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Tapadeera v. Knowlton Appellant's Reply Brief Dckt. 38498

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TAPADEERA, LLC AND CARY HAMILTON dba C&J CONSTRUCTION, Plaintiff/Respondents, vs. JAY F. AND THERESA KNOWLTON, Defendants/Appellants	Supreme Court Docket No. 38498-2011 Minidoka County Docket No. 2008-607

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Minidoka

HONORABLE JONATHAN BRODY
District Judge

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ARGUMENT

In its response to the Knowlton argument, the respondents lay out several factors which the Respondents argue in favor of sustaining the trial court's finding. The respondents specifically state that they did everything possible in order to comply with the contract. The respondents complain that it was the county's error with regard to notice of the hearing, and consequently as a result, they had no fault in the matter. The respondents further argue that there was no illegality in the sale of the property, and that in general, Mr. and Mrs. Knowlton were not harmed by the effects of this real estate transaction.

I. Mr. and Mrs. Knowlton did not receive the benefit of their bargain based upon the actions of the Respondents.

First, the respondents state that there was no wrongdoing on threir part in selling the property in the original real estate transaction between the parties. The respondents quote Mr. Aston as stating that the Knowltons could have built the house they wanted on the remaining 7 acre parcel, if they wanted to continue in ownership of the full 8 acres. This statement ignores one very important fact: that is, that the Knowltons informed the respondents when they purchase the property, that it was their intention to build a second house and to sell the other house, once their dream home was built.[1] Although it is true they could have built on the remaining portion of land, this was not the bargain they sought when they purchased both parcels of property. When the real estate transaction was entered on April 22, 2004, Mr. and Mrs. Knowlton fully expected to have two separate parcels of property which were not subject to any legal infirmities. To their chagrin, upon recording the deed, they learned that the property they had purchased had been subdivided into two separate parcels in contravention of Minidoka County ordinances. Consequently, it is disingenuous

[1] Affidavit of Jay Knowlton

to state that there was no harm to the Knowltons in the original real estate transaction, and if they had only been content with what they had, then there was no real problem.

However, there was a problem which consisted of a real estate transaction which was based upon misrepresentations by the respondents. It is interesting to note, that in the respondent's brief, the respondent puts forth arguments which in all aspects either misrepresent the facts or paint them in such a manner as to deflect responsibility on their part for the wrongdoing which is the basis of this lawsuit. Therein also lies the problem, which is, that Mr. and Mrs. Knowlton have no confidence in the respondent's ability to follow the rules and to do things correctly.

II. The Respondents failed to follow proper procedures with regard to notice, along with a failure to take into account the Knowltons' concerns regarding easements provided the Knowltons with just occasion to withdraw from the settlement agreement.

As the respondent argues, it is true, that Mr. and Mrs. Knowlton signed the application that the Respondents presented to them. However, what Respondents does not tell the Court, is that at the time of signing the application Respondents had not prepared the plat which needed to accompany the application.[2] It is very likely, that if Mr. and Mrs. Knowlton had seen the plat at the time of signing the application, they would not have signed the application. Once Mr. and Mrs. Knowlton saw a copy of the plat, they registered their objection with regard to the location of the proposed easements. As the facts have been laid out before the court, this objection was ignored by the respondents.

In response to this objection, the respondent argues that matter could be cured simply and easily by adding or subtracting easements at a later date. Once again, this argument is disingenuous and misrepresents the facts. Paul Aston in his deposition specifically stated that in order to change easements and make changes to the plat, Mr. and Mrs. Knowlton would have had to make those

[2] Affidavit of Jay Knowlton.

changes by amending the plat. This would have required them to file an application, and publish notice regarding the changes, secure permission from their neighbors, and do all of the other requirements under the Minidoka County ordinance for amending a subdivision plat. In other words, they would have had to go through the same process that is the basis of this lawsuit. Mr. and Mrs. Knowlton would have had to incur additional expense in order to make the changes that they were requesting of the respondent in this process. As the terms of the settlement agreement dictate, the Knowltons were to "cooperate and assist" Respondents in this process. However, whenever Mr. and Mrs. Knowlton made an objection to the process, their objections have been hereafter painted as non-cooperative. However, it is just as valid to argue that the respondent was the one who was uncooperative and sought in push this matter through regardless of how the Knowlton's felt about the process.

The cumulative effect of all of these facts was that when the Knowlton's discovered that the planning and zoning meeting had been held, and that no notice had been given to them, Mr. and Mrs. Knowlton once again felt that they were being betrayed by the respondents, and that the respondents were pursuing an agenda which did not include their wishes with regard to this matter. In a theme familiar to this case, respondents were responsible for creating those two parcels of property, which was done outside of the appropriate legal channels. Rather than fixing the problem prior to selling the Knowltons the two parcels of property, the respondent did nothing, letting the Knowltons discover the problem after the sale have been executed. The extension of that malfeasance has now evolved into the settlement agreement. After the agreement had been reached, the respondents started the application process, and pushed it through according to the dictates of their own wishes, ignoring Mr. and Mrs. Knowlton. Consequently, the overall theme of this

conflict is played out once again where Respondents do whatever they feel is appropriate, and then shift the blame to the other party when things don't work out as they want.

Nowhere is this more evident, than in the brief of the respondent wherein it is stated that Hamilton did everything he was supposed to do, but because of an error by the county, notice of the planning and zoning meeting was not delivered to Mr. and Mrs. Knowlton.[3] In other words, it was not the respondents' fault, it was the county's failure, and therefore the Knowlton's were not justified in taking the actions that they did. This argument not only misrepresents the respondents' duties, it is also a misstatement of the law. Minidoka county ordinance states specifically that the "subdivider" 15 days prior to the hearing, shall post notice of the hearing on the "object property" on a notice to be approved by the planning and zoning commission.[4] Such notice was not posted by Hamilton. Consequently, although it may have been a failure on the part of the county to mail out the notice, such error does not excuse the "subdivider", in this case, Respondents, from following through with the posting of notice as required by the ordinance. The ordinance further states that failure to comply with the notice requirements, invalidates any action by the commission.[5] Once again, the recurring theme in this matter surfaces in the actions on Respondents. It is not their fault that Mr. and Mrs. Knowlton did not see the notice, it was not their fault that the Knowltons objected to the easements, and it was not their fault that they thereafter withdrew their support for the applications based upon Respondents' failure to respect the Knowltons' wishes and to the Minidoka County ordinances.

Case law for this type of situation is clear: all contractual performance is governed by a "covenant of good faith and fair dealing" that is "implied by law and `requires the parties to

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[3] Respondent's Brief at 10.
[4] Minidoka County Subdivision Ordinance3.3 G (1). Attached hereto as Exhibit A
[5] Minidoka County Subdivision Ordinance 3.3 G (4). Attached hereto as Exhibit A

perform, in good faith, the obligations required by their agreement [.]'"[6] This covenant of good faith and fair dealing is reciprocal, that is, that both parties are required to perform their contractual duties pursuant to this covenant.[7] The respondents claim that their performance of the settlement agreement was prevented by Mr. and Mrs. Knowlton's withdrawal of their approval for the application. This argument is disingenuous, as it ignores Respondents' own shortcomings with regard to their performance under the contract. The covenant of good faith and fair dealing requires the respondents to conduct themselves in such a way as to ensure that they comply with all of their obligations under the contract. Respondents did not fulfill their part of the bargain, as is evident.

Although prevention of performance is a valid standard for the interpretation of the contract, it is tempered by the fact that prevention of performance where " *(a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party,...*[8]" The respondents' acts were such that the Knowltons were justified in withdrawing their support for the application. The Respondents' failure to take into account their wishes with regard to the easements, coupled with the respondents' failure to provide them with notice of the hearing, are clear acts justifying their actions.

In this matter, the trial court ruled under the standard of summary judgment in favor of Respondents. This Court in reviewing "a ruling on a summary judgment motion, this Court employs the same standard as that used by the district court."[9] Therefore, under this standard

> [s]ummary judgment is appropriate "if the pleadings, deposition, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c). All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable

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[6] *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust,* 145 Idaho 208, 217, 177 P.3d 955, 964 (2007), quoting *Steiner v. Ziegler-Tamura Ltd., Co.* 138 Idaho 238, 242, 61 P.3d 595, 599 (2002).
[7] *Okun v. Morton,* 203 Cal.App.3d 805, 820, 250 Cal. Rptr. 220, 229 (1988).
[8] *In Re Penn Traffic Company,* 322 B.R. 63, 75-76 (S.D.N.Y. 2005), quoting Restatement (First) of Contracts § 295 (1932)
[9] *Goodman v. Lothrop,* 143 Idaho 622, 626, 151 P.3d 818, 822 (2007), citations omitted.

> inferences that can be drawn from the record are to be drawn in favor of the non-moving party.[10]

Summary judgment is inappropriate where "reasonable people could reach different conclusions or draw conflicting inferences from the evidence" regarding a genuine issue of material fact.[11]

In examining this case, it is clear that summary judgment was not an appropriate remedy for this case. Mr. and Mrs. Knowlton have presented sufficient facts to establish that "different conclusions" or "conflicting inferences" can be drawn from these facts. And Mr. and Mrs. Knowlton have argued all along, that their version of the facts has been placed in a lesser light, and that reasonable inferences have been drawn against them with regard to this case. The settlement agreement is only one part of this case, and reflected an effort on the part of the parties to resolve conflict. However, there are sufficient facts to establish that summary judgment was not appropriate, and that this matter should be remanded back to the trial court for trial on all of the claims of the parties.

III. The illegal subdivision of the Knowlton property was an illegal act under Minidoka ordinance punishable as a misdemeanor.

In addressing the illegal subdivision argument, the respondents put forth two specious arguments in support of the subdivision. First, the respondent states that the county ordinance "only permitted a person from getting a building permit to build on the property if the property did not comply with the zoning and subdivision ordinance."[12] Next, the respondent supports this statement by further declaring that "the Minidoka County ordinance had absolutely no provisions that were

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[10] *Id.*

[11] *Kalange v. Rencher,* 136 Idaho 192, 195, 30 P.3d 970, 973 (2001).

[12] Respondent's Brief at 24.

violated when plaintiff agreed to sell 6 acres to the defendants."[13] This argument, although technically correct, ignores the 800 lbs gorilla in the room. It is true that one would be unable to secure a building permit if there was a failure to comply with zoning and subdivision ordinance. However, what is missing from this statement is the underlying reason for denial of the building permit, which is, the illegal subdivision. Likewise it is also true that the sale of the 6 acres was not a violation of Minidoka County subdivision ordinance. However, creating two deeds for an 8 acre parcel which was subject to Minidoka County subdivision ordinances is a violation of Minidoka County ordinance. It is a misdemeanor to violate Minidoka County subdivision ordinance.[14]

As it has been argued, *ad nauseum*, throughout this brief, Minidoka County sets forth a specific procedure for amending a subdivision plat. Through this nuanced and specious argument Respondents once again try to deflect blame for their original illegal actions, by insinuating that Mr. and Mrs. Knowlton suffered minimal impact from their actions. After all, as the argument goes, Mr. and Mrs. Knowlton were only denied a building permit because of the illegal subdivision. Likewise, the sale of 6 acres to Mr. and Mrs. Knowlton was not illegal, and if they could not build their dream home on the 6 acres, that was not the respondents' fault. The real danger in this argument is that the respondents seek to have the Court put its official imprimatur on the respondents' illegal actions, by having this Court affirm the Trial Court's finding of summary judgment.

Through the settlement agreement, the respondents were given the opportunity to cure their illegal actions. The respondents' actions in that process, once again, indicated the respondents' lack of respect for the proper procedures outlined in Minidoka County subdivision ordinances. When they failed to follow those ordinances, and the Knowltons, based upon their prior dealings with Respondents, withdrew their support for the application, Respondents then seek to have the court

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[13] Respondent's Brief at 25.
[14] Minidoka County Subdivision Ordinance 8-2.

impose upon the Knowltons' the burden of paying for an illegal subdivision. Such a result is unjust and gives to the respondents a reward for their illegal activities. It has long been established that the law in this state

> that a party to any legal contract cannot come into a court of law and ask to have his illegal objects carried out;... the law in short will not aid either party to an illegal contract; it leaves the parties where it finds them. The general rule is the same at law and in equity, and whether the contract is executory or executed.[15]

Through the trial court's ruling such a result has been accomplished. The illegal basis of the original subdivision will be given legal standing, and Mr. and Mrs. Knowlton will be left with and illegally subdivided parcel of property, which they will have to remedy through their own expense or accept the property as is. Such a result should not be sanctioned by the law or equity.

IV. The court did not err in denying attorney fees to the Respondent.

In denying attorney fees, the court ruled correctly, that attorney fees were not warranted in this matter. As the Knowlton's have pointed out in this matter, this case should be remanded for trial on all aspects of the complaint filed. To award attorney fees in this case would be to compound the underlying error in granting summary judgment in this matter. The court reviewed the request for attorney fees, and found that it was not appropriate, and this ruling should stand. Therefore, Mr. and Mrs. Knowlton argue that attorney fees are not appropriate in this case.

CONCLUSION

[15] *Kunz*, 133 Idaho at 612, 990 P. 2d at 1223, quoting *Hancock v. Elkington*, 67 Idaho 542, 548, 186 P. 2d 494, 498 (1947), quoting 17 C.J.S. Contracts § 272.

It is therefore respectfully submitted that the court erred in granting summary judgment, and the Appellants petition this court to so find and to remand this matter for trial. Also, the Court did not erred in denying attorney's fees.

Dated this ___ of October, 2011.

Kent Jensen Attorney Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of October , 2011, I served the foregoing **Appellant's Reply Brief** to the attorney for the Respondents by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

JEFF STOKER, CHARTERED, P.O.
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TWIN FALLS, ID M83303-1597

Kent D. Jensen

CHAPTER 3

PROCEDURE FOR SUBDIVISION APPROVAL

3-1: SUBDIVISION PLAT APPROVAL REQUIRED: Any person desiring to create a subdivision as herein defined shall submit all necessary applications to the Commission. No final plat shall be filed with the County Recorder until the plat has been acted upon by the Commission and approved by the Board. No lots shall be sold from any plat until it has been recorded in the office of the County Recorder.

3-2: PRE-APPLICATION:

A. Application: Prior to the filing of an application for approval of a preliminary plat the subdivider shall submit a completed sub division pre-application form as provided by Minidoka County and eight (8) copies of a sketch plan to the Planning and Zoning Office. The sketch plan shall include the entire development scheme of the proposed subdivision, in schematic form including the area proposed for immediate development in such a form and content as required by the Commission and shall include the following:

1. The general layout of streets, blocks, and lots in sketch form;
2. The existing conditions and characteristic of the land adjacent to the proposed subdivision.
3. Areas set aside for schools, park and other public facilities.

B. Fee: None required.

C. Pre-application Approval Procedure: The subdivider shall submit the pre-application to the Minidoka County Planning and Zoning Office at least fifteen (15) days prior to a regular scheduled meeting. The Planning and Zoning staff will schedule the application before the Commission at the next possible meeting and forward all available materials and information to Commission members.

D. Commission Action: At a regular meeting the subdivider shall present his pre-application and intent to the Commission for review and comment. The Commission will review the pre-application to determine the following:

1. Is the proposed subdivision in compliance with existing local or state policies and regulations as well as with goals and objectives of the Minidoka County Comprehensive Plan;
2. Are any special use permits, ordinances or map amendments, special development permits or variances needed and may application for these processes be combined into one permit;
3. What other agencies approvals or input is necessary for final approval;
4. Do any unique environmental or hazardous concerns exist that may be directly or indirectly associated with the subject property, such as areas that have been designated by the State or Federal Government as areas of

critical environmental concern, unique plant or animal life, wetlands, flood plain, airport flight pattern or like or similar conditions; and

5. May the preliminary and final plats be combined and what, if any additional issues need to be addressed for approval with all necessary forms and submittals.

3-3: PRELIMINARY PLAT:

A. Application: Upon completion of the pre-application procedures, the subdivider may file with the Planning and Zoning Office a completed subdivision application form and preliminary plat data as required in this Ordinance in such form and content as required by the Commission.

B. Combining Both Preliminary and Final Plats: The applicant may also request that the subdivision application be processed as both a preliminary and final plat if the following conditions are met:

1. The proposed subdivision does not exceed ten (10) lots;
2. No new street or major street widening are involved;
3. No major special development considerations are involved, such as infrastructure development or the like; and
4. All required information submittals for both preliminary and final plat are complete and in an acceptable form.

A request to combine both preliminary plat and final plat into one application shall be acted upon by the Commission.

C. Content of Preliminary Plat: Preliminary plat shall contain the information required under subsection D of this Section. Additional maps or data deemed necessary by the Commission might also be required. The subdivider shall submit to the Commission at least the following:

1. Four (4) copies of the preliminary plat of the proposed subdivision, drawn in accordance with the requirements hereinafter stated;
2. Four (4) sets of preliminary engineering plans for streets, water, sewers, sidewalks and other required public improvements, including a master utility map; said engineering plans shall contain sufficient information and detail to enable the Commission to make a preliminary determination as to conformance of the proposed improvements to applicable regulations, ordinances and standards as outlined in the special development article of this Ordinance;
3. A written application requesting approval of the Preliminary Plat on a form prescribed by the Commission; and
4. Appropriate information that sufficiently details the proposed development within any special development area, such as hillside, planned unit development, flood plain, wetlands, cemetery, mobile home, large-scale development, hazardous and unique areas of development.

D. Requirement of Preliminary Plats and Plat Applications: The following shall be shown on any preliminary plat submitted or shall be submitted with the same:

1. The name of the proposed subdivision;
2. The names, addresses and telephone numbers of the present owners of the property and the subdivider or subdividers and the surveyor, engineer or draftsman who prepared the plat;
3. The name and address of all adjoining property owners whether or not bisected by a public right of way as shown on records in the County Assessor's office;
4. The legal description of the property of the proposed subdivision;
5. A statement of the intended use of the proposed subdivision, such as residential single-family; two-family and multi-family housing; commercial; industrial; recreational; or agricultural and a showing of any sites proposed for parks, playgrounds, schools, churches or other public uses;
6. A map of the entire area scheduled for development if the proposed subdivision is a portion of a larger holding intended for subsequent development;
7. A vicinity map showing the relationship of the proposed plat to the surrounding area (1/2 mile minimum radius);
8. The land use and existing zoning of the proposed subdivision and the adjacent land;
9. Streets, street names, right of way and roadway widths, including adjoining streets and roadways;
10. Lot lines, dimensions and numbers, and the total number of lots by block;
11. Contours, shown at five foot (5') intervals where land slope is greater than ten percent (10%), with an established bench mark, including location and elevation;
12. A site report and/or a Nutrient Pathogen Evaluation as required by the appropriate health district where individual wells or septic tanks are proposed;
13. Any proposed or existing utilities, including, but not limited to, storm and sanitary sewers, irrigation laterals, ditches, drainages, bridges, culverts, water mains, fire hydrants, electric power lines, gas lines, cable lines, and their respective profiles or indicated alternative methods;
14. A copy of any proposed restrictive covenants and/or deed restrictions or, if none, a statement that none are proposed;
15. Any dedications to the public and/or easements, together with a statement of location, dimensions, and purpose of such;
16. Any additional required information for special developments as specified in Chapter 6 of this Ordinance;
17. A statement as to whether or not a variance will be requested with respect to any provision of this Ordinance describing the particular provision, the variance requested, and the reasons therefore.

E. Fee: A nonrefundable fee as established by resolution of the Board shall be paid at the time of submission of an application for a preliminary plat. There shall be no additional fee for the combining of the preliminary and final plats.

F. Required Submittal: The subdivider shall submit the required four (4) copies of the preliminary plat and supplemental material, and fee to the office of the Administrator prior to scheduling the hearing before the Commission.

G. Public Notification: Notice complying with the following items shall be given for the public hearing to consider the subdivision application and plat. If the preliminary and final plats are being combined hearings before both the Commission and Board are required.

1. Posting for Commission & Board Hearings: The subdivider shall post a reasonable number of posters on or near the object property under consideration to be subdivided. Such poster and stated information shall be of such size and content as may be approved by the Commission. The location of the posters shall be on the closest public roads in visible locations surrounding the subject property and erected at least fifteen (15) days prior to the Commission and Board hearings.
2. Notice in Newspaper: At least fifteen (15) days prior to the hearings notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation.
3. Notice to Property Owners: Further, the subdivider shall give actual written notice to every property owner as set forth as follows:

    a. If the parcel borders on or is close to a City Limits notice shall be provided to property owners or purchasers of record located in the City Limits within three hundred (300) feet of the external boundaries of the land being considered. In addition notice shall be provided to property owners or purchasers of record located outside the City Limits within one half (1/2) mile of the external boundaries of the land being considered;
    b. If the parcel is completely outside and at least three hundred feet from a City Limits notice shall be provided to property owners or purchasers of record located outside the City Limits within one half (1/2) mile of the external boundaries of the land being considered; and

4. Failure to Notify: The failure of the subdivider to comply with the exact provisions of these procedures shall invalidate the Commission's action.

G. ADDITIONAL PROCEDURES IN CITY AREAS OF IMPACT: In cases where the parcel or property involved in the subdivision application is located in an Area of City Impact, the applicable City shall have thirty (30) days to review the application. The purpose of this review is to allow the City time to review and evaluate the application with respects to the possible impact on the City or compliance with the City's ordinances and Comprehensive Plan. If the City

deems that thirty (30) days are inadequate for a thorough review, it may be granted a thirty (30) day extension upon written request.

After the review, the City may make a recommendation to the County to approve, conditionally approve, postpone decision for additional information or disapprove the subdivision plat application. Upon making a recommendation the City shall specify:

1. The Ordinance and standards used in evaluating the application;
2. The reasons for the specific recommendation; and
3. The recommended actions, if any, that the applicant could take to obtain a permit.

If the proposed subdivision is located within an area of city impact and consists of lots of five (5) acres or less the County shall require an annexation consent agreement signed by the original subdivider and property owners if so requested by the applicable City

H. Commission Action: At the public hearing scheduled before the Commission, the subdivider shall present the preliminary plat for action. The Commission shall take action according to one of the following procedures:

1. Preliminary Plat: The Commission may approve, approve conditionally, disapprove, or table the preliminary plat for additional information. Such action shall occur within thirty (30) days of the date of the public hearing. The action, and the reasons for such action shall be stated in writing by the Commission and forwarded to the applicant. The Commission shall also forward a statement of the action taken and the reasons for such action, together with a copy of the preliminary plat to the Board.
2. Combined Preliminary and Final Plat: The Commission may approve, approve conditionally, disapprove, or table the preliminary plat for additional information. Such action shall occur within thirty (30) days of the date of the public hearing. The action, and the reasons for such action shall be stated in writing by the Commission and forwarded to the applicant. The Commission shall also forward a statement of the action taken and the reasons for such action, together with a copy of the final plat for Board action.

J. Board Action: The Board shall act upon the preliminary or combined plats with the following procedures:

1. Preliminary Plat: At the next regular Board meeting after the Commission's decision, the subdivider shall present the preliminary plat to the Board. The Board may approve, approve conditionally, disapprove, or table the preliminary plat for additional information. Such action shall occur within thirty (30) days of the date of the regular meeting at which

the plat is first considered. The action, and the reasons for such action shall be stated in writing by the Board and forwarded to the applicant.

2. Combined Preliminary and Final Plat: After the Commission's approval or conditional approval, the subdivider shall present the final plat to the Board at a public hearing with public notification as established in 3-3-G of this ordinance. The Board may approve, approve conditionally, disapprove, or table the plat for additional information. Such action shall occur within thirty (30) days of the date of the regular meeting at which the plat is first considered. The action, and the reasons for such action shall be stated in writing by the Board and forwarded to the applicant.

K. Appeals: Any person who appeared in person or by writing before the Commission or the subdivider may appeal in writing the decision of the Commission relative to any action taken by the Commission. Such appeal must be submitted to the Board within fifteen (15) days from such Commission action.

L. Approval Period:

1. Failure to file and obtain the certification of the acceptance of the final plat application by the developer within one year after action by the Commission shall cause all approvals of said preliminary plat to be null and void, unless an extension of time is applied for and granted by the Commission prior to the expiration date.
2. In the event that the development of the preliminary plat is made in successive continuous segments in an orderly and reasonable manner, and conforms substantially to the approved preliminary plat, such segments, if submitted within successive intervals of one year may be considered for final approval without resubmission for preliminary plat approval.

3-4: FINAL PLAT

A. Application: After the approval or conditional approval of the preliminary plat, the subdivider shall cause the subdivision, or any part thereof, to be surveyed and a final plat prepared in accordance with the approved preliminary plat. The subdivider shall submit to the Commission the following:

1. Three (3) copies and the original in black opaque image upon stable base drafting film with a minimum base thickness of 0.003 inches, of the final plat. The original plat shall be returned to the subdivider for other approvals, if needed, and recording upon Board approval.
2. If applicable three (3) copies of the final engineering construction drawings and/or specifications for the streets, water, sewers, sidewalks and other public improvements.

B. Content of Final Plat: The final plat shall include and be in compliance with all items required under Title 50, Chapter 13 of the Idaho Code and shall be drawn at a scale and contain lettering of such size as to enable the same to be placed on one

sheet of eighteen inch by twenty-seven inch (18" x 27") drawing paper, with a three and one-half (3 ½) inch margin at the left end and one-half (½) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. The reverse of said sheet shall not be used for any portion of the drawing, nor contain written matter as to dedications, certifications and other information. The final plat and/or accompanying submittals shall include at least the following:

1. A written application for approval of such final plat as stipulated by the Commission;
2. Proof of current ownership of the real property included in the proposed final plat;
3. Such other and further information as the Commission may deem necessary to establish whether or not all proper parties have signed and/or approved said final plat;
4. Verification of conformance with the approved preliminary plat and meeting all requirements or conditions thereof; and
5. Conform to all requirements and provisions of this Ordinance and acceptable engineering practices and local standards.

C. Commission Review:

1. Submittal of Final Plat: The subdivider shall submit the final plat to the Commission for review in a public hearing using the same procedures for notification as used for the preliminary hearing. The Commission shall review the final plat for compliance with the approved or conditionally approved preliminary plat. If the Commission determines that there is substantial difference in the final plat from that which was considered as a preliminary plat or conditions which have not been met, the Commission may require that the plat be resubmitted to the Planning and Zoning Office and Commission in the same manner as required in the preliminary plat process.
2. Submission to the Board: Upon the determination that the final plat is in compliance with the preliminary plat and all conditional requirements have been met, the Commission shall place the final plat on the Board agenda within forty-five (45) days from the date that an acceptable plat application was received and approved by the Commission.

D. Agency Review: The Commission may transmit one copy of the final plat, or other document submitted, for review and recommendation to the same departments and agencies, or others as they may deem necessary to insure compliance with the preliminary approval and/or conditions of preliminary approval. Such agency review shall also include the construction standards of improvements, compliance with health standards, the cost estimate for all improvements and the legal review of the performance bond.

E. Board Action: The Board at a scheduled public hearing following receipt of the Commission's report shall consider the Commission's findings and comments

from concerned persons and agencies to arrive at a decision on the final plat. If said final plat conforms to the requirements of this Ordinance applicable at the time of approval of the preliminary plat, all rulings made by the Commission on the preliminary plat, and the requirements of the Idaho State Law, the Board shall approve, approve conditionally, disapprove or table the final plat for additional information. The decision shall be made within thirty (30) days of the date of the public hearing at which the plat is first considered.

F. Approval Period: Final plat and covenants, if any, shall be filed by the subdivider/developer with the County Recorder within ninety (90) days after written approval by the Board, otherwise such approval shall become null and void unless prior to said expiration date an extension of time is applied for and granted by the Commission.

G. Plat Endorsements: Upon approval of the final plat by the Board, the subdivider shall obtain the following signatures of approval on the final plat. Signatures shall be in reproducible black ink:

1. Certification of owner or owners of the land included in the plat, with correct legal description of the land, certifying their intentions to include the same in the plat, and make a dedication of all public streets, right of ways, and easements shown on said plat. Which certifications shall be acknowledged before an officer duly authorized to take acknowledgements and shall be endorsed on the plat;
2. Certification of the Idaho Professional surveyor, who prepared the plat, certifying the correctness of said plat, with his signature he shall place his seal and date on the plat;
3. Certification and signature of an Idaho professional surveyor chosen by the County verifying compliance of the plat to County and State requirements;
4. Certification and signature of the Chairman of the Planning and Zoning Commission verifying that the subdivision has been approved by the Commission;
5. Certification and signature of the Chairman of the Board of County Commissioners verifying that the subdivision has been approved by the Board;
6. Certification and signature of local or State health agency that all health requirements have been complied with or the required sanitary restriction set forth in title 50, chapter 13, Idaho Code has been placed thereon;
7. Certification of approval and acceptance of the local fire protection district or department;
8. Certification of approval and acceptance of dedication of public streets and right of ways and means of lot ingress and egress by the Minidoka County Highway District or department having jurisdiction over such streets or right of ways; and
9. Minidoka County Treasurer Certification that all property taxes have been paid on the land included in the plat.