

3-4-2011

Chavez v. Clayton County Clerk's Record Dckt. 38378

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LAW CLERK

v. 1 | of 1

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

**ISMAEL CHAVEZ and DOLORES
MERCADO, on behalf of themselves
and others similarly situated.**

**Petitioners-Appellants-
Cross Respondents,**

-vs-

**CANYON COUNTY, STATE OF IDAHO,
through its duly elected BOARD OF
COUNTY COMMISSIONERS and the
Canyon County Treasurer and ex-officio
tax collector,**

**Defendants-Respondents-
Cross Appellants.**

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

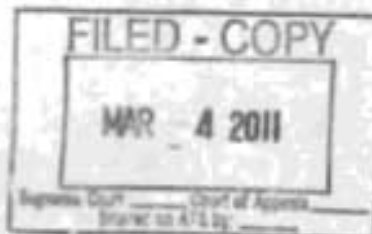
Honorable STEPHEN W. DRESCHER, District Judge

Ismael Chavez
P. O. Box 1094
Caldwell, Idaho 83606-1094

Attorney for Appellants

Bryan F. Taylor
Carlton R. Ericson
Canyon County Prosecuting Attorneys

Attorneys for Respondents



38378

IN THE SUPREME COURT OF THE
STATE OF IDAHO

ISMAEL CHAVEZ and DOLORES)
MERCADO, on behalf of themselves)
and others similarly situated,)
)
Petitioners-Appellants-)
Cross Respondents,)
)
-vs-)
)
CANYON COUNTY, STATE OF IDAHO,)
through its duly elected BOARD OF)
COUNTY COMMISSIONERS and the)
Canyon County Treasure and ex-officio)
tax collector,)
)
Defendants-Respondents-)
Cross Appellants.)

Supreme Court No. 38378

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

HONORABLE STEPHEN W. DRESCHER, Presiding

Ismael Chavez, P O Box 1094, Caldwell, Idaho 83606-1094

Attorney for Appellants

Bryan F. Taylor and Carlton R. Ericson, Canyon County Prosecuting Attorneys,
1115 Albany St., Caldwell, Idaho 83605

Attorneys for Respondents

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| 12/4/2009 | New Case Filed-Other Claims | Bradly S Ford |
| | Summons Issued | Bradly S Ford |
| | Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Chavez, Ismael (attorney for Chavez, Ismael) Receipt number: 0433066 Dated: 12/4/2009 Amount: \$88.00 (Check) For: Chavez, Ismael (plaintiff) | Bradly S Ford |
| 12/23/2009 | Affidavit Of Service 12-11-09 Canyon County State of Idaho | Bradly S Ford |
| 12/28/2009 | Notice Of Appearance - John T Bujak | Bradly S Ford |
| 1/4/2010 | Notice of Intent to Take Default | Bradly S Ford |
| | Motion for Summary Jdmt and Notc of Hearing | Bradly S Ford |
| | Affidavit in Suppt of Motn for Summary Jdmt | Bradly S Ford |
| | Memorandum in Suppt of Motn for Summary Jdmt and Notc of Hearing | Bradly S Ford |
| | Hearing Scheduled (Motion Hearing 02/11/2010 09:00 AM) Motn for Summary Jdmt | Bradly S Ford |
| 1/5/2010 | Answer of Defendants/Respondents | Bradly S Ford |
| 1/28/2010 | Memorandum in Opposition to Summary Judgment Motion | Bradly S Ford |
| 2/8/2010 | Order of Voluntary Disqualification | Bradly S Ford |
| | Change Assigned Judge | Juneal C. Kerrick |
| | Supplemental Affidavit in support of Mo for Summary Judgment | Juneal C. Kerrick |
| | Plt Responding Memorandum in Support of Mo for Sumamry Judgment | Juneal C. Kerrick |
| 2/10/2010 | Change Assigned Judge | Stephen W. Drescher |
| | Order of Assignment - Drescher | Stephen W. Drescher |
| 2/11/2010 | Hearing result for Motion Hearing held on 02/11/2010 09:00 AM: Hearing Vacated Motn for Summary Jdmt - DQ filed | Bradly S Ford |
| | Amended Notice Of Hearing | Stephen W. Drescher |
| | Hearing Scheduled (Motion Hearing 02/26/2010 01:30 PM) Motn for Summary Jdmt | Stephen W. Drescher |
| 2/24/2010 | Report on Status of Case | Stephen W. Drescher |
| 2/26/2010 | Hearing result for Motion Hearing held on 02/26/2010 01:30 PM: Hearing Held Motn for Summary Jdmt | Stephen W. Drescher |
| | Hearing result for Motion Hearing held on 02/26/2010 01:30 PM: District Court Hearing Held | Stephen W. Drescher |
| | Court Reporter: Debbie Kriedler | |
| | Number of Transcript Pages for this hearing estimated: less than 100 pages | |
| 4/9/2010 | Order Denying Motion for Summary Judgment and Order Converting Action to Judicial Review | Stephen W. Drescher |
| 4/12/2010 | Motion and Notice of Hearing | Stephen W. Drescher |
| | Memorandum in Suppt of Plnt's Motn | Stephen W. Drescher |
| | Hearing Scheduled (Motion Hearing 05/03/2010 09:30 AM) Plnt's Motn | Stephen W. Drescher |
| 4/19/2010 | Petition for Judicial Review | Stephen W. Drescher |
| 4/30/2010 | Scheduling Order on Petition for Judicial Review | Stephen W. Drescher |

Other Claims

| Date | | Judge |
|-----------|---|---------------------|
| 5/3/2010 | Hearing result for Motion Hearing held on 05/03/2010 09:30 AM: Hearing Held Plnt's Motn - 120 day stay granted | Stephen W. Drescher |
| | District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100 | Stephen W. Drescher |
| 5/4/2010 | Order- staying the enforcement of the board of county commissioners regarding tax deed for 120 days | Stephen W. Drescher |
| 5/7/2010 | Objection to Proposed Order | Stephen W. Drescher |
| 5/10/2010 | Response to respondent's objection to proposed order | Stephen W. Drescher |
| 5/27/2010 | Lodged Agency's Record and Transcript | Stephen W. Drescher |
| | Notice of Clerk's Lodged Transcript and Record | Stephen W. Drescher |
| 6/3/2010 | Motion to Augment Record and Notice of Hearing | Stephen W. Drescher |
| | Statement in Suppt of Motn to Augment Record | Stephen W. Drescher |
| | Petitioner's Initial Brief | Stephen W. Drescher |
| | Hearing Scheduled (Motion Hearing 06/17/2010 10:00 AM) Motn to Augment Record | Stephen W. Drescher |
| 6/17/2010 | Hearing result for Motion Hearing held on 06/17/2010 10:00 AM: Motion Held Motn to Augment Record | Stephen W. Drescher |
| | Hearing result for Motion Hearing held on 06/17/2010 10:00 AM: Termination Granted Motn to Augment Record | Stephen W. Drescher |
| | District Court Hearing Held Court Reporter: N/A electronic recording only Number of Transcript Pages for this hearing estimated: | Stephen W. Drescher |
| 6/18/2010 | Order Granting Motn to Augment Record | Stephen W. Drescher |
| 7/1/2010 | Respondent Canyon County's Brief | Stephen W. Drescher |
| 7/7/2010 | Notice of Clerks Filed Transcript and Record | Stephen W. Drescher |
| | Transcript Filed | Stephen W. Drescher |
| | Filed Agency Record | Stephen W. Drescher |
| 7/8/2010 | Motion for Contempt and Notice of Hearing | Stephen W. Drescher |
| | Affidavit in support of Motion for an Order in Re contempt | Stephen W. Drescher |
| | Certificate of Service | Stephen W. Drescher |
| | Petns Responding Brief | Stephen W. Drescher |
| 7/9/2010 | Certificate of Service | Stephen W. Drescher |
| 7/13/2010 | Augmentation of Record | Stephen W. Drescher |
| 8/16/2010 | District Court Hearing Held Court Reporter:NONE Number of Transcript Pages for this hearing estimated: | Stephen W. Drescher |
| | Hearing Held | Stephen W. Drescher |
| | Hearing Scheduled (Motion Hearing 09/27/2010 09:00 AM) oral argument | Stephen W. Drescher |
| 9/27/2010 | District Court Hearing Held Court Reporter:Debora Kreidler Number of Transcript Pages for this hearing estimated: less than 100 pages | Stephen W. Drescher |

Date: 1/21/2011

User: RANDALL

Time: 10:52 AM

ROA Report

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Case: CV-2009-0012900-C Current Judge: Stephen W. Drescher

Ismael Chavez, etal. vs. Canyon County, etal.

Ismael Chavez, Dolores Mercado vs. Canyon County, Canyon County Treasurer

Other Claims

| Date | | Judge |
|------------|---|---------------------|
| 9/27/2010 | Hearing result for Motion Hearing held on 09/27/2010 09:00 AM: Hearing Held oral argument - taken under advisement / decision forthcoming | Stephen W. Drescher |
| 10/25/2010 | Order on petn for judicial review (submit an order within 14 days) | Stephen W. Drescher |
| 11/10/2010 | Final Judgment/Judicial review granted | Stephen W. Drescher |
| | Civil Disposition entered for: Canyon County, Defendant; Canyon County Treasurer, Defendant; Chavez, Ismael, Plaintiff; Mercado, Dolores, Plaintiff. Filing date: 11/10/2010 | Stephen W. Drescher |
| | Case Status Changed: Closed | Stephen W. Drescher |
| 12/17/2010 | Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Chavez, Ismael (plaintiff) Receipt number: 0078359 Dated: 12/17/2010 Amount: \$101.00 (Check) For: Chavez, Ismael (plaintiff) | Stephen W. Drescher |
| | Bond Posted - Cash (Receipt 78361 Dated 12/17/2010 for 100.00) for clerks record | Stephen W. Drescher |
| | Case Status Changed: Closed pending clerk action | Stephen W. Drescher |
| | Notice of Appeal | Stephen W. Drescher |
| | Appealed To The Supreme Court | Stephen W. Drescher |
| | Case Status Changed: closed pending clerk action | Stephen W. Drescher |
| 1/7/2011 | Notice of Cross-Appeal | Stephen W. Drescher |

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L E D
A.M. 3:47 P.M.

DEC 04 2009

CANYON COUNTY CLERK
K CANNON, DEPUTY

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

ISMAEL CHAVEZ AND) Case No.: CV-09-12900-C
DOLORES MERCADO,)
On behalf of themselves and)
others similarly situated,)
Plaintiffs/Petitioners,)
-v-)
CANYON COUNTY, STATE OF IDAHO,) **COMPLAINT**
through it duly elected BOARD)
OF COUNTY COMMISSIONERS and)
the Canyon County Treasurer) Fee Category: A-1
and ex-officio tax collector,) Fee: \$88.00
Defendant/Respondent.)

COME NOW Plaintiffs/Petitioners, individually and as
representatives of the putative Class described in this
Complaint, and hereby file this Class Action Complaint, alleging
as follows:

1. In this class action complaint, Plaintiffs seek, on
behalf of themselves and the class of persons identified
below, injunctive relief and damages from Defendants.

This action involves the provisions of Idaho Code Title

63, Chapter 10 and the class of persons consists of all taxpayers who have been served with Notices of Pending Tax Deeds (hereinafter "Notices"), the Notices alleging a property tax delinquency as of January 1, 2007 who desire to be included in the class.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action.
3. The venue in this case is properly in Canyon County, Idaho.

I. THE PARTIES

4. Plaintiffs Ismael Chavez ("Chavez") and Dolores Mercado are joint owners of two adjoining parcels of land located in Canyon County, Idaho. All other Plaintiffs/Petitioners are owners of property in Canyon County, Idaho, who are alleged to be delinquent in their property taxes as aforesaid and who have been served with Notices.
5. The Defendant, namely, the County of Canyon, State of Idaho, is a body politic and political subdivision of the State of Idaho. At all times relevant hereto the Defendant has been acting through the duly elected county treasurer and ex-officio tax collector and the Canyon County Board of County Commissioners.

II. STATEMENT OF THE CASE

6. The two parcels aforementioned are identified thus: one parcel is referred to by the Defendant by the number 213755500 and is legally described as lot 1, block 1, of Dee Ann Meadows Subdivision. The other parcel is identified as number 21375511 and is legally described as lot 6, block 2, Dee Ann Meadows Subdivision. The two parcels in question will be referred herein for convenience as "the properties".
7. On or about September 18, 2009, the Defendant served Chavez with Notices on the properties, copies of said Notices being attached hereto as Exhibits "A" and "B" and by reference made a part hereof.
8. On or about October 8, 2009, Chavez responded to the Notices by serving the Defendant with an Answer and Objection to the Notices. This Answer and Objection was made pursuant to Idaho Code § 63-1006(2) and requested discovery pursuant to Idaho Code § 63-1006(4)(g).
9. Chavez later received a response by in a letter dated October 16, 2009 from Defendant's attorney. The response indicated the Defendant has adopted resolution No. 09-169, a copy attached hereto as Exhibit "C" in which the Defendant claims it has decided to assess a flat fee of \$500.00 for delinquent tax accounts for which Notices are issued after having determined that such fee is actually

less than the costs incurred by the Defendant in handling tax deed properties. No response to Chavez's request for discovery was made.

10. Chavez thereafter attended a hearing held on November 20, 2009 as specified in the Notice and the response. Legal counsel for the Defendant was not present at the hearing. At the hearing, Chavez reiterated his position. Without discovery and the presence of legal counsel the hearing was not only a denial of due process of law, it was a farce and a joke; the hearing consisted of a desultory "conversation" in which the commission's attitude was simply one of didactic insouciance, superciliousness, in an apparent extempore atmosphere. On December 3, 2009, Chavez received a letter from the Defendant informing him that on November 20, 2009, a tax deed was issued in favor of Canyon County, State of Idaho by the county treasurer and ex-officio tax collector on the properties. No decision containing findings of fact and conclusions was issued as required by Idaho Code § 63-1006(2) nor was any decision finding the county tax collector had conformed to the requirements of Idaho Code § 63-1005 having been made.
11. The Notices are form letters generally require no significant expenditures to print out on a computer,

stuff them in an envelope, and send to the mail room to be sent by certified mail. The cost of sending the Notices by certified mailing required by Idaho Code § 63-1005(2)(a) amounts to a few dollars. Idaho Code § 63-1005(4)(d) mandates the Notices include "[a]n itemized statement detailing the delinquency and all costs and fees incident to the delinquency and notice up to and including the date of the mailing of such notice". "Itemized" means to "list the particulars of ..." the total amount due on the delinquency. The Defendant has neither implicitly nor explicitly been authorized to vary the requirements of the statute in question. Idaho Code § 31-801 provides that "[t]he boards of county commissioners in their respective counties shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law". Idaho Code § 31-801 is a restriction or limitation on the Defendant "prescribed by ... statute". The Notices accordingly do not comport with a requirement of law. The attempt by the Defendant to vary the statute by "resolution" is an *ultra vires* act by the Defendant and thus such Notices are void *ab initio*. Accordingly, Resolution No. 09-169 is invalid and the Notices are void *ab initio*.

12. The Defendant in effect amended the statute in question

by ignoring the itemization requirement and arbitrarily and unlawfully inserting in lieu thereof \$500.00. The Defendant has no authority to "amend" the statute and the "charge" of \$500.00 has no basis in fact or law. The Defendant implacably insists otherwise.

13. To the best of Plaintiffs' knowledge and belief, the facts of this case are not disputed. Hence, this issue in this case is primarily one of statutory interpretation. Interpretation of a statute is a question of law. The Court must, in interpreting the statute, give every word, clause and sentence in the statute the effect which the legislature obviously intended. In statutory construction, the first step is to examine the statute's literal language. The statute's words must be given their plain and ordinary meaning in light of the statute as a whole. If the words are clear and unambiguous, the Court must give effect to the statute as written, Albee v. Judy, 136 Idaho 226, 31 P.3d 248 (2001). The words of the statute in question herein are clear and unambiguous and should be given the effect as written.
14. Plaintiffs may seek to amend this complaint upon further investigation and discovery.

IV. FOR A CAUSE OF ACTION

15. Plaintiffs re-allege sections I, II, and III above herein

as if set out herein in full.

16. The Defendant stated in the Notices that if the alleged delinquency is not redeemed on or before November 20, 2009, a tax deed for the property in favor of Canyon County will be issued. Plaintiffs have a right to have the decision to issue a tax deed reviewed by the district court of the district wherein the county is located by filing a petition in the district court.
17. Plaintiffs have been and are aggrieved by the Defendant by failing to provide Plaintiffs and members of the class with an "... [i]temized statement detailing the delinquency and all costs and fees incident to the delinquency and notice up to and including the date of the making of such notice". This failure is clearly erroneous as a matter of law. The decision of the Defendant to "charge" persons in the class aforementioned \$500.00 is an arbitrary decision, an abuse of discretion, and clearly an unwarranted and unlawful act.

V. DECLARATORY JUDGMENT, INJUNCTIVE RELIEF,
DAMAGES AND ATTORNEY FEES

18. I.R.C.P. Rule 65 provides that a preliminary injunction may be granted (1) "[w]hen it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in

restraining the commission or continuance of the acts complained of, either for a limited period or perpetually".

19. I. R. C. P., Rule 57, provides that

I. "[t]he procedure for obtaining a declaratory judgment pursuant to the statutes of this state, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

II. R. C. P. Rules 38 and 39 pertain to jury trials and are inapplicable to this case.

20. Plaintiffs are entitled to a speedy hearing on the issue of a declaratory judgment that the Notices accordingly do not comport with a requirement of law, that the attempt by the Defendant to vary the statute by "resolution" is an *ultra vires* act by the Defendant that, accordingly, Resolution No. 09-169 is invalid and the Notices are void *ab initio*.

21. Plaintiffs are entitled injunctive relief proscribing the Defendant from proceeding in violation of law. The Defendant should further be ordered to comply with the statutory requirement that all Notices have an itemized detail as provided in the statute in question.

22. Plaintiffs are entitled to damages by being refunded those amounts any amounts paid that did not exceed the amount prescribed by the statute.
23. If this action is contested Chavez should be awarded attorney fees pursuant to Idaho Code §§ 12-117 and/or 12-120(1).
24. Plaintiffs should be awarded their costs incurred in this action.
25. Plaintiffs are entitled to such other and further relief as the Court may deem just and appropriate in the premises.

WHEREFORE, Plaintiffs pray the Court thus:

- A. To certify that this is a class action and order the Defendant to so notify the members of the class;
- B. For a Declaratory Judgment that the aforesaid resolution is contrary to law and as such is invalid, that the Notices are invalid and void *ab initio*;
- C. For an order compelling the Defendant to proceed as provided by the statute in question;
- D. For damages, attorney fees and costs, and;
- E. For such other and further relief as the Court may deem just and equitable in the premises.

DATED: December 3, 2009.



Ismael Chavez

CHAVEZ ISMAEL
MERCADO DOLores
1511 ARTHUR ST
CALDWELL, ID 83605

GRZ 780-511-10
CERTIFIED No.

YOU ARE FURTHER NOTIFIED,

5. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009, by payment to the Canyon County Treasurer, of said unpaid taxes together with late charge, interest and all costs and expenses, I, as Treasurer and Tax Collector for Canyon County, State of Idaho, shall thereupon, as required by law, make application to the Board of County Commissioners of Canyon County, State of Idaho, for a Tax Deed to issue on the subject property in favor of Canyon County with absolute title, free of all encumbrances, except any mortgages of record to the holders of which notice has not been sent and any lien for property taxes which may have attached subsequent to the assessment and any lien for special assessments;
6. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009 in the manner described above then at 9:00 O'CLOCK AM MST on NOVEMBER 20, 2009 a tax deed for the subject property in favor of Canyon County will be issued at the Treasurer's Office, Room 342 Canyon County Courthouse, 1115 Albany, Caldwell, Idaho by the County Treasurer as the Tax Collector of Canyon County, State of Idaho;
7. Pursuant to Idaho Code 63-1005(3), the record owner or owners and parties in interest of record shall be liable and pay to the county tax collector all costs and fees in the preparation, service and publication of such notice and the tax deed process and such costs shall become a perpetual lien upon the property in favor of the county tax collector.

NOTICE OF HEARING

8. A hearing shall be held before the Canyon County Board of Commissioners on NOVEMBER 20, 2009 at the hour of 9:00 O'CLOCK AM MST or as soon thereafter as the matter can be heard, to determine if a tax deed for the subject property shall be issued in favor of Canyon County.
9. The record owner or owners and parties in interest shall have adequate opportunity to be heard, to confront or cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on behalf of the record owner or owners or any party in interest. ALL INQUIRIES OR OBJECTIONS CONCERNING THIS NOTICE AND THE INFORMATION CONTAINED HEREIN SHALL BE DIRECTED TO THE CANYON COUNTY TREASURER, CANYON COUNTY COURTHOUSE, 1115 ALBANY, ROOM 342, CALDWELL, IDAHO 83605, PHONE NO. (208)454-7354 NO LATER THAN FIVE (5) WORKING DAYS PRIOR TO THE HEARING DATE NOTED ABOVE.

Dated this 18TH DAY OF SEPTEMBER 2009.

Tracie Lloyd

County Treasurer and ex-Officio Tax Collector
for Canyon County, Idaho

By: *J. Sullens*
Deputy

***** Cashier's check, money order, certified check or cash *****
* * NO PERSONAL CHECKS WILL BE ACCEPTED * *

EXHIBIT "B"

NOTICE OF PENDING ISSUE OF TAX DEED

STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

CERTIFIED No.

Article #:71791000164450018604

TO: CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

YOU ARE HEREBY NOTIFIED, as follows:

1. That a delinquency occurred on January 1, 2007 in the records of the County Treasurer as Tax Collector of Canyon County, State of Idaho for the following described property (hereinafter referred to as the "subject property"):

6R21375-505- -0 017700010060 Acres: 000.00
 34-5N-3W SW DEE ANN MEADOWS SUB
 LOT 6 BLK 1
 Site Address: 0 PHILLIS LN M1

2. That the name(s) and last known address(es) of the record owner or owners of record of the subject property is:

CHAVEZ ISMAEL
 MERCADO DOLORES
 1511 ARTHUR ST
 CALDWELL, ID 83605

3. That said delinquency exists in respect to the assessment and subsequent unpaid taxes for 2006.
4. That the total amount due as of 09/18/2009 is:

| | |
|--------------------------------|--------|
| Amount of Tax | 43.42 |
| Amount of Late Chg (2%) | 88 |
| Interest (12%) per annum | 14.44 |
| Cost and Fees | 500.00 |

Total Due as of SEPTEMBER 18, 2009 \$558.74

CALL 454-7354 FOR CURRENT PAYMENT INFORMATION.
 OTHER COSTS, FEES AND INTEREST MAY BE DUE UPON PAYMENT.

CHAVEZ ISMAEL
MERCADO DOLORE
1511 ARTHUR ST
CALDWELL, ID 83605

BRP 15-505-10

CERTIFIED No.

YOU ARE FURTHER NOTIFIED,

5. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009, by payment to the Canyon County Treasurer, of said unpaid taxes together with late charge, interest and all costs and expenses, I, as Treasurer and Tax Collector for Canyon County, State of Idaho, shall thereupon, as required by law, make application to the Board of County Commissioners of Canyon County, State of Idaho, for a Tax Deed to issue on the subject property in favor of Canyon County with absolute title, free of all encumbrances, except any mortgages of record to the holders of which notice has not been sent and any lien for property taxes which may have attached subsequent to the assessment and any lien for special assessments;
6. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009 in the manner described above then at 9:00 O'CLOCK AM MST on NOVEMBER 20, 2009 a tax deed for the subject property in favor of Canyon County will be issued at the Treasurer's Office, Room 342 Canyon County Courthouse, 1115 Albany, Caldwell, Idaho by the County Treasurer as the Tax Collector of Canyon County, State of Idaho;
7. Pursuant to Idaho Code 63-1005(3), the record owner or owners and parties in interest of record shall be liable and pay to the county tax collector all costs and fees in the preparation, service and publication of such notice and the tax deed process and such costs shall become a perpetual lien upon the property in favor of the county tax collector.

NOTICE OF HEARING

8. A hearing shall be held before the Canyon County Board of Commissioners on NOVEMBER 20, 2009 at the hour of 9:00 O'CLOCK AM MST or as soon thereafter as the matter can be heard, to determine if a tax deed for the subject property shall be issued in favor of Canyon County.
9. The record owner or owners and parties in interest shall have adequate opportunity to be heard, to confront or cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on behalf of the record owner or owners or any party in interest. ALL INQUIRIES OR OBJECTIONS CONCERNING THIS NOTICE AND THE INFORMATION CONTAINED HEREIN SHALL BE DIRECTED TO THE CANYON COUNTY TREASURER, CANYON COUNTY COURTHOUSE, 1115 ALBANY, ROOM 342, CALDWELL, IDAHO 83605, PHONE NO. (208)454-7354 NO LATER THAN FIVE (5) WORKING DAYS PRIOR TO THE HEARING DATE NOTED ABOVE.

Dated this 18TH DAY OF SEPTEMBER 2009.

Tracie Lloyd

County Treasurer and ex-Officio Tax Collector
for Canyon County, Idaho

By: *J. Sullens*
Deputy

***** Cashier's check, money order, certified check or cash *****
* * NO PERSONAL CHECKS WILL BE ACCEPTED * *

EXHIBIT C

RESOLUTION NO. 09-169

A RESOLUTION AUTHORIZING AN INCREASE IN THE FEE CHARGED TO COLLECT COSTS INCURRED BY CANYON COUNTY IN THE PROCESS OF COLLECTING DELINQUENT PROPERTY TAXES

The following resolution and order was considered and adopted by the Canyon County, Idaho Board of Commissioners on this 31 day of July, 2009.

Upon motion of Commissioner Alder and the second by Commissioner Ferdinand, the Board resolves as follows:

WHEREAS, Idaho Code § 31-801 grants general powers and duties, subject to the restrictions of law, to the boards of county commissioners in their respective counties; and

WHEREAS, Idaho Code §§ 63-1002 and 63-1005 authorize a county to collect the costs incurred by it in the processing and collection of delinquent property taxes, including the costs of certified mailings, title searches, advertising and all other expenses for the processing and collection of the delinquency; and

WHEREAS, Idaho Code §§ 31-870(1) and 63-1311 require that the fees imposed and collected by the County must be reasonably related, and not exceed, the actual cost of the services being rendered; and

WHEREAS, during the tax deed process, extensive work is done by the Canyon County Treasurer as the tax collector in order to (1) identify all parties of interest in a piece of property, (2) locate valid mailing addresses, (3) locate and contact by telephone individuals, including neighbors, prior owners, current owners, etc., to obtain additional information that may not be recorded relating to the subject property, (4) obtain history related to the property, (5) prepare required letters notifying recorded parties in interest of the pending action, (6) prepare a legal notice to be published in the newspaper advertising all delinquent accounts, (7) payment of the publication costs, (8) personally visit and post notice on the property, and (9) make personal contact with the property owners; and

WHEREAS, Idaho Code § 31-870(1) authorizes the Board of County Commissioners to "... impose and collect fees for those services provided by the County which would otherwise be funded by ad valorem tax revenues"; and

WHEREAS, the present cost schedule utilized by the Canyon County Treasurer is a graduated cost schedule which has been in place for at least twelve (12) years, and which does not accurately reflect the costs incurred by the county for properties that proceed to the tax deed stage; and

WHEREAS, the Canyon County Treasurer's Department has determined that the actual costs incurred to get delinquent property to the tax deed stage is in excess of Five Hundred

Dollars (\$500.00), and as a result, wishes to adopt a single level fee of Five Hundred Dollars (\$500.00) to be attached to the delinquent properties; and

WHEREAS, Idaho Code § 63-1311A requires the Board of County Commissioners to hold a regular special meeting, with proper notice, for any "fee increase that exceeds five percent (5%) of the amount of the fee last collected or a decision imposing a new fee . . ."; and


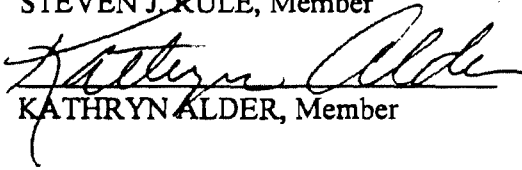
WHEREAS, the Board of County Commissioners conducted a public hearing on the above proposed revised cost on July 31, 2009 at 9:00 a.m.; and

WHEREAS, the Board of County Commissioners finds good cause to adopt the cost of Five Hundred Dollars (\$500.00) to be imposed on delinquent properties that proceed to a tax deed status, which is less than the actual cost incurred by the County for the tax deed process on individual delinquent properties.

NOW THEREFORE, THE BOARD HEREBY RESOLVES, that the Canyon County Treasurer shall impose a Five Hundred Dollar (\$500.00) fee for costs incurred for collection of property taxes that are three years or more delinquent, and for which the County begins the tax deed process.

IT IS FURTHER RESOLVED BY THE BOARD that this Resolution shall be effective this 31 day of July, 2009.

- Motion Carried Unanimously
- Motion Carried/Split Vote Below
- Motion Defeated/Split Vote Below

| | Yes | No | Did Not Vote |
|---|-------------------------------------|--------------------------|--------------------------|
|  DAVID J. FERDINAND, II, Chairman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Unavailable for signature</u> STEVEN J. RULE, Member | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|  KATHRYN ALDER, Member | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ATTEST: WILLIAM H. HURST, CLERK

By: 
Deputy Clerk

Date: 7-31-09

4/11

JOHN T. BUJAK, ISB #5544
CARLTON R. ERICSON, ISB #5845
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
9:25 A.M.
JAN 05 2010
CANYON COUNTY CLERK
T EARLS, DEPUTY

Attorneys for Defendants/Respondents

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

ISMAEL CHAVEZ and DOLORES
MERCADO, On behalf of themselves and
others similarly situated,

Plaintiffs/Petitioners,

vs.

CANYON COUNTY, STATE OF IDAHO,
through its duly elected BOARD OF
COUNTY COMMISSIONERS and the
Canyon County Treasurer and ex-officio tax
collector,

Defendants/Respondents.

CASE NO. CV09-12900-C

**ANSWER OF DEFENDANTS/
RESPONDENTS**

Defendants/Respondents, by and through their attorneys, John T. Bujak and Carlton R. Ericson, Canyon County Prosecuting Attorney's Office, respond to the allegations of the Complaint as follows:

1. Defendants/Respondents deny the allegations of the Complaint to the extent they are not expressly admitted herein.

2. In answering Paragraph 1, Defendants/Respondents admit that

Plaintiffs/Petitioners have alleged that this is a class action, but deny that a class action is

appropriate in this matter.

3. In answering Paragraphs 2-9, Defendants/Respondents admit the allegations contained therein.

4. In answering Paragraph 10, Defendants/Respondents admit the allegations of the first, third and fifth sentences, and deny the remaining allegations contained therein.

5. In answering the first sentence of Paragraph 11, Defendants/Respondents admit that the notice is a form letter, but deny the remaining allegations contained therein.

6. In answering the second, third and sixth sentences of Paragraph 11, Defendants/Respondents admit the allegations therein.

7. In answering the fourth, fifth and seventh through tenth sentences of Paragraph 11, Defendants/Respondents deny the allegations contained therein.

8. In answering Paragraph 12, Defendants/Respondents admit that they have no authority to amend a statute, and deny the remaining allegations contained therein.

9. In answering Paragraph 13, Defendants/Respondents deny the allegations contained therein as they appear to be legal argument, rather than allegations of fact or law.

10. In answering Paragraph 14, Defendants/Respondents deny the allegations contained therein.

11. In answering Paragraph 15, Defendants/Respondents incorporate by reference their responses to Paragraphs 1-14 of the Complaint.

12. In answering Paragraph 16, Defendants/Respondents admit the allegations contained therein.

13. In answering Paragraph 17, Defendants/Respondents deny the allegations contained therein.

14. In answering Paragraphs 18-19, Defendants/Respondents admit only that the referenced Idaho Rules of Civil Procedure have been accurately quoted, but deny any inference that Plaintiff/Petitioners are entitled to any such relief.

15. In answering Paragraphs 20-24, Defendants/Respondents deny the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

Defendants/Respondents have not been able to engage in sufficient discovery to learn all of the facts and circumstances relating to the matters described in Plaintiffs'/Petitioners' Complaint and therefore request the Court to permit Defendants/Respondents to amend their Answer and assert additional affirmative defenses or abandon affirmative defenses once discovery has been completed.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs'/Petitioners' Complaint fails to state a cause of action against Defendants/Respondents upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs/Petitioners have failed to act reasonably or to otherwise mitigate their damages, if any.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs/Petitioners have improperly brought this action as a class action pursuant to Rule 23 of the Idaho Rules of Civil Procedure and should be dismissed forthwith.

FIFTH AFFIRMATIVE DEFENSE

Assuming arguendo a class action has been validly stated, Plaintiffs'/Petitioners' lack of

standing to complain of some or all of the allegations contained in the Complaint on file herein.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs'/Petitioners' causes of action for declaratory or injunctive relief are not ripe.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs'/Petitioners' causes of action for declaratory or injunctive relief are improper at this time, because Plaintiffs'/Petitioners' have stated a claim for damages in their Complaint and therefore have acknowledged that they have an adequate remedy at law.

EIGHTH AFFIRMATIVE DEFENSE

The allegations contained in Plaintiffs'/Petitioners' Complaint regarding their actions for declaratory and injunctive relief are based upon mere speculation and there is insufficient evidence that any future event complained of will or will not occur.

NINTH AFFIRMATIVE DEFENSE

The allegations contained in Plaintiffs'/Petitioners' Complaint regarding their actions for declaratory and injunctive relief do not show or allege the sufficient likelihood of future injury or irreparable harm.

TENTH AFFIRMATIVE DEFENSE

The allegations contained in Plaintiffs'/Petitioners' Complaint regarding their complaint for declaratory and injunctive relief do not allege or show sufficient evidence of the existence or a reasonable likelihood of success.

ELEVENTH AFFIRMATIVE DEFENSE

The allegations contained in Plaintiffs'/Petitioners' Complaint regarding their request for declaratory and injunctive relief do not show or sufficiently allege the existence of immediate or irreparable injury.

ATTORNEY FEES

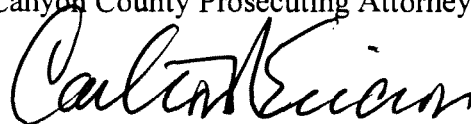
Defendants/Respondents have been required to retain attorneys in order to defend this action and are entitled to recover reasonable attorney fees pursuant to state law and applicable Idaho Rules of Civil Procedure.

WHEREFORE, Defendants/Respondents pray for judgment against Plaintiffs/Petitioners as follows:

1. That Plaintiffs'/Petitioners' Complaint be dismissed with prejudice and that Plaintiffs/Petitioners take nothing thereunder.
2. That Defendants/Respondents be awarded their costs, including reasonable attorneys' fees pursuant to Idaho Code § 12-117 and Rule 54 of the Idaho Rules of Civil Procedure.
3. That judgment be entered in favor of Defendants/Respondents on all claims for relief.
4. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 5th day of January, 2010.

JOHN T. BUJAK,
Canyon County Prosecuting Attorney



Carlton R. Ericson
Deputy Prosecuting Attorney
Attorneys for Defendants/Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2010, I caused a true and correct copy of the foregoing ANSWER OF DEFENDANTS/RESPONDENTS to be served on the following in the manner indicated:

Ismael Chavez [X] U.S. Mail
Attorney at Law [] Overnight Delivery
P.O. Box 1094 [] Hand Delivery
Caldwell, Idaho 83606-1094 [] Facsimile

Tracie Lloyd [] U.S. Mail
Canyon County Treasurer [] Overnight Delivery
Canyon County Courthouse [X] Hand Delivery
1115 Albany Street [] Facsimile
Caldwell, Idaho 83605

Board of County Commissioners [] U.S. Mail
Canyon County Courthouse [] Overnight Delivery
1115 Albany Street [X] Hand Delivery
Caldwell, Idaho 83605 [] Facsimile



Carlton R. Ericson
Deputy Prosecuting Attorney

D. Sanchez
FILED
A.M. 1:55 P.M.

APR 09 2010

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

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

ISMAEL CHAVEZ AND DOLORES)
MERCADO, on behalf of themselves and)
others similarly situated,)
)
Plaintiffs/Petitioners,)
)
v.)
)
CANYON COUNTY, STATE OF IDAHO,)
through it duly elected BOARD OF)
COUNTY COMMISSIONERS and the)
Canyon County Treasurer and ex-officio)
tax collector,)
)
Defendant/Respondent.)

Case No. CV-2009-12900-C

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT
AND
ORDER CONVERTING ACTION TO
JUDICIAL REVIEW**

On December 4, 2009, Petitioner filed a COMPLAINT challenging actions of the Canyon County Board of Commissioners with regard to Notices of Pending Tax Deeds and pursuant to Idaho Code 63-1001 *et seq.* Respondents filed an ANSWER on January 5, 2010.

Petitioners filed a MOTION FOR SUMMARY JUDGMENT on January 4, 2010. Respondents filed a MEMORANDUM IN OPPOSITION on January 28, 2010 in which they argue that this action should be conducted as a Judicial Review pursuant to Idaho Code 63-1006(4). Oral

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND ORDER
CONVERTING ACTION TO JUDICIAL REVIEW**

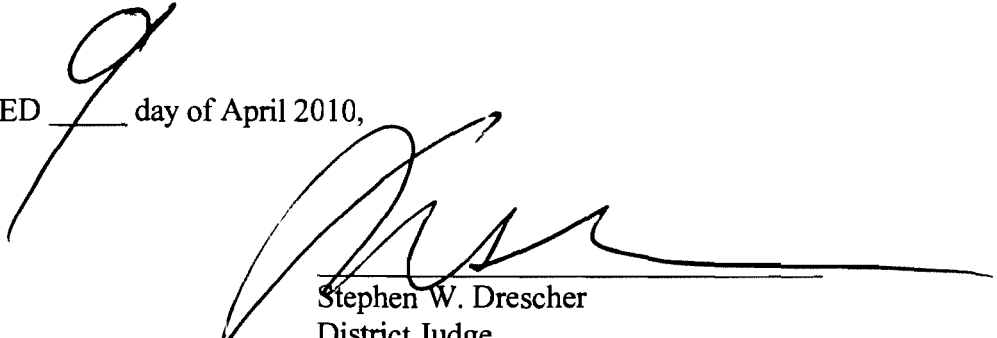
argument was held on February 26, 2010.

Upon review of the file, and the relevant statutory authority the court finds that this action should be conducted as a Judicial Review pursuant to Idaho Code 63-1006(4). Petitioners' COMPLAINT, in essence, alleges that they have been aggrieved by the decision of Canyon County to issue a tax deed as set forth in the COMPLAINT. Thus, the court finds that Petitioner must follow the proper procedures as set forth in Idaho Code 63-1006(4) and Idaho Rule of Civil Procedure 84. If Petitioners intend to pursue this action further, they are ordered to file a Petition for Judicial Review in accordance with the above mentioned legal authority within fourteen (14) days of this order.

IT IS HEREBY ORDERED, and this does ORDER,

1. That Petitioners' Motion for Summary Judgment is DENIED.
2. That this action is converted to a Petition for Judicial Review.
3. That Petitioners must file a Petition for Judicial Review in this action within fourteen (14) days of this order.

DATED 9 day of April 2010,


Stephen W. Drescher
District Judge

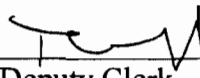
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was mailed or delivered to the following persons this 9 day of April 2010.

Ismael Chavez
Attorney at Law
PO Box 1094
Caldwell, Idaho 83606

Canyon County Prosecuting Attorney
Attn: Carlton Ericson
1115 Albany Street
Caldwell, ID 83605

WILLIAM H. HURST
Clerk of the District Court

By: 
Deputy Clerk

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L E D
11:08 A.M. P.M.

APR 19 2010

CANYON COUNTY CLERK
K CANNON, DEPUTY

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

ISMAEL CHAVEZ AND) Case No.: CV09-12900*C
DOLORES MERCADO,)
Petitioners,)

-v-

)
) **PETITION FOR JUDICIAL**
) **REVIEW**
)
CANYON COUNTY, STATE OF IDAHO,)
through it duly elected BOARD)
OF COUNTY COMMISSIONERS and)
the Canyon County Treasurer)
and ex-officio tax collector,)
Respondent.)

Pursuant to Idaho Code § 63-1006(4), I.R.C.P. Rule 84, and the Order of this Court dated April 9, 2010, Petitioners hereby petition the Court for the relief hereinafter requested, alleging in support thereof as follows:

1. The name of the agency for which judicial review of the decision which is sought is Canyon County, Idaho, by and through its duly elected Board of County Commissioners, and the Canyon County Treasurer and ex-officio tax collector.
2. The title of the district court to which the petition is

taken is the Third Judicial District for the State of Idaho, in and for the County of Canyon.

3. Plaintiffs Ismael Chavez ("Chavez") and Dolores Mercado are joint owners of two adjoining parcels of land located in Canyon County, Idaho, described thus: one parcel is referred to by the Defendant as the number 213755500 and is legally described as lot 1, block 1, of Dee Ann Meadows Subdivision, Canyon County, Idaho and the other parcel is identified as number 21375511 and is legally described as lot 6, block 2, Dee Ann Meadows Subdivision, Canyon County, Idaho. The two parcels in question will be referred herein for convenience herein as "the properties".
4. Petitioners have no information regarding the date and the heading, case caption or other designation of the agency except as herein stated.
5. Chavez was served with Notices of Pending Issue of Tax Deeds ("Notices") pursuant to Idaho Code, Title 63, Chapter 10, on each of the properties by certified mail, return receipt requested, by the Defendant, copies of said Notice being a part of this Court's file and the same are herein made a part hereof as if set out herein in full. To avoid the issuance of a tax deed the notices demand payment of certain fees, including a fee of \$500.00 each. Upon receiving the Notices, Chavez answered and requested a

hearing on the date specified in Notice before the Defendant Board of County Commissioners as provided for by the Idaho Code § 63-1006(2).

6. On November 20, 2009, Chavez attended a hearing before the Canyon County Commissioners that was, to the best of the Chavez's knowledge, recorded and the name and address of the person with possession of such recording is the deputy clerk of said Defendants Board of County Commissioners, to wit: Monica Reeves, c/o Canyon County Commissioners, courthouse, 1115 Albany, Caldwell, Idaho 83605.
7. On December 3, 2009, Chavez received a letter from the Defendant informing him that on November 20, 2009, a tax deed was issued in favor of Canyon County, State of Idaho by the Defendant County Treasurer and ex-officio Tax Collector on the properties. No decision in writing which included findings of fact and conclusions of law was ever sent to Chavez as required by Idaho Code § 63-1006(2).
8. The issues for judicial review that Petitioners then, heretofore, and now assert on judicial review are: with respect to delinquent tax accounts, the Defendant claims it had decided, via a "resolution", a copy of the resolution being a part of this Court's file and the same is herein made a part hereof as if set out herein in full, to assess a flat fee of \$500.00 for delinquent tax accounts in lieu

of itemizing in detail all costs and fees incident to any tax delinquency, notwithstanding Idaho Code § 63-1005(4)(d) mandates the Notices include "[a]n itemized statement detailing the delinquency and all costs and fees incident to the delinquency and notice up to and including the date of the mailing of such notice". Issues arising therefrom are: whether the "resolution" of the Defendant to charge "\$500.00" in lieu of the an itemized statement detailing all costs and fees incident to the delinquency and notice up to and including the date of the mailing of such each notice effectively amended Idaho Code Title 63, Chapter 10, whether the notices comported with the requirements of the statute, whether the attempt by the Defendant to vary the statute by "resolution" is an *ultra vires* act by the Defendant and whether such Notices are void *ab initio*, and whether the tax deed issued by the Defendant was thus invalidated by the failure to comply with the Idaho code § 63-1005(4)(d). And still further issues arising are whether the Defendant's decision to "charge" delinquent property taxpayers \$500.00 in lieu of itemizing in detail the delinquency costs and fees incident to the delinquency and notice up to and including the date of the mailing of such notice was made upon unlawful procedure, Idaho Code § 63-1006(a), whether the decision clearly erroneous in view of

the record, Idaho Code § 63-1006(b), and whether the decision was arbitrary, capricious, or characterized by abuse of discretion or clearly an unwarranted exercise of discretion, Idaho Code § 63-1006(c). The question raised entails interpreting the statute, specifically, "what do the words in the statute 'itemizing and detailing' mean", the answer thereto being a determinative key to the case's *ratio decidendi*.

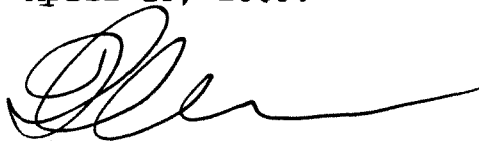
9. A transcript is not requested nor is one required. To the best of Plaintiffs' knowledge and belief, the facts of this case are not disputed. Further, Idaho Code § 63-1006 (2) requires the Defendant to make a final decision in writing wherein findings of fact and conclusions of law are specified, and that such written decision be mailed to Chavez. No written decision which included findings of fact and conclusions of law has, as aforesaid, been mailed to Chavez and this failure of the Defendant obviates the need for a transcript. The fact that the Defendant decided as it did, namely, to enter and record a tax deed without a written decision is a *fait accompli* and whether and why the Defendant decided as it did will in no way, shape, or form assist the Court in deciding the issues in the case.

10. The undersigned hereby certifies he served a copy of the

above and foregoing Petition upon the Defendant by personally leaving the same at the Defendant's attorney's office, namely, the office of the Canyon County Prosecuting Attorney on the 19th day of April, 2010, and that he has paid the Defendant Canyon County Commissioner's clerk the estimated fee for preparation of the transcript and for the preparation of the record

WHEREFORE, Plaintiffs pray the Court reverse the decision of the Defendant, holding the Defendant failed comply with the statute in question by substituting \$500.00 in lieu of itemizing in detail the costs and expenses incident to the alleged delinquency, order the issuance of the tax deed by the Defendant to be null and void and of no effect, award Petitioner his costs pursuant to I.R.C.P. Rule 54(d) and attorney fees pursuant to Idaho Code §§ 12-117 and/or 63-1006(5), and for such other and further relief as the Court may deem just and equitable in the premises.

DATED: April 19, 2009.



Ismael Chavez

Appeal. Upon receipt of the Notice of Estimate, the petitioner shall have fourteen (14) days to pay for the transcript. If it is not paid, the court may conditionally dismiss the action.

IT IS FURTHER ORDERED that the Clerk of the Agency shall notify the counsel for all parties in writing by mail or delivery, that the transcript has been lodged with the court. The notice shall inform the parties that they may pick up a copy of the transcript and that the parties have fourteen (14) days from the date of the notice in which to file any objections to the transcript. If no objection is filed within fourteen (14) days from the date of the mailing or delivery of the notice to the parties, then the transcript is deemed settled. Any objection made to a transcript and record shall be determined by the agency within fourteen (14) days of receipt thereof. The agency's decision on the objection shall be included in the record on petition for review.

IT IS FURTHER ORDERED that the agency shall transmit the settled transcript, and pursuant to I.R.C.P. 84(k), the agency shall submit to and file with this Court the agency record forty-two (42) days from the service of this Order. The agency shall notify all parties or their attorneys of the agency's filing.

IT IS FURTHER ORDERED that any party desiring to augment the transcript or record with additional materials presented to the agency may move the district court within twenty-one (21) days of the filing of the settled transcript and record in the same manner and pursuant to the same procedure for augmentation of the record in appeals to the Supreme Court. Where statute provided for the district court itself to take additional evidence, the party desiring to present additional evidence must move the court to do so within twenty-one (21) days of the filing of the transcript and record with the district court.

IT IS FURTHER ORDERED that all motions shall be filed with the district court, except those expressly required to be filed before the agency, and shall be served upon the parties in the

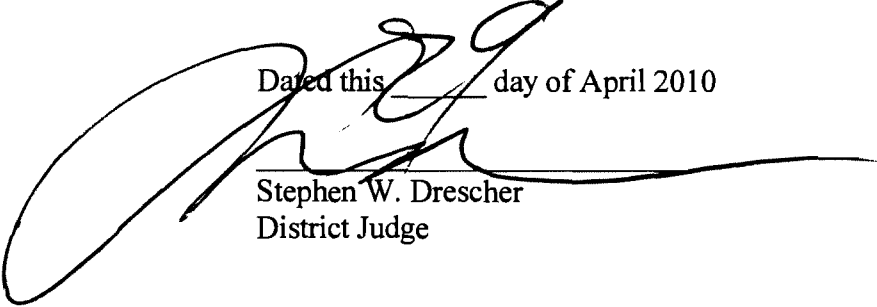
same manner as motions before the district court. All motions must be accompanied with a supporting memorandum or brief. The opposing party shall have fourteen (14) days from the service to file a response or reply brief.

IT IS FURTHER ORDERED that the Petitioner's brief shall be filed within thirty-five (35) days of the date that the transcript is filed. The responding brief shall be filed within twenty-eight (28) days thereafter and any reply brief shall be filed within twenty-one (21) days. The content and arrangement of the briefs shall comply with the requirements for briefs filed with the Supreme Court according to the Idaho Appellate Rules.

This judicial review may be decided upon the briefs and without oral argument in the absence of an objection from either party.

FAILURE TO SUBMIT BRIEFS WITHIN THE AFORESAID TIME PERIOD OR FAILURE TO SHOW CAUSE WHY BRIEFS HAVE NOT BEEN SUBMITTED WITHIN THE PROPER TIME PERIOD WILL RESULT IN DISMISSAL OF THE APPEAL WITH PREJUDICE.

Dated this 29 day of April 2010


Stephen W. Drescher
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded to the following persons on this 30th day of April, 2010.

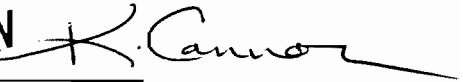
Ismael Chavez
Attorney at Law
P.O. Box 1094
Caldwell, Idaho 83606-1094 ✓

Canyon County Board of Commissioners
c/o Canyon County Clerk
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605 ✓

Canyon County Prosecuting Attorney
Attn: Carlton Ericson
1115 Albany Street
Caldwell, Idaho 83605 ✓

Theresa Randall
Canyon County Appeals Clerk
1115 Albany Street
Caldwell, Idaho 83605 ✓

William H. Hurst
Clerk of the District Court

By: K CANNON 
Deputy Clerk

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L L E D
9:28 A.M. P.M.

MAY 04 2010

CANYON COUNTY CLERK
K CANNON, DEPUTY

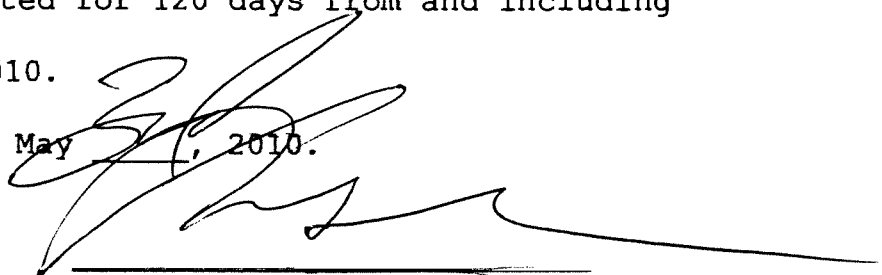
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ISMAEL CHAVEZ AND) Case No.: CV09-12900*C
DOLORES MERCADO,)
Petitioners,)
-v-) **ORDER**
CANYON COUNTY, STATE OF IDAHO,)
through it duly elected BOARD)
OF COUNTY COMMISSIONERS and)
the Canyon County Treasurer)
and ex-officio tax collector,)
Respondent.)

UPON the motion of Plaintiff Ismael Chavez for order staying the Order of the Defendant concerning enforcement of the Defendant Board of County Commissioners, *pendente lite*, including but not limited to the issuance and recordation of any tax deed,

IT IS HEREBY ORDERED and this does order that the said motion is hereby granted for 120 days from and including the 3rd day of May, 2010.

DATED: May 4, 2010.


District Judge

JOHN T. BUJAK, ISB #5544
CASRLTON R. ERICSON, ISB #5845
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

Attorneys for Respondent

FILED
7:05 A.M. P.M.
MAY 07 2010
CANYON COUNTY CLERK
C DOCKINS, DEPUTY

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

ISMAEL CHAVEZ and DOLORES
MERCADO,

Petitioners,

vs.

CANYON COUNTY, STATE OF IDAHO,
through its duly elected BOARD OF
COUNTY COMMISSIONERS and the
Canyon County Treasurer and ex-officio tax
collector,

Respondent.

CASE NO. CV2009-12900-C

OBJECTION TO PROPOSED ORDER

This Court held a hearing on May 3, 2010 with regard to Petitioners' motion, the focus of which was to obtain an order staying Respondent from selling the subject property at a tax deed sale prior to a resolution of this matter. Respondent informed the Court that it had withdrawn the property from the list of properties to be sold, and had acknowledged the need to wait for the resolution of this matter before proceeding to sell them. Based on that representation, this Court ordered that it would enter a stay for one hundred eighty (180) days in accordance therewith.

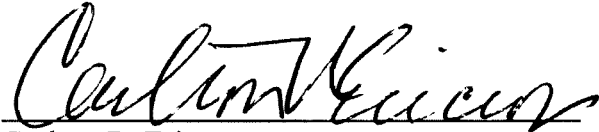
OBJECTION TO PROPOSED ORDER
CHAVEZ V. CANYON COUNTY
CASE NO. CV09-12900-C
9-1117

Petitioners' proposed order is broader than the order entered by the Court as it appears to include a stay of the issuance and recording of a tax deed on the properties. Those actions, of course, cannot be stayed because they actions have already occurred.

Respondent has attached herewith a proposed order which more accurately reflects the Court's order at the hearing.

DATED this 7th day of May, 2010.

JOHN T. BUJAK,
Canyon County Prosecuting Attorney



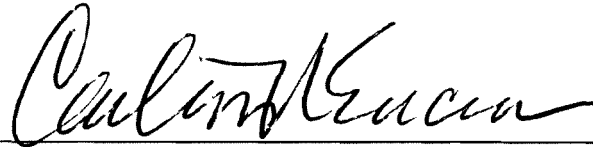
Carlton R. Ericson
Deputy Prosecuting Attorney
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2010, I caused a true and correct copy of the foregoing **OBJECTION TO PROPOSED ORDER** to be served on the following in the manner indicated:

Ismael Chavez
Attorney at Law
P.O. Box 1094
Caldwell, Idaho 83606-1094

- U.S. Mail
- Overnight Delivery
- Hand Delivery
- Facsimile
- Email



Carlton R. Ericson
Deputy Prosecuting Attorney

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L E D
A.M. / 5 E P.M.

MAY 10 2010

CANYON COUNTY CLERK
DEPUTY

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

| | | |
|--------------------------------|---|--------------------------|
| |) | Case No.: CV09-12900*C |
| ISMAEL CHAVEZ AND |) | |
| DOLORES MERCADO, |) | |
| Petitioners, |) | |
| -v- |) | RESPONSE TO RESPONDENT'S |
| |) | OBJECTION TO PROPOSED |
| CANYON COUNTY, STATE OF IDAHO, |) | ORDER |
| <u>et al,</u> |) | |
| Respondent.) |) | |

The Respondent has filed an objection to the proposed stay order submitted by Petitioner Chavez ("Chavez"). Respondent's counsel asserts he represented at the hearing on Chavez's motion for a stay the Respondent had withdrawn the properties in question from the list of properties to be sold and that it acknowledged the need to wait for the resolution of this matter before proceeding to sell the properties. Thus based on the representation the Court then ordered a stay in accordance with the counsel's representation for one hundred eighty (180) days. The proposed order, said counsel says, is broader than the order entered by the Court at the hearing. It seems, the assertion continues, to include a stay restraining the

Respondent from issuing and recording tax deeds on the properties when the issuance and recordation of the deeds have already occurred, counsel claims. Counsel then claims another proposed order that more accurately reflected the Court's verbal order at the hearing was attached to the objection. Chavez responds to the objection as follows:

1. First, the record should reflect that the hearing on Chavez's motion had been scheduled for May 3, 2010, at 9:30 o'clock a. m. Respondent's counsel was about fifteen (15) late after having had to be called by the court clerk and informed the Court and Chavez were waiting for him. Said counsel offered neither an excuse nor an apology for his tardiness. This kind of behavior supports the view held by Chavez that this case is viewed as nothing more than a nuisance and not to be seriously taken. It shows Respondent's counsel was unprepared in that he failed to raise any specific objections and failed to file any objection to the motion and any memorandum prior to the hearing. No specific objection was made nor was any specific alternative order provided by counsel at the hearing. Given the lack of a specific argument or a timely and specific counter-proposal by the Respondent, the Court acted properly in signing the proposed order.

2. As Chavez understood the hurried colloquy between the

Court and Chavez, the Court granted the motion to stay with the proviso the stay would be limited to 120 days. Thus, except for including the 120 day proviso limit set by the Court the proposed order mirrored the motion's and the statute's wording. See paragraph 1 of the Motion and § 63-1006(4), Idaho Code. Hearing on the whole motion lasted less time than the time waiting for belated opposing counsel to appear at the scheduled hearing. At the end of the hearing, Chavez had to literally yell at Your Honor as he was leaving the courtroom "do the 120 days start as of today?", to which the Court yelled back, "yes" or words to that effect. Respondent's counsel neither interposed an objection nor did he ask for any clarification at the hearing regarding the Court's order. The Court therefore properly signed the proposed order.

3. What is sought by the Order is a stay concerning enforcement of the Respondent's order. See, again, Idaho Code § 63-1006(4). A deed's validity, including a tax deed, has several requirements that must be met in order for the deed to be efficacious. For example, a deed must be delivered to the grantee. Thus, the "enforcement" of the Commissioners' order may entail more than what was represented by counsel that the properties will not be sold. That the Respondent Canyon County Commissioners did

make a de facto finding they were satisfied that the Respondent Canyon County Tax Collector had fulfilled the requirements of § 63-1005, Idaho Code, and that a delinquency was owing on the property and that such delinquency had not been paid, whereupon the Commissioners directed the County Tax Collector to issue and record a tax deed in favor of Canyon County is admitted, albeit without the Commissioners' decision so directing the Tax Collector failing to include the statutory requisite findings of fact and conclusions of law. See Idaho Code § 63-1006(2) (last sentence).

Whether the requirements of Idaho Code § 63-1005, were indeed fulfilled is an issue now before this Court. The record more than adequately reflects Petitioners position and from whence it can more than reasonably be concluded the gist of the case, namely, that the word "summary" and the words "itemize in detail" are ordinary, common-day words and are not synonymous or are not so ambiguous as to be construed as meaning close to the same thing. Petitioners have established a prima facie case. Establishing such prima facie case is fatal to Respondent's position. Hence, Petitioners are entitled to at least 120 days protection from "enforcement" of the order of the Commissioners *pendente lite*, as provided by the statute.

See, again, Idaho Code § 63-1006(4). The Court ostensibly agreed in exercising its discretion and granting Chavez's motion. The Court accordingly signed the proposed order. Granting of the motion was an appropriate exercise of the Court's discretion and signing of the order was a proper act of the Court.

4. As stated the hearing on Chavez's motion was held on May 3, 2010, close to 10:00 o'clock a.m. On that same day, early in the afternoon, Chavez submitted the proposed order to the Court. Prior to submitting the proposed order to the Court Chavez served copies of the proposed order and of the letter on the Respondent's counsel. The Court signed the proposed Order that day. The order is a simple one-page document. At no time between May 3, 2010, and May 6, 2010, did opposing counsel raise any objections by filing the same with the Court. Again it appears that the Respondents are simply making a hurried and extempore response to an order which the Respondent had had sufficient time to object and to which the Respondent failed again to timely do. The Court acted properly.

5. As stated hereinbefore, Counsel claims another proposed order that more accurately reflected the Court's verbal order at the hearing was attached to the objection. No copy of such order was attached to the copy of the objection

served upon Chavez, showing this case is viewed as nothing more than a nuisance and not to be taken seriously, an attitude which Chavez is finding more and more tiresome and in a way hectoring.

The order of this Court of May 3, 2010 should stand as signed.

CERTIFICATE OF SERVICE

The undersigned hereby certifies he served a copy of the above and foregoing motion upon the Canyon County Prosecuting Attorney by personally delivering the same to his office at the Canyon County courthouse on the 10 day of May, 2010.

DATED: May 10, 2010.



Ismael Chavez

BEFEHLT IST BEFEHLT

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

FILED
A.M. 1:53 P.M.

JUN 03 2010

CANYON COUNTY CLERK
K CANNON, DEPUTY

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

| | | |
|--------------------------------|---|------------------------|
| |) | Case No.: CV09-12900*C |
| ISMAEL CHAVEZ AND |) | |
| DOLORES MERCADO, |) | |
| Petitioners, |) | |
| |) | |
| -v- |) | MOTION TO AUGMENT |
| |) | RECORD AND NOTICE |
| |) | OF HEARING |
| CANYON COUNTY, STATE OF IDAHO, |) | |
| <u>et al,</u> |) | |
| Respondent.) |) | |

MOTION

Petitioner Ismael Chavez respectfully and moves the Court pursuant to Idaho Appellate Rule 30 and this Court's scheduling order filed April 30, 2010 for an order augmenting the appellate record in the above-entitled appeal with copies of Resolution No. 09-169, copies of the Notices of Pending Issuance of Tax Deed dated September 18, 2009, copies of undated letters from the county treasurer informing petitioners a tax deed had been issued, and copies of the affidavits filed by said Petitioner and of record with this Court, said copies being attached hereto

and by reference made a part hereof. The Defendant should also be ordered the Defendant to produce and make part of the record the so-called Affidavit of Compliance.

NOTICE OF HEARING

NOTICE is hereby given that the Defendant will bring the above and foregoing Motion on for hearing before the Honorable Stephen Drescher, District Judge, on the 17th day of June, 2010, at 10:00 o'clock a.m. or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the attached MOTION TO AUGMENT THE RECORD by personally delivering the same to the Office of the Canyon County Prosecuting Attorney, Canyon County courthouse, Caldwell, Idaho on the 3 day of June, 2010.

Dated: June 3, 2010.



Ismael Chavez

RESOLUTION NO. 09-169

A RESOLUTION AUTHORIZING AN INCREASE IN THE FEE CHARGED TO COLLECT COSTS INCURRED BY CANYON COUNTY IN THE PROCESS OF COLLECTING DELINQUENT PROPERTY TAXES

The following resolution and order was considered and adopted by the Canyon County, Idaho Board of Commissioners on this 31 day of July, 2009.

Upon motion of Commissioner Alder and the second by Commissioner Ferdinand, the Board resolves as follows:

WHEREAS, Idaho Code § 31-801 grants general powers and duties, subject to the restrictions of law, to the boards of county commissioners in their respective counties; and

WHEREAS, Idaho Code §§ 63-1002 and 63-1005 authorize a county to collect the costs incurred by it in the processing and collection of delinquent property taxes, including the costs of certified mailings, title searches, advertising and all other expenses for the processing and collection of the delinquency; and

WHEREAS, Idaho Code §§ 31-870(1) and 63-1311 require that the fees imposed and collected by the County must be reasonably related, and not exceed, the actual cost of the services being rendered; and

WHEREAS, during the tax deed process, extensive work is done by the Canyon County Treasurer as the tax collector in order to (1) identify all parties of interest in a piece of property, (2) locate valid mailing addresses, (3) locate and contact by telephone individuals, including neighbors, prior owners, current owners, etc., to obtain additional information that may not be recorded relating to the subject property, (4) obtain history related to the property, (5) prepare required letters notifying recorded parties in interest of the pending action, (6) prepare a legal notice to be published in the newspaper advertising all delinquent accounts, (7) payment of the publication costs, (8) personally visit and post notice on the property, and (9) make personal contact with the property owners; and

WHEREAS, Idaho Code § 31-870(1) authorizes the Board of County Commissioners to "... impose and collect fees for those services provided by the County which would otherwise be funded by ad valorem tax revenues"; and

WHEREAS, the present cost schedule utilized by the Canyon County Treasurer is a graduated cost schedule which has been in place for at least twelve (12) years, and which does not accurately reflect the costs incurred by the county for properties that proceed to the tax deed stage; and

WHEREAS, the Canyon County Treasurer's Department has determined that the actual costs incurred to get delinquent property to the tax deed stage is in excess of Five Hundred

Dollars (\$500.00), and as a result, wishes to adopt a single level fee of Five Hundred Dollars (\$500.00) to be attached to the delinquent properties; and

WHEREAS, Idaho Code § 63-1311A requires the Board of County Commissioners to hold a regular special meeting, with proper notice, for any "fee increase that exceeds five percent (5%) of the amount of the fee last collected or a decision imposing a new fee . . ."; and


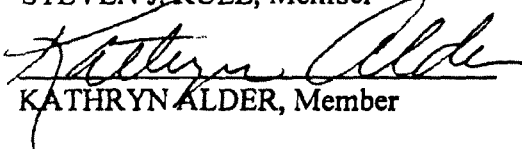
WHEREAS, the Board of County Commissioners conducted a public hearing on the above proposed revised cost on July 31, 2009 at 9:00 a.m.; and

WHEREAS, the Board of County Commissioners finds good cause to adopt the cost of Five Hundred Dollars (\$500.00) to be imposed on delinquent properties that proceed to a tax deed status, which is less than the actual cost incurred by the County for the tax deed process on individual delinquent properties.

NOW THEREFORE, THE BOARD HEREBY RESOLVES, that the Canyon County Treasurer shall impose a Five Hundred Dollar (\$500.00) fee for costs incurred for collection of property taxes that are three years or more delinquent, and for which the County begins the tax deed process.

IT IS FURTHER RESOLVED BY THE BOARD that this Resolution shall be effective this 31 day of July, 2009.

- Motion Carried Unanimously
- Motion Carried/Split Vote Below
- Motion Defeated/Split Vote Below

| | Yes | No | Did Not Vote |
|---|-------------------------------------|--------------------------|--------------------------|
|  DAVID J. FERDINAND, II, Chairman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Unavailable for signature</u> STEVEN J. RULE, Member | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|  KATHRYN ALDER, Member | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ATTEST: WILLIAM H. HURST, CLERK

By: 
Deputy Clerk

Date: 7-31-09

Article #: 71791000164450018604

THE ABOVE PROPERTY NOTED HEREON IS AVAILABLE

for a mortgage loan to be made by TD Bank in the amount of the County Treasurer as Tax
and the amount of the County Treasurer as Tax and the amount of the County Treasurer as Tax
amount of the County Treasurer as Tax

APR 13 11 54 50 AM '09 017700010050 Amount: 1000.00
14-5N-3W SW DEE ANN MEADOWS SUB
LOT 3 BLK 1
Site Address: 0 PHILLIS LN MI

That the amount of the County Treasurer as Tax and the amount of the County Treasurer as Tax
amount of the County Treasurer as Tax

FRANK ISRAEL
MARGARO DOLORES
3511 ARTHUR ST
CALDWELL, ID 83605

- s. That said del. amount results in respect to the amount of subsequent unpaid taxes for 2006.
- f. That the total amount due as of 09/13/2009 is:

| | |
|--------------------------|----------|
| Amount of Tax | 43.42 |
| Amount of Late Chg (2%) | 0.88 |
| Interest (12% per annum) | 11.44 |
| Cost and Fees | 1,500.00 |

Amount of Tax and Interest as of SEPTEMBER 13, 2009 1,555.74

Amount of Tax and Interest as of SEPTEMBER 13, 2009 1,555.74

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

FILED
A.M. P.M.

JAN 04 2010

CANYON COUNTY CLERK
K CANNON, DEPUTY

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

ISMAEL CHAVEZ AND) Case No.: CV09-12900*C
DOLORES MERCADO,)
On behalf of themselves and)
others similarly situated,)
Plaintiffs/Petitioners,)

-v-

CANYON COUNTY, STATE OF IDAHO,)
through it duly elected BOARD)
OF COUNTY COMMISSIONERS and)
the Canyon County Treasurer)
and ex-officio tax collector,)
Defendant/Respondent.)

AFFIDAVIT IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

State of Idaho)
) ss.
County of Canyon)

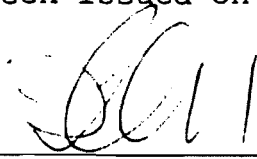
Ismael Chavez, being first duly sworn upon oath,
deposes and says:

1. Affiant has personal knowledge of the facts related
in this affidavit;
2. This affidavit is made in support of Affiant's motion
of summary judgment;

3. Ismael Chavez ("Chavez") and Dolores Mercado are joint owners of two adjoining parcels of land located in Canyon County, Idaho, who have been served with Notices of Issuance of Tax Deeds (hereinafter the "Notices").
4. The Defendant, namely, the County of Canyon, State of Idaho, is a body politic and political subdivision of the State of Idaho and at all times relevant hereto the Defendant has been acting through the duly elected county treasurer and ex-officio tax collector and the Canyon County Board of County Commissioners.
5. The two parcels of the of affiant and Dolores Mercado are identified thus: one parcel is referred to by the Defendant by the number 213755500 and is legally described as lot 1, block 1, of Dee Ann Meadows Subdivision and the other parcel is identified as number 21375511 and is legally described as lot 6, block 2, Dee Ann Meadows Subdivision. On or about September 18, 2009, the Defendant served Chavez with Notices on the two properties, copies of said Notices being attached to the Complaint as Exhibits "A" and "B".
6. On or about October 8, 2009, Chavez responded to the otices by serving the Defendant with an Answer and

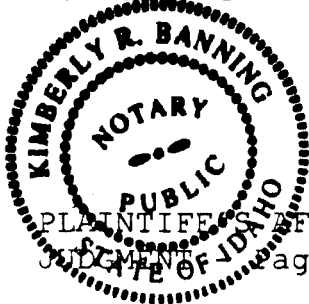
Objection to the Notices pursuant to Idaho Code § 63-1006(2), requesting discovery pursuant to Idaho Code § 63-1006(4)(g). No discovery was given. Chavez maintained the county's Notices were invalid for failure to itemize the costs as required by the statute, *infra*, and in lieu of itemizing inserting the sum of \$500.00 per Notice. The Defendant responded its resolution attached to the complaint as Exhibit "C" "amending the statute" by imposing a \$500.00 fee in lieu of having to itemize as being within its authority and discretion to do so. Chavez attended a hearing before the Defendant. The county made no decision containing findings of fact and conclusions as required by Idaho Code § 63-1006(2).


7. Instead, on December 3, 2009, Affiant received letters informing affiant that tax deeds in favor of Canyon County had been issued on the two parcels.



Ismael Chavez

Subscribed and Sworn to before me this 4th day of
January, 2010.




Notary Public for Idaho
Residing at: Middleton, ID
Commission Expires: May 27, 2014

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT Page 3 of 4

000058

My Commission expires:

CERTIFICATE OF SERVICE

The undersigned hereby certifies he served a copy of the above and foregoing motion upon the Canyon County Prosecuting Attorney by personally delivering the same to his office on the 4 day of January, 2010.

DATED: January 4, 2010.



Ismael Chavez

COPY

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

FILED
A.M. 2:35 P.M.

FEB 08 2010

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

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

ISMAEL CHAVEZ AND) Case No.: CV09-12900*C
DOLORES MERCADO,)
On behalf of themselves and)
others similarly situated,)
Plaintiffs/Petitioners,)

-v-

SUPPLEMENTAL
AFFIDAVIT IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

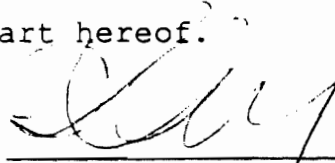
CANYON COUNTY, STATE OF IDAHO,)
through it duly elected BOARD)
OF COUNTY COMMISSIONERS and)
the Canyon County Treasurer)
and ex-officio tax collector,)
Defendant/Respondent.

State of Idaho)
) ss.
County of Canyon)

Ismael Chavez, being first duly sworn upon oath,
deposes and says:

1. Affiant has personal knowledge of the facts related
in this affidavit;
2. This affidavit is made in support of Affiant's motion
of summary judgment;

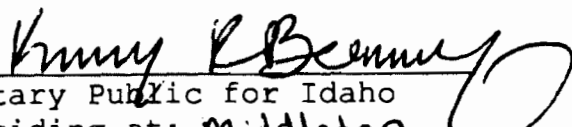
3. On or about December 3, 2009, Ismael Chavez received by certified mail, return receipt requested, from the Canyon County, Idaho, Treasurer's Department letters, copies of said letters being attached hereto and by reference made a part hereof.



Ismael Chavez

Subscribed and Sworn to before me this 8th day of January, 2010.



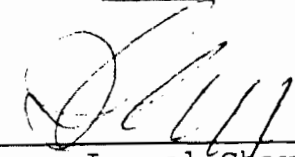


Notary Public for Idaho
Residing at: Middleton
My Commission expires: May 27, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies he served a copy of the above and foregoing motion upon the Canyon County Prosecuting Attorney by personally delivering the same to his office on the 8 day of February, 2010.

DATED: February 8, 2010.



Ismael Chavez

CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

CHAVEZ, ISMAEL
MERCADO, DELORES
1511 ARTHUR ST
CALDWELL, ID 83605

Certified No. Article #: 71791000164450047062

This letter is to inform you that on November 20, 2009, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho Code §§63-1005 and 63-1006, on the following described property:

Account No. R21375511 0
Parcel No.017700020060
Section: 34-5N-3W SW DEE ANN MEADOWS SUB
LOT 6 BLK 2
Site Address / Location Description: 0 PHILLIPS LN, MI
Acreage: 0.59

The name and last known address of the record owner or owners of said property were:

CHAVEZ, ISMAEL
MERCADO, DELORES
1511 ARTHUR ST
CALDWELL, ID 83605

If you are interested in redeeming said property you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash. NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code §63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.



Tracie Lloyd

TRACIE LLOYD
County Treasurer and Ex-officio Tax
Collector for Canyon County, Idaho

000062

CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

CHAVEZ, ISMAEL
MERCADO, DELORES
1511 ARTHUR ST
CALDWELL, ID 83605

Certified No.

Article #: 71791000164450047055

This letter is to inform you that on November 20, 2009, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho Code §§63-1005 and 63-1006, on the following described property:

Account No. R21375505 0
Parcel No. 017700010060
Section: 34-5N-3W SW DEE ANN MEADOWS SUB
LOT 6 BLK 1
Site Address / Location Description: 0 PHILLIPS LN, MI
Acreage: 0.60

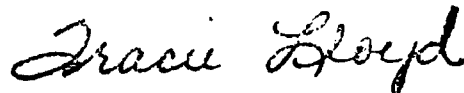
The name and last known address of the record owner or owners of said property were:

CHAVEZ, ISMAEL
MERCADO, DELORES
1511 ARTHUR ST
CALDWELL, ID 83605

If you are interested in redeeming said property you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash. NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code §63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.



TRACIE LLOYD
County Treasurer and Ex-officio Tax
Collector for Canyon County, Idaho



000063

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L E D
A.M. 1:23 P.M.

JUN 03 2010

CANYON COUNTY CLERK
K CANNON, DEPUTY

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

| | | |
|--------------------------------|---|------------------------|
| |) | Case No.: CV09-12900*C |
| ISMAEL CHAVEZ AND |) | |
| DOLORES MERCADO, |) | |
| |) | |
| Petitioners, |) | STATEMENT IN SUPPORT |
| -v- |) | OF MOTION TO AUGMENT |
| |) | RECORD |
| |) | |
| CANYON COUNTY, STATE OF IDAHO, |) | |
| <u>et al,</u> |) | |
| |) | |
| Respondent.) |) | |

Idaho Code § 63-1006(4) provides thus: "Review [of an appeal by the district court from a decision of the commissioners] shall be conducted by the court without a jury and shall be confined to the record in the county minutes." Hence, the statute specifically limits the review of the decision to "county minutes". In its scheduling order filed April 30, 2010, the Court ordered a transcript and the record be prepared. Petitioner Ismael Chavez ("Chavez") objected to the ordering of the transcript not because the statute confined the appeal to the county minutes but on the grounds the salient,

significant, and material facts of the case were not disputed and because the Defendant failed to comply with the statutory requirement that it enter findings of fact and conclusions of law pursuant to Idaho Code § 63-1006(2). Chavez asserted and continues to maintain the transcript would not and will not assist the Court in determining the facts of the case. Chavez's position has been substantiated by the transcript and the record. The only relevant "minutes" regarding the so-called "hearing" is found on pages 2-3 of the Record wherein it is stated that Chavez "... questioned the \$500 fee ... the Treasurer's Office charged for delinquent accounts" and "... he said he should receive an itemized statement showing the expenses when he was sent a notice of pending tax deed". Chavez also, the minutes say, said the "... Board does not have the power to set a fee in place of providing an itemized statement". The minutes then relate that a "Carl Ericson [an attorney with the prosecuting attorney's office] said a public hearing regarding the adoption of the \$500 fee was held in July". The thrust of Mr. Ericson's remark is the absurd notion that (1) a county may in effect amend a statute by "resolution" and (2) upon publication of the adoption of the resolution a property owner is on notice that a fixed fee of \$500 will be assessed against him in the event of a

three year delinquency and the taxpayer cannot thereafter complain when assessed the \$500.00 fee.

No hearing in any sense of the word was held. The transcript clearly shows the commissioners simply wanted to know (1) whether Chavez was going to pay the taxes and (2) if he had a resolution(?). The commissioners were not interested in the issue or hearing about it. Like everything else in this case, the hearing a joke and treated as such. The Defendant's position at the hearing can be discerned from the succinct conversation stated on page 10, lines 10-17, of the transcript. Chavez inquired whether the decision of the Defendant would be "... based on ... what you're (meaning the commissioners) going to say the prosecuting attorney tells ... [you and he is telling ... you you] can do this [that is, charge a fixed fee of \$500 in lieu of itemizing] and [therefore] that ... [would be] ... the Defendant's position". In response commissioner Ferdinand responded "right". Chavez continued inquiring whether the commissioners' position and therefore their decision would be that the Defendant didn't " ... have to itemize ... notwithstanding ... the statute says ... they must itemize in detail the fees and costs". Tr., p. 10, lines 14-17. Again, Commissioner Ferdinand responded "right". That was the sum and substance of the "hearing".

This Court cannot, given the so-called "hearing" did not address the issue raised and the statute's limitation of the "record" to the county "minutes", be expected to render a fair decision on such miniscule evidence. The Court needs a complete record. This case started with the service of Notices of Pending Issuance of Tax Deeds. The notices contain information germane to the issue raised by petitioners. The so-called Findings of Fact on page 14 of the record states as a finding of fact the proper notices were sent as required by law. Item 5. If the tax deeds were made part of the record why were not the Notices? The notices are necessary to the issue raised by Petitioner's. The Notices should have been made a part of the record.

Similarly, copies of the so-called Affidavit of Compliance and of the resolution should be part of the record. The commissioners were aware of the issue raised by Petitioners and were thus aware that Petitioners were, and are, challenging the verity of the so-called Affidavit of Compliance. The "Affidavits" are an important part of the case and were found to be "facts" by the commissioners. The resolution is referred to in the transcript and the Defendant raised the defendant that publishing of the resolution gave the Defendant authority to amend the statute.

The Defendant was responsible for the record and its accuracy. To insert only what the Defendant wants on the record and to omit copies of relevant documents is, as the Defendant has been doing through-out this proceeding, treating the case as a joke. It's not enough the Defendant has all the advantages, the Defendant also cannot control the record before this Court.

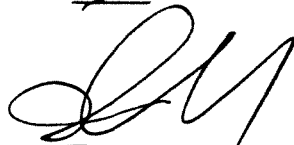
The letters sent to Petitioners informing them the tax deed had been issued is ostensibly the "decision" of the Defendant. The letters should be made part of the record.

Petitioner Chavez's affidavits are already part of the Court's record. These affidavit should also be made part of the appellate record. The affidavits support the "procedure" utilized and serve as a foundation for the documents hereinabove mentioned.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the attached STATEMENT IN SUPPORT OF MOTION TO AUGMENT THE RECORD by personally delivering the same to the Office of the Canyon County Prosecuting Attorney, Canyon County courthouse, Caldwell, Idaho on the 3 day of June, 2010.

Dated: June 3, 2010.



Ismael Chavez

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L E D
A.M. 4:23 P.M.

JUN 18 2010

CANYON COUNTY CLERK
K CANNON, DEPUTY

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

| | | |
|--------------------------------|---|------------------------|
| |) | Case No.: CV09-12900*C |
| ISMAEL CHAVEZ AND |) | |
| DOLORES MERCADO, |) | |
| Petitioners, |) | |
| |) | ORDER GRANTING MOTION |
| -v- |) | TO AUGMENT RECORD |
| |) | |
| |) | |
| CANYON COUNTY, STATE OF IDAHO, |) | |
| <u>et al,</u> |) | |
| Respondent.) |) | |

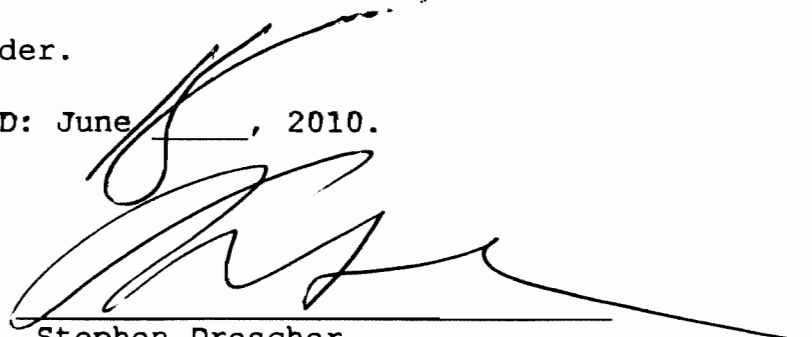
The motion of Petitioner Ismael Chavez for an order to augment the appellate record in the above-entitled appeal having come regularly before the Court the 17th day of June, 2010, said petitioner being present and the Respondent not having been present,

IT IS HEREBY ORDERED and this does order that the motion is granted and the copies of Resolution No. 09-169, copies of the Notices of Pending Issuance of Tax Deed dated September 18, 2009, copies of undated letters from the county treasurer informing petitioners a tax deed had been issued, and copies of the affidavits filed by said

Petitioner and of record with this Court, being attached to the motion are hereby made part of the appellate record, and

IT IS FURTHER ORDERED and this does order that the Defendant produce and file with the Court a copy of the so-called Affidavit of Compliance, with a copy of the same being provided to the Petitioner, within ten (10) days of the date of this Order.

DATED: June 1, 2010.

A large, stylized handwritten signature in black ink, appearing to read 'Stephen Drescher', is written over a horizontal line.

Stephen Drescher
District Judge

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

FILED
A.M. P.M.
JUL 08 2010
CANYON COUNTY CLERK
C DOCKINS, DEPUTY

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

| | | |
|--------------------------------|---|------------------------|
| |) | Case No.: CV09-12900*C |
| ISMAEL CHAVEZ AND |) | |
| DOLORES MERCADO, |) | |
| Petitioners, |) | |
| -v- |) | MOTION FOR AN ORDER |
| |) | IN RE CONTEMPT AND |
| |) | NOTICE OF HEARING |
| |) | |
| CANYON COUNTY, STATE OF IDAHO, |) | |
| <u>et al,</u> |) | |
| Respondent.) |) | |

Petitioner Ismael Chavez respectfully moves the Court for an Order pursuant to I. R. C. P. Rule 75 setting a date and time for a hearing on the issue of whether the Respondent Canyon County Board of County Commissioners should not be held in contempt and to advise said Respondent of both the charge against it and the rights it is entitled thereunder.

Petitioner represents to the Court as follows:
Idaho Code § 63-1005(8) provides in relevant part
thus:

No less than five (5) working days prior to the date on which the tax deed shall be issued, the county tax collector shall make an affidavit of

compliance stating that he has complied with the conditions of issuance of the notice of pending issue of tax deed described in this section, and stating with particularity the facts relied on as constituting such compliance.

As stated in the affidavit filed in support hereof, on June 18, 2010, the Court entered an Order directing the Respondent to produce and file with the Court a copy of the so-called Affidavit of Compliance, with a copy of the same being provided to the Petitioner, within ten (10) days of the date of this Order. The Respondent has failed to comply with the Court's order.

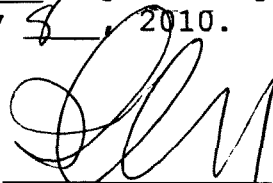
NOTICE OF HEARING

NOTICE is hereby given that the Defendant will bring the above and foregoing Motion on for hearing before the Honorable Stephen Drescher, District Judge, on the 16th day of ~~July~~ ^{August}, 2010, at 2:30 o'clock p.m. or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the above and foregoing document by personally delivering the same to the Office of the Canyon County Prosecuting Attorney, Canyon County courthouse, Caldwell, Idaho on the 3 day of July, 2010.

Dated: July 3, 2010.



Ismael Chavez

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208)459-0192

F I L E D
9:10 A.M. P.M.

JUL 08 2010

CANYON COUNTY CLERK
C DOCKINS, DEPUTY

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

ISMAEL CHAVEZ AND) Case No.: CV09-12900*C
DOLORES MERCADO,)
Petitioners,) AFFIDAVIT IN SUPPORT
-v-) OF MOTION FOR AN ORDER
CANYON COUNTY, STATE OF IDAHO,) IN RE CONTEMPT
et al,)
Respondent.)

State of Idaho)
County of Canyon) ss.

Ismael Chavez ("affiant"), being first duly sworn upon
oath, deposes and states as follows:

1. Affiant has personally knowledge of the facts
stated herein;
2. On June 18, 2010, the Court entered an Order
directing the Respondent to produce and file with
the Court a copy of the so-called Affidavit of
Compliance, with a copy of the same being provided
to the Petitioner, within ten (10) days of the date
of this Order;

3. The Respondent Canyon County Board of Commissioners ("BOCC") failed to comply with the aforesaid Order of this Court as of July 7, 2010.



Ismael Chavez

SUBSCRIBED AND SWORN TO before me the 7th day of July, 2010.



Notary Public for Idaho

Residing at: Nampa, ID

Commission Expires: May 27, 2014

JOHN T. BUJAK, ISB #5544
CARLTON R. ERICSON, ISB #5845
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. 8:05 P.M.

JUL 13 2010

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Defendants/Respondents

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

ISMAEL CHAVEZ and DOLORES
MERCADO, On behalf of themselves and
others similarly situated,

Plaintiffs/Petitioners,

vs.

CANYON COUNTY, STATE OF IDAHO,
through its duly elected BOARD OF
COUNTY COMMISSIONERS and the
Canyon County Treasurer and ex-officio tax
collector,

Defendants/Respondents.

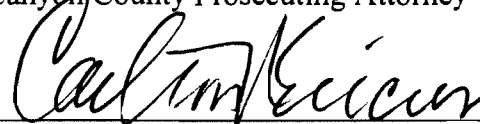
CASE NO. CV09-12900-C

AUGMENTATION OF RECORD

Attached hereto as Exhibits 1 and 2 are the Affidavits of Compliance that were ordered by the Court to be filed to augment the record in the above-referenced case.

DATED this 13th day of July, 2010.

JOHN T. BUJAK,
Canyon County Prosecuting Attorney



Carlton R. Ericson
Deputy Prosecuting Attorney
Attorneys for Defendants/Respondents

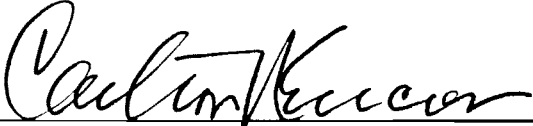
AUGMENTATION OF RECORD
CHAVEZ/MERCAD V. CANYON COUNTY
CASE NO. CV09-12900-C
9-1117

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2010, I caused a true and correct copy of the foregoing **AUGMENTATION OF RECORD** to be served on the following in the manner indicated:

Ismael Chavez
Attorney at Law
P.O. Box 1094
Caldwell, Idaho 83606-1094

U.S. Mail
 Overnight Delivery
 Hand Delivery
 Facsimile



Carlton R. Ericson
Deputy Prosecuting Attorney

4
* * AFFIDAVIT OF COMPLIANCE * *

STATE OF IDAHO >
> ss.
COUNTY OF CANYON >

2009 NOV 13 AM 9 28
WILLIAM H. HURST
CANYON CHTY RECORDER
BY Tina B. Lewis

RECORDED

2009057527

TRACIE LLOYD being first duly sworn, deposes and says as follows:

1. That affiant is duly elected and qualified Tax Collector in and for Canyon County, State of Idaho.
2. That affiant has fully complied with the provisions of Section 63-1005, Idaho Code, by reason of the following:
 - a. On SEPTEMBER 18, 2009, affiant served or caused to be served a copy of Notice of Pending Issue of Tax Deed by registered or certified mail with return receipt demanded upon the record owner or owners and/or any party in interest demanding notice for the following described property:

| | |
|---------------------------------|--|
| Account Number: 6R21375-505- -0 | CHAVEZ ISMAEL MERCADO DOLORES Parcel No. 017700010060 Section 34-5N-3W SW DEE ANN MEADOWS SUB LOT 6 BLK 1 Site Address: 0 PHILLIS LN MI |
|---------------------------------|--|

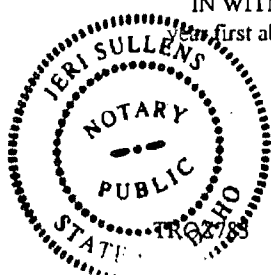
- b. A copy of said return is attached hereto as Exhibit "A" and hereby incorporated by reference herein.
 - c. Said Notice was served by publishing a copy thereof in the IDAHO PRESS-TRIBUNE for four (4) consecutive weeks, beginning on OCTOBER 5, 2009 ENDING OCTOBER 26, 2009 A copy of Affidavit of Publication is attached hereto as Exhibit "B".
 - d. All other Notices (i.e. Yearly Tax Notices) have been given as required by Idaho Code.
3. That a copy of said Notice is attached hereto as Exhibit "C", and that the total amount of unpaid taxes, late fee, interest, cost and fees up to the date of Notice was \$558.74.

Tracie Lloyd

 County Treasurer and Ex-officio Tax Collector
 for Canyon County, State of Idaho.

On this 13TH DAY OF NOVEMBER 2009, before me JERI SULLENS in and for said County of Canyon, State of Idaho, personally appeared TRACIE LLOYD known to me to be the County Treasurer and ex-officio Tax Collector of said Canyon County, and who executed the within instrument as such and acknowledged to me that TRACIE LLOYD executed the same as such officer.

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



Jeri Sullens

 Notary Public
 Residing at Greenleaf, Idaho Commission expires 06/26/2016

REQUEST
 TRACIE LLOYD
 CANYON COUNTY

2. Article Number

71791000164450018604

1. Article Addressed to:

CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
J. Chavez Addressee

B. Received by (Print Name) *ISMAEL CHAVEZ* C. Date of Delivery *9/21/05*

D. Is delivery address different from item 1? Yes
If YES enter delivery address below: No

3. Service Type Certified

4. Restricted Delivery? (Extra Fee) Yes

Code 2: 6R21375505 0

PS Form 3811

Domestic Return Receipt

EXHIBIT 'A'

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

000078

NOTICE OF PENDING ISSUE OF TAX DEED

STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

CERTIFIED No. _____

TO: CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

YOU ARE HEREBY NOTIFIED, as Follows:

1. That a delinquency occurred on January 1, 2007 in the records of the County Treasurer as Tax Collector of Canyon County, State of Idaho for the following described property (hereinafter referred to as the "subject property"):

6R21375-505- -0 017700010060 Acres: 000.00
34-5N-3W SW DEE ANN MEADOWS SUB
LOT 6 BLK 1
Site Address: 0 PHILLIS LN MI

2. That the name(s) and last known address(es) of the record owner or owners of record of the subject property is:

CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

3. That said delinquency exists in respect to the assessment and subsequent unpaid taxes for 2006.
4. That the total amount due as of 09/18/2009 is:

| | |
|--------------------------------|--------|
| Amount of Tax | 43.42 |
| Amount of Late Chg (2%) | 88 |
| Interest (12%) per annum | 14.44 |
| Cost and Fees | 500.00 |

Total Due as of SEPTEMBER 18, 2009 \$558.74

CALL 454-7354 FOR CURRENT PAYMENT INFORMATION.
OTHER COSTS, FEES AND INTEREST MAY BE DUE UPON PAYMENT.

Page 1 of 2

EXHIBIT 'C'

000079

CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

6R21375-505- -0

CERTIFIED No.

YOU ARE FURTHER NOTIFIED,

5. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009, by payment to the Canyon County Treasurer, of said unpaid taxes together with late charge, interest and all costs and expenses, I, as Treasurer and Tax Collector for Canyon County, State of Idaho, shall thereupon, as required by law, make application to the Board of County Commissioners of Canyon County, State of Idaho, for a Tax Deed to issue on the subject property in favor of Canyon County with absolute title, free of all encumbrances, except any mortgages of record to the holders of which notice has not been sent and any lien for property taxes which may have attached subsequent to the assessment and any lien for special assessments;
6. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009 in the manner described above then at 9:00 O'CLOCK AM MST on NOVEMBER 20, 2009 a tax deed for the subject property in favor of Canyon County will be issued at the Treasurer's Office, Room 342 Canyon County Courthouse, 1115 Albany, Caldwell, Idaho by the County Treasurer as the Tax Collector of Canyon County, State of Idaho;
7. Pursuant to Idaho Code 63-1005(3), the record owner or owners and parties in interest of record shall be liable and pay to the county tax collector all costs and fees in the preparation, service and publication of such notice and the tax deed process and such costs shall become a perpetual lien upon the property in favor of the county tax collector.

NOTICE OF HEARING

8. A hearing shall be held before the Canyon County Board of Commissioners on NOVEMBER 20, 2009 at the hour of 9:00 O'CLOCK AM MST or as soon thereafter as the matter can be heard, to determine if a tax deed for the subject property shall be issued in favor of Canyon County.
9. The record owner or owners and parties in interest shall have adequate opportunity to be heard, to confront or cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on behalf of the record owner or owners or any party in interest. ALL INQUIRIES OR OBJECTIONS CONCERNING THIS NOTICE AND THE INFORMATION CONTAINED HEREIN SHALL BE DIRECTED TO THE CANYON COUNTY TREASURER, CANYON COUNTY COURTHOUSE, 1115 ALBANY, ROOM 342, CALDWELL, IDAHO 83605, PHONE NO. (208)454-7354 NO LATER THAN FIVE (5) WORKING DAYS PRIOR TO THE HEARING DATE NOTED ABOVE.

Dated this 18TH DAY OF SEPTEMBER 2009.

County Treasurer and ex-Officio Tax Collector
for Canyon County, Idaho

By: _____
Deputy

* * * * * Cashier's check, money order, certified check or cash * * * * *
* * NO PERSONAL CHECKS WILL BE ACCEPTED * *

RQZ780

Page 2 of 2

EXHIBIT 'C'

000080

* * AFFIDAVIT OF COMPLIANCE * *

STATE OF IDAHO >
> ss.
COUNTY OF CANYON >

2009 NOV 13 AM 9:38
WILLIAM H. HUBBARD
CANYON CITY RECORDER
BY *Shirley B. Adams*

RECORDED

2009057528

TRACIE LLOYD being first duly sworn, deposes and says as follows:

1. That affiant is duly elected and qualified Tax Collector in and for Canyon County, State of Idaho.
2. That affiant has fully complied with the provisions of Section 63-1005, Idaho Code, by reason of the following:
 - a. On SEPTEMBER 18, 2009, affiant served or caused to be served a copy of Notice of Pending Issue of Tax Deed by registered or certified mail with return receipt demanded upon the record owner or owners and/or any party in interest demanding notice for the following described property:

Account Number: 6R21375-511- -0 CHAVEZ ISMAEL
MERCADO DOLORES
Parcel No. 017700020060
Section 34-5N-3W SW DEE ANN MEADOWS SUB
LOT 6 BLK 2
Site Address: 0 PHILLIS LN MI
 - b. A copy of said return is attached hereto as Exhibit "A" and hereby incorporated by reference herein.
 - c. Said Notice was served by publishing a copy thereof in the IDAHO PRESS-TRIBUNE for four (4) consecutive weeks, beginning on OCTOBER 5, 2009 ENDING OCTOBER 26, 2009. A copy of Affidavit of Publication is attached hereto as Exhibit "B" .
 - d. All other Notices (i.e. Yearly Tax Notices) have been given as required by Idaho Code.
3. That a copy of said Notice is attached hereto as Exhibit "C" , and that the total amount of unpaid taxes, late fee, interest, cost and fees up to the date of Notice was \$557.18.

RECORDED
CANYON COUNTY

Tracie Lloyd

County Treasurer and Ex-officio Tax Collector
for Canyon County, State of Idaho.

On this 13TH DAY OF NOVEMBER 2009, before me JERI SULLENS in and for said County of Canyon, State of Idaho, personally appeared TRACIE LLOYD known to me to be the County Treasurer and ex-officio Tax Collector of said Canyon County, and who executed the within instrument as such and acknowledged to me that TRACIE LLOYD executed the same as such officer.

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



Jeri Sullens

Notary Public
Residing at Greenleaf, Idaho Commission expires 06/26/2016

TRACIE LLOYD
 CANYON COUNTY TREASURER AND
 EX-OFFICIO TAX COLLECTOR
 P. O. BOX 1010 - Caldwell, Idaho 83606



09/24/09
 \$05.54
 25¢ PER OZ
 *FIRST CLASS PERMIT NO. 6044
 US POSTAGE

INVESTORS FINANCIAL
 PO BOX 4125
 BOISE ID 83711-4125,

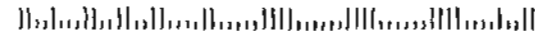
NAME
 1ST NOTICE 9+9

NIXIE 837 SE 1 B6 09/24/09

RETURN TO SENDER
 ATTEMPTED - NOT KNOWN
 UNABLE TO FORWARD

BC: 93606101010 *0635-00632-18-42

93606@1010
 93711@4125 B002



| | | | |
|---|--|---|---|
| 2. Article Number | | COMPLETE THIS SECTION ON DELIVERY | |
| 71791000164450018628 | | A. Signature X <u>[Signature]</u> | <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee |
| Article Addressed to: CHAVEZ ISMAEL MERCADO DOLORES 1511 ARTHUR ST CALDWELL, ID 83605 | | B. Received by (Printed Name) <u>ISMAEL CHAVEZ</u> | C. Date of Delivery <u>9/24/09</u> |
| | | D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES enter delivery address below: <input type="checkbox"/> No | |
| | | 3. Service Type <input checked="" type="checkbox"/> Certified | |
| | | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes | |
| Code2: 6R21375511 0 | | | |

PS Form 3811

Domestic Return Receipt

EXHIBIT 'A'

280000

CANYON COUNTY NOTICE
OF PENDING ISSUE
OF TAX DEED

NOTICE IS HEREBY GIVEN
To each of the owners or
claimants on the property here-
inafter described that under the
provisions of Revenue Laws of
the State of Idaho, the County
Treasurer, as Tax Collector of
Canyon County in said State,
is required to file a notice of
tax delinquency on the 1st day of
January, 2009, in an amount
only described as follows:
paid, less any amount already
YOU ARE HEREBY NOTI-
FIED: That a BURDENING
is to be filed on the 1st day of
SEPTEMBER 18, 2009.

SEPTEMBER 2009
TRACIE LLOYD
County Treasurer and
ex-Officio Tax Collector for
Canyon County, Idaho
Cashier's check, money
order, certified check or cash

NO PERSONAL CHECKS
WILL BE ACCEPTED

County Treasurer

3606

Account Number:
6R21075511 0
CHAVEZ, ISMAEL
& MERCADO, DOLores
1511 ARTHUR ST
CALDWELL, ID 83605
Parcel No. 017700020080
Section 34-8N-0W SW
000 ANN MEADOWS SUB
L76 BLK 2
Site Address: 0 PHILLIS LN
MI
Tax 42.24
Late Charge .88
Interest (12%) per annum 14.08
Cost & Fees 500.00
Due SEPTEMBER 18, 2009 \$657.10

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)

County of Canyon)

) SS.

Marissa McNeal
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 4 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:
10/5/09, 10/12/09, 10/19/09, 10/26/09

STATE OF IDAHO)
County of Canyon)

On this 20th day of Oct in the year of
2009 before me a Notary Public, personally
appeared Marissa McNeal, known or identified
to me to be the person whose name is subscribed
to the within instrument, and being by me first
duly sworn, declared that the statements therein
are true, and acknowledge to me that he/she
executed the same.

Rebecca L Thompson
Notary Public for Idaho
Residing at Nampa
My Commission expires August 11, 2009



EXHIBIT 'B'

NOTICE OF PENDING ISSUE OF TAX DEED

STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

CERTIFIED No. _____

TO: CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

YOU ARE HEREBY NOTIFIED, as follows:

1. That a delinquency occurred on January 1, 2007 in the records of the County Treasurer as Tax Collector of Canyon County, State of Idaho for the following described property (hereinafter referred to as the "subject property"):

6R21375-511- -0 017700020060 Acres: 000.00
34-5N-3W SW DEE ANN MEADOWS SUB
LOT 6 BLK 2
Site Address: 0 PHILLIS LN MI

2. That the name(s) and last known address(es) of the record owner or owners of record of the subject property is:

CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

3. That said delinquency exists in respect to the assessment and subsequent unpaid taxes for 2006.

4. That the total amount due as of 09/18/2009 is:

| | |
|--------------------------------|--------|
| Amount of Tax | 42.24 |
| Amount of Late Chg (2%) | 88 |
| Interest (12%) per annum | 14.06 |
| Cost and Fees | 500.00 |

Total Due as of SEPTEMBER 18, 2009 \$557.18

CALL 454-7354 FOR CURRENT PAYMENT INFORMATION.
OTHER COSTS, FEES AND INTEREST MAY BE DUE UPON PAYMENT.

EXHIBIT 'C'

000084

CHAVEZ ISMAEL
MERCADO DOLORES
1511 ARTHUR ST
CALDWELL, ID 83605

6R21375-511--0

CERTIFIED No.

YOU ARE FURTHER NOTIFIED.

5. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009, by payment to the Canyon County Treasurer, of said unpaid taxes together with late charge, interest and all costs and expenses, I, as Treasurer and Tax Collector for Canyon County, State of Idaho, shall thereupon, as required by law, make application to the Board of County Commissioners of Canyon County, State of Idaho, for a Tax Deed to issue on the subject property in favor of Canyon County with absolute title, free of all encumbrances, except any mortgages of record to the holders of which notice has not been sent and any lien for property taxes which may have attached subsequent to the assessment and any lien for special assessments;
6. That if said delinquency is not redeemed on or before NOVEMBER 20, 2009 in the manner described above then at 9:00 O'CLOCK AM MST on NOVEMBER 20, 2009 a tax deed for the subject property in favor of Canyon County will be issued at the Treasurer's Office, Room 342 Canyon County Courthouse, 1115 Albany, Caldwell, Idaho by the County Treasurer as the Tax Collector of Canyon County, State of Idaho;
7. Pursuant to Idaho Code 63-1805(3), the record owner or owners and parties in interest of record shall be liable and pay to the county tax collector all costs and fees in the preparation, service and publication of such notice and the tax deed process and such costs shall become a perpetual lien upon the property in favor of the county tax collector.

NOTICE OF HEARING

8. A hearing shall be held before the Canyon County Board of Commissioners on NOVEMBER 20, 2009 at the hour of 9:00 O'CLOCK AM MST or as soon thereafter as the matter can be heard, to determine if a tax deed for the subject property shall be issued in favor of Canyon County.
9. The record owner or owners and parties in interest shall have adequate opportunity to be heard, to confront or cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on behalf of the record owner or owners or any party in interest. ALL INQUIRIES OR OBJECTIONS CONCERNING THIS NOTICE AND THE INFORMATION CONTAINED HEREIN SHALL BE DIRECTED TO THE CANYON COUNTY TREASURER, CANYON COUNTY COURTHOUSE, 1115 ALBANY, ROOM 342, CALDWELL, IDAHO 83605, PHONE NO. (208)454-7354 NO LATER THAN FIVE (5) WORKING DAYS PRIOR TO THE HEARING DATE NOTED ABOVE.

Dated this 18TH DAY OF SEPTEMBER 2009.

County Treasurer and ex-Officio Tax Collector
for Canyon County, Idaho

By: _____
Deputy

***** Cashier's check, money order, certified check or cash *****
* * NO PERSONAL CHECKS WILL BE ACCEPTED * *

RQZ780

Page 2 of 2

EXHIBIT 'C'

000085

DC.

707 L
FILED
A.M. P.M.

OCT 25 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

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

| | | |
|--|---|---|
| _____ | |) |
| ISMAEL CHAVEZ and DOLORES, |) |) |
| MERCADO, |) |) |
| |) |) |
| |) |) |
| |) |) |
| |) |) |
| |) |) |
| |) |) |
| |) |) |
| vs. |) |) |
| |) |) |
| |) |) |
| CANYON COUNTY, STATE OF IDAHO, |) |) |
| through it duly elected BOARD OF |) |) |
| COUNTY COMMISSIONERS and the |) |) |
| Canyon County Treasurer and ex-officio tax |) |) |
| collector, |) |) |
| |) |) |
| |) |) |
| |) |) |
| Respondent. |) |) |
| _____ | |) |

Case No. CV-2009-12900-C

ORDER ON PETITION FOR
JUDICIAL REVIEW

Procedural History

On December 4, 2009, Ismael Chavez and Delores Mercado (Chavez collectively) filed a Complaint challenging actions taken by the Canyon County Board of Commissioners and the county treasurer. On January 4, 2010, Chavez filed a Motion for Summary Judgment along with supporting affidavit and memorandum.

On January 5, 2010, Canyon County filed its Answer. On January 28, 2010, the County filed its Memorandum in Opposition to Summary Judgment Motion. Chavez filed a Responding Memorandum and supporting affidavit on February 8, 2010. A hearing was held on February 26, 2010, and this court issued an Order Denying Motion for Summary Judgment and Order Converting Action to Judicial Review on April 9, 2010.

Chavez filed a Petition for Judicial Review on April 19, 2010. On June 3, 2010, Chavez filed a Motion to Augment the Record. That motion was granted on June 17, 2010 at an uncontested hearing. The Order Granting Motion to Augment Record required Respondent to comply on or before June 29, 2010. On July 8, 2010, Chavez filed a Motion for Contempt because the County had failed to comply. On July 13, 2010, the County complied with the Order.

Petitioner's Initial Brief was filed on June 3, 2010, Respondent's Brief was filed on July 1, 2010, and Petitioner's Responding Brief was filed on July 8, 2010. The Agency Record was filed on July 7, 2010, along with a transcript of the Tax Deed Hearing. Oral argument was held on September 27, 2010.

Analysis

This court has jurisdiction over this action pursuant to Idaho Code § 63-1006(4). That code section provides that a party who is aggrieved by the actions of a county by the issuance of a tax deed may seek review from the district court by filing a petition. The district court shall review the record as it exists in the county minutes and the court may reverse or modify the decision of the county commissioners if the petitioner's substantial rights have been prejudiced because the county's findings, conclusions or decisions are: (a) made upon unlawful procedure; (b) clearly erroneous in view of reliable, probative and substantial evidence on the whole record;

or (c) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. I.C. 63-1006(4).

Chavez owns two parcels of land in Canyon County. He received Notices of Pending Issue of Tax Deeds in which the County demanded the payment of unpaid taxes along with a \$500.00 flat fee imposed for administrative costs. Chavez challenges the County's practice of imposing a flat fee as a violation of Idaho Code § 63-1005 which provides the steps that must be undertaken before a county may issue a tax deed for real property upon which there is a delinquency. Upon determining that there is a delinquency that has not been redeemed within three (3) years, the county must make a tax deed for the property but must provide notice of pending issue of tax deed and an affidavit of compliance must be recorded. I.C. 63-1005(1). Written notice must be provided via an approved method found in I.C. 63-1005(2) and must include the items delineated in I.C. 63-1005(4) as set forth below.

I.C. 63-1005(4) Such notice and summary thereof must contain the following items:

- (a) The name and last known address of the record owner or owners;
- (b) An accurate description of the property on which the delinquency stands, or, in lieu thereof, the tax number of record or parcel number used in assessing the same;
 - (i) A street address or other information which would be of assistance to the public in ascertaining the location of the property; or
 - (ii) The name and telephone number of a person, firm or business office from whom information concerning the location of the property may be obtained;
- (c) The year for which the property tax was assessed and for which the delinquency exists;
- (d) An itemized statement detailing the delinquency and all costs and fees incident to the delinquency and notice up to and including the date of the making of such notice;
- (e) The date the delinquency occurred;
- (f) The time, date, place at which, and by whom the tax deed will issue; and
- (g) A statement that the record owner or owners or any party in interest shall have adequate opportunity to be heard, to confront and cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on

behalf of the record owner or owners or any party in interest. Such statement shall also contain notice of to whom inquiries and objections shall be directed concerning the notice and information contained therein and by what date such inquiries and objections must be received.

I.C. 63-1005(4) (emphasis added).

Chavez argues that the code section should be interpreted to mean that the itemized statement presented to a property owner must include an itemized list of the costs and fees incurred incident to the delinquency and providing notice. The County asserts that a flat fee is permitted pursuant to Canyon County Resolution 09-169.

Resolution 09-169 is entitled "A Resolution Authorizing an Increase in the Fee Charged to Collect Costs Incurred by Canyon County in the Process of Collection Delinquent Property Taxes." The resolution references I.C. 63-1002 and 63-1005, as well as I.C. 31-870(1) and 63-1311. In addition, the resolution references a list of actions taken by the Canyon County Treasurer during the performance of the delinquency/tax deed duties including identification of interested parties, locating valid mailing addresses, contacting parties to obtain information about the subject property, locating the history of the property and preparing the required notices and publishing those notices, and personal contact with the owners of the subject property. The resolution then states that the treasurer had "determined that the actual costs incurred to get delinquent property to the tax deed state is in excess of Five Hundred Dollars (\$500.00), and as a result, wishes to adopt a single level fee of Five Hundred Dollars (\$500.00) to be attached to the delinquent properties." It is this fee of \$500.00 that Chavez objects to because the flat fee relieves the treasurer and the County from its obligation to provide a property owner with an itemized statement of costs and fees incurred pursuant to I.C. 63-1005 and is prejudicial to a property owner who may not have incurred fees in excess of \$500 during this process.

There is no appellate authority interpreting I.C. 63-1005. Chavez thus urges the court to apply the rules of statutory construction to this matter and find that the statute as quoted above is not ambiguous and the plain language of the code section should apply to this action.

The basic rules of statutory construction as summarized by the Idaho Supreme Court are set forth below:

The interpretation of a statute is a question of law over which we exercise free review. It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written. A statute is ambiguous where the language is capable of more than one reasonable construction. If the statute is ambiguous, then it must be construed to mean what the legislature intended for it to mean. To determine that intent, we examine not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history. Statu[t]es that are in *pari materia* must be construed together to effect legislative intent. Statutes are in *pari materia* if they relate to the same subject.

State, ex rel. Wasden v. Maybee, 148 Idaho 520, 224 P.3d 1109 (2010) *citing City of Sandpoint v. Sandpoint Independent Highway District*, 139 Idaho 65, 69, 72 P.3d 905, 909 (2003) (internal citations omitted).

The requirement at issue here is subsection (d), which requires “An *itemized* statement *detailing* the delinquency and *all costs and fees* incident to the delinquency and notice up to and including the date of the making of such notice.” (emphasis added).

When considering the plain meaning of each of these words, the County’s resolution authorizing a flat fee violates the itemization requirement of I.C. § 63-1005(4)(d). “Itemize,” as defined by one dictionary is “to set down in detail or by particulars.” Merriam-Webster Online Dictionary (2010). Another dictionary defines itemize as “to state by items; give the particulars of; list the individual units or parts of” or “to list as an item or separate part.” Random House Dictionary (2010). Taking this common meaning of the term itemize is also considered in

connection with the verb “detailing” and its direct objects, “all costs and fees.” A single flat fee can not “detail” multiple costs and fees, even if it is a reasonable summary. And the words “costs” or “fees,” both of which are plural, also defy the single flat “fee” that the County wants to impose. The statute’s clear language requires that the costs and fees be listed in particular detail, item by item.

A flat fee, even if based on nine typical categories of expenses the county incurs in collecting delinquent property taxes, does not list the charges (plural) as required by the statute. Incorporation by reference through the resolution and into the flat fee is not adequate because the statute contemplates unique costs and fees incurred in collecting from each taxpayer. Even if in most cases or, as the County asserts, in all cases, the flat fee amounts to less than the actual costs incurred, the legislature has required itemization. By its fundamental meaning, “itemized” does not allow a summary flat fee.

In addition, this court has looked to neighboring jurisdictions for guidance on this matter. Montana has dealt with a similar case in *Tax Lien Services v. Hall*, 277 Mont. 126, 132-133, 919 P.2d 396, 400 (Mont. 1996). In that case, the court held that Montana Code § 15-18-212(6) provides the notice requirements including “taxes due, a separate listing must be made of the delinquent taxes, penalties, interest and costs that must be paid for the property tax lien to be liquidated.” *Id.* M.C. 15-18-212(6). The court found that a notice that had included a double charge of \$35 and a cost of \$311.28 that was conceded to be an improper charge was fatally flawed because “notice did not accurately reflect the elements which the statute required to be itemized in the listing.” *Id.* The tax deed notice was declared to be null and void.

This court finds that the flat fee, authorized by Resolution 09-169, violates Idaho Code 63-1005 because it eliminates the county’s responsibility to provide an itemized statement of

taxes owed and fees incurred in the collection process. This court finds that the plain meaning of that code section requires the county to provide the detail of the actions taken and itemize the costs incurred. Thus, because the county failed to do so in its notices to Chavez those notices are null and void. Petitioner shall prepare an Order accordingly.

Chavez has requested costs pursuant to I.C. 63-1006(5). That code section allows for an award of costs and fees to a prevailing party and Chavez does qualify as the prevailing party in this action. However, costs may not be assessed against the county or county officials in the absence of "gross negligence, gross nonfeasance or gross malfeasance." I.C. 63-1006(5). The court does not find that the County acted grossly negligent or malfeasant in its attempt to administrate in a business like manner. The request for costs is denied.

Finally, the court finds that the motion for contempt is moot because the County did comply with the court's Order.

ORDER

It is hereby ordered:

1. Petitioner's Petition for Judicial Review is GRANTED.
2. Petitioner's request for costs is DENIED.
3. Petitioner's motion for contempt is DENIED.
4. Petitioner shall submit an Order in accordance with the court's decision within

fourteen (14) days.

Dated this 21 day of October 2010


Stephen W. Dreschner, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded to the following persons on this 25 day of October, 2010.

Ismael Chavez
Attorney at Law
P.O. Box 1094
Caldwell, Idaho 83606-1094

Canyon County Board of Commissioners
c/o Canyon County Clerk
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

Canyon County Prosecuting Attorney
Attn: Carlton Ericson
1115 Albany Street
Caldwell, Idaho 83605

Theresa Randall
Canyon County Appeals Clerk
1115 Albany Street
Caldwell, Idaho 83605

William H. Hurst
Clerk of the District Court

By: 
Deputy Clerk

FILED
A.M. P.M.

NOV 10 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

Ismael Chavez
Idaho State Bar No. 1650
Attorney at Law
P. O. Box 1094
Caldwell, Idaho 83606-1094
Telephone: (208) 459-0192

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

ISMAEL CHAVEZ AND)
DOLORES MERCADO,)
Petitioners,)
)

Case No.: ~~CR~~^{CV}09-12900*C

-v-

FINAL JUDGMENT

CANYON COUNTY, STATE OF IDAHO,)
through it duly elected BOARD)
OF COUNTY COMMISSIONERS and)
the Canyon County Treasurer)
and ex-officio tax collector,)
Respondent. (

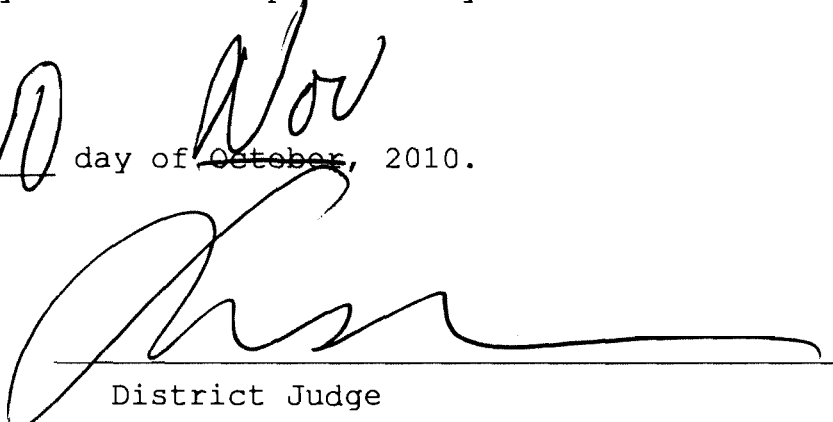
The Court having entered an Order on Petition for
Judicial Review herein on the 25th day of October, 2010,
whereupon good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED and this
does order, adjudge, and decree as follows:

1. Petitioners' Petition for Judicial Review is granted,
2. Petitioners' Request for cost is denied, and
3. Petitioners' motion for contempt is denied,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED and this does order, adjudge, and decree that this judgment is hereby certified pursuant to I.R.C.P Rule 54(b) that with respect to the issues herein the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above and foregoing judgment shall be a final judgment and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 10 day of Nov ~~October~~, 2010.


District Judge

Ismael Chavez
 Idaho State Bar No. 1650
 Attorney at Law
 P. O. Box 1094
 Caldwell, Idaho 83606-1094
 Telephone: (208)459-0192

FILED
 415

DEC 17 2010

CANYON COUNTY CLERK
 J HEIFEMAN, DEPUTY

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

ISMAEL CHAVEZ AND) Case No.: CV09-12900*C
 DOLORES MERCADO,)
 On behalf of themselves and)
 others similarly situated,)
 Plaintiffs/Petitioners/)
 Appellants,)

-v-

NOTICE OF APPEAL

CANYON COUNTY, STATE OF IDAHO,)
 through it duly elected BOARD)
 OF COUNTY COMMISSIONERS and)
 the Canyon County Treasurer)
 and ex-officio tax collector,)
 Defendant/Respondents.)

TO: THE ABOVE NAMED RESPONDENTS, CANYON COUNTY AND THE CANYON
 COUNTY BOARD OF COUNTY COMMISSIONERS AND THE PARTY'S ATTORNEYS,
 CANYON COUNTY PROSECUTING ATTORNEY, CANYON COUNTY COURTHOUSE,
 CALDWELL, IDAHO, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, Ismael Chavez and Dolores Mercado, appeal against the above named respondents to the Idaho Supreme Court from the final judgment entered in the above entitled action on the 10th day of November, 2010, Honorable District Judge Stephen W. Drescher, presiding.
2. That the party has 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), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal:

(a) Whether the trial court erred in converting a civil complaint into a petition for judicial review;

(b) Whether Petitioner is entitled to attorney fees and costs.

(c) Whether the trial court erred in denying Appellants' motion for contempt.

4. Has an order been entered sealing all or any portion of the record? No.

5. (a) Is a reporter's transcript requested? No, but the transcript of hearing is requested in hard copy..

The entire reporter's standard transcript supplemented by the following: Transcript filed 7/7/10.

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

(a) Motion to Augment Record, Statement in Support of Motion to Augment Order, and Order granting Motion to Augment Record;

(b) Motion, Affidavit in support of Motion for an Order in re contempt;

(c) Augmentation of Record filed 7/13/10;

(d) Agency Record.

I certify:

(a) That a copy of this notice of appeal has been served appeals clerk for Canyon County, Idaho.

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 or agency's record has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS 17th day of December, 2010.



Ismael Chavez, Pro Se, Appellant

BRYAN F. TAYLOR, ISB #6400
CARLTON R. ERICSON, ISB #5845
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
A.M. 1:05 P.M.

JAN 07 2011

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Defendants/Respondents/Cross-Appellants

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

ISMAEL CHAVEZ and DOLORES
MERCADO, On behalf of themselves and
others similarly situated,

Petitioners/Appellants/Cross-
Respondents,

vs.

CANYON COUNTY, STATE OF IDAHO,
through its duly elected BOARD OF
COUNTY COMMISSIONERS and the
Canyon County Treasurer and ex-officio tax
collector,

Defendants/Respondents/Cross-
Appellants.

CASE NO. CV09-12900-C

NOTICE OF CROSS-APPEAL

Defendants/Respondents/Cross-Appellants hereby appeal from the final judgment entered in this case on November 10, 2010 by the Honorable Senior Judge Stephen W. Drescher, which followed the order on petition for judicial review which was filed on October 25, 2010.

1. PRELIMINARY STATEMENT OF ISSUES ON APPEAL:

A. Whether the district court erred in concluding that the flat fee charged by Canyon County, and shown on the notice of pending issue of tax deed, is a violation of Idaho Code § 63-1005(4)(d) which requires an itemized statement of the tax delinquency “and all costs and fees incident to the delinquency....”

B. Whether the district court erred in concluding that a flat fee adopted by Canyon County, and stated on the notice of pending issue of tax deed, was not an itemized statement of the costs and fees incident to the tax delinquency as required by Idaho Code § 63-1005(4)(d).

2. JURISDICTIONAL STATEMENT:

The Idaho Supreme Court has jurisdiction of this appeal pursuant to Rule 11(f), Idaho Appellate Rules, as an appeal of a final decision or order of the district court on judicial review of an agency decision.

3. TRANSCRIPT:

No transcript of the proceedings is requested.

4. RECORD:

No additional documents are requested for the record beyond those set forth in Rule 28, Idaho Appellant Rules.

5. EXHIBITS:

No exhibits were offered or admitted in the district court.

6. SEALED RECORD:

No portion of the record has been sealed.

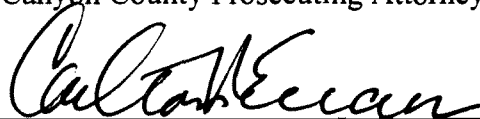
7. **CERTIFICATION:**

I certify that:

- (a) No service of the notice of cross-appeal is required because no additional transcripts have been requested and no reporter fees are required;
- (b) No fees are required for additional documents to be included in the Clerk's Record as no additional documents are requested, and Cross-Appellants are exempt from paying such fees as a governmental entity;
- (c) Cross-Appellants are exempt from paying appellate filing fees because they are a governmental entity; and
- (d) Service has been made upon all other parties required to be served pursuant to Rule 20.

DATED: January ^{7th} , 2011.

BRYAN F. TAYLOR,
Canyon County Prosecuting Attorney



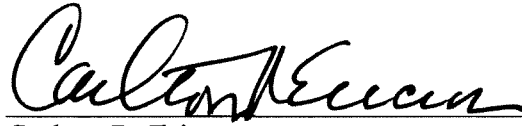
Carlton R. Ericson
Deputy Prosecuting Attorney
Attorneys for Defendants/Respondents/
Cross/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of January, 2011, I caused a true and correct copy of the foregoing **NOTICE OF CROSS-APPEAL** to be served on the following in the manner indicated:

Ismael Chavez
Attorney at Law
P.O. Box 1094
Caldwell, Idaho 83606-1094

- U.S. Mail
- Overnight Delivery
- Hand Delivery
- Facsimile



Carlton R. Ericson
Deputy Prosecuting Attorney

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

ISMAEL CHAVEZ and DOLORES)
MERCADO, on behalf of themselves)
and others similarly situated,)
))
Petitioners-Appellants-)
Cross Respondents,)
))
-vs-)
))
CANYON COUNTY, STATE OF IDAHO,)
through its duly elected BOARD OF)
COUNTY COMMISSIONERS and the)
Canyon County Treasurer and ex-officio)
tax collector,)
))
Defendants-Respondents-)
Cross Appellants.)

Case No. CV-09-12900*C

CERTIFICATE OF EXHIBITS

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the following are being sent as exhibits:

Transcript of Tax Deed Hearing, filed 7-7-10

Agency Record, filed 7-7-10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 2 day of ^{Feb.} ~~January~~, 2011.

CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

By:  Deputy

CERTIFICATE OF EXHIBITS

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

ISMAEL CHAVEZ and DOLORES)
MERCADO, on behalf of themselves)
and others similarly situated,)
))
Petitioners-Appellants-)
Cross Respondents,)
))
-vs-)
))
CANYON COUNTY, STATE OF IDAHO,)
through its duly elected BOARD OF)
COUNTY COMMISSIONERS and the)
Canyon County Treasurer and ex-officio)
tax collector,)
))
Defendants-Respondents-)
Cross Appellants.)

Case No. CV-09-12900*C

CERTIFICATE OF CLERK

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 2 day of ^{Feb.} ~~January~~, 2011.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *J Rendell* Deputy

CERTIFICATE OF CLERK

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

ISMAEL CHAVEZ and DOLORES)
MERCADO, on behalf of themselves)
and others similarly situated,)

Petitioners-Appellants-)
Cross Respondents,)

-vs-)

CANYON COUNTY, STATE OF IDAHO,)
through its duly elected BOARD OF)
COUNTY COMMISSIONERS and the)
Canyon County Treasurer and ex-officio)
tax collector,)

Defendants-Respondents-)
Cross Appellants.)

Supreme Court No. 38378

CERTIFICATE OF SERVICE

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

Bryan F. Taylor and Carlton R. Ericson, Canyon County Prosecutors
Ismael Chavez, P O Box 1094, Caldwell, ID 83606-1094

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 2 day of ^{Feb.} ~~January~~, 2011.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *A. Randall* Deputy

CERTIFICATE OF SERVICE