Application for Writ of Mandate	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 10/22/2004 01:30 PM) Application for Writ of Mandate	James C. Morfitt
	Affidavit Of Service	James C. Morfitt
	Notice Of Taking Deposition Duces Tecum Becky Thompson	James C. Morfitt
10/14/2004	Affidavit of Becky Thompson	James C. Morfitt
10/18/2004	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: White Peterson Receipt number: 0078366 Dated: 10/18/2004 Amount: \$47.00 (Check)	James C. Morfitt
	Notice Of Appearance - T Guy Hallam, Atty for Respondents	James C. Morfitt
	Motion to Dismiss	James C. Morfitt
	Lodged - memo in Sup of Motion to Dismiss	James C. Morfitt
	Affidavit of John R Kormanik in Sup of Motion to Dismiss	James C. Morfitt
	Motion to Shorten Time (No Order Sent	James C. Morfitt
	Notice Of Hearing (10/22/2004 01:30 pm)	James C. Morfitt
10/19/2004	Notice of Intent to Present Testimony, Evidence & to Cross-examine Witnesses	James C. Morfitt
10/21/2004	Petitioners memo in oppo to Nampa Respondents motion to dismiss ***FAX	James C. Morfitt
	Subpoena Returned Nampa City Clerk Diana Lambing (fax	James C. Morfitt
	Subpoena Returned Nampa Planning Director Norm Holm (fax	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 10/22/2004 01:30 PM) Def's motn to dismiss	James C. Morfitt
	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Moore Smith Buxton & Turcke Receipt number: 0079274 Dated: 10/21/2004 Amount: \$47.00 (Check)	James C. Morfitt
	Notice Of Appearance	James C. Morfitt
	Motion to Dismiss & Motion for Order to Shorten Time	James C. Morfitt
	Memorandum in Support of Motion to Dismiss	James C. Morfitt
10/22/2004	Motion to quash subpoena duces tecum	James C. Morfitt
	Hearing result for Motion Hearing held on 10/22/2004 01:30 PM: Interim Hearing Held Def's motn to dismiss	James C. Morfitt

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Other Claims

Date		Judge
10/22/2004	Hearing result for Motion Hearing held on 10/22/2004 01:30 PM: Interim Hearing Held Application for Writ of Mandate	James C. Morfitt
10/26/2004	Order to shorten time on hearing on motion to dismiss	James C. Morfitt
10/27/2004	Order Requiring preparatrion of record/Trascripts/Appellatw scheduling ordr	James C. Morfitt
11/1/2004	Order (parties submitt 3 sets of available dates w/in 10 days)	James C. Morfitt
11/3/2004	city of Nampa Respondents response to petn	James C. Morfitt
	Notice of Service Re: Discovery ____	James C. Morfitt
11/5/2004	Notice of estimates of clerks record & transcripts costs	James C. Morfitt
11/12/2004	Notice of change of address for Plt (fax	James C. Morfitt
	Petitoners Available trial dates (fax	James C. Morfitt
11/15/2004	respondents scottys durobilt generator availble trial dates	James C. Morfitt
11/24/2004	Notice Of Service	James C. Morfitt
	Notice of available Trial Dates	James C. Morfitt
12/8/2004	Petitioner's Objection to Nampa's Estimate of Transcript Cost	James C. Morfitt
	Affidavit of John C. Mccreedy in Support of Petitioner's Objection to Nampa's Estimate of Transcript of Cost	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 01/21/2005 01:30 PM)	James C. Morfitt
12/22/2004	Notice Of Taking Deposition brad balmires	James C. Morfitt
	Notice Of Taking Deposition bart mcknight	James C. Morfitt
	Notice Of Taking Deposition mayor tom dale	James C. Morfitt
	Notice Of Taking Deposition norm holm	James C. Morfitt
1/5/2005	Affidavit Of Service	James C. Morfitt
	Notice Of Hearing (fax)	James C. Morfitt
1/7/2005	Petitioner's Motion to Amend	James C. Morfitt
	Affidavit of John C. Mccreedy in support of petitioner's motion to Amend	James C. Morfitt
	Memorandum in Support of Petitioner's motion to Amend	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
1/12/2005	Notice to vacate hearing (fax)	James C. Morfitt
	amended Notice Of Taking Deposition brad balmires	James C. Morfitt
	amended Notice Of Taking Deposition mayor tom dale	James C. Morfitt
	amended Notice Of Taking Deposition bart mcknight	James C. Morfitt
	amended Notice Of Taking Deposition norman holm	James C. Morfitt
1/14/2005	Notice of joinder in city of nampa's memorandum	James C. Morfitt
	Response to Petitioner's Objection to Nampa's Estimate of Transcript Cost	James C. Morfitt
	Memorandum in Opposition to Petn Goodman Oil Company's Motion to Amend	James C. Morfitt
1/19/2005	petitioner's reply in support of objection to transcript cost (fax)	James C. Morfitt
1/20/2005	reply Memorandum in support of motion to amend (fax)	James C. Morfitt

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Other Claims

Date		Judge
1/21/2005	Motion to amend petition Denied	James C. Morfitt
1/26/2005	Order re:transcript cost estimate	James C. Morfitt
2/4/2005	Affidavit Of Service	James C. Morfitt
	Notice of Withdrawal of Attorney	James C. Morfitt
2/7/2005	Notice of postponement of depositions	James C. Morfitt
2/14/2005	Notice Of Taking Deposition	James C. Morfitt
	Notice Of Taking Deposition second amended bart mcknight	James C. Morfitt
2/28/2005	Notice Of Taking Deposition second amended mayor tom dale	James C. Morfitt
	Notice Of Taking Deposition second amended brad blamires	James C. Morfitt
	Notice Of Taking Deposition second amended norman holm	James C. Morfitt
3/3/2005	Notice Of Service	James C. Morfitt
3/4/2005	Notice Of Service	James C. Morfitt
3/9/2005	Lodged-Clerk's Agency Records	James C. Morfitt
3/17/2005	Notice Of Service (FAX)	James C. Morfitt
3/21/2005	Notice Of Service of Discovery Documents	James C. Morfitt
	Motion for Protective Order	James C. Morfitt
	Affidavit of T Guy Hallam Jr in Support of Motion for Protective Order	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 04/15/2005 01:30 PM) def's motn for Protective order	James C. Morfitt
4/1/2005	Motion to compel production of Documents	James C. Morfitt
	Affidavit of Jon M Steele in support of Motn To Compel and motn to Augument the record	James C. Morfitt
	Memorandum in support of motn to compel prod of documents and motn to Augument the record	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
4/5/2005	Notice Of Taking Audio Visual Deposition Duces Tecum of Charles D Conley	James C. Morfitt
4/6/2005	Certificate of transcription	James C. Morfitt
	Notice of lodging of agency record and transcript	James C. Morfitt
	Lodged transcripts of hearings August 16, September 17 and 20, 2004	James C. Morfitt
4/8/2005	Affidavit of christopher yorgason in support of notice of joinder inc ity of nampa's motion for order to shorten time (fax)	James C. Morfitt
	Notice of joinder in city of nampa's motion for order to shorten time (fax)	James C. Morfitt
4/11/2005	Motion for order to shorten time	James C. Morfitt
	Notice vacating deposition	James C. Morfitt
	Second Motion for protective order	James C. Morfitt
	Affidavit of T Guy Hallam Jr in support of second motion for protective order	James C. Morfitt
	Brief in opposition to motion to compel and motion to augument record	James C. Morfitt
	objection to motion for order to shorten time (fax)	James C. Morfitt

Other Claims

Date		Judge
4/15/2005	Hearing result for Motion Hearing held on 04/15/2005 01:30 PM: Interim Hearing Held def's motn for Protective order	James C. Morfitt
	Order to Shorten Time	James C. Morfitt
4/18/2005	Amended Notice Of taking Audio Visual Deposition Duces Tecum Of Charles D Conley	James C. Morfitt
4/21/2005	Hearing Scheduled (Motion Hearing 05/20/2005 01:30 PM)	James C. Morfitt
	Notice Of Hearing 05/20/2005 (fax)	James C. Morfitt
4/25/2005	Notice Of Taking Deposition 3rd amended of norman holm	James C. Morfitt
5/4/2005	Affidavit of Karl J F Runft	James C. Morfitt
	Petitioner's Second Motion to Amend its Petition	James C. Morfitt
	Lodged Memorandum in Support of Second Motion to Amend Petition	James C. Morfitt
	Lodged/Petitioner's Brief in Opposition to Resp Scotty's Duro-Bilt's Motion to Dismiss	James C. Morfitt
	Motion for Summary Judgment on Petitioners Application for Writ of Mandate	James C. Morfitt
	Lodged/Brief in Support of Motion for Summary Judgment in Regards to Petitioners Application for Writ of Mandamus	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 05/20/2005 01:30 PM) Petitioners 2nd motn to amend complaint	James C. Morfitt
5/13/2005	Memorandum in opposition to petitioner goodman oil's second motion to amend its petition (fax)	James C. Morfitt
	Memorandum In Opposition To Petitioners Second Motion To Amend	James C. Morfitt
5/18/2005	reply Memorandum in support of motion to dismiss (fax)	James C. Morfitt
	Supplemental Affidavit of Karl J. F. Runft in support of petitioner's motion to amend & motion for summary judg. & in opposition to duro-bilt's motion to dismiss	James C. Morfitt
5/20/2005	Hearing result for Motion Hearing held on 05/20/2005 01:30 PM: Motion Denied Petitioners 2nd motn to amend complaint	James C. Morfitt
5/24/2005	Hearing Scheduled (Motion Hearing 07/15/2005 01:30 PM)	James C. Morfitt
6/3/2005	Respondent Scottys Durobilt Generator, Memorandum Of Costs And Attorneys Fees (faxed)	James C. Morfitt
	Affidavit Of Christopher E Yorgason In Support Of Memorandum Of Costs And Attorney Fees (faxed)	James C. Morfitt
	Lodged - Brief In Support Of Respondents Memorandum Of Costs And Attorneys Fees (faxed)	James C. Morfitt
6/16/2005	Objection to respondent Scotty's duro-built generators, inc.'s memorandum of costs and attorney fees	James C. Morfitt
	Lodged- memorandum in support of objection to respondant Scotty's Duro-Bilt generators, inc.'s memorandum of costs and attorneys fees	James C. Morfitt
6/17/2005	respondents scotty's durobilt reply in support of motion for cost and atty fees (fax)	James C. Morfitt
6/29/2005	Order On Petitioners Motion To Amend	James C. Morfitt
	Order	James C. Morfitt

Other Claims

Date		Judge
6/29/2005	Civil Disposition entered for: Scottys Duro Built Generator, Defendant. order date: 6/29/2005	James C. Morfitt
	Order On Petitioners Second Motion To Amend	James C. Morfitt
7/1/2005	Memorandum in Opposition to Summary Judgment Motion of Petitioner Motion to Strike	James C. Morfitt
	Notice of hearing	James C. Morfitt
	Affidavit of T. Guy Hallam, Jr.	James C. Morfitt
7/8/2005	Supplemental Affidavit of Jon M. Steele in support of petitioners motion for summary judgment and in opposition to nampa respondents motion to strike	James C. Morfitt
	Petitioners reply Memorandum in support of petitioners motion for summary judgment and in opposition to nampa respondents motion to strike	James C. Morfitt
7/11/2005	Second Motion To Strike	James C. Morfitt
7/15/2005	Hearing result for Motion Hearing held on 07/15/2005 01:30 PM: Hearing Held	James C. Morfitt
7/22/2005	Order RE: Respondents motions to strike-Granted	James C. Morfitt
	Hearing Scheduled (Motion Hearing 08/19/2005 01:30 PM)	James C. Morfitt
	Notice Of Hearing 08/19/2005 (fax)	James C. Morfitt
8/8/2005	Order granting writ of mandamus	James C. Morfitt
	Civil Disposition entered for: Dale, Tom, Defendant; Lambing, Diana, Defendant; Nampa City of, Defendant; Goodman Oil Company, Plaintiff. order date: 8/8/2005	James C. Morfitt
	Peremptory Writ Issued of Mandamus	James C. Morfitt
	Case Status Changed: closed pending clerk action	James C. Morfitt
8/19/2005	Hearing result for Motion Hearing held on 08/19/2005 01:30 PM: Motion Granted	James C. Morfitt
8/22/2005	Memorandum of Costs and Atty Fees (fax)	James C. Morfitt
8/29/2005	Order on respondent Scotty's Duro-Bilt Generator, Inc.'s memorandum of costs and fees	James C. Morfitt
	Civil Disposition entered for: Scottys Duro Built Generator, Defendant; Goodman Oil Company, Plaintiff. order date: 8/29/2005 \$9332.49	James C. Morfitt
	Case Status Changed: Closed	James C. Morfitt
9/7/2005	Memorandum in opposition to petitioner Goodman Oil Company's memorandum of attorneys' fees and costs (fax)	James C. Morfitt
9/14/2005	Judgment	James C. Morfitt
	Civil Disposition entered for: Scottys Duro Built Generator, Defendant; Goodman Oil Company, Plaintiff. order date: 9/14/2005	James C. Morfitt
	Case Status Changed: reopened	James C. Morfitt
9/19/2005	Notice Of Hearing	James C. Morfitt
	Lodged- Memorandum in Support of Petitioners Memorandum of Attorneys Fees and Costs and in Opposition to Respondents Objection	James C. Morfitt

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Other Claims

Date		Judge
9/19/2005	Hearing Scheduled (Motion Hearing 10/21/2005 01:30 PM) Petitioners Memorandum of Attorneys Fees and Costs	James C. Morfitt
9/23/2005	Notice of Compliance with Peremptory Writ of Mandamus	James C. Morfitt
10/14/2005	Notice of appeal to supreme court	James C. Morfitt
	Appealed To The Supreme Court	James C. Morfitt
	Filing: T - Civil Appeals To The Supreme Court Paid by: Steele, Jon M (attorney for Goodman Oil Company) Receipt number: 0142349 Dated: 10/14/2005 Amount: \$9.00 (Money order)	James C. Morfitt
	Bond Posted - Cash (Receipt 142350 Dated 10/14/2005 for 100.00)	James C. Morfitt
10/21/2005	Hearing result for Motion Hearing held on 10/21/2005 01:30 PM: Motion Denied Petitioners Memorandum of Attorneys Fees and Costs	James C. Morfitt
10/24/2005	S C - Order Conditionally Dismissing Appeal	James C. Morfitt
11/7/2005	Notice of filing of agency record and transcript (fgax)	James C. Morfitt
11/14/2005	Order Denying Request for Attorney Fees	James C. Morfitt
12/1/2005	Petitioners Motion For Summary Judgment On Petition For Judicial Review	James C. Morfitt
	Affidavit Of Jon Steele In Support Of Motion for Summary Judgment	James C. Morfitt
	Lodged Petitioners Brief In Support Of Summary Judgment	James C. Morfitt
12/7/2005	S C - Order Dismissing Appeal	James C. Morfitt
	Bond Converted (Transaction number 24840 dated 12/7/2005 amount 100.00)	James C. Morfitt
1/5/2006	Remittitur (Appeal Dismissed)	James C. Morfitt
1/10/2006	Motion for Extension of Time	James C. Morfitt
	Affidavit of John R Kormanik in support of motion for extension of time	James C. Morfitt
	Motion for Extension of Time (Fax)	James C. Morfitt
	Affidavit of John R. Kormanik in Support of Motion for Extension of Time (Fax)	James C. Morfitt
	Motion to Shorten Time (Fax)	James C. Morfitt
	Notice Of Hearing (Fax)	James C. Morfitt
	Hearing Scheduled (Motion Hearing 01/20/2006 01:30 PM) Motion to Shorten time/extension of time	James C. Morfitt
1/11/2006	Opposition to petitioner's motion for summary judgment on petition for judicial review	James C. Morfitt
	Affidavit of John R Kormanik in oppositon to petitioner's motion for summary judgment on petition for judicial review	James C. Morfitt
1/17/2006	Motion to strike Nampa's opposition to petitioner's motion for summary judgment on petition for judicial review	James C. Morfitt
	Affidavit of Jon M. Steele in support of Goodman's motion to strike Nampa's opposition to petitioner's motion for summary judgment on petition for judicial review; in opposition ot Nampa's motion for extension of time and in opposition to Nampa's motion to shorten time	James C. Morfitt
	Brief in support of Goodman's motion to strike Nampa's opposition to petitioner's motion for summary judgment on petition for judicial review; in opposition to Nampa's motion for extension of time and in opposition to Nampa's motion to shorten time	James C. Morfitt

Other Claims

Date		Judge
1/20/2006	Hearing result for Motion Hearing held on 01/20/2006 13:30: Hearing Held Motion to Shorten time/extension of time	James C. Morfitt
1/27/2006	Renewed Motion to augment the record	James C. Morfitt
	Affidavit of Jon M Steele in support of renewed motion to augment the record	James C. Morfitt
	Brief in support of renewed motion to augment the record	James C. Morfitt
2/3/2006	Brief in oppose to Petn Renewed mo to augment record and alternatively, mo to include additional augmentation of record	James C. Morfitt
	Brief in oppose to Petn renewed mo to augment record and alternatively mo to include additional augment of record	James C. Morfitt
	Affidavit of T Guy Hallam Jr Regarding Petn mo to augment record	James C. Morfitt
2/16/2006	Response to city of Nampa's opposition to petitioner's renewed motion to augment the record and, alternatively, Imotion to include additional augmentation of recored	James C. Morfitt
4/3/2006	Order granting respondents' motion for extension of time and motion to shorten time	James C. Morfitt
	Memorandum Decision and Order on petitioner's renewed motion to augment record	James C. Morfitt
4/11/2006	Motion to dismiss Appellate Proceedings	James C. Morfitt
	Lodged brief in support of Nampa Respondents mo to Dismiss	James C. Morfitt
	Notice Of Hearing 5-18-06 9:00	James C. Morfitt
	Hearing Scheduled (Motion Hearing 05/18/2006 09:00 AM) mo to Dismiss	James C. Morfitt
5/4/2006	Lodged Petitioner's brief in opposition to nampa's motion to dismiss appelate procedding	James C. Morfitt
5/8/2006	Lodged Petitioner's opening appellant brief	James C. Morfitt
5/10/2006	Notice vacating hearing on motion to dismiss appellate proceeding	James C. Morfitt
5/11/2006	Hearing result for Motion Hearing held on 05/18/2006 09:00 AM: Hearing Vacated mo to Dismiss	James C. Morfitt
6/5/2006	Lodged Respondents Response Brief	James C. Morfitt
6/22/2006	Lodged Petitioner's reply brief	James C. Morfitt
6/28/2006	Notice of lodging response brief (fax)	James C. Morfitt
8/14/2006	Notice Of Hearing 9-1-06 1:30 (fax)	James C. Morfitt
	Hearing Scheduled (Motion Hearing 09/01/2006 01:30 PM)	James C. Morfitt
9/1/2006	Hearing result for Motion Hearing held on 09/01/2006 01:30 PM: Hearing Held	James C. Morfitt
9/7/2006	Order denying Nampa's motion to dismiss appellate proceeding	James C. Morfitt
11/7/2006	Memorandum Decision On Judicial Review and Order-Remanded to City of Nampa for Its determination	James C. Morfitt
	Civil Disposition entered for: Nampa City of, Defendant; Goodman Oil Company, Plaintiff. order date: 11/7/2006	James C. Morfitt
	Case Status Changed: Closed	James C. Morfitt
11/20/2006	Memorandum of Attorneys' Fees and Costs	James C. Morfitt

Other Claims

Date		Judge
11/20/2006	Brief in Support of Petitioner's Memorandum of Attorneys' Fees and Costs	James C. Morfitt
12/4/2006	Objection to Petitioner Goodman Oil Company's Memorandum of Costs and Attorney Fees	James C. Morfitt
	Memorandum in Opposition to Petitioner Goodman Oil Company's Memorandum of Attorneys' Fees and Costs	James C. Morfitt
12/20/2006	Notice Of Service	James C. Morfitt
12/22/2006	Notice Of Hearing 1-18-07	James C. Morfitt
	Hearing Scheduled (Motion Hearing 01/18/2007 09:00 AM) obj to memo of costs	James C. Morfitt
	Case Status Changed: Closed pending clerk action	James C. Morfitt
1/18/2007	Case Status Changed: reopened	James C. Morfitt
	Hearing result for Motion Hearing held on 01/18/2007 09:00 AM: Hearing Held obj to memo of costs	James C. Morfitt
	Hearing result for Motion Hearing held on 01/18/2007 09:00 AM: Motion Granted for attorneys fees	James C. Morfitt
1/29/2007	Brief in Support of Motion for Preliminary Injunction and Motion for Reconsideration and Clarification	James C. Morfitt
	Motion for Preliminary Injunction	James C. Morfitt
	Motion for Reconsideration and Clarification	James C. Morfitt
	Motion to Shorten Time	James C. Morfitt
	Affidavit of Jon M Steele in Support of Goodman's Motion for Preliminary Injunction & for Reconsideration and Clarification	James C. Morfitt
	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 02/02/2007 02:00 PM) Petitioner's Motion for Preliminary Injunction & Motion for Reconsideration and Clarification	James C. Morfitt
1/30/2007	Nampa respondents' objection to petitioner's motion to shorten time and hearing	James C. Morfitt
2/1/2007	Order shortening time	James C. Morfitt
2/2/2007	Hearing result for Motion Hearing held on 02/02/2007 02:00 PM: Hearing Held Petitioner's Motion for Preliminary Injunction & Motion for Reconsideration and Clarification	James C. Morfitt
	Hearing result for Motion Hearing held on 02/02/2007 02:00 PM: Motion Granted Petitioner's Motion for Preliminary Injunction - remainder reset	James C. Morfitt
	Hearing Scheduled (Motion Hearing 03/19/2007 03:00 PM)	James C. Morfitt
2/8/2007	Bond Posted - Cashier ck (Receipt 228849 Dated 2/8/2007 for 500.00) Security for Preliminary Injunction	James C. Morfitt
2/20/2007	Motion for Reconsideration	James C. Morfitt
	Memorandum in support of Petn mo for reconsideration	James C. Morfitt
2/22/2007	Notice Of Hearing 3-19-07 3:00	James C. Morfitt
2/23/2007	Supplemental brief	James C. Morfitt

Other Claims

Date		Judge
2/23/2007	Goodman's renewed objection to defendants Bart and Alane McKnight's memorandum of costs and attorney fees date Sept 19, 2006; and objection to defendants Bart and Alane McKnight's amended memorandum of costs and attorney fees dated Feb 7th, 2007; and objection to Duro-Bilt's memorandum of costs and attorney fees dated Feb 7, 2007	James C. Morfitt
	Affidavit of Christopher Gabbert	James C. Morfitt
	City of Nampa's supplemental brief and memorandum in opposition to petitioner's motion for reconsideration	James C. Morfitt
2/28/2007	Motion for Entry of Proposed Findings of Fact and conclusions of law: Proposed Judgment as to Nampa Respondents and Proposed preliminary Injunction as to Nampa	James C. Morfitt
	Notice Of Hearing 3-19-07 3:00	James C. Morfitt
3/2/2007	Respondent City of Nampa's Motion for reconsideration regarding attorney fees	James C. Morfitt
	Respondent City of Nampa's Memorandum in support motion for reconsideration regarding attorney fees and in opposition to petitioner's motion for reconsideration	James C. Morfitt
	Notice Of Hearing 3-19-07	James C. Morfitt
3/5/2007	response to city of Nampa's supplemental brief	James C. Morfitt
	City of Nampa's reply brief	James C. Morfitt
3/6/2007	Objection to entry of proposed findings of fact and conclusions of law and proposed judgment as to Nampa Respondents and proposed preliminary injunction as to Nampa	James C. Morfitt
3/12/2007	Goodman's memo response to Nampa's motion for reconsideration regarding this court's award of attorney fees to Goodman and in reply to Nampa's opposition to Goodman's motion for reconsideration regarding this court's denial of attorney fees in the mandamus proceeding	James C. Morfitt
3/19/2007	Hearing result for Motion Hearing held on 03/19/2007 03:00 PM: Hearing Vacated - per judge	James C. Morfitt
3/20/2007	Affidavit of Jon Steele in support of motion to strike	James C. Morfitt
	Motion to strike	James C. Morfitt
3/30/2007	Notice Of Hearing	James C. Morfitt
	Hearing Scheduled (Motion Hearing 04/13/2007 09:30 AM) VARIOUS MOTIONS	James C. Morfitt
4/3/2007	Notice Of Hearing 4-13-07 9:30	James C. Morfitt
4/13/2007	Hearing result for Motion Hearing held on 04/13/2007 09:30 AM: Hearing Held VARIOUS MOTIONS	James C. Morfitt
4/26/2007	Order	James C. Morfitt
	Order	James C. Morfitt
4/27/2007	Amended Preliminary Injunction against Nampa respondents	James C. Morfitt
	Civil Disposition entered for: Nampa City of, Defendant; Goodman Oil Company, Plaintiff. order date: 4/27/2007 costs \$2966.29 and attorney fees \$40,000	James C. Morfitt
	Case Status Changed: closed pending clerk action	James C. Morfitt
6/6/2007	Appealed To The Supreme Court	James C. Morfitt

Other Claims

Date		Judge
6/6/2007	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Steele, Jon M (attorney for Goodman Oil Company) Receipt number: 0249498 Dated: 6/6/2007 Amount: \$15.00 (Check) For: Goodman Oil Company (plaintiff)	James C. Morfitt
	Notice of Appeal	James C. Morfitt
	Bond Posted - Cash (Receipt 249506 Dated 6/6/2007 for 100.00) (for Clerk's Record)	James C. Morfitt
6/27/2007	Notice of cross-appeal (City of Nampa)	James C. Morfitt
7/12/2007	S C - Order Suspending Appeal Pending Completion of Appellate Settlement Conference	James C. Morfitt
11/15/2007	S C - Order Reinstating Appeal	James C. Morfitt
12/4/2007	Satisfaction Of Judgment	James C. Morfitt
12/13/2007	Remittitur (Appeal Dismissed)	James C. Morfitt
12/21/2007	Cash Bond Exonerated (Amount 100.00)	James C. Morfitt
12/26/2007	Amended Remittitur(Appeal Dismissed Only as to City of Nampa)	James C. Morfitt
12/28/2007	S C - Order Amending Title	James C. Morfitt
1/7/2008	Notice of Appeal	James C. Morfitt
	Appealed To The Supreme Court	James C. Morfitt
	Reopen (case Previously Closed)	James C. Morfitt

FILED
A.M. P.M.

OCT - 5 2004

CANYON COUNTY CLERK
E. P. GARCIA, DEPUTY

John C. McCreedy [ISB No. 3823]
McCREEDY LAW OFFICE, P.C.
Attorney at Law
1199 N. Shoreline Lane, Suite 260
Boise, Idaho 83702
Telephone No. (208) 947-2074
Facsimile No. (208) 383-9511

Attorney for Goodman Oil Company

ORIGINAL

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF CANYON**

GOODMAN OIL COMPANY,

Petitioner,

vs.

CITY OF NAMPA, a corporate body politic; the
CITY COUNCIL of the CITY OF NAMPA;
MAYOR TOM DALE, in his capacity as Mayor
of the City of Nampa; DIANA LAMBING, in
her capacity as City Clerk; and SCOTTY'S
DURO-BUILT GENERATOR, INC., an Idaho
corporation,

Respondents.

Case No. CV04-10007

**PETITION FOR WRIT OF MANDATE
AND PETITION FOR JUDICIAL
REVIEW**

Petitioner, Goodman Oil Company, by and through its attorney of record John C.

McCreedy of the firm McCreedy Law Office, P.C., complains and alleges as follows:

I.
NATURE OF THE CASE

1. This action is brought pursuant to Title 7, Chapter 3, Idaho Code. Goodman Oil Company seeks a Writ of Mandate compelling the City of Nampa, pursuant to Idaho Code § 50-

901, to publish Ordinance No. 3374 vacating 1st Avenue South between 2nd Street South and 3rd Street South in Nampa, Idaho. The Ordinance was fully approved by the Nampa City Council and Mayor Tom Dale on August 16, 2004. On August 16, 2004, the Mayor declared the Ordinance passed and directed the City Clerk to record the Ordinance as required by law. The City Clerk then sent the Ordinance to the Idaho Press Tribune for publication. However, on September 2, 2004, the Mayor vetoed the Ordinance. Goodman Oil Company contends that the Mayor had no legal authority to veto the Ordinance after it was fully approved and deposited with the City Clerk for publication.

2. This is also a petition for judicial review brought pursuant to Idaho Code § 50-1322 and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. Goodman Oil Company seeks an order setting aside the Nampa City Council's decision to require a dedicated twenty (20) foot wide fire apparatus access road, and the Council's decision to require a fifty (50) foot ingress/egress and utility easement on the westerly portion of 1st Avenue South.

II. **PARTIES**

3. Goodman Oil Company is a corporation organized under the laws of the State of Idaho, with its principal place of business in Ada County, Idaho.

4. Respondent City of Nampa ("City") is a corporate body politic of the State of Idaho.

5. Respondent City Council of the City of Nampa ("Council") is the governing body for the City of Nampa, and is granted the authority by Idaho Code § 50-902 and Nampa City Code Section 2-2-3-3 to pass ordinances with a majority vote of the Council.

6. Respondent Mayor Tom Dale ("Mayor") is the Mayor of the City of Nampa, and resides in Canyon County, State of Idaho.

7. Respondent Diana Lambing is the City Clerk of the City of Nampa and resides in Canyon County, State of Idaho.

8. Respondent Scotty's Duro-Built Generator, Inc. is a corporation organized under the laws of the State of Idaho, with its principal place of business in Canyon County, Idaho.

III. **JURISDICTION AND VENUE**

9. The Court has jurisdiction in this matter pursuant to Title 7, Chapter 3, Idaho Code. Venue in Canyon County is appropriate under Idaho Code §§ 5-401, 5-402 and 5-404.

IV. **STATEMENT OF FACTS**

10. On August 2, 1995, Scotty's Duro-Bilt Generator, Inc., the Balmires Family Trust, T.J. Forest, Inc. and Goodman Oil Company entered into a Property Owner Street Vacation Agreement ("Vacation Agreement") whereby the parties consented to the City of Nampa's vacation as public right-of-way of 1st Avenue South located between Blocks 16 and 19 of Pleasants Addition to the City of Nampa, Canyon County, Idaho. A true and accurate copy of the Vacation Agreement is attached to this Petition as Exhibit A. Pursuant to the Vacation Agreement, the parties granted and conveyed among themselves a perpetual easement upon the vacated property for the purpose of access to and from their property. The parties also agreed to fully cooperate to ensure that the purpose and intent of the Vacation Agreement was accomplished, and to equally share in the maintenance of the easement in proportion to the amount of property they owned which adjoins 1st Avenue South.

11. On August 3, 1995, Goodman Oil Company submitted an application to the City for vacation of 1st Avenue South between 2nd Street South and 3rd Street South. A true and accurate copy of the Application for Vacation is attached to this Petition as Exhibit B.

12. On September 5, 1995, a public hearing was held and the Council approved the vacation of 1st Avenue South between 2nd Street South and 3rd Street South.

13. On September 18, 1995, the first reading of the Ordinance vacating 1st Avenue South between 2nd Street South and 3rd Street South was completed by the Council.

14. On October 2, 1995, the second reading of the Ordinance was completed by the Council.

15. On October 16, 1995, the third reading of the Ordinance was tabled by the Council.

16. On March 1, 1999, the Planning Director for the City of Nampa confirmed that the vacation of 1st Avenue South between 2nd Street South and 3rd Street South had been approved by the Council on September 5, 1995. In a letter dated March 1, 1999, the Planning Director for the City of Nampa stated that "once a plan for development of the site has been prepared, presented to, and approved by the Fire [D]epartment I will request the City Council take the matter of the street vacation off the table and complete their action vacating the street." A true and accurate copy of the Planning Director's letter dated March 1, 1999 is attached to this Petition as Exhibit C.

17. On March 29, 2001, the Planning Director for the City of Nampa again confirmed that the vacation of 1st Avenue South between 2nd Street South and 3rd Street South had been approved by the Council on September 5, 1995. In a letter dated May 29, 2001, the Planning

Director for the City of Nampa stated that "once a plan for development of the site has been prepared, presented to, and approved by the Fire [D]epartment, I will request the City Council take the matter of the street vacation off the table and complete their action vacating the street." A true and accurate copy of the Planning Director's letter dated March 29, 2001 is attached to this Petition as Exhibit D.

18. On August 4, 2004, the Nampa Fire Department provided written conditional approval of development plans for the vacated property and the property owned by Goodman Oil Company. The Nampa Fire Department approved the vacation of 1st Avenue South subject to a dedicated twenty (20) foot wide fire apparatus access road. A true and accurate copy of the Fire Department's memorandum dated August 4, 2004 is attached to this Petition as Exhibit E.

19. Between August 11 and August 16, 2004, the City created a legal description for the vacation of 1st Avenue South that required a fifty (50) foot ingress/egress and utility easement to be maintained on the westerly portion of 1st Avenue South.

20. The only public utility located within the existing right-of-way for 1st Avenue South is a municipal waterline that runs down the center of the right-of-way for 1st Avenue South.

21. On August 16, 2004, the vacation Ordinance ("Ordinance No. 3374") was approved by the Council and the Mayor. At the Council meeting held August 16, 2004, the Mayor declared Ordinance No. 3374 passed and directed the City Clerk to record it as required by law.

22. On or about August 17, 2004, the City Clerk delivered Ordinance No. 3374 to the Idaho Press Tribune with instructions that the Ordinance be published on August 23, 2004.

23. Sometime after August 17, 2004, but prior to August 23, 2004, the City Clerk contacted the Idaho Press Tribune and cancelled the request to publish Ordinance No. 3374.

24. On September 2, 2004, the Mayor vetoed the Ordinance No. 3374. A true and accurate copy of Ordinance No. 3374, showing that it was approved by the Council and Mayor and signed by the Mayor and City Clerk on August 16, 2004, and then vetoed by the Mayor on September 2, 2004, is attached to this Petition as Exhibit E.

V.
CLAIMS FOR RELIEF

Count One - Writ of Mandate

25. Goodman Oil Company re-alleges all prior allegations set forth in this Petition.

26. Goodman Oil Company does not have a plain, speedy and adequate remedy in the ordinary course of law. Goodman Oil Company has entered into a contract to sell its real property adjacent to 1st Avenue South. The purchase and sale agreement is contingent upon the vacation of 1st Avenue South. The closing on the real estate transaction was previously set for September 12, 2004. The parties were unable to complete the transaction because of the Mayor's veto of Ordinance No. 3374. The purchase and sale agreement will be cancelled by the Buyer in the immediate future if the vacation of 1st Avenue South is not completed.

27. Idaho Code § 50-902 requires that a majority vote of a city council is needed for the passage or adoption of every ordinance. Ordinances are to be read on three different days, unless the city council dispenses with the reading. *Id.* Following passage by the city council, the mayor has the authority to sign or veto any ordinance. *Idaho Code § 50-611.* If an ordinance is vetoed by the mayor, the city council may override the veto by a vote of one-half plus one of the members of the council. *Id.* If the mayor neglects or refuses to sign an ordinance or returns the

ordinance with his objections, the ordinance shall become law at the next regular meeting of the city council without his signature. *Id.*

28. Nampa City Code § 2-2-3-3 requires a majority vote of the Council for the passage of an ordinance. Following the passage of an ordinance, Nampa City Code 2-2-3-4 directs the City Clerk to sign the ordinance and to add the date of its passage by the Council. The ordinance must then be presented to the Mayor within three (3) days for his approval. If the Mayor approves the ordinance, he must attach his signature to the ordinance. *Id.*

29. The Nampa City Code 2-2-3-5 grants the Mayor the power to veto an ordinance. If an ordinance is vetoed, the mayor must return the ordinance, with his objections in writing, to the next regular Council meeting after the ordinance was presented to the Mayor for approval. The Council is then required to reconsider the ordinance and may override the Mayor's veto by an affirmative vote of one-half plus one of the Council members. *Id.*

30. Nampa City Code 2-2-3-6 provides that an ordinance shall be considered passed on one of the following dates: the date of approval by the Mayor; the date of passage over the Mayor's veto; or the date of the next regular meeting after the ordinance was presented for approval, if the Mayor has refused or neglected to sign the ordinance.

31. Nampa City Code 2-2-3-7 states that an ordinance shall take effect and be in force from and after its passage, approval and publication. An ordinance is deemed published when it appears in one issue of the official newspaper within the City. *Id.*

32. Case law establishes that Mayor Dale did not have authority to veto Ordinance No. 3374 after he approved the Ordinance and then deposited the Ordinance with the City Clerk for

publication. In *Pulskamp v. Martinez*, 2 Cal.App.4th 854, 3 Cal.Rptr.2d 607 (1992), the Court stated:

However, as demonstrated by decisions from this state and other jurisdictions, it must be concluded that once a chief executive has relinquished possession of legislation with his signature and transmitted it to the appropriate depositary agent (in our case the city clerk), the measure's character as a properly enacted law becomes immutable.

Pulskamp, 3 Cal.Rptr.2d at 612 (footnote omitted).

33. On August 16, 2004, the Council and Mayor approved Ordinance No. 3374. The City Clerk attested the Mayor's signature. The Minutes of the August 16, 2004 meeting show that the Mayor directed the City Clerk to record Ordinance No. 3374 as required by law. The City Clerk then forwarded the Ordinance to the Idaho Press Tribune for publication on August 23, 2004. Sometime thereafter, the City Clerk contacted the Idaho Press Tribune and cancelled the request to publish the Ordinance.

34. The Mayor relinquished possession and control of Ordinance No. 3374, and transmitted the Ordinance to the City Clerk for publication. Ordinance No. 3374 was therefore properly enacted as law, and the Mayor had no authority to veto the Ordinance on September 2, 2004, or at anytime thereafter.

Count Two - Judicial Review

35. Goodman Oil Company re-alleges all prior allegations set forth in this Petition.

36. Goodman Oil Company seeks judicial review of the Council's decision to require a dedicated twenty (20) foot wide fire apparatus access road within the confines of the vacated right-of-way. Goodman Oil Company also seeks judicial review of the Council's decision

PETITION FOR WRIT OF MANDATE AND PETITION FOR JUDICIAL REVIEW - 8.

to require a fifty (50) foot ingress/egress and utility easement to be maintained on the westerly portion of 1st Avenue South.

37. Goodman Oil Company's Petition for Judicial Review is timely. The City Council's initial decision was rendered August 16, 2004. The time for filing the Petition for Judicial Review was extended to September 20, 2004, during which time Goodman Oil Company exhausted administrative remedies.

38. The Council's deliberations on Ordinance No. 3374 took place on August 16, September 7, and September 20, 2004. Each of those proceedings was recorded by tape recorder, and the City Clerk has possession of those recordings.

39. Pursuant to I.R.C.P. 84(d)(5), Goodman Oil Company identifies the following preliminary list of issues it intends to assert on review:

- A. The Council's decision to require a twenty (20) foot wide dedicated fire apparatus access road, and the Council's decision to require a fifty (50) foot easement, are in violation of constitutional or statutory provisions;
- B. The Council's decisions are in excess of the statutory authority of the Council;
- C. The Council's decisions were made upon unlawful procedure;
- D. The Council's decisions are not supported by substantial evidence on record as a whole; and
- E. The Council's decisions are arbitrary, capricious or an abuse of discretion.

40. Goodman Oil Company requests a transcript of the proceedings held on August 16, September 7 and September 20, 2004.

41. Counsel for Petitioner certifies that service of this Petition has been made upon the Council, and that the estimated fee for preparation of the transcript and record will be paid as soon as counsel for Petitioner receives an estimate.

WHEREFORE, Petitioner Goodman Oil Company requests the following relief:

1. Entry of an Order declaring that Ordinance No. 3374 has been fully approved and passed, and has become law;
2. Entry of an Order declaring that Mayor Dale had no authority to veto Ordinance No. 3374, and therefore his veto of Ordinance No. 3374 is null, void and of no effect;
3. Entry of an Order directing the City Clerk of the City of Nampa to publish Ordinance No. 3374 as soon as reasonably possible;
4. Entry of an Order setting aside the Council's decision to require a dedicated twenty (20) foot wide fire apparatus access road;
5. Entry of an Order setting aside the Council's decision to require a fifty (50) foot ingress/egress and utility easement to be maintained on the westerly portion of 1st Avenue South; and
6. For an award of costs and attorney fees to Petitioner Goodman Oil Company and against the City of Nampa pursuant to Idaho Code § 12-117 or other applicable authority.

DATED this 5th day of October, 2004.

By _____


John C. McCreedy,
Attorney for Plaintiff

INSTRUMENT NO.
200451127

**PROPERTY OWNER
STREET VACATION AGREEMENT**

This Agreement is entered into by and between SCOTTY'S DURO-BUILT GENERATOR, INC.; BLAMIRES FAMILY TRUST; T.J. FOREST, INC.; and GOODMAN OIL COMPANY, an Idaho corporation, collectively referred to herein as "the parties."

WITNESSETH:

WHEREAS, SCOTTY'S DURO-BUILT GENERATOR, INC. owns real property described as Lot 10, Block 19, Pleasants Addition to the City of Nampa, County of Canyon, State of Idaho, as designated on the official plat filed within the office of the Canyon County Recorder;

WHEREAS, BLAMIRES FAMILY TRUST owns real property described as a portion of Lots 1, 2, and 3, Block 16, Pleasants Addition to the City of Nampa, County of Canyon, State of Idaho, as designated on the official plat filed within the office of the Canyon County Recorder;

WHEREAS, T.J. FOREST, INC. owns real property described as a portion of Lots 1 and 2, Block 16, Pleasants Addition to the City of Nampa, County of Canyon, State of Idaho, as designated on the official plat filed within the office of the Canyon County Recorder;

WHEREAS, GOODMAN OIL COMPANY owns the real property located at Lots 4, 5, and 6 of Block 16, Pleasants Addition, and Lots 7, 8, 9, 11, and 12 of Block 19, Pleasants

REQUEST Naylor, Hayes, & McCready
TYPE B+A FEE 18
CANYON CNTY RECORDER
G NOEL HAYES
A. Sammons

2004 SEP 14 AM 10 46

RECORDED

200451127

PROPERTY OWNER STREET VACATION AGREEMENT

000021

EXHIBIT A

Addition, all in the City of Nampa, County of Canyon, State of Idaho, as designated on the official plat filed within the office of the Canyon County Recorder; and

WHEREAS, the parties' property above-described surrounds and adjoins First Avenue South as it divides Blocks 16 and 19 of the Pleasants Addition in the City of Nampa, County of Canyon, State of Idaho.

NOW THEREFORE, the parties, for good and valuable consideration the receipt of which is hereby acknowledged, agree as follows:

1. That the parties consent to the City of Nampa's vacation of First Avenue South, located between Blocks 16 and 19 of Pleasants Addition above-described, as a public right-of-way as depicted on Exhibit "A" attached hereto.

2. That the parties grant and convey among themselves, their agents, licensees, and assignees a perpetual easement upon vacated First Avenue South for the purpose of access to and from their property from both Second and Third Street located in Nampa, Canyon County, Idaho. The actual location of the easement shall be at the discretion of the legal owner of the vacated property upon the City's vacation of First Avenue South as described herein.


3. That the parties shall fully cooperate to ensure that the purpose and intent of this Agreement shall be accomplished. The parties shall execute a formalized agreement recognizing the rights and obligations of the parties upon the City of Nampa's vacation of First Avenue South as described herein. The parties shall equally share in the maintenance of said easement in proportion to the amount of property they own which adjoins First Avenue South as described herein.

4. That the parties shall hold each other harmless and indemnify the other parties from their negligent acts and that of their agents in maintaining and using said access easement.

5. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs, and personal representatives.

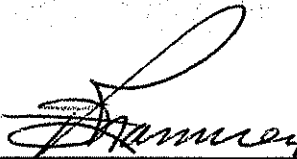
SCOTTY'S DURO-BUILT GENERATOR, INC.

31 July 95
Date


BART MCKNIGHT

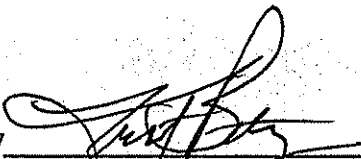
BLAMIRES FAMILY TRUST

August 2, 1995
Date

By 
FLOYD BLAMIRES, Trustee


T.J. FOREST, INC.

July 31st
Date

By 
KURT BATEY, President

GOODMAN OIL COMPANY

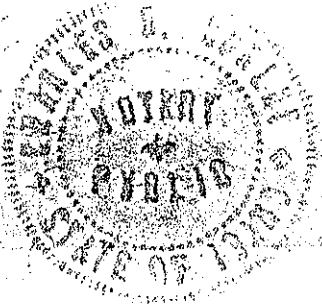
July 31st
Date

By 
CHARLES CONLEY, President

STATE OF IDAHO)
) ss.
County of ADA)

On this 31st day of July, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared BART McKNIGHT, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

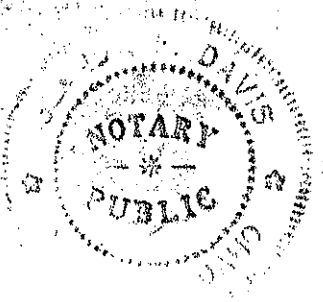


Charles D. Conley
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: March 17, 1999

STATE OF IDAHO)
) ss.
County of ADA)

On this 2nd day of AUGUST, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared FLOYD BLAMIRE, known to me to be the Trustee of the BLAMIRE'S FAMILY TRUST, which is the trust that executes this instrument and the person who executed the instrument on behalf of said trust, and acknowledged to me that such trust executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

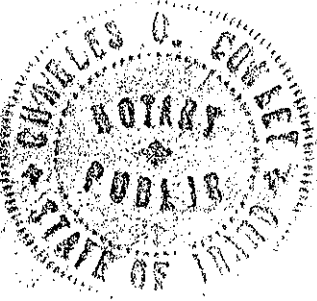


Glenda F. Davis
Notary Public for Idaho
Residing at MERIDIAN, Idaho
Commission Expires: AUGUST, 1999

STATE OF IDAHO)
) ss.
County of Ada)

On this 31ST day of July, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared KURT BATEY, known to me to be the President of T.J. FOREST, INC., which is the corporation that executes this instrument and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

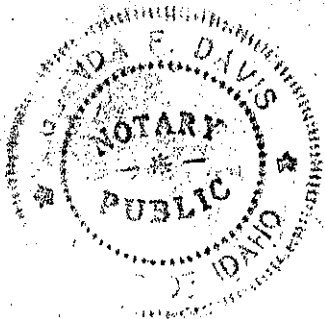


Charles D. Conley
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: March 17, 1999

STATE OF IDAHO)
) ss.
County of ADA)

On this 31ST day of JULY, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared CHARLES CONLEY, known to me to be the President of GOODMAN OIL COMPANY, which is the corporation that executes this instrument and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

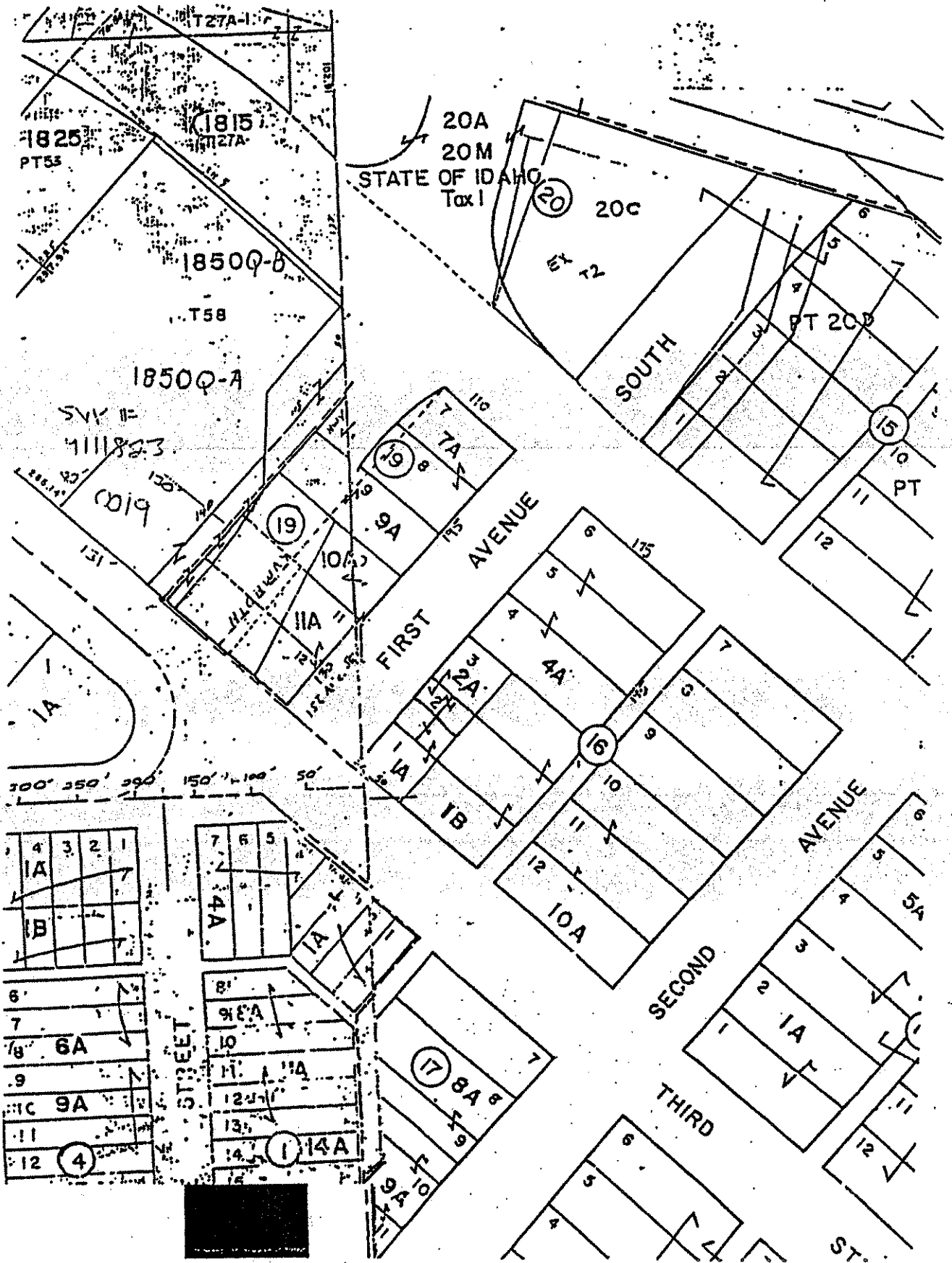
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Amanda F. Davis
Notary Public for Idaho
Residing at MERIDIAN, Idaho
Commission Expires: AUGUST, 1999

2432E*02.A28

EXHIBIT A
STREET VACATION



9/5 C.C.

APPLICATION FOR VACATION OF EASEMENT, PUBLIC RIGHT-OF-WAY OR PLAT
City of Nampa, Idaho

This application must be filled out in detail and submitted to the office of the Planning Director for the City of Nampa, Idaho, accompanied by a nonrefundable fee of \$182.00

1. Name of applicant: Goodman Oil Company
2. Address of applicant: PO Box 2578, Boise, ID 83701
3. Telephone number of applicant: (208) 342-4588 work; (208) 342-4588 home.
4. Address or approximate location of easement, public right-of-way, plat or part thereof to be vacated: First Avenue South, between 2nd Street South and 3rd Street South
5. Legal description and sketch drawing of easement, public right-of-way, or platted area proposed to be vacated, (attach legal and drawing as necessary): See Attached
6. Reason you desire the easement, public right-of-way, plat or part thereof to be vacated: So property owners adjacent to this street may more fully utilize their properties. Also, the construction of a bank building.
7. Names and addresses of the owners and contract purchasers of all the property adjoining the easement, public right-of-way or platted area proposed to be vacated: Scotty's Duro-Built Generators, Inc., 215 First Avenue South, Nampa, ID 83651; Blamires Family Trust, 5891 West Riverbend Lane, Boise, ID 83703; T.J. Forest, Inc., 104 Third Street South, Nampa, ID 83651; Goodman Oil Company, PO Box 2578, Boise, ID 83701.
8. You must obtain and submit to the Planning Director written consent from all persons who own property adjacent to the proposed vacation. Have you attached this information to this application? Yes

Dated this Third day of August, 19 95

Goodman Oil Co. by Charles D. Cooney
Signature of applicant

NOTICE TO APPLICANT

This application will be referred to the Nampa City Council. If the Council desires it may refer the application to the Planning Commission for its recommendation. If the application is recommended for approval the City Council shall hold a public hearing.

Written notice of the public hearing shall be sent to all property owners within 300 feet of the boundaries of the proposed vacation by certified mail with return receipt, at least 10 days prior to the date of the public hearing. Notice shall also be published once a week for 2 successive weeks in the Idaho Press-Tribune, with the last publication at least 7 days prior to the hearing.

You will be given notice of the public hearings and should be present to answer any questions.

Planning & Community Development Dept.

Nampa, Idaho... Today's Vision is Tomorrow's Reality

March 1, 1999

John McCreedy
Jim Jones & Associates
1275 Shoreline Lane
Boise, Idaho 83702-6870

Subject: Vacation of First Ave. So. between 2nd St. So. And 3rd St. So. for Goodman Oil Co.

Dear Mr. McCreedy:

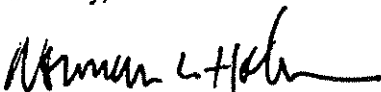
This letter is written in follow-up to your February 26, 1999 letter in which you inquired concerning the status of the above-proposed street vacation submitted to the City of Nampa in August of 1995. Please be advised that the Nampa City Council in regular session on September 5, 1995 voted to approve the vacation and authorized the city attorney to prepare the required ordinance. The vacation was subject to the following conditions:

1. Provision of a method of storm water drainage through or around the site in a manner approved by the city engineer and retainage of easements for existing public utilities.
2. Physical closure of 1st Ave. So. at 2nd St. So. and 3rd St. So. in a manner acceptable to the city engineer. This may include the provision of curb, gutter, sidewalk and drive approaches across the vacation ends.
3. Provision of approved fire apparatus access within and around the proposed bank building and other buildings previously accessed via 1st Ave. So. in a manner acceptable to the Nampa Fire Department prior to the third reading of the of the vacation ordinance.

The applicant was to communicate with the Nampa Fire Marshall regarding the provision and acceptance of the proposed access. The vacation ordinance was to have had its third reading at the October 16, 1995 Council meeting. Minutes of the meeting record that the matter was tabled and not acted upon. A note in the vacation file indicates that approval of the fire access by the Fire Department, as stated in condition #3, was never provided.

Please be advised that once a plan for development of the site has been prepared, presented to, and approved by the Fire department I will request that the City Council take the matter of the street vacation off the table and complete their action vacating the street. Should you have questions please feel free to contact me at 465-2200 ext. 2246.

Sincerely,



Norman L. Holm, Planning Director
CITY OF NAMPA

000028

EXHIBIT C

Planning & Community Development Dept.

Nampa, Idaho... Today's Vision is Tomorrow's Reality

May 29, 2001

Charles D. Conley
Goodman Oil Company
P.O. Box 2578
Boise, Idaho 83701

Subject: Vacation of First Ave. So. between 2nd St. So. and 3rd St. So. for Goodman Oil Co.

Dear Mr. Conley: —

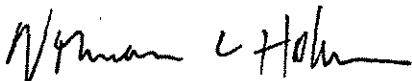
This letter is written in follow-up to a request from Maurice Clements, Brandt Agency Real Estate, regarding the continued status of the above-proposed street vacation submitted to the City of Nampa in August of 1995. Please be advised that the Nampa City Council in regular session on September 5, 1995 voted to approve the vacation and authorized the city attorney to prepare the required ordinance. The vacation was subject to the following conditions:

1. Provision of a method of storm water drainage through or around the site in a manner approved by the city engineer and retainage of easements for existing public utilities.
2. Physical closure of 1st Ave. So. at 2nd St. So. and 3rd St. So. in a manner acceptable to the city engineer. This may include the provision of curb, gutter, sidewalk and drive approaches across the vacation ends.
3. Provision of approved fire apparatus access within and around the proposed bank building and other buildings previously accessed via 1st Ave. So. in a manner acceptable to the Nampa Fire Department prior to the third reading of the of the vacation ordinance.

You were to communicate with the Nampa Fire Marshall regarding the provision and acceptance of the proposed access. The vacation ordinance was to have had its third reading at the October 16, 1995 Council meeting. Minutes of the meeting record that the matter was tabled and not acted upon. A note in the vacation file indicates that approval of the fire access by the Fire Department, as stated in condition #3, was never provided.

Please be advised that once a plan for development of the site has been prepared, presented to, and approved by the Fire department I will request that the City Council take the matter of the street vacation off the table and complete their action vacating the street. Should you have questions please feel free to contact me at 465-2200 ext. 2246.

Sincerely,



Norman L. Holm, Planning Director
CITY OF NAMPA

000029

EXHIBIT D



From the desk of:

Brent Hoskins
Fire Prevention Officer

DATE: August 4, 2004
TO: Planning and Community Development Dept.
411 3rd ST S
Nampa, ID 83651

SUBJECT: Vacation of 1st AVE S between 2nd ST S and 3rd ST S for Goodman Oil Co.

Nampa Fire Department will agree to the vacation of 1st AVE S, provided a dedicated 20' wide apparatus access road is maintained between 2nd ST S and 3rd ST S. The apparatus access road shall be built within the confines of the vacated right of way lines. All affected parcel owners shall respond in writing to the Nampa Fire Department that they understand the requirements of this letter. Any deviations from the requirements above shall first be approved by the Nampa Fire Department.

If I can be of any assistance please feel free to contact me.

Thank you,

Brent Hoskins

000030

EXHIBIT E

VETO

ORDINANCE NO. 3374

AN ORDINANCE OF THE CITY OF NAMPA, IDAHO, VACATING 1ST AVENUE SOUTH BETWEEN 2ND STREET SOUTH AND 3RD STREET SOUTH IN THE CITY OF NAMPA, CANYON COUNTY, IDAHO, SUBJECT TO AN ACCESS AND UTILITY EASEMENT RESERVED THEREON, AND DIRECTING THE CITY ENGINEER TO ALTER THE USE AND AREA MAP ACCORDINGLY.

WHEREAS, on September 5, 1995, a public hearing on vacating 1st Avenue South between 2nd Street South and 3rd Street South in the City of Nampa was held before the City Council; and

WHEREAS, the City Council approved the vacation; and

WHEREAS, on September 18, 1995, the First Reading of the Ordinance Vacating 1st Avenue South between 2nd Street South and 3rd Street South in the City of Nampa was read before the City Council; and

WHEREAS, on October 2, 1995, the Second Reading of the above described vacation Ordinance was read before the City Council; and

WHEREAS, on October 16, 1995, the Third Reading of the above described vacation Ordinance was tabled by the City Council because the necessary approval of fire access through the area by the Fire Department had not been obtained; and

WHEREAS, the Fire Department has recently reviewed development plans for the area and has provided its written, conditional approval of the vacation Ordinance if an access and utility easement is retained through the property to be vacated; and

WHEREAS, the City of Nampa has created a legal description for an access and utility easement to be retained through the property to be vacated; and

WHEREAS, the access and utility easement is acceptable to the Fire Department as to location and dimension.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NAMPA, IDAHO:

Section 1: That 1ST Avenue South between 2ND Street South and 3RD Street South in the City of Nampa, Idaho be and the same is hereby vacated, such vacation subject to the following described access and utility easement which is hereby reserved on the vacated property, to-wit:

See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full.

000031

EXHIBIT F

Section 2: That the City Engineer is hereby instructed and directed to alter the Use and Area Map in accordance with the above Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 16th DAY OF August, 2004.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 16th DAY OF August, 2004.

Approved:

By *Tom Dale*
Mayor

Attest:
By *Deana Lambing*
City Clerk

VETO
Sept 2, 2004
Tom Dale

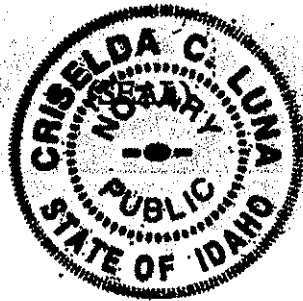
State of Idaho)

Canyon County)

On this 16TH day of August, in the year 2004, before me, Criselda C. Luna
a Notary Public, personally appeared TOM DAVE and DIANA Campbell known
or identified to me to be the Mayor and City Clerk, respectively, of The City of Nampa, who
executed the instrument or the person that executed the instrument on behalf of said corporation,
and acknowledge to me that such corporation executed the same.

Criselda C. Luna

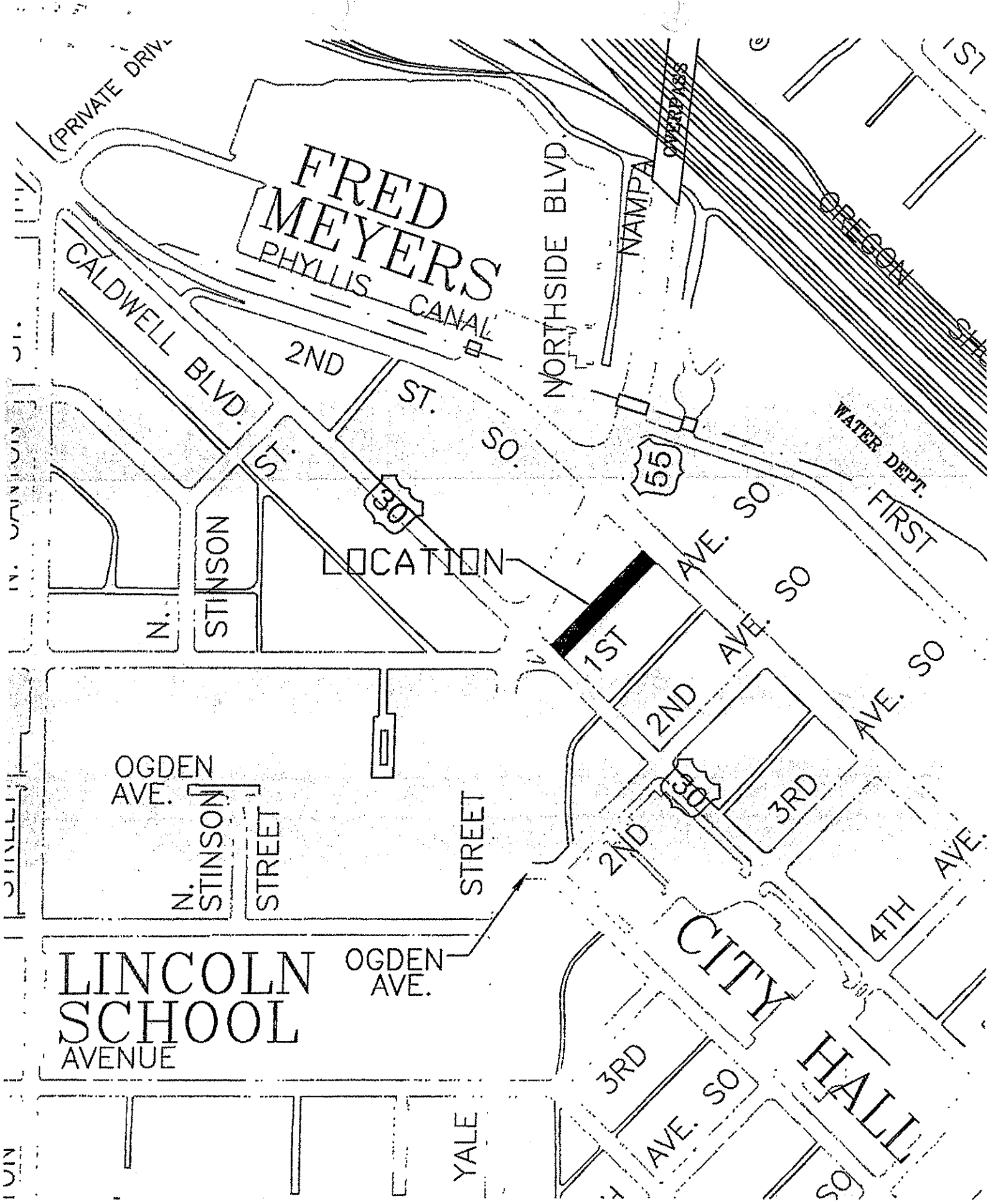
Criselda C. Luna
Residing at: Nampa, Canyon County, Idaho
My Commission Expires: 10/02/07



**LEGAL DESCRIPTION FOR
VACATION OF FIRST AVENUE SOUTH**

That portion of First Avenue South between Second Street South and Third Street South within the NW ¼, Section 22, and the NE ¼, Section 21, Township 3 North, Range 2 West, Boise Meridian, City of Nampa, Canyon County, Idaho, as shown on the plat of PLEASANTS ADDITION on file with Canyon County Book 4, Page 10.

Maintaining the westerly fifty feet (50') for an Ingress/Egress and utility easement.



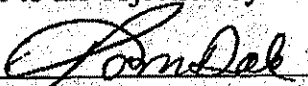
FRED MEYERS
PHYLLIS CANAL

LOCATION

CITY HALL

LINCOLN SCHOOL
AVENUE

I, Mayor Tom Dale do hereby VETO Ordinance number 3374 for Vacation of 1st Avenue South between 2nd Street South and 3rd Street South pursuant to Nampa City Code 2-2-3-5 due to the objection by an adjoining property owner.



Tom Dale
Mayor
City of Nampa

FILED
A.M. 4:00 P.M.
NOV 03 2004
CANYON COUNTY CLERK
A ORTEGA, DEPUTY

Terrence R. White
T. Guy Hallam, Jr.
John R. Kormanik
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB Nos.: 1351, 6101, 5850
trw@whitepeterson.com
igh@whitepeterson.com
jkormanik@whitepeterson.com

Attorneys for Respondents.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,

Petitioner,

vs.

CITY OF NAMPA, a corporate body politic;
THE CITY COUNCIL of the CITY OF
NAMPA; MAYOR TOM DALE, in his
capacity as Mayor of the City of Nampa;
DIANA LAMBING, in her capacity as City
Clerk; and SCOTTY'S DURO-BILT
GENERATOR, INC., an Idaho corporation,

Respondents.

Case No.: CV 04-10007

**CITY OF NAMPA RESPONDENTS'
RESPONSE TO PETITION FOR WRIT
OF MANDATE AND PETITION FOR
JUDICIAL REVIEW**

COME NOW, the City of Nampa, the City Council of the City of Nampa, Mayor Tom
Dale, in his capacity as Mayor of the City of Nampa, and Diana Lambing, in her capacity as the

ORIGINAL

City Clerk (hereinafter "Nampa Respondents"), by and through their attorneys of record, the law firm of White Peterson, P.A., and hereby respond to the *Petition for Writ of Mandate and Petition for Judicial Review* (hereinafter "Petition") as follows:

INTRODUCTION

The following defenses are not stated separately as to each claim for relief or allegation of Petitioner. Nevertheless, the following defenses are applicable, where appropriate, to any and all of Petitioner's claims for relief. Nampa City Respondents, in asserting the following defenses, do not admit that the burden of proving the allegations or denials contained in the defenses is upon these answering Nampa City Respondents, but, to the contrary, assert that by reason of said denials, and by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and affirmative defenses and the burden of proving the inverse of the allegations contained in many of the defenses and affirmative defenses is upon the Petitioner. Moreover, Nampa City Respondents do not admit, in asserting any defense, any responsibility or liability but, to the contrary, specifically deny any and all allegations of responsibility and liability contained in the Petition

FIRST DEFENSE

The Petition fails to state a claim against Nampa City Respondents upon which relief can be granted.

SECOND DEFENSE

Nampa City Respondents deny each and every allegation contained in the Petition not specifically admitted herein.

THIRD DEFENSE

1.

In response to ¶ 1 of the Petition, Nampa City Respondents deny the same.

2.

To the extent ¶ 2 of the Petition requires a response from Nampa City Respondents, Nampa City Respondents deny this paragraph.

**II.
PARTIES**

3.

In response to ¶ 3 of the Petition, Nampa City Respondents are without sufficient knowledge of the allegations contained therein and therefore deny the same.

4.

In response to ¶ 4 of the Petition, Nampa City Respondents admit the same.

5.

In response to ¶ 5 of the Petition, Nampa City Respondents admit the same.

6.

In response to ¶ 6 of the Petition, Nampa City Respondents admit the same.

7.

In response to ¶ 7 of the Petition, Nampa City Respondents admit the same.

8.

In response to ¶ 8 of the Petition, Nampa City Respondents are without sufficient knowledge of the allegations contained therein and therefore deny the same.

III.
JURISDICTION AND VENUE

9.

In response to ¶ 9 of the Petition, Nampa City Respondents admit that the Court has jurisdiction and venue is appropriate for the Writ of Mandate. Nampa City Respondents deny any and all remaining allegations contained therein.

IV.
STATEMENT OF FACTS

10.

In response to ¶ 10 of the Petition, Nampa City Respondents are without sufficient knowledge of the allegations contained therein and therefore deny the same.

11.

In response to ¶ 11 of the Petition, Nampa City Respondents admit that on August 3, 1995, Goodman Oil Company submitted an application to the City of vacation of 1st Avenue South between 2nd Street South and 3rd Street South. Nampa City Respondents deny that a true and accurate copy of the Application for Vacation is attached to the Petition, as there is no attachment included with Exhibit B, which references the same. Nampa City Respondents deny any and all remaining allegations contained therein.

12.

In response to ¶ 12 of the Petition, Nampa City Respondents admit that upon notice, a public hearing was held, and an ordinance was to be drafted to effect the vacation of 1st Avenue between 2nd Street South and 3rd Street South. Nampa City Respondents deny any and all remaining allegations contained therein.

13.

In response to ¶ 13 of the Petition, Nampa City Respondents admit the same.

14.

In response to ¶ 14 of the Petition, Nampa City Respondents admit the same.

15.

In response to ¶ 15 of the Petition, Nampa City Respondents admit that on October 16, 1995, the third reading of the Ordinance was tabled by the Council because Petitioner had not met conditions of final approval of the Ordinance. Nampa City Respondents deny any and all remaining allegations contained therein.

16.

In response to ¶ 16 of the Petition, Nampa City Respondents admit that the Planning Director sent a letter dated March 1, 1999, the terms and conditions of which speak for themselves. Nampa City Respondents deny any and all remaining allegations contained therein.

17.

In response to ¶ 17 of the Petition, Nampa City Respondents admit that the Planning director sent a letter dated May 29, 2001, the terms and conditions of which speak for themselves. Nampa City Respondents deny any and all remaining allegations contained therein, including specifically denying that the letter was sent on March 29, 2001.

18.

In response to ¶ 18 of the Petition, Nampa City Respondents admit that on August 4, 2004, the Nampa Fire Department provided written conditional approval of development plans for the vacated property and the property owned by Petitioner, the terms and conditions of which

speak for themselves. Nampa City Respondents deny any and all remaining allegations contained therein.

19.

In response to ¶ 19 of the Petition, Nampa City Respondents admit that a legal description was created and provided to the City Clerk's office to be attached to the Ordinance prior to it being presented to the City Council for consideration on August 16, 2004, the terms of the legal description speak for themselves. Nampa City Respondents deny any and all remaining allegations contained therein.

20.

In response to ¶ 20 of the Petition, Nampa City Respondents deny the same.

21.

In response to ¶ 21 of the Petition, Nampa City Respondents admit the same.

22.

In response to ¶ 22 of the Petition, Nampa City Respondents admit that the City Clerk delivered the Ordinance to the Idaho Press Tribune on August 19, 2004, which was the deadline for publications which would be in the Idaho Press Tribune on August 23, 2004. Nampa City Respondents deny any and all remaining allegations contained therein.

23.

In response to ¶ 23 of the Petition, Nampa City Respondents admit that on August 19, 2004, the City Clerk contacted the Idaho Press Tribune and pulled the ordinance from publication. Nampa City Respondents deny any and all remaining allegations contained therein.

24.

In response to ¶ 24 of the Petition, Nampa City Respondents admit that the Ordinance was officially vetoed on September 2, 2004. Nampa City Respondents deny any and all remaining allegations contained therein.

V.

CLAIMS FOR RELIEF
Count One-Writ of Mandate

25.

In response to ¶ 25 of the Petition, Nampa City Respondents reallege and incorporate herein by reference their responses answers to ¶¶ 1-24 above.

26.

In response to ¶ 26 of the Petition, Nampa City Respondents specifically deny that Goodman Oil Company does not have a plain, speedy and adequate remedy in the ordinary course of law. Nampa City Respondents are without sufficient knowledge of the remaining allegations in ¶ 26 of the Petition and therefore deny the same.

27.

In response to ¶ 27 of the Petition, the same is a legal conclusion and no responsive pleading is required. To the extent a response is required, the Idaho Statutes speak for themselves.

28.

In response to ¶ 28 of the Petition, the same is a legal conclusion and no responsive pleading is required. To the extent a response is required, the Nampa City Code speaks for itself.

29.

In response to ¶ 29 of the Petition, the same is a legal conclusion and no responsive pleading is required. To the extent a response is required, the Nampa City Code speaks for itself.

30.

In response to ¶ 30 of the Petition, the same is a legal conclusion and no responsive pleading is required. To the extent a response is required, the Nampa City Code speaks for itself.

31.

In response to ¶ 31 of the Petition, the same is a legal conclusion and no responsive pleading is required. To the extent a response is required, the Nampa City Code speaks for itself.

32.

In response to ¶ 32 of the Petition, Nampa City Respondents deny the same.

33.

In response to ¶ 33 of the Petition, Nampa City Respondents admit the same.

34.

In response to ¶ 34 of the Petition, Nampa City Respondents deny the same.

Count Two-Judicial Review

35.

In response to ¶ 35 of the Petition, Nampa City Respondents reallege and incorporate herein by reference their responses answers to ¶¶ 1-34 above.

36.

In response to ¶ 36 of the Petition, to the extent a response is required, Nampa City Respondents deny the same.

37.

In response to ¶ 37 of the Petition, Nampa City Respondents deny the same.

38.

In response to ¶ 38 of the Petition, Nampa City Respondents admit that regular council matters took place on August 16, September 7, and September 20, 2004, and that, per the ordinary practice of the Nampa City Respondents, the proceedings were tape recorded. Nampa City Respondents deny any and all remaining allegations contained therein.

39.

In response to ¶ 39 of the Petition, Nampa City Respondents:

- A. Deny.
- B. Deny.
- C. Deny.
- D. Deny.
- E. Deny.

40.

In response to ¶ 40 of the Petition, Nampa City Respondents deny the same as it is vague and unintelligible, and does not appear to be an allegation directed to these parties.

41.

In response to ¶ 41 of the Petition, Nampa City Respondents admit that service of the Petition has been made upon the Council. Nampa City Respondents are without sufficient knowledge of the remaining allegations in ¶ 41 of the Petition and therefore deny the same.

42.

To the extent the Prayer for Relief within the Petition contains affirmative requests for relief or factual allegations regarding this matter, those requests and allegations are denied and Petitioner should take nothing herefrom.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Petitioner has failed to demonstrate a “clear legal right” to the relief sought.

SECOND AFFIRMATIVE DEFENSE

Petitioner has failed to state a claim upon which relief can be granted because it is not entitled to the relief it seeks.

THIRD AFFIRMATIVE DEFENSE

The Nampa City Respondents do not have a clear legal duty to perform the acts requested by Petitioner.

FOURTH AFFIRMATIVE DEFENSE

The relief sought by Petitioner to be compelled is neither ministerial, nor executive in nature.

FIFTH AFFIRMATIVE DEFENSE

The relief sought by Petitioner to be compelled requires the exercise of discretion.

SIXTH AFFIRMATIVE DEFENSE

Petitioner has speedy and adequate remedies at law to resolve this matter.

SEVENTH AFFIRMATIVE DEFENSE

Petitioner seeks specific performance of an agreement between Petitioner and Respondent Duro-Bilt Generator, Inc. (“Duro-Bilt”). The Writ of Mandate is an inappropriate legal vehicle for Petitioner’s attempt to seek specific performance of the Property Owner Street Vacation Agreement.

EIGHTH AFFIRMATIVE DEFENSE

The ordinance vacating the relevant portion of First Avenue South in 1995 was conditional. Petitioner failed to meet those conditions in a timely fashion.

NINTH AFFIRMATIVE DEFENSE

The ordinance vacating the relevant portion of First Avenue South in 2004 was never effective. Petitioner failed to meet those conditions in a timely fashion.

TENTH AFFIRMATIVE DEFENSE

Petitioner failed to meet the conditions required by the Nampa Fire Department in order for the ordinance to be approved.

ELEVENTH AFFIRMATIVE DEFENSE

Petitioner failed to inform the Nampa City Respondents, or any of them, that Petitioner had failed to meet the conditions required by the Nampa Fire Department in order for the ordinance to be approved.

TWELFTH AFFIRMATIVE DEFENSE

The Mayor's veto occurred prior to the ordinance taking effect by virtue of its publication and was proper.

THIRTEENTH AFFIRMATIVE DEFENSE

The Mayor properly vetoed the ordinance vacating 1st Avenue South because the requirements of Idaho Code § 50-1321 were not satisfied prior to the ordinance's effective date.

FOURTEENTH AFFIRMATIVE DEFENSE

The ordinance, if passed, would be void as a matter of law because all adjoining landowners had not consented to the vacation of the public street, as required by Idaho Code § 50-1321.

FIFTEENTH AFFIRMATIVE DEFENSE

Petitioner failed to inform the Nampa City Respondents, or any of them, that Petitioner had failed to get written consent to the vacation of the public street from all adjoining landowners, as required by Idaho Code § 50-1321.

SIXTEENTH AFFIRMATIVE DEFENSE

Petitioner has failed to exhaust its administrative remedies for appeal of the decision of the Nampa City Respondents.

SEVENTEENTH AFFIRMATIVE DEFENSE

Petitioner is not entitled to an order requiring the amendment of the ordinance.

EIGHTEENTH AFFIRMATIVE DEFENSE

That Petitioner has unclean hands by its actions of failing to properly disclose the lack of consent of adjacent landowners and failure to meet the conditions necessary for approval of the Ordinance. Thus, Petitioner cannot maintain an action in equity.

NINETEENTH AFFIRMATIVE DEFENSE

That Petitioner was guilty of laches and unreasonable delay in bringing this action and in asserting any cause of action against Nampa City Respondents and that such laches and unreasonable delay were without good cause and substantially prejudiced the Nampa City Respondents.

TWENTIETH AFFIRMATIVE DEFENSE

Petitioner's petition for judicial review is untimely.

RESERVATION OF RIGHTS

Defendants reserve the right to amend their answer and to assert additional affirmative defenses as discovery progresses in this case.

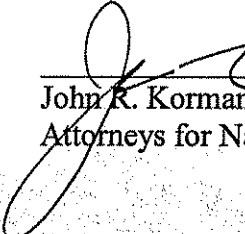
ATTORNEY FEES

Nampa City Respondents are entitled to attorney fees against Petitioner under I.C. §§ 12-121, 12-117, and Idaho Rule of Civil Procedure 54.

DATED this 3rd day of November, 2004.

WHITE PETERSON, P.A.

By:



John R. Kormanik, for the Firm
Attorneys for Nampa City Respondents

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served upon the following by the method indicated:

John C. McCreedy
McCREEDY LAW OFFICE, P.C.
Attorney at Law
1199 N. Shoreline Lane, Suite 260
Boise, Idaho 83702

____ Hand Delivered
 Mailed
 Faxed
208.383.9511

Christopher E. Yorgason
MOORE, SMITH, BUXTON & TURCKE
225 N. 9th St., Ste. #420
Boise, ID 83702

____ Hand Delivered
 Mailed
 Faxed
208.331.1202

DATED this ___ day of November, 2004.



for White Peterson, P.A.

Z:\Work\Nampa City\Goodman Oil Co\Pleadings\pld answer 10-28-04 wy.doc

John C. McCreedy [ISB No. 3823]
McCREEDY LAW OFFICE, P.C.
3184 Elder Street
Boise, Idaho 83705
Telephone No. (208) 383-6521
Facsimile No. (208) 383-6688

Attorney for Petitioner

ORIGINAL

FILED
A.M. (1:35) P.M.

JAN 07 2005

CANYON COUNTY CLERK
G ARECHIGA, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,

Petitioner,

vs.

CITY OF NAMPA, a corporate body politic;
THE CITY COUNCIL of the CITY OF
NAMPA; MAYOR TOM DALE, in his capacity
as Mayor of the City of Nampa; DIANA
LAMBING, in her capacity as City Clerk; and
SCOTTY'S DURO-BILT GENERATOR, INC.,
an Idaho corporation,

Respondents.

Case No.: CV 04-10007

PETITIONER'S MOTION TO AMEND

Petitioner, Goodman Oil Company, by and through its counsel, and pursuant to I.R.C.P. 15(a), hereby moves for leave of Court to amend its Petition for Writ of Mandate and Petition for Judicial Review. Petitioner seeks to add Bart McKnight, and Bradley G. Blamires and Tamara D. Blamires, as Respondents/Defendants, to add claims for breach of contract against Respondents/Defendants Scotty's Duro-Bilt Generator, Inc. ("Duro-Bilt") and the Blamires, and to add claims for tortious interference with contract against Bart McKnight and Duro-Bilt. Petitioner's

PETITIONER'S MOTION TO AMEND- 1

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proposed First Amended Petition for Writ of Mandate, Petition for Judicial Review, and Complaint and Demand for Jury Trial is attached hereto as Exhibit A. This Motion is supported by the Affidavit of John C. McCreedy in Support of Petitioner's Motion to Amend, by a Memorandum, and by the record in this matter.

ORAL ARGUMENT IS REQUESTED.

DATED this 7th day of January, 2005.

McCREEDY LAW OFFICE P.C.

By


John C. McCreedy
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2005, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing **PETITIONER'S MOTION TO AMEND** upon:

T. Guy Hallam
WHITE PETERSON, P.A.
5700 East Franklin Road Suite 200
Nampa, Idaho 83687-7901

U.S. Mail
 Hand Delivered
 Federal Express
 Fax Transmission
(208) 466-4405

Christopher E. Yorgason
MOORE SMITH
225 N 9th Suite 420
Boise, Idaho 83702

U.S. Mail
 Hand Delivered
 Federal Express
 Fax Transmission
(208) 331-1202


John C. McCreedy

John C. McCreedy [ISB No. 3823]
McCREEDY LAW OFFICE, P.C.
3184 Elder Street
Boise, Idaho 83705
Telephone No. (208) 383-6521
Facsimile No. (208) 383-6688

Attorney for Goodman Oil Company

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,

Petitioner/Plaintiff,

vs.

CITY OF NAMPA, a corporate body politic; the CITY COUNCIL of the CITY OF NAMPA; MAYOR TOM DALE, in his capacity as Mayor of the City of Nampa; DIANA LAMBING, in her capacity as City Clerk; and SCOTTY'S DURO-BUILT GENERATOR, INC., an Idaho corporation; BART MCKNIGHT, Individually and as President of Scotty's Duro-Bilt Generator, Inc.; and BRADLEY G. BLAMIREs and TAMARA D. BLAMIREs, husband and wife.

Respondents/Defendants.

Case No. CV 04-10007

FIRST AMENDED PETITION FOR WRIT OF MANDATE, AND PETITION FOR JUDICIAL REVIEW, AND COMPLAINT AND DEMAND FOR JURY TRIAL

Petitioner/Plaintiff, Goodman Oil Company, by and through its attorney of record

John C. McCreedy of the firm McCreedy Law Office, P.C., complains and alleges as follows:

I.
NATURE OF THE CASE

1. This action is brought pursuant to Title 7, Chapter 3, Idaho Code. Goodman Oil Company ("Goodman") seeks a Writ of Mandate compelling the City of Nampa, pursuant to Idaho Code § 50-901, to publish Ordinance No. 3374 vacating First Avenue South between 2nd Street South and 3rd Street South in Nampa, Idaho. The Ordinance was fully approved by the Nampa City Council and Mayor Tom Dale on August 16, 2004. On August 16, 2004, the Mayor declared the Ordinance passed and directed the City Clerk to record the Ordinance as required by law. The City Clerk then sent the Ordinance to the Idaho Press Tribune for publication. However, on September 2, 2004, the Mayor vetoed the Ordinance. Goodman Oil Company contends that the Mayor had no legal authority to veto the Ordinance after it was fully approved and deposited with the City Clerk for publication.

2. This is also a petition for judicial review brought pursuant to Idaho Code § 50-1322 and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. Goodman Oil Company seeks an order setting aside the Nampa City Council's decision to require a dedicated twenty (20) foot wide fire apparatus access road, and the Council's decision to require a fifty (50) foot ingress/egress and utility easement on the westerly portion of First Avenue South.

3. This is also an action for breach of contract against Scotty's Duro-Bilt Generator, Inc., and Bradley G. and Tamara D. Blamires. Goodman seeks damages and specific performance.

II.
PARTIES

34. Goodman Oil Company is a corporation organized under the laws of the State of Idaho, with its principal place of business in Ada County, Idaho.

45. Respondent City of Nampa ("City") is a corporate body politic of the State of Idaho.

56. Respondent City Council of the City of Nampa ("Council") is the governing body for the City of Nampa, and is granted the authority by Idaho Code § 50-902 and Nampa City Code Section 2-2-3-3 to pass ordinances with a majority vote of the Council.

67. Respondent Mayor Tom Dale ("Mayor") is the Mayor of the City of Nampa, and resides in Canyon County, State of Idaho.

78. Respondent Diana Lambing is the City Clerk of the City of Nampa and resides in Canyon County, State of Idaho.

89. Respondent/Defendant Scotty's Duro-Built Generator, Inc. ("Duro-Bilt") is a corporation organized under the laws of the State of Idaho, with its principal place of business in Canyon County, Idaho.

10. Respondent/Defendant Bart McKnight is the President of Duro-Bilt and resides in Canyon County, Idaho.

11. Respondents/Defendants Bradley G. Blamires and Tamara D. Blamires (together, "Blamires") are husband and wife and reside in Canyon County, Idaho.

III.
JURISDICTION AND VENUE

912. The Court has jurisdiction in this matter pursuant to Title 7, Chapter 3, Idaho Code; Idaho Code § 50-1322 and Title 67, Chapter 52, Idaho Code; and Idaho Code § 1-705. Venue in Canyon County is appropriate under Idaho Code §§ 5-401, 5-402, and 5-404, and § 67-5272.

IV.
STATEMENT OF FACTS

1013. On August 2, 1995, ~~Seott's~~ Duro-Bilt, Generator, Inc., the Ballamires Family Trust, T.J. Forest, Inc. and Goodman Oil Company entered into a Property Owner Street Vacation Agreement ("Vacation Agreement") whereby the parties consented to the City of Nampa's vacation as public right-of-way of First Avenue South located between Blocks 16 and 19 of Pleasants Addition to the City of Nampa, Canyon County, Idaho. A true and accurate copy of the Vacation Agreement is attached to this Petition as Exhibit A. Pursuant to the Vacation Agreement, the parties granted and conveyed among themselves a perpetual easement upon the vacated property for the purpose of access to and from their property. The parties also agreed to fully cooperate to ensure that the purpose and intent of the Vacation Agreement was accomplished, and to equally share in the maintenance of the easement in proportion to the amount of property they owned which adjoins First Avenue South.

1114. On August 3, 1995, ~~Goodman Oil Company~~ submitted an application to the City for vacation of First Avenue South between 2nd Street South and 3rd Street South. A true and accurate copy of the Application for Vacation is attached to this Petition as Exhibit B.

1215. On September 5, 1995, a public hearing was held and the Council approved the vacation of First Avenue South between 2nd Street South and 3rd Street South.

~~13~~16. On September 18, 1995, the first reading of the Ordinance vacating First Avenue South between 2nd Street South and 3rd Street South was completed by the Council.

~~14~~17. On October 2, 1995, the second reading of the Ordinance was completed by the Council.

~~15~~18. On October 16, 1995, the third reading of the Ordinance was tabled by the Council.

~~16~~19. On March 1, 1999, the Planning Director for the City of Nampa confirmed that the vacation of First Avenue South between 2nd Street South and 3rd Street South had been approved by the Council on September 5, 1995. In a letter dated March 1, 1999, the Planning Director for the City of Nampa stated that "once a plan for development of the site has been prepared, presented to, and approved by the Fire [D]epartment I will request the City Council take the matter of the street vacation off the table and complete their action vacating the street." A true and accurate copy of the Planning Director's letter dated March 1, 1999 is attached to this Petition as Exhibit C.

20. The Vacation Agreement is binding upon the successors and assigns to the parties to the Agreement. On or about February 6, 2001, the Blamires became the owners of real property subject to the Vacation Agreement, namely a portion of Lots 1, 2, and 3, Block 16, Pleasants Addition to the City of Nampa, County of Canyon, State of Idaho, as designated on the official plat filed with the Office of the Canyon County Recorder. The Blamires are successors and assigns to a party to the Vacation Agreement and are bound by the Vacation Agreement.

~~17~~21. On March 29, 2001, the Planning Director for the City of Nampa again confirmed that the vacation of First Avenue South between 2nd Street South and 3rd Street South

had been approved by the Council on September 5, 1995. In a letter dated May 29, 2001, the Planning Director for the City of Nampa stated that "once a plan for development of the site has been prepared, presented to, and approved by the Fire [D]epartment, I will request the City Council take the matter of the street vacation off the table and complete their action vacating the street." A true and accurate copy of the Planning Director's letter dated March 29, 2001 is attached to this Petition as Exhibit D.

22. On July 28, 2004, Goodman entered into a Purchase and Sale Agreement with James R. Wiley ("Wiley") whereby Goodman agreed to sell and Wiley agreed to purchase Goodman's property abutting First Avenue South. The Purchase and Sale Agreement was contingent upon the City completing the vacation of First Avenue South in a manner acceptable to Goodman and Wiley.

23. Bart McKnight and Duro-Bilt had knowledge of the contract between Goodman and Wiley.

24. On August 4, 2004, the Nampa Fire Department provided written conditional approval of development plans for the vacated property and the property owned by Goodman Oil Company. The Nampa Fire Department approved the vacation of First Avenue South subject to a dedicated twenty (20) foot wide fire apparatus access road. A true and accurate copy of the Fire Department's memorandum dated August 4, 2004 is attached to this Petition as Exhibit E.

25. Between August 11 and August 16, 2004, the City created a legal description for the vacation of First Avenue South that required a fifty (50) foot ingress/egress and utility easement to be maintained on the westerly portion of First Avenue South.

2026. The only public utility located within the existing right-of-way for First Avenue South is a municipal waterline that runs down the center of the right-of-way for First Avenue South.

2127. On August 16, 2004, the vacation Ordinance ("Ordinance No. 3374") was approved by the Council and the Mayor. At the Council meeting held August 16, 2004, the Mayor declared Ordinance No. 3374 passed and directed the City Clerk to record it as required by law.

2228. On or about August 17, 2004, the City Clerk delivered Ordinance No. 3374 to the Idaho Press Tribune with instructions that the Ordinance be published on August 23, 2004.

29. Sometime after August 17, 2004, but prior to August 23, 2004, Bart McKnight and Duro-Bilt contacted the City and attempted to verbally withdraw Duro-Bilt's consent to the vacation of First Avenue South. Neither Mr. McKnight nor Duro-Bilt notified Goodman that Duro-Bilt had attempted to withdraw its consent to the vacation.

2330. Sometime after August 17, 2004, but prior to August 23, 2004, the City Clerk contacted the Idaho Press Tribune and cancelled the request to publish Ordinance No. 3374.

2431. On September 2, 2004, the Mayor officially vetoed the Ordinance No. 3374. A true and accurate copy of Ordinance No. 3374, showing that it was approved by the Council and Mayor and signed by the Mayor and City Clerk on August 16, 2004, and then vetoed by the Mayor on September 2, 2004, is attached to this Petition as Exhibit E.

32. On September 3, 2004, Bart McKnight and Duro-Bilt sent a letter to the City attempting to withdraw Duro-Bilt's consent to the vacation of First Avenue South. Duro-Bilt did not send a copy of its letter to Goodman or otherwise inform Goodman that it had attempted to withdraw its consent to the vacation.

33. At no time prior to the Mayor's veto of Ordinance No. 3374, did the Mayor or the City give Goodman notice of Duro-Bilt's attempt to withdraw its consent to the vacation of First Avenue South.

34. On December 3, 2004, the Blamires attempted to withdraw their consent to the vacation of First Avenue South.

V.
CLAIMS FOR RELIEF

Count One - Writ of Mandate

2535. ~~Goodman Oil Company~~ re-alleges all prior allegations set forth in this Petition.

2636. ~~Goodman Oil Company~~ does not have a plain, speedy and adequate remedy in the ordinary course of law. ~~Goodman Oil Company~~ has entered into a contract to sell its real property adjacent to First Avenue South. The purchase and sale agreement is was contingent upon the vacation of First Avenue South. The closing on the real estate transaction was previously set for September 12, 2004. The parties were unable to complete the transaction because of the Mayor's veto of Ordinance No. 3374. The purchase and sale agreement ~~will be~~ was cancelled by the ~~B~~buyer in the ~~immediate future if~~ because the vacation of First Avenue South is was not completed.

2737. Idaho Code § 50-902 requires that a majority vote of a city council is needed for the passage or adoption of every ordinance. Ordinances are to be read on three different days, unless the city council dispenses with the reading. *Id.* Following passage by the city council, the mayor has the authority to sign or veto any ordinance. *Idaho Code § 50-611.* If an ordinance is vetoed by the mayor, the city council may override the veto by a vote of one-half plus one of the members of the council. *Id.* If the mayor neglects or refuses to sign an ordinance or returns the

ordinance with his objections, the ordinance shall become law at the next regular meeting of the city council without his signature. *Id.*

2838. Nampa City Code § 2-2-3-3 requires a majority vote of the Council for the passage of an ordinance. Following the passage of an ordinance, Nampa City Code 2-2-3-4 directs the City Clerk to sign the ordinance and to add the date of its passage by the Council. The ordinance must then be presented to the Mayor within three (3) days for his approval. If the Mayor approves the ordinance, he must attach his signature to the ordinance. *Id.*

2939. The Nampa City Code 2-2-3-5 grants the Mayor the power to veto an ordinance. If an ordinance is vetoed, the mayor must return the ordinance, with his objections in writing, to the next regular Council meeting after the ordinance was presented to the Mayor for approval. The Council is then required to reconsider the ordinance and may override the Mayor's veto by an affirmative vote of one-half plus one of the Council members. *Id.*

3040. Nampa City Code 2-2-3-6 provides that an ordinance shall be considered passed on one of the following dates: the date of approval by the Mayor; the date of passage over the Mayor's veto; or the date of the next regular meeting after the ordinance was presented for approval, if the Mayor has refused or neglected to sign the ordinance.

3141. Nampa City Code 2-2-3-7 states that an ordinance shall take effect and be in force from and after its passage, approval and publication. An ordinance is deemed published when it appears in one issue of the official newspaper within the City. *Id.*

3242. Case law establishes that Mayor Dale did not have authority to veto Ordinance No. 3374 after he approved the Ordinance and then deposited the Ordinance with the City Clerk for

publication. In *Pulskamp v. Martinez*, 2 Cal.App.4th 854, 3 Cal.Rptr.2d 607 (1992), the Court stated:

However, as demonstrated by decisions from this state and other jurisdictions, it must be concluded that once a chief executive has relinquished possession of legislation with his signature and transmitted it to the appropriate depository agent (in our case the city clerk), the measure's character as a properly enacted law becomes immutable.

Pulskamp, 3 Cal.Rptr.2d at 612 (footnote omitted).

3343. On August 16, 2004, the Council and Mayor approved Ordinance No. 3374. The City Clerk attested the Mayor's signature. The Minutes of the August 16, 2004 meeting show that the Mayor directed the City Clerk to record Ordinance No. 3374 as required by law. The City Clerk then forwarded the Ordinance to the Idaho Press Tribune for publication on August 23, 2004. Sometime thereafter, the City Clerk contacted the Idaho Press Tribune and cancelled the request to publish the Ordinance.

3444. The Mayor relinquished possession and control of Ordinance No. 3374, and transmitted the Ordinance to the City Clerk for publication. Ordinance No. 3374 was therefore properly enacted as law, and the Mayor had no authority to veto the Ordinance on September 2, 2004, or at anytime thereafter.

Count Two - Judicial Review

3545. Goodman Oil Company re-alleges all prior allegations set forth in this Petition.

3646. Goodman Oil Company seeks judicial review of the Council's decision to require a dedicated twenty (20) foot wide fire apparatus access road within the confines of the vacated right-of-way. Goodman Oil Company also seeks judicial review of the Council's decision to

require a fifty (50) foot ingress/egress and utility easement to be maintained on the westerly portion of First Avenue South.

~~3747.~~ Goodman Oil Company's Petition for Judicial Review is timely. The City Council's initial decision was rendered August 16, 2004. ~~The time for filing the Petition for Judicial Review was extended to September 20, 2004, during which time and Goodman Oil Company pursued exhausted administrative remedies through September 20, 2004.~~

~~3848.~~ The Council's deliberations on Ordinance No. 3374 took place on August 16, September 7, and September 20, 2004. Each of those proceedings was recorded by tape recorder, and the City Clerk has possession of those recordings.

~~3949.~~ Pursuant to I.R.C.P. 84(d)(5), Goodman Oil Company identifies the following preliminary list of issues it intends to assert on review:

- A. The Council's decision to require a twenty (20) foot wide dedicated fire apparatus access road, and the Council's decision to require a fifty (50) foot easement, are in violation of constitutional or statutory provisions;
- B. The Council's decisions are in excess of the statutory authority of the Council;
- C. The Council's decisions were made upon unlawful procedure;
- D. The Council's decisions are not supported by substantial evidence on record as a whole; and
- E. The Council's decisions are arbitrary, capricious or an abuse of discretion.

4050. Goodman Oil Company requests a transcript of the proceedings held on August 16, September 7 and September 20, 2004.

4151. Counsel for Petitioner certifies that service of this Petition has been made upon the Council, and that the estimated fee for preparation of the transcript and record will be paid as soon as ~~counsel for~~ Petitioner's ~~receives~~ objections to the an estimate ~~are~~ resolved by the Court.

Count Three – Breach of Contract

52. Goodman re-alleges all prior allegations set forth in this Petition.

53. The Vacation Agreement is a contract between Goodman, Duro-Bilt and the Blamires.

54. Duro-Bilt and the Blamires breached the Vacation Agreement. Among other things, the attempt by Duro-Bilt and the Blamires to withdraw their consent to the vacation of First Avenue South is a breach of the following obligations set forth in the Vacation Agreement:

- A. The obligation to consent to the vacation of First Avenue South;
- B. The obligation to grant and convey a perpetual easement upon the vacated street for the purpose of access to and from the parties' properties;
- C. The obligation to fully cooperate to ensure that the purpose and intent of the Vacation Agreement is accomplished;
- D. The obligation to execute a formal agreement recognizing the parties' rights and obligations;
- E. The obligation to share equally in the maintenance of the easement in proportion to the amount of property each party owns; and

F. The promise that the Agreement is binding upon the parties' successors and assigns.

55. Goodman has been damaged by Duro-Bilt's and the Blamires' breach of the Vacation Agreement in the amount of at least \$100,000 or in a more specific amount to be proven at trial. Duro-Bilt's breach of the Vacation Agreement caused Goodman to lose the sale of its property to Wiley. The Blamires' breach of the Vacation Agreement has reduced the fair market value of Goodman's real property.

Count Four – Specific Performance

56. Goodman re-alleges all prior allegations set forth in this Petition.

57. Goodman is entitled to specific performance of the Vacation Agreement.

58. Goodman has performed all obligations it is required to perform under the Vacation Agreement.

59. Duro-Bilt and the Blamires have failed and refused, and continue to fail and refuse, to perform the terms and conditions of the Vacation Agreement.

60. Goodman's legal remedies against Duro-Bilt and the Blamires are inadequate.

61. A balance of the equities between the parties favors specific enforcement of the Vacation Agreement.

62. Goodman is entitled to a decree of specific performance of the Vacation Agreement.

Count 5 – Tortious Interference With Contract

63. Goodman re-alleges all prior allegations set forth in this Petition.

64. A contract existed between Goodman and Wiley for the purchase and sale of Goodman's property abutting First Avenue South.

65. Bart McKnight and Duro-Bilt had knowledge of the contract between Goodman and Wiley.

66. Bart McKnight and Duro-Bilt intentionally interfered with the contract between Goodman and Wiley, causing a breach of that contract.

67. Goodman has suffered injury resulting from the breach of the contract between Goodman and Wiley in the amount of at least \$100,000 or in a more specific amount to be proven at trial.

68. Bart McKnight and Duro-Bilt are liable to Goodman for the tort of interference with contract in the amount of at least \$100,000, or in a more specific amount to be proven at trial.

WHEREFORE, Petitioner/Plaintiff Goodman Oil Company requests the following relief:

1. Entry of an Order declaring that Ordinance No. 3374 has been fully approved and passed, and has become law;
2. Entry of an Order declaring that Mayor Dale had no authority to veto Ordinance No. 3374, and therefore his veto of Ordinance No. 3374 is null, void and of no effect;
3. Entry of an Order directing the City Clerk of the City of Nampa to publish Ordinance No. 3374 as soon as reasonably possible;
4. Entry of an Order setting aside the Council's decision to require a dedicated twenty (20) foot wide fire apparatus access road;

5. Entry of an Order setting aside the Council's decision to require a fifty (50) foot ingress/egress and utility easement to be maintained on the westerly portion of First Avenue South; and

6. Entry of a Judgment against Bart McKnight, Duro-Bilt and the Blamires in the amount of at least \$100,000, or in a more specific amount to be proven at trial;

7. Entry of a decree requiring Defendants to specifically perform all of their contractual obligations set forth in the Vacation Agreement;

8. For an award of costs and attorney fees to Petitioner Goodman Oil Company and against the City of Nampa pursuant to Idaho Code §12-117 or other applicable authority;

9. For an award of costs and attorneys fees against Bart McKnight, Duro-Bilt and the Blamires pursuant to Idaho Code §§ 12-120 and 12-121, or other applicable law; and

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

DATED this _____ day of January, 2005.

By _____

John C. McCreedy,
Attorney for Plaintiff

John C. McCreedy [ISB No. 3823]
 McCREEDY LAW OFFICE, P.C.
 3184 Elder Street
 Boise, Idaho 83705
 Telephone No. (208) 383-6521
 Facsimile No. (208) 383-6688

Attorney for Petitioner

ORIGINAL 1/27

FILED ✓
 A.M. 1:35 P.M.
JAN 07 2005
 CANYON COUNTY CLERK
 G ARECHIGA, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

GOODMAN OIL COMPANY,

Petitioner,

vs.

CITY OF NAMPA, a corporate body politic;
 THE CITY COUNCIL of the CITY OF
 NAMPA; MAYOR TOM DALE, in his capacity
 as Mayor of the City of Nampa; DIANA
 LAMBING, in her capacity as City Clerk; and
 SCOTTY'S DURO-BILT GENERATOR, INC.,
 an Idaho corporation,

Respondents.

Case No.: CV 04-10007

**AFFIDAVIT OF JOHN C. MCCREEDY
 IN SUPPORT OF PETITIONER'S
 MOTION TO AMEND**

STATE OF IDAHO)
) ss.
 County of Ada)

JOHN C. MCCREEDY, being duly sworn on oath, deposes and says:


1. I am counsel of record for Petitioner and make this affidavit based upon my own personal knowledge. I am competent to testify to the matters stated herein.

**AFFIDAVIT OF JOHN C. MCCREEDY IN SUPPORT OF PETITIONER'S MOTION
 TO AMEND- 1**

000067

2. Attached hereto as Exhibit A is a true and accurate copy of the letter agreement signed by counsel for the parties on January 5, 2005.
3. Attached hereto as Exhibit B is a true and accurate copy of the letter dated September 3, 2004 from Bart McKnight, President/Owner, Duro-Bilt to the City of Nampa.
4. Attached hereto as Exhibit C is a true and accurate copy of the letter dated December 6, 2004, that I received from counsel for the Nampa Respondents.
5. Attached hereto as Exhibit D is a true and accurate copy of the warranty deed recorded on February 7, 2001 as Canyon County Instrument No. 200104493.

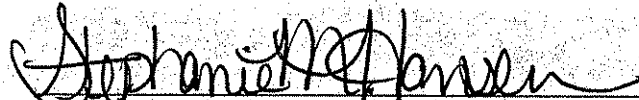
DATED this 7th day of January, 2005.



John C. McCreedy

SUBSCRIBED AND SWORN To before me this 7th day of January, 2005.





NOTARY PUBLIC FOR IDAHO
Residing at: Boise, ID
My Commission Expires: 6/26/06

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2005, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing **AFFIDAVIT OF JOHN C. MCCREEDY IN SUPPORT OF PETITIONER'S MOTION TO AMEND** upon:

T. Guy Hallam
WHITE PETERSON, P.A.
5700 East Franklin Road Suite 200
Nampa, Idaho 83687-7901

U.S. Mail
 Hand Delivered
 Federal Express
 Fax Transmission
(208) 466-4405

Christopher E. Yorgason
MOORE SMITH
225 N 9th Suite 420
Boise, Idaho 83702

U.S. Mail
 Hand Delivered
 Federal Express
 Fax Transmission
(208) 331-1202



John C. McCreedy

WHITE PETERSON

ATTORNEYS AT LAW

SARAH H. ARNETT
KEVIN E. DINIUS
JULIE KLEIN FISCHER
CHRISTOPHER D. GABBERT
Wm. R. GIGRAY, III
T. GUY HALLAM **
JILL S. HOLINKA
JOHN R. KORMANIK *
WILLIAM A. MORROW

WHITE PETERSON, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901
TEL (208) 466-9272
FAX (208) 466-4405
tgh@whitepeterston.com

WILLIAM K. NICHOLS **
CHRISTOPHER S. NYB
PHILIP A. PETERSON
TODD A. ROSSMAN
TERENCE R. WHITE ***

* Also admitted in CA
** Also admitted in OR
*** Also admitted in WA

January 5, 2005

Delivered via Facsimile
Original by U.S. Mail

John C. McCreedy
McCreedy Law Office, P.C.
3184 Elder St.
Boise, ID 83705

Chris Yorgason
Moore, Smith, Buxton, and Turcke
225 N. 9th St., Suite 420
Boise, ID 83702

Re: Goodman Oil Company v. City of Nampa, et al., Case #CV 04-10007

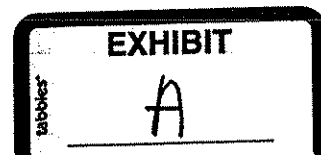
Dear Gentlemen:

This letter is being sent in follow-up to my telephone conversations with you both. In light of my clients' and my scheduling issues, John has agreed to vacate the depositions currently scheduled for January 7, 2005. The depositions will be reset to February 7 and 8, 2005. Although John mentioned the possibility of executing some stipulation related to the parties' agreement to vacate and reschedule depositions, it is my belief that this letter agreement will suffice. I have taken the liberty of putting the terms of our agreement in this form, and have included a signature line for all of the attorneys to indicate their agreement. I trust that either of you will feel free to contact me if there is some disagreement as to the terms or form of this agreement.

In consideration of the agreement to vacate the depositions, the parties have mutually agreed as follows:

- (1) The City of Nampa respondents agree that they will not file a dispositive motion until after February 8, 2005;
- (2) Scotty's Duro-Bilt Generator, Inc. agrees that it will not file a dispositive motion until after February 8, 2005;
- (3) All parties agree that subpoenas need not be issued by Mr. McCreedy in order to gain attendance of the deponents at the depositions on February 7 and 8, 2005; Simple notice of depositions shall suffice; and

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McCreedy Letter
January 5, 2005
Page 2 of 3

- (4) Chris and I will consult with our respective clients in order to inform Mr. McCreedy of any scheduling issues that need to be accommodated on February 7 and 8, 2005.¹

John, I would also like to take your client's deposition on one of the dates mentioned above. I certainly do not mind completing his deposition after the others are completed. I would expect that I would need less than one (1) hour to complete the deposition. Although I have not talked to him about it, I would expect that Chris might have some questions for your client as well. Please talk with your client and provide Chris and I with your preference for scheduling his deposition on February 7th or 8th. Thank you for your attention to this matter.

I appreciate your consideration in vacating the depositions.

Regards,

WHITE PETERSON, P.A.


T. Guy Hallam, Jr.

LETTER AGREEMENT APPROVED AS TO FORM AND SUBSTANCE BY:


John McCreedy
Counsel for Goodman Oil Co.


Chris Yorgason
Counsel for Scotty's Duro-Bilt


Guy Hallam
Counsel for City Respondents

cc: City of Nampa

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¹ John, neither Chris nor I expect any problems on these dates. In fact, I have already informed two of my clients about the potential new dates. I simply included this language in case afternoons or mornings on those two dates work better for a particular deponent.

000071

McCreedy Letter
January 5, 2005
Page 2 of 3

(4) Chris and I will consult with our respective clients in order to inform Mr. McCreedy of any scheduling issues that need to be accommodated on February 7 and 8, 2005.¹

John, I would also like to take your client's deposition on one of the dates mentioned above. I certainly do not mind completing his deposition after the others are completed. I would expect that I would need less than one (1) hour to complete the deposition. Although I have not talked to him about it, I would expect that Chris might have some questions for your client as well. Please talk with your client and provide Chris and I with your preference for scheduling his deposition on February 7th or 8th. Thank you for your attention to this matter.

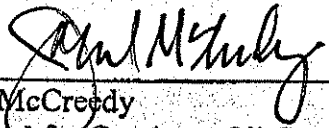
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Regards,

WHITE PETERSON, P.A.

T. Guy Hallam, Jr.

LETTER AGREEMENT APPROVED AS TO FORM AND SUBSTANCE BY:


John McCreedy
Counsel for Goodman Oil Co.


Chris Yorgason
Counsel for Scotty's Duro-Bilt


Guy Hallam
Counsel for City Respondents

cc: City of Nampa

Z:\Work\Nampa City\Goodman Oil Co\Correspondence\ltr counsel 1-05-05 wy.doc

¹ John, neither Chris nor I expect any problems on these dates. In fact, I have already informed two of my clients about the potential new dates. I simply included this language in case afternoons or mornings on those two dates work better for a particular deponent.

DUROBILT

STARTERS • ALTERNATORS • REGULATORS • BATTERIES

215 1st Ave. South • P.O. Box 904 • Nampa, Idaho 83653-0904 • FAX 208 / 466-7023 • TEL 208 / 466-781

City of Nampa, Office of the Mayor
311 3rd Street South
Nampa, ID 83651

September 3, 2004

Attention: All Nampa City Officials

To Whom It May Concern:

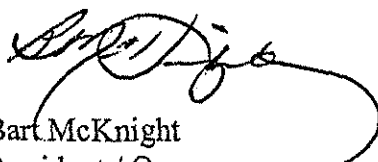
RE: Vacating 1st Avenue South Application

In 1995 an application was sought to vacate 1st Avenue South in Nampa, Idaho for development of the surrounding area. Property owners were contacted and an agreement was signed clearing the way for development of the area. The original idea behind the agreement was to transplant property owners to other properties opening this block for future development. The idea was cleared to a certain point and then drop without being finalized.

Nine years later, a developer wants to resurrect the issue of vacating 1st Avenue South, but development plans have changed dramatically. No longer are all property owners affected fairly.

Being a property owner in the middle of 1st Avenue South let it be known: I am not in agreement to the action of vacating 1st Avenue South at this present time. My business has grown to where it has the need of access through the whole block from both sides for industrial & agricultural vehicles, eighteen wheelers, commercial vehicles and general traffic.

Once again, I am not in favor of vacating 1st Avenue South. To restrict this street would cripple my business, frustrate customers and become a traffic hazard. It is my understanding that all property owners must be in agreement on such action. I am not in agreement. Please dismiss action on vacating 1st Avenue South.


Bart McKnight
President / Owner

000073

EXHIBIT

B

WHITE PETERSON

ATTORNEYS AT LAW

SARAH H. ARNETT
KEVIN E. DIMIUS
JULIE KLEIN FISCHER
CHRISTOPHER D. GABBERT
WM. F. GIGRAY, III
T. GUY HALLAM **
JILL S. HOLINKA
JOHN R. KORMANIK *
WILLIAM A. MORROW

WHITE PETERSON, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901
TEL (208) 466-9272
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WILLIAM F. NICHOLS **
CHRISTOPHER S. NYE
PHILIP A. PETERSON
TODD A. ROSSMAN
TERRENCE R. WHITE ***

* Also admitted in CA
** Also admitted in OR
*** Also admitted in WA

December 6, 2004

Delivered via Facsimile
Original by U.S. Mail

John C. McCreedy
McCreedy Law Office, P.C.
3184 Elder St.
Boise, ID 83705

Re: Goodman Oil Company v. City of Nampa, et al., Case #CV 04-10007

Dear Mr. McCreedy:

Enclosed please find a copy of the letter from Mr. and Mrs. Blamires withdrawing consent to reduce the easement between Second and Third Streets South on First Avenue in Nampa. It appears that your client's, or the property purchaser's efforts to gain consent to a reduced right-of-way are going to fail. As I have previously informed you, my clients prefer to settle this matter to avoid additional attorney fees and expenses, but your client would have to dismiss the instant action and proceed through the appropriate administrative procedures. If a settlement arrangement can not be reached in short order, the City Defendants will move for summary judgment. Please contact me at your earliest convenience to discuss the same.

Regards,

WHITE PETERSON, P.A.

T. Guy Hallam, Jr.

Enc.

cc: City of Nampa
Chris Yorgason

EXHIBIT

C

RECEIVED
12/3/04

D.L.

December 3, 2004

City of Nampa
Mayor Tom Dale

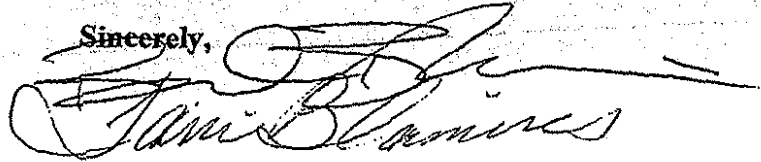
DEC 3 2004

RE: 1st Avenue South Reduction of Easement

Dear Sir,

At this time we retract any agreement to reduce the easement between Second Street South and Third Street South on First Avenue South in Nampa Idaho. We deem it necessary to have at least a forty foot road in order for our customers and delivery vehicles to adequately access our business. This is currently the width of the road at this time. The owners of T.J. Forrest and Durobuilt are also concerned with the reduction of the easement. It would make a hardship on all business. Any questions concerning this matter can be sent us at 216 1st Avenue So. Nampa, Idaho 83651.

Sincerely,



Brad Blamires
Tami Blamires
Dba Blazen Burgers Restaurant

 COPY

REQUEST
TYPE: Deed FEB 6, 2001
TRANSACTION NUMBER

BY: *[Signature]*
CANYON COUNTY RECORDER

01 FEB 7 PM 4 20

RECORDED

200104933

Order No.: CB10009

TN01-10234

WARRANTY DEED

FOR VALUE RECEIVED,
FLB INVESTMENTS CO., A PARTNERSHIP
The Grantor(s), do(es) hereby grant, bargain sell and convey unto

BRADLEY G. BLAMIREs and TAMARA D. BLAMIREs, HUSBAND AND WIFE

whose current address is 112 3RD STREET S. NAMPA, ID 83686

the Grantee(s), the following described premises, in CANYON County, Idaho, TO WIT:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor(s) do(es) hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances EXCEPT: Subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, general taxes and assessments, including irrigation and utility easements (if any) for the current year, which are not due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: 02/06/01

FLB INVESTMENTS

BY: *[Signature]*
FLOYD L. BLAMIREs, PARTNER

BY: *[Signature]*
LARAYNE M. BLAMIREs, PARTNER

STATE OF IDAHO)

COUNTY OF CANYON)

ON THIS 6TH OF FEBRUARY, 2001, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED FLOYD L. BLAMIREs AND LARAYNE M. BLAMIREs PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE, TO BE THE PARTNERS IN THE PARTNERSHIP OF FLB INVESTMENTS CO., AND THE PARTNERS WHO SUBSCRIBED SAID PARTNERSHIP'S NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP'S NAME.

[Signature]
NOTARY PUBLIC
RESIDING AT: *Nampa, ID*
COMMISSION EXPIRES: *11/13-01*



000076

EXHIBIT

D

EXHIBIT "A"

PARCEL I

The Southeasterly 90 feet of Lots 1, 2 and 3 in Block 16 of PLEASANTS ADDITION to Nampa, Canyon County, Idaho, according to the official plat thereof, filed in Book 4 of Plats at Page 10A, records of said County.

PARCEL II

The Northwesterly 50 feet of Lot 1 and Northwesterly 50 feet of the Northeasterly 25 feet of Lot 2 in Block 16 of PLEASANTS ADDITION to Nampa, Canyon County, Idaho, according to the official plat thereof, filed in Book 4 of Plats at Page 10A, records of said County.

FILED
 A.M. 2:45 P.M.
 JUN 16 2005
 CANYON COUNTY CLERK
Clindholm DEPUTY

JON M. STEELE (ISB # 1911)
KARL J. RUNFT (ISB # 6640)
RUNFT & STEELE LAW OFFICES, PLLC
 1020 W. Main Street, Suite 400
 Boise, Idaho 83702
 Phone: (208) 333-9495
 Fax: (208) 343-3246
 Email: jmsteele@runftlaw.com

Attorneys for Petitioner

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

GOODMAN OIL COMPANY,)
)
 Petitioner,)
)
 vs.)
)
 CITY OF NAMPA, a corporate body politic;)
 THE CITY COUNCIL of the CITY OF)
 NAMPA; MAYOR TOM DALE, in his)
 capacity as Mayor of the City of Nampa;)
 DIANA LAMBING, in her capacity as City)
 Clerk; and SCOTTY'S DURO-BILT)
 GENERATOR, INC., an Idaho corporation,)
)
 Respondents.)
)

CASE NO. CV 04-10007

**OBJECTION TO RESPONDENT
 SCOTTY'S DURO-BILT
 GENERATORS, INC.'S
 MEMORANDUM OF COSTS AND
 ATTORNEY FEES**

STATE OF IDAHO)
 :ss
 County of Ada)

COMES NOW, Jon M. Steele, being over the age of eighteen years and competent to make this Affidavit, after first being duly sworn, and upon his own information and belief, states as follows:

OBJECTION TO RESPONDENT SCOTTY'S DURO-BILT GENERATORS, INC.'S
 MEMORANDUM OF COSTS AND ATTORNEY FEES – Page 1

1. Respondent's claim under Idaho Code § 12-121 requires a finding that the case was brought frivolously, unreasonably or without foundation. *See*, Idaho Rules of Civil Procedure 54(e)1. Respondent has made no claim that the case was brought frivolously, unreasonably or without foundation.
2. Respondent's claim under Idaho Code § 12-120(1) has no application to the issues presented in this case. The primary issue in this case is whether Mayor Tom Dale illegally exercised his power of veto over a properly passed ordinance. Idaho Code § 12-120(1) applies only to cases where the amount pled is less than \$25,000. There is no amount pled in the Petition. The exercise of the Mayor's veto power cannot be defined as \$25,000 or less.
3. Respondent's claim under Idaho Code § 12-120(3) has no application to the issues presented in this case. Respondent has made no claim that a commercial transaction exists. The subject of the Petition is the legality of the Nampa Mayor's veto, a ministerial act not a commercial transaction.
4. There is no showing that the discretionary costs claimed are exceptional in any way.

Further affiant sayeth naught.

DATED this 16th day of June, 2005.

RUNFT & STEELE LAW OFFICES, PLLC

By: _____

J M Steele
JON M. STEELE

Attorney for Petitioner

STATE OF IDAHO)

:ss

County of Ada)

On this 16th day of June 2005, before me Karissa Armbrust, a notary public, personally appeared JON M. STEELE, known to me to be the person whose name is subscribed to the above document, and acknowledged to me that he executed the same.



Karissa R. Armbrust
Notary Public for the State of Idaho
Residing at: Nampa
My Commission Expires: 3-16-07

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of June 2005, a true and correct copy of the foregoing OBJECTION TO RESPONDENT SCOTTY'S DURO-BILT GENERATORS, INC.'S MEMORANDUM OF COSTS AND ATTORNEY FEES was served upon opposing counsel as follows:

Christopher E. Yorgason
Moore Smith
225 N. 9th, Suite 420
Boise ID 83702

US Mail
 Personal Delivery
 Facsimile

T. Guy Hallam
White Peterson, P.A.
5700 East Franklin Road, Suite 200
Nampa ID 83687-7901

US Mail
 Personal Delivery
 Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: Jon M. Steele
Jon M. Steele
Attorney for Petitioner

CHRISTOPHER E. YORGASON # 5844
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

F I L E D
A.M. 3:40 P.M.
JUN 29 2005

CANYON COUNTY CLERK
C ROBINSON, DEPUTY

Attorneys for Respondent Scotty's Durobilt Generator, Inc.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)

Petitioner,)

v.)

CITY OF NAMPA, a corporate body politic;)
THE CITY COUNCIL of the CITY OF)
NAMPA; MAYOR TOM DALE, in his)
capacity as Mayor of the City of Nampa;)
DIANA LAMBING, in her capacity as City)
Clerk; and SCOTTY'S DURO-BILT)
GENERATOR, INC., and Idaho corporation.)

Defendants.)

Case No. CV 04-10007

ORDER OF DISMISSAL

Before the Court is Respondent Scotty's Duro-Bilt Generator, Inc.'s Motion to Dismiss pursuant to I.R.C.P. 12(b)(6), and having reviewed the relevant pleadings, briefs and memoranda, and having considered oral argument, and good cause appearing therefore;

It is hereby ORDERED that the issues raised in Petitioner's Petition for Writ of Mandate and Petition for Judicial Review do not state a claim upon which relief can be granted against Scotty's

Duro-Bilt Generator, Inc.; and

It is further ORDERED that Petitioner's Petition for Writ of Mandate and Petition for Judicial Review against Scotty's Duro-Bilt Generator, Inc., is hereby dismissed with prejudice, with costs and attorney fees to be awarded separately.

DATED this 29th day of ~~May~~^{June}, 2005.

By:



Judge James C. Morfitt
District Judge, Third Judicial District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of June, 2005, I caused a true and correct copy of the foregoing ORDER OF DISMISSAL by the method indicated below, and addressed to the following:

John M. Steele
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Facsimile (208) 343-3246


U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile

T. Guy Hallam
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Facsimile (208) 466-4405

U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile

Christopher E. Yorgason
MOORE, SMITH, BUXTON & TURCKE
225 N. 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1800

U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile



Runft, and the Nampa Respondents appeared by and through their attorney, John Kormanik. The Court having reviewed the pleadings, briefs, memoranda and affidavits and having considered oral argument, does hereby incorporate the Court's Findings of Fact and Conclusions of Law pronounced during the hearing on this matter and Orders as follows:

IT IS HEREBY DECLARED that Petitioner has no plain, speedy or other adequate remedy in the ordinary course of law and that Nampa Respondents have a clear, legal duty to publish Ordinance #3374. Plaintiff is therefore entitled to a Peremptory Writ of Mandamus that will require the Nampa Respondents to publish Ordinance #3374.

IT IS HEREBY ORDERED that a Peremptory Writ of Mandamus be issued compelling the Nampa Respondents to publish Ordinance #3374.

DATED this 7th day of ~~July~~^{August}, 2005.



JUDGE JAMES C. MORFITT

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b) I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issued and an appeal may be taken as provided by the Idaho Appellate Rule.

DATED this 7th day of ~~July~~^{August}, 2005.



JUDGE JAMES MORFITT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8 day of ^{August} ~~July~~ 2005, a true and correct copy of the foregoing ORDER GRANTING WRIT OF MANDAMUS was served upon opposing counsel as follows:

Christopher E. Yorgason
Moore Smith
225 N. 9th, Suite 420
Boise ID 83702

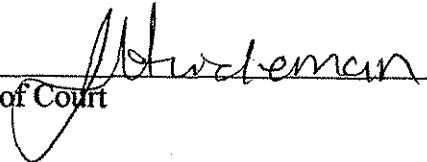
US Mail
 Personal Delivery
 Facsimile

T. Guy Hallam
White Peterson, P.A.
5700 East Franklin Road, Suite 200
Nampa ID 83687-7901

US Mail
 Personal Delivery
 Facsimile

Jon M. Steele
Runft & Steele Law Offices, PLLC
1020 W. Main St. Suite 400
Boise, ID 83702

US Mail
 Personal Delivery
 Facsimile


Clerk of Court

m

FILED
A.M. 3:15 P.M.

AUG 29 2005

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

CHRISTOPHER E. YORGASON # 5844
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Respondent Scotty's Durobilt Generator, Inc.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)	
)	
Petitioner,	)	Case No. CV 04-10007
)	
v.	)	PROPOSED
)	
CITY OF NAMPA, a corporate body politic;	)	ORDER ON RESPONDENT
THE CITY COUNCIL of the CITY OF	)	SCOTTY'S DURO-BILT
NAMPA; MAYOR TOM DALE, in his	)	GENERATOR, INC.'S
capacity as Mayor of the City of Nampa;	)	MEMORANDUM OF COSTS AND
DIANA LAMBING, in her capacity as City	)	FEES
Clerk; and SCOTTY'S DURO-BILT)	
GENERATOR, INC., and Idaho corporation.)	
)	
Respondents.)	
)	

Before the Court is Respondent Scotty's Duro-Bilt Generator, Inc.'s Memorandum of Costs and Fees, filed pursuant to I.R.C.P. 54 and Idaho Code Sections 12-120 and 12-121, and having reviewed the relevant pleadings, briefs and memoranda, and having considered oral argument, and good cause appearing therefore;

**PROPOSED ORDER ON RESPONDENT SCOTTY'S DURO-BILT GENERATOR, INC.'S
MEMORANDUM OF COSTS AND FEES - 1**

It is hereby ORDERED:

- (1) That Respondent Scotty's Duro-Bilt Generator, Inc.'s request for Costs as a Matter of Right is GRANTED in the amount of \$962.49;
- (2) That Respondent Scotty's Duro-Bilt Generator, Inc.'s request for Discretionary Costs is DENIED;
- (3) That Respondent Scotty's Duro-Bilt Generator, Inc.'s request for Attorney Fees is GRANTED, pursuant to Idaho Code §12-121 & I.R.C.P. 54, in the amount of \$8,370.00; and
- (4) That Petitioner Goodman Oil Company is required to pay Respondent Scotty's Duro-Bilt Generator, Inc. costs and attorney fees in the total amount of \$9,332.49

The Court's findings and conclusions were made on the record. A written transcript of the findings and conclusions is available at the request of either party.

DATED this ____ day of _____, 2005.

AUG 29 2005

By: _____

Judge James C. Morrill
District Judge, Third Judicial District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of August, 2005, I caused a true and correct copy of the foregoing **PROPOSED ORDER ON DEFENDANT SCOTTY'S DURO-BILT GENERATOR, INC.'S MEMORANDUM OF COSTS AND FEES** by the method indicated below, and addressed to the following:

John M. Steele
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Facsimile (208) 343-3246

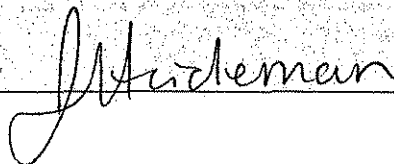
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T. Guy Hallam
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5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Facsimile (208) 466-4405

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 Hand Delivery
 Overnight Mail
 Facsimile



SEP 14 2005

CANYON COUNTY CLERK
Franklin, DEPUTY

CHRISTOPHER E. YORGASON # 5844
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Respondent Scotty's Durobilt Generator, Inc.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,

Petitioner,

v.

CITY OF NAMPA, a corporate body politic;
THE CITY COUNCIL of the CITY OF
NAMPA; MAYOR TOM DALE, in his
capacity as Mayor of the City of Nampa;
DIANA LAMBING, in her capacity as City
Clerk; and SCOTTY'S DURO-BILT
GENERATOR, INC., and Idaho corporation.

Respondents.

Case No. CV 04-10007

JUDGMENT

The Court, having issued an Order of Dismissal on June 29, 2005, and having entered on
Order on Scotty's Duro-bilt, Generator, Inc.'s Memorandum of Costs and Fees, and good cause
appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The action against Scotty's Duro-Bilt Generator, Inc. is dismissed with prejudice;

and

JUDGMENT - 1

2. That Petitioner Goodman Oil Company is required to pay Respondent Scotty's Duro-Bilt Generator, Inc. costs and attorney fees in the total amount of \$9,332.49.

DATED this 14TH day of SEPTEMBER, 2005.

By: 

Judge James C. Morfitt
District Judge, Third Judicial District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of September 2005, I caused a true and correct copy of the foregoing **PROPOSED ORDER ON DEFENDANT SCOTTY'S DURO-BILT GENERATOR, INC.'S MEMORANDUM OF COSTS AND FEES** by the method indicated below, and addressed to the following:

John M. Steele
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Facsimile (208) 343-3246

U.S. Mail
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Nampa, Idaho 83687-7901
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Christopher E. Yorgason
MOORE, SMITH, BUXTON & TURCKE
225 N. 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1800

U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile

C. Franklin

FILED
A.M. 2:25 P.M.

APR 03 2006

CANYON COUNTY CLERK
SHEIDEMAN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)
)
Petitioner,)
)
-vs-)
)
CITY OF NAMPA, a corporate body politic;)
THE CITY COUNCIL of the CITY OF)
NAMPA; MAYOR TOM DALE, in his)
capacity as Mayor of the City of Nampa;)
DIANA LAMBING, in her capacity as City)
Clerk; and SCOTTY'S DURO-BILT)
GENERATOR, INC., an Idaho Corporation,)
)
Respondents.)

Case No. CV 2004-10007*C

MEMORANDUM DECISION AND
ORDER ON PETITIONER'S
RENEWED MOTION TO
AUGUMENT RECORD

This matter is before the Court on Petitioner Goodman Oil's Renewed Motion to Augment the Record filed January 27, 2006. Goodman Oil seeks to augment the record on judicial review with portions of the deposition testimony of Norman L. Holm, an employee of the City of Nampa, taken April 28, 2005. The City of Nampa Respondents filed their opposition to Goodman's Motion on February 3, 2006 seeking denial of the

motion to augment or, alternatively, additional augmentation with further deposition testimony of Mr. Holm.

Jon M. Steele and Karl J. Runft, Runft & Steele Law Offices, appeared on behalf of Goodman Oil and T. Guy Hallam, Jr., White Peterson, P.A., appeared on behalf of the City of Nampa Respondents.

BACKGROUND AND PRIOR PROCEEDINGS

Goodman Oil commenced this case by filing a Petition for Writ of Mandate and Petition for Judicial Review on October 5, 2004. Goodman Oil sought: 1) a writ of mandate to require the City of Nampa to publish an Ordinance vacating a portion of 1st Avenue South passed by the City Council, approved by and thereafter vetoed by the Mayor of the City of Nampa; and, 2) Judicial Review of the Nampa City Council's decision to require a 50 foot ingress/egress and utility easement, which included a 50 foot fire department access easement, over the westerly portion of the vacated portion of 1st Avenue South.

On June 29, 2005, this Court entered its order dismissing Goodman Oil's Petition for Writ of Mandate and Petition for Judicial Review against Respondent Scotty's Duro-Bilt.

On August 8, 2005, this Court entered its order granting Goodman Oil's Petition for Writ of Mandate. On September 23, 2005, the City of Nampa respondents filed a Notice of Compliance with Preemptory Writ of Mandamus.

The issue remaining for decision in this case is Goodman Oil's Petition for Judicial Review. On November 7, 2005, the Agency Record and Transcripts were filed.

On April 1, 2005, Goodman Oil filed a motion to augment the record relating to both its writ of mandate claim and its petition for judicial review to include a number of depositions scheduled, but not yet taken, as well as discovery responses filed by the Respondents. At a hearing on April 15, 2005, the Court determined that the motion to augment was premature because the depositions had not yet been taken. On June 29, 2005, the Court entered an Order providing that any motion to augment would be considered once discovery was complete. The augmentation issue was again before the Court on January 20, 2006. The Court requested that Goodman Oil file a renewal of its motion to augment specifying the items that they sought to have included in the record and provided the City of Nampa time to respond.

ANALYSIS

1. The Idaho Administrative Procedure Act is Inapplicable to this Action

Our Supreme Court has held that “[t]he language of the IAPA indicates that it is intended to govern the judicial review of decisions made by state administrative agencies, and not local governing bodies.” *Gibson v. Ada County Sheriff’s Dept.* 139 Idaho 5, 7 (2003) citing *Idaho Historic Preservation Council v. City Council of Boise*, 134 Idaho 651, 653 (2000). Counties and city governments are considered local governing bodies rather than agencies for purposes of the IAPA. *Id.* Absent a statute invoking the IAPA’s judicial review provisions, local government actions may not be reviewed under the IAPA. *Id.* at 7-8. The street vacation statutes at issue in this case, do not invoke the IAPA.

2. I.R.C.P. 84(I) is the Controlling Authority on the Issue Presented

Rule 84(I), Idaho Rules of Civil Procedure states:

Any party desiring to augment the transcript or record with additional materials presented to the agency may move the district court within twenty-one (21) days of the filing of the settled transcript and record in the same manner and pursuant to the same procedure for augmentation of the record in appeals to the Supreme Court. Where statute provides for the district court itself to take additional evidence, the party desiring to present additional evidence must move the court to do so within twenty-one (21) days of the filing of the transcript and record with the district court. Where the statute provides for the district court to remand the matter for the agency to take further evidence before the district court renders its decisions on judicial review, the district court may remand the matter to the agency. (Underlining added).

Idaho Code Section 50-1322 does not provide for the district court itself to take additional evidence.

The deposition testimony of Norman L. Holm which Goodman Oil seeks to include in the record on judicial review was not presented to the Nampa City Council. Although Goodman Oil opines that the deposition testimony of Mr. Holm will aid the Court "in understanding why the right-of-way reserved in the ordinance as it was passed by the Nampa City Council is flawed and not based on any facts presented to the Nampa City Council" and that without these additional facts, the agency record will be incomplete, Goodman Oil has presented no statutory, rule or case authority in support of its position.

Further, the language of I.R.C.P. 84(l) limiting augmentation of the record in this case to "additional materials presented to the agency" is supported by the provisions of I.R.C.P. 84(e)(1) which provides that when judicial review is authorized by statute, and statute or law does not provide the procedure or standard, "judicial review of agency action shall be based upon the record created before the agency."

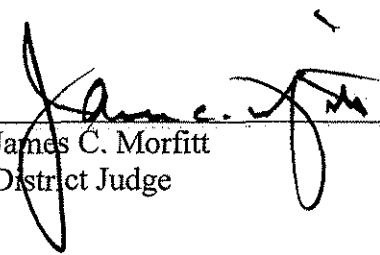
Therefore,

ORDER

IT IS HEREBY ORDERED, and this does ORDER, that the Petitioner's Renewed Motion to Augment Record, be, and is hereby, **DENIED**.

IT IS FURTHER ORDERED, and this does ORDER, that Respondent's alternative Motion to Include Additional Augmentation of Record, be, and is hereby **DENIED**.

DATED: APR 3 2006



James C. Morfitt
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER ON PETITIONER'S RENEWED MOTION TO AUGMENT RECORD was mailed to the following persons on this 3 day of April, 2006

Jon M. Steele
Karl J. Runft
RUNFT & STEELE LAW OFFICES, PLLC
1020 w. Main Street, Suite 400
Boise, ID 83702

T. Guy Hallam, Jr.
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687-7901

G. Noel Hales

BY: J HEIDEMAN
Deputy Clerk

F I L E D
A.M. 4:05 P.M.

NOV 07 2006

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,

Petitioner,

-vs-

CITY OF NAMPA, a corporate
Body politic; THE CITY COUNCIL of the
CITY OF NAMPA; MAYOR TOM DALE,
in his capacity as Mayor of the City of
Nampa; and DIANA LAMBING, in her
Capacity as City Clerk;

Respondents.

Case No. CV 2004-10007*C

MEMORANDUM DECISION ON
JUDICIAL REVIEW AND ORDER

Petitioner Goodman Oil Company ("Goodman Oil") seeks judicial review of the easement reserved in City of Nampa Ordinance No. 3374, which vacates 1st Avenue South between 2nd Street South and 3rd Street South in the City of Nampa. The ordinance reserves "the westerly fifty feet (50') for an Ingress/Egress and utility easement."

The matter came on regularly before the Court for oral argument on September 1, 2006. Petitioner Goodman Oil Company appeared through its attorney of record, Mr. Jon M. Steele. Respondent City of Nampa ("City") appeared through its attorney of record, Mr. John R. Kormanik.

BACKGROUND AND PROCEDURAL HISTORY

Goodman Oil first petitioned the City of Nampa to vacate the relevant portion of 1st Avenue South on or about August 3, 1995. By letter dated September 6, 1995, Norman L. Holm the Planning Director for the City of Nampa advised Goodman Oil that the street vacation would be complete so long as the Nampa Fire Department approved fire apparatus access. Subsequently, the first reading of the ordinance occurred September 18, 1995. The second reading occurred on October 2, 1995. On October 16, 1995, the Ordinance was tabled because "approval of the fire access by the Fire Department...was never provided."

In August, 2004, Goodman Oil sought to complete the street vacation. On or about August 4, 2004, Fire Prevention Officer Brent Hoskins sent a letter to the Planning and Community Development Department advising that

Nampa Fire Department will agree to the vacation of 1st AVE S, provided a dedicated 20' wide apparatus access road is maintained between 2nd ST S and 3rd ST S. The apparatus access road shall be built within the confines of the vacated right of way lines. All affected parcel owners shall respond in writing to the Nampa Fire Department that they understand the requirements of this letter. Any deviations from the requirements above shall first be approved by the Nampa Fire Department. (Emphasis added).

On August 16, 2004, the City Council took up the street vacation. There was a motion for suspension of the rules requiring three readings. The motion carried and Ordinance No. 3374 vacating the relevant portion of 1st Avenue South was passed. After it was passed, approved by the

Mayor and released for publication, but prior to publication, the City recalled the Ordinance and the Mayor vetoed it.

Petitioner Goodman Oil Company brought this action on October 5, 2004, as an Application for Writ of Mandate and a Petition for Judicial Review. Goodman Oil sought 1) a writ of mandate to require the City of Nampa to publish an Ordinance vacating a portion of 1st Avenue South passed by the City Council, approved by and thereafter vetoed by the Mayor of the City of Nampa; and, 2) judicial review of the Nampa City Council's decision to reserve a fifty (50') foot ingress/egress and utility easement over the westerly portion of the vacated portion of 1st Avenue South.

On August 8, 2005, this Court granted Goodman Oil's Writ of Mandamus and directed the Respondent, City of Nampa, to publish Ordinance No. 3374, which, in relevant part, reads:¹

Section 1: That 1st Avenue South between 2nd Street South and 3rd Street South in the City of Nampa, Idaho be and the same is hereby vacated, such vacation subject to the following described access and utility easement which is hereby reserved on the vacated property, to-wit:

See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full. (Emphasis added).

Exhibit A, describing the reserved easement, states the following:

Maintaining the westerly fifty feet (50') for an Ingress/Egress and utility easement.

On September 23, 2005, the City of Nampa filed a notice of compliance with the preemptory writ of mandate.

Pursuant to the Court's Order Requiring Preparation of Record and Transcripts and Appellate Scheduling Order, dated October 27, 2004, the Agency Record and Transcripts were filed on November 7, 2005. The Petitioner's brief was due within thirty-five (35) days of the date

¹ A copy of Ordinance No. 3374 is attached hereto as Exhibit "A".

of notice that the transcripts and the agency record have been filed. Goodman Oil's appellate brief was due December 12, 2005.

Instead of filing an appellate brief, Petitioner Goodman Oil, on December 1, 2005, moved for summary judgment on the judicial review. The City of Nampa opposed the motion. Both Goodman Oil and the City of Nampa moved to augment the record. On April 3, 2006, the Court entered its *Memorandum Decision and Order on Petitioner's Renewed Motion to Augment Record* denying both parties motions to augment the record. Additionally, the Court granted the City of Nampa extended time in which to respond to Goodman Oil's motion for summary judgment. The Court ordered the parties to "proceed to file briefing in this matter in accord with the Court's prior scheduling order." See *Order Granting Respondents' Motion for Extension of Time and Motion to Shorten Time*, dated March 31, 2006 and filed April 3, 2006. On April 11, 2006, The City of Nampa filed its Motion to Dismiss Appellate Proceeding.

On May 8, 2006, Petitioner Goodman Oil filed Petitioner's Opening Appellant Brief. On June 5, 2006, the City filed its Response Brief. On June 22, 2006, the Petitioner filed its Reply Brief. Respondent's Petition for Judicial Review was thereafter noticed for oral arguments. Following oral argument, the Court denied the City's Motion to Dismiss Appellate Proceeding.

ISSUES PRESENTED ON JUDICIAL REVIEW

Whether the City of Nampa exceeded its statutory authority in granting an application to vacate a street by reserving a fifty foot (50') ingress/egress and utility easement.

STANDARD OF REVIEW

This Court has previously held that the Idaho Administrative Procedure Act ("IAPA") does not govern this action as stated in the Court's *Memorandum Decision and Order on Petitioner's Renewed Motion to Augment Record*, filed April 3, 2006. In its briefing and at oral argument, the

City requested that this Court revisit that issue. Both parties presented argument and authority on the applicability of the IAPA.

The IAPA and its judicial review standards apply to agency actions.

"Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

IDAHO CODE § 67-5201 (2006).

The Supreme Court of Idaho has held that "[t]he language of the IAPA indicates that it is intended to govern the judicial review of decisions made by *state* administrative agencies, and not local governing bodies." *Idaho Historic Preservation Council v. City Council of Boise*, 134 Idaho 651, 653 (2000) (Italics in original) (Underlining added); see *Gibson v. Ada County Sheriff's Department*, 139 Idaho 5 (2003). Counties and city governments are considered local governing bodies rather than agencies for purposes of the IAPA. *Gibson* at 7. Absent a statute invoking the IAPA's judicial review provisions, local government actions may not be reviewed under the IAPA. *Id.* at 7-8.

Statutes may authorize judicial review without invoking the provisions of the IAPA. *Id.*

Idaho Rule of Civil Procedure 84(a)(1) provides:

The procedures and standards of review applicable to judicial review of state agency and local government actions shall be as provided by statute. When judicial review of an action of a state agency or local government is expressly provided by statute but no stated procedure or standard of review is provided in that statute, then Rule 84 provides the procedure for the district Court's judicial review. Actions of state agencies or officers or actions of a local government, its officers or its units are not subject to judicial review unless expressly authorized by statute. (Emphasis added).

In this case, judicial review of an order granting or denying an application to vacate a street is expressly provided by statute.

Whenever the governing body shall grant the application, or refuse the application of any person or persons, made as provided for the vacation of any... street... an appeal may be taken from any act, order or proceeding of the board made or had pursuant to by any person aggrieved thereby within twenty (20) days after the first publication or posting of the statement as required by section 31-819, Idaho Code. Procedure upon such appeal shall be in all respects the same as prescribed in sections 31-1510, 31-1511 and 31-1515, Idaho Code. (Emphasis added).

IDAHO CODE § 50-1322 (2006).

Idaho Code Section 50-1322, which provides for an appeal from an order granting or denying an application to vacate a street, is a provision of chapter 13 (Plats and Vacations), title 50 (Municipal Corporations), Idaho Code. Idaho Code Section 50-1322 facially provides a procedure for the judicial review of street vacation decisions. However, Idaho Code Sections 31-1510 and 31-1511 were repealed in 1993 and Idaho Code Section 31-1515 was repealed in 1995. All three of the repealed Idaho Code Sections referenced in I.C. § 50-1322 were found in title 31, Counties and County Law. Idaho Code Section 31-1510, prior to its repeal in 1993, provided for notice of the appeal, the time for the hearing of the appeal and the requirements for a bond. Idaho Section 31-1511, prior to its repeal in 1993, provided for the transmission of papers relating to the appeal to the district judge. Idaho Code Section 31-1515 required that no member of the board of commissioners could have any interest in property sold or purchased by the county or in any contract of the county. For the current law on that subject, see I. C. § 31-807A.

All three of the repealed statutes cited in I.C. § 50-1322 predated the enactment of either the IAPA in 1967 or the adoption of the Idaho Rules of Civil Procedure. None of these referenced statutes invoke the IAPA's judicial review provisions. Neither do any of the

referenced statutes set forth a standard of review applicable to the review of street vacation decisions by a city.

The conclusion that the three repealed statutes referenced in I.C. § 50-1322 did not invoke the IAPA's judicial review provisions is further buttressed by the Statement of Purpose for the bill which repealed those code sections, which stated:

The purpose of this bill is to provide for the appeal of county commission decisions in the same manner as judicial review of actions under the Administrative Procedure Act (APA), chapter 52, title 67, Idaho Code.

The current process for appeals is archaic and inconsistent with other sections of county law. The planning and zoning and medical indigency appeals are conducted as appeals under the APA.

The current process of appellate procedure makes the district judge the fourth or "super" commissioner with the ability to overrule the factual determinations and judgments of three individuals.

The types of decisions that are appealed are administrative or executive in nature and the more appropriate method would be to use the APA. This method of appeal will protect the rights of those affected by county commission decisions while giving consideration to county commission judgments.

Statement of Purpose, RS 02035, 1993 House Bill 120.

The 1993 House Bill also added a new section to Title 31, Idaho Code. Section 31-1509 was added to provide the manner of judicial review of actions by boards of county commissioners. The new section 31-1509 provided:

(1) Unless otherwise provided by law, judicial review of any act, order or proceeding of the board shall be initiated by any person aggrieved thereby within the same time and in the same manner as provided in chapter 52, title 67, Idaho Code, for judicial review of actions.

(2) Venue for judicial review of board actions shall be in the district court of the county governed by the board.

1993 Idaho Sess. Laws ch. 103. In 1995, Idaho Code section 31-1509 was redesignated Idaho Code section 31-1506. 1995 Idaho Sess. Laws ch. 61 § 11.

Therefore, the Court finds and concludes that I.C. § 50-1322 does not invoke IAPA's judicial review provisions.

The Court further finds and concludes, as previously announced, that the judicial review provisions of the IAPA are not applicable to these proceedings.

The Court recognizes that the 1993 Idaho legislature created an anomaly by also enacting Idaho Code Section 40-208 governing the judicial review of final decisions of a board of county or highway district commissioners relating to abandonment or vacation of a highway. Although I.C. § 40-208 does not specifically invoke the judicial review provisions of the IAPA, the statute does adopt standards of review similar to those of the IAPA.

Idaho Rule of Civil Procedure 84, which governs judicial review of local governing bodies, does not provide a specific standard of review. Therefore, the Court applies the general standards of review for cases in which the district court reviews appeals from the magistrate court. *See Idaho Historical Preservation Council*, at 654.

The Court finds and concludes that judicial review of a decision of a local governing body, in the absence of a statutory standard of review, is as provided for when the district court reviews a decision of a magistrate judge as an appellate proceeding not involving a trial de novo. The district court shall review the case upon the record and determine the appeal upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and laws of this state, and the appellate rules of the Supreme Court. *See I.R.C.P. 83(u)(1)*.

Factual findings will not be set aside on judicial review unless they are clearly erroneous. *Kornfield v. Kornfield*, 134 Idaho 383, 385 (Ct. App. 2000). Findings of fact supported by

substantial and competent evidence are not clearly erroneous. *Whiteley v. State*, 131 Idaho 323, 326 (1998).

Statutory interpretation is a question of law over which this Court exercises free review. *Herman ex rel. Herman v. Herman*, 136 Idaho 685, 688 (2002).

ANALYSIS

In its Petition for Judicial Review, Goodman Oil argues that the easement reservation exceeds the City of Nampa's statutory authority, that it is not supported by any evidence found in the record, that the reservation violates due process, and that the reservation is arbitrary and capricious. The City of Nampa argues that the easement contained in Ordinance 3374 is wholly proper and within the City of Nampa's authority. The City further asserts that Goodman Oil is judicially estopped from challenging the easement.

Vacated First Avenue South is eighty (80') feet in width and three hundred (300') feet in length. The easement reserved by the City covers the westerly fifty (50') feet of the vacated property thus encumbering all of Goodman Oil's property located on the west side of the vacated street.

Cities are empowered to vacate any street by statute.

...Provided further that whenever any street ... shall be vacated, the same shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof, or as the city council deems in the best interests of the adjoining properties, but the right of way, easements and franchise rights of any lot owner or public utility shall not be impaired thereby.... (Emphasis added).

IDAHO CODE § 50-311 (2006).

The statute does not provide for the imposition conditions on the vacation. Rather, the statute explicitly provides that a street vacation may not impair "right of way, easements and franchise rights of any lot owner or public utility." *Id.*

The Idaho Supreme has held that Idaho Code Section 50-311, which applies to all municipal corporations in the state of Idaho and is an act of the state legislature is a state law of general application. *Black v. Young*, 122 Idaho 302, 308 (1992). In *Black*, the City of Ketchum conditioned the vacation of the alley upon the issuance of a building permit and the funding of a construction loan *Id.* at 305. In addition, the vacation ordinance provided the City of Ketchum a right of reversion if a certificate of occupancy was not issued for a proposed motel. *Id.* The Supreme Court held:

The two conditions that the City of Ketchum imposed upon vacation of the alley, as well as the right of reversion should a certificate of occupancy not be issued, are not expressly granted powers, fairly implied powers from the clear language of I.C. § 50-311, nor are they powers essential to the vacation of the alley. The *only* condition that I.C. § 50-311 allows upon a finding of expedience for the public good is that the vacation cannot impair "the right of way, easements and franchise rights of any lot owner or public utility." I.C. § 50-311. Thus, the two above-listed conditions, as well as the right of reversion, are *ultra vires* acts by the City of Ketchum because they conflict with I.C. § 50-311. (Italics in original) (Underling added).

Id. at 308.

The Court thus finds and concludes, as a matter of law, that the City's reservation of a 50 foot ingress/egress and utility easement is in violation of the provisions of I.C. § 50-311.

The Court further finds and concludes that the City's reservation of a 50 foot ingress/egress and utility easement is an *ultra vires* act by the City because the reservation of the easement is in conflict with I. C. § 50-311.

Judicial estoppel is a doctrine which prevents a party from assuming a position in one proceeding and then taking an inconsistent position in a subsequent proceeding. Although the issue of judicial estoppel was not directly addressed by the Idaho Supreme Court in *Black*, in that case, Blacks had signed an estoppel affidavit which provided that the conditions of the ordinance

were acceptable to them and would not be challenged by them. *Id.* at 305. In defense of the Blacks' complaint, the City of Ketchum asserted the affirmative defense of estoppel. *Id.* The trial court subsequently granted the City of Ketchum's motion for summary judgment finding that Ketchum was within its statutory authority to impose the conditions and the right of reversion upon its vacation of the alley in question. The Idaho Supreme Court reversed the judgment of the district court and remanded the case to the trial court to determine if other factors existed or were considered regarding the public expediency requirement of I. C. § 50-311.

This Court finds and concludes that Goodman Oil is not judicially estopped from challenging the statutory authority of the City to impose conditions upon the vacation of the portion of First Avenue South at issue in this case.

The Court further finds and concludes that, in light of the above-findings, it is not necessary to address Goodman Oil's remaining arguments.

The Court still further finds and concludes that the findings set forth in Ordinance No. 3374 relate only to the procedural history of the request to vacate and the adequacy of the access and utility easement. The ordinance contains no findings "of expedience for the public good" required by I. C. § 50-311.

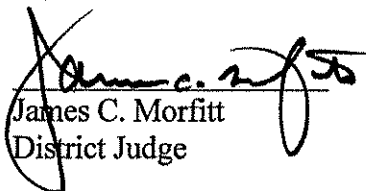
Therefore,

ORDER

IT IS HEREBY ORDERED, and this does ORDER, that the reservation of a 50 foot ingress/egress and utility easement in Ordinance No. 3374 be, and is hereby, SET ASIDE.

IT IS FURTHER ORDERED, and this does ORDER, that Ordinance No. 3374 be, and is hereby, REMANDED to the City of Nampa for its determination as to whether other factors existed or regarding the public good requirement of I. C. § 50-311.

DATED: NOV 7 2006


James C. Morfitt
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision on Judicial Review and Order was mailed to the following persons on this 7 day of November, 2006.

Thomas Guy Hallam
John R. Kormanik
WHITE PETERSON, P.A.
5700 E. Franklin Road, Suite 200
Nampa, ID 83687-7901

Jon M. Steele
RUNFT & STEEL LAW OFFICES, PLLC
1020 W. Main St., Ste. #400
Boise, ID 83702

Theresa Randall
Appellate Clerk
Canyon County Courthouse
1115 Albany Street
Caldwell, ID 83605

G. Noel Hales
Clerk of the District Court

By: 
Deputy Clerk

VETO

ORDINANCE NO. 3374

AN ORDINANCE OF THE CITY OF NAMPA, IDAHO, VACATING 1ST AVENUE SOUTH BETWEEN 2ND STREET SOUTH AND 3RD STREET SOUTH IN THE CITY OF NAMPA, CANYON COUNTY, IDAHO, SUBJECT TO AN ACCESS AND UTILITY EASEMENT RESERVED THEREON, AND DIRECTING THE CITY ENGINEER TO ALTER THE USE AND AREA MAP ACCORDINGLY.

WHEREAS, on September 5, 1995, a public hearing on vacating 1st Avenue South between 2nd Street South and 3rd Street South in the City of Nampa was held before the City Council; and

WHEREAS, the City Council approved the vacation; and

WHEREAS, on September 18, 1995, the First Reading of the Ordinance Vacating 1st Avenue South between 2nd Street South and 3rd Street South in the City of Nampa was read before the City Council; and

WHEREAS, on October 2, 1995, the Second Reading of the above described vacation Ordinance was read before the City Council; and

WHEREAS, on October 16, 1995, the Third Reading of the above described vacation Ordinance was tabled by the City Council because the necessary approval of fire access through the area by the Fire Department had not been obtained; and

WHEREAS, the Fire Department has recently reviewed development plans for the area and has provided its written, conditional approval of the vacation Ordinance if an access and utility easement is retained through the property to be vacated; and

WHEREAS, the City of Nampa has created a legal description for an access and utility easement to be retained through the property to be vacated; and

WHEREAS, the access and utility easement is acceptable to the Fire Department as to location and dimension.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NAMPA, IDAHO:

Section 1: That 1ST Avenue South between 2ND Street South and 3RD Street South in the City of Nampa, Idaho be and the same is hereby vacated, such vacation subject to the following described access and utility easement which is hereby reserved on the vacated property, to-wit:

See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full.

Section 2: That the City Engineer is hereby instructed and directed to alter the Use and Area Map in accordance with the above Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 16th DAY OF August, 2004.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 16th DAY OF August, 2004.

Approved:

By *Pom Dale*
Mayor

Attest:

By *Heana Lambing*
City Clerk

VETO
Sept 2, 2004
Pom Dale

State of Idaho)

Canyon County)

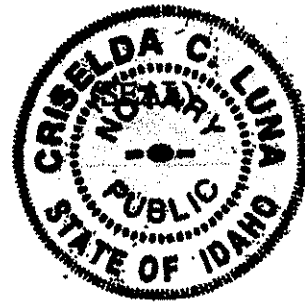
On this 16TH day of August, in the year 2004, before me, Criselda C. Luna
a Notary Public, personally appeared TOM DIE and DIANA Lambing known
or identified to me to be the Mayor and City Clerk, respectively, of The City of Nampa, who
executed the instrument or the person that executed the instrument on behalf of said corporation,
and acknowledge to me that such corporation executed the same.

Criselda C. Luna

Criselda C. Luna

Residing at: Nampa, Canyon County, Idaho

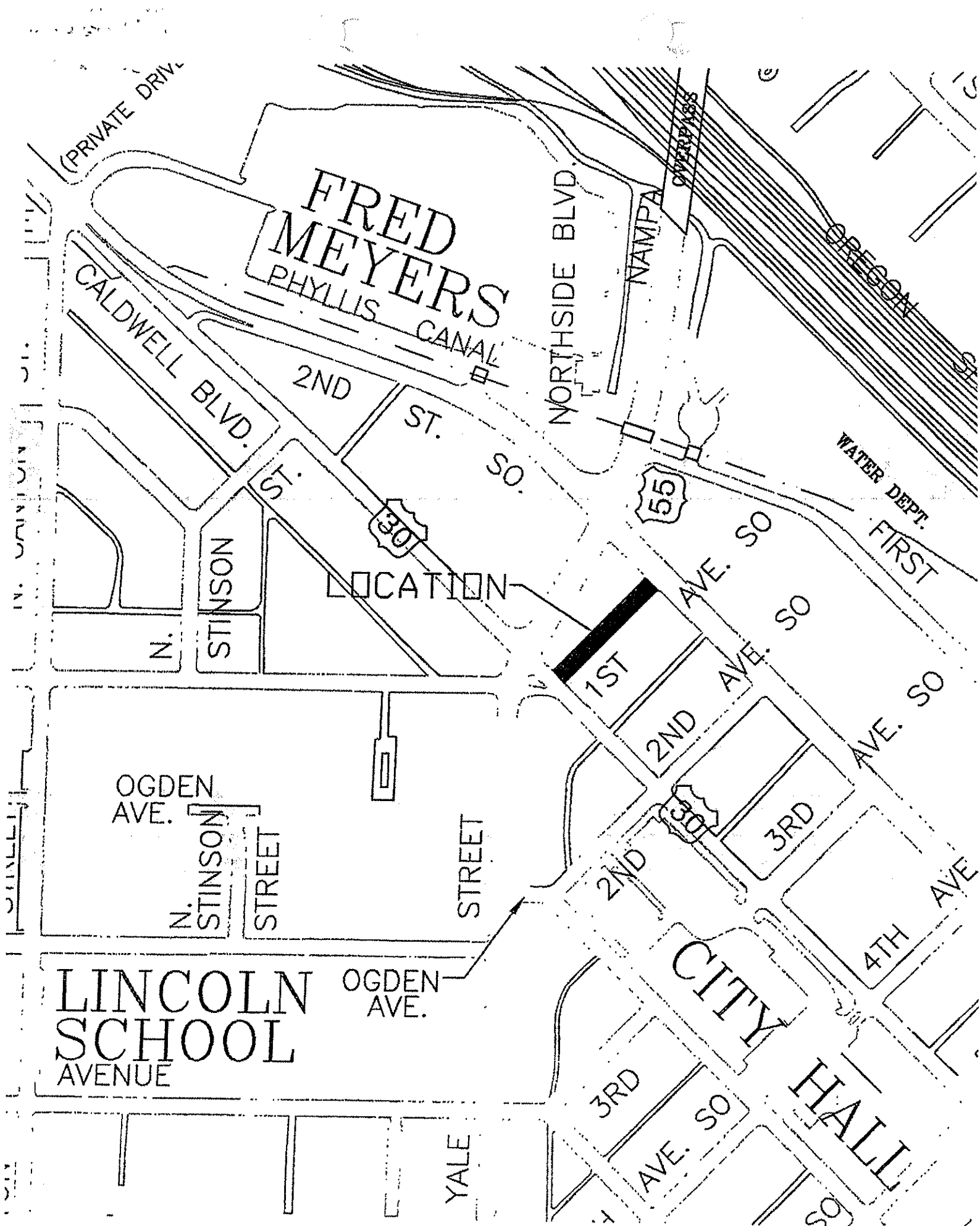
My Commission Expires: 10/02/07



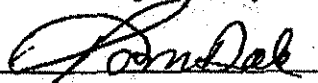
**LEGAL DESCRIPTION FOR
VACATION OF FIRST AVENUE SOUTH**

That portion of First Avenue South between Second Street South and Third Street South within the NW ¼, Section 22, and the NE ¼, Section 21, Township 3 North, Range 2 West, Boise Meridian, City of Nampa, Canyon County, Idaho, as shown on the plat of PLEASANTS ADDITION on file with Canyon County Book 4, Page 10.

Maintaining the westerly fifty feet (50') for an Ingress/Egress and utility easement.



I, Mayor Tom Dale do hereby VETO Ordinance number 3374 for Vacation of 1st Avenue South between 2nd Street South and 3rd Street South pursuant to Nampa City Code 2-2-3-5 due to the objection by an adjoining property owner.



Tom Dale
Mayor
City of Nampa

F I L E D
A.M. P.M.

APR 27 2007

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,

Petitioner,

-vs-

CITY OF NAMPA, a corporate body)
Politic; THE CITY COUNCIL of the)
CITY OF NAMPA; MAYOR TOM)
DALE, in his capacity as Mayor of)
The City of Nampa; DIANA)
LAMBING, in her capacity as City)
Clerk,)

Respondents.

CASE NO. CV 2004-0010007*C

JUDGMENT FOR COSTS AND
ATTORNEY FEES

The above-entitled case came on regularly for hearing on Petitioner's motion for an award of attorney fees and costs on January 18, 2007. The Court, having heard and considered the arguments and briefing of the parties together with the file and record in this case, held:

- 1) Petitioner was entitled to its cost in this action;

JUDGMENT FOR COSTS
AND ATTORNEY FEES

1

000119

2) Petitioner was entitled to an award of attorney fees in the sum of \$40,000.00 pursuant to I.C. § 12-117 arising from the judicial review portion of these proceedings; and,

3) Petitioner was not entitled to an award of attorney fees arising from the Mandamus portion of these proceedings.

The Court's findings of fact and conclusions of law were made orally upon the record and are adopted herein. Either party may request a transcript of the Court's findings of fact and conclusions of law should they so desire.

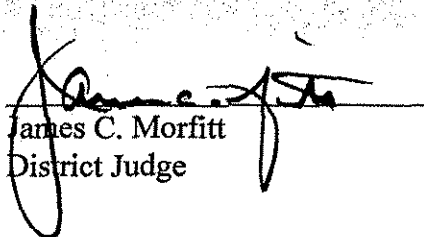
Thereafter, each party requested that the Court reconsider its rulings as to attorney fees. Both motions to reconsider came on regularly for hearing on April 13, 2007. Following hearing, the Court denied each parties motion for reconsideration as to the award of attorney fees.

Therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED:

Petitioner, GOODMAN OIL COMPANY, is awarded its costs as a matter of right in this action in the sum of \$2,966.29 together with attorney fees relating to the Judicial Review portion of these proceedings pursuant to I.C. § 12-117 in the amount of \$40,000.00.

DATED: APR 27 2007


James C. Morfitt
District Judge

JUDGMENT FOR COSTS
AND ATTORNEY FEES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was forwarded to the following persons on this 27 of April, 2007.

Tammy Zokan
Moore Smith Buston & turke, Chtd.
950 W. Bannock, Suite 520
Boise, ID 83702

Chris D. Gabbert
White Peterson, P. A.
5700 East Franklin Road, Ste 200
Nampa, ID 83687-7901

Jon M. Steele
Runft & Steele Law Offices, PLLC
1020 W. Main St., Suite 400
Boise, ID 83702



Deputy Clerk of the Court

FILED
A.M. 4:20 P.M.

JUN 06 2007

CANYON COUNTY CLERK
C. DOCKINS, DEPUTY

JON M. STEELE (ISB # 1911)
KARL J. RUNFT (ISB # 6640)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-9495
Fax: (208) 343-3246
Email: jmsteele@runftlaw.com

Attorneys for Appellant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

GOODMAN OIL COMPANY,)

Petitioner,)

vs.)

CITY OF NAMPA, a corporate body politic;)
THE CITY COUNCIL of the CITY OF)
NAMPA; MAYOR TOM DALE, in his)
capacity as Mayor of the City of Nampa;)
DIANA LAMBING, in her capacity as City)
Clerk; and SCOTTY'S DURO-BILT)
GENERATOR, INC., an Idaho corporation,)
_____)
_____)

CASE NO. CV 04-10007

NOTICE OF APPEAL

TO: The above named Respondents, its attorneys of record, and the Clerk of the above
entitled Court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant Goodman Oil Company appeals against the
above named Respondent Scotty's Duro-Bilt Generator, Inc., to the Idaho

Supreme Court from the District Court's Order of Dismissal dated June 29, 2005; Order on Petitioner's Second Motion to Amend dated June 29, 2005; Order on Respondent Scotty Duro-Bilt Generator's Memorandum of Costs and Fees dated August 29, 2005, and Judgment dated September 14, 2005, entered by the Honorable Judge James C. Morfitt presiding.

2. The above named Appellant Goodman Oil Company appeals against the above named Respondent City of Nampa to the Idaho Supreme Court from the District Court's Memorandum Decision on Judicial Review and Order dated November 7, 2006; Order dated April 25, 2007; and Judgment for Costs and Attorney Fees dated April 27, 2007 entered by the Honorable Judge James C. Morfitt presiding.
3. The Appellant has the right to appeal to the Supreme Court, and the Order and Judgment described in paragraph 1 above is appealable pursuant to Rule 11(a)(1) I.A.R.
4. Appellants' preliminary statement of issues is as follows:
 - a. Whether the District Court erred in dismissing Respondent Scotty's Duro-Bilt as a Respondent.
 - b. Whether the District Court erred in denying Appellant's Motion to Amend its Petition for Writ of Mandate to include causes of action against Respondent Scotty's Duro-Bilt.
 - c. Whether the District Court erred in denying Appellant attorney fees in the Mandamus Proceeding against Respondent City of Nampa.

- d. Whether the District Court erred in remanding the Judicial Review portion of this case to the Respondent City of Nampa.
- e. Whether Appellant is entitled to an award of costs and attorney's fees as a result of this appeal.

5. A reporter's transcript of the following hearings are requested:

- a. Hearing on Petitioner's Motion to Amend held on January 21, 2005;
- b. Hearing on Respondent's Motion to Dismiss and Petitioner's Second Motion to Amend Complaint heard on May 20, 2005;
- c. Hearing on Petitioner's Motion for Summary Judgment on Petitioner's Writ of Mandate and Respondent's Motion to Strike held on July 15, 2005;
- d. Hearing on Respondent's Memorandum of Costs and Fees held on August 19, 2005;
- e. Hearing on Respondent's Petition for Judicial Review held on September 1, 2006;
- f. Hearing on Respondent's City of Nampa's Objection to Petitioner Goodman's Memorandum of Costs and Attorney's Fees held on January 18, 2007;
- g. Hearing on Petitioner's Motion for Preliminary Injunction and Motion for Reconsideration and Clarification held on February 2, 2007;
- h. Hearing on Petitioner's Motion for Reconsideration of Attorney's Fees and Mediation; Petitioner's Motion for Entry of Proposed Findings of Fact and Conclusions of Law, Proposed Judgment as to Nampa

Respondents and Proposed Preliminary Injunction; and Respondent City of Nampa's Motion for Reconsideration Regarding Attorney's Fees held on March 19, 2007; and

- i. Hearing on Petitioner's Motion for Reconsideration and Clarification; Petitioner's Motion for Reconsideration of Attorney's Fees and Mediation; Petitioner's Motion for Entry of Proposed Findings of Fact and Conclusions of Law, Proposed Judgment as to Nampa Respondents and Proposed Preliminary Injunction; and Respondent City of Nampa's Motion for Reconsideration Regarding Attorney's Fees held on April 13, 2007.

6. The Appellant requests the clerk's record be prepared to include in addition to those documents automatically included under Rule 28 I.A.R. and the following:

- a. Petition for Writ of Mandate and Petition for Judicial Review, dated 10/5/04;
- b. Response to Petition for Writ of Mandate and Petition for Judicial Review, dated 11/3/04;
- c. Motion to Amend, dated 01/07/05;
- d. Affidavit of McCreedy in Support of Motion to Amend, dated 01/07/05;
- e. Memorandum in Support of Motion to Amend, dated 01/07/05;
- f. Memorandum in Opposition to Goodman Oil Company's Motion to Amend, dated 01/18/05;

- g. Reply Memorandum in Support of Petitioner's Motion to Amend, dated 01/19/05;
- h. Petitioner's Brief in Opposition to Respondent Scotty's Duro-Bilt's Motion to Dismiss, dated 05/04/05;
- i. Brief in Support of Motion for Summary Judgment in Regards to Petitioner's Application for Writ of Mandamus, dated 05/04/05;
- j. Motion for Summary Judgment on Petitioner's Application for Writ of Mandate, dated 05/04/05;
- k. Memorandum in Support of Second Motion to Amend Petition, dated 05/04/05;
- l. Petitioner's Second Motion to Amend Its Petition, dated 05/04/05;
- m. Memorandum in Opposition to Petitioner's Second Motion to Amend, dated 05/15/05;
- n. Memorandum in Opposition to Petitioner Goodman Oil Company's Second Motion to Amend Its Petition, dated 05/13/05;
- o. Reply Memorandum in Support of Motion to Dismiss, dated 05/18/05;
- p. Objection to Respondent Scotty's Memorandum of Costs and Attorney's Fees, dated 06/16/05;
- q. Memorandum in Opposition to Summary Judgment Motion of Petitioner, dated 07/01/05;
- r. Petitioner's Reply Memorandum in Support of Petitioner's Motion for Summary Judgment and in Opposition to Nampa Respondents' Motion to Strike, dated 07/08/05;

- s. Order Granting Writ of Mandamus, dated 08/08/05;
- t. Memorandum of Attorneys' Fees and Costs, dated 08/22/05;
- u. Order on Respondent Scotty's Duro-Bilt Generator's Memo of Costs & Fees, dated 08/29/05;
- v. Memorandum in Support of Petitioner's Memorandum of Attorney's Fees and Costs and in Opposition to Respondent's Objection, dated 09/19/05;
- w. Notice of Compliance with Peremptory Writ of Mandamus, dated 09/22/05;
- x. Order Denying Goodman Oil's Request for Attorney Fees, dated 11/14/05;
- y. Petitioner's Opening Appellant Brief, dated 05/08/06;
- z. Respondents' Response Brief, dated 06/05/06;
- aa. Petitioner's Reply Brief, dated 06/22/06;
- bb. Memorandum Decision on Judicial Review and Order, dated 11/10/06;
- cc. Memorandum of Attorney's Fees and Costs, dated 11/20/06;
- dd. Brief in Support of Petitioner's Memorandum of Attorney's Fees and Costs, dated 11/20/06;
- ee. Objection to Petitioner Goodman Oil Company's Memorandum of Costs and Attorney's Fees, dated 12/05/06;
- ff. Memorandum in Opposition to Petitioner Goodman Oil Company's Memorandum of Attorneys' Fees and Costs, dated 12/05/06;
- gg. Motion for Reconsideration and Clarification, dated 01/29/07;

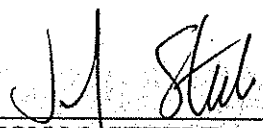
- hh. Motion for Preliminary Injunction, dated 01/29/07;
- ii. Affidavit of JMS in Support of Goodman's Motion for Preliminary Injunction and for Reconsideration and Clarification, dated 01/29/07;
- jj. Brief in Support of Motion for Preliminary Injunction and Motion for Reconsideration and Clarification, dated 01/29/07;
- kk. Memorandum in Support of Petitioner's Motion for Reconsideration, dated 02/16/07;
- ll. Motion for Reconsideration, dated 02/16/07;
- mm. Supplemental Brief, dated 02/23/07;
- nn. City of Nampa's Supplemental Brief and Memorandum in Opposition to Petitioner's Motion for Reconsideration, dated 02/26/07;
- oo. City of Nampa's Reply Brief, dated 03/05/07;
- pp. Response to City of Nampa's Supplemental Brief, dated 03/05/07;
- qq. Goodman's Memorandum Response to Nampa's Motion for Reconsideration Regarding This Court's Award of Attorney's Fees to Goodman and in Reply to Nampa's Opposition to Goodman's Motion for Reconsideration Regarding this Court's Denial of Attorney Fees in the Mandamus Proceeding, dated 03/12/07;
- rr. Judgment as to the Nampa Respondents, dated 04/17/07;
- ss. Order, dated 04/26/07;
- tt. Order, dated 04/26/07;
- uu. Judgment for Costs and Attorney Fees, dated 04/27/07; and
- vv. Preliminary Injunction Against Nampa Respondents, dated 04/27/07

7. I certify:

- a. That a copy of this Notice of Appeal has been served on the Court Reporter;
- b. The Appellants have ordered and will pay the estimated Reporter's Transcript Fee when received;
- c. That the estimated fee for preparation of the Clerk's record has been paid;
- d. That the Appellants filing fee has been paid; and,
- e. That service has been made upon all parties required to be served to Rule 20.

DATED this 10th day of June 2007.

RUNFT & STEELE LAW OFFICE, PLLC

By: 

JON M. STEELE
Attorney for the Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of June 2007, a true and correct copy of the **NOTICE OF APPEAL** was served upon opposing counsel as follows:


Chris D. Gabbert
White Peterson, P.A.
5700 East Franklin Road, Ste 200
Nampa, ID 83687-7901

US Mail
 Personal Delivery
 Facsimile

Tammy Zokan
Moore Smith Buxton & Turke,
Chtd.
950 W. Bannock, Suite 520
Boise, ID 83702

US Mail
 Personal Delivery
 Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: 
JON M. STEELE
Attorney for Appellant

Terrence R. White
 Christopher D. Gabbert
 WHITE PETERSON, P.A.
 5700 East Franklin Road, Suite 200
 Nampa, Idaho 83687-7901
 Telephone: (208) 466-9272
 Facsimile: (208) 466-4405
 ISB Nos.: 1351, 6772
 trw@whitepeterson.com
 cgabbert@whitepeterson.com

FILED
 A.M. 4:00 P.M.

JUN 27 2007

**CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY**

Attorneys for Respondents/Cross-Appellants City of Nampa

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)
)
) Petitioner/Appellants,)
)
) vs.)
)
) CITY OF NAMPA, a corporate body politic;)
) THE CITY COUNCIL of the CITY OF)
) NAMPA; MAYOR TOM DALE, in his)
) capacity as Mayor of the City of Nampa;)
) DIANA LAMBING, in her capacity as City)
) Clerk; and SCOTTY'S DURO-BILT)
) GENERATOR, INC., an Idaho corporation,)
)
) Respondents/Cross-Appellants)

CASE NO. CV-2004-0010007*C

NOTICE OF CROSS-APPEAL

Fee Category: T
 Filing Fee: Exempt (I.C. § 67-2301)

TO: THE ABOVE NAMED PETITIONER/APPELLANT, GOODMAN OIL COMPANY,
 AND THEIR ATTORNEY, JON STEELE, AND THE CLERK OF THE ABOVE
 NAMED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, CITY OF NAMPA, a corporate body politic; THE CITY COUNCIL OF THE CITY OF NAMPA; MAYOR OF THE CITY OF NAMPA TOM DALE, in his capacity as Mayor of the City of Nampa; DIANA LAMBING, in her capacity as City Clerk; cross-appeal against the above-named Petitioner/Appellant to The Idaho Supreme Court from the final orders entered in the above-entitled action on April 26 and 27, 2007, Honorable James C. Morfitt presiding.

2. The party has a right to appeal to the Idaho Supreme Court, and the judgment described in Paragraph 1 above is appealable under and pursuant to Rule 11(a)(1) and Rule 15 of the Idaho Appellate Rules and Rule 84(t) of the Idaho Rules of Civil Procedure.

3. A preliminary statement of the issues on appeal which the Cross-Appellants then intend to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Cross-Appellants from asserting other issues on appeal:

3.1 Whether the Court erred in denying Cross-Appellants' Motion for Reconsideration of Attorneys Fees Award on the Judicial Review;

3.2 Whether the Court erred in finding that as a matter of law, the City of Nampa's reservation of a 50 foot ingress/egress and utility easement is in violation of the provisions of Idaho Code § 50-311;

3.3 Whether the Court erred in finding that the City of Nampa's reservation of a 50 foot ingress/egress and utility easement is an *ultra vires* act by the City because the reservation is in conflict with Idaho Code § 50-311;

3.4 Whether the Court erred in granting Appellant's Motion for Clarification or Remand Order after expiration of the time period in which to appeal.

3.5 Whether Cross-Appellant is entitled to an award of costs and attorney's fees as a result of this appeal.

4. Cross-Appellants agree and concur with Appellant's request for a Reporter's Transcript, as provided for in I.A.R. 25(a), in compressed format, of the following hearings before the district court for purposes of this cross-appeal, on or about:

4.1 January 18, 2007, on Goodman's Motion for Attorneys Fees and Costs;

4.2 February 2, 2007 on various post-trial motions, and

4.3 April 13, 2007 on the cross motions for reconsideration.

5. The Cross-Appellants agree and concur with Appellant's requests that the following documents be included in the Clerk's Record, for the purposes of this cross-appeal in addition to those automatically included under Rule 28, I.A.R. Items numbered 5.1 - 5.5, and 5.17 - 5.19 are in addition to those requested by Appellant in its Notice of Appeal:

5.1 Petitioner's Motion for Summary Judgment on Petition for Judicial Review (12/1/05);

5.2 Petitioner's Brief in Support of Motion for Summary Judgment on Petition for Judicial Review and in Support of Petitioner's Motion to Augment the Record [filed April 1, 2005] (12/1/05);

5.3 Affidavit of Jon M. Steele in support of Motion for Summary Judgment on Petition for Judicial Review (12/1/05);

5.4 Opposition to Petitioner's Motion for Summary Judgment on Petition for Judicial Review (1/11/06);

5.5 Affidavit of John R. Kormanik in Opposition to Petitioner's Motion for Summary Judgment on Petition for Judicial Review (1/11/06);

- 5.6 Memorandum Decision on Judicial Review and Order (11/07/06);
- 5.7 Goodman's Memorandum of Attorney's Fees and Costs (11/20/06);
- 5.8 Goodman's Brief in Support of Petitioner's Memorandum of Attorneys Fees and Costs (11/20/06);
- 5.9 Objection to Petitioner Goodman Oil Company's Memorandum of Costs and Attorney Fees (12/04/06);
- 5.10 Memorandum in Opposition to Petitioner Goodman Oil Company's Memorandum of Attorneys Fees and Costs (12/04/06);
- 5.11 Goodman's Motion for Reconsideration and Clarification (1/29/07);
- 5.12 Goodman's Motion for Preliminary Injunction (1/29/07);
- 5.13 Goodman's Brief in Support of Motion for Preliminary Injunction and Motion for Reconsideration and Clarification (1/29/07);
- 5.14 Affidavit of Jon M. Steele in Support of Goodman's Motion for Preliminary Injunction and for Reconsideration and Clarification (1/29/07);
- 5.15 Goodman's Supplemental Brief (2/23/07);
- 5.16 City of Nampa's Supplemental Brief (2/23/07);
- 5.17 Affidavit of Christopher D. Gabbert (2/23/07);
- 5.18 Respondent City of Nampa's Motion for Reconsideration Regarding Attorneys Fees (3/02/07);
- 5.19 Respondent City of Nampa's Memorandum in Support of Motion for Reconsideration Regarding Attorney Fees and In Opposition to Petitioner's Motion for Reconsideration (3/02/07);

- 5.20 Nampa's Reply Brief (3/05/07);
- 5.21 Goodman's Response to Nampa's Supplemental Brief (3/05/07);
- 5.22 Goodman's Memorandum Response to Nampa's Motion for Reconsideration Regarding This Court's Award of Attorney's Fees to Goodman and In Reply to Nampa's Opposition to Goodman's Motion for Reconsideration Regarding This Court's Denial of Attorney Fees in the Mandamus Proceeding (3/12/07);
- 5.23 Order, dated April 26, 2007 denying Nampa's Motion for Reconsideration of Attorney Fees, granting Goodman's Motion for Clarification of Remand Order;
- 5.24 Judgment for Costs and Attorney Fees, dated April 27, 2007.

6. I certify:

- 6.1 That a copy of this Notice of Appeal has been served on the reporter;
- 6.2 That the clerk of the district court will be paid the estimated fee for preparation of the Reporter's Transcript within the time required by rule after notice to Appellants of the amount of the estimated fee;
- 6.3 That the estimated fee for preparation of the Clerk's Record will be paid within the time required by rule after notice to Appellants of the amount of the estimated fee;
- 6.4 The Respondent/Cross-Appellant is a corporate body politic and is therefore exempt from payment of the appellate filing fee pursuant to Idaho Code § 67-2301; and

6.5 That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 27th day of June, 2007.

WHITE PETERSON, P.A.

By: _____

Christopher D. Gabbert
Attorneys for Respondents/Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Jon M. Steele
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile: 208-343-3246

Christopher E. Yorganson
Tammy A. Zokan
MOORE SMITH BUXTON & TURCKE
950 W. Bannock, Ste. 520
Boise, Idaho 83702

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile: 208-331-1202

Lehan Sember

WHITE PETERSON, P.A.

CV04-10007

In the Supreme Court of the State of Idaho

FILED
11:20 A.M. P.M.

JUL 12 2007

CANYON COUNTY CLERK
T RANDALL, DEPUTY

GOODMAN OIL COMPANY,)
)
 Petitioner-Appellant-Cross Respondent,)
)
 v.)
)
 CITY OF NAMPA, a corporate body politic;)
 THE CITY COUNSEL of the CITY OF)
 NAMPA; MAYOR TOM DALE, in his)
 capacity as Mayor of the City of Nampa;)
 DIANA LAMBING, in her capacity as City)
 Clerk,)
)
 Respondents-Cross Appellants,)
)
)
 SCOTTY'S DURO-BILT GENERATOR, INC.,)
 an Idaho corporation,)
)
 Respondent.)
)

ORDER SUSPENDING APPEAL
PENDING COMPLETION OF
APPELLATE SETTLEMENT
CONFERENCE

NO. 34284

The parties to this appeal have stipulated to submit this appeal for an Appellate Settlement Conference as provided by Rule 49, I.A.R.; therefore, good cause appearing,

IT IS HEREBY ORDERED that the STIPULATION to submit this appeal to Appellate Settlement Conference be, and hereby is, APPROVED.

IT IS FURTHER ORDERED that proceedings in this appeal shall be SUSPENDED pending completion of the Appellate Settlement Conference procedure.

DATED this 10th day of July, 2007.

For the Supreme Court

Stephen Kenyon

Steven W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter – Saunders (Tuckers)

000138

In the Supreme Court of the State of Idaho

GOODMAN OIL COMPANY, _____)
)
 Petitioner-Appellant-Cross Respondent,)
)
 v.)
)
 CITY OF NAMPA, et al.,)
)
 Respondents-Cross Appellants,)
 and)
)
 SCOTTY'S DURO-BILT GENERATOR, INC.,)
 an Idaho corporation,)
)
 Respondent.)

ORDER REINSTATING APPEAL

Supreme Court No. 34284

F I L E D
11:20 A.M. P.M.

NOV 15 2007

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

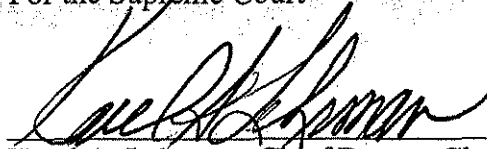
Proceedings in this appeal were suspended July 10, 2007, due to the parties' Stipulation to submit to an Appellate Settlement Conference. Subsequently, the Clerk of this Court has been advised by the settlement conference judge that this appeal should now proceed. Therefore, good cause appearing,

IT IS HEREBY ORDERED that suspension of proceedings in this appeal for the Appellate Settlement Conference shall be, and hereby is, WITHDRAWN.

IT IS FURTHER ORDERED that the Reporter's Transcript and Clerk's Record shall be filed with this Court on or before February 12, 2008.

DATED this 13th day of November 2007.

For the Supreme Court



Karel A. Lehrman, Chief Deputy Clerk for
 Stephen W. Kenyon, Clerk

cc: Counsel of Record
 District Court Clerk
 District Court Reporter

In the Supreme Court of the State of Idaho

FILED
1145 A.M. P.M.

DEC 13 2007

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

GOODMAN OIL COMPANY,)

Petitioner-Appellant-Cross Respondent,)

v.)

CITY OF NAMPA, a corporate body politic;)
THE CITY COUNSEL of the CITY OF)
NAMPA; MAYOR TOM DALE, in his)
capacity as Mayor of the City of Nampa;)
DIANA LAMBING, in her capacity as City)
Clerk,)

Respondents-Cross Appellants,)

and)

SCOTTY'S DURO-BILT GENERATOR, INC.,)
an Idaho GOODMAN OIL COMPANY,)

Petitioner-Appellant-Cross Respondent,)

v.)

CITY OF NAMPA, a corporate body politic;)
THE CITY COUNSEL of the CITY OF)
NAMPA; MAYOR TOM DALE, in his)
capacity as Mayor of the City of Nampa;)
DIANA LAMBING, in her capacity as City)
Clerk,)

Respondents-Cross Appellants,)

and)

SCOTTY'S DURO-BILT GENERATOR, INC.,)
an Idaho)

REMITTITUR

NO.: 34284

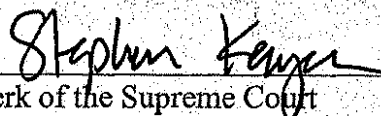
TO: THIRD JUDICIAL DISTRICT, COUNTY OF CANYON.

The Court having entered an Order granting the Stipulation to Dismiss this appeal on December 5, 2007; therefore,

IT IS HEREBY ORDERED that the appeal herein from the Judgment of the District Court be, and hereby is, DISMISSED, and

IT IS FURTHER HEREBY ORDERED that each party shall bear its own costs and attorney fees.

DATED this 7th day of December, 2007.


Clerk of the Supreme Court
STATE OF IDAHO

cc: Counsel of Record
District Court Clerk
District Judge

In the Supreme Court of the State of Idaho

FILED
11:45 A.M. P.M.

DEC 26 2007

CANYON COUNTY CLERK
T RANDALL, DEPUTY

GOODMAN OIL COMPANY,)
)
 Petitioner-Appellant-Cross Respondent,)
 v.)
)
 CITY OF NAMPA, a corporate body politic;)
 THE CITY COUNSEL of the CITY OF)
 NAMPA; MAYOR TOM DALE, in his)
 capacity as Mayor of the City of Nampa;)
 DIANA LAMBING, in her capacity as City)
 Clerk,)
)
 Respondents-Cross Appellants,)
 and)
)
 SCOTTY'S DURO-BILT GENERATOR, INC.,)
 an Idaho,)
)
 Respondent.)

AMENDED REMITTITUR

Supreme Court No. 34284

TO: THIRD JUDICIAL DISTRICT, COUNTY OF CANYON.

The Court having entered an Order granting the Stipulation to Dismiss this appeal on December 5, 2007; therefore,

IT IS HEREBY ORDERED that the appeal herein from the ~~Judgment of the District Court~~ final orders entered by the District Court on April 26, 2007 and April 27, 2007 be, and hereby is, DISMISSED as to GOODMAN OIL COMPANY as Cross Respondent and CITY OF NAMPA, et al, Cross Appellants. This appeal remains pending as to GOODMAN OIL COMPANY, Appellant, and SCOTTY'S DURO-BILT GENERATOR, INC., Respondent.

IT IS FURTHER ORDERED that ~~each party shall bear its own costs and attorney fees~~ GOODMAN OIL COMPANY and CITY OF NAMPA, et al., shall bear their own costs and attorney fees related to the Cross Appeals.

DATED this 21 day of December 2007.

Stephen Kenyon
Clerk of the Supreme Court
STATE OF IDAHO

000142

cc: Counsel of Record
District Court Clerk
District Judge

In the Supreme Court of the State of Idaho E D P.M.

DEC 28 2007

CANYON COUNTY CLERK
T RANDALL, DEPUTY

ORDER AMENDING TITLE

Supreme Court No. 34284

GOODMAN OIL COMPANY, _____)
)
 Petitioner-Appellant-Cross Respondent,)
 v.)
)
 CITY OF NAMPA, a corporate body politic;)
 THE CITY COUNSEL of the CITY OF)
 NAMPA; MAYOR TOM DALE, in his)
 capacity as Mayor of the City of Nampa;)
 DIANA LAMBING, in her capacity as City)
 Clerk,)
)
 Respondents-Cross Appellants,)
 and)
)
 SCOTTY'S DURO-BILT GENERATOR, INC.,)
 an Idaho corporation.)
)
 Respondent.)

It appearing that the title of this appeal should be AMENDED to more accurately reflect the parties remaining on appeal: therefore, good cause appearing,

IT HEREBY IS ORDERED that the title of this case shall be AMENDED for all purposes as follows:

GOODMAN OIL COMPANY,
 Petitioner-Appellant on Appeal,
 v.

SCOTTY'S DURO-BILT GENERATOR, INC., an Idaho corporation.

Respondent-Respondent on Appeal,
 and

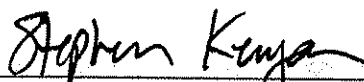
CITY OF NAMPA, a corporate body politic; THE CITY COUNSEL
 of the CITY OF NAMPA; MAYOR TOM DALE, in his
 capacity as Mayor of the City of Nampa; DIANA LAMBING, in her
 capacity as City Clerk,

Respondents.

IT FURTHER IS ORDERED that any objection by any party to the amended title shall be filed within fourteen (14) days from the date of this Order.

DATED this 27 day of December 2007.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Judge
District Court Reporter

FILED
11/15 A.M. P.M.

JAN 07 2008 ✓

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

JON M. STEELE (ISB # 1911)
KARL J. RUNFT (ISB # 6640)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-9495
Fax: (208) 343-3246
Email: kjrunft@runftlaw.com

Attorneys for Appellant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

GOODMAN OIL COMPANY,)
)
Petitioner-Appellant-Cross Respondent,)
)
vs.)
)
CITY OF NAMPA, a corporate body politic;)
THE CITY COUNSEL of the CITY OF)
NAMPA; MAYOR TOM DALE, in his)
capacity as Mayor of the City of Nampa;)
DIANA LAMBING, in her capacity as City)
Clerk,)
)
Respondents-Cross Appellants,)
)
and)
)
SCOTTY'S DURO-BILT GENERATOR,)
INC., an Idaho corporation,)
)
Respondent.)
)
_____)

CASE NO. CV 04-10007
NOTICE OF APPEAL

TO: The above named Respondents, its attorneys of record, and the Clerk of the above entitled Court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant Goodman Oil Company appeals against the above named Respondent Scotty's Duro-Bilt Generator, Inc., to the Idaho Supreme Court from the District Court's Order of Dismissal dated June 29, 2005; Order on Petitioner's Second Motion to Amend dated June 29, 2005; Order on Respondent Scotty Duro-Bilt Generator's Memorandum of Costs and Fees dated August 29, 2005, and Judgment dated September 14, 2005, entered by the Honorable Judge James C. Morfitt presiding.
2. The Appellant has the right to appeal to the Supreme Court, and the Order and Judgment described in paragraph 1 above is appealable pursuant to Rule 11(a)(1) I.A.R.
3. Appellants' preliminary statement of issues is as follows:
 - a. Whether the District Court erred in dismissing Respondent Scotty's Duro-Bilt as a Respondent;
 - b. Whether the District Court erred in denying Appellant's Motion to Amend its Petition for Writ of Mandate to include causes of action against Respondent Scotty's Duro-Bilt; and
 - c. Whether Appellant is entitled to an award of costs and attorney's fees as a result of this appeal.
4. A reporter's transcript of the following hearings are requested:
 - a. Hearing on Petitioner's Motion to Amend held on January 21, 2005;

- b. Hearing on Respondent's Motion to Dismiss and Petitioner's Second Motion to Amend Complaint heard on May 20, 2005; and
 - c. Hearing on Respondent's Memorandum of Costs and Fees held on August 19, 2005;
5. The Appellant requests the clerk's record be prepared to include in addition to those documents automatically included under Rule 28 I.A.R. and the following:
- a. Petition for Writ of Mandate and Petition for Judicial Review, dated 10/5/04;
 - b. Response to Petition for Writ of Mandate and Petition for Judicial Review, dated 11/3/04;
 - c. Motion to Amend, dated 01/07/05;
 - d. Affidavit of McCreedy in Support of Motion to Amend, dated 01/07/05;
 - e. Memorandum in Support of Motion to Amend, dated 01/07/05;
 - f. Memorandum in Opposition to Goodman Oil Company's Motion to Amend, dated 01/18/05;
 - g. Reply Memorandum in Support of Petitioner's Motion to Amend, dated 01/19/05;
 - h. Petitioner's Brief in Opposition to Respondent Scotty's Duro-Bilt's Motion to Dismiss, dated 05/04/05;
 - i. Objection to Respondent Scotty's Memorandum of Costs and Attorney's Fees, dated 06/16/05;

- j. Order on Respondent Scotty's Duro-Bilt Generator's Memo of Costs
& Fees, dated 08/29/05;

7. I certify:

- a. That a copy of this Notice of Appeal has been served on the Court
Reporter;
- b. That Appellants have ordered and will pay the estimated Reporter's
Transcript Fee when received;
- c. That the estimated fee for preparation of the Clerk's record has been
paid;
- d. That the Appellants filing fee has been paid; and
- e. That service has been made upon all parties required to be served to
Rule 20.

DATED this 3 day of January 2008.

RUNFT & STEELE LAW OFFICE, PLLC

By: 

Karl J. F. Runft
Attorney for the Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3 day of January 2008, a true and correct copy of the **NOTICE OF APPEAL** was served upon opposing counsel as follows:

Tammy Zokan
Moore Smith Buxton & Turke,
Chtd.
950 W. Bannock, Suite 520
Boise, ID 83702

US Mail
 Personal Delivery
 Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: 

KARL J. F. RUNFT
Attorney for Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)	
)	
Petitioner-Appellant on Appeal,	)	Case No. CV-04-10007*C
)	
-vs-	)	CERTIFICATE OF EXHIBITS
)	
SCOTTY'S DURO-BILT GENERATOR,)	
INC., an Idaho corporation,)	
)	
Respondent-Respondent)	
on Appeal.)	
)	
and)	
)	
CITY OF NAMPA, etal.,)	
)	
Respondents.)	

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the following are being sent as exhibits as requested in the Notice of Appeal:

Clerk's Agency Record

Agency Transcripts

**Memorandum in Support of Petitioner's Motion to Amend,
Lodged 1-7-05**

**Memorandum in Opposition to Petitioner Goodman Oil Company's
Motion to Amend, Lodged 1-14-05**

**Reply Memorandum in Support of Petitioner's Motion to Amend,
Lodged 1-20-05**

**Petitioner's Brief in Opposition to Respondent Scotty's Duro-Bilt's
Motion to Dismiss, Lodged 5-4-05**

CERTIFICATE OF EXHIBITS

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 25 day of February, 2008.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: J. Randall Deputy

CERTIFICATE OF EXHIBITS

000151

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)	
)	
Petitioner-Appellant on Appeal,	)	Case No. CV-04-10007*C
)	
-vs-	)	CERTIFICATE OF CLERK
)	
SCOTTY'S DURO-BILT GENERATOR, INC.,)	
an Idaho corporation.)	
)	
Respondent-Respondent on Appeal,)	
)	
and)	
)	
CITY OF NAMPA, etal.,)	
)	
Respondents.)	

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including specific documents as requested in the Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 25 day of February, 2008.

WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

By: *J. R. Riddell* Deputy

CERTIFICATE OF CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GOODMAN OIL COMPANY,)
)
Petitioner-Appellant on Appeal,) Supreme Court No. 34284
)
-vs-) CERTIFICATE OF SERVICE
)
SCOTTY'S DURO-BILT GENERATOR, INC.,)
an Idaho corporation,)
)
Respondent-Respondent on Appeal,)
)
and)
)
CITY OF NAMPA, etal.,)
)
Respondents.)

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcript to the attorney of record to each party as follows:

Jon M Steele and Karl J. Runft, 1020 W. Maint St., Ste. 400, Boise, Idaho 83702

Tammy Zokan and Susan Buxton, MOORE SMITH BUXTON & TURCKE, CHTD.,
950 W. Bannock, Ste. 520, Boise, Idaho 83702

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 25 day of February, 2008.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: D Randall Deputy

CERTIFICATE OF SERVICE

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