

1-28-2011

City of Osburn v. Randel Clerk's Record v. 2 Dckt. 37965

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

CITY OF OSBURN,

CG COPY
Volume II

Plaintiff, _____ and
Respondent,
_____ vs.

DAVID C RANDEL and PAMELA L RANDEL,
Husband and Wife;

Defendants, _____ and
Appellants.

Appealed from the District Court of the First
Judicial District for the State of Idaho, in and
for Shoshone County County

Hon. Fred Gibler District Judge

Henry Madsen

SEE AUGMENTATION RECORD

Attorney for Appellant

Charles Cox

Attorney for Respondent

FILED - COPY	
Filed this _____ day of _____, 19____	_____ Clerk
JAN 28 2011	_____ Deputy
By _____ Sharer or AFS by _____	

37965

SUPREME COURT NO. 37965-2010 DISTRICT COURT NO. CV-2008-497

TABLE OF CONTENTS PAGE NO.

VOLUME I

COMPLAINT, FILED AUGUST 11, 2008 1

ANSWER, FILED SEPTEMBER 8, 2008..... 29

ORDER OF DISMISSAL, FILED NOVEMBER 16, 2009..... 34

DEFENDANT’S MEMORANDUM OF COSTS AND FEES,
FILED NOVEMBER 25, 2009 36

MEMORANDUM OPPOSITION TO DEFENDANT’S MEMORANDUM OF
COSTS AND FEES, FILED DECEMBER 9, 2009..... 50

AMENDED DEFENDANT’S MEMORANDUM OF COST AND FEES,
FILED DECEMBER 11, 2009 53

AFFIDAVIT OF HENRY MADSEN IN SUPPORT OF MEMORANDUM OF
COSTS AND FEES, FILED DECEMBER 11, 2009..... 58

ORDER DENYING DEFENDANT’S MOTION FOR ATTORNEYS AND
COSTS, FILED JANUARY 19, 2010..... 62

MOTION FOR NEW TRIAL AND/OR OPEN THE JUDGMENT TO
AMEND, FILED JANUARY 29, 2010 64

OBJECTION TO RANDELS’ MOTION FOR NEW TRIAL AND
ADDITIONAL TESTIMONY, FILED MARCH 2, 2010 70

MEMORANDUM SUPPORT OF ATTORNEY FEES AND COSTS,
FILED MAY 7, 2010 72

VOLUME II

AFFIDAVIT OF HENRY MADSEN IN SUPPORT OF MEMORANDUM OF
ATTORNEY FEES AND COSTS, FILED MAY 7, 2010 240

SUPREME COURT NO. 37965-2010 DISTRICT COURT NO. CV-2008-497

TABLE OF CONTENTS	PAGE NO.
RESPONSE TO DEFENDANTS RANDEL'S AFFIDAVIT, FILED MAY 17, 2010	288
REBUTTAL MEMORANDUM IN SUPPORT OF ATTORNEY FEES AND COSTS, FILED MAY 24, 2010	291
MOTION TO PUT ON EVIDENCE AND TESTIMONY RE ATTORNEY FEES AND COSTS, FILED MAY 24, 2010	294
AFFIDAVIT OF HENRY MADSEN IN SUPPORT OF MOTION TO PUT ON EVIDENCE AND TESTIMONY RE ATTORNEY FEES AND COSTS, FILED MAY 24, 2010	296
NOTICE OF HEARING, FILED MAY 24, 2010.....	303
OPINION RE: COSTS AND ATTORNEY FEES, FILED JUNE 22, 2010	305
NOTICE OF APPEAL, FILED AUGUST 3, 2010.....	312
NOTICE OF TRANSCRIPT LODGED, FILED SEPTEMBER 3, 2010	316
CLERK'S CERTIFICATE.....	317
NOTICE OF COMPLETION.....	318

SUPREME COURT NO. 37965-2010 DISTRICT COURT NO. CV-2008-497

INDEX OF RECORD PAGE NO.

VOLUME I

AFFIDAVIT OF HENRY MADSEN IN SUPPORT OF MEMORANDUM OF COSTS AND FEES, FILED DECEMBER 11, 2009..... 58

AMENDED DEFENDANT’S MEMORANDUM OF COST AND FEES, FILED DECEMBER 11, 2009 53

ANSWER, FILED SEPTEMBER 8, 2008..... 29

COMPLAINT, FILED AUGUST 11, 2008 1

DEFENDANT’S MEMORANDUM OF COSTS AND FEES, FILED NOVEMBER 25, 2009 36

MEMORANDUM OPPOSITION TO DEFENDANT’S MEMORANDUM OF COSTS AND FEES, FILED DECEMBER 9, 2009..... 50

MEMORANDUM SUPPORT OF ATTORNEY FEES AND COSTS, FILED MAY 7, 2010 72

MOTION FOR NEW TRIAL AND/OR OPEN THE JUDGMENT TO AMEND, FILED JANUARY 29, 2010 64

OBJECTION TO RANDELS’ MOTION FOR NEW TRIAL AND ADDITIONAL TESTIMONY, FILED MARCH 2, 2010 70

ORDER DENYING DEFENDANT’S MOTION FOR ATTORNEYS AND COSTS, FILED JANUARY 19, 2010..... 62

ORDER OF DISMISSAL, FILED NOVEMBER 16, 2009..... 34

VOLUME II

AFFIDAVIT OF HENRY MADSEN IN SUPPORT OF MEMORANDUM OF ATTORNEY FEES AND COSTS, FILED MAY 7, 2010 240

SUPREME COURT NO. 37965-2010 DISTRICT COURT NO. CV-2008-497

INDEX OF RECORD PAGE NO.

AFFIDAVIT OF HENRY MADSEN IN SUPPORT OF MOTION TO PUT
ON EVIDENCE AND TESTIMONY RE ATTORNEY FEES AND
COSTS, FILED MAY 24, 2010 296

CLERK’S CERTIFICATE..... 317

MOTION TO PUT ON EVIDENCE AND TESTIMONY RE ATTORNEY
FEES AND COSTS, FILED MAY 24, 2010 294

NOTICE OF APPEAL, FILED AUGUST 3, 2010..... 312

NOTICE OF COMPLETION..... 318

NOTICE OF HEARING, FILED MAY 24, 2010..... 303

NOTICE OF TRANSCRIPT LODGED, FILED SEPTEMBER 3, 2010 316

OPINION RE: COSTS AND ATTORNEY FEES, FILED JUNE 22, 2010 305

REBUTTAL MEMORANDUM IN SUPPORT OF ATTORNEY FEES AND
COSTS, FILED MAY 24, 2010..... 291

RESPONSE TO DEFENDANTS RANDEL’S AFFIDAVIT,
FILED MAY 17, 2010 288

STATE OF IDAHO
COUNTY OF SHOSHONE/30
FILED

2010 MAY -7 PM 5:03

PEGGY WHITE
CLERK DIST. COURT
BY *Bonnie Johnson*
DEPUTY

HENRY D. MADSEN
MADSEN LAW OFFICES, PC
1859 N. Lakewood Dr.,
Coeur d'Alene, ID 83814
Telephone: (208) 664-8080
Facsimile: (208) 664-6258
ISBA# 4428

Attorney for Defendants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Defendants.

CASE NO. CV-08-497

**AFFIDAVIT OF HENRY D. MADSEN IN
SUPPORT OF MEMORANDUM OF
ATTORNEY FEES AND COSTS**

STATE OF IDAHO)
 : ss.
County of Kootenai)

Henry D. Madsen, being first duly sworn upon oath, deposes and says:

1. I am the attorney of record for the above-named Defendants.
2. This is an action for violation of zoning ordinances, which was filed August 11, 2008

by Plaintiff the City of Osburn.

3. That the court pursuant to a motion by Plaintiff dismissed the above action with prejudice.



4. That Defendants are now seeking attorney fees and costs as a result of having to defend the above action.

5. That your affiant in support of Defendants' motion for attorney fees pursuant to "the public attorney general doctrine" visited the Shoshone County Assessors Office at Wallace Idaho and obtained true and correct copies of the parcels including the property legal descriptions of homeowner citizens of the City of Osburn.

6. That it was revealed to me by the deputy assessor, Connie Holmquist, that there are 863 parcels of property within the city limits of the City of Osburn, Idaho.

7. That your affiant while at the Shoshone County Assessor's office reviewed parcels of property located in the computer files of the Office of the Shoshone County Assessor's Office and presented information to the deputy clerk, Marilyn Hinsz, for her retrieval and certification as true and correct copies of the records therein.

8. That attached as "Exhibit A" are the true and correct copies of a portion of the parcel owners with their legal descriptions thereto.

9. That your affiant viewed 200 parcels of the 863 and found out of those two hundred 172 parcels included more than one lot number in their property legal description.

10. That out of the 200 parcels your affiant reviewed, your affiant chose 158 parcels which are reflected in the attached "Exhibit A"

11. Further, your affiant then took a random sampling of the descriptions of "Exhibit A" and had Deeds pulled at the Recorders office as examples of the descriptions of record of the Assessor's office and those in the original deeds attached as "Exhibit B".

- a. Instrument No. 436529 as owned by Herbert Nash set forth in parcel master inquiry page no. 58 of Plaintiff's Exhibit A.
- b. Instrument No. 311493 as owned by Richard Cloos set forth in parcel master inquiry page no. 153 of Plaintiff's Exhibit A
- c. Instrument No. 429396 as owned by Casey Fluid set forth in parcel master inquiry page no. 158 of Plaintiff's Exhibit A.
- d. Instrument No. 404383 as owned by Keith McKay set forth in parcel master inquiry page no. 152 of Plaintiff's Exhibit A.
- e. Instrument No. 330010 as owned by Sandra Montee set forth in parcel master inquiry page no. 59 of Plaintiff's Exhibit A.
- f. Instrument No. 382966 as owned by Anthony Branz set forth in parcel master inquiry page no. 63 of Plaintiff's Exhibit A.
- g. Instrument No. 381277 as owned by Margaret Banks set forth in parcel master inquiry page no. 149 and 157 of Plaintiff's Exhibit A.
- h. Instrument No. 368078 as owned by James Isenberger set forth in parcel master inquiry page No. 156 of Plaintiff's Exhibit A.
- i. Instrument No. 430847 as owned by Donald Gragg set forth in parcel master inquiry page no. 60 of Plaintiff's Exhibit A.
- j. Instrument No. 450521 as owned by Wilbur Bruhn set forth in parcel master inquiry page no. 3 and 69 of Plaintiff's Exhibit A
- k. Instrument No. 433452 as owned by John Szakara set forth in parcel master inquiry page no. 14 of Plaintiff's Exhibit A.

- l. Instrument No. 418572 as owned by Guy Sande set forth in parcel master inquiry page no. 25 of Plaintiff's Exhibit A.
- m. Instrument No. 451991 as owned by Patrick Waters set forth in parcel master inquiry page no. 111 of Plaintiff's Exhibit A.
- n. Instrument No. 405029 as owned by Christopher Stovern set forth in parcel master inquiry page no. 106 of Plaintiff's Exhibit A.
- o. Instrument No. 405416 as owned by Jay Storkson set forth in parcel master inquiry page no. 109 of Plaintiff's Exhibit A.
- p. Instrument No. 420586 as owned by Larry Calhoun set forth in parcel master inquiry page no. 46 of Plaintiff's Exhibit A.
- q. Instrument No. 369216 as owned by Michael Perry set forth in parcel master inquiry page no. 44 of Plaintiff's Exhibit A.
- r. Instrument No. 233083 as owned by Ella Maupin set forth in parcel master inquiry page no. 41 of Plaintiff's Exhibit A.
- s. Instrument No. 257326 as owned by John Cowley set forth in parcel master inquiry page no. 33 of Plaintiff's Exhibit A.
- t. Instrument No. 430961 as owned by Daniel E. Meyer set forth in parcel master inquiry page no. 29 and 30 and 67 of Plaintiff's Exhibit A.
- u. Instrument No. 279577 as owned by David Rust set forth in parcel master inquiry page no. 50 of Plaintiff's Exhibit A.
- v. Instrument No. 417957 as owned by Michael Siedschlag set forth in parcel master inquiry page no. 47 of Plaintiff's Exhibit A.

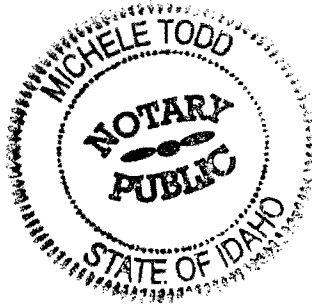
DATED this 7 day of May, 2010.

MADSEN LAW OFFICES, P.C.

Attorneys for Defendants

By: *Henry D. Madsen*
Henry D. Madsen

SUBSCRIBED AND SWORN to before me this 7 day of May, 2010.



Michele Todd
Notary Public for Idaho
Residing at: *Grand Alene, ID*
Commission Expires: *May 15, 2012*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of May, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Charles L.A. Cox
EVANS, KEANE
111 Main Street / P.O. Box 659
Kellogg, ID 83837

- U.S. Mail
- Hand Delivered
- Facsimile to: 208-783-7601
- Overnight Mail

Henry D. Madsen
Henry D. Madsen

381277

QUITCLAIM DEED

FOR VALUE RECEIVED: James E. Banks

DO HEREBY CONVEY, RELEASE, AND FOREVER QUITCLAIM UNTO: Margaret L. Banks

WHOSE CURRENT ADDRESS IS: P.O. Box 722, Osburn, ID 83849

THE FOLLOWING PREMISES TO WIT:

The South 150 feet of Lots 2 & 3, Block 7, Dunkle Gardens Addition, City of Osburn, County of Shoshone, State of Idaho.

TOGETHER WITH THEIR APPURTENANCES:

Dated 1-13-98

James E. Banks
James E. Banks

STATE OF Idaho COUNTY OF Shoshone

On this 13th day of January, 1998, before me, a Notary Public in and for said State, personally appeared JAMES E. BANKS, known to me to be the person(s) whose name(s) subscribed to the within instrument, and acknowledge that he/she/they executed the same.

Shirley Sumner Penhurst 3-10-99
Notary Public Residing at My commission expires

RECORDED
in the presence of

381277

JAMES BANKS

DEEDS

MARGARET BANKS

BOX 722

OSBURN, ID 83849

3.00

FILED

'98 JAN 13 AM 10 22

MARCIA WINGFIELD
SHOSHONE CTY RECORDER
BY [Signature] DEPUTY

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 13th DAY OF

[Signature], 20 18
PEGGY WHITE, SHOSHONE COUNTY RECORDER
[Signature] DEPUTY

368078

WARRANTY DEED

For Value Received DANNY L. JAGGARD, an unmarried man; and CAROLYN F. HANSEN, an unmarried woman, who acquired title as Carolyn F. Jaggard

The grantor ^s do hereby grant, bargain, sell and convey unto JAMES N. ISENBERGER and MARYANN ISENBERGER, husband and wife

the grantee ^s whose current address is 43 RIDGEWATER RD. DOUGLAS, WY 82633-9014

the following described premises, in SHOSHONE County Idaho, to-wit:

Lots 4 and 5, Block 6, Dunkle Gardens Addition, Osburn, Shoshone County, State of Idaho, according to the official and recorded plat thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee ^s their heirs and assigns forever. And the said Grantor ^s do hereby covenant to and with the said Grantee ^s that they are the owner ^s in fee simple of said premises; that they are free from all incumbrances EXCEPT: current year taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record

and that the Y will warrant and defend the same from all lawful claims whatsoever.

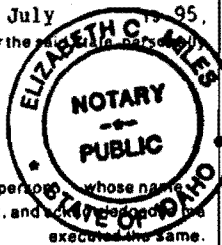
Dated: July 19, 1995

Danny L. Jaggard
DANNY L. JAGGARD

Carolyn F. Hansen
CAROLYN F. HANSEN

STATE OF IDAHO, COUNTY OF Shoshone
On this 19th day of July 1995,
before me, a notary public in and for the State of Idaho,
appeared

DANNY L. JAGGARD
CAROLYN F. HANSEN



known or identified to me to be the persons whose names
subscribed to the within instrument, and that they
that they executed the same.

Elizabeth C. Miles
Notary Public
Residing at Wallace, Idaho
Comm. Expires 09/01/99

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at the request of

at _____ minutes past _____ o'clock M.,
this _____ day of _____
1995, in my office, and duly recorded in Book _____
of Deeds at Page _____

Ex-Officio Recorder
By _____ Deputy.

Fees \$ _____
Mail to: _____

INSTRUMENT NO.

368078

RECORDED
at the request of
Security Title Co.

to

Deeds

turn to

Security Title Co.

Wallace, ID

3.00

FILED

'95 JUL 24 PM 3 55

MARCIA WINGFIELD
SHOSHONE CTY RECORDER
BY *[Signature]* DEPUTY

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE, SEALED ON THIS 24th DAY OF

July, 2010
PEGGY WHITE, SHOSHONE COUNTY RECORDER
[Signature] DEPUTY

289

430847

WARRANTY DEED

Order No.:2040604639MH

FOR VALUE RECEIVED

James C. Auld and Brenda J. Auld, Husband and Wife

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Donald E. Gragg and Allene D. Gragg, Husband and Wife

whose current address is

P.O. Box 553 Osburn, ID 83849

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

Being a portion of Lots 6 and 7, Block 14, Galena Home Tracts as shown on the Amended Plat of Galena Home Tracts filed in the office of the County Recorder of Shoshone County, State of Idaho on June 5, 1950, described as follows;

Beginning at the most Southerly corner of Lot 7 in Block 14 of said Galena Home Tracts, according to the Amended Plat thereof; running thence

North 59°55'00" West, along the Southwesterly line of said Lots 7 and 6, a distance of 100 feet to the most Westerly corner of said Lot 6; thence

North 30°05'00" East, along the Northwesterly line of said Lot 6, a distance of 65 feet; thence

South 59°55'00" East, parallel with the said Southwesterly line of Lots 6 and 7, a distance of 100 feet to a point on the Southeasterly line of said Lot 7; thence

South 30°05'00" West along the Southeasterly line of said Lot 7, a distance of 65 feet to the point of beginning.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: May 31, 2006

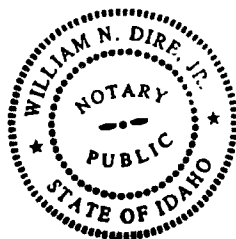
James C. Auld (signature)

Brenda J. Auld (signature)

State of Idaho }
County of SHOSHONE } ss

On this 1st day of JUNE 2006, before me, a Notary Public in and for said state, personally appeared James C. Auld & Brenda J. Auld known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.



William N. Dir, Jr. (signature)
Notary Public for the State of Idaho
Residing at:
Commission Expires:

Notary Public for the State of Idaho
Residing at Wallace, ID
My Commission Expires August 28, 2008

Instrument # 430847
WALLACE, SHOSHONE COUNTY, IDAHO
2006-06-01 03:17:00 No. of Pages: 1
Recorded for : ALLIANCE
PEGGY DELANGE-WHITE Fee: 3.00
Ex-Officio Recorder Deputy
Index to: WARRANTY DEED

430847

JUN 1 3 PM 3 17

Janet Zumbardo

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 10th DAY OF

June, 2010
PEGGY WHITE, SHOSHONE COUNTY RECORDER
Peggy White
DEPUTY

450521

WARRANTY DEED

Order No.:2040906705MH

FOR VALUE RECEIVED

Richard E. Legault, a married person as sole and separate property

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Wilbur C. Bruhn and Virginia R. Bruhn, Husband and Wife

whose current address is

MULLAN
PO Box 28 Osburn, ID 83849

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

Lots 13, 14 and all that portion of Lot 15 lying Northwesterly of a line drawn parallel with and equidistant between the Northwesterly and Southeasterly side lines of said Lot 15, all in Block 1, Dunkle Garden Addition to the Town of Osburn, Shoshone County, State of Idaho, according to the official and recorded plat thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: March 9, 2009

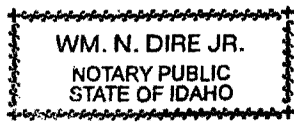
Richard E. Legault
Richard E. Legault

State of Idaho)
County of SHOSHONE) ss

On this 9th day of MARCH 2009, before me, a Notary Public in and for said state, personally appeared RICHARD E. LEGAULT known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.

[Signature]
Notary Public for the State of Idaho
Residing at:
Commission Expires:



Notary Public for the State of Idaho
Residing at Wallace, ID
My Commission Expires August 28, 2012

450521

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE. SEALED ON THIS 10th DAY OF

May, 2010.
[Signature]
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

Instrument # 450521
WALLACE, SHOSHONE COUNTY, IDAHO
3-9-2009 04:47:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE CO.
PEGGY DELANGE-WHITE Fee: 3.00
Ex-Officio Recorder Deputy [Signature]
Index to: QUITCLAIM DEED

2009 MAR 9 PM 4 47

433452

WARRANTY DEED

Order No.: 2040605039MH

FOR VALUE RECEIVED

Susan Johnson, an unmarried person

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

John Szakara and June Szakara, Husband and Wife

whose current address is

24016 Sargeant Rd. Ramona, CA 92065

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

The East one-half of Lot 14 and the West one-half of Lot 15 in Block 4 of Dunkle Garden Addition, according to the official plat thereof, filed in Official Records of Shoshone County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

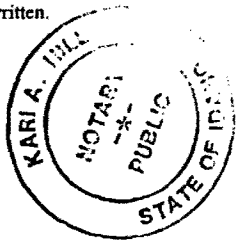
Dated: September 26, 2006

Susan Johnson
Susan Johnson

State of Idaho }
County of Shoshone } ss

On this 27th day of September, 2006, before me, a Notary Public in and for said state, personally appeared Susan Johnson known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.



Kari A. Hill
Notary Public for the State of Idaho
Residing at: Wallace
Commission Expires: 7/14/11

433452

Instrument # 433452
WALLACE, SHOSHONE COUNTY, IDAHO
2006-09-29 04:44:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE CO.
PEGGY DELANGE-WHITE Fee: 3.00
Ex-Officio Recorder Deputy *J. Shiner*

2006 SEP 29 PM 4 44

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE. SEALED ON THIS 26th DAY OF September, 2006

Peggy White
PEGGY WHITE, SHOSHONE COUNTY RECORDER
253 *Peggy White* DEPUTY

418572

WARRANTY DEED

CCS

Order No.: 204042990

FOR VALUE RECEIVED

Mary Gail Powers, an unmarried woman

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Guy Sande, an unmarried person, Leslie McPhall, an unmarried person

whose current address is P.O. Box 548
Osburn, ID 83849

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

The Southeasterly 40 feet of Lot 3 and the Northwesterly 20 feet of Lot 4 in Block 3 of Dunkle's Third Addition to the Town of Osburn, Shoshone County, State of Idaho, more particulary described as follows:

Beginning at the most Southerly corner of said Lot 3; thence
Northwesterly along the South line of Lot 3, a distance of 40 feet; thence
Northeasterly, parallel with the lot line common to Lots 3 and 4 to a point on the Northeasterly line of Lot 3; thence
Southeasterly along the Northeasterly line of Lots 3 and 4, a distance of 60 feet; thence
Southwesterly parallel with the lot line common to Lots 3 and 4 to a point on the Southwesterly line of Lot 4; thence
Northwesterly along the Southwesterly line of Lot 4, 20 feet to the place of beginning.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

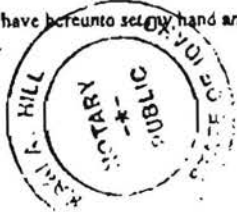
Dated: August 20, 2004

Mary Gail Powers
Mary Gail Powers

State of Idaho)
County of Shoshone) ss

On this 20th day of August 2004, before me, a Notary Public in and for said state, personally appeared Mary Gail Powers known or identified to me to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that they executed 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.



Kari Adelle
Notary Public for the State of Idaho
Residing at: Wallace
Commission Expires: 7/14/05

418572

RECORDED
at the request of

ALLIANCE TITLE CO.
In

DEEDS
Return to:

ALLIANCE TITLE CO.
WALLACE, ID 83873

Fee \$ 3.00

2004 AUG 20 PM 3 50

RECORDING
SHOSHONE COUNTY RECORDER
Carrie Simer

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 6th DAY OF
May, 2010

Carrie Simer
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

451991
QUITCLAIM DEED

ORDER NO.. 2040906840MH

FOR VALUE RECEIVED,

Patrick D. Waters and Dianne Waters, husband and wife

Do(es) hereby convey, release, remise and forever quit claim unto

Patrick D. Waters and Dianne R. Waters, husband and wife

whose current address is: P.O. Box 488
Osburn, ID 83849

the following described premises:

Lots 7 and 8 in Block 30 of Osburn, according to the official plat thereof, filed in Official Records of Shoshone County, Idaho.

TO HAVE AND TO HOLD the said premises, unto the said grantees, heirs and assigns forever.

June 4, 2009

Patrick D. Waters
Patrick D. Waters

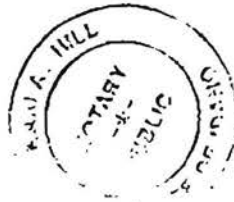
Dianne Waters
Dianne Waters

State of Idaho

County of Shoshone

On this 4th day of June, 2009, before me, a Notary Public in and for said state, personally appeared Patrick D. Waters & Dianne Waters known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.



Kari A. Hill
Notary Public for the State of Idaho
Residing at: Wallace
Commission Expires: 7/14/11 5 1 9 9 1

CHARGE TO STATE
pertaining to...

Instrument # 451991
WALLACE, SHOSHONE COUNTY, IDAHO
06-03-2009 04:16:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE CO.
PEGGY DELANGE-WHITE Fee: 00
Recording Recorder Deputy
Instrument QUITCLAIM DEED

2009 JUN 9 PM 4 16

405029

QUITCLAIM DEED

For Value Received Christopher N. Stovern and Aubrey E. Stovern, husband and wife who acquired title as Christopher N. Stovern, a single person and Aubrey E. Bekel, a single person do/does hereby convey, release, remise and forever quit claim unto Christopher N. Stovern and Aubrey E. Stovern, husband and wife whose address is P.O. Box 398, Osburn, Idaho 83849, the following described premises, to-wit:

Lots 10 and 11, Block 28, Except the East 42 feet, Osburn Townsite, Shoshone County State of Idaho, according to the official and recorded plat thereof.

together with his/her/their appurtenances and any hereafter acquired title.

Dated: August 12, 2002

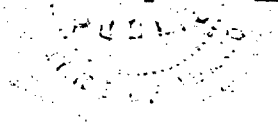
Christopher N. Stovern
CHRISTOPHER N. STOVERN

Aubrey E. Stovern
AUBREY E. STOVERN

STATE OF IDAHO)
) : ss
COUNTY OF SHOSHONE)

On This 12th day of August in the year 2002 before me, a Notary Public in and for said State, personally appeared Christopher N. Stovern and Aubrey E. Stovern, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument, and acknowledged to me that he/she/they executed the same.

Lucille M. Jones
Notary Public of Idaho
Residing at Boise
Commission Expires 11/11/02



RECORDED
at the request of

405029

FIRST AMERICAN TITLE CO.

In

DEEDS

Return to:

FIRST AMERICAN TITLE CO.

WALLACE, ID 83873

2002 AUG 12 PM 3 35

Fee \$ 3.00

MARCIA WILSON
SHOSHONE COUNTY RECORDER
BY Marcia Wilson DEPUTY

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 12th DAY OF

May, 2010
PEGGY WHITE, SHOSHONE COUNTY RECORDER
Marcia Wilson DEPUTY

405416
WARRANTY DEED

For Value Received **Jared M. Jordan and Stacey A. Jordan, husband and wife**

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

Jay Storkson, an unmarried man

whose address is 415 7th St. #224, Wallace, Id, 83873

Hereinafter called the Grantee, the following described premises situated in **Shoshone County, Idaho**, to-wit:

The West 92 feet of Lots 10 and 11 when measured parallel to the Northerly lot lines and Lot 12, except the East 50 feet of Lot 12, all in Block 29, Osburn, Townsite, Shoshone County, State of Idaho, according to the official and recorded plat thereof.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: 8-31- 2002

[Signature]
Jared M. Jordan
[Signature]
Stacey A. Jordan

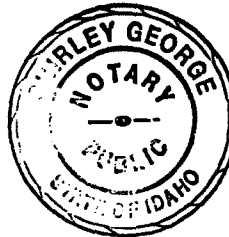
STATE OF

)ss.

COUNTY OF

On this 31st day of ~~September~~ ^{August}, 2002, before me, personally appeared Jared M. Jordan and Stacey A. Jordan, known or identified to me (or proved to me on the oath of their), to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged to me that executed the same.

[Signature]
Notary Public of Idaho
Residing at: Pinehurst
Commission Expires: 3-12-2005



RECORDED
at the request of

405416

First American Title Co.

Deeds in

Return to:

First American Title

Wallace, ID

Fee \$ 3.00

2002 SEP 9 PM 3 11

MARGIA W. WHITE
SHOSHONE COUNTY RECORDER
BY *Daniel Zamboni* DEPUTY

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 6th DAY OF

May, 2010.
Carice Sumner
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

420586

WARRANTY DEED

Order No.: 204043138

FOR VALUE RECEIVED

August Phillip Apel Jr. and Lorraine Alice Apel, Trustees of The August and Lorraine Apel Living Trust dated March 25, 1998,

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Larry Calhoun and Gaynor Calhoun, Husband and Wife

whose current address is

940 Deer Park Ln Oak Harbor, WA 98277

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

Lots 1 And 2 in Block 1 of Amended Galena Home Tract, according to the official plat thereof, filed in Official Records of Shoshone County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: November 22, 2004

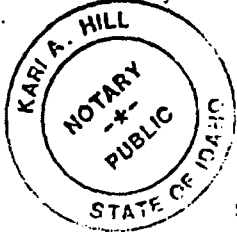
August Phillip Apel Jr. and Lorraine Alice Apel, Trustee's of the August and Lorraine Apel Living Trust dated March 25, 1998

August Phillip Apel Jr.
Lorraine Alice Apel

State of Idaho)
County of Shoshone) ss.

On this 22nd day of November 2003, before me, a Notary Public in and for said state, personally appeared August Phillip Apel Jr. and Lorraine Alice Apel known or identified to me to be the person whose name is subscribed to the foregoing instrument as trustee of the August and Lorraine Apel Living Trust, and acknowledged to me that they executed the same as Trustee.

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



Kari A Hill
Notary Public for the State of Idaho
Residing at: Wallace
Commission Expires: 7/1/05

at the request of 420586

ALLIANCE TITLE CO.
in

DEEDS
Return to:

ALLIANCE TITLE CO. 2004 NOV 29 PM 3 34

WALLACE, ID 83873

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE, SEALED ON THIS 20th DAY OF

Nov 20 10
Peggy White
SHOSHONE COUNTY RECORDER
DEPUTY

SHOSHONE COUNTY RECORDER
Peggy White

261^{3.00}

AFTER RECORDING, MAIL TO GRANTEE.
FATCO #1569/

369216

WARRANTY DEED

For Value Received FRANK L. TAPIA and MILDRED L. TAPIA, husband and wife

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto
MICHAEL C. PERRY and JANICE K. PERRY, husband and wife
whose address is: General Delivery, Osburn, Id 83849
Hereinafter called the Grantee, the following described premises situated in Shoshone County, Idaho, to-wit:

**Lots 1 and 2, Block 9, DUNKLES THIRD ADDITION, to the City of Osburn,
County of Shoshone, State of Idaho, according to the official and recorded
plat thereof.**

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated:

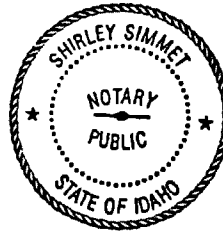
Frank L. Tapia
FRANK L. TAPIA

Mildred L. Tapia
MILDRED L. TAPIA

STATE OF Idaho)
COUNTY OF Shoshone)

On This 28th day of Sept in the year 1995 before me, a Notary Public in and for said State, personally appeared FRANK L. TAPIA and MILDRED L. TAPIA, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument, and acknowledged to me that he/she/they executed the same.

Shirley Simmet
Notary Public
Residing at Wallace
Commission Expires 3-10-99



RECORDED
at the request of
FIRST AMERICAN TITLE CO.

369216

DEEDS
FIRST AMERICAN TITLE CO.
WALLACE, ID 83873

FILED

'95 SEP 29 AM 11 39
MARCIA WINGFIELD
SHOSHONE CITY RECORDER
BY [Signature] DEPUTY

WARRANTY DEED

THIS INDENTURE Made the 13th day of January, A. D. 1971, between
 EUGENE WINTEROWD and VERDA D. WINTEROWD, his wife,
 the part^{ies} of the first part, and ALFRED MAUPIN, of Osburn, Idaho,
 and ELLA M. MAUPIN, his wife
 the part^y of the second part.

WITNESSETH: That the said part^{ies} of the first part, for and in consideration of the sum of
 ONE and no/100 (\$1.00) DOLLARS, lawful
 money of the United States of America, to them, in hand paid by the part^y of the second part, the receipt whereof
 is hereby acknowledged, do by their presents grant, bargain, sell, convey and confirm unto said part^y of the
 second part, and to his heirs and assigns forever the following described real property, to-wit:

A tract of land situated in Section 20, T 48 N, R 4 E, BM and more particularly described as follows:

A parcel of land comprised of Lot 13 and the Westerly 25.00 feet of Lot 14, Block 6, Dunkles Third Addition to Osburn. Also a parcel beginning at the SW corner of the Westerly 25.00 feet of Lot 14, Block 6, Dunkles Third Addition to Osburn from whence Cor. # 1 of said Dunkles Third Addition bears S 62° 04' E 429.42 feet distant; thence S 39° 28' W 39.02 feet distant to a point, a piece of drill steel; thence N 50° 32' W 75.00 feet distant to a point, a piece of drill steel; thence N 39° 28' E 7.93 feet distant to a point; thence S 78° 00' E 56.35 feet distant to Cor. # 10 of Dunkles Third Addition to Osburn; thence S 62° 04' E 25.52 feet distant to the point of beginning and containing 0.045 acres more or less. The entire described tract contains 0.215 acres more or less.

The above being subject to all existing right-of-ways and/or easements of record.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and Singular in above mentioned and described premises, together with the appurtenances, unto the said part^y of the second part, and to his heirs and assigns forever. And the said part^{ies} of the first part, and their heirs, the said premises, in the quiet and peaceable possession of the said part^y of the second part, his heirs and assigns, against the said part^{ies} of the first part and their heirs, and against all and every person and persons whatsoever, lawfully claiming or to claim the same shall and will warrant, and by their presents forever defend.

IN WITNESS WHEREOF, The said part^{ies} of the first part have hereto subscribed their
 names, on the day and year first above written.

Signed and delivered in the presence of:

Eugene Winterowd (SEAL)

Verda D. Winterowd (SEAL)

263 (SEAL)

(SEAL)

STATE OF IDAHO,
County of Shoshone, ss.

On this 13th day of January, A. D. 1971, before me, the undersigned,
a Notary Public in and for said State aforesaid, personally appeared EUGENE WINTEROWD
and VERDA D. WINTEROWD,
his wife, personally known to me to be the persons who sign the within instrument and acknowledged to me that they executed the same.

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

E. J. Helgeson
Notary Public in and for the State of Idaho,
Residing at Spalding, Idaho

Warranty Deed

-10-

Dated 13 A. D. 1971

Recorded at the request of

at 13 minutes past 11 o'clock A.M.

in Book 142 of 142

at page 414 Records of Shoshone

County, Idaho.

County Recorder

Deputy

Printed and for sale by
THE WALLACE METER
W. T. T. Co., Boise, Idaho

A tract of land situated in Section 20, T 43 N, R 1 E, 20th
and more particularly described as follows:

A parcel of land comprised of Lot 13 and the Westerly 25.00
feet of Lot 14, Block 6, Dunkles Third Addition to Osburn. Also
a parcel beginning at the SW corner of the Westerly 25.00 feet of
Lot 14, Block 6, Dunkles Third Addition to Osburn from whence
Cor. # 1 of said Dunkles Third Addition bears S 62° 04' E
129.42 feet distant; thence S 19° 20' W 50.02 feet distant to
a point, a piece of drill steel; thence N 50° 32' W 75.00 feet
distant to a point, a piece of drill steel; thence N 39° 28' E
7.93 feet distant to a point; ~~thence S 70° 00' E 56.35 feet distant to Cor. # 10 of Dunkles Third
Addition to Osburn; thence S 62° 04' E 25.52 feet distant to
the point of beginning and containing 0.045 acres more or less.
The entire described tract contains 0.215 acres more or less.~~

The above being subject to all existing right-of-ways
and/or easements *of record.*

I, Ronald J. Santi, a Registered Professional Engineer,
State of Idaho, do hereby certify that I have surveyed the above
described tract and that pieces of drill steel are placed on all
exterior corners as shown on the enclosed plat.

WITNESS my hand and seal this 7th day of September, 1970.

State of Idaho
County of Shoshone

This instrument was recorded at the request of
Alfred P. Maupin at 10:35 A.M.

on January 15, 1971
GROCK HO WOK TAVENHENT 20 707 3007
30 440 THE CLERK OF THE DISTRICT COURT
210 THE DISTRICT COURT
Fee \$ 4.00
Return to Idaho First National Bank

P. O. Box 559
Wallace, Idaho 83873



WARRANTY DEED

THIS INDENTURE, Made the 20th day of June, A.D. 1975,
 between WILLIAM A. GRIFFITH and GRATIA H. GRIFFITH, his wife,
 the parties of the first part, and JOHN F. COWLEY, JR. and SUE R.
 COWLEY, his wife, of 1043 East Larch, Osburn, Idaho, the parties
 of the second part.

W I T N E S S E T H:

That the said parties of the first part, for and in consideration
 of the sum of ONE DOLLAR (\$1.00) lawful money of the United
 States of America, to them in hand paid by the parties of the
 second part, the receipt whereof is hereby acknowledged, do
 by these presents grant, bargain, sell, convey and confirm unto
 said parties of the second part, and to their heirs and assigns
 forever the following described real property, to-wit:

Lots Eight (8), Nine (9) and all that portion of Lot
 Seven (7), Block Four (4), DUNKLES THIRD ADDITION to
 the Town of Osburn, (now City) Shoshone County, State of
 Idaho, according to the official plat recorded thereof
 lying Southeasterly of a line drawn parallel with and
 distant 25 feet radially from the Southeasterly line of said
 Lot Seven (7).

but excluding all mineral lands which may be reserve to the United
 States of America by that certain deed recorded January 2, 1897,
 in Book 10, Deeds, page 348, records of Shoshone County, Idaho.

Subject to the following conditions, restrictions and
 covenants running with the land, to-wit:

1. No lot or lots shall be used except for residential
 purposes. No building shall be erected, altered, placed or
 permitted to remain on any lot other than one detached single-
 family dwelling not to exceed one and one-half stories in height
 and a private garage for not more than two cars.
2. No dwelling shall be permitted on any lot at a cost of
 less than \$5,000.00 based upon cost levels prevailing on the date
 these covenants are records, it being the intention and purpose
 of the covenants to assure that all dwellings shall be of a
 quality of workmanship and materials substantially the same or
 better than that which can be produced on the date these covenants
 are recorded at the minimum cost stated herein for the minimum
 permitted dwelling size. The ground floor area of the main
 structure, exclusive of one-story open porches and a garage,
 shall be not less than 600 square feet for a one-story dwelling,
 not less than 1500 square feet for a dwelling of more than one
 story. Every dwelling shall be completed within nine months after
 the erection thereof shall be started.

3. That until such time as an adequate sewer system shall be available all sewage must be disposed of by means of adequate septic tanks or cesspool and no outside toilets shall be erected or used upon said premises.

4. All dwellings erected within said addition shall be placed not closer than 25 feet nor more than 50 feet from the front lot line and no buildings shall be placed nearer than 5 feet from the side lines of the lots excepting garages located on the rear quarter of the lot.

5. No domestic fowl and/or livestock of any kind shall be kept or permitted to be kept on said premises.

6. Temporary residences shall be permitted only during a period of not to exceed nine months during which time a dwelling complying with the provisions of the foregoing paragraphs number "1" and "2" is under construction.

7. These restrictions, conditions and covenants shall be binding upon the purchasers of all lots within said addition and upon their successors in interest until May 1, 1974, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

8. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

9. Invalidation of any one of these covenants by judgment or court shall in no wise affect any of the other provisions which shall remain in full force and effect.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the improvements as they now exist and together with the appurtenances, unto the said parties of the second part, and to their heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises, in the quiet and peaceable possession of the said parties of the second part and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant, and by these presents

forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto subscribed their names the day and year first above written.

[Handwritten signature]

STATE OF IDAHO)
) ss.
County of Shoshone)

On this 30th day of June, A.D. 1975, before me, the undersigned, a Notary Public in and for the State aforesaid personally appeared WILLIAM A. GRIFFITH and GRACIA H. GRIFFITH, his wife, known to me to be the persons who signed the within instrument and acknowledged to me that they executed the same.

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



Robert L. Geitz

Notary Public in and for the State of Idaho, Residing at _____, Idaho.

My commission expires January 1, 1979

RECORDED
at the request of

Shoshone Title Company
in

Deeds

Return to:

STATE OF IDAHO

Idaho _____

257226

FILED

JUL 19 9 39 AM '75

VICTORIA WHITE
SHOSHONE CITY RECORDER

Victoria White
DEPUTY

-3-

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT OF THE COUNTY OF SHOSHONE, IDAHO.
RECORDED IN BOOK _____ PAGE _____
FEE \$ _____

269

430961

RECORDING REQUESTED BY & RETURN TO: DANIEL E. MEYER & GEORGINA C. MEYER
P.O. BOX 673
1268 E. LARCH
OSBURN, ID 83849

QUITCLAIM DEED

DANIEL E. MEYER and GEORGINA C. MEYER husband and wife, whose address is P.O. BOX 673, 1268 E. LARCH, OSBURN, ID 83849 ("Transferor"), in consideration of the sum of ten dollars (\$10.00) and other valuable consideration paid to Transferor by DANIEL E. MEYER and GEORGINA C. MEYER husband and wife, whose address is P.O. BOX 673, 1268 E. LARCH, OSBURN, ID 83849 ("Transferee"), and which consideration is hereby acknowledged by Transferor; Transferor hereby remises, releases and forever quitclaims to Transferee all of the interest of Transferor, if any, in and to certain real property located (LOT 17, W ½ LOT 18, BLK 3, DUNKLE'S THIRD ADD, OSBURN, SHOSHONE COUNTY, PARCEL RP C0200003017A A); and (E ½ LOT 18, ALL OF LOT 19 - 20 - 21, BLK 3, DUNKLE'S THIRD ADD, OSBURN, SHOSHONE COUNTY, PARCEL RP C0200003019A A). Request Recorded modification from the existing Parcel Descriptions to following Parcel Descriptions:

(ALL OF LOT 17 - 18 - 19, BLK 3, DUNKLE'S THIRD ADD, OSBURN, SHOSHONE COUNTY, PARCEL RP C0200003017A A); and (ALL OF LOT 20 - 21, BLK 3, DUNKLE'S THIRD ADD, OSBURN, SHOSHONE COUNTY PARCEL RP C0200003019A A) which property is more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof ("Property").

SUBJECT TO any and all existing easements and reservations of record or apparent.

TO HAVE AND TO HOLD, all and singular the described property, together with the tenements, hereditaments and appurtenances belonging to such property, or in anywise appertaining, and the rents, issues and profits of such property to Transferee and Transferec's heirs, successors and assigns forever.

IN WITNESS WHEREOF, Transferor has caused this Quitclaim Deed to be executed this 6th day of June, 2006.

TRANSFEROR

By: *Daniel E. Meyer*
DANIEL E. MEYER

By: *Georgina C. Meyer*
GEORGINA C. MEYER

1 of 3

430161

**EXHIBIT A
to Quitclaim Deed**

LEGAL DESCRIPTION

EXISTING PARCEL DESCRIPTIONS:

PARCEL NUMBER: RP C0200003017A A
LOT 17, W. ½ LOT 18
BLK. 3
DUNKLE'S THIRD ADD.
OSBURN, ID
SHOSHONE COUNTY
PARCEL ADDRESS: 1268 E. LARCH 83849

PARCEL NUMBER: RP C0200003019A A
E. ½ LOT 18, ALL OF LOT 19 - 20 - 21
BLK. 3
DUNKLE'S THIRD ADD.
OSBURN, ID
SHOSHONE COUNTY
PARCEL ADDRESS: 1274 E. LARCH

RECORD THE FOLLOWING MODIFIED PARCEL DESCRIPTIONS:

PARCEL NUMBER: RP C0200003017A A
ALL OF LOT 17 - 18 - 19
BLK. 3
DUNKLE'S THIRD ADD.
OSBURN, ID
SHOSHONE COUNTY
PARCEL ADDRESS: 1268 E. LARCH 83849

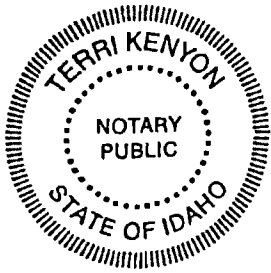
PARCEL NUMBER: RP C0200003019A A
ALL OF LOT 20 - 21
BLK. 3
DUNKLE'S THIRD ADD.
OSBURN, ID
SHOSHONE COUNTY
PARCEL ADDRESS: 1274 E. LARCH

ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss.
County of Shoshone)

ON THIS 6 day of June, 2006, before me, the undersigned, a Notary Public in and for the state of Idaho, personally appeared Daniel & Georgina Meyer, known or identified to me to be the person whose name is subscribed to within instrument, and acknowledged to me that he/she executed the same.

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



Terri Kenyon
Notary Public
Residing at Kellogg, Idaho
My Commission Expires 6/3/08

Instrument # 430961
WALLACE, SHOSHONE COUNTY, IDAHO
2006-06-06 02:40:00 No. of Pages: 3
Recorded for : DANIEL MEYER
PEGGY DELANGE-WHITE Fee: 9.00
Ex-Officio Recorder Deputy [Signature]
Index to: QUITCLAIM DEED

430961

2:40

[Signature]

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE. SEALED ON THIS 6th DAY OF

May, 2010.
[Signature] PEGGY WHITE, SHOSHONE COUNTY RECORDER
[Signature] DEPUTY

3 of 3

21990

WA ANTY DEED

For Value Received RALPH W. PAYTON and KAY A. PAYTON,
husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto
DAVID H. RUST and CHRISTINE A. RUST,
the grantees, whose current address is husband and wife,
P.O. Box 1105, Wallace, Idaho 83433
the following described premises, in Shoshone County Idaho, to-wit:

Lot 2, Block 3, GALENA HOME TRACTS, Shoshone County, State of Idaho, according to the official and recorded plat thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, and their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: June

Ralph W. Payton attorney in fact for
Kay A. Payton

Kay A. Payton

STATE OF IDAHO, COUNTY OF Shoshone
On this 20th day of June, 1979,
before me, a notary public in and for the said State, personally appeared Key A. Payton,
individually and as attorney-
in-fact for Ralph W. Payton

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Bonnie
Notary Public
Residing at Wallace, Idaho
Comm. Expires 1980

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at the request of
at _____ minutes past _____ o'clock
this _____ day of _____
19____, in my office, and duly recorded in Book
of Deeds at Page _____

Ex-Officio Recorder

By _____ Deputy.

Fees \$
Mail to:

RECORDED
at the request of

Safaco Title Co.
in

Deeds

Return to:

David Rust

Box 1105

Wallace, ID 83073

Fee \$ 2.00

279577

FILED

JUN 20 10 48 AM '79

VICTORIA WHITE
SHOSHONE CTY RECORDER
SY *Janet Zamboni*

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 10th DAY OF

20 1979
Peggy White
PEGGY WHITE SHOSHONE COUNTY RECORDER
DEPUTY

417957

WARRANTY DEED

Order No.: 204042933

FOR VALUE RECEIVED

John R. Specht, Joel A. Specht ~~and Anna Specht~~ ^{fr}

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Michael Siedschlag and Sonya Siedschlag, Husband and Wife

whose current address is

537 Oaklawn Chulavista, CA 90901

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

East 10 feet of Lot 4, All of Lot 5 and the West one-half of Lot 6 in Block 1 of Galea Home Tracts, according to the official plat thereof, filed in Official Records of Shoshone County, Idaho. Subject to those certain conditions, restrictions and covenants running with the land as set forth in Deeds recorded in Book 85, page 253, Instrument No. 150820 and Book 86, Deed, page 297, Instrument No. 154637 and Book 88, Deeds, page 528, Instrument No. 161460, of Official Records.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: July 20, 2004

John R. Specht
John R. Specht

Joel A. Specht
Joel A. Specht

State of Idaho

County of Ada

On this 21st day of July, 2004, before me, a Notary Public in and for said state, personally appeared Joel A. Specht known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.

Jammy Sorensen
Notary Public for the State of Idaho
Residing at: Meridian, ID.
Commission Expires: 11/28/07



STATE OF IDAHO
COUNTY OF Shoshone } 35.

On this 27th day of July, 2004 in the
year ~~19~~ 2004, before me, a Notary Public, personally appeared

John R Specht

known or identified to me to be the person whose name subscribed to the within
instrument, and acknowledged to me that he executed the same.

NATASHA KEFELI
NOTARY PUBLIC
STATE OF IDAHO

Notary Public [Signature]
Residing at Pocatello, Idaho

Commissioner
EXPIRES: 11/24/09

RECORDED
at the request of

ALLIANCE TITLE CO.
in

DEEDS
Return to:

ALLIANCE TITLE CO.
WALLACE, ID 83873

Fee \$ 6.00

417957

2004 JUL 23 PM 3:49

RECORDED
SHOSHONE COUNTY RECORDER
[Signature]

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 6th DAY OF
July, 2004

[Signature]
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
415 Seventh Street, Suite 1
Wallace, ID 83873

429396

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 150800-WA (sg)

Date: February 14, 2006

For Value Received, **Diane Bouchard, a single woman**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Casey E. Pluid, a married man as his separate property**, hereinafter called the Grantee, whose current address is

109 Railroad Ave. Kellokee, ID 83837, the following described premises, situated in **Shoshone County, Idaho**, to-wit:

LOTS 9 AND 10, BLOCK 4, OSBURN TOWNSITE, SHOSHONE COUNTY, STATE OF IDAHO, ACCORDING TO THE OFFICIAL AND RECORDED PLAT THEREOF.

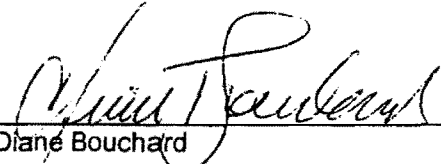
SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Date: 02/14/2006

Warranty Deed
- continued

File No.: 150800-WA (sg)

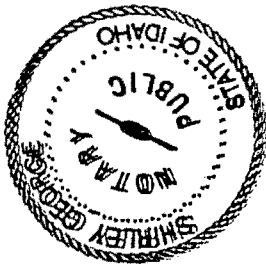


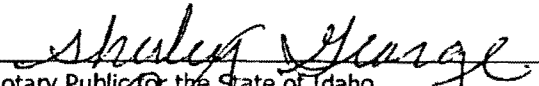
Diane Bouchard

STATE OF Idaho)
ss.

COUNTY OF Shoshone)

On this 3rd day of March, 2006, before me, a Notary Public in and for said State, personally appeared **Diane Bouchard**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.





Notary Public for the State of Idaho
Residing at Benehurst
My Commission Expires: 03-12-2011

429396

Instrument # 429396
WALLACE, SHOSHONE COUNTY, IDAHO
2006-03-07 02:53:00 No. of Pages: 2
Recorded for : FIRST AMERICAN
PEGGY DELANGE-WHITE Fee: 6.00
Ex-Officio Recorder Deputy _____
Index to: WARRANTY DEED

APR 7 2006



STATE OF IDAHO
County of Shoshone

Page 2 of 2

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE. SEALED ON THIS 6th DAY OF May, 2010.

PEGGY WHITE, SHOSHONE COUNTY RECORDER

DEPUTY

278

WHEN RECORDED MAIL TO:

Keith and Sharon McKay
~~1141 East Larch Avenue~~ P.O. Box H
Osburn, ID 83849

404383

5811

Space Above This Line for Recorder's Use Only

WARRANTY DEED

For Value Received THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON D.C., HIS SUCCESSORS AND ASSIGNS, the grantor(s), do(es) hereby grant, bargain, sell and convey unto Keith D McKay and Sharon R McKay

, the grantee(s) whose current address is 1141 East Larch Avenue, Osburn, ID 83849, the following described premises, in Shoshone County Idaho, to wit:

Assessor's Parcel No. C0200005011A

Lots 11 and 12, Block 5, Dunkles Third Addition to Osburn, Shoshone County, State of Idaho, according to the official and recorded plat thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), their heirs and assigns forever. And the said Grantor(s) do(es) hereby covenant to and with the said Grantee(s), that he/she/they is/are the owners(s) in fee simple of said premises; that they are free from all encumbrances except current year taxes, levies and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that he/she/they will warrant and defend the same from all lawful claims whatsoever.

Dated: *June 25, 2002*

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Thomas Johnson
By: Authorized Signature *attest*

State of Idaho)SS
County of Shoshone)

On _____, before me, _____ personally appeared _____ personally know to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

404383

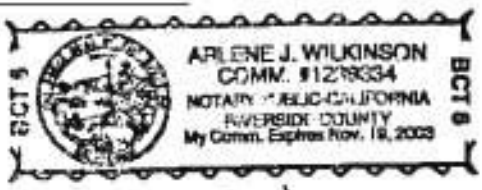


STATE OF CALIFORNIA)
) SS
 COUNTY OF ORANGE)

On June 25, 2002, before me, ARLENE J WILKINSON, personally appeared TONI JOHNSON, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]*



Title of Document WARRANTY DEED
 Date of Document 6/25/02 No. of Pages (1)
 Other signatures not acknowledged (None)

RECORDED
at the request of

404383

First American
in
Deeds

Return to:
First American

Wallace, ID

Fee \$ 6.00

2002 JUN 28 PM 3 20

MARGA WILFIELD
SHOSHONE CITY RECORDER
BY Janet Lambert DEPUTY

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 6th DAY OF

May 2010
PEGGY WHITE, SHOSHONE COUNTY RECORDER
Constance Skinner DEPUTY

436529
WARRANTY DEED

Order No.:2040705427MH

FOR VALUE RECEIVED

Jerry A. Farnsworth and Lyola K. Farnsworth, Husband and Wife

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Herbert Dean Nash and Ronda Gail Nash, Husband and Wife

whose current address is

P.O. Box 115 Osburn, ID 83849

the grantee(s), the following described premises, in Shoshone County, Idaho, TO WIT:

Lots 5 and 6 in Block 23 of Polaris First Addition, Osburn, together with the abandoned Monroe Street lying east of Lot 6, Block 23 of Polaris First Addition and that portion of Polaris Avenue acquired through vacation of said streets by City of Osburn Resolution, recorded April 16, 1987, Instrument No. 327913 as follows: Except Highway right-of-way according to the official plat thereof, filed in Official Records of Shoshone County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does 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: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: March 16, 2007

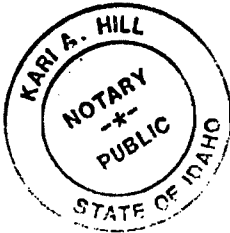
Jerry A. Farnsworth
Jerry A. Farnsworth

Lyola K. Farnsworth
Lyola K. Farnsworth

State of Idaho }
County of Shoshone } ss

On this 16th day of March 2007, before me, a Notary Public in and for said state, personally appeared Jerry A. Farnsworth & Lyola K. Farnsworth known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.



Kari A. Hill
Notary Public for the State of Idaho
Residing at: Wallace
Commission Expires: 7/14/11

436529

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE. SEALED ON THIS 16th DAY OF May, 2010.
Peggy White
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

2007 MAR 16 PM 12 26

Instrument # 436529
WALLACE, SHOSHONE COUNTY, IDAHO
2007-03-16 12:26:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE
PEGGY DELANGE-WHITE
Ex-Officio Recorder Deputy Peggy White Fee: 3.00
Index to: WARRANTY DEED

QUITCLAIM DEED

FOR VALUE RECEIVED

E.L. McPoland and Julie A. McPoland, husband and wife

do hereby convey, release, remise and Forever quit claim

unto Sandra L. Montee

whose address is P.O. BOX 47 Osburn, Idaho 83849

the following described premises, to-wit:

Lots 3 and 4, Block 19, FIRST ADDITION TO POLAKIS TOWNSITE, Shoshone County State of Idaho, according to the official and recorded plat thereof, now included in and forming a part of the Village of Osburn.

EXCEPT all minerals in or under said land including but not limited to metals, oil, gas, coal, stone and mineral rights, mining rights and easement rights or other matters relating thereto whether expressed or implied.

together with their appurtenances, together with any after acquired title

dated: September 8, 1987

[Handwritten signatures of E.L. McPoland and Julie A. McPoland]

ACKNOWLEDGMENT - Individual

STATE OF Idaho, County of Kootenai, ss.

On this 8th day of September, in the year of 1987, before me

Sandra Ward, a notary public, personally appeared E.L. McPoland and Julie A. McPoland, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Notary Public: Sandra M. Ward
Residing at Coeur d'Alene, Idaho
Commission expires 7/3/1991

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the request of

at _____ minutes past _____ o'clock _____, this _____ day of _____, 19____, in my office, and duly recorded in Book of Deeds at page _____

Ex-Officio Recorder

By _____ Deputy.

Fees \$ _____
Mail to: _____

Pioneer Title Company of Kootenai County

618 N. 4th Street • P.O. Box 486
Coeur d'Alene, Idaho 83814
(208) 664-8254

RECORDED
at the request of

SANDRA MONTEE

in

DEEDS

return to:

SANDRA MONTEE

BOX 47

OSBURN, IDAHO 83849

Fee \$ 3.00

330010

FILED

'87 SEP 15 PM 3 24

NADIA WINGFIELD
SHOSHONE COUNTY RECORDER
BY *Anna Shinn* DEPUTY

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE. SEALED ON THIS 15th DAY OF
May, 2016

REGGY WHITE, SHOSHONE COUNTY RECORDER
Anna Shinn DEPUTY

DEED FOR IDAHO

THIS INSTRUMENT, Made the 17th day of May 1984, between Samuel R. Pierce, Jr., Secretary of Housing and Urban Development, of Washington, D. C., acting by and through the Federal Housing Commissioner, party of the first part, and Richard P. Cloos, and Debra L. Cloos, husband and wife, whose address is N. 1426 Grady Road, Greenacres, WA 99016 party(ies) of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United State of America, and other good and valuable considerations, to him in hand paid by the said party(ies) of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party(ies) of the second part, and to the heirs and assigns of the said party(ies) of the second part forever

1307 E. Mullan Ave., Osburn

The Northeasterly 200 feet of lot 2 and the Northwest half of the Northeasterly 200 feet of lot 3, all in Block 3, DUNKLE GARDENS ADDITION to the Town of Osburn, Shoshone County, State of Idaho, according to the official and recorded plat thereof.

BEING the same property acquired by the party of the first part pursuant to the provisions of the National Housing Act, as amended (12 USC 1701 et seq.) and the Department of Housing and Urban Development Act (79 Stat. 667).

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party(ies) of the second part, and to the heirs and assigns of the said party(ies) of the second part forever. And the said party of the first part, and his successors, the said premises in the quiet and peaceable possession of the said party(ies) of the second part, the heirs and assigns of the said party(ies) of the second part, against the said party of the first, and his successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same by, through or under him, shall and will warrant and by these presents forever defend.

SUBJECT TO ALL covenants, restrictions, reservations, easements, conditions and rights appearing of record; and SUBJECT to any state of facts an accurate survey would show.

IN WITNESS WHEREOF the undersigned has set his hand and seal as Office Manager, FHA Office, Boise, Idaho, for and on behalf of the said Secretary of Housing and Urban Development, under authority and by virtue of the Code of Federal Regulations, Title 24, Chapter II, Part 200, Subpart D.

Witnesses: Secretary of Housing and Urban Development

[Signature]

By: Federal Housing Commissioner

[Signature]

By: *[Signature]* (SEAL)

FHA Office Manager
Office, Boise, Idaho

STATE OF IDAHO
COUNTY OF ADA

On this 17th day of May 1984, before me Alice Bodie a Notary Public in and for said State, personally appeared Ronald R. Johnson known to me to be the duly appointed Office Manager, FHA Office, Boise, Idaho, and the person who executed the foregoing instrument by virtue of the authority vested in him by the Code of Federal Regulations, Title 24, Chapter II, Part 200, Subpart D, and acknowledged to me that he executed the same as Office Manager for and on behalf of Samuel R. Pierce Jr., Secretary of Housing and Urban Development.

Witness my hand and official seal.

Residing at Boise, Idaho.

[Signature]
Notary Public, Boise, Idaho

RECORDED
at the request of

3 1 1 - 9 3

Safeco Title Co.

Deeds

Richard P. Cloos

MAY 24 3 58 PM '84

N. 1426 Grady Road

Greenacres, WA 99016

Janet Zamboni

Fee \$ 4.00

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE, SEALED ON THIS 6th DAY OF

May, 2010
Janet Zamboni
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

RECORDED
at the request of
Safeco Title Co.

311493

Deeds

Richard P. Cloos

N. 1426 Grady Road

Greensacres, WA 99016

Fee \$ 4.00

MAY 24 5 53 PM '84

Janet Zambrani

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE, SEALED ON THIS 14th DAY OF
MAY 2010
PEGGY WHITE, SHOSHONE COUNTY RECORDER
Peggy White DEPUTY

2871

2010 MAY 17 PM 2:37

CHARLES L.A. COX
EVANS, KEANE
111 Main Street
P.O. Box 659
Kellogg, Idaho 83837
Phone: (208) 784-1105
Fax: (208) 783-7601
ISB #2745

PEGGY WHITE
CLERK DIST. COURT
BY *Bonnie Johnson*
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,)	Case No. CV-08-497
)	
Plaintiff,)	
)	
v.)	RESPONSE TO DEFENDANTS
)	RANDELS' AFFIDAVIT
DAVID C. RANDEL and PAMELA L.)	
RANDEL, husband and wife,)	
)	
Defendants.)	
_____)	

I.

Preliminary Statement

This memorandum is submitted in response to a memorandum and an affidavit in support of the defendants' motion for attorneys fees and cost. On January 19, 2010, the Court denied the defendants' motion for attorneys fees and costs. On February 3, 2010, the defendants moved for a new trial. On March 8, 2010, the Court granted to defendants thirty (30) days to provide affidavits to support their position in this matter. On April 7, 2010, the Court extended the time to file affidavits to May 7, 2010, with Plaintiff having until May 17, 2010 to respond. On May 7, 2010, one of the defendants, David Randel delivered to

Evans, Keane office, the affidavit of Henry Madsen and a Memorandum In Support of Attorneys Fees and Costs.

II.

The Court Previously denied the Defendants' Request for Attorneys Fees and Costs and Entered a Final Order With Prejudice

The defendants have raised nothing in the latest papers filed to justify a reversal of the Court's action. To date, the only affidavit filed with the Court is that of the defendants' attorney. That affidavit only establishes other citizens of Osburn may be in a similar position as defendants if they apply for a similar permit as applied for by Randels. As of the date of this memorandum, there is no evidence presented or otherwise of that occurring. In fact, assuming that the Osburn City Council, the elected officials of Osburn, represent the citizens, their homes and property remain protected. Following the Court's prior order supporting the Randels' position, the Council amended its ordinance to clarify what was intended for future applications by someone other than the Randels.

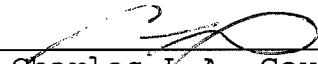
Conclusion

It is respectfully submitted, the Court should again deny the Randel's motion for Attorneys Fees and Costs.

DATED this 17th day of May, 2010.

EVANS, KEANE

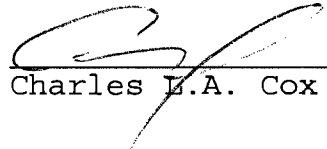
By


Charles L.A. Cox
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify I caused a true and correct copy of the foregoing **RESPONSE TO DEFENDANTS RANDELS' AFFIDAVIT** to be mailed, first-class postage prepaid thereon, to the following-named attorney this 17th day of May, 2010:

Henry D. Madsen
Madsen Law Offices P.C.
1859 N. Lakewood Drive, Ste. 201
Coeur d'Alene, ID 83814



Charles E.A. Cox

STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED

2010 MAY 24 PM 4:55

PEGGY WHITE
CLERK DIST. COURT
BY *Paul Elliott*
By Fax

HENRY D. MADSEN
MADSEN LAW OFFICES, PC
1859 N. Lakewood Dr.,
Coeur d'Alene, ID 83814
Telephone: (208) 664-8080
Facsimile: (208) 664-6258
ISBA# 4428
Attorney for Defendants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Defendants.

CASE NO. CV-08-497

**REBUTTAL MEMORANDUM IN
SUPPORT OF ATTORNEY FEES AND
COSTS**

COMES NOW the above-named Defendants, by and through Henry D. Madsen of MADSEN LAW OFFICES, P.C., attorneys of record, and hereby respectfully submits the following memorandum of law in rebuttal to Plaintiff's Response.

RESPONSE

Plaintiff responded to Defendants memorandum on May 17, 2010. In its response the City of Osburn simply argues that Defendant has not provided new information to the court and specifically argues that affidavits from the citizens of Osburn were required in support of attorney fees. The City of Osburn failed to cite any authority or propositions of law to support its arguments nor did it cite any authority contradicting Defendant's

memorandum. What can be gleaned from the City of Osburn is that they seem to be moving the court to deny Defendants attorney fees and costs but has cited no authority as required by Rule 7(b) of the Idaho Rules of Civil procedure. See also Rule 54(d)(6) of the Idaho Rules of Civil Procedure.

In Lettunich v. Lettunich, 145 Idaho 746, 750, 185 P.3d 258, 262 (Idaho,2008), the Court stated "To object, the opposing party must file a motion to disallow the claimed attorney fees, I.R.C.P 54(e)(6), which motion must state with particularity the grounds upon which it is based, I.R.C.P. 7(b)(1)." The City of Osburn's objections are not supported by propositions of law or authority and therefore any objections should be deemed waived and should not be considered by this Court.

Further, the City of Osburn argues that because Defendant has not submitted affidavits of citizens, Defendants should be denied attorney fees and costs. Failure to cite legal authority for its proposition notwithstanding, it would make for a bad state of things for a Defendant to have to wait until someone was actually damaged other than themselves to defend or bring an action for injunctive relief to address inequities brought on by a city as a result of, in this case, a misinterpretation of its own ordinance. By the Master Inquiries and Deeds attached to the Affidavit of Henry D. Madsen in support of Defendant's memorandum, it is clear that the misinterpretation affected all those similarly situated with the Randels which I would venture to say would be ninety percent of the citizens of the City of Osburn.

Plaintiff has not addressed the three considerations under the "Attorney General Doctrine"- "(1) the strength or societal importance of the public policy indicated by the litigation; (2) the necessity for private enforcement and the magnitude of the resultant

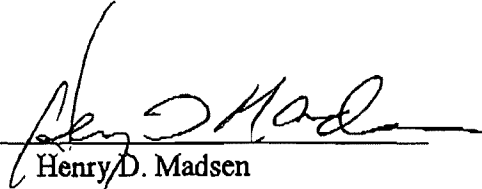
burden on the plaintiff; and (3) the number of people standing to benefit from the decision and therefore having no objection thereto should be found in favor of Defendants.

CONCLUSION

As previously explained in Defendants memorandum, the Randels have borne unfair and unjustified financial burden attempting to correct mistakes the City of Osburn should never have made. It is for the foregoing reasons that Defendants pray the Court award them their cost and attorney fees. Defendants were the prevailing parties and should be awarded the same as matter of law.

Dated this 24 day of May, 2010.

MADSEN LAW OFFICES, PC

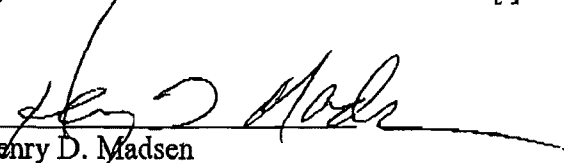
By: 
Henry D. Madsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of May, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Charles L.A. Cox
PO Box 659
Kellogg, ID 83837

- U.S. Mail
- Hand Delivered
- Facsimile to: 783-7601
- Overnight Mail


Henry D. Madsen

STATE OF IDAHO
COUNTY OF SHOSHONE/SO
FILED

2010 MAY 24 PM 4:55

PEGGY WHITE
CLERK DIST. COURT
BY *Paul Elliott*
DEPUTY
By Fax

HENRY D. MADSEN
MADSEN LAW OFFICES, PC
1859 N. Lakewood Dr.,
Coeur d'Alene, ID 83814
Telephone: (208) 664-8080
Facsimile: (208) 664-6258
ISBA# 4428
Attorney for Defendants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Defendants.

CASE NO. CV-08-497

**MOTION TO PUT ON EVIDENCE AND
TESTIMONY RE ATTORNEY FEES
AND COSTS**

COMES NOW the above-named Defendants, by and through Henry D. Madsen of Madsen Law Offices PC, attorneys of record, and hereby respectfully move the Court for a hearing for Defendants put on evidence and testimony regarding attorney fees as follows:

This Motion is made in accordance with I.R.C.P. 7(b)(1) and I.R.C.P. 54(e) and based on the fact that Defendants have been in contact with citizens of City of Osburn and cannot get cooperation to sign affidavits for fear of retaliation from the City of Osburn.

In furtherance of said motion, Defendants submit the attached Affidavit of Henry D. Madsen filed herewith.

Defendants request the opportunity to present evidence, witness' testimony, and/or oral argument in support of these motions and to cross examine Plaintiff and their witnesses at hearing on these motions.

Dated this 24 day of May, 2010.

MADSEN LAW OFFICES, PC


By: 
Henry D. Madsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of May, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Charles L.A. Cox
PO Box 659
Kellogg, ID 83837

- U.S. Mail
- Hand Delivered
- Facsimile to: 783-7601
- Overnight Mail


Henry D. Madsen

STATE OF IDAHO
COUNTY OF SHOSHONE/31
FILED

2010 MAY 24 P11 4:55

PERRY WHITE
CLERK DIST. COURT
BY *Sail Elliott*
By Fax

HENRY D. MADSEN
MADSEN LAW OFFICES, PC
1859 N. Lakewood Dr.,
Coeur d'Alene, ID 83814
Telephone: (208) 664-8080
Facsimile: (208) 664-6258
ISBA# 4428

Attorney for Defendants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Defendants.

CASE NO. CV-08-497

**AFFIDAVIT OF HENRY D. MADSEN IN
SUPPORT OF MOTION TO PUT ON
EVIDENCE AND TESTIMONY RE
ATTORNEY FEES AND COSTS**

STATE OF IDAHO)
 :ss.
County of Kootenai)

COMES NOW HENRY D. MADSEN, Attorney for the Defendants, DAVID C.
RANDEL and PAMELA L. RANDEL, after being first duly sworn, deposes and says:

1. I am attorney for the Defendants in the above-entitled matter. I have personal
knowledge of the facts set forth below.

2. That Defendant's MEMORANDUM IN SUPPORT OF ATTORNEY FEES
AND COSTS was filed on May 7, 2010.

3. In preparing said memorandum, your affiant contacted Pat and Diane Waters regarding similar property issues with the City of Osburn, but neither of them were willing to sign an Affidavit due to fear of retaliation from the City of Osburn.

4. In preparing my rebuttal to Plaintiff's Response to Defendants Randels' Affidavit filed May 17, 2010, I again contacted Diane Waters regarding similar property issues with the City of Osburn. See Attachment A and B Water's Deed and Parcel Master Inquiry.

5. Ms Waters told your affiant that she would sign an affidavit stating as follows:

a. The "PARCEL MASTER INQUIRY" accurately establishes her property address PARCEL number and legal description of her property.

b. That her parcel includes both lots 7 and 8 of Block 30 of Osburn.

c. That her residence is located on Lot 7 only.

d. That in the Spring of 2007, Diane Waters planned a garage to be built on lot 8 only.

e. That Diane Waters applied for a building permit to build the garage on the portion of my parcel described as lot 8 but her application was denied.

f. That Diane Waters went to the Osburn City Counsel meeting to appeal their denial of her application.

g. That the City Counsel again denied her building permit explaining that the garage could not be built on a lot without a primary residence.

h. That although Diane Waters' property is described with lot numbers, she has one deed only, and only one parcel of property.

i. That Diane Waters has not been able to build the garage because there is not enough area in Lot 7 which includes her residence to build a garage there.

j. Because of the Court's decision, Diane Waters will now be able to use all of her property that she has been paying taxes on and possibly build the garage on Lot 8 that she was denied in 2007.

5. Your affiant drafted the Affidavit for Ms. Waters' signature, but when it came time to sign, she refused, stating she feared retaliation from the City of Osburn.

6. Your affiant has scheduled a hearing in this matter for Monday, July 12, 2010 at 1:00 p.m. and has prepared a subpoena to Ms. Waters for her to testify at said hearing.

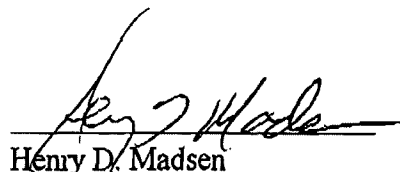
7. Your affiant requires the testimony of Ms. Waters to substantiate the request for attorney fees in this matter.

8. That your affiant called and spoke to several other citizens of the City of Osburn who have been denied a building permit due to the City's misinterpretation of the statute but those individuals would not sign an affidavit either citing the fear of retaliation from the City of Osburn.

9. That your affiant requests the court to set a hearing in this matter to afford Defendants the opportunity to subpoena these citizens so they might be heard on the matter

Further, your affiant sayeth naught.

DATED the 24th day of May, 2010.

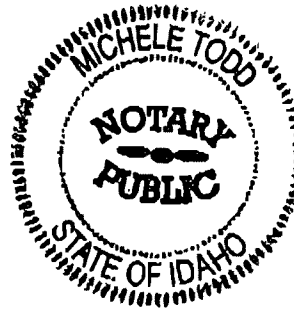

Henry D. Madsen

STATE OF IDAHO)
)ss.
County of Kootenai)

On this 24 day of May, 2010, before me, Michele Todd, the undersigned Notary Public for said State, personally appeared Henry D. Madsen, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.

Michele Todd
Notary Public for the State of Idaho
Residing at: Coeur d'Alene, ID
My Commission Expires: May 15, 2012



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of May, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Charles L. A. Cox
EVANS, KEANE
PO Box 659
Kellogg, Idaho 83837

- U.S. Mail
- Hand Delivered
- Facsimile to:
- Overnight Mail

Henry D. Madsen
Henry D. Madsen

451991

QUITCLAIM DEED

ORDER NO.: 2040906840MH

FOR VALUE RECEIVED,

Patrick D. Waters and Dianne Waters, husband and wife

Do(es) hereby convey, release, remise and forever quit claim unto

Patrick D. Waters and Dianne R. Waters husband and wife

whose current address is: P.O. Box 488
Osburn, ID 83849

the following described premises:

Lot 7 and 8 in Block 30 of Osburn, according to the official plat thereof, filed in Official Records of Shoshone County, Idaho.

TO HAVE AND TO HOLD the said premises, unto the said grantees, heirs and assigns forever.

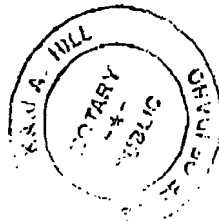
June 4, 2009

Patrick D. Waters
Patrick D. Waters

Dianne Waters
Dianne Waters

State of Idaho }
County of Shoshone } ss

On this 4th day of June 2009, before me, a Notary Public in and for said state, personally appeared Patrick D. Waters & Dianne Waters known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed 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.



Kari A Hill
Notary Public for the State of Idaho
Residing at: Wallace
Commission Expires: 7/14/14 51991

CHARGE TO BE PAID
according to statute

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-24-2010 BY 60322
SP-1/BJ

Instrument # 451991
WALLACE, SHOSHONE COUNTY, IDAHO
632009 04:18:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE CO.
PEGGY DELANGE-WHITE Pgs: 3-00
County Recorder Deputy
Office: QUITCLAIM DEED

2009 JUN 9 PM 4 16

ATTACHMENT A

STATE OF IDAHO
County of Shoshone

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE, SEALED ON THIS 6th **DAY OF**

May, 2010.
Carole Sumner
PEGGY WHITE, SHOSHONE COUNTY RECORDER
DEPUTY

PARCEL: RP C0050030007A

F14=HO

F17=DD

LEGAL DESCRIPTION

WATERS, PATRICK D
WATERS, DIANNE R

*TREND LOT 7 & 8
BLK 30
OSBURN 18-48-4
ProVal Area Number 1
CODE AREA 5-0000 OWNER CD
PARC TYPE LOC CODE 702
EFFDATE 1011980 EXPDATE
PREV PARCEL

PO BOX 488

OSBURN ID 83849
114 N FOURTH

83849

CAT/ST#	RY	QUANTITY	UN	VALUE	HO MRKT	HO EXMP	CB MRKT	OTHER
20 1	2007			25940	25940	12970		
41 1	2007			132910	132910	66455		

TOTALS

158850 158850 79425

ENTER NEXT PARCEL NUMBER RP _____ A

FKeys: F2=TX F3=Exit F5=SS F6=NM F7=LG
F8=CT F13=TM F18=HS F20=Srch F22=EU

ATTACHMENT B
302 PAGE 1 OF 1

STATE OF IDAHO
COUNTY OF SHOSHONE/SA
FILED

2010 MAY 24 PM 4:59

PEGGY WHITE
CLERK DIST. COURT
BY Ariel Elliott
DEPUTY
By Fax

HENRY D. MADSEN
MADSEN LAW OFFICES, PC
1859 N. Lakewood Drive, Suite 201.
Coeur d'Alene, Id 83814
Off: (208) 664-8080
Facsimile: (208) 664-6258
ISB #4428

Attorney for Defendants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Defendants.

) Case No. CV-08-497
)
) **NOTICE OF HEARING**
)
) **Date: July 12, 2010**
) **Time: 1:00 PM**
) **Judge: Fred Gibler**
)

Notice is hereby given that the Defendants, DAVID C. RANDEL and PAMELA L. RANDEL, by and through their attorney of record, HENRY D. MADSEN of MADSEN LAW OFFICES, PC, will call on for hearing their Motion to Put on Evidence and Testimony re Attorney Fees and Costs before the Honorable Fred Gibler, Magistrate Judge of the above Court, on the 12th day of July, 2010 at the hour of 1:00 p.m., or as soon thereafter as it may be heard at the Courthouse in Shoshone County, Idaho.

DATED this 24 day of May, 2010.

MADSEN LAW OFFICES, PC

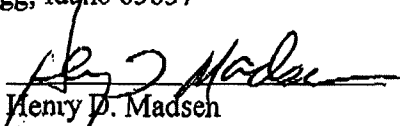
By: Henry D. Madsen
Henry D. Madsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of May, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Charles L. A. Cox
EVANS, KEANE
PO Box 659
Kellogg, Idaho 83837

- U.S. MAIL
- HAND DELIVERED
- FACSIMILE TO: 783-7601
- OVERNIGHT MAIL


Henry D. Madsen

2010 JUN 22 AM 10:08

PEGGY WHITE
CLERK DIST. COURT
BY *Bonnie Jhusen*
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Respondent.

CASE NO. CV-2008-497

OPINION RE: COSTS AND
ATTORNEY FEES

City of Osburn brought this lawsuit against the Randels alleging that structures built on the Randels' property were in violation of Osburn zoning ordinances. The Randels answered, and Osburn moved for summary judgment. The Randels filed affidavits in opposition to the motion for summary judgment. The Randels did not move for summary judgment. The motion for summary judgment was denied because genuine issues of material fact existed.

Thereafter a status conference was held where Osburn moved to dismiss the action, and the Randels did not object to the motion. On November 16, 2009 an order dismissing the case was entered. The Randels then moved for costs

and attorney fees pursuant to Idaho Code §§ 12-117, 12-120 and 12-121. The request for costs and attorney fees was denied.

The Randels have sought reconsideration of the denial of their request for costs and attorney fees and have raised two new issues. They base their claim on the "private attorney general" doctrine and *Straub v. Smith*, 145 Idaho 65, 175 P.3d 754 (2007).

To determine whether a party is entitled to an award of attorney fees under the private attorney general doctrine the court considers (1) the strength or societal importance of the public policy vindicated by the litigation; (2) the necessity for private enforcement and the resultant burden on the Randels; and (3) the number of people standing to benefit from the decision. *Harris v. State, Ex Rel. Kempthorne*, 147 Idaho 401, 210 P.3d 86 (2009). Under the private attorney general doctrine, the party claiming attorney fees cannot prevail if it is protecting its own economic interests. "It is not enough that the action results in benefits to the public; it must be pursued with the purpose of benefiting the public." *State v. Hagerman Water Right Owners Inc.*, 130 Idaho 718, 726, 947 P.2d 391(1997). Finally, there must be some resolution of the substantive issues before a decision on attorney fees can be reached. *Idaho Schools for Equal Educational Opportunity v. Idaho State Board of Education*, 128 Idaho 276, 912 P.2d 644 (1996).

In support of the private attorney general argument the Randels have submitted the affidavit of Henry Madsen which states that there are 863 parcels of property in Osburn, that Madsen has "viewed 200 parcels of the 863" and that

172 of the 200 parcels "included more than one lot number in their legal description." The Randels argument is that each of these parcels "clearly benefited" from the "Court's findings of fact and conclusions of law" because under Osburn's interpretation of the zoning ordinance "anyone who has a property legal description which includes more than one lot number, that individual would not be granted a building permit to construct a garage or storage unit unless the garage or storage unit would be constructed on the same lot number as that where the individual's residence was located."

The Randel's arguments do not entitle them to attorney fees under the private attorney general doctrine. There were no findings of fact and conclusions of law in the case. Summary judgment was denied because of the existence of genuine issues of material fact. Had the case gone to trial it is entirely possible that Osburn would have prevailed. The Randels have failed to show that any member of the public has benefited from the order granting the voluntary dismissal because there was no resolution of any substantive issue.

The Randels argument that 172 other property owners in Osburn benefited from the order of dismissal is not established. This argument assumes that 172 property owners desire to build a garage or outbuilding on their property in violation of Osburn's interpretation of the zoning ordinance. This assumes too much. In any event, it does not establish "the number of people standing to benefit from the decision."

The Randels have failed to establish “the strength or societal importance of the public policy vindicated by the litigation.”¹ The presumed desire of 172 property owners to build garages or outbuildings on a specific portion of their property hardly compares to reapportionment of the legislature in *Hellar v. Cenarrusa*, 106 Idaho 571, 628 P.2d 524 (1984).

Finally, the Randels have failed to satisfy the requirement that they are public interest litigants and that their defense of the lawsuit was done with the purpose of benefiting the public. Nothing was presented in the Randels answer to the complaint, the opposition to the motion for summary judgment or in their initial request for attorney fees to suggest that they were acting with the purpose to benefit the public. It was not until after the request for attorney fees was denied that this issue was raised.

The Randels also seek relief based on *Straub v. Smith, supra.*, which deals with the “prevailing party” issue. A reading of *Straub and Eighteen Mile Ranch v. Nord Excavating*, 141 Idaho 716, 117 P.3d 130 (2005) shows that the Randels did prevail in the sense that their defense of the lawsuit and motion for summary judgment resulted in a voluntary dismissal of the complaint. The Randels are entitled to an award of costs. This does not mean they are entitled to attorney fees however. In *Straub and Eighteen Mile Ranch*, attorney fees were awarded pursuant to I.C. § 12-120(3) which mandates an award of attorney

¹ Some of the Idaho reported decisions state that the test involves the public policy “indicated” by the litigation. As pointed out in *State v. Hagerman Water Right Owners Inc., supra*, the test involves the public policy “vindicated” by the litigation. *Id.* 130 Idaho at 723-24, fn.4.

fees in a case involving a commercial transaction. This case does not involve a commercial transaction.

The Randels seek attorney fees pursuant to I.C. §§ 12-117 and 12-121 both of which require a finding that the action was pursued frivolously or without foundation by Osburn. Having considered the positions of the parties and the issues raised on summary judgment the court remains convinced that the action was not brought frivolously or without foundation.

The Randels are entitled to costs as a matter of right of \$58 for the filing fee. They seek \$274 for copying costs and recording fees as a matter of right. Under Idaho Rule of Civil Procedure 54(d)(1)(C) a prevailing party is entitled to expenses or charges of certified copies of documents admitted in a hearing in the action. Certain documents were attached to the Randels affidavits in opposition to the motion for summary judgment. It is impossible to discern from the record how much, if any, of the \$274 claimed is awardable under the rule. The Randels seek other copying costs, postage costs and paralegal fees. Such costs are not awardable as a matter of right under Rule 54. To the extent that these costs are claimed as discretionary costs under the rule, the claim is denied. While such costs may have been "necessary" they are not "exceptional" as required under Rule 54(d)(1)(D).

The Randels have requested a hearing on July 12, 2010 for the purpose of presenting the testimony of Diane Waters, an Osburn resident who was allegedly denied a building permit under circumstances similar to the Randels. They also propose to present testimony from the Osburn City Clerk to establish

the reasons for the denial of the permit to Waters and to Anthony and Tina Dechand. Such a hearing is unnecessary. Even if the reasons asserted regarding these two property owners denial of a building permit are correct—that they were denied permits for the same reasons as the Randels—the analysis of the Randels claim for attorney fees would not change. Specifically, the requirements for application of the private attorney general doctrine would not be met.

IT IS THEREFORE ORDERED:

1. The Randels are entitled to costs of \$58;
2. The Randels' claim for attorney fees is denied;
3. The Randels' request for an evidentiary hearing on July 12, 2010 is denied; and
4. Counsel for the Randels is directed to prepare a judgment consistent with the terms of this order for presentation to the court.

DATED this 22nd day of June, 2010.



FRED M. GIBLER, District Judge

I hereby certify a true and correct copy of the foregoing was mailed, postage prepaid, this 2nd day of June, 2010, to the following:

Charles L.A. Cox
Evans, Keane
111 Main St.
PO Box 659
Kellogg, ID 83837

Henry D. Madsen
Madsen Law Offices, PC
1859 N. Lakewood Dr.,
Coeur d'Alene, ID 83814

PEGGY WHITE, Clerk of Court

By: Bonnie Johnson
Deputy Clerk

2010 AUG -3 PM 4:46

PEGGY WHITE
CLERK DIST. COURT
BY Marla Anson
DEPUTY

HENRY D. MADSEN
MADSEN LAW OFFICES, PC
1859 N. Lakewood Dr.,
Coeur d'Alene, ID 83814
Telephone: (208) 664-8080
Facsimile: (208) 664-6258
ISBA# 4428

Attorney for Defendants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,

Plaintiff,

vs.

DAVID C. RANDEL and PAMELA L.
RANDEL, husband and wife,

Defendants.

CASE NO. CV-08-497

NOTICE OF APPEAL

TO: THE ABOVE NAMED PLAINTIFF CITY OF OSBURN, AND THEIR ATTORNEY,
CHARLES COX, AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, DAVID C. RANDEL and PAMELA L. RANDEL,
husband and wife, appeal against the above named Plaintiff, CITY OF OSBURN to the Idaho
Supreme Court from the Opinion RE: Costs and Attorney Fees entered on or about the 22nd day
of June, 2010, Honorable Judge Fred Gibler presiding.

 ORIGINAL

2. That the parties have a right to appeal to the Idaho Supreme Court, and the judgments or orders described in Paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1).

3. A preliminary statement of the issues on appeal which the Appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal.

a. Did the court err by vacating Defendant's hearing to put on evidence in support of attorney's fees and costs?

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

5. The entire reporter's standard transcript of all hearings is requested. Said hearings occurred on January 12, 2009; November 6, 2009 and January 11, 2010, March 8, 2010, and June 28, 2010.

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

- a. Defendant's Memorandum of Costs and Fees
- b. Memorandum in Opposition to Defendant's Memorandum of Costs and Fees
- c. Amended Defendant's Memorandum of Costs and Fees
- d. Affidavit of Henry D. Madsen In Support of Memo of Costs and Fees
- e. Motion for New Trial and/or Open the Judgment to Amend
- f. Objection to Randels' Motions for a New Trial and Additional Testimony
- g. Memorandum in Support of Attorney Fees/Costs

- h. Affidavit of Henry D. Madsen in Support of Memorandum of Attorney Fees/Costs
 - i. Response to Defendants Randels' Affidavit
 - j. Rebuttal Memorandum In Support of Attorney Fees and Costs
 - k. Motion To Put On Evidence and Testimony Re Attorney Fees and Costs
 - l. Affidavit of Henry D Madsen In Support of Motion To Put On Evidence and Testimony Re Attorney Fees and Costs
 - m. Notice Of Hearing
 - n. Opinion RE: Costs and Attorney Fees
7. I certify:
- a. That a copy of this Notice of Appeal has been served on the reporter.
 - b. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.
 - c. That the estimated fee for preparation of the clerk's record has been paid.
 - d. That the appellate filing fee has been paid.
 - (e) That service has been made upon all parties required to be served pursuant to Rule 20, of the Idaho Appellate Rules

DATED this 31st day of August, 2010.

MADSEN LAW OFFICES, P.C.
Attorneys for Appellant

By: _____

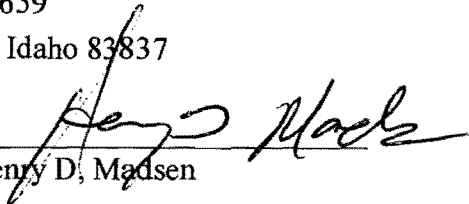

Henry D. Madsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31 day of August, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Charles L. A. Cox
EVANS, KEANE
PO Box 659
Kellogg, Idaho 83837

- U.S. Mail
- Hand Delivered
- Facsimile to:
- Overnight Mail


Henry D. Madsen

STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED

2010 SEP -3 PM 12:46

TO: Clerk of the Court
Idaho Supreme Court
P.O. Box 83720
Boise, ID 83720-0101

PEGGY WHITE
CLERK DIST. COURT
BY *Mark Anderson*
DEPUTY

DOCKET NO. 37965-2010

(CITY OF OSBURN
(
(vs.
(
(DAVID C. RANDEL and PAMELA L.
(RANDEL, husband and wife

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on Lodging date, I lodged a transcript of 38 pages in length for the above-referenced appeal with the District Court Clerk of the County of Shoshone in the First Judicial District. I have lodged all assigned appellate transcript(s) requested in the Notice of Appeal.

- 1/12/09, Summary judgment hearing
- 11/16/09, Status hearing
- 1/11/10, Motion hearing
- 3/8/10, Motion hearing

Byrl Cinnamon

Byrl Cinnamon

Lodging date

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,)
)
 Plaintiff-Respondent,)
)
)
 vs.)
)
 DAVID C RANDEL and PAMELA)
 L RANDEL, Husband and Wife,)
)
 Defendants-Appellants.)
 _____)
 State of Idaho)
 County of Shoshone)

SUPREME COURT NO. 37965-2010
 DISTRICT COURT NO. CV-2008-497

CLERK'S CERTIFICATE

I, PEGGY WHITE, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents required by Appellate Rule 28, as well as those additionally requested in the Notice of Appeal.

I FURTHER CERTIFY that the Court Reporter's Transcript will be duly lodged with the Clerk of the Supreme Court along with the Clerk's Record in the above entitled cause of action.

I FURTHER CERTIFY that there were no exhibits which were marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Wallace, Idaho this 11th day of November, 2010.

PEGGY WHITE, Clerk District Court

By Mala Anson Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

CITY OF OSBURN,)
)
 Plaintiff-Respondent,)
)
)
 vs.)
)
 DAVID C RANDEL and PAMELA)
 L RANDEL, Husband and Wife,)
)
 Defendants-Appellants.)
 _____)

SUPREME COURT NO. 37965-2010
DISTRICT COURT NO. CV-2008-497

NOTICE OF COMPLETION

TO: **STEPHEN W. KENYON**, Clerk of Supreme Court; **HENRY MADSEN** for the Appellant and **CHARLES COX** for the Respondent:

YOU ARE HEREBY NOTIFIED that I have personally served or mailed, by certified United States mail, one copy of the Clerks Record (consisting of two volumes) and one copy of the Court Reporter's Transcript in the above entitled cause upon each of the following:

HENRY MADSEN
Attorney at Law
1859 Lake Harbor Lane
Coeur d'Alene ID 83814

CHARLES L.A. COX
Attorney at Law
PO Box 659
Kellogg ID 83837

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from this date in which to file objections to the Record, including requests for corrections, additions or deletions. In the event no objections are filed within the twenty-eight day period, the Record shall be deemed settled.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 12th day of November, 2010.