

10-10-2007

# Black Labrador v. Council Clerk's Record v. 1 Dckt. 34513

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"Black Labrador v. Council Clerk's Record v. 1 Dckt. 34513" (2007). *Idaho Supreme Court Records & Briefs*. 1646.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/1646](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1646)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

BLACK LABRADOR INVESTING, LLC,

PETITIONER-RESPONDENT,

vs.

KUNA CITY COUNCIL and the CITY OF KUNA,  
IDAHO, a political subdivision of the State of  
Idaho,

RESPONDENTS-APPELLANTS.

*Appealed from the District Court of the Fourth Judicial  
District of the State of Idaho, in and for ADA County*

*Hon D:DUFF MCKEE, District Judge*

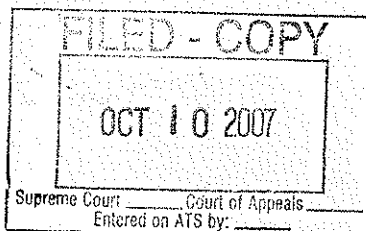
RANDALL S. GROVE

*Attorney for Appellant*

ERIC R. CLARK

*Attorney for Respondent*

**COPY**



IN THE SUPREME COURT OF THE STATE OF IDAHO

BLACK LABRADOR INVESTING, LLC,

Petitioner-Respondent,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA, IDAHO, a political subdivision of  
the State of Idaho,

Respondents-Appellants.

Supreme Court Case No. 34513

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE D. DUFF MCKEE

RANDALL S. GROVE

ATTORNEY FOR APPELLANT

NAMPA, IDAHO

ERIC R. CLARK

ATTORNEY FOR RESPONDENT

EAGLE, IDAHO

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
REGISTER OF ACTIONS .....	3
PETITION FOR JUDICIAL REVIEW, FILED DECEMBER 7, 2006 .....	5
MEMORANDUM DECISION, FILED JULY 11, 2007.....	12
NOTICE OF APPEAL, FILED AUGUST 22, 2007 .....	20
CERTIFICATE OF EXHIBITS.....	22
CERTIFICATE OF SERVICE .....	23
CERTIFICATE TO RECORD .....	24

<b>INDEX TO THE CLERK'S RECORD.....</b>	<b>PAGE NO.</b>
CERTIFICATE OF EXHIBITS.....	22
CERTIFICATE OF SERVICE .....	23
CERTIFICATE TO RECORD .....	24
MEMORANDUM DECISION, FILED JULY 11, 2007.....	12
NOTICE OF APPEAL, FILED AUGUST 22, 2007 .....	20
PETITION FOR JUDICIAL REVIEW, FILED DECEMBER 7, 2006 .....	5
REGISTER OF ACTIONS.....	3

Black Labrador Investing, LLC vs. Kuna City Council, City Of Kuna, Idaho

Date	Code	User		Judge
12/7/2006	NCOC	CCTEELAL	New Case Filed - Other Claims	Kathryn A. Sticklen
	PETN	CCTEELAL	Petition For Judicial Review	Kathryn A. Sticklen
12/11/2006	OGAP	DCLYKEMA	Order Governing Judicial Review	Kathryn A. Sticklen
1/12/2007	NOSV	CCTEELAL	Notice Of Service	Kathryn A. Sticklen
1/22/2007	NOTS	MCBIEHKJ	Notice Of Service	Kathryn A. Sticklen
2/1/2007	OBJT	CCHEATJL	Objection To Transcripts & Records	Kathryn A. Sticklen
2/9/2007	ORDR	DCLYKEMA	Order (Objection Overruled)	D. Duff McKee
	TRAN	DCLYKEMA	Record	D. Duff McKee
2/16/2007	NOTS	CCDWONCP	Notice Of Service of Respondents' Responses to Petitioner's Second Set of Discovery to Respondents'	D. Duff McKee
2/22/2007	NOTC	CCAMESLC	Notice of Lodging of the Agency Record and Transcripts	D. Duff McKee
3/15/2007	MOTN	MCBIEHKJ	Motion to Supplement Clerks Record for Judicial Review	D. Duff McKee
	AFFD	MCBIEHKJ	Affidavit of Eric Clark in Support of Motion to Supplement Record	D. Duff McKee
3/29/2007	BREF	CCDWONCP	Petitioner's Brief Filed	D. Duff McKee
4/3/2007	ORDR	DCLYKEMA	Order Denying Petitioner's Motion to Supplement the Clerk's Record	D. Duff McKee
4/26/2007	BREF	CCDWONCP	Respondents' Brief Filed	D. Duff McKee
5/16/2007	BREF	CCCHILER	Petitioner's Reply Brief	D. Duff McKee
5/22/2007	HRSC	CCNAVATA	Hearing Scheduled (Hearing Scheduled 06/06/2007 11:00 AM) Request for Judicial review	D. Duff McKee
6/6/2007	HRHD	DCOATMAD	Hearing result for Hearing Scheduled held on 06/06/2007 11:00 AM: Hearing Held Request for Judicial review	D. Duff McKee
7/11/2007	DEOP	DCLYKEMA	Memorandum Decision (Reversed & Remanded)	D. Duff McKee
7/18/2007	MECO	CCEARLJD	Memorandum of Cost	D. Duff McKee
7/26/2007	ORDR	DCLYKEMA	Order	D. Duff McKee
8/22/2007	APSC	CCTHIEBJ	Appealed To The Supreme Court	D. Duff McKee
8/23/2007	MOTN	CCBLACJE	Motion for Contempt Proceedings	D. Duff McKee
	AFFD	CCBLACJE	Affidavit of Eric R. Clark	D. Duff McKee
8/27/2007	NOTC	DCTYLENI	Notice to Appear for Contempt Proceedings (9/5/07 @ 11:00 a.m.)	D. Duff McKee
	HRSC	DCTYLENI	Hearing Scheduled (Motion for Contempt 09/05/2007 11:00 AM)	D. Duff McKee
9/5/2007	HRHD	DCOATMAD	Hearing result for Motion for Contempt held on 09/05/2007 11:00 AM: Hearing Held	D. Duff McKee
	HRHD	DCOATMAD	Hearing result for Motion for Contempt held on 09/05/2007 11:00 AM: Hearing Held	D. Duff McKee
	MOTN	DCOATMAD	Motion for Stay Pending Appeal	D. Duff McKee

00003

Date: 9/10/2007

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 02:15 PM

ROA Report

Page 2 of 2

Case: CV-OC-2006-22960 Current Judge: D. Duff McKee  
Black Labrador Investing, LLC vs. Kuna City Council, etal.

Black Labrador Investing, LLC vs. Kuna City Council, City Of Kuna, Idaho

Date	Code	User		Judge
9/5/2007	ORDR	DCOATMAD	Order for Stay Pending Appeal	D. Duff McKee
	MISC	DCOATMAD	Pending application on enforcement of decree is moot	D. Duff McKee
	MISC	DCTYLENI	Minute Entry	D. Duff McKee

00004

DEC 07 2006

J. DAVID NAVARRO, Clerk  
By ASBY TEEL  
DEPUTY

Eric R. Clark, ISB# 4697  
CLARK LAW OFFICE  
P.O. Box 2504  
Eagle, ID 83616  
Tel: (208) 830-8084  
Fax: (209) 939-7136

Attorney for Petitioner

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

BLACK LABRADOR INVESTING, LLC,

Petitioner,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA , IDAHO, a political subdivision of  
the State of Idaho,

Respondents.

Case No.: **CV OC 0622960**

**PETITION FOR JUDICIAL REVIEW**

Filing Fee: R2. \$78.00

COMES NOW the Petitioner, Black Labrador Investing, LLC, by and through its attorney of record, Eric R. Clark, of the Clark Law Office, and petitions this Court for judicial review as follows:

1. The Petitioner, Black Labrador Investing, LLC ("Black Labrador") is a limited liability company with its principal place of business in Eagle, Idaho.
2. The Respondent, City of Kuna, is a political subdivision of the State of



Idaho. The Respondent, Kuna City Council, comprises duly elected representatives acting on behalf of the Respondent City of Kuna, and as a quasi-judicial body.

3. The District Court to which this petition is taken is the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada.

4. The action which is the subject of this judicial review is the Kuna City Council's denial of Black Labrador's request for annexation and lot split ("the application").

5. Black Labrador applied for annexation and lot split on August 3, 2006, of land that it owns at 2295 W. Columbia, Kuna, Idaho.

6. The Kuna Planning and Zoning Commission conducted a public hearing regarding Black Labrador's application on October 24, 2006.

7. Although the notice of hearing of the Planning and Zoning Commission was published by law, no citizen appeared at this public hearing to oppose Black Labrador's application.

8. After conducting a public hearing on October 24, 2006, the Kuna Planning and Zoning Commission recommended approval of Black Labrador's application to the Kuna City Council.

9. In written Conclusions of Law the Kuna Planning and Zoning Commission found that Black Labrador's application "complies with the Kuna City Code," "complies with Idaho Statute 50-222," and "complies with the Kuna Comprehensive Plan."

10. On December 5, 2006, the Respondent Kuna City Council conducted a public hearing concerning Black Labrador's application.

11. The City Council hearing notice was published according to law, and again, as occurred before the Kuna Planning and Zoning Commission, no citizen appeared or voiced opposition to Black Labrador's application.

12. Prior to the December 5, 2006 hearing, the Kuna Planning and Zoning Department drafted a staff report to present to the City Council. In this staff report, the Planning and Zoning Department recommended approval of Black Labrador's application and in its proposed Findings of Facts confirmed that in its informed opinion Black Labrador's application "complies with the Kuna City Code," "complies with Idaho Statute 50-222," and "complies with the Kuna Comprehensive Plan."

13. During this public hearing and at all times when considering Black Labrador's application, the City Council was acting in a quasi-judicial capacity and owed Black Labrador due process.

14. Notwithstanding the recommendation by the Kuna Planning and Zoning Commission to approve Black Labrador's application, and despite confirmation by the Kuna Planning and Zoning Department personnel that the application "complies with the Kuna City Code," "complies with Idaho Statute 50-222," and "complies with the Kuna Comprehensive Plan," and although not one Kuna resident appeared at either the Planning and Zoning Commission public hearing on October 24, 2006 or the Kuna City Council public hearing on December 5, 2006, to oppose Black Labrador's application, three members of the Kuna City Council voted to deny.

15. Black Labrador, pursuant to Chapter 67, Title 65, and Chapter 52, Title 67 Idaho Code, hereby seeks judicial review of the actions described herein.

16. The Kuna City Council's decision to deny Black Labrador's Application was improper, illegal and in violation of the Constitution and Laws of the State of Idaho and the United States. A statement of issues for judicial review that Black Labrador intends to assert includes, but is not necessarily limited to, the following:

(a) The Kuna City Council's decision was arbitrary or capricious and constituted an abuse of its discretion.

(b) The Kuna City Council's decision to deny Black Labrador's application was not supported by substantial evidence on the record.

(c) The Kuna City Council's action was in violation of Idaho State Constitution and/or statutory provisions.

(d) The Kuna City Council acted without a reasonable basis in fact or law.

(e) The Kuna City Council violated Black Labrador's rights to due process by considering evidence outside the record.

(f) Members of the Kuna City Council were biased and prejudiced and therefore denied Black Labrador fair and impartial due process.

17. At the public hearings held in this matter before the Kuna Planning and Zoning Commission and the Kuna City Council oral and written presentations were submitted. Those hearings were also recorded by a tape recording device. In addition, minutes of all such meetings were compiled. Black Labrador believes, and therefore alleges, that the Kuna City Clerk possess all such recordings and minutes of the Planning and Zoning and City Council meetings and that the Clerk's address is 763 W. Avalon, Kuna, Idaho.

18. Black Labrador requests that the Kuna City Clerk file within 42 days of service of

this Petition, a copy of the entire record of these proceedings as required by law, including, but not limited to, all exhibits, letters, electronic mail, reports, petitions, memoranda and other documents relevant in any manner to Black Labrador's application.

19. Black Labrador also requests that the Kuna City Clerk provide written transcripts of portions of the Kuna Planning and Zoning Commission public hearing conducted on October 24, 2006, the Kuna City Council public hearing conducted on November 21, 2006 and the Kuna City Council public hearing conducted on December 5, 2006, relevant to Black Labrador's application.

20. Black Labrador reserves the right to object to the transcript and record transmitted to the Court on the basis of inaccuracy or incompleteness of the same and reserves the right to move this Court to order the Respondents to provide a complete copy of the record. Further, Black Labrador reserves the right to submit evidence of violation of laws or irregularities affecting these procedures not shown in the record transmitted to the Court.

21. As required by Idaho Rules of Civil Procedure 84(f), Black Labrador has paid to the Kuna City Clerk the estimated fee for preparation of the record.

22. As required by Idaho Rules of Civil Procedure 84(g), Black Labrador has paid to the Kuna City Clerk the estimated fee for preparation of the transcript.

23. Black Labrador requests that the Court hear oral arguments and receive written briefs, as well as testimony of irregularities in the procedures which do not appear on the record.

24. Black Labrador is entitled to the relief sought herein and has no adequate remedy at law.

25. As a direct and proximate result of the Kuna City Council's conduct, Black Labrador is prevented from pursuing the economic gain to which it is entitled by developing this property and has suffered monetary damages the actual amount to be proven at trial, but at this juncture in an amount not less than TEN THOUSAND DOLLARS (\$10,000.00).

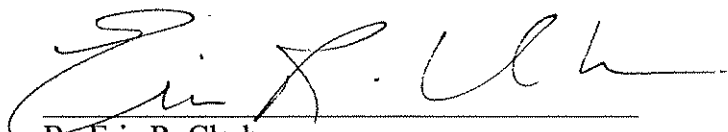
26. Black Labrador has served this Petition on the Respondents as required by law.

WHEREFORE, Black Labrador prays for judgment upon review against the Respondents as follows:

1. That the Court set aside the decision of the Kuna City Council and issue an Order approving Black Labrador's application for annexation and lot split;
2. That the Court Order the Respondents to pay Black Labrador its reasonable attorneys' fees and cost pursuant to Idaho Code § 12-117 as the Respondents acted without basis in fact or law;
3. That the Court order the Respondents to pay Black Labrador its actual damages caused by the Respondent's unlawful conduct; and.
4. For such other and further relief as the Court deems just and equitable.

DATED this 7<sup>th</sup> day of December, 2006.

CLARK LAW OFFICE

  
By Eric R. Clark  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

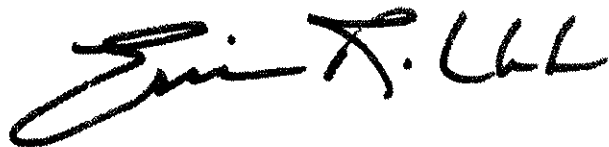
I HEREBY CERTIFY that on the 7th day of December, 2006, I caused to be delivered a true and correct copy of the foregoing in the manner indicated to the following:

Kuna City Clerk  
CITY OF KUNA  
763 W. Avalon  
P.O. Box 13  
Kuna, Idaho 83634

HAND DELIVERED

Randall S. Grove, Esq.  
GROVE LEGAL SERVICES, LLC.  
1026 W. Colorado Avenue  
Nampa, ID 83686

VIA FAX: (208) 442-5293



---

Eric R. Clark

NO. \_\_\_\_\_ FILED  
A.M. 10:05 P.M. \_\_\_\_\_

JUL 11 2007

J. DAVID NAVARRO, Clerk  
By *Martha Rife*  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

<p>BLACK LABRADOR INVESTING, LLC,  Petitioner,  vs.  CITY OF KUNA, et al.  Respondents.</p>	<p>Case No. CV OC 06 22960  MEMORANDUM DECISION</p>
---	---

This case is before the court on petition for judicial review from an action by the City of Kuna denying petitioner's application for the annexation of a designated parcel of ground into the city. Petitioner appeared by its counsel Eric R. Clark of Eagle, Idaho. Respondent appeared by its counsel Randall S. Grove of Nampa, Idaho. For reasons stated, I reverse the decision of the City of Kuna and remand the matter for further proceedings consistent with this opinion.

**Facts and Procedural History**

Black Labrador Investing, LLC (Black Labrador) owns a 1.8 acre parcel of ground contiguous on one side to the existing boundary on the city limits of Kuna. The land is in the county but within the "area of impact" of the City of Kuna as that terms is

defined and used in connection with the Land Use Planning Act in Idaho. Black Labrador sought to have the land annexed to the city, rezoned and then split into three lots of approximately 0.6 acres each.

For this purpose, it paid a substantial fee to the city and submitted the necessary application required. Hearings and proceedings were held before the Kuna City Planning and Zoning Commission, which eventually issued a written report recommending approval of the entire plan to annex, rezone and split the property into three lots, as proposed. Materials prepared by the planning and zoning authorities included detailed findings of fact and conclusions of law containing its approval of the project. The process then moved to the city council for the enactment of the various steps to carry out the proposal.

The Kuna City Council initially scheduled a public hearing on the Black Labrador proposals for the November 21, 2006, meeting of the city council. However, on the morning of the hearing, Black Labrador representatives were informed that its application was to be tabled without consideration at the November 21 meeting, and rescheduled for the December 5 meeting. The representatives were informed that they need not appear at the November 21 meeting. Upon this advice, no one from Black Labrador attended.

In fact, the subject of the Black Labrador proposal was opened at the November 21 hearing, with some discussion adverse to its proposals occurring. When the matter came up for the scheduled hearing on December 5, 2006, the applicant claims it was obvious that the subject had already been reviewed by at least some members of the council. The city director of planning and zoning made a presentation to the council that was contrary to the position taken by the planning and zoning commission in its report



and recommendations. At the conclusion of the public hearing, the city council by a voice vote denied the application of Black Labrador for annexation to the city. This denial made the accompanying application for a rezone and lot split moot or no longer applicable.

Black Labrador filed a petition for judicial review with this court from the denial of the application for annexation.

### Analysis

The main thrust of the Kuna City's argument is that a decision to annex property into the city is a legislative and not an administrative function of the city, and therefore is not subject to judicial review. The city points to *Burt v. City of Idaho Falls*, 105 Idaho 65 (1983), contending this case stands for the proposition that in the annexation of land, a municipality is acting in a legislative capacity, which is not subject to direct judicial review under the general law pertaining to judicial review of administrative procedures, or under any provision of the Local Land Use Planning Act then in force in the state.

(The city also refers to *Crane Creek Country Club v. City of Boise*, 121 Idaho 485 (1990), but this case is not helpful. The *Crane Creek* case turns on the propriety of a writ of prohibition, which is not pertinent to any issue in this case, and only tangentially touches on the distinction between legislative versus quasi judicial functions.)

In my view, *Burt* does not apply under the facts of the instant case. In *Burt*, a relatively large parcel of land, involving a number of landowners, was involved. The opposition to the city's annexation action appears to have involved over 800 protestants. The supreme court in *Burt* concluded that the principles established in *Cooper v Board of Commissioners of Ada County*, 101 Idaho 407 (1980) did not apply because, under the

facts of the case indicating a large parcel of land, many owners and many individuals affected by the decision, the action was more akin to legislation than adjudication and “Legislative action is shielded from direct judicial review by ‘its high visibility and widely felt impact, on the theory that appropriate remedy can be had at the polls.’ [Citation omitted.]”

In the case at bar, only one landowner is involved, there are no protestants, no one other than the owner is directly affected by the decision, and the parcel is only 1.8 acres. The political protection of high visibility and wide impact is not present, and there can be no serious argument that the city’s decision, standing alone, could become a fulcrum for action at the polls. The facts of this case place the circumstances much closer to the center of the *Cooper* case, in which the action of the municipal entity was considered to be quasi-judicial, and therefore subject to judicial review.

The *Cooper* case involved an appeal from the denial of a rezone application. The district court had affirmed the county’s action, holding in part that the rezone decision was a legislative action on the part of the county commissioners. On appeal, the supreme court reversed. As is germane here, the court held,

It is beyond dispute that the promulgation or enactment of general zoning plans and ordinances is legislative action. [Citations omitted.] However, appellants urge that a crucial distinction be drawn between a zoning entity’s action in enacting general zoning legislation and its action in applying existing legislation and policy to specific, individual interests as in a proceeding on an application for rezone of particular property. We find merit in appellants’ argument and the following from an Illinois case:

“It is not a part of the legislative function to grant permits, make special exceptions, or decide particular cases. Such activities are not legislative but administrative, quasi-judicial, or judicial in character. To place them in the hands of legislative bodies, whose acts as such are not judicially reviewable, is to open the door completely to arbitrary government.” *Ward v. Village of Skokie*, 26 Ill.2d 415, 186 N.E.2d 529, 533 (Illinois, 1962).

Oregon, rejecting the view that all decision-making action of a zoning board is legislative, stated in *Fasano v. Board of County Com'rs*, 264 Or. 574, 507 P.2d 23, 26 (1973):

“At this juncture we feel we would be ignoring reality to rigidly view all zoning decisions by local governing bodies as legislative acts to be accorded a full presumption of validity and shielded from less than constitutional scrutiny by the theory of separation of powers. Local and small decision groups are simply not the equivalent in all respects of state and national legislatures. . . .”

In delineating the distinction between legislative and judicial zoning action, the Court stated:

“Ordinances laying down general policies without regard to a specific piece of property are usually an exercise of legislative authority, are subject to limited review, and may only be attacked upon constitutional grounds for an arbitrary abuse of authority. On the other hand, a determination whether the permissible use of a specific piece of property should be changed is usually an exercise of judicial authority and its propriety is subject to an altogether different test. . . .

“Basically, this test involves the determination of whether action produces a general rule or policy which is applicable to an open class of individuals, interest, or situations, or whether it entails the application of a general rule or policy to specific individuals, interests, or situations. If the former determination is satisfied, there is legislative action; if the latter determination is satisfied, the action is judicial.”

I think the rationale of the *Cooper* decision is applicable here. The land in questions is a relatively small, single parcel of property belonging to a single owner. The annexation would amount to little more than a minor adjustment to a minor section of the city limits. A sizable fee was charged for the application in this case – something not generally expected in legislation. Ther decision in this case would have little impact upon anyone other than the owner, and certainly not upon any significant faction within the city. The decision on annexation in this case could not be said to amount to a pronouncement of public policy, applicable to an open class of individuals, interests or situations.

**00016**

Based upon this I conclude that the actions of the Kuna City council in considering the application of Black Labrador for annexation constituted a quasi-judicial action of the council. As such, the applicant was entitled to both substantive and procedural due process in the consideration of its application, which was lacking in several critical regards.

The proceedings of the November 21 hearing and council meeting tainted the process by considering matters germane to the application after specifically advising the applicant that such would not occur, and that its representatives did not have to appear. The process was further tainted at the December 5 hearing when the director of planning and zoning advocated an adverse position, notwithstanding the favorable recommendations of the planning and zoning commission, and by the council's consideration of matters raised at the November meeting, which the applicant did not have the opportunity to rebut. It appears that the city council made its decision on matters *outside of the record presented at the scheduled hearing on this matter*, and to which the applicant did not have an opportunity to address, which it is not permitted to do.

For these reasons, the decision to deny the application for annexation must be reversed and the matter remanded to the city council with directions to proceed again, from the point where the application was referred to it from planning and zoning. The city should start over to afford the applicant with a new hearing on its application and a new consideration by the council. For guidance, the council should proceed under appropriate guidelines for quasi-judicial matters in providing the applicant with an opportunity to be heard on its application, confining itself to the record in which the applicant has been afforded the opportunity to participate, considering the merits of the

application founded upon this record, and providing the applicant with written findings of fact and conclusions of law on its decision that are based upon the record so established.

#### **Attorney Fees**

Black Labrador asks for its attorney fees under Idaho Code §12-117. I conclude the issues presented were *matters of first impression* as they apply to annexation decisions of the type presented in this case, with conflicting rules of law established by two lines of authority from the supreme court. I do not find that the city acted without legal basis in this matter. Black Labrador is entitled to its costs for these proceedings, but I decline to award attorney fees.

#### **Conclusion**

For reasons stated, the decision denying Black Labrador Investments, LLC its application for annexation is reversed and remanded to the City of Kuna for further proceedings consistent with this opinion. Costs, but not attorney fees, are awarded to the petitioner.

Dated this 10<sup>th</sup> day of July, 2007.

  
Sr. Judge D. Duff McKee

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of July 2007, I mailed a true and correct copy of the  
within instrument to:

ERIC R CLARK  
CLARK LAW OFFICE  
POST OFFICE BOX 2504  
EAGLE IDAHO 83616

RANDALL S GROVE  
GROVE LEGAL SERVICES LLC  
1026 W COLORADO AVENUE  
NAMPA IDAHO 83686

J. DAVID NAVARRO  
Clerk of the District Court

By:

  
Deputy Court Clerk

00019

Randall S. Grove, ISB #4397  
Kuna City Attorney  
1038 South River Stone Drive  
Nampa, ID 83686  
Telephone: (208) 442-6950  
Facsimile: (208) 442-5293

NO. \_\_\_\_\_ FILED P.M. 3:03  
A.M. \_\_\_\_\_

AUG 22 2007

J. DAVID NAVARRO, Clerk  
By C. WATSON  
DEPUTY

Attorney for Respondents

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BLACK LABRADOR INVESTING, LLC,

Petitioner-Respondent,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA, IDAHO, a political subdivision of  
The State of Idaho,

Respondents-Appellants.

Case No. CV OC 0622960


NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, Kuna City Council and the City of Kuna, appeal against respondent, Black Labrador Investing, LLC, to the Idaho Supreme Court from the Memorandum Decision filed July 11, 2007 and subsequent orders implementing such Decision, Honorable Judge D. Duff McKee presiding.
2. Appellants have a right to appeal to the Supreme Court, and the decision and orders described above are appealable under Idaho Appellate Rule 11(a).
3. Appellants intend to assert the following issues on appeal:
  - a) The District Court erred by holding that an annexation decision is subject to judicial review.

- b) The District Court erred by holding that annexation of land under the circumstances presented in this case was a quasi-judicial action, not a legislative action.
  - c) The District Court erred in holding that the due process standards attendant to a quasi-judicial matter governed the annexation decision in this case.
  - d) Other issues that may become apparent during the course of this appeal.
4. There have been no orders sealing the record, nor any portion of it.
  5. A reporter's transcript is not requested.
  6. As this is an appeal from a judicial review of an agency action, it would appear that the agency record submitted to the District Court would be included in the record on appeal under I.AR. 28. Appellants are requesting no additional documents.
  7. I certify:
    - a) That a copy of this Notice of Appeal was served on the Reporter.
    - b) No transcript fee is due because no transcript is sought.
    - c) That Appellants have attempted to determine
    - d) As a municipality, a political subdivision of Idaho, Appellants are exempt from the filing fee.
    - e) That a copy of this Notice of Appeal was served by mail upon Respondent.

DATED this 22nd day of August, 2007.

  
\_\_\_\_\_  
Randall S. Grove, Attorney for Appellants



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BLACK LABRADOR INVESTING, LLC,

Petitioner-Respondent,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA, IDAHO, a political subdivision of  
the State of Idaho,

Respondents-Appellants.

Supreme Court Case No. 34513

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Agency Record And Transcripts, filed February 9, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10th day of September, 2007.

J. DAVID NAVARRO  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk



CERTIFICATE OF EXHIBITS

00022

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BLACK LABRADOR INVESTING, LLC,

Petitioner-Respondent,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA, IDAHO, a political subdivision of  
the State of Idaho,

Respondents-Appellants.

Supreme Court Case No. 34513

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

RANDALL S. GROVE

ATTORNEY FOR APPELLANT

NAMPA, IDAHO

ERIC R. CLARK

ATTORNEY FOR RESPONDENT

EAGLE, IDAHO

J. DAVID NAVARRO  
Clerk of the District Court

Date of Service: SEP 10 2007

By BRADLEY J. THIES  
Deputy Clerk

**SEAL**

CERTIFICATE OF SERVICE

00023

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BLACK LABRADOR INVESTING, LLC,

Petitioner-Respondent,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA, IDAHO, a political subdivision of  
the State of Idaho,

Respondents-Appellants.

Supreme Court Case No. 34513

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, 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 and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed on the 22nd day of August, 2007.

J. DAVID NAVARRO  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk



CERTIFICATE TO RECORD

00024