IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM DOYLE, an individual; LAWRENCE CROWLEY, an individual; THE HARRIS RANCH CID TAXPAYERS' ASSOCIATION, an Idaho nonprofit association, Petitioners/Appellants, vs. THE HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1; TJ THOMSON, in his official capacity as Chairperson and Board member of the Harris Ranch Community Infrastructure District No. 1; HOLLI WOODINGS, in her official capacity as Vice-Chairperson and Board Member of the Harris Ranch Community Infrastructure District No. 1; ELAINE CLEGG, in her official capacity as Board member of the Harris Ranch Community Infrastructure District No. 1, Respondents/Appellees, and HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership, Intervenor.	Case No. CV01-21-18655 MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW

In this Petition for Judicial Review, the Harris Ranch Community Infrastructure District Taxpayers' Association (the "Association"), William Doyle, and Lawrence Crowley (collectively

"Petitioners") seek review of final decisions made by TJ Thomson, Holli Woodings, and Elaine Clegg (collectively "Respondents") in their capacity as board members of the Harris Ranch Community Infrastructure District No. 1 (the "District"). *See Petition for Judicial Review.* For the reasons explained below, the Petition is denied and the District's decisions are affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The parties to this proceeding.

The District, located in the southeastern corner of the City of Boise (the "City"), is a special taxing district created in 2010 pursuant to Idaho Code section 50-3101, *et seq.* (the "CID Act"). *See Administrative Record ("A.R.")* at 23. The District is comprised of land that was formerly portions of the Harris Family Ranch, positioned just north of the Boise River and abutting the Boise foothills. *Id.* at 28. The Association is an Idaho non-profit association and community advocacy group whose membership includes real property owners and taxpayers within the District. *Petition for Judicial Review* ¶ 3. Petitioners Doyle and Crowley are officers of the Association and real property owners in the District. *Id.* ¶¶ 1-2. Respondents Thomson, Woodings, and Clegg are current and former members of the City Council for the City of Boise (the "City") and comprise the District's board of directors (the "Board").[1] *Id.* ¶ 5. Accordingly, Respondents Thomson, Woodings, and Clegg are responsible for the management of the affairs of the District. Intervenor Harris Family Limited Partnership develops property within the District and receives reimbursements from the District for the cost of certain projects. *Verified Petition to Intervene* at 1.[2]

[1] Idaho Code section 50-3104(2)(a) requires that the District's Board by comprised of three City Council Members.

[2] Barber Valley Development, Inc. leads the development and construction within the District on behalf of the Harris Family Limited Partnership. The Court refers to these entities collectively as the "Developer." The Developer has developed real property within the District since its inception.

B. Background on the CID Act and Harris Ranch Community Infrastructure District No. 1.

The Idaho Legislature passed the CID Act in 2008. The express purpose of the CID Act is threefold:

> (a) To encourage the funding and construction of regional community infrastructure in advance of actual developmental growth that creates the need for such additional infrastructure;
> (b) To provide a means for the advance payment of development impact fees established in chapter 82, title 67, Idaho Code, and the community infrastructure that may be financed thereby; and
> (c) To create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself.

I.C. § 50-3101. Although community infrastructure districts are political subdivisions of the State of Idaho, they are "special limited purposes district[s]" wielding only the powers prescribed in the CID Act. I.C. § 50-3105. These powers include the power to "[e]nter into contracts and expend moneys for any community infrastructure purposes and/or district operations," to "finance community infrastructure consistent with the general plan," to "[l]evy property taxes on real property located within the district," and to "incur indebtedness and evidence the same by certificates, notes, bonds or debentures." *Id.* In simple terms, CID Act allows CIDs to issue and sell bonds to finance the acquisition of "community infrastructure" already built by a developer and to levy taxes on property owners in a district to pay the debt on the bonds issued. *Id.*[3] The core of this dispute is the Board's practice of allegedly unlawfully issuing bonds and paying the proceeds to the Developer to reimburse the Developer for infrastructure the Developer has already built within the District.

[3] "Community infrastructure," discussed in more detail below, is a statutorily defined term. *See* I.C. § 50-3102(2).

The establishment of the District began when the four managing members of the Harris Family Limited Partnership, the owner of all real property within the District at the time of its inception, filed a petition with the City to create the District pursuant to Idaho Code section 50-3103. *A.R.* at 23, 55. The Harris Family Limited Partnership submitted the petition in the wake of the City's approval of a Land Use Development Plan ("the Harris Ranch Specific Plan") for the undeveloped portions of the greater Harris Ranch area. *Id.* at 906. The Harris Ranch Specific Plan was designed to create a pedestrian friendly community and includes a mixture of land uses for the area, including single-family residential homes, multi-family structures, and commercial spaces. *Id.* While the proposed District encompassed the Harris Ranch Specific Plan area, previously developed land in the greater Harris Ranch area were not included in the proposal. *Id.* Because previously developed areas, including the Harris family's own homes, were carved out from the District's boundaries, there were no homes or homeowners in the District at the time of its formation. *See Id.* at 539-555.

After holding a public hearing, the Boise City Council adopted Resolution No. 20895 on May 11, 2010, formally creating the District. *Id.* at 23, 55. Ten days later, the City expanded the District's boundaries in Resolution No. 20944. *Id.* at 55, 1002 fn. 2. This expansion added land to the east of the District's original boundaries that is non-contiguous with the original boundaries. *Id.* Resolution No. 20944 also approved the execution of a Development Agreement between the City, the District, and the Developer (the "Development Agreement"). *See Id.* at 499-575. The Development Agreement details the process by which certain infrastructure projects are constructed in the District and provides for payments from the District to the Developer to acquire community infrastructure projects from the Developer and reimburse the Developer for their construction. *Id.* at 499-575. The Development Agreement also covers matters related to the bonds

issued by the District to pay for such projects and the *ad valorem* property taxes the District can levy to pay for the bonds. *Id.* The Development Agreement was approved by the Board on June 22, 2010, is dated August 31, 2010, but was not executed by the Developer until October 5, 2010. *Id.* at 534-536.

Soon after the District's formation, the Board held an election (the "2010 General Obligation Bond Election") pursuant to Idaho Code Section 50-3108. *Id.* at 23. That statute provides, in part:

> If two-thirds ($^2/_3$) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without the further vote of the qualified electors . . ..

I.C. § 50-3108.

The 2010 General Obligation Bond Election authorized the District to incur indebtedness and to issue general obligation bonds in the principal amount of up to $50 million, in one or more series, to be repaid over a course of thirty years. *A.R.* 65.[4] On September 20, 2010, notice of the District's authority to issue general obligation bonds in one or more series up to $50 million over 30 years was recorded by the District against all real property located within the District's boundaries as Ada County, Idaho, Instrument No. 110087657. *Id.* at 23, 57. In other words, this election allowed the Board to issue series of bonds throughout the next thirty years to repay the Developer for costs incurred building "community infrastructure" within the District. Over the years, the Board has approved various resolutions authorizing the acquisition of and

[4] Petitioners vigorously dispute the validity of the 2010 General Obligation Bond Election, and several of their issues presented on appeal hinge on its alleged invalidity. *See Petitioners' Brief* at 8-10; *A.R.* at 989-994. For reasons discussed below, the Court will not adjudicate the legitimacy of an election that occurred over a decade ago.

reimbursement for infrastructure projects from the Developer and issuing general obligation bonds. *Id.* at 23-25. Between 2010 and 2020, the Board, through these resolutions, has approved the issuance of approximately $15.3 million in bonds over nine separate series to reimburse the Developer for various projects. *Id.* at 61.

The parties dispute the extent to which prospective homeowners in the District are given notice of the District's existence and the bonds authorized by the 2010 General Obligation Bond Election before purchasing their home. Petitioners maintain purchasers of newly built homes receive only perfunctory notice of the District's existence while purchasers of existing homes receive no notice at all. *Id.* at 969-975. Opponents respond that every title report associated with the District provides multiple disclosures about the District, providing public record notice and the opportunity to review multiple recorded documents, including the Development Agreement and the "CID Tax and Special Assessment Disclosure Notice," both of which are recorded at the Ada County Recorder's office. *Id.* at 976-981. These documents identify the total amount of bonds authorized ($50 million), the District's lifespan (30 years), and purposes for which bonds may be issued. *Id.*

C. The District's 2021 Resolutions.

On October 5, 2021, the Board held a regular meeting ("the October 5th meeting") where it adopted the two resolutions that are the subject of this Petition for Judicial Review. *Id.* at 1525-1534. The first resolution, Resolution No. HRCID-12-2021 (the "Payment Resolution") approved payments from the District to the Developer for three projects the Developer had submitted to the Board for reimbursement. *Id.* at 14-20.[5] In a staff report provided to the Board for guidance on the proposed resolutions (the "Staff Report"), the District staff summarized these projects as follows:

[5] The Court sometimes refers to the Bond Resolution and the Payment Resolution collectively as the "2021 Resolutions."

(1) Project GO21-2 – Dallas Harris Estates Town Homes #9 (the "Town Homes #9 Project"). This project is comprised of roadways, sidewalks, storm drains, sanitary sewers, streetlights, and other related costs within the Dallas Harris Estates Town Homes #9 Subdivision.

(2) Project GO21-3 – Dallas Harris Estates Town Homes #11 (the "Town Homes #11 Project"). This project comprises the construction of roadways, sidewalks, storm drains, sanitary sewers, streetlights, stormwater pond improvements, and other related costs within the Dallas Harris Estates Town Homes #11 Subdivision.

(3) Project GO21-1 – Accrued Interest – Interest Due on Reimbursed Projects (the "Interest Project"). Section 3.2(a) of the Development Agreement No1 allows interest to accrue between the date of dedication, contribution or expenditure and the time at which the project price or segment price is paid. The interest rate is the prime rate plus two percent from day-to day.

This Request would expend general obligation bond proceeds to pay accrued interest on twenty-four previously approved projects....

The District staff have verified that all the Developer's beginning and end dates for interest accrual are in agreement with the District's own records. District staff's calculation of the total interest is slightly less than the Developer's requested amount of $1,396,345.13 by $5,511.96 or 0.40%.

Id. at 28, 36, 41-42.[6] The second resolution, Resolution No. HRCID-13-2021 ("the Bond Resolution"), approved the issuance of a bond in the amount of $5.2 million to finance the Payments Resolution and the levy of *ad valorem* property taxes on homeowners in the District to pay said bond. *Id.* 64-92.

Prior to passing the 2021 Resolutions, the District posted a notice of the October 5th meeting on its website on September 23, 2021. *Id.* at 25, 93-94. The notice set forth the meeting date, time, location, and proposed projects and resolutions to be presented. *Id.* at 25, 93-94.[7]

[6] The Court will not recite the 24 previously approved projects pertaining to the Interest Project. Petitioners do so in their briefing and the District Staff did so in its report. *See Petitioners' Brief* at 10-20; *A.R.* at 23-25.

[7] While the Court notes the adequacy of solely posting a notice on the District's own website for the purpose of alerting the District's homeowners of the public meeting is troubling, any defective notice is cured when the landowners nonetheless participate in a public hearing. *See, e.g., W. Boise 87 v. L&S Dev. Co.*, 108 Idaho 449, 451, 700 P.2d 71, 73 (Ct. App. 1985); *Cowen v. Bd. Of Comm'rs of Fremont Cty.*, 143 Idaho 501, 513 148 P.3d 1247, 1259 (2006) (County did not violate due process where notice was defective, but landowner still participated in hearings);

Although the October 5 meeting transcript is titled "CITY COUNCIL OF THE CITY OF BOISE PUBLIC HEARING," the District staff member presenting at the meeting explained that "[t]his meeting is not a public hearing. The board will not hear oral testimony today, but will instead consider the staff report provided to the board, and the letters that have been sent in by stakeholders of the district, which are all included in the staff report." *Id.* at 1526.

The District's notice invited interested parties to submit written comment by September 28, 2021. *Id.* at 94. Many written comments were submitted by the public and attached to the Staff Report. *Id.* at 95-468. In addition to public comments, the Staff Report includes objection letters the Association sent the District earlier in 2021, as well as the Developer's responses to these letters. *See Id.* at 583-587, 953- 960, 969-975, 982-994, 999-1003, 1407-1420, 1430-1453, 1461-1468; 907-952, 961-968, 976-981, 995-998, 1421-1426, 1454-1460. These letters, which were presented before the Board in their consideration of the 2021 Resolutions, raise a litany of legal arguments regarding the legality of the District's formation and practices. *Id.*

The Staff Report itself, which was provided to the Board before the October 5th meeting, is a detailed report that provides background information on the District, an overview of the projects the Board had previously approved, the format of the October 5th meeting, a summary of the 2021 Resolutions, analysis on whether the 2021 Resolutions comply with the CID Act and the Development Agreement, analysis on the Association's objections, and finally the staff's recommendation that the Board approve the 2021 Resolutions. *Id.* at 21-51. The Board, after considering the Staff Report, the Association's objections, and public comments, unanimously approved the 2021 Resolutions. *Id.* at 1563-1593.

Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 176 P.3d 126, 133-34, N.1 (2007) (Due process was not violated by a defective notice because landowners acknowledged they were made aware of revisions to a previously discussed plan). Here it is undisputed the Petitioners actually filed objections to the 2021 Resolutions.

D. The course of this proceeding.

Petitioners filed their Petition for Judicial Review on December 3, 2021. *See Petition for Judicial Review.* The Petition alleges the District's adoption of the 2021 Resolutions and the actions authorized thereby are unlawful under the CID Act, the United States Constitution and/or the Idaho Constitution for a litany of reasons and requests the Court to find the adoption of the 2021 Resolutions unlawful and void. *Id.* at 6-7. The administrative record was transmitted to the Court on February 11, 2022, and on February 23, 2022, the Harris Family Limited Partnership filed a Petition to Intervene. *See Verified Petition to Intervene.* On March 21, 2022, Petitioners filed a Motion to Compel Completion of Record and Transcript, to Delete Documents From Record, and to Augment Record, as well as an Opposition to the Harris Family Limited Partnership's Petition to Intervene. *See Motion to Compel Completion of Record and Transcript, to Delete Documents From Record, and to Augment Record; Opposition to the Harris Family Limited Partnership Petition to Intervene.* The Court granted the Harris Family Limited Partnership's Petition to Intervene on April 26, 2022. *See Order Granting Verified Petition to Intervene.*

Petitioners filed a Motion for Stay Pending Judicial Review on April 19, 2022, arguing the Court should stay any actions taken pursuant to the 2021 Resolutions until a final resolution in this judicial proceeding. *See Motion for Stay Pending Judicial Review.* The Court denied that motion on August 19, 2022, finding Petitioners would not suffer irreparable harm in the absence of a stay. *See Memorandum Decision and Order on Appellants' Motion for Stay Pending Judicial Review.* On August 24, 2022, the Court issued its decision denying Petitioners' Motion to Compel Completion of Record and Transcript, to Delete Documents From Record, and to Augment

Record. *See Order on Motions to Complete Record, to Delete Documents From Record, and to Augment Record ("Order re: the Record").* In that order, the Court found that the CID Act prohibits Petitioners from retroactively attacking the District's formation or final decisions rendered before the 2021 Resolutions. *Id.* at 5.

Petitioners filed their Opening Brief on October 21, 2022. *See Petitioners' Brief.* Respondents and Intervenor (sometimes referred to collectively as "Opponents") filed their Response Briefs on November 18, 2022, and Petitioners filed a Reply on December 22, 2022. *See Respondents' Brief; Intervenor's Brief; Reply Brief.* Additionally, Petitioners filed a Motion to Strike Portions of Respondents' and Intervenor's Briefs on January 5, 2023, arguing that portions of the Response Briefs should be struck as they included factual allegations not supported by citations to the record. *See Motion to Strike Portions of Respondents' and Intervenor's Briefs.* The Court held oral argument on January 19, 2023, and took the matters under advisement. On January 27, 2023, Intervenor filed a list of supplemental citations pursuant to Idaho Appellate Rule 34(e)(1). *See Intervenor's Supplement of Citations.* Petitioners filed a motion to strike Intervenor's supplemental citations on January 31, 2023. *See Motion to Strike Supplemental Citations.*

II. ISSUES ON APPEAL

Petitioners have presented sixteen issues on appeal to this Court:

1. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily or exclusively serve that development?

2. Is a street or other public facility which is directly in front of a single-family home commonly understood to be "fronting" on that home even if a narrow landscaping strip is interposed so that the lot does not "physically touch" the street or other facility?

3. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities which are privately owned and which are located on land which is privately owned by the Developer?

4. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities the Developer built before the District existed?

5. Does the CID Act permit the District to pay the fair market value of land in exchange for only an easement of access to maintain privately owned facilities on that land, even though the facilities located on those easements are also privately owned and therefore do not constitute community infrastructure?

6. Does the Idaho Constitution permit the District to pay the Developer the full fair market value of privately owned land underneath stormwater ponds in exchange for an easement that only grants a conditional right of access to maintain those ponds?

7. Does the District's prior approval of payments for projects preclude Residents from challenging a new "final decision" to approve additional payments for those projects on the grounds that those projects are unlawful?

8. Do past final decisions of the District preclude new final decisions of the District from being challenged even if a challenge to the new final decision is brought within 60 days of the new decision?

9. Does the CID Act grant Residents standing to challenge the formation of the District in contesting a new final decision of the District?

10. Does the CID Act permit a Court to examine past events in order to determine whether a new final decision being challenged is lawful?

11. Does the Idaho Constitution permit the District to issue debt and levy the related property taxes based on the vote of at most one person who will never pay the taxes?

12. Can the City use a special, limited purpose "district" under its complete control to incur tens of millions of dollars in debt and to levy over $100 million in property taxes without having to comply with the two-thirds voter approval requirement under the Idaho Constitution?

13. Does the Idaho Constitution permit the District to levy tens of millions of dollars of special property taxes on one group of homes while nearly identical neighboring homes pay nothing, even though projects financed by those taxes benefit both groups of homes equally?

14. Does the Idaho Constitution permit the District to issue indebtedness payable from special property taxes to make payments to the Developer for facilities the Developer would otherwise have to pay for themselves as do all other developers in the State?

15. Does the CID Act permit the District to adopt the Challenged Resolutions even though the properties within the District are not contiguous and were not at the time of its formation?

16. Are Residents entitled to attorney fees under the private attorney general doctrine if they prevail in this action? *Petitioners' Brief* at 21-22.

Respondents present no additional issues on appeal beyond a request for an award of costs and fees under Idaho Code section 12-117. *Respondents' Brief* at 7. Intervenor likewise requests attorney fees and costs. *Intervenor's Brief* at 43.

The Court will address the issues on appeal in the order presented to the Court.[8] However, Opponents raise several preliminary arguments that are potentially outcome determinative of

[8] The titles Petitioners have given the issues on appeal do not neatly align with the substance of the arguments presented in the briefing. The Court will attempt to address each argument under the applicable "issue on appeal."

multiple issues on appeal presented by Petitioners. As such, the Court will address these preliminary arguments before addressing each issue in turn.

III. LEGAL STANDARD

Petitioners bring this proceeding pursuant to Idaho Rule of Civil Procedure 84 and the CID Act. *See Petitioners' Brief* at 3. "Judicial review" is "the district court's review pursuant to statute of actions of agencies . . . ." I.R.C.P. 84(a)(3)(C). The CID Act permits "[a]ny person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district" to seek judicial review of the final decision within sixty days. I.C. § 50-3119. "When a district court entertains a petition for judicial review, it does so in an appellate capacity." *Burns Holdings, LLC v. Madison Cty. Bd. of Cty. Comm'rs*, 214 P.3d 646, 648 (Idaho 2009). While most petitions for judicial review in Idaho are subject to the standard of review prescribed in the Idaho Administrative Procedure Act (the "IAPA"), "the language of the IAPA indicates that it is intended to govern the judicial review of decisions made by *state* administrative agencies, and not local governing bodies." *Idaho Historic Pres. Council, Inc. v. City Council of City of Boise*, 134 Idaho 651, 653, 8 P.3d 646, 648 (2000) (emphasis in original). Here, none of the parties have taken the position that this proceeding falls within the purview of the IAPA or its standard of review.

The Court cannot rely on the IAPA's standard of review, and it similarly cannot rely on Idaho Rule of Civil Procedure 84 because "Idaho Rule of Civil Procedure 84, which governs judicial review of administrative and local governing bodies, does not provide a specific standard of review." *Id.* at 654, 8 P.3d 649. The CID Act itself is likewise silent with respect to the

appropriate standard. In such circumstances, "the district court shall review the case upon the record and determine the appeal upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and laws of this state, and the appellate rules of the Supreme Court." *Goodman Oil Co. v. City of Nampa*, No. CV2004-10007C, 2006 WL 6571500 (Idaho Dist. Nov. 07, 2006) (discussing standard in a petition for judicial review where neither the IAPA, Rule 84, nor enabling statute set forth the standard of review). Under this general standard, statutory interpretation is a question of law that receives de novo review. *See, e.g., State v. Schulz*, 151 Idaho 863, 865, 264 P.3d 970, 972 (2011). Findings of fact will not be set aside on appeal unless they are clearly erroneous. *Kornfield v. Kornfield*, 134 Idaho 383, 385, 3 P.3d 61, 63 (Idaho Ct. App. 2000).

IV. ANALYSIS

A. The District's formation, the General Obligation Bond Election, and any District decisions or resolutions adopted prior to the 2021 Resolutions cannot be collaterally challenged in this proceeding.

While this petition ostensibly seeks judicial review of only the 2021 Resolutions, Opponents stress that some of the issues Petitioners raise on appeal require the Court to adjudicate the validity of the District's formation, the 2010 General Obligation Bond Election, and final decisions the Board made prior to 2021. *Intervenor's Brief* at 11-13. As the Court has previously held, Idaho Code section 50-3119 precludes the Court from doing so. *See Order re: the Record.*

Idaho Code section 50-3119 provides the exclusive method for challenging the District's formation and final decisions:

> Any person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district, including, with respect to any tax levy, special assessment or bond, may, within sixty (60) days after such final decision, seek judicial review by filing a written notice of appeal with the clerk of the district and with the clerk of the district court for the judicial

> district in which a majority of the land area of the district is located. After said sixty (60) day period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever and, *thereafter, said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed.* With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

I.C. § 50-3119 (emphasis added).

Petitioners maintain that if a notice of appeal of a final decision is filed within sixty days, the Court "may examine prior events in order to ascertain whether the District has the legal authority for the new 'final decision' being challenged." *Petitioners' Brief* at 56. In essence, Petitioners argue that any new final decision by the Board opens the door for the Court to consider the legality of the District's formation and prior District actions. Under this theory, the District itself and all the District's prior final decisions would remain "valid and uncontestable," but any new final decision could be subject to attack on the grounds that the District lacked the authority to act because it was formed improperly or because a prior final decision was unlawful. Opponents counter that this argument rests on a tortured reading of Idaho Code section 50-3119 that would render the sixty-day limitation meaningless. *Respondents' Brief* at 10-13. The Court agrees with Opponents.

Petitioners' argument on this issue hinges on the presumption that the statute implicitly authorizes a person who feels aggrieved by a district's final decision to challenge that decision "for any reason whatsoever," even if the reason arises from a district's prior decisions that are now "considered valid and uncontestable" and barred from challenge by the statute's sixty-day limitation. *Petitioners' Brief* at 56. Petitioners arrive at this conclusion by arguing that language in the second sentence of the statute, "[a]fter said sixty (60) day period has run, no one shall have

any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever," necessarily implies that a person *can* challenge a final decision "for any reason whatsoever" if they challenge the decision within sixty days. *Id.*

As Respondents point out, it is the first sentence of the statute, not the second, that grants the actual right of judicial review. The first sentence does not grant the right to appeal "for any reason whatsoever." The language Petitioners rely upon comes from the second sentence, which exists to establish a clear prohibition on actions brought after the sixty-day period. Petitioners make a questionable logical leap in arguing that the "for every reason whatsoever" verbiage in the second sentence should be impliedly read into the first sentence. It does not stand to reason that, because a person is barred from bringing an appeal for any reason whatsoever after missing the sixty-day window, the person was necessarily allowed to bring an appeal for any reason whatsoever during the sixty-day window. The converse of a true statement is not necessarily true. Reading the statute in the manner Petitioners urge would effectively circumvent the sixty-day limitation and render the legitimacy of the District's formation and prior decisions vulnerable to collateral attacks whenever the District made a new final decision. When one reads the second half of the second sentence, which provides "and, thereafter, said decision *shall be considered valid and uncontestable* and the validity, legality and regularity of any such decision shall be conclusively presumed," it becomes clear Petitioners' interpretation is untenable. I.C. § 50-3119 (emphasis added). The statute dictates that the legality of a prior decision cannot be contested after the sixty-day window, whether for the purpose of invalidating that decision or for determining a district's authority to render a subsequent decision. After the sixty-day window closes, a district's decisions are considered valid and uncontestable. As such, a collateral attack on the legality of a

past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision.

Petitioners also continue to argue, as they did previously, that the last sentence of section 50-3119 allows the Court to consider prior District actions which might undermine the District's authority to adopt the 2021 Resolutions. *Petitioners' Brief* at 56. The Court addressed this argument in its prior order:

> When Idaho Code section 50-3119 is read in whole and in context it sets forth: 1) person in interest who feels aggrieved has sixty days to file an appeal of final decision by CID related to the formation or governing of district, including tax levies, special assessments or bond; 2) such appeal seeking judicial review must be filed with the district court where majority of the land in the community infrastructure district is located; 3) after the sixty day appeal period has run, there is no cause of action or right of action to contest "the legality, the formality or regularity" of said decision for any reason and said decision shall be considered valid and uncontestable and the validity, legality and regularity of such decision shall be conclusively presumed; and 4) if the question of the validity of any bonds issued is not raised within the appeal period, the authority to issue the bonds, the legality of the bonds and of the levies or assessments to pay the bonds shall be conclusively presumed and no court shall have the authority to inquire into such matter. The last sentence does not mean the Appellants can wait 11 years after the formation of the CID and then challenge the underlying authority of the CID to issue bonds when such formation and establishment of the authority of the CID was not challenged within sixty days of the creation and formation of the CID in 2010. To read the last sentence as proposed by the Appellants that the district court may expand any appeal record to allow an attack on the original formation and authority of the CID eviscerates the sixty day deadline to appeal that the legislature clearly intended.

Order re: the Record at 4-5. The Court declines to reconsider this portion of its prior ruling and will not consider challenges related to the District's formation or past final decisions.

However, the Court's prior ruling also raised a standing issue, citing to *Clemens v. Pinehurst Water Dist.*, 81 Idaho 213, 339 P.3d 665 (1959) and *Pioneer Irr. Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911) for the proposition that the validity of de facto municipal corporations, municipal corporations, or quasi-municipal corporations authorized by statute can

only be determined in a suit brought for that purpose in the name of the state or by some individual under authority of the state. *Order re: the Record* at 5-6. Petitioners addressed this issue in their Opening Brief, and the Court agrees with Petitioners' analysis. Unlike the statutes at issue in *Clemens* and *Walker*, the CID Act expressly confers standing to "any person in interest who feels aggrieved" to challenge the District's formation or decisions, provided they do so within sixty days. As such, the Court need only rely on the clear language of Idaho Code section 50-3119 in declining to consider Petitioners' arguments relating to the District's formation and prior final decisions.

B. The Court will not consider issues that were not preserved for appeal.

In addition to maintaining that many of Petitioners' arguments are time barred by Idaho Code section 50-3119, Opponents maintain that some issues on appeal were not presented to the Board before the October 5th meeting, rendering them ineligible for consideration by this Court. *See Intervenor's Brief* at 11-12. Petitioners respond that the CID Act does not require them to present any issues to the Board before filing an appeal with a district court to challenge the validity of a Board action. *See Reply Brief* at 9-11. Petitioners also point out that the cases Intervenor relies on all involved prior contested administrative proceedings governed by Idaho's Local Land Use Planning and Administrative Procedure Acts, whereas this case involved only an opportunity for public comment and a Board meeting at which the public was not afforded the opportunity to speak. *Id.* The Court must therefore determine whether Petitioners were required to raise arguments before the Board in order to preserve them for consideration in this appeal.

"When a district court entertains a petition for judicial review, it does so in an appellate capacity." *Burns Holdings, LLC v. Madison Cnty. Bd. of Cnty. Com'rs*, 214 P.3d 646, 648, 147 Idaho 660, 662 (2009) (citing *Lane Ranch P'ship v. City of Sun Valley*, 144 Idaho 584, 588, 166

P.3d 374, 378 (2007); *Ater v. Idaho Bureau of Occupational Licenses*, 144 Idaho 281, 284, 160 P.3d 438, 441 (2007)). Moreover, "[a]ppellate court review is limited to the evidence, theories, and arguments that were presented below." *State v. Castrejon,* 163 Idaho 19, 20, 407 P.3d 606, 607 (Ct. App. 2017) (citing *State v. Johnson*, 148 Idaho 664, 670, 227 P.3d 918, 924 (2010)); *See also In re Idaho Dep't of Water Res. Amended Final Ord. Creating Water Dist. No. 170*, 148 Idaho 200, 206, 220 P.3d 318, 324 (2009) ("...failure to raise an issue before an administrative agency will preclude that issue from being heard upon review by the district court.").

First, the Court acknowledges the CID Act does not in itself expressly require Petitioners to raise any arguments below before bringing them before this Court. The Court also acknowledges the authority cited in Intervenor's Brief on this issue, and much of the authority cited by the Court below, arises in the zoning and IAPA context. Nonetheless, the pertinent fact is that Petitioners brought this matter before the Court as a petition for judicial review pursuant to Idaho Rule of Civil Procedure 84, under which the Court functions in an appellate capacity. Acting in its appellate capacity, the Court is "limited to the evidence, theories, and arguments that were presented below." *Castrejon,* 163 Idaho at 20, 407 P.3d at 607. This foundational principle applies broadly when a court sits in an appellate capacity, regardless of whether the proceeding is governed by the IAPA. "It is well established that in order for an issue to be raised on appeal, the record must reveal an adverse ruling which forms the basis for an assignment of error. Hence, issues not raised below but raised for the first time on appeal will not be considered or reviewed." *Whitted v. Canyon County Board of Com'rs*, 137 Idaho 118, 121-22, 44 P.3d 173, 1176-77 (2002). Indeed, Petitioners' view that an aggrieved party need not raise any issues before the Board puts the District in a prejudicial position by denying the Board the opportunity to hear the party's grievance and

correct course before becoming embroiled in litigation. The Court therefore finds Petitioners were required to raise all arguments before the Board for the Court to consider them here.

The Court acknowledges the October 5th meeting was not a contested hearing at which Petitioners could present public testimony and further legal argument. Nonetheless, the Court does not agree with Petitioners' claim that there was "no opportunity" to present evidence or argument. "Due process of law does not require a hearing in every conceivable case of government impairment of private interest. Rather, procedural due process requires an opportunity to be heard." *Rios-Lopez v. State*, 144 Idaho 340, 343, 160 P.3d 1275, 1278 (Ct. App. 2007) (internal citations omitted). Here, a notice was posted on the District's website on September 23, 2021, indicating the meeting time, date, location, and the proposed projects that would be presented. *A.R.* at 25, 93. The notice included already existing comments, concerns, and objections from the Association, homeowners, and other interested parties, and invited all interested parties to submit additional comments for the Board's consideration. *Id.* at 25. In total, hundreds of pages of comments were submitted along with the Association's twelve objection letters. These letters from the Association—which were provided to and considered by the Board— raise sophisticated legal arguments and include objections to the Town Homes #9 Project, the Town Homes #11 Project, the Interest Project, the General Obligation Bond Election, the District's formation, and other matters. *Id.* at 585-588, 989-994, 999-1003. As such, the Court finds the Board's consideration of the public comments and Petitioners' objections constituted an adequate opportunity to be heard and that all arguments raised in Petitioners' comments and letters are preserved for the purposes of this appeal.

C. First issue on appeal: the Court declines to address whether "the CID Act permits the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily

or exclusively serve that Development" because this issue was not raised before the Board.

Petitioners' first issue on appeal is whether "the CID Act permit[s] the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily or exclusively serve that development." *Petitioners' Brief* at 21. In their briefing, Petitioners couches this question in different terms than it did in its "issues on appeal" section quoted above. The thrust of Petitioners' argument on this issue is that the Payments Resolution violates the CID Act because it approves financing of local projects which are not "system improvements" and therefore not "community infrastructure" – a statutorily defined term and the only thing that can be financed under the CID Act. *See Petitioners' Brief* at 24-32; *Reply Brief* at *5-15.* According to this theory, the District can only finance improvements to regional infrastructure that are eligible for financing under the Idaho Development Impact Fee Act (the "Impact Fee Act") and not "project improvements" which primarily serve a particular development and are not eligible under the Impact Fee Act. *Id.*[9,10] Petitioners' argument rests on the premise that, because the CID Act repeatedly references the Impact Fee Act, the Impact Fee Act is part and parcel of the CID Act and the constraint against financing "project improvements" in the Impact Fee Act likewise applies to the CID Act. *Id.* Put another way, Petitioners argue "community infrastructure" excludes "local" improvements and is therefore limited to facilities

[9] The Court will sometimes refer to Petitioners' argument on this issue for appeal as Petitioners' "Impact Fee Act Argument.

[10] The Impact Fee Act, Idaho Code Section 67-8201, *et seq.*, establishes "uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development." I.C. § 67-8202(2). "Project improvements," defined as "site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project," cannot be paid for under the Impact Fee Act. I.C § 67-8202(22); I.C. § 67-8210(2). "System improvements," eligible for payment under the Impact Fee Act, are defined as "capital improvements to public facilities designed to provide service to a service area including, without limitation, the type of improvements described in Section 50-1703, Idaho Code." I.C § 67-8202(28).

eligible for funding from development impact fees under the Impact Fee Act. Opponents urge the Court to reject this argument because it is raised for the first time in this appeal, is in conflict with what Petitioners argued below, and because it is not supported by the plain language of the CID Act. *See Respondents' Brief* at 17-23; *Intervenor's Brief* at 13-20. As such, the Court must first determine whether Petitioners preserved this argument for appeal by raising it before the Board.

As Petitioners point out, the Idaho Supreme Court has recently held that "[a] party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below and noticing it for hearing *or* a party preserves an issue for appeal if the trial court issues an adverse ruling. Both are not required." *State v. Miramontes*, 517 P.3d 849, 853–54 (Idaho 2022) (emphasis in original). Moreover, "preservation standards are not so exacting as to foreclose an argument on appeal just because it was not the central focus of the appellant's argument below." *Id.* at 855. Here, Petitioners argue their Impact Fee Act Argument was preserved below because (1) the Board's adoption of the Payment Resolution to fund community infrastructure that is not impact fee eligible is an "adverse ruling" with respect to their Impact Fee Act Argument, thus satisfying any preservation requirement, and because (2) they preserved the argument by raising it below. *Reply Brief* at 11-13. The Court disagrees.

First, the Court finds that the Board's adoption of the Payment Resolution was not an "adverse ruling" that preserved Petitioners' Impact Fee Act Argument. Petitioners misconstrue the *Miramontes* holding to mean that a party need not present an issue below to preserve it, so long as the lower court's ruling is in conflict with that party's position on the issue. To the contrary, the Idaho Supreme Court was very clear that while a party need not receive an adverse ruling on an issue to preserve it, they must still present the issue below in order to preserve it:

> We take this occasion to clarify that it is not mandatory for a party-appellant to obtain an adverse ruling from the trial court to preserve an issue for appellate

> review, *so long as the party's position on that issue was presented to the trial court with argument and authority and noticed for hearing.*

Id. at 853 (emphasis added). The reason for this requirement is obvious, as Petitioners' reading of the *Miramontes* holding would open the door for litigants to manufacture entirely new issues and arguments on appeal as long as they were crafted to be adverse or inconsistent with the lower court's ruling. That is not what the *Miramontes* opinion said or intended.

Petitioners also maintain they preserved this argument for appeal by "repeatedly [arguing below] that 'local' improvements, including 'sidewalks, landscaping, neighborhood parks and bike lanes,' as well as 'local access roads, water, sewer and stormwater mains, street lighting, and signage,' cannot be funded through a CID." *Reply Brief* at 12. This argument is also without merit. While true that the Association's letters argued that various local improvements cannot be funded through a CID, those arguments were premised on completely different legal foundations than Petitioners' Impact Fee Act Argument. The Court will not recite the substance of all twelve of the Association's letters, but it notes that none of the letters suggest that improvements must be eligible under the Impact Fee Act, much less even use the terms "project improvement," "system improvement," or "Impact Fee Act." *See, e.g., A.R.* at 583-587, 953-956, 957-960, 969-975, 982-988, 989-994, 999-1003, 1407-1420, 1430-1435, 1436-1443, 1444-1453, 1461-1468. As Opponents note, and Petitioners concede, these terms do not appear in the record at all. Disputing the legality of funding "local" projects for unrelated reasons does not preserve a novel legal argument that was not brought before the Board. The Court acknowledges an argument need not be the "central focus" below, but in this case Petitioners' Impact Fee Act Argument was not raised at all.

Finally, Petitioners make the strained argument that Idaho Rule of Civil Procedure 84(c)(5) allows them to raise this issue for the first time on appeal. *Petitioners' Brief* at 12-13. That rule,

which outlines the required contents of a petition for judicial review, says "... the statement of issues may be filed separately within 14 days after the filing of the petition for judicial review and the statement does not prevent the petitioner from asserting other issues later discovered." I.R.C.P. 84. Petitioners assert that this rule applies here "because Residents did not discover that argument until they obtained the entire legislative history of the CID Act from the Legislative Research Library after they had filed their petition for judicial review." *Petitioners' Brief* at 13. Again, the Court disagrees.

Crafting a new legal argument on appeal that is based on legislative history publicly available prior to the October 5th meeting hardly constitutes an issue "later discovered." No new facts or District actions have come to light. Indeed, the reading of this rule implied by Petitioners would effectively nullify preservation requirements by allowing litigants to raise unlimited novel or new arguments on appeal so long as they discovered the legal authority for the argument after the agency rendered its final decision. That is not the rule's meaning or purpose. As such, the Court will not consider Petitioners' Impact Fee Act Argument in this appeal.

D. Second issue on appeal: whether a street or other public facility which is directly in front of a single-family home is "fronting" on that home even if a narrow landscaping strip is interposed so that the lot does not "physically touch" the street or other facility.

Petitioners next argue the Payments Resolution violates the CID Act because it approves funding for facilities "fronting" single-family lots despite the Idaho Code section 50-3102(2) expressly excluding "public improvements fronting individual single-family residential lots" from the definition of community infrastructure that can be financed under the Act. *See Petitioners' Brief* at 33-42; *Reply Brief* at 16-26.[11] Opponents respond that the projects at issue are not "fronting" single-family lots because the projects do not physically touch single-family lots and,

[11] The Court will sometimes refer to this as the "Fronting Exclusion."

alternatively, that the Payments Resolution would be legal even if the financed projects were "fronting" single-family lots because they front *multiple* single-family lots rather than an *individual* single-family lot. *See Respondents' Brief* at 29-37; *Intervenor's Brief* at 20-25. These arguments were raised below in letters exchanged between the Association and the Developer. *See A.R.* at 583-587; 907-912. The parties do not contest the proximity of the projects to the single-family lots, but rather dispute the meaning of the statutory language "fronting individual single-family residential lots."

An appellate court exercises free review over statutory interpretation because it is a question of law. *State v. Dunlap*, 155 Idaho 345, 361, 313 P.3d 1, 17 (2013). The Idaho Supreme Court has explained:

> The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

Id. at 361–62, 313 P.3d at 17-18 (quoting *State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011)). A statute is ambiguous where the language is capable of more than one reasonable construction. *Porter v. Board of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004) (citing *Jen–Rath Co., Inc. v. Kit Mfg. Co.*, 137 Idaho 330, 335, 48 P.3d 659, 664 (2002)). However, "[a]mbiguity is not established merely because differing interpretations are presented to a court; otherwise, all statutes subject to litigation would be considered ambiguous." *Id.* (internal citation omitted). "[I]f statutory language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *State v. Burnight*, 132

Idaho 654, 659, 978 P.2d 214, 219 (1999). And while words should generally be given their "plain, usual, and ordinary meanings," Idaho Code section 73-113 clarifies that in some circumstances certain terms should be construed according to their technical meaning:

> Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

I.C. § 73-113. Moreover, courts "will not construe a statute in a way which makes mere surplusage of provisions included therein." *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990). "It is the duty of the courts in construing statutes to harmonize and reconcile laws wherever possible and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions." *Id.* (quoting *Sampson v. Layton,* 86 Idaho 453, 387 P.2d 883 (1963)). "Any ambiguity in a statute should be resolved in favor of a reasonable operation of the law." *Id.* (quoting *Lawless v. Davis,* 98 Idaho 175, 560 P.2d 497 (1977)).

Here, the parties devote most of their briefing on the Fronting Exclusion to the definition of the word "fronting" and whether it requires immediate physical contact. *See Petitioners' Brief* at 33-42; *Respondents' Brief* at 31-37; *Intervenor's Brief* at 23-24; *Reply Brief* at 16-23. While the Court appreciates the rationale behind Petitioners' stance that a lot is still "fronting" a street even if a narrow strip of undevelopable land separates the lot from the street, the Court finds it need not reach the definition of "fronting" because the Court agrees with Opponents that the Fronting Exclusion applies only to public improvements fronting *individual* single-family residential lots and not to public improvements fronting *multiple* single-family lots.

Idaho Code section 50-3102(2) provides, in its entirety:

> "Community infrastructure" means improvements that have a substantial nexus to the district and directly or indirectly benefit the district. *Community infrastructure*

excludes public improvements fronting individual single-family residential lots. Community infrastructure includes planning, design, engineering, construction, acquisition or installation of such infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure, and incurring expenses incident to and reasonably necessary to carry out the purposes of this chapter. Community infrastructure includes all public facilities as defined in section 67-8203(24), Idaho Code, and, to the extent not already included within the definition in section 67-8203(24), Idaho Code, the following:

(a) Highways, parkways, expressways, interstates, or other such designations, interchanges, bridges, crossing structures, and related appurtenances;
(b) Public parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;
(c) Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;
(d) Public safety facilities;
e) Acquiring interests in real property for community infrastructure;
(f) Financing costs related to the construction of items listed in this subsection; and
(g) Impact fees.

I.C. § 50-3102(2) (emphasis added).[12]

First, the Court finds the phrase "excludes public improvements fronting individual single-family residential lots" is capable of more than one reasonable construction and is therefore ambiguous. Petitioners maintain that, because the sentence refers to "lots" in the plural, it unambiguously prohibits facilities fronting any number of single-family lots. *Reply Brief* at 24. In their view, the phrase would have been written as "excludes public improvements fronting ***an***

[12] Idaho Code section 67-8203(24) defines "public facilities" as:

(a) Water supply production, treatment, storage and distribution facilities;
(b) Wastewater collection, treatment and disposal facilities;
(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;
(d) Stormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
(e) Parks, open space and recreation areas, and related capital improvements; and
(f) Public safety facilities, including law enforcement, fire stations and apparatus, emergency medical and rescue, and street lighting facilities.

I.C. § 67-8203.

individual single family residential ***lot***" if the Fronting Exclusion was meant to apply only in situations where public improvements front just one single-family lot. *Id.* (emphasis in original). However, this interpretation overlooks the fact that the entire sentence, which concerns "public improvement***s***," is written in the plural and, more importantly, ignores the adjective "individual" and how it modifies the compound adjective "single-family residential" and the noun "lots." Indeed, if the second sentence of Idaho Code section 50-3102(2) were intended to prohibit facilities fronting any number of single-family lots, by far the most sensical way for the Idaho Legislature to have expressed that would be to have simply not included the word "individual" in the sentence: "Community infrastructure excludes public improvements fronting [] single-family residential lots." Instead, the Legislature modified "single-family residential lots" with "individual." Again, "the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Dunlap* at 361–62, 313 P.3d at 17–18.

Here, the adjective "individual," meaning "single; particular; [or] separate," comes before the phrase "single-family residential lots."[13] The phrase "single-family residential" is itself a compound adjective modifying the noun "lots," and the Court agrees with Respondents that "single-family residential" is a common phrase used in zoning and land use to designate lots with residential structures occupied by a single family. *See, e.g.,* Boise City Code § 11-04-01. Thus, the word "individual" is not absorbed or incorporated into the phrase "single-family residential lots," but instead modifies it by specifying that the Fronting Exclusion only applies to single or particular single-family residential lots. The fact that the statute refers to plural "lots" does not negate the fact the Legislature chose to include the modifier "individual," especially when one considers that

[13] "Individual," Dictionary.com, https://www.dictionary.com/browse/individual; Accessed March 1, 2023.

the word "lots" is used only in relation to the word "improvements," which is plural throughout section 50-3102(2).

This interpretation is consistent with the principle that a court must "adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions." *Sweitzer,* 118 Idaho at 572, 798 P.2d at 31. Petitioners protest that this construction is nonsensical as it would "mean that, even if a development consisted entirely of single-family residential homes, the developer nonetheless could use a CID to finance streets, sewers, stormwater ponds, and any and all other facilities directly in front of and even abutting those homes . . .." *Reply Brief* at 24-25. The Court, however, does not find this outcome problematic, provided the infrastructure in question satisfies the definition of "community infrastructure" by having a "substantial nexus to the district and directly or indirectly benefit[ing] the district." I.C. § 50-3102(2).

Moreover, the Court agrees with Opponents in that Petitioners' interpretation of the Fronting Exclusion would result in the exception effectively swallowing the rule. The definition of "community infrastructure" expressly includes "[h]ighways, parkways, expressways, interstates . . . and related appurtenances;" "[t]rails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;" "[s]tormwater . . . facilities, flood control facilities, and bank and shore protection and enhancement improvements;" and "[p]arks, open space and recreation areas, and related capital improvements." I.C.§ 50-3102; I.C. § 67-8203. Petitioners' broad interpretation of the Fronting Exclusion would make it nearly impossible for a district with single-family residential lots to finance any of these types of community infrastructure, especially if the Court were to agree with Petitioners that fronting does not require physical contact. Such a broad interpretation of the Fronting Exclusion is not consistent with the broader purpose of the CID Act, that being "[t]o encourage the funding and construction of

regional community infrastructure in advance of actual developmental growth that creates the need for such additional infrastructure." I.C. § 50-3101.

The Court further agrees with Opponents that the legislative history tends to show that the purpose of the Fronting Exclusion is not to tie a district's hands by preventing it from building community infrastructure whenever that infrastructure abuts single-family lots, but rather to prevent the benefit of CID funding from flowing to an individual lot. For example, when a member of the House Revenue and Taxation Committee asked a sponsor of the CID Act about what was excluded from the definition of "community infrastructure," that sponsor explained:

> A Member of the Committee asked a [sic] for clarification on what is excluded from community infrastructure. Mr. Pisca answered it would be side streets, curbs, gutters, and sewer connections to *individual houses*. Mr. Pisca further stated the intention of the CID is to provide for funds for infrastructure that benefits the whole community.

A.R. at 952 (Minutes of H. Revenue and Taxation Comm., 61st Leg. 2 (March 6, 2008) (emphasis added)). This interpretation is consistent with the CID Act's stated purpose of encouraging the funding and construction of regional community infrastructure while not solely benefiting one homeowner.

Accordingly, the Court finds it does not need to reach the question of whether "fronting" requires physical contact. Even assuming Petitioners' more liberal interpretation of the word is correct, the Fronting Exclusion does not apply here because the projects approved under the Payments Resolution front multiple single-family residential lots.

E. Third issue on appeal: whether the CID Act permits the District to issue bonds and levy special property taxes to make payments to the Developer for facilities which are privately owned and which are located on land which is privately owned by the Developer?

The third issue Petitioners bring on appeal is whether certain stormwater retention ponds and related facilities (the "Stormwater Facilities") financed by the Payments Resolution as part of the Town Homes #11 Project violate the CID Act because the Stormwater Facilities are allegedly privately owned by the Developer. *See Petitioners' Brief* at 42-44. Opponents argue the Stormwater Facilities comply with the CID Act's public ownership requirements because they sit on a permanent easement (the "Easement") in favor of the Ada County Highway District ("ACHD"). *See Respondents' Brief* at 43-44; *Intervenor's Brief* at 25-27. Petitioners respond by clarifying that they are not disputing whether community infrastructure may be located on easements owned by political subdivisions of the state, but rather that "the facilities themselves cannot be privately owned regardless of whether they happen to be located within a publicly owned easement." *Reply Brief* at 26. Put another way, Petitioners argue the CID Act "requires any financed facility to be located on publicly owned lands *in addition to and not as a substitute for* public ownership of those facilities." *Petitioners' Brief* at 42 (emphasis in original).[14]

The CID Act provides that "[o]nly community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter," while also stating that "[c]ommunity infrastructure other than personalty [sic], may be located only in or on lands, easements or rights-of-way publicly owned by this state or a political subdivision thereof." I.C. § 50-3101(2); I.C. § 50-3105(2). Moreover, the CID Act's definition of "community infrastructure" expressly includes "[s]tormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements." I.C. § 67-8203(24)(d). It is well established that an easement constitutes an interest in real property. *See Capstar Radio Operating Co. v. Lawrence*, 152 P.3d 575, 578 (Idaho

[14] This issue was presented to the Board and was adequately preserved for consideration in this appeal. *A.R.* at 1462-1468.

2007) ("An express easement, being an interest in real property, may only be created by a written instrument.").

As an initial matter, the Court finds that the Stormwater Facilities fall squarely within the definition of "community infrastructure" as "[s]tormwater collection, retention, detention, treatment and disposal facilities" are expressly included in the definition under Idaho Code Section 67-8203(24)(d). The Court also finds, and the parties agree, that "community infrastructure" can be located on privately owned land encumbered by an easement in favor of ACHD or another public entity. *See* I.C. § 50-3105(2). Still, that finding does not resolve this issue because the crux of Petitioners' argument is that public ownership of the Stormwater Facilities themselves is a separate requirement from the public ownership of the land on which they sit. *Petitioners' Brief* at 42. Under these circumstances, the Court disagrees. The Easement in favor of ACHD satisfies the public ownership requirement because the Stormwater Facilities are built from the land itself and their ownership cannot be bifurcated from the land encumbered by the Easement.

The Court looks to the language of the Easement itself to determine the rights and obligations it creates. The Easement's second section, titled "Grant of Easement and Authorized Uses," sets forth the basic terms:

> [The Developer] hereby grants to ACHD a permanent exclusive easement ... over and across the Servient Estate for use by the public, including motorists, pedestrians and bicyclists, and the following uses and purposes:
>
> (a) placement of Public Rights-of-Way as (as defined in Idaho Code, section 40-117);
> (b) *construction, reconstruction, operation, maintenance, and placement of a Highway* (as defined in Idaho Code, section 40-109) *and any other facilities or structures incidental to the preservation or improvement of the Highway including storm water facilities located on Exhibit A* (hereafter the "Facilities");
> (c) statutory rights if ACHD, utilities and irrigation districts to use the Highway and/or public Right-of-Way.

A.R. at 1018-1019 (emphasis added). The Easement further clarifies that the "Easement herein granted is appurtenant to the Dominant Estate and a burden on the Servient Estate," and provides the procedures for maintenance of the Stormwater Facilities. *A.R.* at 1017-1020.

There are two categories of easements: easements appurtenant and easements in gross. An easement appurtenant is a right to use a certain parcel, the servient estate, for the benefit of another parcel, the dominant estate. *Abbott v. Nampa School Dist. No. 131,* 119 Idaho 544, 550, 808 P.2d 1289, 1295 (1991). Essentially, an easement appurtenant serves the owner of the dominant estate in a way that cannot be separated from his rights in the land. *Id.* When an appurtenant easement is created, it becomes fixed as an appurtenance to the real property, which is subject to the prescriptive use and may be claimed by a successor in interest. *Marshall v. Blair,* 130 Idaho 675, 680, 946 P.2d 975, 980 (1997). In contrast, an easement in gross benefits the holder of the easement personally, without connection to the ownership or use of a specific parcel of land. *King v. Lang*, 136 Idaho 905, 909, 42 P.3d 698, 702 (2002). Thus, easements in gross do not attach to property and easements appurtenant do. *Id.*

While the Court acknowledges Idaho Code section 50-3101(2) (requiring public ownership of community property) is silent with respect to easements, it does not agree with Petitioners' stance that a permanent and exclusive easement appurtenant granting ACHD the rights to "construction, reconstruction, operation, maintenance, and placement of ... storm water facilities" is insufficient to satisfy the public ownership requirement. In fact, Petitioners argue the developer did not actually "convey an easement for the construction, operation, maintenance and repair of the Stormwater Facilities, which would have provided substantial use rights (although not a possessory interest)." *Reply Brief at 33.* The Court disagrees. While the Easement places the burden of maintaining the Stormwater Facilities on the Developer, it expressly provides for the

"construction, reconstruction, operation, maintenance, and placement of a Highway (as defined in Idaho Code, section 40-109) and any other facilities or structures incidental to the preservation or improvement of the Highway including storm water facilities...." *A.R.* at 1018-1019.

Petitioners' position on this issue is based on a distorted reading of the rights the Easement grants ACHD, on a restrictive interpretation of "public ownership" that is in tension with the rest of the CID Act, and ignores the fact that the Stormwater Facilities, which include water retention areas, slopes, and drainage areas, are physically built into the landscape and are indivisible from the underlying land. *See A.R.* at 1005. It does not stand to reason that an easement can satisfy the publicly owned land requirement found is section 50-3105(2) but not the public ownership requirement set forth in section 50-3101(2) in circumstances where the infrastructure is itself part of the underlying land. Section 50-3105(2), which sets forth a CID's powers and expressly provides that community infrastructure may be located on a publicly owned easement, is more specific than section 50-3101(2) which more generally sets forth the public ownership requirement. "A basic tenet of statutory construction is that the more specific statute or section addressing the issue controls over the statute that is more general. Thus, the more general statute should not be interpreted as encompassing an area already covered by one which is more specific." *Jones v. Lynn*, 169 Idaho 545, 564–65, 498 P.3d 1174, 1193–94 (2021) quoting *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, 289, 429 P.3d 168, 177 (2018)). When Idaho Code sections 50-3101(2) and 50-3105(2) are read together and applied to the facts presented here, it becomes clear that a permanent and exclusive easement appurtenant granting ACHD broad rights satisfies the requirements of both sections.

This conclusion is consistent with related statutes in the Idaho Code that allow local government and state agencies to acquire similar interests in property through easements. For

example, the Easement itself contemplates the placement of a public right-of-way as defined by Idaho Code section 40-117. *A.R.* at 1018. That statute specifies that a "public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, *authorized easement*, eminent domain, by plat, prescriptive use, or abandonment . . ." I.C. § 40-117 (emphasis added).

Petitioners suggest such a holding would grant the Developer and unfair windfall, allowing the Developer to receive CID funds for constructing the Stormwater Facilities while maintaining a valuable ownership interest in them and only conveying an "arguably worthless 'easement' for 'access' to 'maintain' those privately owned facilities." *Reply Brief* at 28. That is not true. It is well established that the owner of a servient estate cannot use their property in any manner inconsistent with, or which interferes with, the dominant estate owner's use of the easement. *See, e.g., Nampa & Meridian Irr. Dist. v. Mussell*, 139 Idaho 28, 33, 72 P.3d 868, 873 (2003) (explaining the owners of a servient estate could only use their property in a "manner not inconsistent with, or which did not materially interfere with" the dominant estate owner's use of an easement).

Under the terms of the Easement, the Developer retains hardly any valuable ownership rights. The Easement grants ACHD a "permanent exclusive" easement over the land, for the purposes of "construction, reconstruction, operation, maintenance, and placement of a Highway . . . and . . . storm water facilities." *A.R.* at 1018-1019. The Easement is an easement appurtenant, meaning the Easement "serves the owner of the dominant estate [ACHD] in a way that cannot be separated from [its] rights in the land." *Abbott,* 119 Idaho at 550, 808 P.2d at 1295. In other words, ACHD's rights under the Easement, including the right "operate" the Stormwater Facilities, run with the land and continue in perpetuity. The Stormwater Facilities are permanently dedicated to

public use. This means the Developer cannot develop or otherwise use the land in a way that interferes with its purpose as a stormwater facility. There is no future private use of these areas that will be allowed as ACHD has permanent control of these area. This is not a "worthless" conveyance, and the Court denies the Petitioners' third issue on appeal.

F. Fourth issue on appeal: whether the CID Act permits the District to issue bonds and levy special property taxes to make payments to the Developer for facilities the Developer built before the District existed?

Petitioners next argue the Payments Resolution violates the CID Act because it includes the approval of payments for projects undertaken by the Developer before the District was formed. *Petitioners' Brief* at 44-46; *Reply Brief* at 29-30. Intervenor responds that this argument, which only applies to the Interest Project (Project GO21-1 – Accrued Interest) as Town Home Projects #9 and #11 were constructed after the District's formation, is an inappropriate collateral attack on the projects underlying the Interest Project which this Court prohibited in its *Order re: the Record. See Intervenor's Brief* at 28. Alternatively, Intervenor argues there is no restriction in the CID Act expressly precluding any payment for otherwise qualifying community infrastructure due to construction or dedication prior to the formation of the District. *Id.* at 28-29.

The Court agrees this is argument is an inappropriate collateral attack on prior final decisions underlying the Interest Project. As the Court held in its *Order re: the Record* and reiterated above, a district's decisions are considered *valid and uncontestable* after the sixty-day window set forth in Idaho Code section 50-3119 closes. As such, a collateral attack on the legality of a past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision. Here, the 24 projects underlying the Interest Project (including the interest payments associated with those projects under the terms of the Development Agreement) were all approved for reimbursement in prior final decisions spanning from 2013 to 2019. *A.R.* at 491-492.

As the Staff Report explains, section 3.2(a) of the Development Agreement allows interest to accrue between the date of dedication, contribution, or expenditure and the time at which the project price or segment price is paid. *Id.* at 41, 509. The time to challenge the interest payable on any of the 24 projects underlying the Interest Project was within sixty days of the Board's resolutions approving reimbursement for those projects. That time has passed, and the Interest Project does not open the door for the Court to adjudicate that legality of the Board's resolutions approving reimbursement for those past projects.

Alternatively, even if such a collateral attack was allowed, the Court finds the challenge to the Interest Project is not supported by the express language of the Development Agreement, which provides for interest to accumulate during the period between the "date of dedication, contribution or expenditure and the time which the Project Price or the Segment Price is paid ...." *A.R.* at 512 (section 4.2(b) of the Development Agreement). These interest payments lawfully compensate the Developer for effectively financing the community infrastructure prior to receiving full reimbursement.

G. Fifth issue on appeal: whether the CID act permits the District to pay the fair market value of land in exchange for only an easement of access to maintain privately owned facilities on that land, even though the facilities located on those easements are also privately owned and therefore do not constitute community infrastructure?

The fifth issue on appeal is resolved by the Court's analysis in Section E. Petitioners' argument here, which again only applies to payments for the Stormwater Facilities financed by the Payments Resolution as part of the Town Homes #11 Project, is dependent upon the Court finding that the Stormwater Facilities are privately owned and thus do not constitute community infrastructure. As discussed above, a permanent and exclusive easement appurtenant granting ACHD the rights to "construction, reconstruction, operation, maintenance, and placement of ... storm water facilities" is sufficient to satisfy Idaho Code section 50-3101(2)'s public ownership

requirement with respect to the Stormwater Facilities. Accordingly, Petitioners' fifth issue on appeal must be dismissed.

H. Sixth issue on appeal: whether the Idaho Constitution permits the District to pay the Developer the full fair market value of privately owned land underneath stormwater ponds in exchange for an easement that only grants a conditional right of access to maintain those ponds?

In their sixth issue on appeal, Petitioners argue the payment of the fair market value for the Stormwater Facilities is substantially more than the value of the easement granted, and thus the payments are essentially a gift to the developer in violation of Article VIII, Section 4 and Article XII, Section 4 of the Idaho Constitution. *Petitioners' Brief* at 48-50.[15] Opponents respond that Petitioners have not presented any evidence to show what the correct value should have been, nor any authority demonstrating that land entirely burdened by a permanent easement in favor of a dominant estate is worth substantially less than the value of the fee simple. *Respondents' Brief* at 50-51; *Intervenor's Brief* at 30-31. In their Reply, Petitioners clarify they are "asking the Court to determine whether payment for a fee interest in land in exchange for an easement for access to conduct maintenance constitutes an unconstitutional gift of public funds." *Reply Brief* at 32. The Court agrees with Opponents that Petitioners have not presented any evidence to show what the fair market value of the land would be without the Easement burdening it, what the correct value for the reimbursement for the Stormwater Facilities should have been, nor any authority demonstrating that land entirely burdened by a permanent easement in favor of a dominant estate is worth less than the amount the Developer received. As such, the existence of a "gift" has not

[15] Article VIII, Section 4 of the Idaho Constitution provides that no city or other local government "shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in the aid of any individual, association or corporation, for any amount or any purpose whatsoever." Article XII, Section 4 of the Idaho Constitution provides that no city or other local government "shall ... raise money for, or make donation or loan its credit to, or in aid of" "any joint stock company, corporation or association".

been established to support Petitioners' challenge and the Court need not render an advisory opinion on the question raised in their Reply Brief.

As discussed above, the Court fundamentally disagrees with Petitioners' characterization of the Stormwater Facility Easement. Under the terms of the Easement, the Developer retains hardly any valuable ownership rights. The Easement grants ACHD a "permanent exclusive" easement over the land, for the purposes of "construction, reconstruction, operation, maintenance, and placement of a Highway . . . and . . . storm water facilities." *A.R.* at 1018-1019. The language in Section 5 of the Easement, relating to the burden of maintaining the Stormwater Facilities, does not curtail this broad grant of rights to ACHD contained in Section 2.

At bottom, the Developer surrendered all meaningful ownership over the Stormwater Facilities, which are now permanently dedicated to public use. Indeed, Petitioners conceded that the conveyance of "an easement for the construction, operation, maintenance and repair of the Stormwater Facilities, [] would have provided substantial use rights (although not a possessory interest)." *Reply Brief* at 33. The Court is left with no basis on which to overturn any prior determinations of the land's value or to determine the value of the substantial interests conveyed to ACHD. Accordingly, the Court will not disturb the Board's decision on this theory, and this issue on appeal is denied.

I. Seventh issue on appeal: does the District's prior approval of payments for projects preclude residents from challenging a new "final decision" to approve additional payments for those projects on the grounds that those projects are unlawful?

The seventh issue on appeal has already been rejected by this Court, once in its prior ruling and again in subsection A above. This issue relates to the Interest Project, which approved interest payments to the Developer for twenty-four prior projects. *A.R.* at 14-20. Petitioners' argument is essentially that the Board's approval of prior interest payments for these projects does not preclude

Petitioners from challenging the 2021 Interest Project. This is because the Interest Project is itself a new "final decision" and all such decisions can be challenged within sixty days. *See Petitioners' Brief* at 50-52. Petitioners stress that they "are not challenging any prior final decisions of the Board–only the Challenged Resolutions." *Id.* at 35.

Petitioners are correct in the basic premise that the Interest Project is a new "final decision" that can be challenged within sixty days, regardless of whether prior interest payments were authorized. However, Petitioners' challenge to the Interest Project fails in that it is underpinned by a challenge to the legality of the twenty-four projects approved long ago. As the Court has repeatedly explained, it cannot adjudicate the legality of the District's prior final decisions. They are presumed to be valid and uncontestable, and the Court does not have the authority to inquire about them. The Idaho Legislature was unequivocal on this point:

> After said sixty (60) day period has run, no one shall have any cause or right of action to contest the *legality, formality or regularity of said decision for any reason whatsoever* and, thereafter, *said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed.* With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

I.C. § 50-3119 (emphasis added).

Again, the Court rejects Petitioners' theory that a new final decision opens the door for the Court to consider the legality of prior final decision so that the Court can then, in turn, determine the legality of the new final decision. Petitioners have not challenged the calculation of the accrued interest or argued that the Development Agreement's interest terms reach beyond the scope of the CID Act. Instead, Petitioners attack the Interest Project by way of attacking the legality of the twenty-four projects approved in the past. As, such, Court finds Petitioners' challenge to the

Interest Project fails. This is not because the Board approved prior interest payments similar or identical to the Interest Project, but because this Court cannot review the alleged unlawfulness of the twenty-four prior projects.

J. Eighth issue on appeal: do past final decisions of the District preclude new final decisions of the District from being challenged even if a challenge to the new final decision is brought within 60 days of the new decision?

This is another question that has been answered by the Court in its prior order and in subsections A and I above. The Court has not held that past final decisions preclude a petitioner from properly challenging a CID's new final decision. The Court has held that past final decisions are "considered valid and uncontestable, and the validity, legality and regularity of any such decision shall be conclusively presumed . . . and no court shall thereafter have authority to inquire into such matters." I.C. § 50-3119. As such, a collateral attack on the legality of a past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision.

K. Ninth issue on appeal: does the CID Act grant residents standing to challenge the formation of the District in contesting a new final decision of the District?

In short, the Court's answer to this question is: yes, if the challenge were brought within sixty days of the formation of the District. As discussed above, the Court's prior ruling in this proceeding raised a standing issue, finding the validity of de facto municipal corporations, municipal corporations, or quasi-municipal corporations authorized by statute can only be determined in a suit brought for that purpose in the name of the state or by some individual under authority of the state. *See Order re: the Record* at 5-6. However, the Court also finds that the CID Act expressly confers standing to "any person in interest who feels aggrieved" to challenge the District's formation, provided they do so within sixty days. I.C. § 50-3119. The Court relies on the express language of section 50-3119, not the standing issue raised earlier, in declining to evaluate the District's formation and prior decisions, which are "considered valid and uncontestable" after the

sixty-day appeal window has closed. While Petitioners were not homeowners when the District was formed and when some prior final decisions were made, the CID Act allowed challenges, and none were filed.

L. Tenth issue on appeal: does the CID Act permit a court to examine past events in order to determine whether a new final decision being challenged is lawful?

Petitioners' tenth issue on appeal has, again, already been decided by this Court. It goes without saying that a court can consider certain past events to determine the legality of a new final decision. For example, the CID Act requires that CIDs finance only community infrastructure "consistent with the general plan." I.C.§ 50-3105. In this case, that is the Harris Ranch Specific Plan. If a petitioner were to argue that a new final decision was inconsistent with a district's general plan, then a court would of course be permitted to examine the general plan and its crafter's intent to determine whether the new decision is consistent with the plan.

Again, what a court *cannot* do is examine the legality of a district's formation or prior final decisions after the sixty-day window has closed, even if the new final decision builds upon or arises from that prior decision. This is because prior decisions are

> *considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed.* With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, *the authority to issue the bonds*, the legality thereof and of the levies or assessments necessary to pay the same shall be *conclusively presumed and no court shall thereafter have authority to inquire into such matters.*

I.C. § 50-3119 (emphasis added). Every new final decision does *not* open the door for collateral attacks on a district's formation or prior decisions. Petitioners' references and objections to past events may be relevant context respecting the 2021 Resolutions, but such collateral attacks on prior final decisions are time barred and this issue on appeal is denied.

M. Eleventh issue on appeal: whether the Idaho Constitution permits the District to issue debt and levy the related property taxes based on the vote of at most one person who will never pay the taxes?

Petitioners' next argument is that the Bond Resolution was not approved by two-thirds of the qualified electors within the District in violation of Article VIII, Section 3 of the Idaho Constitution. *Petitioners' Brief* at 61-65. That provision provides:

> No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose....

Idaho Const. art. VIII, § 3. Petitioners contend the 2010 General Obligation Bond Election does not satisfy this requirement because the election was illegitimate and because Article VIII, Section 3 requires "that then-existing voters and taxpayers in a then-existing city, county or school district, are given the constitutional right to vote." *Petitioners' Brief* at 61. Opponents respond that the 2010 General Obligation Bond Election satisfies the requirements of Article VIII, Section 3. *Respondents' Brief* at 51-52; *Intervenor's Brief* at 37-38. On this issue, Petitioners deny they are arguing that a new bond election needed to occur in 2021 or that a bond election cannot approve the issuance of bonds in series. *Reply Brief* at 39. The Court finds, however, that the upshot of their argument is that a new election would be required to issue a bond whenever the "then-existing voters" in the District change. This essentially amounts to a facial challenge of a CID's authority to issue bonds in a series, as the "then-existing voters" in a CID are all but guaranteed to change throughout a year.

First, and as discussed in previous sections, the Court is without authority to consider any of Petitioners' arguments stemming from the legitimacy, legality, or propriety of the 2010 General Obligation Bond Election. The 2010 General Obligation Bond Election authorized the District to

incur indebtedness and to issue general obligation bonds in the principal amount of up to $50 million, in one or more series, to be repaid over a course of thirty years. *See A.R.* 65. That election was a final decision conclusively presumed to be valid and cannot be revisited. Indeed, the record shows the Board held a special election in 2010 in which two-thirds of the current "qualified electors" voted. *Id.* No party raised a challenge to the electors' qualifications or to the election's legitimacy in 2010, and there is no dispute that the CID Act allows a district to approve bonds in series.

Second, the Court does not find that section 50-3108(3) of the CID Act facially violates Article VIII, Section 3 of the Idaho Constitution. Section 50-3108(3) states:

> If two-thirds (2/3) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount *without the further vote of the qualified electors.*

I.C. § 50-3108(3) (emphasis added). Petitioners have expressly disavowed a facial challenge despite it being the obvious extension of their "then-existing voters" argument. For that reason, the Court declines to find that section 50-3108(3) facially violates Article VIII, Section 3 of the Idaho Constitution.

Moreover, Petitioners' argument on that Article VIII, Section 3 facially requires a vote of all "then-existing voters" ignores the fact that prospective homeowners have, at a minimum, constructive notice of the District's existence, the 2010 General Obligation Bond Election, and the $50 million in bonds it authorized. *See A.R.* at 976-981. In Idaho

> "A purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." *W. Wood Invs., Inc.*, 141 Idaho at 86, 106 P.3d at 412. This is a "long-established" principle by which this Court imputes constructive notice of every fact

> shown by the records, and what an examination of the records would have disclosed. *See Kalange v. Rencher*, 136 Idaho 192, 195, 30 P.3d 970, 973 (2001). Recorded conveyances that will impute constructive notice include recorded boundary line adjustments and recorded covenants and restrictions. *See Adams v. Anderson*, 142 Idaho 208, 210, 127 P.3d 111, 113 (2005); *W. Wood Invs., Inc.*, 141 Idaho 75, 86, 106 P.3d 401, 412 (2005).

Davis v. Tuma, 167 Idaho 267, 275, 469 P.3d 595, 603 (2020). Here, the special taxes associated with the bonds were not foisted upon the District's homeowners without notice or consent. The District's homeowners had notice of, and consented to, the taxes associated with the bonds when they chose to purchase property in the District.

Because there is evidence two-thirds of the qualified electors approved up to $50 million in serial bonds to be issued in 2010, no constitutional violation has been established. Buyer's remorse regarding a known obligation on real property is not a violation of the two-thirds voter approval requirement found in Article VIII, Section 3 of the Idaho Constitution. The series of bonds approved in 2010 forecloses the need for additional qualified elector approval of the 2021 Resolutions. Of course, if the District were to issue bonds in excess of the $50 million authorized in the 2010 General Obligation Bond Election, a new vote would be required.

N. Twelfth issue on appeal: can the City use a special, limited purpose "District" under its complete control to incur tens of millions of dollars in debt and to levy over $100 million in property taxes without having to comply with the two-thirds voter approval requirement under the Idaho Constitution?

Petitioners next argue the District is an alter ego of the City and that the Bond Resolution therefore violates Article VIII Section 3 of the Idaho Constitution because it was not approved by a City-wide election. *See Petitioners' Brief* at 57-67; *Reply Brief* at 39-42. Again, Article VIII, Section 3 of the Idaho Constitution provides:

> No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year,

> without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose....

Idaho Const. art. VIII, § 3. Under Petitioners' theory, the District is controlled by the City and, as a result, "[t]he authorization of the 2021 Bonds violates the constitutional voter approval requirement because there has not been a City-wide election to approve its issuance." *Petitioners' Brief* at 57. Opponents respond that the District is not an alter ego of the City and that the Bond Resolution was properly passed as one of the series of bonds authorized by the 2010 General Obligation Bond Election. *Respondents' Brief* at 51-54; *Intervenor's Brief* at 33-38.[16] As such, the Court must decide whether the District is an alter ego of the City.

Petitioners rely on a line of cases in which the Idaho Supreme Court has considered the question of whether an entity created by a local government is merely of a scheme to circumvent the prohibitions of Article VIII, Section 3 of the Idaho Constitution. *See, e.g., O'Bryant v. City of Idaho Falls,* 78 Idaho 313, 303 P.2d 672 (1956); *Wood v. Boise Junior Coll. Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959); *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972); *Urb. Renewal Agency of City of Rexburg v. Hart*, 148 Idaho 299, 222 P.3d 467 (2009).

For example, in *O'Bryant*, the Supreme Court held that an ordinance of the City of Idaho Falls creating a cooperative with the power to issue bonds was unconstitutional because that cooperative was merely an alter ego of the City of Idaho Falls. 78 Idaho at 326, 303 P.2d at 679. There, the City of Idaho Falls passed an ordinance granting an exclusive franchise to a supposedly

[16] Additionally, the parties disagree about whether Petitioners' argument, which is based on the degree of control the City exercises over the District, is a facial challenge to the constitutionality of the CID Act. *Intervenor's Brief* at 35; *Reply Brief* at 40. Petitioners argue they are only challenging the Bond Resolution and not the constitutionality of the CID Act itself. The Court agrees with Intervenor that this alter ego argument would be generally applicable to any CID because of the CID organizational requirements set forth in Idaho Code section 50-3104 require a high degree of interconnectedness between a district and city or county in which it resides.

non-profit cooperative association to construct, maintain, and operate natural gas distribution infrastructure in Idaho Falls. *Id.* at 317, 303 P.2d at 673. The association's express purpose was to "promote the common good and general welfare of the said City and, as gas consumers, the members of this Association, and also the inhabitants and commercial and other enterprises of said City and the surrounding territories. . . ." *Id.* at 321, 303 P.2d at 675. The Idaho Supreme Court found the cooperative association was "an instrumentality of and controlled by the City of Idaho Falls" and part of a "plan and design devised to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes; and to exercise powers not granted to a municipality." *Id.* at 324, 303 P.2d at 677; 327, 303 P.2d at 679.

In *Wood,* the Supreme Court considered whether a junior college housing commission created pursuant to Idaho Code section 33-2122 was an alter ego of the Boise Junior College District and thus subject to the prohibitions of Article VIII Section 3 of the Idaho Constitution. 81 Idaho 379, 342 P.2d 700. The Court focused on the interconnectedness of the commission and the Boise Junior College District and the amount of control the Boise Junior College District exercised over the commission. In finding that the commission was not an alter ego of the Boise Junior College District, the Court noted that "[i]n enacting legislation permitting the creation of the housing commissions, clearly the Legislature intended a high degree of cooperation to exist between the junior college districts and the housing commissions for the purpose of providing students of the district with satisfactory housing." *Id.* at 384, 342 P.2d at 702.

More recently, the Idaho Supreme Court has considered alter ego arguments in the context of the Idaho Urban Renewal Act (the "IURA"). *See Boise Redevelopment Agency v. Yick Kong Corp.,* 94 Idaho 876, 499 P.2d 575; *Urb. Renewal Agency of City of Rexburg v. Hart,* 148 Idaho 299, 222 P.3d 467. The IURA provides for the establishment in each municipality of an "urban

renewal agency," which cannot exercise any powers until the proper findings have been made by the local governing body. I.C. § 50-2006. After such findings are made, an urban renewal agency possesses broad powers allowing it to undertake and carry out urban renewal projects within its area of operation. *See* I.C. § 50-2007.

In *Yick Kong,* the appellants asserted the Boise Redevelopment Agency, created pursuant to the IURA, was merely an alter ego of the City of Boise. *See Boise Redevelopment Agency v. Yick Kong Corp.,* 94 Idaho 876, 499 P.2d 575. There, the appellants based their alter ego theory on the necessity for a finding of deteriorated areas by the City of Boise prior to the Boise Redevelopment Agency being able to exercise any authority, to the appointment of the Boise Redevelopment Agency's commissioners by the Boise Mayor and City Council, and to the ability of the Boise Mayor to remove the Boise Redevelopment Agency's commissioners. The Court found the Boise Redevelopment Agency was not an alter ego of the City of Boise and in doing so noted:

> [The Boise Redevelopment Agency]is an entity of legislative creation and it is the legislature that established its powers, duties and authorities. The legislature, in what we may assume to be an effort to maintain some local voice in the question of whether a particular municipality had a need for urban renewal, required a finding of need by a municipality prior to the time an urban renewal agency could come into existence. While the particular city may trigger the existence of the plaintiff, it cannot control its powers or operations.

Id. at 881, 499 P.2d at 580.

The Idaho Supreme Court revisited the alter ego theory in the IURA context decades later in *Hart.* 148 Idaho at 302, 222 P.3d at 470. There, the appellant argued the Urban Renewal Agency of the City of Rexburg was merely an alter ego of the City of Rexburg. *Id.* The appellant acknowledged the *Yick Kong* holding but argued that amendments to the IURA enacted after the *Yick Kong* decision rendered the holding in that case inapposite. *Id.* at 302, 222 P.3d at 470. The

Court summarized the relevant amendments to the IURA, rejected the appellant's argument, and affirmed *Yick Kong:*

> Four years after our decision in *Yick Kong,* the Legislature amended I.C. § 50–2006(b) to provide that by enactment of an ordinance, the local governing body may initially appoint and designate itself to be the board of commissioners of the urban renewal agency or may terminate the existing board and install itself as the board. 1976 Idaho Sess. Laws, ch. 256, p. 872. Ten years after that, the Legislature amended I.C. § 50–2017 by deleting language that prohibited a "commissioner or other officer of any urban renewal agency ... [from holding] any other public office under the municipality other than his commissionership or office with respect to such urban renewal agency." 1986 Idaho Sess. Laws, ch. 10, p. 52. Hart argues that, as a result of these amendments, there is now no real difference between the municipality and the urban renewal agency, i.e., that the urban renewal agency is the "alter ego" of the municipality. Thus, he argues, when the agency finances urban renewal through revenue allocation financing, its conduct violates the constitutional limitations on municipal conduct found in Article XIII, §§ 3 and 4. The 1976 amendment to I.C. § 50–2006(b)(2), upon which Hart relies, provides that even if the city governing body does appoint itself, the commissioners "shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, *entirely separate and distinct from the municipality,* to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended." 1976 Idaho Sess. Laws, ch. 256, p. 872 (emphasis added). The removal procedures set forth in the Law remain unchanged since our decision in *Yick Kong.* I.C. § 50–2006(b)(1) ("For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearings and have had an opportunity to be heard in person or by counsel.") Even as amended, the Law does not allow a city to usurp the powers and duties of the urban renewal agency. Thus, we conclude that the amendments to I.C. § 50–2006 and 50–2107 do not permit us to distinguish the holding in *Yick Kong.*

Id. at 302–03, 222 P.3d 470–71 (emphasis in original).

Here, Petitioners argue the District is an alter ego of the City because the City has more control over the District than the cities in *Yick Kong* and *Hart* had over the urban renewal agencies. *See Petitioners' Brief* at 57-67*; Reply Brief* at 39-42. The Court concedes there is a high degree of interrelatedness between City officials and the District. The CID Act itself requires that three members of the City Council serve as the District's Board, that the City Treasurer be the District's Treasurer, and that the City Clerk be the Clerk of the District. I.C. § 50- 3104. Indeed, the District

has no full-time staff, instead contracting "with the City of Boise and other publicly-bid contractors to support its operations." *A.R.* at 55. Nonetheless, in light of the Idaho Supreme Court's guidance in *Yick Kong* and *Hart,* the Court finds that the District is not an alter ego of the City.

It is significant that the District, much like a junior college housing commission or an urban renewal agency, "is an entity of legislative creation and it is the legislature that established its powers, duties and authorities." *Yick Kong Corp.*, 94 Idaho at 881, 499 P.2d at 580. The caselaw discussed above demonstrates that Idaho courts are deferential to the presumption of an entity's autonomy when the entity is a creature of statute. *See, e.g., Wood,* 81 Idaho at 383, 342 P.2d at 702 ("The degree of control exercised does not usurp the powers and duties of the housing commissioners. The housing commission is a separate entity from the Boise Junior College District, created pursuant to statutes of this State, and does not impose an obligation upon the taxpayers of the junior college district."). In contrast, the association in *O'Bryant* was an instrumentality created by the City of Idaho Falls without express statutory authority and for the purpose of circumventing constitutional requirements.

Of all the alter ego cases the parties rely on, the Court finds *Hart* to be the most instructive. The amendments to the IURA that preceded *Hart* significantly increased the potential interconnectedness between a city and an urban renewal agency. Those amendments allowed a local governing body to appoint and designate itself to be the board of an urban renewal agency, to terminate an existing board and install itself as the board, and permitted an urban renewal agency's commissioner and other officers to hold public office in the local governing body. *See Hart*, 148 Idaho at 302, 222 P.3d at 470. The CID Act, similarly, requires that a CID board be comprised of city council members. I.C. § 50- 3104. The amendments to the IURA thus made the

IURA much more akin to the CID Act in terms of control potentially exercised by the local governing body.

Nonetheless, the *Hart* Court, aware that a local governing body could now appoint itself as the board of an urban renewal agency, found that the IURA still "does not allow a city to usurp the powers and duties of the urban renewal agency." *Id.* 148 Idaho at 303, 222 P.3d at 471. In reaching its conclusion, the Court noted the amended IURA provides that even if the local governing body does appoint itself, the commissioners "shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended." I.C. § 50-2006(2). The CID Act contains a substantively identical provision:

> The district shall be separate and apart from any county or city. The members of the district board, when serving in their official capacity as members of the district board, shall act on behalf of the district and not as members of a board of county commissioners or as members of a city council.

I.C. § 50-3104(8).

The Idaho Supreme Court's analysis in *Hart* and *Yick Kong* is by and large applicable in the context of the CID Act. The degree of integration between a city and an urban renewal agency with a city council board is comparable to that of a city and a CID. Even in such circumstances, the Supreme Court has rejected alter ego theories, finding "the close association between the two entities at most shows two independent public entities closely cooperating for valid public purposes." *Yick Kong Corp.,* 94 Idaho at 882, 499 P.2d at 581. Moreover, the CID Act and the IURA both expressly provide that the entities created under them are separate and distinct from the local governing bodies, a fact the *Hart* Court found significant. The Idaho Supreme Court has consistently held that "where the public entity created has no power to tax or encumber the assets

of the body creating it, are not violative of the constitutional restrictions of Article 8." *Bd. of Cnty. Comm'rs of Twin Falls Cnty. v. Idaho Health Facilities Auth.*, 96 Idaho 498, 504, 531 P.2d 588, 594 (1974); *See also Wood,* 81 Idaho at 384, 342 P.2d at 702 ("The housing commission is a separate entity from the Boise Junior College District, created pursuant to statutes of this State, and does not impose an obligation upon the taxpayers of the junior college district."). That is the case here, as the District cannot create any obligation on behalf of the City. For these reasons, the Court finds the District is not an alter ego of the City and that the Bond Resolution did not require a City-wide election.

The CID Act's goal is to encourage the funding and construction of regional community infrastructure by allowing developers to front the costs of such infrastructure and to have those costs repaid to the developers over time. The infrastructure constructed pursuant to the CID Act exists for the benefit of the property owners in the District, not for the City of Boise or the Developer. This issue on appeal is denied.

O. Thirteenth issue on appeal: whether the Idaho Constitution permits the District to levy tens of millions of dollars of special property taxes on one group of homes while nearly identical neighboring homes pay nothing, even though projects financed by those taxes benefit both groups of homes equally?

The thirteenth issue on appeal is whether the *ad valorem* property taxes levied pursuant to the Bond Resolution violate Article VII, Section 5 of the Idaho Constitution and the Equal Protection Clauses of the Idaho and Federal Constitutions. *Petitioners' Brief* at 67-71. Petitioners argue the special *ad valorem* property taxes imposed pursuant to the Bond Resolution are not uniform across similar classes of property within the City or within the greater Harris Ranch area. *Id.* at 69. Opponents respond that the relevant question is not whether the *ad valorem* taxes are uniform within the City or the greater Harris Ranch area, but whether the *ad valorem* taxes are uniform within the District. *Respondents' Brief* at 54-55; *Intervenor's Brief* at 38-39. The Court agrees that

the relevant inquiry is whether the *ad valorem* taxes are uniform within the District. Because there is no showing the *ad valorem* property taxes imposed pursuant to the Bond Resolution are not uniform within the District, the Court finds the Bond Resolution does not violate Article VII, Section 5 of the Idaho Constitution or the Equal Protection Clauses of the Idaho and Federal Constitutions.

Article VII, Section 5 of the Idaho Constitution requires that: "All taxes shall be uniform upon the same class of subjects *within the territorial limits of the authority levying the tax* ...." Idaho Const. art. VIII, § 3 (emphasis added). Article I, Section 2 of the Idaho Constitution states: "All political power is inherent in the people. Government is instituted for their equal protection and benefit ...." Idaho Const. art. I, § 2. Amendment XIV, Section 1 of the United States Constitution provides that: "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. Moreover, the Idaho Supreme Court has held that "[b]oth Art. 7, § 5, of the Idaho Constitution, and the federal equal protection clause proscribe unlawful discrimination by taxing authorities. While various standards have been articulated under either provision, there is little practical distinction between the two. A taxing plan offensive to one also violates the other." *Justus v. Bd. of Equalization of Kootenai Cnty.*, 101 Idaho 743, 746, 620 P.2d 777, 780 (1980) (internal citations omitted).

Here, the "authority levying the tax" is the District. As discussed in Section N above, the Court rejects Petitioners' argument that the District is a mere alter ego of the City. As such, the requirement imposed by Article VII, Section 5 of the Idaho Constitution is that all taxes be uniform upon the same class of property within the territorial limits of the District. Idaho law allows for the creation of special taxing districts vested with taxing authority that must be exercised in accordance with the requirements of the Idaho Constitution and such district's enabling statute.

There has been no showing that the special *ad valorem* taxes are not uniform within the District. The same analysis holds true for the Equal Protection Clauses, which "proscribe unlawful discrimination *by taxing authorities*." *Justus,* 101 Idaho at 746, 620 P.2d at 780 (emphasis added). The taxing authority at issue here is the District, and there has been no showing of unlawful discrimination by the District.

Petitioners contend this holding would "eviscerate this Constitutional requirement," hypothetically opening the door for the Legislature to adopt legislation that authorizes a city to establish a special taxing district that includes only those properties whose owners voted in favor of the creation of the district. *Petitioners' Brief* at 70. Under this hypothetical legislation, the special property taxes imposed by such a district would not apply to those properties until after they were later sold, meaning "the only people who would have to pay the taxes would be all the people who, by definition, were deprived of any opportunity to vote on them." *Id.* This argument, however, again ignores that potential homebuyers have notice of a taxing district's existence and are not obliged to purchase property there. Anybody that choses to move into a special taxing district after its formation is likely to pay additional taxes that they did not vote on. Such an arrangement does not violate Article VII, Section 5 of the Idaho Constitution.

P. Fourteenth issue on appeal: whether the Idaho Constitution permits the District to issue indebtedness payable from special property taxes to make payments to the Developer for facilities the Developer would otherwise have to pay for themselves as do all other developers in the State?

The next issue on appeal is whether the 2021 Resolutions amount to an unconstitutional lending of credit to the Developer in violation of Article VIII, Section 4 and Article XII, Section 4 of the Idaho Constitution. *Petitioners' Brief* at 71-74. Petitioners argue:

> The primary if not sole purpose of the District is to allow the City to use the District's credit, including its borrowing and taxing powers, to finance and pay for costs that would otherwise have to be paid and financed by the Developer. That is

> the essence of an unconstitutional lending of credit to — and raising of money for — a private enterprise by a local government. The issuance of the 2021 Bond pursuant to the Bond Resolution and the payments to the Developer pursuant to the Payments Resolution therefore would violate Article VIII, Section 4 and Article XII, Section 6 of the Idaho Constitution.

Id. at 74. Again, Petitioners maintain they are not bringing a facial challenge to the CID Act, alleging it "is the City's and the District's improper utilization of the CID Act that renders their actions unconstitutional, not the language of the CID Act itself." *Reply Brief* at 45. Opponents respond that Petitioners' argument is a facial challenge in that it would be generally applicable to all CIDs and that the CID Act survives this challenge as it has a primarily public purpose. *Respondents' Brief* at 56-58; *Intervenor's Brief* at 39. As an initial matter, the Court agrees with Opponents that Petitioners' argument–essentially that the District's issuance of Bonds to repay the Developer for previously built community infrastructure violates the Idaho Constitution–strikes at the core financing mechanism in the CID Act and is a facial challenge in all but name. In Idaho, there is a "strong presumption of constitutionality to which every legislative enactment is entitled." *Bd. of Cty. Comm'rs of Twin Falls Cty. v. Idaho Health Facilities Auth.*, 531 P.2d 588, 591 (Idaho 1974).

Article VIII, section 4 of the Idaho Constitution provides:

> No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

Idaho Const. Art. VIII, § 4. Petitioners also cite to Article XII, section 4 of the Idaho Constitution, but that provision applies to counties, towns, cities, or other municipal corporations. Opponents argue this section is inapplicable to the District. The Court need not decide the question because the Court's analysis with respect to Article VIII, section also 4 applies to Article XII, section 4.

"The word 'credit' as used in this provision implies the imposition of some new financial liability upon the State which in effect results in the creation of State debt for the benefit of private enterprises." *Hansen v. Kootenai Cnty. Bd. of Cnty. Comm'rs*, 93 Idaho 655, 662, 471 P.2d 42, 49 (1970) (quoting *Engelking v. Inv. Bd.*, 93 Idaho 217, 458 P.2d 213 (1969)). Moreover, "it is obvious that the framers of the Idaho Constitution had no intention of limiting the power of municipalities to *contract* in furtherance of the public interest, but rather of limiting *loans* or *donations* of public credit." *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 954, 703 P.2d 714, 718 (1985) (emphasis in original).

Petitioners rely upon the Idaho Supreme Court's decision in *Village of Moyie Springs, Idaho v. Aurora Manufacturing Co.*, 82 Idaho 337, 353 P.2d 767 (1960). There, the Court struck down an Idaho statute which authorized cities to issue revenue bonds to finance the acquisition of land and construction of buildings which were to be leased or sold to private enterprise. *Id.* The statute's stated purpose was to increase employment and stabilize the economy. The Village of Moyie Springs, pursuant to the statute, enacted an ordinance providing for issuance of revenue bonds, payable from revenues derived from the project, for the acquisition of a site and construction of an industrial plant and authority to enter into a lease of the premises with the defendant Aurora Manufacturing Company. The Court held that the statute and ordinance were unconstitutional as violations of Art. 8 § 4 and Art. 12 § 4 of the Idaho Constitution. *Id.* The Idaho Supreme Court has since explained that *Moyie Springs* "stands for the proposition that a violation of the lending of credit provisions of the Idaho Constitution will occur where the putative public purpose to be served by a pledge of municipal credit is but secondary or incidental to a private purpose." *Utah Power & Light Co. v. Campbell*, 108 Idaho at 955, 703 P.2d at 719. Moreover,

"the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction." *Id.*

In is *Hansen v. Kootenai County Bd. of County Commissioners,* 93 Idaho 655, 471 P.2d 42 (1970), the Idaho Supreme Court revisited *Moyie Springs*. There, the plaintiff argued that Kootenai County's practice of leasing of a portion of the county fairgrounds to a racetrack company, along with expenditures made by the county for insurance premiums, extension of a water line to the track and road work, constituted violations of Article VIII Section 4 and Article XII Section 4 of the Idaho Constitution. *Id.* The Court held that the County's activity violated neither provision and distinguished *Moyie Springs*:

> It is our opinion that *Village of Moyie Springs, Idaho v. Aurora Manufacturing Co.*, supra, is distinguishable from the case at bar. The distinction lies in the fact that in that case the city financed with its own funds the acquisition of land which was admittedly not to be used by the village for public purposes, but rather was at the outset intended to be leased to private business. In the present case, on the other hand, the fairgrounds are utilized by the county for the public purpose of conducting the county fair and a portion thereof is leased to a private concern only when not needed for public purposes. It is readily apparent that the Village of Moyie Springs had no use for the land and industrial site it acquired other than to lease it to the Aurora Manufacturing Company, whereas in the present case Kootenai County does have a public use for the fairgrounds and leases them only when not needed for the public purposes.

Id. at 660–661, 471 P.2d at 47–48.

Here, the Court agrees with Opponents that the CID Act has a primarily public purpose and that the facts of this case align more closely with *Hansen* than *Moyie Springs.* As the *Hansen* Court stressed, the land the village acquired in *Moyie Springs* was not to be used by the village for public purposes but instead was intended to be leased for private business. The primary beneficiary was private business with the only benefits to the village being indirect economic benefits. Here, in contrast, the District, and by extension the public, directly benefit from the construction and acquisition of community infrastructure. The CID Act only serves as a means of repaying

developers for constructing infrastructure that will benefit the District. As discussed above, the CID Act requires community infrastructure to be publicly owned and has an expressly public purpose—to encourage funding and construction of infrastructure ahead of growth and to provide a way for new growth to pay for itself. I.C. § 50-3101(1).

Moreover, Petitioners, in arguing they are not bringing a facial challenge to the CID Act, concede that their argument on this issue is contingent upon the Court's finding that the 2021 Resolutions finance "project improvements" and not "community infrastructure:"

> If the CID Act had been utilized as its provisions require, it would have been used to finance regional community infrastructure, and not "project improvements" within Harris Ranch. Thus, for example, a city and a developer might agree to utilize a CID to finance a portion of the costs of a regional park, or a public safety facility, or regional transportation facilities, in each case that would not otherwise be required as a condition of the development. But, as Residents have explained *supra*, all but one of the 2021 Projects constitute "project improvements" which the Developer would have had to construct and pay for themselves in the absence of the District. See Section A.1., pp. 5-9. It is these projects, not the CID Act, that Residents contend run afoul of Idaho's Constitution.

Reply Brief at 45. As discussed in Section C above, the Court declines to make such a finding because it was not presented to the Board. As such, Petitioners' argument can also be rejected on the basis that it is an extension of an argument not raised below.

Q. Fifteenth issue on appeal: does the CID Act permit the District to adopt the challenged Resolutions even though the properties within the District are not contiguous and were not at the time of its formation?

Finally, Petitioners contend the 2021 Resolutions are unlawful because the District consists of several noncontiguous areas in violation of the CID Act. *Petitioners' Brief* at 74-77. Petitioners argue the addition off the noncontiguous land occurred before the District was formed because the formation of a CID is a process that is not complete until the board of a CID has its first meeting and appoints its officers. *Id.* at 75. According to their theory, by adding noncontiguous land to the District ten days after the City's resolution ordering the District's formation, the City and

Developer, by predesign, did "in two baby steps what the CID Act expressly prohibits them from doing in one." *Reply Brief* at 47.

The Court need not address the merits of Petitioners' fifteenth issue on appeal because the Court agrees with Opponents that the decision to amend the District's boundaries occurred in 2010 and cannot be challenged here. *A.R.* at 55. As the Court has discussed in great detail above, a collateral attack on the legality of a past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision. I.C. § 50-3119.

Moreover, the Court disagrees with Petitioners' position that a CID is not formed until its first board meeting. Idaho Code section 50-3103(2) provides:

> After hearing and considering any and all of the testimony given, the governing body shall thereupon approve a resolution either denying the petition [to form the CID] or granting the same and, if granting the same, shall fix and describe in the resolution the boundaries of the proposed district and order the formation of the same.

I.C. § 50-3103(2). In the Court's view, this language means a CID is formed when the local governing body issues the resolution ordering the CID's formation. While the CID Act requires the District to be contiguous at the time of its formation, it allows noncontiguous land to be added later. I.C. § 50-3102(5). There is no minimum amount of time required to have passed before a CID can add noncontiguous land. *See Id.* Here, the Boise City Council adopted Resolution No. 20895 on May 11, 2010, formally ordering the District's formation. *A.R.* at 23, 55. The City expanded the District's boundaries in Resolution No. 20944, ten days later. *Id.* at 55, 1002 fn. 2. The City was under no obligation to wait for the District's first board meeting before approving Resolution No. 20944. Accordingly, the Court rejects Petitioners' fifteenth issue on appeal.

R. Sixteenth issue on appeal: are residents entitled to attorney fees under the private attorney general doctrine if they prevail in this action?

Petitioners argue that they are entitled to fees under the private attorney general doctrine if they prevail in this appeal. *Petitioners' Brief* at 77-79. In Idaho, costs and fees will not be awarded to a non-prevailing party. *Idaho Indep. Bank v. Frantz*, 162 Idaho 509, 517, 399 P.3d 836, 844 (2017), *reh'g denied* (Aug. 15, 2017) (citing *Cummings v. Stephens*, 157 Idaho 348, 336 P.3d 281, 300 (2014)). As the Court has rejected or declined to consider all sixteen of Petitioners' arguments brought on appeal, the Court finds Petitioners are the non-prevailing party. As such, the Court need not reach the elements of the private attorney general doctrine.

S. Seventeenth issue on appeal: are Opponents entitled to attorney fees?

Opponents have also asked for attorney fees to be awarded. Respondents believe they should be awarded attorney fees if they are the prevailing party pursuant to Idaho Code section 12-117 because "Petitioners' factual and legal contentions have shifted dramatically from prior positions," and "Petitioners' Brief runs through a series of issues and topics that have nothing to do with this proceeding and which the Court has already excluded, in direct disregard of the CID Act text and the Record Decision." *Respondents' Brief* at 59-60. Intervenor acknowledges that it is not eligible for attorney fees under section 12-117, but instead argues attorney fees would be appropriately awarded as a matter of the Court's discretion under the Rule 11 of the Idaho Rules of Civil Procedure. *Intervenor's Brief* at 43.

Idaho Code section 12-117(1) provides that

> in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

I.C. § 12-117(1). The statute also permits a partial award of fees when a party prevails on a portion of a case. I.C. § 12-117(2). The award is mandatory if the Court finds the non-prevailing party acted without a reasonable basis in fact or law. Furthermore, Section 12-117 "is the exclusive means for awarding attorney fees for the entities to which it applies." *City of Osburn v. Randel*, 152 Idaho 906, 910, 277 P.3d 353, 357 (2012) (quoting *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285,* 148 Idaho 630, 635, 226 P.3d 1277, 1282 (2010)).

Here, not all elements of section 12-117 are satisfied. The District is a political subdivision of the State and Petitioners are persons within the meaning of the statute. I.C. § 12-117(6)(c) ("'Person' means any individual, partnership, limited liability partnership, corporation, limited liability company, association or any other private organization"). And the District is the prevailing party based on the Court's above analysis. However, the Court does not find Petitioners' arguments were brought "without a reasonable basis in fact or law."

The Court finds Petitioners have acted in good faith, and while the Court ultimately disagrees with Petitioners, it finds they advanced cogent legal arguments that presented legitimate questions for the Court to address. Indeed, many arguments were close calls for the Court. The Court further agrees with Petitioners that an award of attorney fees under Idaho Code section 12-117 is less meritorious when the non-prevailing party has raised matters of first impression. *See E.g., Newton v. MJK/BJK, LLC*, 167 Idaho 236, 469 P.3d 23 (2020) (declining to award fees under section 12-117 where non-prevailing party raised matters of first impression). This is the first time the CID Act has been litigated, and Petitioners raised many complex matters of first impression challenging the legality of the District's decisions and, by implication, the CID Act itself.

The Court acknowledges Opponents' protest that some of Petitioners' arguments were based on a theory the Court had already expressly rejected in its *Order re: the Record.* The Court

was clear in its *Order re: the Record* that Idaho Code section 50-3119 precludes a court from considering a CID's formation or any final decision not challenged within sixty days. As discuses *ad nauseum*, after the sixty-day window closes, "no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever and, thereafter, said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed." I.C. 50-3119. And there is no doubt Petitioners raised several arguments that would necessarily require the Court to inquire into the legality of long past decisions.

Nonetheless, the Court declines to award attorney fees on these grounds. Petitioners raised debatable, albeit ultimately unpersuasive, reasons the Court should reconsider its *Order re: the Record.* In fact, the Court did reconsider the portion of the *Order re: the Record* relating to Petitioners' standing to bring this proceeding. Moreover, the Court understands Petitioners argued some issues the Court addressed in its *Order re: the Record* to ensure that those issues are preserved for appeal. As such, the Court declines to find Petitioners acted without a reasonable basis in fact or law. Respondents request for attorney fees pursuant to section 12-117 is denied.

Finally, the Court finds Intervenor is not entitled to attorney fees as a matter of the Court's discretion under Rule 11 of the Idaho Rules of Civil Procedure. Rule 11 sanctions "are not granted lightly and are imposed only in the most extreme cases in which the asserted claims have no reasonable chance of success." *Curzon v. Hansen*, 137 Idaho 420, 422, 49 P.3d 1270, 1272 (Ct. App. 2002) (citing *Sun Valley Shopping Center, Inc. v. Idaho Power Co.,* 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)). As Petitioners did not act without a reasonable basis in fact or law, this case clearly does not call for Rule 11 sanctions. While the Court may disagree with Petitioners'

arguments, it finds they were brought in good faith, and many raised interesting and debatable legal questions.

V. CONCLUSION

For the foregoing reasons, the Court denies Petitioners' Petition for Judicial Review. While aggrieved homeowners have standing to challenge a CID's final decisions, they must do so within sixty days as required by Idaho Code section 50-3119. After this window closes, a CID's decisions are considered valid and uncontestable and a collateral attack on the legality of a CID's formation, prior project, or past decision cannot be the basis for a challenge to a new final decision.

Moreover, the Court finds the 2021 Resolutions are not in violation of the CID Act, the District's Development Agreement, the Idaho Constitution, or the United States Constitution. While the Court understands why Petitioners feel aggrieved by the *ad valorem* taxes levied pursuant to the 2021 Resolutions, the Court is also mindful that nobody is obligated to purchase property within the District and that a purchaser of real property "is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." *W. Wood Invs., Inc. v. Acord*, 141 Idaho at 86, 106 P.3d at 412. As such, all claims in the Petition are denied and the Board's adoption of the 2021 Resolutions is affirmed. The Court denies Opponents' request for attorney fees as it finds Petitioners acted with a reasonable basis in fact or law.

IT IS SO ORDERED.

DATED this 25th day of April 2023.

Nancy A. Baskin

NANCY A. BASKIN
District Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on 4/25/23, I caused a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

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Trent Tripple
Clerk of the District Court

By _____
Deputy Clerk