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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TETON

EDGEWOOD LANE HOMEOWNERS, LTD, an Idaho Non-Profit Corporation, Petitioner v. BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, STATE OF IDAHO, Respondent.	**Case No.** CV-2007-009 **BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION OR ALTERNATIVE RELIEF FROM ORDER**

COMES NOW On Time Financial, LLC (hereafter "On Time"), by and through its attorney of record, Paul L. Fuller, of Fuller and Beck Law Offices, PLLC, pursuant to Idaho Rule of Civil Procedure 11.2(b), or alternatively under Rule 60(b)(4), 60(b)(6), and 60(d)(3), and moves for reconsideration of and/or relief from this Court's Order and Decree Approving Settlement Agreement, entered October 9, 2007. The Court should grant such reconsideration and/or relief because (1) the Court acted in excess of its authority, (2) the County has no authority to delegate control of Edgewood Lane to the HOA, (3) the County has no authority to selectively limit the rights of the public to use

public roads, (4) the HOA has no authority to restrict, control and/or regulate access on Edgewood Lane in the manner it did, and (5) the Settlement Agreement upon which the Order is based was entered in violation of the Due Process rights of adjoining landowners.

FACTS

On Time adopts the Statement of Facts set forth in its Motion to Reopen and Motion for Joinder, as if set forth herein.

Standard on Reconsideration

> When deciding the motion for reconsideration, the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered. In other words, if the original order was a matter within the trial court's discretion, then so is the decision to grant or deny the motion for reconsideration. If the original order was governed by a different standard, then that standard applies to the motion for reconsideration. Likewise, when reviewing a trial court's decision to grant or deny a motion for reconsideration, this Court utilizes the same standard of review used by the lower court in deciding the motion for reconsideration. If the decision was within the trial court's discretion, we apply an abuse of discretion standard.

Fragnella v. Petrovich, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

Standard on Rule 60 Motions

A trial court's decision whether to grant relief pursuant to Rule 60(b) is reviewed for an abuse of discretion. *Kirkland v. State*, 143 Idaho 544, 547, 149 P.3d 819, 822 (2006). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

A determination under Rule 60(b) turns largely on questions of fact to be determined by the trial court. *Andrus v. State*, 164 Idaho 565, 567, 433 P.3d 665, 667 (Ct. App. 2019). Idaho appellate courts will uphold those factual findings unless they are clearly erroneous. *Id.* If the trial court applies the facts in a logical manner to the criteria set forth in Rule 60(b), while keeping in mind the policy favoring relief in doubtful cases, the court will be deemed to have acted within its discretion. *Id.*

PREFRATORY CASE LAW

The following case law citations provide on overarching view of general principles governing this case, which is that Idaho law **does not** allow denying the public or adjoining land owners access on public roads or right-of-ways.

> The right to travel over a street or highway is a **primary absolute right** of everyone…."

Foster's, Inc., v. Boise City, 63 Idaho 201, 217, 118 P.2d 721 (1941)(emphasis added).

> A public street or highway is free to all persons who choose to travel over it, whether they be abutting property owners, residents of the municipality, the country, the state, or of a foreign state, with the exception only; **that the abutting property owner has an additional right of ingress and egress.**

Id. at 212.

> Idaho is firmly committed to the rule that access to property from an existing highway is a property right. *Village of Sandpoint v. Doyle*, 14 Idaho 749, 95 P. 945, 17 L.R.A.,N.S., 497; *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353; *Independent School Dist. No. 1 of Twin Falls County v. Continental Oil Co.*, 49 Idaho 109, 286 P. 360.

Mabe v. State ex rel. Rich, 83 Idaho 222, 224, 360 P.2d 799, 801 (1961).

The Idaho Supreme Court has stated it does not matter if the road is publicly owned or private, access to public roads is a vested appurtenant right to the ownership of property:

> This Court in *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353, 359, recognized that the right of the easement of access constituted an interest in the realty by virtue of being appurtenant thereto. In this case, this Court stated:
>
> > 'Access to a public way across sidewalks, subject to the right of reasonable regulation by the municipality, 'is one of the incidents of ownership of land bounding thereon, and this right is appurtenant to the land and exists **when the fee of the way is in the municipality as well as when it is in private ownership.**' *Anzalone v. Metropolitan District Com.*, 257 Mass. 32, 153 N.E. 325, 327, 47 A.L.R. 897. *See, also*, 13 R.C.L., p. 142; 44 C.J., pp. 943, 945. And it is a vested right of which the lot owner **cannot be deprived without just compensation**. *Howell v. Board of Commissioners, supra*, [169 Ga. 74, 149 S.E. 779]; *Gulf Refining Co. v. City of Dallas*, Tex.Civ.App., 10 S.W.2d 151.'
>
> The above rule was followed in *Independent School Dist. No. 1 of Twin Falls County v. Continental Oil Co.*, 49 Idaho 109, 286 P. 360.

Hughes v. State, 80 Idaho 286, 294-95, 328 P.2d 397 (1958)(emphasis added).

The primary issue before this Court is whether it is just and proper to deny On Time and/or the public from using Edgewood Lane.

ARGUMENT

If the Court determines that the Court's 2007 Order is not final, it should reconsider the 2007 Order under IRCP 11.2(b). Teton County properly included Edgewood Lane on the County Map because it had been dedicated to and accepted by Teton County in 1980 and no legal abandonment has occurred.

If the Court determines that there was a final judgment entered in 2007, this Court should grant relief to On Time under IRCP 60(b) and (d). The actions of Teton County and the HOA violated numerous constitutional and statutory requirements, and this Court should determine that the 2007 Settlement Agreement and 2007 Order were null and void ab initio. Additionally, this Court was without authority to approve the 2007 Settlement Agreement as part of a Petition for Judicial Review and the 2007 Order was

a product of fraud on the Court.

Edgewood Lane is indisputably a public road which is held in trust by Teton County for the benefit of the public, including On Time. Teton County cannot divest On Time or the public of any of their rights to use Edgewood Lane without compliance with constitutional and statutory provisions regarding abandonment or vacation of public roads.

1. **THE COURT SHOULD RECONSIDER THE 2007 ORDER AND AFFIRM THE ACTION OF TETON COUNTY TO INCLUDE EDGEWOOD LANE ON THE COUNTY MAP – IRCP 11.2(b)**.

The determination in July 24, 2006 to include Edgewood Lane on the County Road Map was appropriate because Edgewood Lane was dedicated to the public in 1980. Under Idaho Code Section 40-202(7), the factors that the Board of County Commissioners is to rely upon are (1) confirm that no legal abandonment has occurred, and (2) have some basis that the road was acquired, whether by dedication, purchase, prescriptive use or other means. Teton County and the HOA have not identified any County Meeting where legal abandonment has occurred, and Edgewood Lane was dedicated to and accepted by Teton County in 1980. *See* Edgewood Plat Map, attached as Exhibit 'B' to the Declaration of Paul Fuller. This Court must affirm the County's 2006 decisions because Edgewood was dedicated to the public, and no legal abandonment has occurred. The HOA's attempt to privatize a public road, which serves as access to On Time's properties and BLM lands beyond Edgewood Estates, must be rejected.

Reconsideration should also be considered for the same reasons outlined below.

2. **2007 ORDER IS IN EXCESS OF THIS COURT'S AUTHORITY, RENDERING IT VOID – IRCP 60(b)(4) AND (6).**

Under Idaho Code Section 67-5279(2) and (3), when a judicial review occurs, the

Court is only authorized to (1) affirm the agency's action, or (2) set the agency action aside, in whole or in part, and remand for further proceedings as necessary. Idaho law does not allow the Court to adopt a completely new remedy agreed to through mediation in order to avoid statutory requirements. The Court in 2007 should have either (1) affirmed Edgewood Lane's inclusion on the County map, or (2) set the County's action's aside, in whole or part, and remand the matter back to Teton County. Using Judicial Review as a Trojan horse to avoid statutory requirements under I.C. § 40-203 and adopt a completely different remedy was a significant overreach of judicial authority. Because the Court was without authority to approve the 2007 Settlement Agreement, the 2007 Order must be set aside. This Court can only affirm the agency's decision, or set the action aside and remand.

3. <u>2007 SETTLEMENT AGREEMENT VIOLATED THE IDAHO CONSTITUTION AND IS VOID – IRCP 60(b)(4) & (6).</u>

Under the Idaho Constitution, Article XI, Section 6: "All individuals, associations, and corporations, similarly situated, shall have equal rights to have persons or property transported on and over any railroad, *transportation*, or express route in this state…." (Emphasis added). Under the 2007 Settlement Agreement and 2007 Order, Teton County agreed to allow some owners along Edgewood Lane use of Edgewood Lane for motorized uses, but has restricted motorized use to all others, including adjacent lot owners, such as On Time, whose only access is via Edgewood Lane. By treating some owners of property along Edgewood Lane different from other owners, and granting special privileges to one group, but not the others, Teton County is violating the Constitutional rights of On Time. This Court should declare that Teton County is in violation of the Idaho Constitution and grant all owners of property rights abutting

Edgewood Lane equal rights to use this public transportation route.

4. <u>2007 SETTLEMENT AGREEMENT VIOLATED STATUTORY PROCEDURES AND IS VOID – IRCP 60(b)(4) AND (6).</u>

Numerous Idaho statutes were violated by Court approval of the 2007 Settlement Agreement, including, but not limited to, the following:

a. Idaho Code 40-203(2): "No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way." By restricting motorized access to only members of the HOA, both of On Time's parcels are without substantive access to an established highway. There is no area in the vicinity for parking to allow reasonable non-motorized access to the properties, and modern society necessitates motorized access to rural residential property. We find no support that allowing non-motorized access is sufficient to avoid the application of this statute to residential property.

b. Idaho Code Section 50-1321: "No vacation of a public street, public right-of-way or any part thereof having been duly accepted and recorded as part of a plat or subdivided tract shall take place unless the consent of the adjoining owners be obtained in writing and delivered to the public highway agency having jurisdiction over said public street or public right-of-way." There is no reference or evidence that written consent was given by the owner of On Time's parcels as part of the 2007 Settlement Agreement. The prior owner was not identified as having participated in the executive session mediation or Court proceedings. The record contains no proof of service. It would be unreasonable to assume that the prior owner would have willingly given up motorized access to a personal residence.

c. Idaho Code Section 50-1321: "Any vacation of lands within one (1) mile of a city shall require notification and consent of the city."[1] The boundaries for the City of Victor abut Edgewood Estates. There is no reference or evidence that the City of Victor provided consent to the privatization of Edgewood Lane. In response to the recent request to vacate Edgewood Lane, Kimberly Kolner, Victor's Planning and Zoning Director, stated that "[t]he City wants to make sure that all public access will remind [sic], including vehicular and trail access, as well as the driveway to the adjoining parcels outside of the subdivision." *See* Exhibit 'M' attached to the Declaration of Paul L. Fuller. A requirement to notify adjacent cities is also found in Teton County Code 9-7-1(C). The record contains no proof of service on the City of Victor.

d. Idaho Code Section 40-203(1)(d): "The commissioners shall prepare a public notice stating their intention to hold a public hearing to consider the proposed abandonment and vacation of a highway or public right-of-way, which shall be made available to the public not later than thirty (30) days prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after any such request." Given that the decision to vacate the right of the public to use Edgewood Lane by motorized means was made **during an executive session** and was voted on immediately after, it is unlikely that any notice, let alone a thirty (30) day notice regarding vacation/abandonment, was provided prior to the July 12, 2007 Commission Meeting. Additionally, the parties altered the time the hearing was scheduled to be held on June 27, 2007, 15 days prior to the executive session, conclusively precluding any claim that timely notice was provided 30 days prior to the hearing. *See* Third Report by

[1] Idaho Code Section 50-1321 was revised in 2014 to only require written notification to the City, not actual consent.

Petitioner Re: Mediation. Further, the County concedes that the 2007 Settlement Agreement was unenforceable because it "purports to vacate or abandon a public right of way or easement without following proper public notice and hearing procedure in violation of Idaho law." *See* Complaint, para. 8, filed in Teton County Case No. CV-12-382. If the Settlement Agreement was unenforceable as to one public right it stands to reason to be unenforceable as to any public right which required identical statutory notice.

e. Idaho Code Section 40-203(1)(e): "At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice by United States mail to known owners and operators of an underground facility, as defined in section 55-2202, Idaho Code, that lies within the highway or public right-of-way." It is impossible for this notice to have been sent out as required, because the County's decision to abandon/vacate motorized use of Edgewood Lane occurred on the date of the hearing, immediately following the mediation held during executive session. *See* Exhibit 'G', attached to the Declaration of Paul L. Fuller.

f. Idaho Code Section 40-203(1)(f): "At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice to owners of record of land abutting the portion of the highway or public right-of-way proposed to be abandoned and vacated at their addresses as shown on the county assessor's tax rolls and shall publish notice of the hearing at least two (2) times if in a weekly newspaper or three (3) times if in a daily newspaper, the last notice to be published at least five (5)

days and not more than twenty-one (21) days before the hearing." It was impossible for this notice and publication to have been sent out as required, because the County's decision to abandon/vacate motorized use of Edgewood Lane occurred on the date of the hearing, immediately following the mediation held during executive session. *See* Exhibit 'G', attached to the Declaration of Paul L. Fuller.

g. Idaho Code Section 40-203(1)(g): "At the hearing, the commissioners shall accept all information relating to the proceedings. Any person, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appear and give testimony for or against abandonment." The hearing occurred immediately following an executive session and there is no evidence that any opportunity was provided to any person or the government to provide input after the executive session concluded. *See* Exhibit 'G', attached to the Declaration of Paul Fuller.

h. Idaho Code Section 40-203(1)(h): "After completion of the proceedings and consideration of all related information, the commissioners shall decide whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation. The decision whether or not to abandon and vacate the highway or public right-of-way shall be written and shall be supported by findings of fact and conclusions of law." There is no evidence in the record that the Commissioners made any determination on the record regarding the public interest in motorized use of Edgewood Lane, and there is no evidence that such decision and findings of fact and conclusions of law were ever written as required.

i. Idaho Code Section 40-203(1)(j): "The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the

highway system to be amended as affected by the abandonment and vacation." No such order or resolution was ever adopted or recorded by the County. The 2007 Settlement Agreement does not constitute an Order or Resolution of the July 12, 2007 decision. Teton County's currently available GIS Road's Dataset identifies Edgewood Lane an open, public road. *See* Declaration of Paul Fuller, Exhibit 'K'.

j. Idaho Code Section 40-203(6): "All other highways or public rights-of-way may be abandoned and vacated only upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest, and such other highways or public rights-of-way may be validated or judicially determined at any time notwithstanding any other provision of law. Provided that any abandonment under this section shall be subject to and limited by the provisions of subsections (2) and (3) of this section." The Teton County Commission has never made a formal determination that retaining Edgewood Lane for use by the public is not in the public interest. In fact, in 2006 the County determined to add Edgewood Lane to its roadmap and maintenance schedule. Given that Edgewood Lane provides direct access to BLM Lands, it is clearly in the public interest to allow full use of Edgewood Lane by motorized vehicles.

k. Idaho Code Section 74-206 (formerly Idaho Code Section 67-2345): This provision, and its previous iterations, identifies appropriate times when a governmental body may conduct executive sessions. None of the provisions authorize an executive session to occur for purposes of conducting mediation. The closest exception is found in Subpart (f), which allows an executive session to occur to "communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for

pending litigation, or controversies not yet being litigated but imminently likely to be litigated." This exception was not applicable because the communications in the executive session went far beyond merely communicating with legal counsel and involved active negotiations in a pending litigation regarding imposing restrictions and divesting the public of their rights to public property. By holding mediation of pending litigation in an executive session, Teton County violated then applicable Idaho Code Section 67-2345.

5. 2007 SETTLEMENT AGREEMENT VIOLATES STATUTORY DUTIES RENDERING THE AGREEMENT VOID – IRCP 60(b)(4) AND (6).

Idaho Code Section 40-604(4) requires compliance with Section 40-203 to vacate or privatize a public roadway. Until such process occurs, Idaho Code imposes statutory duties on counties to maintain the public roadway. Counties cannot delegate their authority to non-governmental entities. Because Teton County has not properly vacated Edgewood Lane, the delegation of control to the HOA in the 2007 Settlement Agreement was in violation of statutory process, and such violations continue to this date. The County cannot ignore formal statutory process and effectively abandon/vacate public roadways through alternative processes in violation of statutes.

Under Idaho Code Section 31-805, the County has a **mandatory** duty to "lay out, maintain, control and manage public roads…." Similarly, Section 31-807 delegates to the County the authority to "preserve, take care of, manage and control the county property…." Under Section 31-602, the County's "powers can only be exercised by the board of county commissioners, or by agents and officers acting under their authority or authority of law." By delegating control, management and maintenance of Edgewood Lane to the HOA, Teton County is in a continual state of violation of each of these

statutory provisions. The following cases are directly on point:

a. In *Quiring v. Quiring,* 130 Idaho 560, 944 P.2d 695 (1997), the Supreme Court stated as follows with regards to a Court's duty in relation to an illegal contract:

> An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy. 17A AM.JUR.2D Contracts § 239; *see Miller v. Haller*, 129 Idaho 345, 924 P.2d 607 (1996). A contract prohibited by law is illegal and hence unenforceable. *Miller*, 129 Idaho at 351, 924 P.2d at 613.
>
> Although not clearly argued below or addressed in either the magistrate's decision or the district court, in Idaho a court may not only raise the issue of whether a contract is illegal *sua sponte*, *Nab v. Hills*, 92 Idaho 877, 882, 452 P.2d 981, 986 (1969); *Belt v. Belt*, 106 Idaho 426, 430 n. 2, 679 P.2d 1144, 1148 n. 2 (Ct.App.1984), but it **has a duty** to raise the issue of illegality, whether pled or otherwise, at **any stage** in the litigation. *Stearns*, 72 Idaho at 290, 240 P.2d at 842. As the Court in *Stearns* explained:
>
> > A party to a contract, void as against public policy, cannot waive its illegality by failure to specially plead the defense *or otherwise*, but *whenever the same is made to appear at any stage of the case*, it becomes *the duty of a court to refuse to enforce it*; again, a court of equity will not knowingly aid in the furtherance of an illegal transaction; in harmony with this principle, **it does not concern itself as to the manner in which the illegality of a matter before it is brought to its attention**.
>
> *Id.* ([italic] emphasis added [by *Quiring* Court]) (citation omitted).

Quiring v. Quiring, 130 Idaho 560, 566-67, 944 P.2d 695 (1997) (bold emphasis added). This Court has a duty to address the illegality of the 2007 Settlement Agreement. The 2007 Settlement Agreement is void as against public policy for the numerous statutory and constitutional violations committed in its execution and enforcement.

b. *Johnson v. Young,* 53 Idaho 217, 23 P.2d 723 (1932); *reh'g granted*. In the *Johnson* rehearing, the Court addressed a contract whereby Power County had delegated some of its property to a trust, to be managed by a non-elected trustee. Beginning on page 283, the *Johnson* Court cited to numerous Idaho Constitutional

provisions and then numerous statutory provisions. Beginning on page 285, the *Johnson* Court addresses numerous cases, including *Gorman v. County Commrs.,* 1 Ida 553, *Prothero v. Board of County Commrs.,* 22 Ida 598, 127 Pac 175, *Franske v. Fergus County,* 76 Mont. 150, 245 Pac. 962, and *House v. Los Angeles County,* 104 Cal. 73, 37 Pac. 796. The *Johnson* Court cites to several Corpus Juris sections throughout the decision as well. All of these citations supported the Court's Opinion which found that the County was in violation of the law by entering into the trust agreement and delegating control of public property to the trustee. The Court found Power County "attempted, in violation of the law and of the public policy of the state, to delegate powers which it possesses with respect to county property" and "attempted to place property of the county beyond its control and beyond the control of its successors in office…." *Johnson,* 53 Idaho at 289. As a result "[t]he entire instrument [was] held to be void." *Id.* at 289. Both concurring opinions also stated that the County cannot delegate its powers over public property to another entity and the contract was void. In this action, the 2007 Settlement Agreement is void as an unauthorized delegation of county property which was placed beyond the control of the County and its successors in office. *See* Exhibit 'J' to the Declaration of Paul Fuller: "…the Edgewood HOA is the sole entity that has the right to regulate and control motorized vehicle use of Edgewood Lane."

c. *Youmans v. Thornton,* 31 Idaho 10, 13, 168 Pac. 1141 (1917). In addressing a County's duty to lay out, maintain, control and manage public roads, the Idaho Supreme Court has stated as follows:

> Governmental functions have been recently defined by this court to be 'legal duties imposed by the state upon its creatures [i.e. the County], which it may not

> omit with impunity but must perform at its peril. …. They are imposed by statute, and are necessarily mandatory or peremptory functions, ….' (*Boise Development Co. v. Boise City*, 30 Ida. 675, 167 Pac. 1032.)

Youmans v. Thornton, 31 Idaho 10, 13, 168 Pac. 1141 (1917).

d. *State v. Idaho Power Company,* 81 Idaho 487, 346 P.2d 596 (1959); *reh'g denied*. This case involved Idaho Power Co. seeking reimbursement from the Idaho Board of Highway Directors for the cost of relocating utilities located on a highway right-of-way. The Board had determined to reconstruct the highway, which required the relocation of the utilities. The District Court ruled that Idaho Power was entitled to recover the costs incurred in relocating the facilities. In its arguments on appeal, the State argued that the provisions which allowed payment to Idaho Power were unconstitutional because they allowed the legislature to "decrease the quantum of ownership of the public in the public thoroughfares and give away the property of the public which the state holds in trust." *Id.* at p. 496. The Court recognized that Idaho Power had permissive use of the public highway, but that there exists a time honored rule "that streets and highways belong to the public and are held by the governmental bodies and political subdivisions of the state in trust for use by the public, and that only a permissive right to their use, and no permanent property right can be gained by those using them." *Id.* at p. 498 (internal citations omitted). The Court then stated as follows:

> The state and its political subdivisions are without power to make a valid contract permanently alienating any part of the public streets and highways or permitting a permanent encroachment or obstruction thereon limiting the use of the public thoroughfares by the public. *Boise City v. Hon,* 14 Idaho 272, 94 P. 167; *Boise City v. Wilkinson,* 16 Idaho 150, 102 P. 148; *Yellow Cab Taxi Service v. City of Twin Falls,* 68 Idaho 145, 190 P.2d 681; *Keyser v. City of Boise,* 30 Idaho 440, 165 P. 1121, L.R.A.1917F, 1004; *Boise City v. Sinsel,* 72 Idaho 329, 241 P.2d 173; *Village of Lapwai v. Alligier,* 78 Idaho 124, 299 P.2d 475.
>
> No right to the use of streets and highways for private purposes can be acquired

> by prescription as against the state or its political subdivisions, *Yellow Cab Taxi Service v. City of Twin Falls, supra.*
>
> Permissive use of a street or highway does not vest in the user a property or contractual right, *Keyser v. City of Boise, supra.; Boise City v. Sinsel, supra.*
>
> The power of the state and its political subdivisions to require removal of a nuisance or obstruction, which in anywise interferes with the public use of streets and highways cannot be questioned. *Village of Lapwai v Alligier, supra.*

Id. at p. 500-01. The Court continued by stating as follows:

> Clearly, the legislature at all times has recognized, and continues to recognize that all roads, streets and highways are held in trust by the state and its political subdivisions for use by the public; also, that the granting by the state or political subdivision of a vested or permanent property right or interest in any public street or highway would not only be violative of such public trust, but would result in diminution of the quantum of ownership of the public in its public thoroughfares; and that so to do would constitute the giving or loaning of the credit of the state to or in aid of an individual, municipality or corporation, violative of Idaho Const. Art. 8, § 2, or a gift of the public property in violation of the implied limitations of the Constitution.

Id. at p. 506. Ultimately the Idaho Supreme Court found that the statute authorizing payment for the cost of Idaho Power to relocate its utilities was unconstitutional and that any "permissive use of the public thoroughfares is subordinate to the paramount use thereof by the public." *Id.* at p. 515.

e. *Rich v. Burdick,* 83 Idaho 335, 362 P.2d 1088 (1961). In *Rich,* an abutting property owner had constructed gasoline pumps and related structures on a highway right-of-way, and was ordered to remove the obstructions by the County. The District Court found that the disputed property was a public highway and that no adverse possession existed. Specifically:

> Possession and use of an unused portion of a highway by an abutting owner is not adverse to the public and cannot ripen into a right or title by lapse of time no matter how long continued. *Boise City v. Hon, supra; Hanson v. proffer,* 23 Idaho 705, 132 P. 573; *Thiessen v. City of Lewiston, supra; Keyser v. City of Boise,* 30 Idaho 440, 165 P. 1121, L.R.A.1917F, 1004; *Yellow Cab Taxi Service v. City of*

> *Twin Falls,* 68 Idaho 145, 190 P.2d 681; *Boise v. Sinsel,* 72 Idaho 329, 241 P.2d 173; *Sweet v. Irrigation Canal Co., supra; Pine v. Reynolds, supra; Kamerer v. Commonwealth,* 364 Pa. 120, 70 A.2d 305; *Hostetter v. Commonwealth,* 367 Pa. 603, 80 A.2d 719. **Nor does such possession and use, even though by express permission of the public authority, work an estoppel against the public use.** *Yellow Cab Taxi Service v. City of Twin Falls, supra; Boise City v. Sinsel, supra; State on relation of Rich v. Idaho Power Co*., 81 Idaho 487, 346 P.2d 596. Even in the case of a highway established by user, all portions of the highway right of way need not be maintained and kept up at public expense. *Kosanke v. Kopp, 74 Idaho 302*, 261 P.2d 815. In *Boise City v. Sinsel, supra*, we held that an abutting owner who erected and maintained a building on a portion of a public street under a permit granted by the city council, for a period of 25 years, did not acquire a right to such occupancy, and that the city was not estopped to cancel the permit and require the removal of the building.

Id. at p. 345 (emphasis added). The *Rich* Court upheld the Order to remove the gas pumps. Public officials have no right to give away rights to public property without following proper statutory notice procedures for vacating or abandoning.

f. More recently, in *Schneider v. Howe,* 142 Idaho 767, 133 P.3d 1232 (2006), the Supreme Court addressed a case in Jefferson County regarding a subdivision which was approved in 1978, which identified a dedicated public road easement which, when developed, would connect to the property of an owner outside of the subdivision. A property owner within the subdivision built a garage on top of the undeveloped easement. After the owner refused to remove the garage, the adjacent owner brought declaratory judgment to determine his right to use the easement. Following the filing of the declaratory action, the subdivision petitioned to vacate the easement, but their request was denied and the subdivision appealed the denial. After various stays, the Court entered a final judgment which "confirmed the existence of a public road easement shown on the duly recorded plat of the subdivision, and stated: '[Schneider] having established the existence of the public road easement confirmed herein, **is entitled to use it as a public roadway** following its development in

accordance with county specifications.'" *Id.* at p. 770 (emphasis added). This case is on all fours with the present action. It should also be noted that the attorney acting on behalf of Schneider, the prevailing party, was Gregory W. Moeller, who now serves as an Idaho Supreme Court Justice.

6. <u>ONCE A HIGHWAY, ALWAYS A HIGHWAY.</u>

While Idaho's Courts have yet to specifically address a common law principle, other states recognize the maxim "Once a Highway, Always a Highway." North Carolina held as follows in *Long v. Melton,* 218 N.C. 94, 10 S.E.2d 699 (N.C. 1940):

> We think *Davis v. Alexander*, 202 N.C. 130, 162 S.E. 372, is similar to the present action. At pages 131, 132 of 202 N.C., at page 374 of 162 S.E., it is said: "The law applicable to this action is well stated in 2 Elliott, Roads & Streets (4th Ed.) part section 1172, at page 1668: ';Once a highway always a highway,' is an old maxim of the common law to which we have often referred, and so far as concerns the rights of abutters, or others occupying a similar position, who have lawfully and in good faith invested money or obtained property interests in the just expectation of the continued existence of the highway, the maxim still holds good. **Not even the legislature can take away such rights without compensation.** Such at least, is the rule which seems to us to be supported by the better reason and the weight of authority, although there is much apparent conflict as to the doctrine when applied to the vacation of highways.' [Citing authorities] *** [202 N.C. at page 135, 162 S.E. at page 375]. In 1 Lewis on Eminent Domain, pp. 368, 369, the matter is stated thus: 'But it would seem that both the public and those claiming the fee **should be estopped from denying the existence of a private right of access and of light and air**, as to those who have purchased or improved abutting property on the faith of the advantage offered by the street or highway and that **this private right of access should be held to include an outlet in both directions to the general systems of streets**. Many cases hold that these private rights exist in favor of every abutting owner without considering how the street was established or how such owner obtained title to his property.'"...
>
> ***
>
> As has been well said, "The maxim (';once a highway always a highway') exists in support of the position that when it is shown that a highway was once laid out pursuant to law, or created by dedication, the burden of showing discontinuance, abandonment or vacation, is upon the party who asserts that the public and the abutting owners have lost or surrendered their rights. In the absence of satisfactory evidence of discontinuance, vacation or abandonment, the presumption is in favor

of the continuance of the highway with the principal and incidental rights attached to it." *See* 2 Elliott, Roads and Streets, 4th Ed., p. 166 et seq.

Id. at 701-702 (emphasis added). The burden is on Teton County and the HOA to establish that Edgewood Lane is no longer a public road. "Once a Highway, Always a Highway" is also found in the following, non-exhaustive list:

- *Davenhall v. Cameron,* 366 A.2d 499, 116 N.H. 695 (N.H. 1976);
- *Wolfe v. The Town of Sullivan,* 32 N.E. 1017, 1019, 133 Ind. 331 (Ind. 1893) ("The right of the public to the use of the highways is not barred by the statute of limitations.");
- *McKenzie v. Commalander,* 549 So.2d 476, 478, (Ala. 1989);
- *Huffman v. Bd. of Sup'rs of W. Bay Tp.,* 47 N.D. 217, 182 N.W. 459, 461 (N.D. 1921);
- *Clare v. Wogan,* 204 Iowa 1021, 216 N.W. 739, 740 (Iowa 1927);
- *Town of Schoepke v. Rustick,* 723 N.W.2d 770, 774, 2006 WI App. 222 (Wis.App. 2006);
- *City of Houston v. Hughes,* 284 S.W.2d 249, 252 (Tex.Ct.App. 1955);
- *Oetting v. Pollock,* 175 S.W. 222, 224, 189 Mo. App. 263 (Mo.App. 1915);
- *Payne v. Godwin,* 147 Va. 1019, 133 S.E. 481, 483 (Va. 1926);
- *Regan v. City of Newport,* 43 A.3d 33, 38 (R.I. 2012);
- *Bartlett v. Roberts,* 2020 VT 24, Page 7 (Vt. Mar. 10 2020);
- *Grove Bridge Co. v. State,* 271 P. 846, 849, 133 OK 450 (Okla. 1928);
- *Blaser v. Cnty. of Madison,* 285 Neb. 290, 826 N.W.2d 554, 566 (Neb. 2013) ("The discontinuance of a public highway is not favored in the law.");
- *Sweet v. Irrigation Canal Co.,* 198 Or. 166, 254 P.2d 700, 715 (Or. 1953);
- *Western Aggregates, Inc. v. County of Yuba,* 101 Cal.App. 4th 278, 304-05, 130 Cal.Rptr.2d 436 (Cal.App. 2002);
- *High Lonesome Ranch, LLC v. Bd. of Cnty. Comm'rs for the Cnty. of Garfield,* 508 F.Supp.3d 801, 843 (D.Colo. 2020).

In the 2007 Settlement Agreement, p. 4, footnote 4, attached as Exhibit 'C' to the Petition, it was the clear intent of the County and HOA to effectively privatize Edgewood Lane without going through the statutory process required under Idaho Code Section 40-203 for abandonment: "The result is comparable to designating on the plat that the roads are private, under Idaho Code Section 50-1309(3), as to motorized vehicles." The effect of the 2007 Settlement Agreement was to vacate/abandon a 'stick' (motorized use) from the bundle of rights owned by the public. Motorized use of residential roads is likely the most important stick in the bundle of public rights. A similar litigation settlement agreement was rejected by the Idaho Supreme Court in *Farrell v. Board of Com'rs, Lemhi County,* 138 Idaho 378, 64 P.3d 304 (2002) (discussed below), as a violation of the statutory processes set forth in Idaho Code Section 40-203. Where a statutory process is declared which governs the method to privatize platted roads, allegedly "comparable" processes are prohibited. The Legislature has established a statutory process to permanently restrict the public from public roads, and the 2007 Settlement Agreement was deficient in multiple respects. The HOA and County used the 2007 Settlement Agreement and defrauded the judiciary to circumvent the required statutory process and the rights of On Time's predecessor.

In 2012, Teton County even expressly admitted that it violated statutory procedure in adopting the 2007 Settlement Agreement:

7. The Settlement Agreement violates statutory procedure in that it vacates or abandons roads or easements on the Edgewood Estates Plat without following proper statutory procedure.

See 2012 Complaint for Declaratory Judgment, p. 2.

In Teton County Case No. CV41-22-0069, Judge Stephens recognized that Teton County and the HOA's failure to include On Time's predecessor in the negotiation process impacted the legality of the 2007 Settlement Agreement:

> Kinkaid [sic], as owner of Lots 1 and 2 at the time of the Teton County case, should have been joined to the action as he had an interest in the subject of the action, Edgewood Lane, and decisions made without him had a direct impact on his ability to protect that interest. Teton County and the HOA's failure to properly join Kinkaid [sic] in Teton County Case CV-07-009 does impact the legality of the settlement agreement.

See Memorandum Decision, p. 16, dated August 30, 2023.[2] While Judge Boyce may have granted relief under Rule 60(a), based upon a lack of notice and hearing, relief under Rule 60 does **not** operate to change correct facts or legal conclusions. Judge Stephens was correct that On Time's predecessor should have been a party in the 2007 litigation, and his absence impacts the legality of the 2007 Settlement Agreement and 2007 Order.

OTF and its predecessor did not receive notice and have never had an opportunity to be heard in the 2007 litigation, and the public was deprived of its statutory protections. In the interest of equity, the Court should void the 2007 Settlement Agreement and 2007 Order which were entered without notice and opportunity to be heard by both On Time's predecessor and the public, in violation of procedural and substantive due process.

7. <u>PROCEDURAL VIOLATIONS.</u>

a. <u>The 2007 Settlement Agreement was not properly executed – IRCP 60(b)(3), (4) and (6).</u>

The 2007 Settlement Agreement was signed by the County Commissioners and Dawn Felchle, who falsely represented herself as a Deputy Clerk. Idaho Code Section

[2] This Memorandum Decision was later overturned in part by Judge Boyce for procedural deficiencies.

31-707 imposes a duty that all County records "must be signed by the chairman and the clerk." During 2007, the elected Teton County Clerk was Mary Lou Hansen. Dawn Felchle was an assistant to the Board of Commissioners. Dawn Felchle was not a Clerk, or even a Deputy Clerk. This fact is established by the Meeting Minutes of Teton County Board Meeting which was held four (4) days after the 2007 Stipulation was signed:

MINUTES OF THE TETON COUNTY COMMISSIONERS
August 27, 2007
Commissioners' Meeting Room in the American Legion Hall, Driggs, Idaho

COMMISSIONERS PRESENT: Larry Young, Alice Stevenson, Mark Trupp

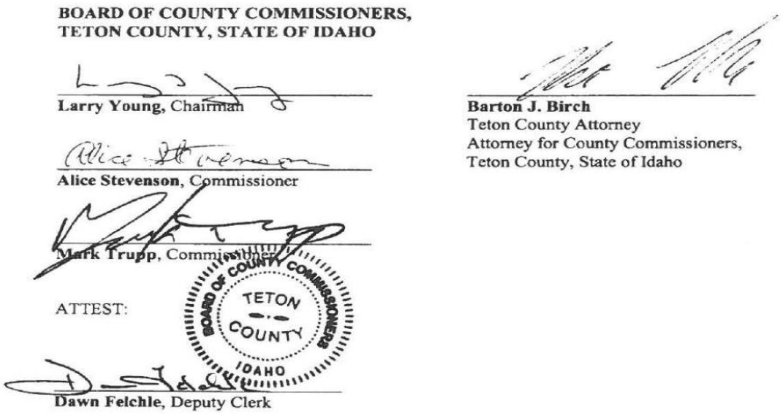
OTHER ELECTED OFFICIALS and STAFF PRESENT: Clerk Mary Lou Hansen, Commissioners' Assistant Dawn Felchle, Emergency Management Coordinator Greg Adams, Planning Administrator Kurt Hibbert, GIS Manager Eric Smith, Road & Bridge Acting Foreman Clay Smith, Prosecutor Bart Birch, Sheriff Kim Cooke, Dispatch Supervisor Valee Wells

See Declaration of Paul Fuller, Exhibit 'N', submitted herewith. Because the 2007 Settlement Agreement was **not** signed by the County Clerk, such Settlement Agreement is facially defective and void.

This exact issue was addressed in *Farrell v. Board of Com'rs, Lemhi County,* 138 Idaho 378, 64 P.3d 304 (2002). In *Farrell,* Lemhi County entered into a stipulation for settlement of a lawsuit having the effect of closing a public roadway. *Id.* at 382. Lemhi County later had a change of heart and attempted to set aside the stipulation. *Id.* at 382. All attempts to set aside the stipulation by Lemhi County and other road users were rejected by the District Court. *Id.* at 382. After establishing that a public road existed and had not been vacated or abandoned by statutory process, the Idaho Supreme Court addressed the validity of the stipulated settlement and applied the requirements of Idaho Code Section 31-707 to settlement agreements in litigation involving a county. *Id.*

at 387-89. The Idaho Supreme Court stated that "[t]o be facially valid, a County board record 'must be signed by the chairman and the clerk.'" *Id.* at 388. While the *Farrell* Court found that Lemhi County's stipulation was facially valid, having been signed by the Chairman and Clerk, (*Id.* at 388) the Court went on the find the stipulation was invalid based upon violation of Idaho's Open Meeting Law and the County's failure to follow the requirements identified in Idaho Code Section 40-203, which also occurred in the present action as is outlined in the concurrently filed Motion for Reconsideration.

In addition to the Open Meeting Violations and failure to comply with Idaho Code Section 40-203, as was the case in *Farrell*, the 2007 Settlement Agreement is facially invalid because it was not signed by Teton County's Clerk, Mary Lou Hansen, or even a lawfully serving Deputy County Clerk, but was signed by the Teton County Board of Commissioner's assistant, Dawn Felchle, falsely claiming to be a 'Deputy Clerk':


BOARD OF COUNTY COMMISSIONERS,
TETON COUNTY, STATE OF IDAHO

Larry Young, Chairman

Alice Stevenson, Commissioner

Mark Trupp, Commissioner

ATTEST:

TETON COUNTY IDAHO BOARD OF COUNTY COMMISSIONERS

Dawn Felchle, Deputy Clerk

Barton J. Birch
Teton County Attorney
Attorney for County Commissioners,
Teton County, State of Idaho

See Settlement Agreement based on Mediation, p. 8. The August 27, 2007 Meeting Minutes identifies the Clerk as Mary Lou Hansen, and identifies Dawn Felchle as the "Commissioners' Assistant". The 2007 Settlement Agreement, dated August 23, 2007, was not signed by the Clerk as required by Section 31-707, but signed by Ms. Felchle, the Commissioner's assistant. Because Section 31-707 was not complied with by Teton

County, the 2007 Settlement Agreement is void on its face.

According to the Court Minutes of the hearing held April 10, 2007, the HOA falsely stated that the "Subdivision created [Edgewood Lane] which is by easement and not platting." A review of the plat for Edgewood Estates conclusively establishes that Edgewood Lane was dedicated and accepted as part of the plat. *See* Exhibit 'B', Declaration of Paul Fuller. This is yet another example of fraud on the Court in 2007 by the HOA and Teton County.

b. <u>Equal Protection</u>

The Idaho Supreme Court has declared that "[i]t is an elementary principle that the neglect or failure of public officers to do and perform their duties as required by law will not estop **the public** or prevent any rights or acts of the state **in enforcing such laws**…." *Ada County v. Boise Commercial Club,* 20 Idaho 421, 444-45, 118 P. 1086 (1911). Teton County's negligence and intentional failures to perform its statutory duties, do not estop the public, including On Time Financial, from their right to use public property. No amount of time can absolve Teton County from violating its statutory duties, or deny the public their rights to use public roadways, which are held as a public trust.

> As noted above, Bon Appetit asserts the denial of equal protection under both the fourteenth amendment to the United States Constitution, and art. 1 § 2 of the Idaho Constitution. An act of the legislature is presumed to be constitutional, but whether the act is reasonable or arbitrary or discriminatory is a question of law for determination by this Court. *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963). The principle underlying the equal protection clauses of both the Idaho and United States Constitutions is that **all persons in like circumstances should receive the same benefits and burdens of the law**. *Sterling H. Nelson & Sons, Inc. v. Bender*, 95 Idaho 813, 520 P.2d 860 (1974); *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct.App.1986).

Bon Appetit Gourmet Foods, Inc. v. State, Dept. of Employment, 117 Idaho 1002, 1003, 793 P.2d 675 (1989). On Time is entitled to receive the same benefits and burdens of the law in common with all landowners adjacent to Edgewood Lane. Treating On Time different from the HOA is a violation of On Time's Equal Protection Rights.

c. <u>Due Process</u>

The Court, the County and the HOA all acted in violation of the due process rights of an adjoining landowner when the 2007 Settlement Agreement and 2007 Order were entered. The prior owner was not a party to the action, yet his right of access was effectively stripped without notice or an opportunity to be heard.

> Under the due process clause of the Constitution of the United States, a personal judgment rendered without service of process on, or legal notice to, a defendant, in the absence of a voluntary appearance or waiver is void, and not merely voidable. *McDonald v. Mabee*, 243 U.S. 90, 37 S.Ct. 343, 344, 61 L.Ed. 608. A judgment cannot be based on void service of process. *Ennis v. Casey*, 72 Idaho 181, 238 P.2d 435, 28 A.L.R.2d 952. Due process of law envisions opportunity upon reasonable notice for a fair hearing before an impartial tribunal. *Yellowstone Pipe Line Co. v. Drummond*, 77 Idaho 36, 287 P.2d 288. A void judgment is a nullity, and no rights can be based thereon; it can be set aside on motion or can be collaterally attacked at any time. *Miller v. Prout*, 33 Idaho 709, 197 P. 1023. *Jensen v. Gooch*, 36 Idaho 457, 211 P. 551. 30A Am.Jur. 198, Judgments, § 45.

Garren v. Rollis, 85 Idaho 86, 90, 375 P.2d 994 (1962). There was absolutely no service of process or legal notice provided to the prior owner of On Time's parcels, rendering any order or judgment void. The prior owner was deprived of reasonable notice for a fair hearing.

> Due process of law under the federal and state constitutions 'requires that one be heard before his rights are adjudged.' *Lovell v. Lovell*, 80 Idaho 251, 328 P.2d 71 (1958); *Western Loan and Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936); *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921). This principle of equity embedded in our constitutions is applicable in proceedings before administrative bodies. *Washington Water Power Co. v. Idaho Public Util. Comm.*, 84 Idaho 341, 372 P.2d 409 (1962); *Application of Citizens Utilities Company*, 82

Idaho 208, 351 P.2d 487 (1960).

Duggan v. Potlatch Forests, Inc., 92 Idaho 262, 264, 441 P.2d 172 (1968). Whether in front of the County or the Court, due process required that the owners of On Time's parcels be afforded an opportunity to be heard before their access rights were stripped.

> "Procedural due process requires that there must be some process to ensure that the individual is not arbitrarily deprived of his rights in violation of the state or federal constitutions." *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999) (citation omitted). This requires both notice and the opportunity to be heard. *Id.* Each must occur at a meaningful time and in a meaningful manner, though the exact procedural safeguards can vary depending on the situation. *Id.*; *Meyers v. Hansen*, 148 Idaho 283, 292, 221 P.3d 81, 90 (2009).

Floyd v. Bd. of Ada Cnty. Commissioners, 164 Idaho 659, 664, 434 P.3d 1265 (2019). There was no notice provided, nor an opportunity to be heard in the litigation. The mediation was conducted in executive session, no notice was provided, and no action item was included on the agenda. Simply put, there was no meaningful time or meaningful manner in which On Time's or its predecessor had an opportunity to protect their access rights. The consequence of a violation of due process is to treat any order or judgment as void, not merely voidable. Because the action is void (not voidable), the passage of time does not render an order or judgment obtained in violation of due process rights valid.

8. <u>FRAUD ON THE COURT – IRCP 60(d)(3)</u>

> The term "fraud upon the court" contemplates more than interparty misconduct, and, in Idaho, has been held to require more than perjury or misrepresentation by a party or witness, even where the misrepresentation was made to establish the court's jurisdiction. *Willis v. Willis*, 93 Idaho 261, 460 P.2d 396 (1969). Apparently such fraud will be found only in the presence of such "tampering with the administration of justice" as to suggest "a wrong against the institutions set up to protect and safeguard the public...." *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246, 64 S.Ct. 997 1001, 88 L.Ed. 1250, 1256 (1944) (fraud upon the court found where attorney for patent holder wrote article describing

> patent as unique, and arranged for publication in trade journal under name of ostensibly disinterested expert; court relied on article in reaching decision; construing identical language of F.R.C.P. 60(b)); 11 Wright and Miller, Federal Practice and Procedure § 2870 (1973).

Compton v. Compton, 101 Idaho 328, 334, 612 P.2d 1175 (1980).

The 2007 Settlement Agreement was presented to this Court without any representation that the 2007 Settlement Agreement would deprive adjoining landowners of access to their parcels. The HOA also misrepresented the actual status of Edgewood Lane. According to the Court Minutes of the hearing held April 10, 2007, p. 2, the HOA falsely stated that the "Subdivision created [Edgewood Lane] which is by easement and not platting." A review of the plat for Edgewood Estates conclusively establishes that Edgewood Lane was dedicated and accepted as part of the plat. *See* Exhibit 'B', Declaration of Paul Fuller.

The Court was unable to protect the property rights of the owner of On Time's parcels, because those material facts were withheld from the Court. Presenting the 2007 Settlement Agreement to the Court, without notifying the Court that it was land-locking two parcels and misrepresenting the public nature of the road, is nothing short of tampering with the administration of justice. The 2007 Order was a wrong against the adjoining parcel owners, which was fraudulently obtained from the very institutions which were set up to protect and safeguard the public.

While Courts regularly accept settlement agreements on the reliance that they are submitted in good faith and do not deprive non-parties of their due process rights. This Court should not take kindly on the fact that the parties failed to inform the Court of the impact on adjoining parcel owners, and have since used the 2007 Order as a basis to demand substantial payment from On Time as a condition to continue using a public

road. The HOA seeks to turn a public road into a toll road, at public expense. At every stage the County and HOA violated statutory and procedural requirements, designed to protect adjoining property owners, and then failed to inform the Court of these violations when they sought a Court Order. This Order obtained by fraud on the Court has since been used to deny access rights to adjoining property owners and the public in general. Justice demands that the 2007 Order and 2007 Settlement Agreement be declared void ab initio due to the parties' fraud upon this institute of justice by the HOA and Teton County.

CONCLUSION

"Idaho public policy favors the full use of lands…." *Backman v. Lawrence,* 147 Idaho 390, 394, 210 P.3d 75 (2009). It is undisputed that Edgewood Lane was dedicated to the public in 1980s, and that Teton County continues to hold legal title to Edgewood Lane. On Time "having established the existence of the public road easement confirmed herein, is entitled to use it as a public roadway…." *Schneider v. Howe,* 142 Idaho 767, 770, 133 P.3d 1232 (2006).

This Court should reconsider the 2007 Order, and affirm the County's original determination to include Edgewood Lane on the County Road Map. This Court should grant relief from the 2007 Settlement Agreement and 2007 Order because such are null and void because (1) they were entered in excess of this Court's authority, (2) they violated applicable Idaho Constitutional rights, (3) they violated applicable statutory provisions, (4) they violated applicable statutory County duties, (5) they violated common law principles, (5) they violated procedure requirements, including a failure to be properly executed, a violation of equal protection and a violation of due process

rights, and (6) the actions were only approved based upon fraud on the Court. Simply put, the right to access real property should NEVER be taken away without direct involvement of the party which is losing access rights. The 2007 Settlement Agreement and 2007 Order cannot be considered just under any standard.

DATED this 1st day of October, 2024.

/s/ Paul L. Fuller
Paul L. Fuller
Attorney for On Time Financial, LLC

NOTICE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing Document to the attorneys listed below on this 1st day of October, 2024.

DOCUMENT SERVED: BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION OR ALTERNATIVE RELIEF FORM ORDER

Attorney Served:

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Via E-Service

Edgewood Lane Homeowners, Ltd.
c/o Nate Carey
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Via U.S. Mail

/s/ Paul L. Fuller
Paul L. Fuller
Attorney at Law