

3-23-2011

# City of Osburn v. Randel Augmentation Record Dckt. 37965

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## Recommended Citation

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[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2797](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2797)

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# In the Supreme Court of the State of Idaho

LAW CLERK

CITY OF OSBURN,

Plaintiff-Respondent,

v.

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

Defendants-Appellants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

ORDER GRANTING MOTION TO  
AUGMENT THE RECORD

Supreme Court Docket No. 37965-2010  
Shoshone County Docket No. 2008-497

A MOTION TO AUGMENT was filed by counsel for Appellants on March 21, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Judgment Nunc Pro Tunc, file-stamped March 16, 2011.

DATED this 23 day of March 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

## AUGMENTATION RECORD

ORDER GRANTING MOTION TO AUGMENT THE RECORD – Docket No. 37965-2010

# In the Supreme Court of the State of Idaho

CITY OF OSBURN, )  
)  
Plaintiff-Respondent, ) ORDER GRANTING MOTION TO  
) AUGMENT  
v. )  
) Supreme Court Docket No. 37965-2010  
DAVID C. RANDEL and, PAMELA L. ) Shoshone County Docket No. 2008-497  
RANDEL, husband and wife, )  
)  
Defendants-Appellants. )

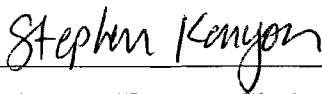
A MOTION TO AUGMENT was filed by counsel for Appellants on March 28, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Motion for Summary Judgment, file-stamped November 26, 2008;
2. Affidavit of Nila L. Jurkovich, file-stamped November 26, 2008;
3. Objection to Plaintiffs Motion for Summary Judgment, file-stamped December 16, 2008;
4. Affidavit in Support of Brief in Opposition to Plaintiff's Motion for Summary Judgment, file-stamped December 16, 2008;
5. Affidavit in Support of Brief in Opposition to Plaintiff's Motion for Summary Judgment; file-stamped December 16, 2008;
6. Affidavit in Support of Brief in Opposition to Plaintiff's Motion for Summary Judgment with attachments, file-stamped December 16, 2008; and
7. Affidavit in Support of Brief in Opposition to Plaintiff's Motion for Summary Judgment, file-stamped December 17, 2008.

DATED this 1<sup>st</sup> day of ~~March~~ <sup>April</sup> 2011.

For the Supreme Court

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 NOV 26 PM 2: 34

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

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

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.	)	MOTION FOR SUMMARY JUDGMENT
	)	
DAVID C. RANDEL and PAMELA L.	)	
RANDEL, husband and wife,	)	
	)	
Defendants.	)	
	)	

Comes Now City of Osburn, by and through its attorney,  
Charles L. A. Cox of Evans, pursuant to Idaho Rule of Civil  
Procedure 56(a), and move for summary judgment in favor of City  
of Osburn and against David C. Randel and Pamela L. Randel,  
husband and wife.

This motion is supported by the Affidavit of Nila L.  
Jurkovich filed concurrently herewith.

Oral argument is requested at hearing.

DATED this 25<sup>th</sup> day of November, 2008.


EVANS, KEANE

By *Charles L. A. Cox*  
Charles L. A. Cox  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT to be mailed by first-class mail, postage prepaid, to the following-named attorney this 28<sup>th</sup> day of November, 2008:

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

  
\_\_\_\_\_  
Charles L.A. Cox

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 NOV 26 PM 2:34

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

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

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.	)	AFFIDAVIT OF NILA L. JURKOVICH
	)	
DAVID C. RANDEL and PAMELA L.	)	
RANDEL, husband and wife,	)	
	)	
Defendants.	)	
	)	

STATE OF IDAHO )  
County of Shoshone ) ss.

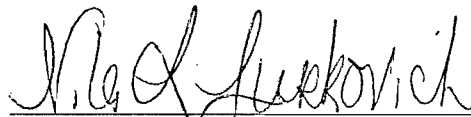
Nila L. Jurkovich, being first duly sworn on her oath,  
deposes and says:

1. I am over the age of eighteen (18) years and have personal knowledge of the facts contained herein.
2. I am employed by the City of Osburn.
3. At all relevant times, I was the City Clerk/Treasurer for plaintiff, City of Osburn.
4. I have reviewed the defendants' Answer to Complaint.

5. The defendants are in violation of the Zoning Ordinance by placing storage buildings on lots adjacent to their home.

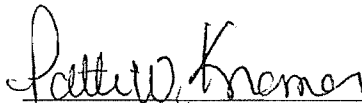
6. Defendants own lots 15 and 16, situated at 1263 East Larch, Osburn, Idaho. The defendants' residence is on lot 15. On or about July, 2007, defendants unlawfully caused to be erected or constructed two (2) storage sheds on lot 16. Osburn City ordinances do not allow for accessory uses, such as storage sheds without a primary building or residence also being constructed on the same lot.

7. The two lots owned by defendants are platted on the subdivision as two separate lots and there has been no amendment to the plat.



Nila L. Jurkovich, CMC  
Clerk/Treasurer

Subscribed and sworn to before me this 25<sup>th</sup> day of November, 2008.



Notary Public for the State of Idaho  
My Commission Expires: 09-05-09

PATTI W. KROMER  
NOTARY PUBLIC  
STATE OF IDAHO

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 DEC 16 PM 4:52

PEGGY WHITE  
CLERK DIST. COURT  
BY *[Signature]*  
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

**OBJECTION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Defendants, DAVID C. RANDEL and PAMELA L. RANDEL, by and through their attorney of record, Henry D. Madsen of the law firm Madsen Law Offices, PC and hereby objects to Plaintiff's Motion for Summary Judgment and the statements in the Affidavit of Nila L. Jurkovich.

This objection is made for the reason and upon the grounds that the above documents lack foundation. Further, said objection is based upon the Affidavit of David Randel, the Affidavit of Pamela Randel, and the Affidavit of J. Chris Pfahl, and



attachments thereto in support hereof, which Affidavits are attached hereon and by reference made a part hereof.

DATED this 16 day of December, 2008.

Madsen Law Offices, PC

By: Henry D. Madsen  
Henry D. Madsen

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of December, 2008, 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  
Henry D. Madsen

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 DEC 16 PM 5:09

PEGGY WHITE  
CLERK DIST. COURT  
BY *Donnie 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 IN SUPPORT OF BRIEF IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO            )  
  ).ss.  
County of Shoshone        )

David C. Randel, being first duly sworn upon oath, deposes and says:

1. That I make this Affidavit based upon my own personal knowledge, information and belief.
2. That I am the Defendant named in the above-entitled matter.

3. A Complaint for Violation of Osburn City Zoning Ordinance was filed against me on August 11, 2008 which alleged that I was in violation of said Ordinance due to the construction of a temporary storage building upon my property located at and commonly described as 1263 E. Larch Ave., Osburn, Idaho 83849.

4. That my wife and I purchased said property, hereinafter Randel property, on November 18, 2004 at which time we were given a Warranty Deed, Attached hereon as Exhibit A and by reference herein made a part hereof.

5. That I have always been under information and belief that the Randel property was one parcel made up of lots and portions of lots.

6. That the Randel property falls under the one address stated above.

7. That the tax assessments for the Randel property have always come under one parcel number of RP C0200006015A A, see "2008 ASSESSMENT NOTICE", "PARCEL MASTER INQUIRY", and "2006 ASSESSMENT NOTICE" attached as Exhibits B1-3 hereon and by reference made a part hereof.

8. That before constructing the temporary building at issue, your affiant called and spoke to Nila Jurkovich, city clerk for the City of Osburn, with regard the need for a building permit and was referred to the building inspector, Dale Fletcher who, after giving him a full disclosure of the nature of the project, stated a building permit would not be needed, see letter City of Osburn attached hereon as Exhibit C.

9. That your affiant additionally bases his information and belief that Randel's property is one inclusive parcel on a prior conversation he had with Ms. Jurkovich with regard the possibility

of selling some of the Randel property- what is referred to as lot 16 of the legal description of Exhibits A and F. and was told by Ms. Jurkovich that the Randel property, above commonly describe and as further described in attachments A, B1-3, and F, was one piece of property and could not be sold unless subdivided, see letters of August 19 and 27 between your affiant and Ms. Jurkovich attached as Exhibits D and E hereon and by reference made a part hereof.

10. That as a result of a boundary dispute with a neighbor, your affiant had to hire Silver Valley Engineering to rewrite the legal description to exclude property which was not owned by Randels but was included in their original Warranty Deed.

11. That Bill Drake of Silver Valley Engineering, engineered the correct legal description for the Randel property commonly described above, which was recorded as instrument #447614, a copy of which is attached as Exhibit F hereon and by reference made a part hereof.

12. That it is your affiant's understanding and belief that Randels own one inclusive part and parcel of property to include lots and parts of lots.

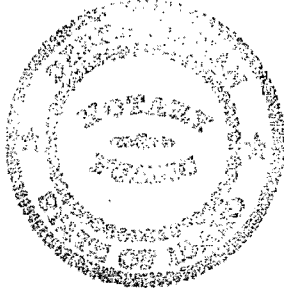
Further your affiant sayeth naught.

DATED this 16 day of December, 2008.



David C. Randel  
Defendant

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of December, 2008.



*Debra Hanan*

Notary Public in and for Idaho  
Residing at: *Kellogg, ID*  
Commission Expires: *Sept. 22, 2012*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the *16* day of December, 2008, 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

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 DEC 16 PM 5:10

PEGGY WHITE  
CLERK DIST. COURT  
BY *David 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 IN SUPPORT OF BRIEF IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO )  
 ) ss.  
County of Shoshone )

Pamela L. Randel, being first duly sworn upon oath, deposes and says:

1. That I make this Affidavit based upon my own personal knowledge, information and belief.
2. That I am the Defendant named in the above-entitled matter.

3. A Complaint for Violation of Osburn City Zoning Ordinance was filed against me on August 11, 2008 which alleged that I was in violation of said Ordinance due to the construction of a temporary storage building upon my property located at and commonly described as 1263 E. Larch Ave., Osburn, Idaho 83849.

4. That my husband and I purchased said property, hereinafter the Randel property, on November 18, 2004 at which time we were given a Warranty Deed, Attached hereon as Exhibit A and by reference herein made a part hereof.

5. That I have always been under information and belief that the Randel property was one parcel made up of lots and portions of lots.

6. That all the Randel property falls under the one address stated above.

7. That the tax assessments for the Randel property have always come under one parcel number of RP C0200006015A A, see "2008 ASSESSMENT NOTICE", "PARCEL MASTER INQUIRY", and "2006 ASSESSMENT NOTICE" attached as Exhibits B1-3 hereon and by reference made a part hereof.

8. That before constructing the temporary building at issue, your affiant's husband called and spoke to Nila Jurkovich, city clerk for the City of Osburn, with regard the need for a building permit and was referred to the building inspector, Dale Fletcher who, after giving him a full disclosure of the nature of the project, stated a building permit would not be needed, see letter City of Osburn attached hereon as Exhibit C.

9. That your affiant additionally bases her information and belief that Randel's property is one inclusive parcel on a prior conversation her husband had with Ms. Jurkovich with regard the

possibility of selling some of the Randel property- what is referred to as lot 16 of the legal description of Exhibits A and F. Your affiant was involved with the potential sale of some of the Randel property with her husband and had privy to all information at all times with regard said sale. Randels were told by Ms. Jurkovich that the Randael property, above commonly describe and as further described in attachments A, B1-3, and F, was one piece of property and could not be sold unless subdivided, see letters of August 19 and 27 between your affiant's husband and Ms. Jurkovich attached as Exhibits D and E hereon and by reference made a part hereof.

10. That as a result of a boundary dispute with a neighbor, your affiant had to hire Silver Valley Engineering to rewrite the legal description with regard the Randel property to exclude property which was not owned by Randels but was included in their original Warranty Deed.

11. That Bill Drake of Silver Valley Engineering, engineered the correct legal description for the Randel property commonly described above, which was recorded as instrument #447614, a copy of which is attached as Exhibit F hereon and by reference made a part hereof.

12. That it is your affiant's understanding and belief that Randels own one inclusive part and parcel of property to include lots and parts of lots.

Further your affiant sayeth naught.

DATED this 16 day of December, 2008.

Pamela Lee Randel  
PAMELA L. RANDEL  
Defendant



SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of December, 2008.



*Debra Hansen*

Notary Public in and for Idaho

Residing at: *Kellogg, ID*

Commission Expires: *Sept. 22, 2012*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of December, 2008, 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

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 DEC 16 PM 5:12

PEGGY WHITE  
CLERK DIST. COURT  
BY *Henry D. Madsen*  
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 IN SUPPORT OF BRIEF IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO            )  
                                  ) ss.  
County of Shoshone        )

J. Chris Pfahl, being first duly sworn upon oath, deposes and says:

1. That I make this Affidavit based upon my own personal knowledge, information and belief.
2. That I am a Professional Land Surveyor in the State of Idaho.

3. That I was engaged by David and Pamela Randel to rewrite their legal description of their property based on settlement of a boundary dispute and determination that part of the legal description attached to their Warranty Deed, a copy of which is attached hereon as Exhibit A, was incorrect.

4. As a Professional Land Surveyor, I survey land and give my opinion as to the correct legal description of land according to my survey as well as records historically kept in the offices of Shoshone County.

5. That based on my education, experience, and the records of Shoshone County, I drafted the correct legal description for the Randel property attached as Exhibit F hereon.

5. That based on my education and training and the records kept at the offices of Shoshone County, it is my opinion that the property description set forth in Exhibit F describes one inclusive parcel of property and not several parcels.

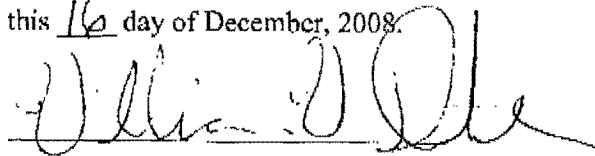
Further your affiant sayeth naught.

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

  
J. Chris Pfahl, PLS

SUBSCRIBED AND SWORN to before me this 16 day of December, 2008.

WILLIAM W. DRAKE  
NOTARY PUBLIC  
STATE OF IDAHO



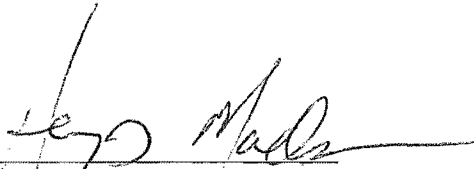
Notary Public in and for Idaho  
Residing at: *Waller*  
Commission Expires: *Feb 26, 2013*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of December, 2008, 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



Order No.: 204043148

420553

420777

LEGAL DESCRIPTION

EXHIBIT 'A'

EXHIBIT A

PARCEL 1:

The Northwesterly 93 feet of Lot 15, Block 6, Dunkles Third Addition, Shoshone County, State of Idaho according to the official and recorded plat thereof.

EXCEPT the Northwesterly 9 feet of said Lot 15. Said Northwesterly 93 feet and Northwesterly 9 feet to be measured parallel with and at right angles to the lot line common to Lots 14 and 15 of said Block 6.

PARCEL 2:

All that portion of the Southwest quarter Northwest quarter of Section 20, Township 48 North, Range 4 East, B.M., Shoshone County, State of Idaho described as follows:

Beginning at a point on the Southwesterly line of Lot 15, Block 6, Dunkles Third Addition, Shoshone County, State of Idaho according to the official and recorded plat thereof from whence Corner No. 1 of said Dunkles Third Addition bears South 62°04' East, 257.96 feet distant; thence

South 39°28' West, 73.44 feet distant to a point, a piece of drill steel; thence

North 50°32' West, 84.00 feet distant to a point, a piece of drill steel; thence

North 39°28' East, 56.31 feet distant to a point; thence

South 62°04' East, 85.73 feet distant to the point of beginning.

PARCEL 3:

A parcel of land situated in Section 20, Township 48 North, Range 4 East, B.M., Shoshone County, Idaho and comprised of the Easterly 7.00 feet of Lot 15 and the Westerly 77.00 feet of Lot 16, Block 6, Dunkles Third Addition to Osburn.

Also, a parcel beginning at the Southwest corner of the Westerly 77.00 feet of Lot 16, Block 6, Dunkles Third Addition to Osburn, from whence Corner No. 1 of said Dunkles Third Addition bears South 62°04' East, 172.13 feet distant; thence

420777

South 39°28' West, 90.58 feet distant to a point, a piece of drill steel; thence  
North 50°32' West, 84.00 feet distant to a point, a piece of drill steel; thence  
North 39°28' East, 73.44 feet distant to a point; thence  
South 62°04' East, 85.73 feet distant to the point of beginning.

RECORDED  
at the request of

420553

ALLIANCE TITLE CO.  
in

DEEDS  
Return to:

ALLIANCE TITLE CO.  
WALLACE, ID 83873

2004 NOV 26 PM 3 51

Fee \$ 9.00

PEGGY WHITE  
SHOSHONE CITY RECORDER  
*(Signature)*

JERRY WHITE  
 SHOSHONE COUNTY ASSESSOR  
 700 BANK STREET - SUITE 100  
 WALLACE, IDAHO 83873-2348  
 (208) 752-1202

2008

**ASSESSMENT NOTICE**

RANDEL DAVID C  
 PO BOX 2068  
 OSBURN ID 83849-2068



For any questions, please notify the Assessor's Office immediately  
 Assessor's Telephone Number: (208) 752-1202

1/1 Appeals of your property value must be filed in writing on a form  
 provided by the County Commissioners by:

**JUNE 23, 2008 5:00PM**

See back of this notice for more information.

**Parcel Description:** LOT 15 LESS W 9' & PRT LOT 16  
 AND ADJ STRIP BLK 6  
 DUNKLES THIRD ADD 20-48-4

Parcel Number: RP C0200006015A A

Tax Code Area: 5-0000

Parcel Address: 1263 E LARCH 83849

**ASSESSED VALUE OF YOUR PROPERTY**

CURRENT CATEGORY AND DESCRIPTION	LOTS/ACRES	LAST YEAR'S VALUE	CURRENT YEAR'S VALUE
20 RES LOTS	.200 AC		30,590
41 RES BLDG			141,503
SUBTOTAL:		.200	172,093
LESS HOMEOWNER'S EXEMPTION:			86,047
NET TAXABLE PROPERTY VALUES:			86,046

Taxes are calculated on the values shown on this Notice & based on the budgets of the various taxing districts listed below.

**BUDGET HEARING INFORMATION**

TAXING DISTRICTS	LAST YEAR'S TAXES	PHONE NUMBER	DATE OF PUBLIC BUDGET HEARING
COUNTY		752-3331	09/02/2008
OSBURN		752-0001	08/26/2008
SCHL #393 BOND		753-4515	06/09/2008
SCHL #393 SUPP		753-4515	06/09/2008
FIRE DISTRICT 1		752-1101	08/27/2008
E SHOSHONE HOSP		752-1264	08/20/2008
TOTAL PROPERTY TAXES:			
TOTAL FEES:			
TOTAL PROPERTY TAXES & FEES:			

THIS IS NOT A BILL. DO NOT PAY.

See the back of this Notice for details.

**EXHIBIT B-1**  
**PAGE 1 OF 1**



PARCEL: RP C0200006015A A

F14=HO

F17=DD

RANDEL, DAVID C

\*TREND

LEGAL DESCRIPTION

LOT 15 LESS W 9' & PRT LOT 16  
AND ADJ STRIP BLK 6  
DUNKLES THIRD ADD 20-48-4

PO BOX 2068

ProVal Area Number 1

CODE AREA 5-0000 OWNER CD

PARC TYPE LOC CODE 702

OSBURN ID 83849

EFFDATE 1011980 EXPDATE

1263 E LARCH

83849

PREV PARCEL

CAT	RY	QUANTITY	UN	VALUE	HO MRKT	HO EXMP	CB MRKT	OTHER
20	2007	463	AC	30710	30710	15355	30710	
41	2007			141503	141503	70752	141503	

TOTALS

463

172213

172213

86107

172213

ENTER NEXT PARCEL NUMBER RP

A

FKeys:

F2=TX

F3=Exit

F6=NM

F7=LG

F8=CT

F13=TM

F18=HS

F20=SrcH

EXHIBIT

B2

PAGE 1 OF 1

JERRY WHITE

2006

THIS IS NOT A BILL.  
DO NOT PAY.

SHOSHONE COUNTY ASSESSOR  
700 BANK STREET - SUITE 100  
WALLACE, IDAHO 83873-2348

ASSESSMENT NOTICE

PARCEL DESCRIPTION:  
LOT 15, LESS W. 19' & PRT LOT 16  
AND ADJ. STRIP  
BLK. 6  
DUNKLES THIRD ADD.

For any questions, please notify  
the Assessor's office immediately.  
Assessor's telephone#: (208) 752-1202

PARCEL ADDRESS:  
1263 E LARCH 83849

RANDEL DAVID C & PAMELA L  
PO BOX 2068  
OSBURN ID 83849

Appeals of your property value must  
be filed in writing on a form provided  
by the County, by:  
JUNE 26, 2006

Tax Code Area: 5-0000

Parcel Number: RPC0200006015A A

ASSESSED VALUE OF YOUR PROPERTY

CATEGORY AND DESCRIPTION	LOTS/ACRES	LAST YEAR'S VALUE	CURRENT YEAR'S VALUE
20 RES LOTS 41 RES BLDG	.450 AC	17,663 91,213	21,488 113,536
<b>SUBTOTAL:</b>	.450	108,876	135,024
<b>LESS HOMEOWNERS EXEMPTION:</b>		45,607	67,512
<b>NET TAXABLE PROPERTY VALUE:</b>		63,269	67,512

TAXING DISTRICT INFORMATION

TAXING DISTRICTS	LAST YEAR'S TAXES	PHONE NUMBER	DATE OF PUBLIC BUDGET HEARING
COUNTY		752-1264	09/05/2006
OSBURN		752-0001	08/29/2006
SCHOOL #393		753-4515	06/12/2006
FIRE DISTRICT 1		752-1101	08/30/2006
E SHOSHONE HOSP		752-1248	08/16/2006
<b>SUBTOTAL:</b>			
<b>+ FEES:</b>			
<b>= TOTAL:</b>			

THIS IS NOT A BILL. DO NOT PAY.

EXHIBIT B3  
PAGE 1 OF 1

City of Osburn  
P.O. Box 865  
Osburn, ID 83849  
August 23, 2007

Re: Letter of 8-16-2007

Yes, we did add two (2) temporary storage buildings to the side yard of our property at 1263 East Larch Avenue, Osburn, ID.

Our side yard is large enough to accommodate them.

Your comments to the effect that the zoning ordinance does not allow for our using our side yard does not make sense.

We have one piece of property that was already one piece of property when we purchased it. The fact that it may have been comprised of three or more formerly platted lots at some time during it's history is moot. We purchased one piece of property and received one deed, it is so recorded in the official record at the county. Had we purchased three separate lots we would have received three separate deeds and would be so recorded at the county.

We do not wish to belabor this point, as it is moot. The buildings are temporary, and as such are exempt, according to the building inspector, from the sections you refer to.

Prior to the purchasing of our temporary storage, we checked with Nila to determine if a building permit would be required. Nila referred us to the building inspector, Dale Fletcher. We explained to the building inspector about wanting to make sure that we comply with the zoning ordinance. He was very helpful and after giving him a description of what we planned he assured us that since the buildings are "temporary" there would be no need for a permit or inspection and are not classified as "accessory buildings".

We hope that this fully explains our situation and our full compliance to our Osburn Zoning Ordinance.

Thank you,

*David Randel*      *Pamela Lee Randel*

David & Pamela Randel

1263 East Larch Avenue  
P.O. Box 2068  
Osburn, ID 83849-2068

(208) 556-0942

**DAVID & PAMELA RANDEL**

City of Osburn  
P.O. Box 865  
Osburn, ID 83849  
August 19, 2008

Attn: Nila

A while ago I spoke to you about the possibility of selling a portion of my property. You said something about having to sub-divide or filing something to do with small subdivision, I can't quite remember.

Would you please refresh my memory and also provide me with the proper form or information necessary.

Thank you,

*David Randel*  
David Randel

1263 East Larch Avenue  
P.O. Box 2068  
Osburn, ID 83849-2068  
(208) 556-0912

EXHIBIT

PAGE 1 OF 1

August 27, 2008

Mr. David Randel  
P.O. Box 2068  
Osburn, Idaho 83849

Re: Subdivision Application

Dear Mr. Randel:

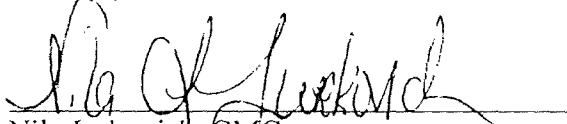
This is in response to your letter I received on August 21<sup>st</sup> regarding the process of subdividing your property.

I am enclosing an application for subdivision. The City has two (2) types of subdivisions, a major subdivision would involve five or more splits and a minor subdivision would involve four or less splits.

This process would involve public hearings with legal notices published in the paper along with the City mailing out notices as required by Idaho Code.

The fee to file an application for a major subdivision is \$1,000 and the fee for a minor subdivision application is \$500.00. Both of these subdivision applications also require a deposit for engineering and plan check fees that will be incurred by the City which would be required at the time an application is submitted to the City.

Sincerely,

  
Nila Jurkovich, CMC  
Clerk/Treasurer

Enc.



**Legal Description**  
**Portion of Lots 15 and 16 of Block 6 of Dunkle's Third Addition to**  
**Osburn and**  
**Portion of Section 20, Township 48 North, Range 4 East B.M.,**  
**Shoshone County, Idaho**

A tract of land being a portion of Lots 15 and 16 of Block 6 of Dunkle's Third Addition to Osburn and portion of Section 20, Township 48 North, Range 4 East B.M., Shoshone County, Idaho, based on Record of Survey recorded as Instrument #362027; more particularly described as follows:

Beginning at a point on the southerly line of said Block 6 of Dunkle's Third Addition from which Corner 1 of said Dunkle's Third Addition bears S62°04'00"E a distance of 182.85 feet;

Thence S39°41'02"W a distance of 88.42 feet to a point;

Thence N50°32'00"W a distance of 157.07 feet to a point;

Thence N39°57'58"E a distance of 125.02 feet to a point on the southwesterly right-of-way of Larch Street;

Thence S50°32'00"E along said right-of-way a distance of 156.45 feet to a point;

Thence S39°41'02"W a distance of 36.59 feet to the true point-of-beginning.

DAVID C. RANDEL  
 PO BOX 2068  
 OSBURN, ID 83849

447614

2008 OCT 6 PM 4 09

**Instrument # 447614**  
 WALLACE, SHOSHONE COUNTY, IDAHO  
 10-8-2008 04:09:00 No. of Pages: 2  
 Recorded for : DAVID C. RANDEL  
 PEGGY DELANGE-WHITE Fee: 6.00  
 Ex-Officio Recorder Deputy *[Signature]*  
 Index to: QUITCLAIM DEED

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2008 DEC 17 AM 10:51

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 IN SUPPORT OF BRIEF IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO            )  
  ) ss.  
County of Shoshone        )

Jerry White, being first duly sworn upon oath, deposes and says:

1. That I make this Affidavit based upon my own personal knowledge, information and belief.
2. That I am the Shoshone County Assessor.

3. That as part of my duties as Assessor I am responsible for keeping the business records during the ordinary course of business at the Shoshone County Assessor's Office.

4. That attached as Exhibits A and B1-3 are true and correct copies of the business records kept in the ordinary course of doing business at the Shoshone County Assessor's Office.

5. That the parcel of land described in Exhibits A and B1-3 is one parcel of land with one parcel number of RP C0200006015A A comprised of several lots and portions of lots.

6. That the Randel property is assessed as one parcel.

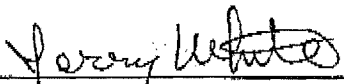
7. That there are no other assessments with regard the property descriptions set out in the attachments.

8. That although said property descriptions contain language specifically referring to lots, it is your affiant's opinion that said language only describes the included land within the one parcel and does not create separate parcels of land although the property could be subdivided through the appropriate process.

9. That it is your affiant's understanding and belief that Randels own one inclusive part and parcel of property to include lots and parts of lots.

Further your affiant sayeth naught.

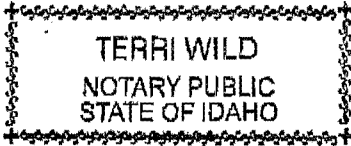
DATED this 17 day of December, 2008.

  
\_\_\_\_\_  
JERRY WHITE



SHOSHONE COUNTY ASSESSOR

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of December, 2008.



Terrill Wild  
Notary Public in and for Idaho  
Residing at: Silverton  
Commission Expires: May 13, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of December, 2008, 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  
Henry D. Madsen

# In the Supreme Court of the State of Idaho

CITY OF OSBURN,

Plaintiff-Respondent,

v.

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

Defendants-Appellants.

)  
)  
) ORDER GRANTING MOTION TO  
) AUGMENT THE RECORD

)  
) Supreme Court Docket No. 37965-2010  
) Shoshone County Docket No. 2008-497

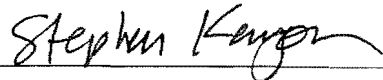
A MOTION TO AUGMENT was filed by counsel for Appellants on March 21, 2011.  
Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT be, and hereby is,  
GRANTED and the augmentation record shall include the document listed below, file stamped  
copies of which accompanied this Motion:

1. Judgment Nunc Pro Tunc, file-stamped March 16, 2011.

DATED this 23 day of March 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

STATE OF IDAHO  
COUNTY OF SHOSHONE/SS  
FILED

2011 MAR 16 AM 10:16

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

HENRY D. MADSEN  
MADSEN LAW OFFICES, PC  
1859 N. Lakewood Dr., Suite 201  
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

JUDGMENT  
NUNC PRO TUNC

The Court having dismissed the action with prejudice on November 16, 2009 and the matter having come before the Court on Defendant's Motion for Attorney fees and costs, the Court being fully advised in the premises, and good cause appearing,


NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Defendants' request for evidentiary hearing pursuant to Idaho Rule of Civil Procedure 54(e)(6) in furtherance of their Motion for Attorney Fees and Costs is denied.

2. Judgment is entered against Plaintiff, CITY OF OSBURN, and for Defendants, RANDELS, for costs as a matter of right in the amount of \$58,00.

- 3. Discretionary costs requested by Defendants in the amount of \$274.00 are denied.
- 4. Defendants' request for attorneys fees pursuant to I.C. §12-117, 12-120(3), 12-121, and pursuant to the attorney general doctrine are denied.
- 5. Further, this judgment is entered *nunc pro tunc* to June 29, 2010.

ENTERED on this 16 day of March, 2011.

  
 FRED M. GIBLER,  
 District Judge

**CLERK'S CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 16<sup>th</sup> day of March, 2011, 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  
 Attorney at Law  
 P.O. Box 659  
 Kellogg, ID 83837

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

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

- U.S. Mail
- Hand Delivered
- Facsimile to: 664-6253
- Overnight Mail

*Idaho Supreme Court  
 PO Box 83720  
 Boise ID 83720-0101*

SHOSHONE COUNTY CLERK

By:   
 Deputy