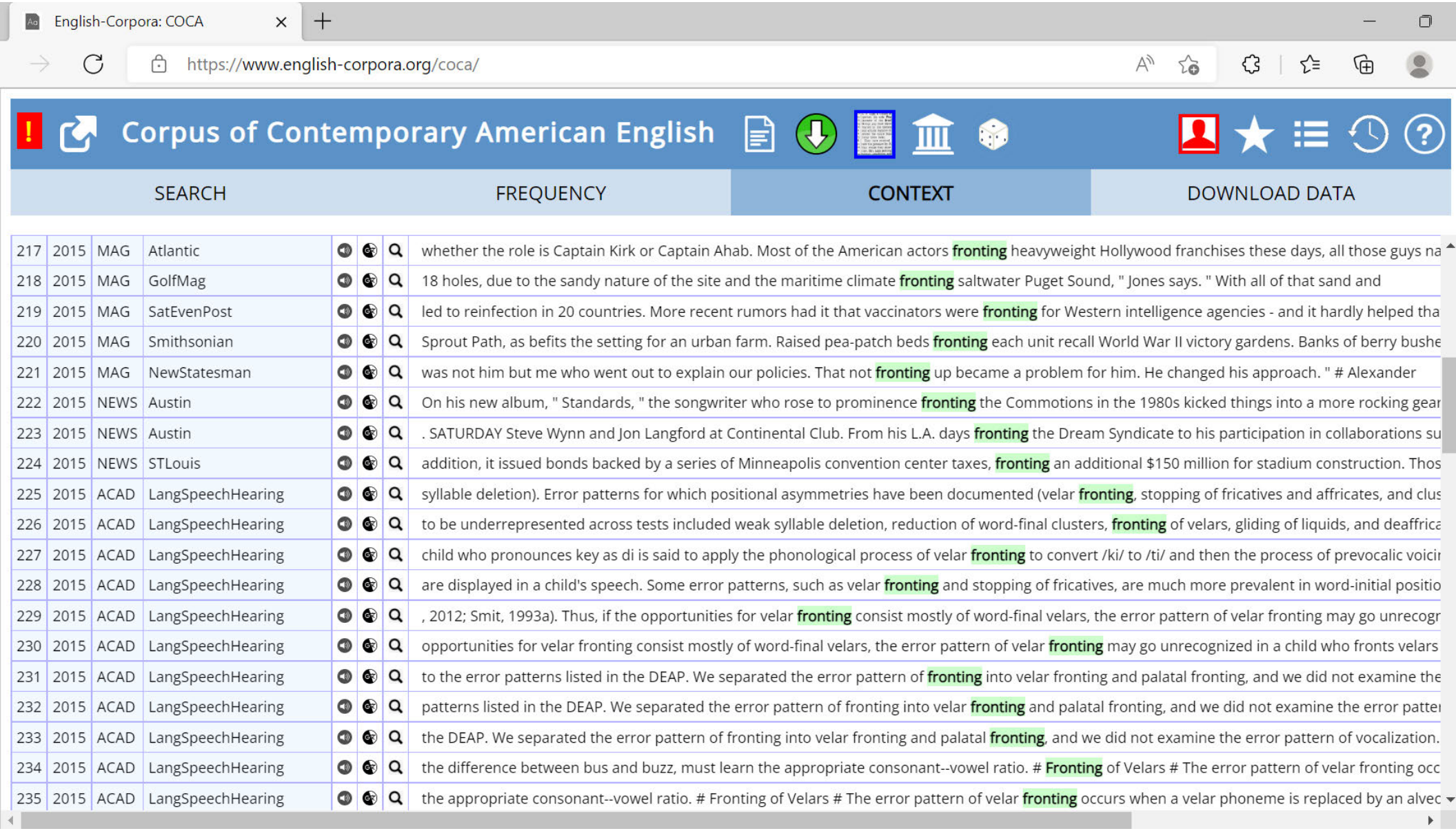
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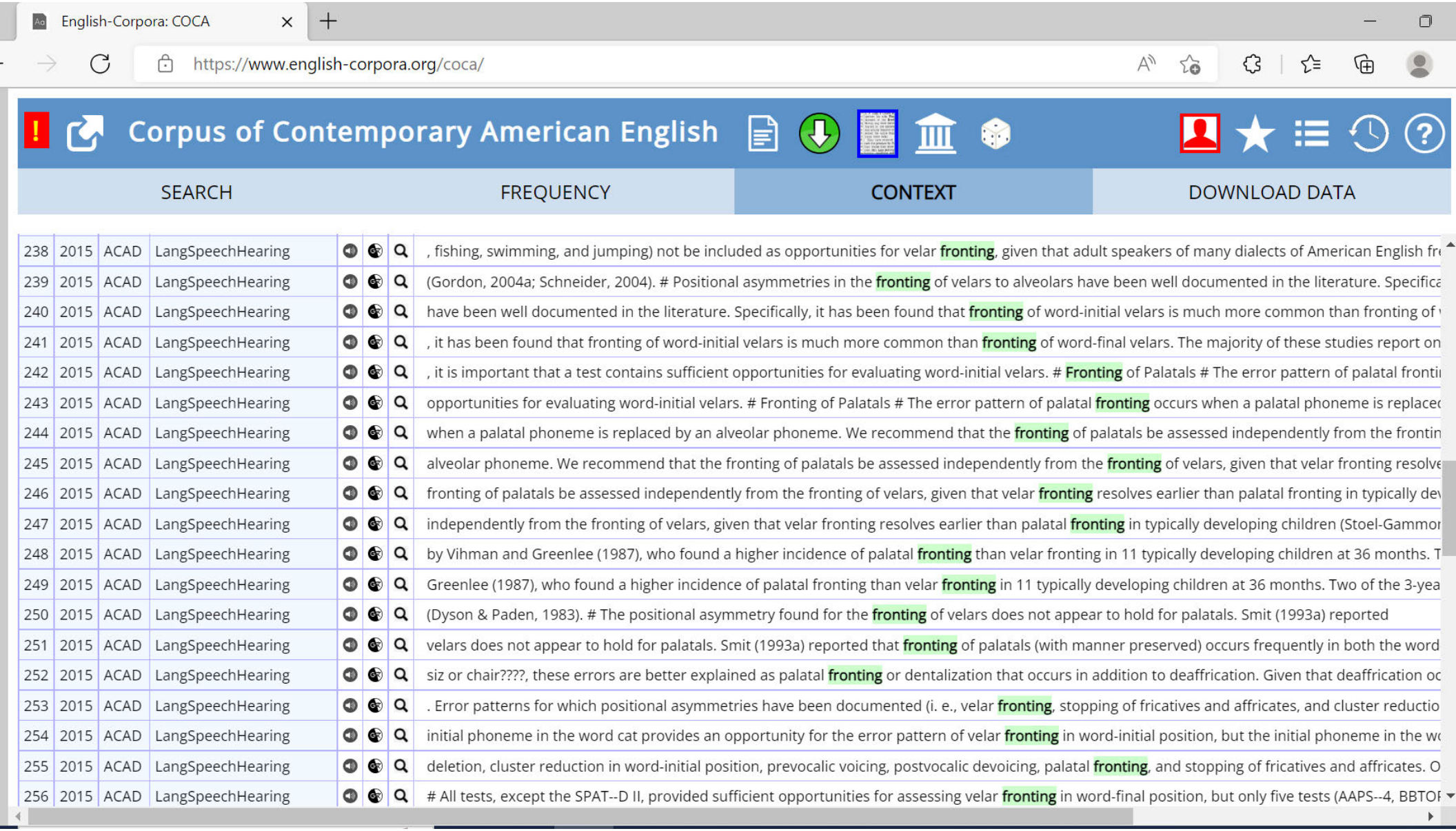
217 2015 MAG Atlantic whether the role is Captain Kirk or Captain Ahab. Most of the American actors fronting heavyweight Hollywood franchises these days, all those guys na
218 2015 MAG GolfMag 18 holes, due to the sandy nature of the site and the maritime climate fronting saltwater Puget Sound, " Jones says. " With all of that sand and
219 2015 MAG SatEvenPost led to reinfection in 20 countries. More recent rumors had it that vaccinators were fronting for Western intelligence agencies - and it hardly helped tha
220 2015 MAG Smithsonian Sprout Path, as befits the setting for an urban farm. Raised pea-patch beds fronting each unit recall World War II victory gardens. Banks of berry bushe
221 2015 MAG NewStatesman was not him but me who went out to explain our policies. That not fronting up became a problem for him. He changed his approach. " # Alexander
222 2015 NEWS Austin On his new album, " Standards, " the songwriter who rose to prominence fronting the Commotions in the 1980s kicked things into a more rocking gear
223 2015 NEWS Austin . SATURDAY Steve Wynn and Jon Langford at Continental Club. From his L.A. days fronting the Dream Syndicate to his participation in collaborations su
224 2015 NEWS STLouis addition, it issued bonds backed by a series of Minneapolis convention center taxes, fronting an additional $150 million for stadium construction. Thos
225 2015 ACAD LangSpeechHearing syllable deletion). Error patterns for which positional asymmetries have been documented (velar fronting, stopping of fricatives and affricates, and clus
226 2015 ACAD LangSpeechHearing to be underrepresented across tests included weak syllable deletion, reduction of word-final clusters, fronting of velars, gliding of liquids, and deaffrica
227 2015 ACAD LangSpeechHearing child who pronounces key as di is said to apply the phonological process of velar fronting to convert /ki/ to /ti/ and then the process of prevocalic voici
228 2015 ACAD LangSpeechHearing are displayed in a child's speech. Some error patterns, such as velar fronting and stopping of fricatives, are much more prevalent in word-initial positio
229 2015 ACAD LangSpeechHearing , 2012; Smit, 1993a). Thus, if the opportunities for velar fronting consist mostly of word-final velars, the error pattern of velar fronting may go unrecogr
230 2015 ACAD LangSpeechHearing opportunities for velar fronting consist mostly of word-final velars, the error pattern of velar fronting may go unrecognized in a child who fronts velars
231 2015 ACAD LangSpeechHearing to the error patterns listed in the DEAP. We separated the error pattern of fronting into velar fronting and palatal fronting, and we did not examine the
232 2015 ACAD LangSpeechHearing patterns listed in the DEAP. We separated the error pattern of fronting into velar fronting and palatal fronting, and we did not examine the error patte
233 2015 ACAD LangSpeechHearing the DEAP. We separated the error pattern of fronting into velar fronting and palatal fronting, and we did not examine the error pattern of vocalization.
234 2015 ACAD LangSpeechHearing the difference between bus and buzz, must learn the appropriate consonant--vowel ratio. # Fronting of Velars # The error pattern of velar fronting occ
235 2015 ACAD LangSpeechHearing the appropriate consonant--vowel ratio. # Fronting of Velars # The error pattern of velar fronting occurs when a velar phoneme is replaced by an alvec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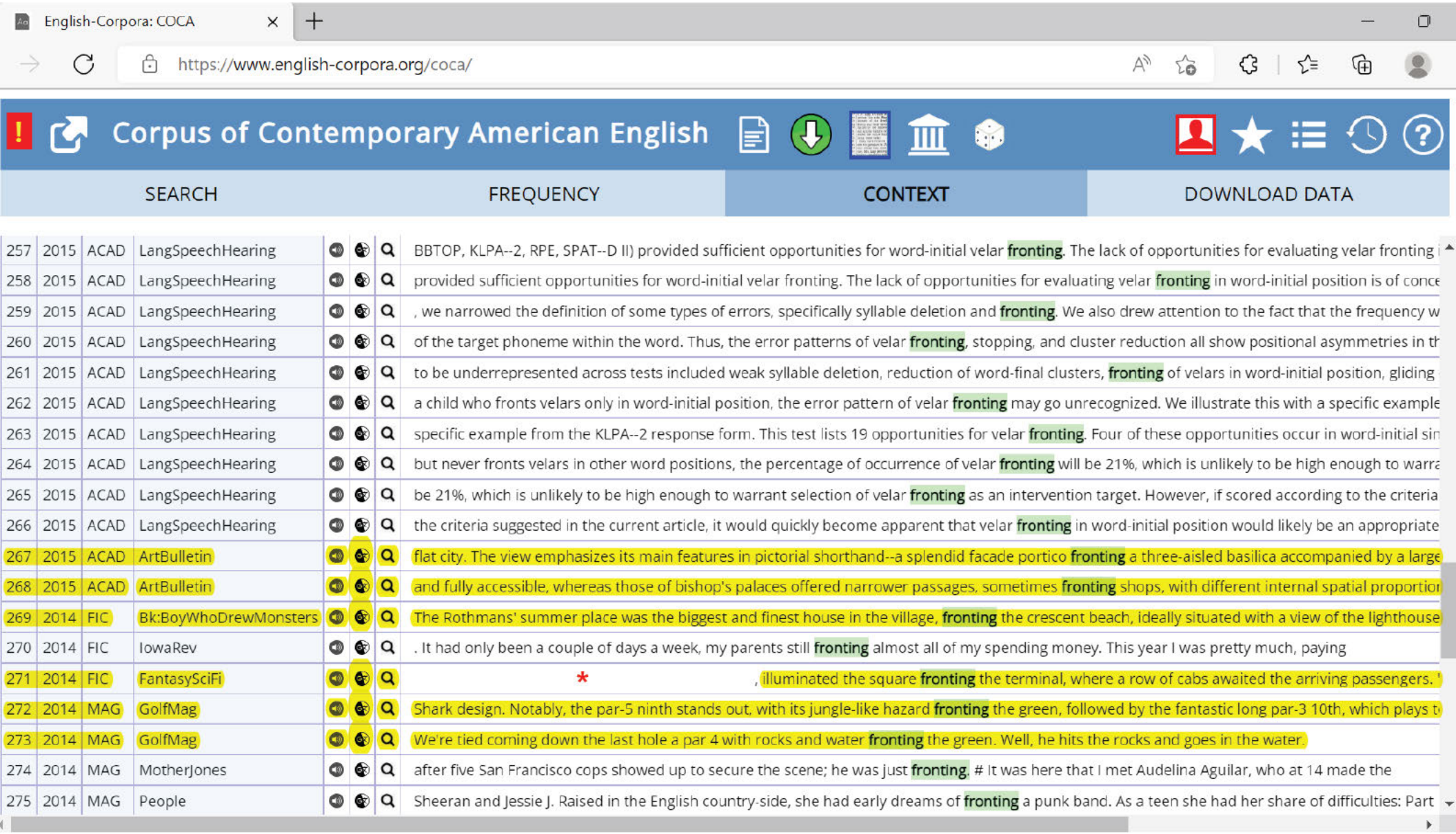
238 2015 ACAD LangSpeechHearing , fishing, swimming, and jumping) not be included as opportunities for velar fronting, given that adult speakers of many dialects of American English fr
239 2015 ACAD LangSpeechHearing (Gordon, 2004a; Schneider, 2004). # Positional asymmetries in the fronting of velars to alveolars have been well documented in the literature. Specifica
240 2015 ACAD LangSpeechHearing have been well documented in the literature. Specifically, it has been found that fronting of word-initial velars is much more common than fronting of
241 2015 ACAD LangSpeechHearing , it has been found that fronting of word-initial velars is much more common than fronting of word-final velars. The majority of these studies report on
242 2015 ACAD LangSpeechHearing , it is important that a test contains sufficient opportunities for evaluating word-initial velars. # Fronting of Palatals # The error pattern of palatal fronti
243 2015 ACAD LangSpeechHearing opportunities for evaluating word-initial velars. # Fronting of Palatals # The error pattern of palatal fronting occurs when a palatal phoneme is replace
244 2015 ACAD LangSpeechHearing when a palatal phoneme is replaced by an alveolar phoneme. We recommend that the fronting of palatals be assessed independently from the frontin
245 2015 ACAD LangSpeechHearing alveolar phoneme. We recommend that the fronting of palatals be assessed independently from the fronting of velars, given that velar fronting resolve
246 2015 ACAD LangSpeechHearing fronting of palatals be assessed independently from the fronting of velars, given that velar fronting resolves earlier than palatal fronting in typically de
247 2015 ACAD LangSpeechHearing independently from the fronting of velars, given that velar fronting resolves earlier than palatal fronting in typically developing children (Stoel-Gammo
248 2015 ACAD LangSpeechHearing by Vihman and Greenlee (1987), who found a higher incidence of palatal fronting than velar fronting in 11 typically developing children at 36 months. T
249 2015 ACAD LangSpeechHearing Greenlee (1987), who found a higher incidence of palatal fronting than velar fronting in 11 typically developing children at 36 months. Two of the 3-yea
250 2015 ACAD LangSpeechHearing (Dyson & Paden, 1983). # The positional asymmetry found for the fronting of velars does not appear to hold for palatals. Smit (1993a) reported
251 2015 ACAD LangSpeechHearing velars does not appear to hold for palatals. Smit (1993a) reported that fronting of palatals (with manner preserved) occurs frequently in both the word
252 2015 ACAD LangSpeechHearing siz or chair????, these errors are better explained as palatal fronting or dentalization that occurs in addition to deaffrication. Given that deaffrication oc
253 2015 ACAD LangSpeechHearing . Error patterns for which positional asymmetries have been documented (i. e., velar fronting, stopping of fricatives and affricates, and cluster reductio
254 2015 ACAD LangSpeechHearing initial phoneme in the word cat provides an opportunity for the error pattern of velar fronting in word-initial position, but the initial phoneme in the w
255 2015 ACAD LangSpeechHearing deletion, cluster reduction in word-initial position, prevocalic voicing, postvocalic devoicing, palatal fronting, and stopping of fricatives and affricates. O
256 2015 ACAD LangSpeechHearing # All tests, except the SPAT--D II, provided sufficient opportunities for assessing velar fronting in word-final position, but only five tests (AAPS--4, BBTOP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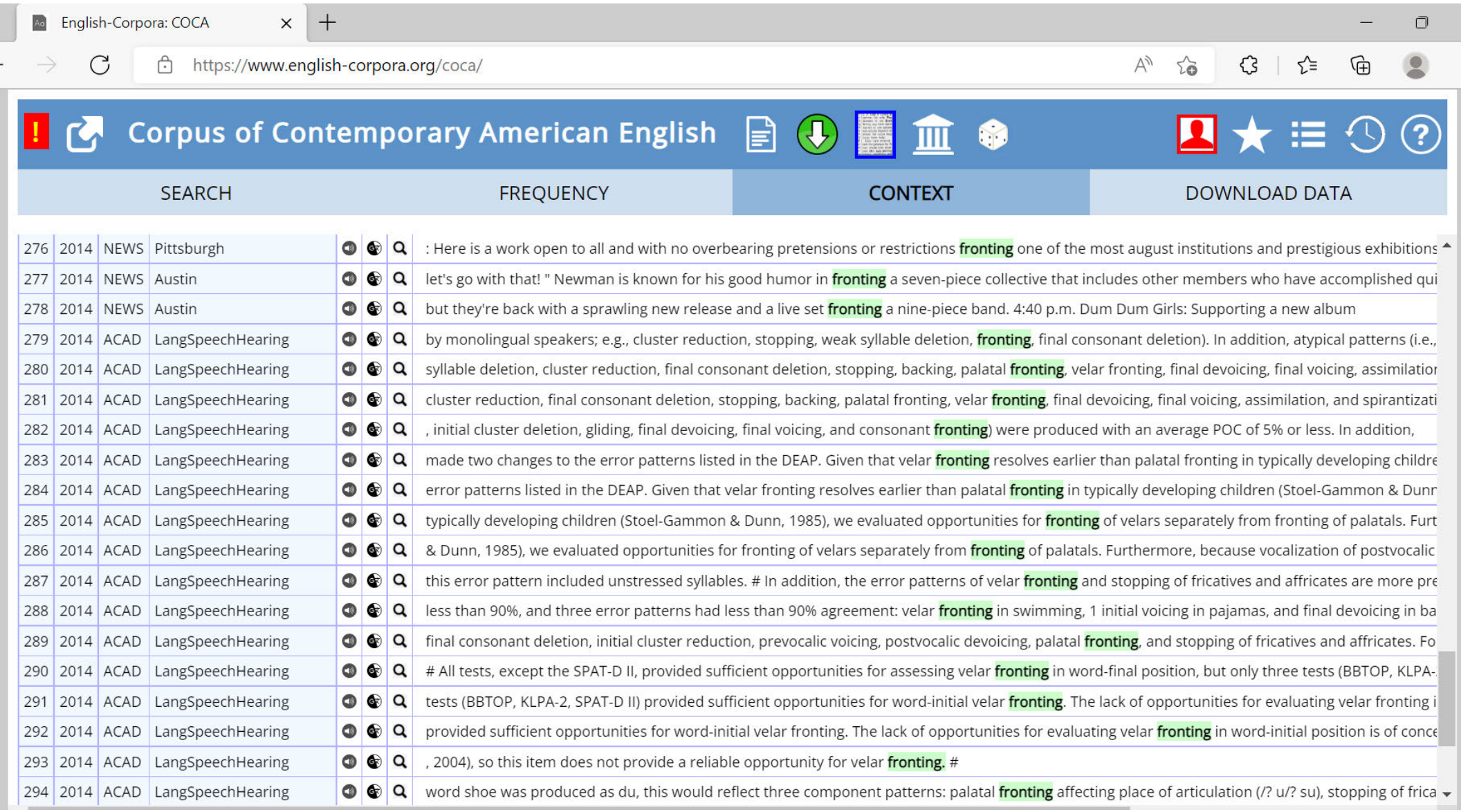
257 2015 ACAD LangSpeechHearing BBTOP, KLPA--2, RPE, SPAT--D II) provided sufficient opportunities for word-initial velar fronting. The lack of opportunities for evaluating velar fronting
258 2015 ACAD LangSpeechHearing provided sufficient opportunities for word-initial velar fronting. The lack of opportunities for evaluating velar fronting in word-initial position is of conce
259 2015 ACAD LangSpeechHearing , we narrowed the definition of some types of errors, specifically syllable deletion and fronting. We also drew attention to the fact that the frequency w
260 2015 ACAD LangSpeechHearing of the target phoneme within the word. Thus, the error patterns of velar fronting, stopping, and cluster reduction all show positional asymmetries in th
261 2015 ACAD LangSpeechHearing to be underrepresented across tests included weak syllable deletion, reduction of word-final clusters, fronting of velars in word-initial position, gliding
262 2015 ACAD LangSpeechHearing a child who fronts velars only in word-initial position, the error pattern of velar fronting may go unrecognized. We illustrate this with a specific example
263 2015 ACAD LangSpeechHearing specific example from the KLPA--2 response form. This test lists 19 opportunities for velar fronting. Four of these opportunities occur in word-initial sin
264 2015 ACAD LangSpeechHearing but never fronts velars in other word positions, the percentage of occurrence of velar fronting will be 21%, which is unlikely to be high enough to warra
265 2015 ACAD LangSpeechHearing be 21%, which is unlikely to be high enough to warrant selection of velar fronting as an intervention target. However, if scored according to the criteria
266 2015 ACAD LangSpeechHearing the criteria suggested in the current article, it would quickly become apparent that velar fronting in word-initial position would likely be an appropriate
267 2015 ACAD ArtBulletin flat city. The view emphasizes its main features in pictorial shorthand--a splendid facade portico fronting a three-aisled basilica accompanied by a large
268 2015 ACAD ArtBulletin and fully accessible, whereas those of bishop's palaces offered narrower passages, sometimes fronting shops, with different internal spatial proportion
269 2014 FIC Bk:BoyWhoDrewMonsters The Rothmans' summer place was the biggest and finest house in the village, fronting the crescent beach, ideally situated with a view of the lighthouse
270 2014 FIC IowaRev . It had only been a couple of days a week, my parents still fronting almost all of my spending money. This year I was pretty much, paying
271 2014 FIC FantasySciFi * , illuminated the square fronting the terminal, where a row of cabs awaited the arriving passengers.
272 2014 MAG GolfMag Shark design. Notably, the par-5 ninth stands out, with its jungle-like hazard fronting the green, followed by the fantastic long par-3 10th, which plays t
273 2014 MAG GolfMag We're tied coming down the last hole a par 4 with rocks and water fronting the green. Well, he hits the rocks and goes in the water.
274 2014 MAG MotherJones after five San Francisco cops showed up to secure the scene; he was just fronting. # It was here that I met Audelina Aguilar, who at 14 made the
275 2014 MAG People Sheeran and Jessie J. Raised in the English country-side, she had early dreams of fronting a punk band. As a teen she had her share of difficulties: Part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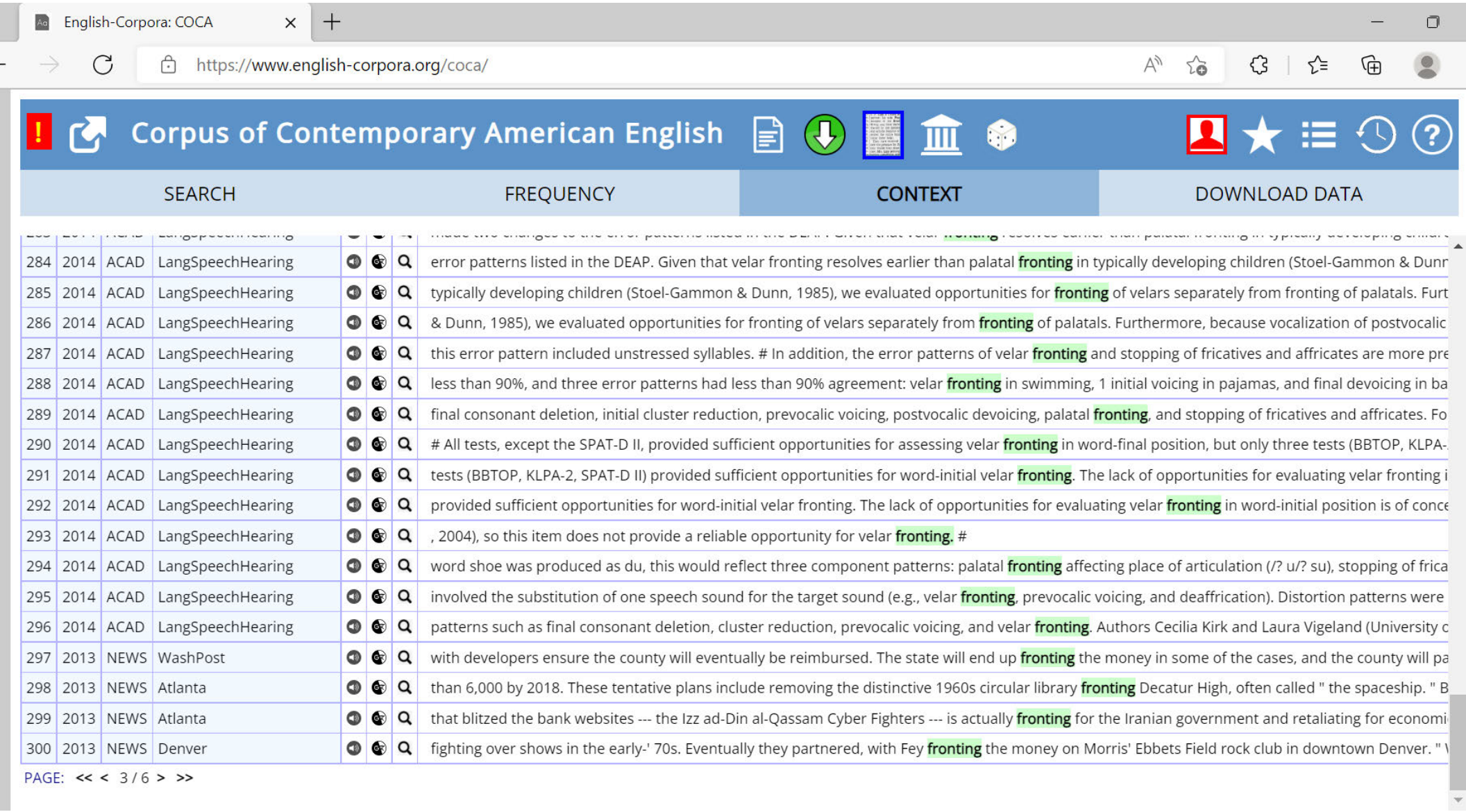
276 2014 NEWS Pittsburgh : Here is a work open to all and with no overbearing pretensions or restrictions fronting one of the most august institutions and prestigious exhibitions
277 2014 NEWS Austin let's go with that! " Newman is known for his good humor in fronting a seven-piece collective that includes other members who have accomplished qui
278 2014 NEWS Austin but they're back with a sprawling new release and a live set fronting a nine-piece band. 4:40 p.m. Dum Dum Girls: Supporting a new album
279 2014 ACAD LangSpeechHearing by monolingual speakers; e.g., cluster reduction, stopping, weak syllable deletion, fronting, final consonant deletion). In addition, atypical patterns (i.e.,
280 2014 ACAD LangSpeechHearing syllable deletion, cluster reduction, final consonant deletion, stopping, backing, palatal fronting, velar fronting, final devoicing, final voicing, assimilatio
281 2014 ACAD LangSpeechHearing cluster reduction, final consonant deletion, stopping, backing, palatal fronting, velar fronting, final devoicing, final voicing, assimilation, and spirantizati
282 2014 ACAD LangSpeechHearing , initial cluster deletion, gliding, final devoicing, final voicing, and consonant fronting) were produced with an average POC of 5% or less. In addition,
283 2014 ACAD LangSpeechHearing made two changes to the error patterns listed in the DEAP. Given that velar fronting resolves earlier than palatal fronting in typically developing childre
284 2014 ACAD LangSpeechHearing error patterns listed in the DEAP. Given that velar fronting resolves earlier than palatal fronting in typically developing children (Stoel-Gammon & Dunn
285 2014 ACAD LangSpeechHearing typically developing children (Stoel-Gammon & Dunn, 1985), we evaluated opportunities for fronting of velars separately from fronting of palatals. Furt
286 2014 ACAD LangSpeechHearing & Dunn, 1985), we evaluated opportunities for fronting of velars separately from fronting of palatals. Furthermore, because vocalization of postvocalic
287 2014 ACAD LangSpeechHearing this error pattern included unstressed syllables. # In addition, the error patterns of velar fronting and stopping of fricatives and affricates are more pre
288 2014 ACAD LangSpeechHearing less than 90%, and three error patterns had less than 90% agreement: velar fronting in swimming, 1 initial voicing in pajamas, and final devoicing in ba
289 2014 ACAD LangSpeechHearing final consonant deletion, initial cluster reduction, prevocalic voicing, postvocalic devoicing, palatal fronting, and stopping of fricatives and affricates. Fo
290 2014 ACAD LangSpeechHearing # All tests, except the SPAT-D II, provided sufficient opportunities for assessing velar fronting in word-final position, but only three tests (BBTOP, KLPA-
291 2014 ACAD LangSpeechHearing tests (BBTOP, KLPA-2, SPAT-D II) provided sufficient opportunities for word-initial velar fronting. The lack of opportunities for evaluating velar fronting i
292 2014 ACAD LangSpeechHearing provided sufficient opportunities for word-initial velar fronting. The lack of opportunities for evaluating velar fronting in word-initial position is of conce
293 2014 ACAD LangSpeechHearing , 2004), so this item does not provide a reliable opportunity for velar fronting. #
294 2014 ACAD LangSpeechHearing word shoe was produced as du, this would reflect three component patterns: palatal fronting affecting place of articulation (/? u/? su), stopping of frica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284 2014 ACAD LangSpeechHearing error patterns listed in the DEAP. Given that velar fronting resolves earlier than palatal fronting in typically developing children (Stoel-Gammon & Dunn
285 2014 ACAD LangSpeechHearing typically developing children (Stoel-Gammon & Dunn, 1985), we evaluated opportunities for fronting of velars separately from fronting of palatals. Furt
286 2014 ACAD LangSpeechHearing & Dunn, 1985), we evaluated opportunities for fronting of velars separately from fronting of palatals. Furthermore, because vocalization of postvocalic
287 2014 ACAD LangSpeechHearing this error pattern included unstressed syllables. # In addition, the error patterns of velar fronting and stopping of fricatives and affricates are more pre
288 2014 ACAD LangSpeechHearing less than 90%, and three error patterns had less than 90% agreement: velar fronting in swimming, 1 initial voicing in pajamas, and final devoicing in ba
289 2014 ACAD LangSpeechHearing final consonant deletion, initial cluster reduction, prevocalic voicing, postvocalic devoicing, palatal fronting, and stopping of fricatives and affricates. Fo
290 2014 ACAD LangSpeechHearing # All tests, except the SPAT-D II, provided sufficient opportunities for assessing velar fronting in word-final position, but only three tests (BBTOP, KLPA-
291 2014 ACAD LangSpeechHearing tests (BBTOP, KLPA-2, SPAT-D II) provided sufficient opportunities for word-initial velar fronting. The lack of opportunities for evaluating velar fronting i
292 2014 ACAD LangSpeechHearing provided sufficient opportunities for word-initial velar fronting. The lack of opportunities for evaluating velar fronting in word-initial position is of conce
293 2014 ACAD LangSpeechHearing , 2004), so this item does not provide a reliable opportunity for velar fronting. #
294 2014 ACAD LangSpeechHearing word shoe was produced as du, this would reflect three component patterns: palatal fronting affecting place of articulation (/? u/? su), stopping of frica
295 2014 ACAD LangSpeechHearing involved the substitution of one speech sound for the target sound (e.g., velar fronting, prevocalic voicing, and deaffrication). Distortion patterns were
296 2014 ACAD LangSpeechHearing patterns such as final consonant deletion, cluster reduction, prevocalic voicing, and velar fronting. Authors Cecilia Kirk and Laura Vigeland (University c
297 2013 NEWS WashPost with developers ensure the county will eventually be reimbursed. The state will end up fronting the money in some of the cases, and the county will pa
298 2013 NEWS Atlanta than 6,000 by 2018. These tentative plans include removing the distinctive 1960s circular library fronting Decatur High, often called " the spaceship. " B
299 2013 NEWS Atlanta that blitzed the bank websites --- the Izz ad-Din al-Qassam Cyber Fighters --- is actually fronting for the Iranian government and retaliating for economi
300 2013 NEWS Denver fighting over shows in the early-' 70s. Eventually they partnered, with Fey fronting the money on Morris' Ebbets Field rock club in downtown Denver. "
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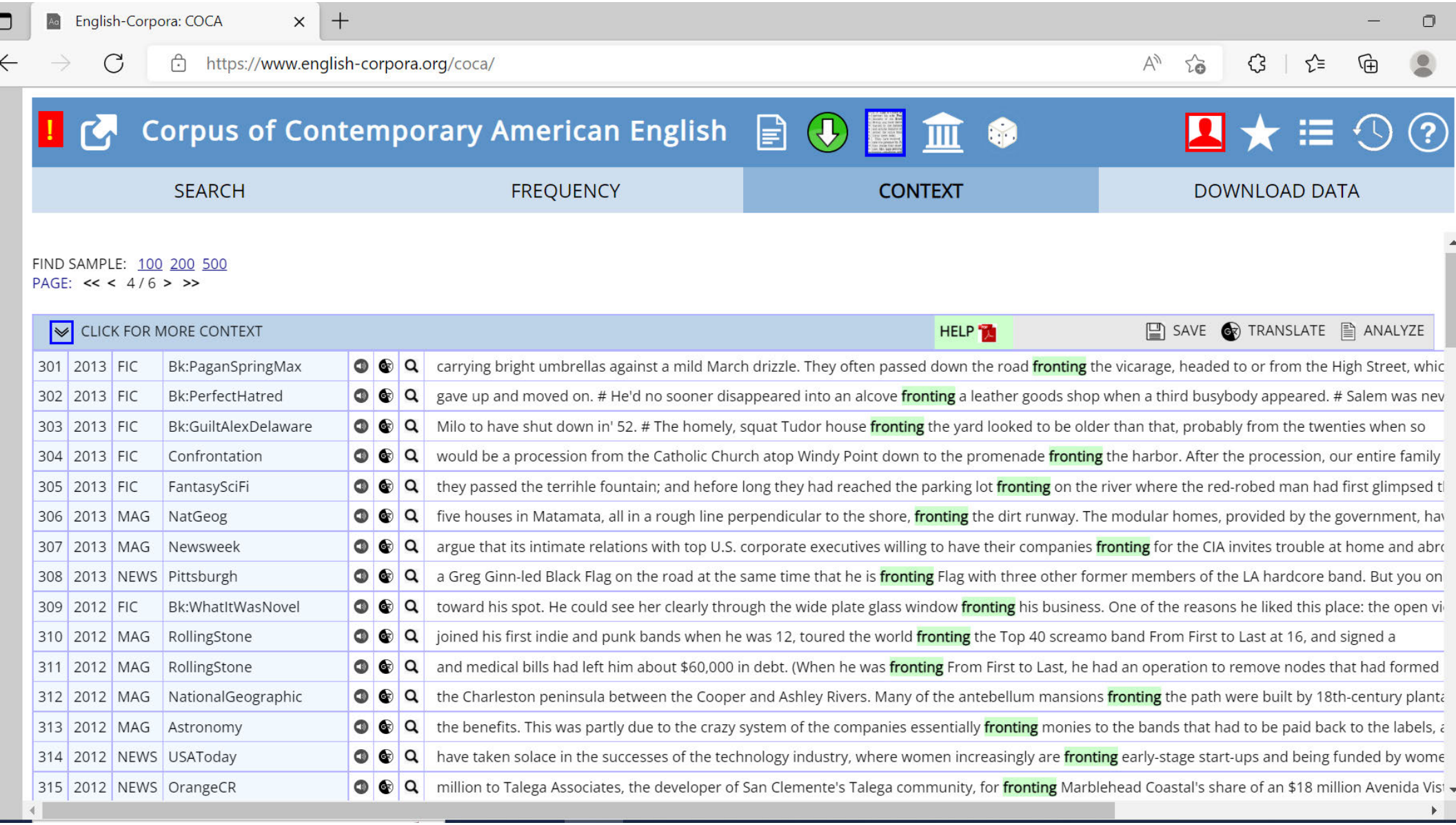
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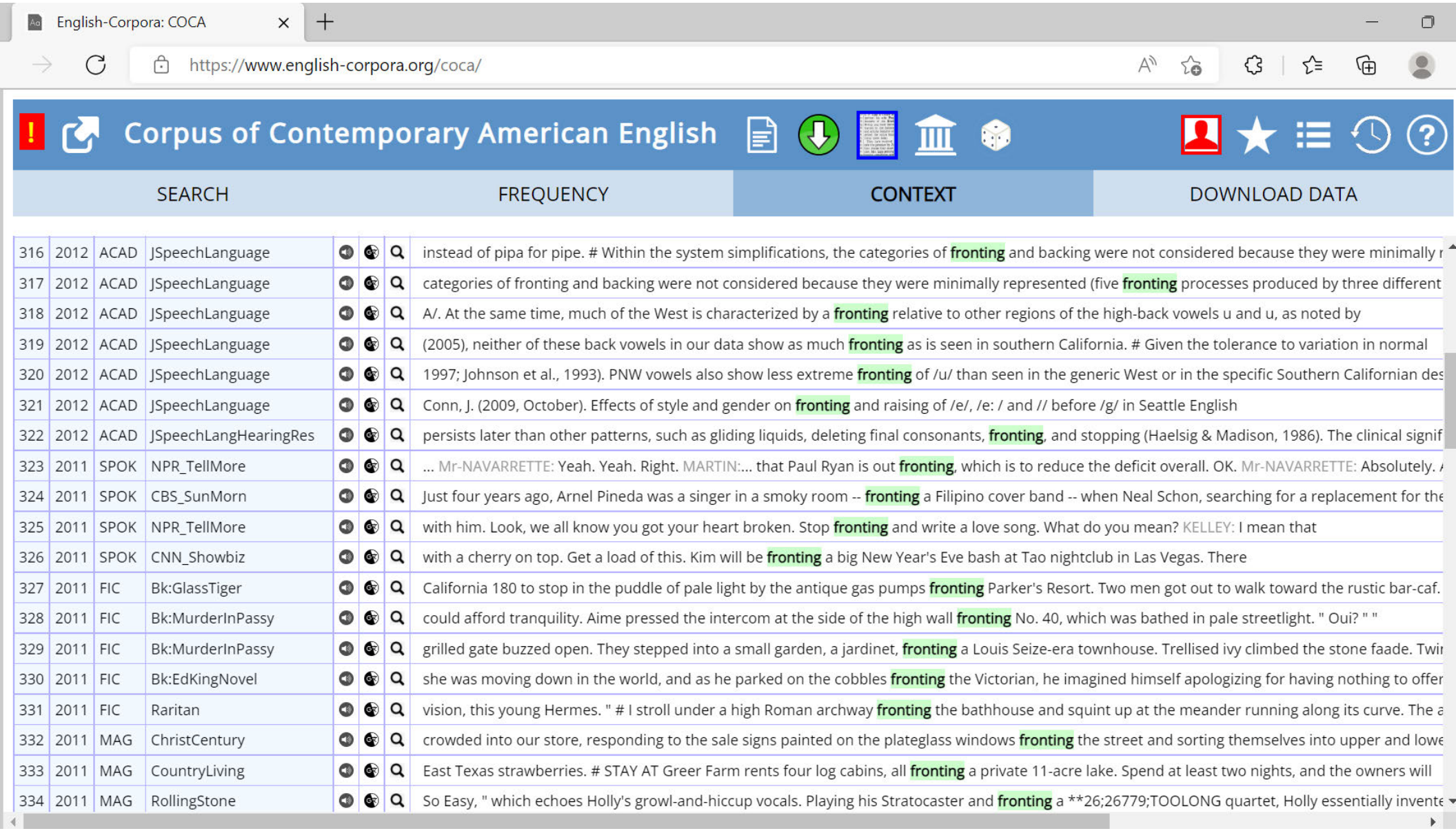
301 2013 FIC Bk:PaganSpringMax carrying bright umbrellas against a mild March drizzle. They often passed down the road fronting the vicarage, headed to or from the High Street, whic
302 2013 FIC Bk:PerfectHatred gave up and moved on. # He'd no sooner disappeared into an alcove fronting a leather goods shop when a third busybody appeared. # Salem was nev
303 2013 FIC Bk:GuiltAlexDelaware Milo to have shut down in' 52. # The homely, squat Tudor house fronting the yard looked to be older than that, probably from the twenties when so
304 2013 FIC Confrontation would be a procession from the Catholic Church atop Windy Point down to the promenade fronting the harbor. After the procession, our entire family
305 2013 FIC FantasySciFi they passed the terrihle fountain; and hefore long they had reached the parking lot fronting on the river where the red-robed man had first glimpsed t
306 2013 MAG NatGeog five houses in Matamata, all in a rough line perpendicular to the shore, fronting the dirt runway. The modular homes, provided by the government, hav
307 2013 MAG Newsweek argue that its intimate relations with top U.S. corporate executives willing to have their companies fronting for the CIA invites trouble at home and abro
308 2013 NEWS Pittsburgh a Greg Ginn-led Black Flag on the road at the same time that he is fronting Flag with three other former members of the LA hardcore band. But you on
309 2012 FIC Bk:WhatItWasNovel toward his spot. He could see her clearly through the wide plate glass window fronting his business. One of the reasons he liked this place: the open vi
310 2012 MAG RollingStone joined his first indie and punk bands when he was 12, toured the world fronting the Top 40 screamo band From First to Last at 16, and signed a
311 2012 MAG RollingStone and medical bills had left him about $60,000 in debt. (When he was fronting From First to Last, he had an operation to remove nodes that had formed
312 2012 MAG NationalGeographic the Charleston peninsula between the Cooper and Ashley Rivers. Many of the antebellum mansions fronting the path were built by 18th-century planta
313 2012 MAG Astronomy the benefits. This was partly due to the crazy system of the companies essentially fronting monies to the bands that had to be paid back to the labels, a
314 2012 NEWS USAToday have taken solace in the successes of the technology industry, where women increasingly are fronting early-stage start-ups and being funded by wome
315 2012 NEWS OrangeCR million to Talega Associates, the developer of San Clemente's Talega community, for fronting Marblehead Coastal's share of an $18 million Avenida Vis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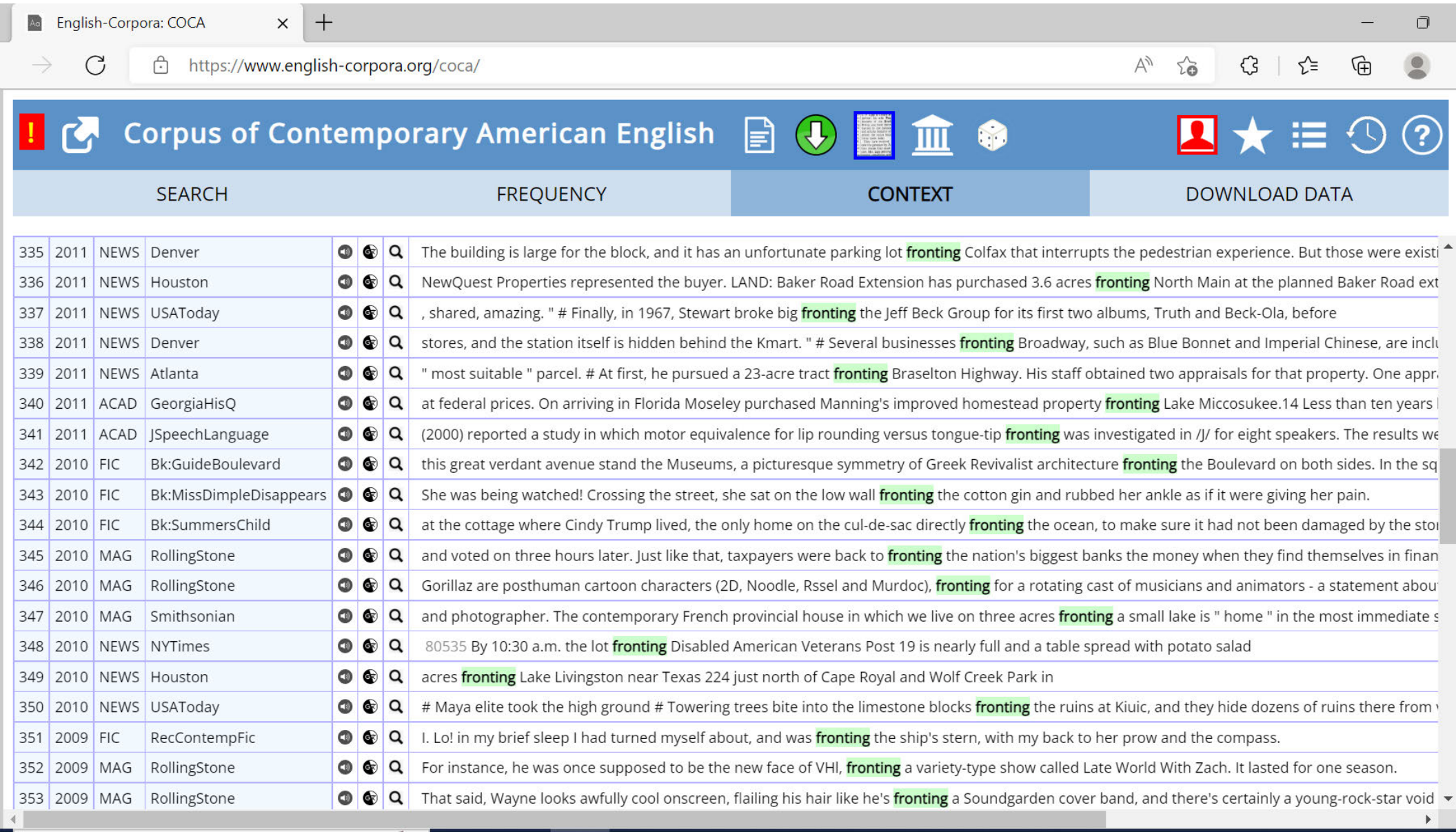
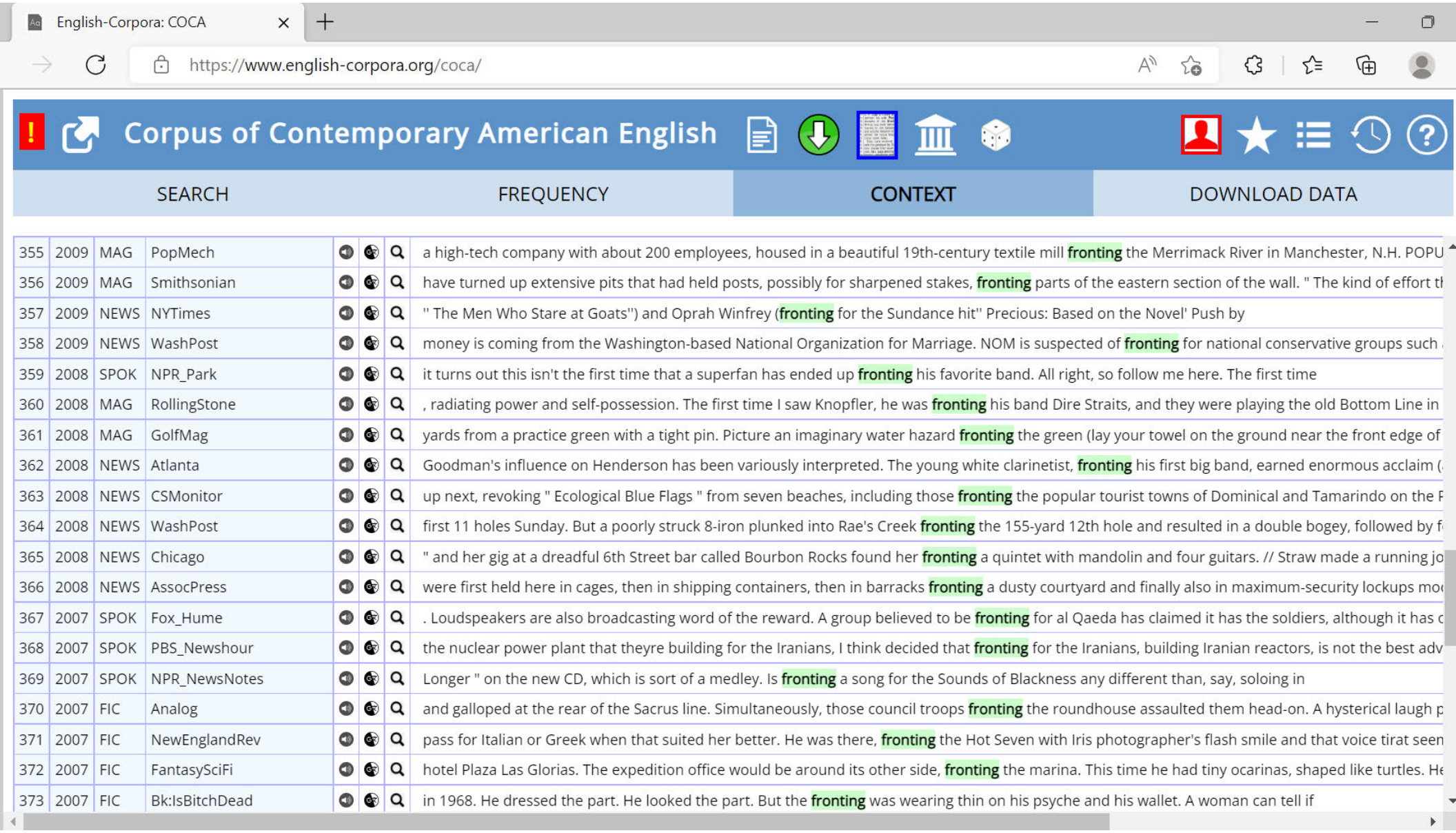
316 2012 ACAD JSpeechLanguage instead of pipa for pipe. # Within the system simplifications, the categories of fronting and backing were not considered because they were minimally
317 2012 ACAD JSpeechLanguage categories of fronting and backing were not considered because they were minimally represented (five fronting processes produced by three different
318 2012 ACAD JSpeechLanguage A/. At the same time, much of the West is characterized by a fronting relative to other regions of the high-back vowels u and u, as noted by
319 2012 ACAD JSpeechLanguage (2005), neither of these back vowels in our data show as much fronting as is seen in southern California. # Given the tolerance to variation in normal
320 2012 ACAD JSpeechLanguage 1997; Johnson et al., 1993). PNW vowels also show less extreme fronting of /u/ than seen in the generic West or in the specific Southern Californian des
321 2012 ACAD JSpeechLanguage Conn, J. (2009, October). Effects of style and gender on fronting and raising of /e/, /e: / and // before /g/ in Seattle English
322 2012 ACAD JSpeechLangHearingRes persists later than other patterns, such as gliding liquids, deleting final consonants, fronting, and stopping (Haelsig & Madison, 1986). The clinical signif
323 2011 SPOK NPR_TellMore ... Mr-NAVARRETTE: Yeah. Yeah. Right. MARTIN:... that Paul Ryan is out fronting, which is to reduce the deficit overall. OK. Mr-NAVARRETTE: Absolutely.
324 2011 SPOK CBS_SunMorn Just four years ago, Arnel Pineda was a singer in a smoky room -- fronting a Filipino cover band -- when Neal Schon, searching for a replacement for the
325 2011 SPOK NPR_TellMore with him. Look, we all know you got your heart broken. Stop fronting and write a love song. What do you mean? KELLEY: I mean that
326 2011 SPOK CNN_Showbiz with a cherry on top. Get a load of this. Kim will be fronting a big New Year's Eve bash at Tao nightclub in Las Vegas. There
327 2011 FIC Bk:GlassTiger California 180 to stop in the puddle of pale light by the antique gas pumps fronting Parker's Resort. Two men got out to walk toward the rustic bar-caf.
328 2011 FIC Bk:MurderInPassy could afford tranquility. Aime pressed the intercom at the side of the high wall fronting No. 40, which was bathed in pale streetlight. " Oui? " "
329 2011 FIC Bk:MurderInPassy grilled gate buzzed open. They stepped into a small garden, a jardinet, fronting a Louis Seize-era townhouse. Trellised ivy climbed the stone faade. Twi
330 2011 FIC Bk:EdKingNovel she was moving down in the world, and as he parked on the cobbles fronting the Victorian, he imagined himself apologizing for having nothing to offer
331 2011 FIC Raritan vision, this young Hermes. " # I stroll under a high Roman archway fronting the bathhouse and squint up at the meander running along its curve. The a
332 2011 MAG ChristCentury crowded into our store, responding to the sale signs painted on the plateglass windows fronting the street and sorting themselves into upper and lowe
333 2011 MAG CountryLiving East Texas strawberries. # STAY AT Greer Farm rents four log cabins, all fronting a private 11-acre lake. Spend at least two nights, and the owners will
334 2011 MAG RollingStone So Easy, " which echoes Holly's growl-and-hiccup vocals. Playing his Stratocaster and fronting a **26;26779;TOOLONG quartet, Holly essentially invente



335	2011	NEWS	Denver				The building is large for the block, and it has an unfortunate parking lot **fronting** Colfax that interrupts the pedestrian experience. But those were existi
336	2011	NEWS	Houston				NewQuest Properties represented the buyer. LAND: Baker Road Extension has purchased 3.6 acres **fronting** North Main at the planned Baker Road ext
337	2011	NEWS	USAToday				, shared, amazing. " # Finally, in 1967, Stewart broke big **fronting** the Jeff Beck Group for its first two albums, Truth and Beck-Ola, before
338	2011	NEWS	Denver				stores, and the station itself is hidden behind the Kmart. " # Several businesses **fronting** Broadway, such as Blue Bonnet and Imperial Chinese, are inclu
339	2011	NEWS	Atlanta				" most suitable " parcel. # At first, he pursued a 23-acre tract **fronting** Braselton Highway. His staff obtained two appraisals for that property. One appr
340	2011	ACAD	GeorgiaHisQ				at federal prices. On arriving in Florida Moseley purchased Manning's improved homestead property **fronting** Lake Miccosukee.14 Less than ten years
341	2011	ACAD	JSpeechLanguage				(2000) reported a study in which motor equivalence for lip rounding versus tongue-tip **fronting** was investigated in /J/ for eight speakers. The results we
342	2010	FIC	Bk:GuideBoulevard				this great verdant avenue stand the Museums, a picturesque symmetry of Greek Revivalist architecture **fronting** the Boulevard on both sides. In the sq
343	2010	FIC	Bk:MissDimpleDisappears				She was being watched! Crossing the street, she sat on the low wall **fronting** the cotton gin and rubbed her ankle as if it were giving her pain.
344	2010	FIC	Bk:SummersChild				at the cottage where Cindy Trump lived, the only home on the cul-de-sac directly **fronting** the ocean, to make sure it had not been damaged by the sto
345	2010	MAG	RollingStone				and voted on three hours later. Just like that, taxpayers were back to **fronting** the nation's biggest banks the money when they find themselves in finan
346	2010	MAG	RollingStone				Gorillaz are posthuman cartoon characters (2D, Noodle, Rssel and Murdoc), **fronting** for a rotating cast of musicians and animators - a statement abou
347	2010	MAG	Smithsonian				and photographer. The contemporary French provincial house in which we live on three acres **fronting** a small lake is " home " in the most immediate s
348	2010	NEWS	NYTimes				80535 By 10:30 a.m. the lot **fronting** Disabled American Veterans Post 19 is nearly full and a table spread with potato salad
349	2010	NEWS	Houston				acres **fronting** Lake Livingston near Texas 224 just north of Cape Royal and Wolf Creek Park in
350	2010	NEWS	USAToday				# Maya elite took the high ground # Towering trees bite into the limestone blocks **fronting** the ruins at Kiuic, and they hide dozens of ruins there from
351	2009	FIC	RecContempFic				I. Lo! in my brief sleep I had turned myself about, and was **fronting** the ship's stern, with my back to her prow and the compass.
352	2009	MAG	RollingStone				For instance, he was once supposed to be the new face of VHl, **fronting** a variety-type show called Late World With Zach. It lasted for one season.
353	2009	MAG	RollingStone				That said, Wayne looks awfully cool onscreen, flailing his hair like he's **fronting** a Soundgarden cover band, and there's certainly a young-rock-star void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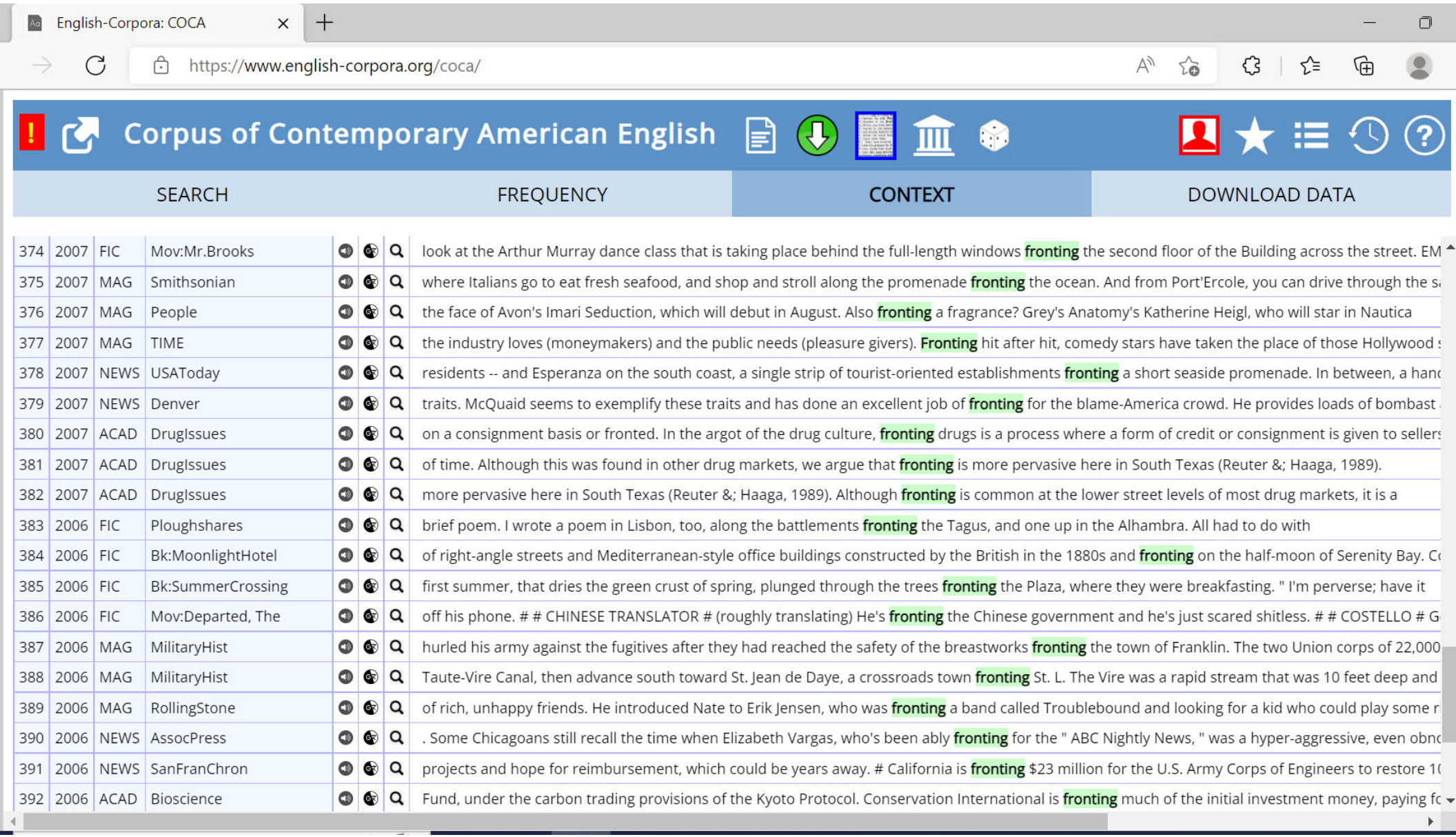
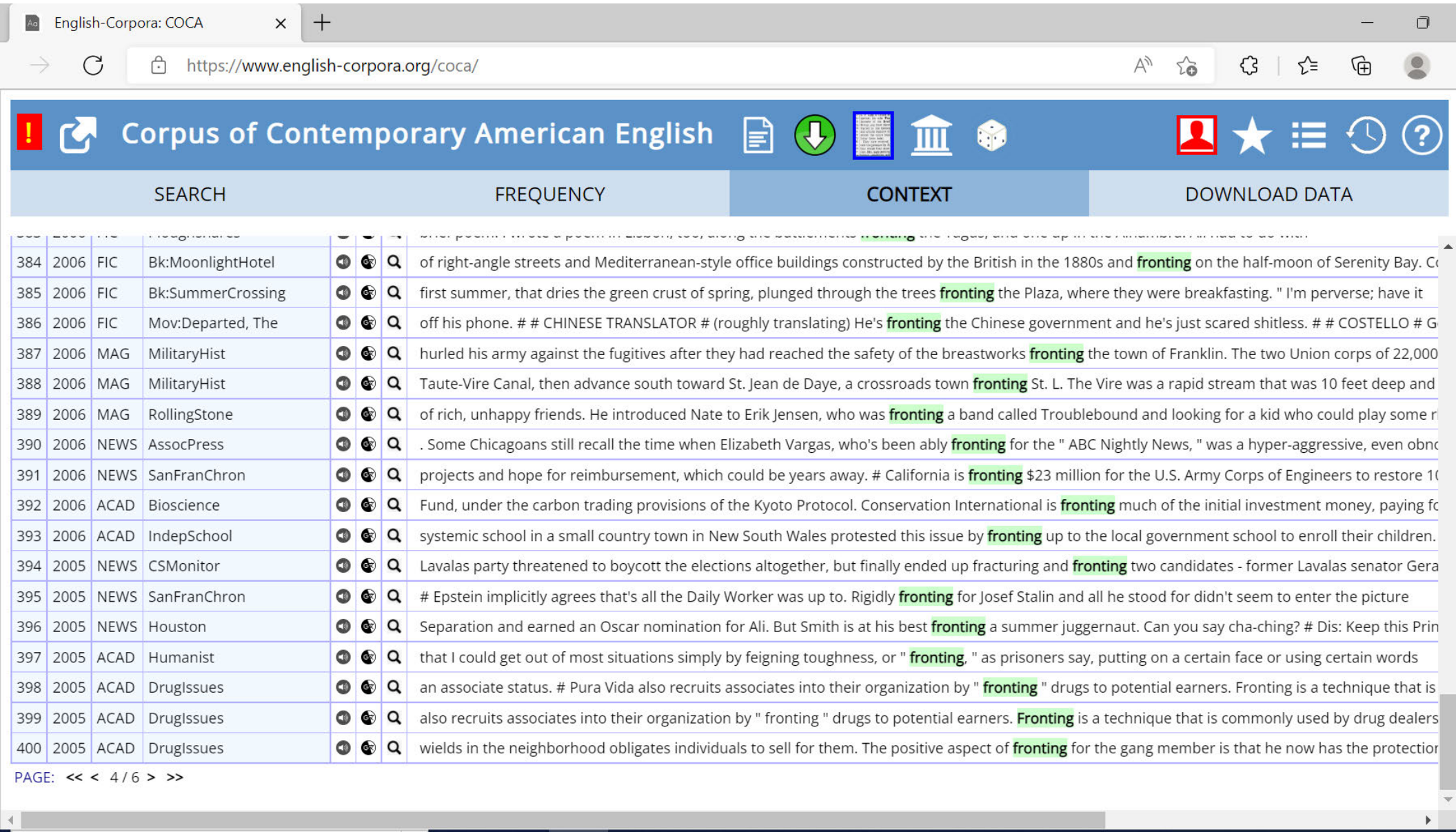
355 2009 MAG PopMech a high-tech company with about 200 employees, housed in a beautiful 19th-century textile mill fronting the Merrimack River in Manchester, N.H. POPU
356 2009 MAG Smithsonian have turned up extensive pits that had held posts, possibly for sharpened stakes, fronting parts of the eastern section of the wall. " The kind of effort th
357 2009 NEWS NYTimes " The Men Who Stare at Goats") and Oprah Winfrey (fronting for the Sundance hit" Precious: Based on the Novel' Push by
358 2009 NEWS WashPost money is coming from the Washington-based National Organization for Marriage. NOM is suspected of fronting for national conservative groups such
359 2008 SPOK NPR_Park it turns out this isn't the first time that a superfan has ended up fronting his favorite band. All right, so follow me here. The first time
360 2008 MAG RollingStone , radiating power and self-possession. The first time I saw Knopfler, he was fronting his band Dire Straits, and they were playing the old Bottom Line in
361 2008 MAG GolfMag yards from a practice green with a tight pin. Picture an imaginary water hazard fronting the green (lay your towel on the ground near the front edge of
362 2008 NEWS Atlanta Goodman's influence on Henderson has been variously interpreted. The young white clarinetist, fronting his first big band, earned enormous acclaim (
363 2008 NEWS CSMonitor up next, revoking " Ecological Blue Flags " from seven beaches, including those fronting the popular tourist towns of Dominical and Tamarindo on the P
364 2008 NEWS WashPost first 11 holes Sunday. But a poorly struck 8-iron plunked into Rae's Creek fronting the 155-yard 12th hole and resulted in a double bogey, followed by f
365 2008 NEWS Chicago " and her gig at a dreadful 6th Street bar called Bourbon Rocks found her fronting a quintet with mandolin and four guitars. // Straw made a running jo
366 2008 NEWS AssocPress were first held here in cages, then in shipping containers, then in barracks fronting a dusty courtyard and finally also in maximum-security lockups mo
367 2007 SPOK Fox_Hume . Loudspeakers are also broadcasting word of the reward. A group believed to be fronting for al Qaeda has claimed it has the soldiers, although it has c
368 2007 SPOK PBS_Newshour the nuclear power plant that theyre building for the Iranians, I think decided that fronting for the Iranians, building Iranian reactors, is not the best adv
369 2007 SPOK NPR_NewsNotes Longer " on the new CD, which is sort of a medley. Is fronting a song for the Sounds of Blackness any different than, say, soloing in
370 2007 FIC Analog and galloped at the rear of the Sacrus line. Simultaneously, those council troops fronting the roundhouse assaulted them head-on. A hysterical laugh p
371 2007 FIC NewEnglandRev pass for Italian or Greek when that suited her better. He was there, fronting the Hot Seven with Iris photographer's flash smile and that voice tirat seen
372 2007 FIC FantasySciFi hotel Plaza Las Glorias. The expedition office would be around its other side, fronting the marina. This time he had tiny ocarinas, shaped like turtles. He
373 2007 FIC Bk:IsBitchDead in 1968. He dressed the part. He looked the part. But the fronting was wearing thin on his psyche and his wallet. A woman can tell if



374	2007	FIC	Mov:Mr.Brooks		look at the Arthur Murray dance class that is taking place behind the full-length windows **fronting** the second floor of the Building across the street. EM
375	2007	MAG	Smithsonian		where Italians go to eat fresh seafood, and shop and stroll along the promenade **fronting** the ocean. And from Port'Ercole, you can drive through the s
376	2007	MAG	People		the face of Avon's Imari Seduction, which will debut in August. Also **fronting** a fragrance? Grey's Anatomy's Katherine Heigl, who will star in Nautica
377	2007	MAG	TIME		the industry loves (moneymakers) and the public needs (pleasure givers). **Fronting** hit after hit, comedy stars have taken the place of those Hollywood s
378	2007	NEWS	USAToday		residents -- and Esperanza on the south coast, a single strip of tourist-oriented establishments **fronting** a short seaside promenade. In between, a hanc
379	2007	NEWS	Denver		traits. McQuaid seems to exemplify these traits and has done an excellent job of **fronting** for the blame-America crowd. He provides loads of bombast
380	2007	ACAD	DrugIssues		on a consignment basis or fronted. In the argot of the drug culture, **fronting** drugs is a process where a form of credit or consignment is given to seller
381	2007	ACAD	DrugIssues		of time. Although this was found in other drug markets, we argue that **fronting** is more pervasive here in South Texas (Reuter &; Haaga, 1989).
382	2007	ACAD	DrugIssues		more pervasive here in South Texas (Reuter &; Haaga, 1989). Although **fronting** is common at the lower street levels of most drug markets, it is a
383	2006	FIC	Ploughshares		brief poem. I wrote a poem in Lisbon, too, along the battlements **fronting** the Tagus, and one up in the Alhambra. All had to do with
384	2006	FIC	Bk:MoonlightHotel		of right-angle streets and Mediterranean-style office buildings constructed by the British in the 1880s and **fronting** on the half-moon of Serenity Bay. C
385	2006	FIC	Bk:SummerCrossing		first summer, that dries the green crust of spring, plunged through the trees **fronting** the Plaza, where they were breakfasting. " I'm perverse; have it
386	2006	FIC	Mov:Departed, The		off his phone. # # CHINESE TRANSLATOR # (roughly translating) He's **fronting** the Chinese government and he's just scared shitless. # # COSTELLO # G
387	2006	MAG	MilitaryHist		hurled his army against the fugitives after they had reached the safety of the breastworks **fronting** the town of Franklin. The two Union corps of 22,000
388	2006	MAG	MilitaryHist		Taute-Vire Canal, then advance south toward St. Jean de Daye, a crossroads town **fronting** St. L. The Vire was a rapid stream that was 10 feet deep and
389	2006	MAG	RollingStone		of rich, unhappy friends. He introduced Nate to Erik Jensen, who was **fronting** a band called Troublebound and looking for a kid who could play some r
390	2006	NEWS	AssocPress		. Some Chicagoans still recall the time when Elizabeth Vargas, who's been ably **fronting** for the " ABC Nightly News, " was a hyper-aggressive, even obnc
391	2006	NEWS	SanFranChron		projects and hope for reimbursement, which could be years away. # California is **fronting** $23 million for the U.S. Army Corps of Engineers to restore 1(
392	2006	ACAD	Bioscience		Fund, under the carbon trading provisions of the Kyoto Protocol. Conservation International is **fronting** much of the initial investment money, paying fc



384	2006	FIC	Bk:MoonlightHotel			of right-angle streets and Mediterranean-style office buildings constructed by the British in the 1880s and **fronting** on the half-moon of Serenity Bay. C
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392	2006	ACAD	Bioscience			Fund, under the carbon trading provisions of the Kyoto Protocol. Conservation International is **fronting** much of the initial investment money, paying fc
393	2006	ACAD	IndepSchool			systemic school in a small country town in New South Wales protested this issue by **fronting** up to the local government school to enroll their children.
394	2005	NEWS	CSMonitor			Lavalas party threatened to boycott the elections altogether, but finally ended up fracturing and **fronting** two candidates - former Lavalas senator Gera
395	2005	NEWS	SanFranChron			# Epstein implicitly agrees that's all the Daily Worker was up to. Rigidly **fronting** for Josef Stalin and all he stood for didn't seem to enter the picture
396	2005	NEWS	Houston			Separation and earned an Oscar nomination for Ali. But Smith is at his best **fronting** a summer juggernaut. Can you say cha-ching? # Dis: Keep this Prin
397	2005	ACAD	Humanist			that I could get out of most situations simply by feigning toughness, or " **fronting**, " as prisoners say, putting on a certain face or using certain words
398	2005	ACAD	DrugIssues			an associate status. # Pura Vida also recruits associates into their organization by " **fronting** " drugs to potential earners. Fronting is a technique that is
399	2005	ACAD	DrugIssues			also recruits associates into their organization by " fronting " drugs to potential earners. **Fronting** is a technique that is commonly used by drug dealers
400	2005	ACAD	DrugIssues			wields in the neighborhood obligates individuals to sell for them. The positive aspect of **fronting** for the gang member is that he now has the protectior

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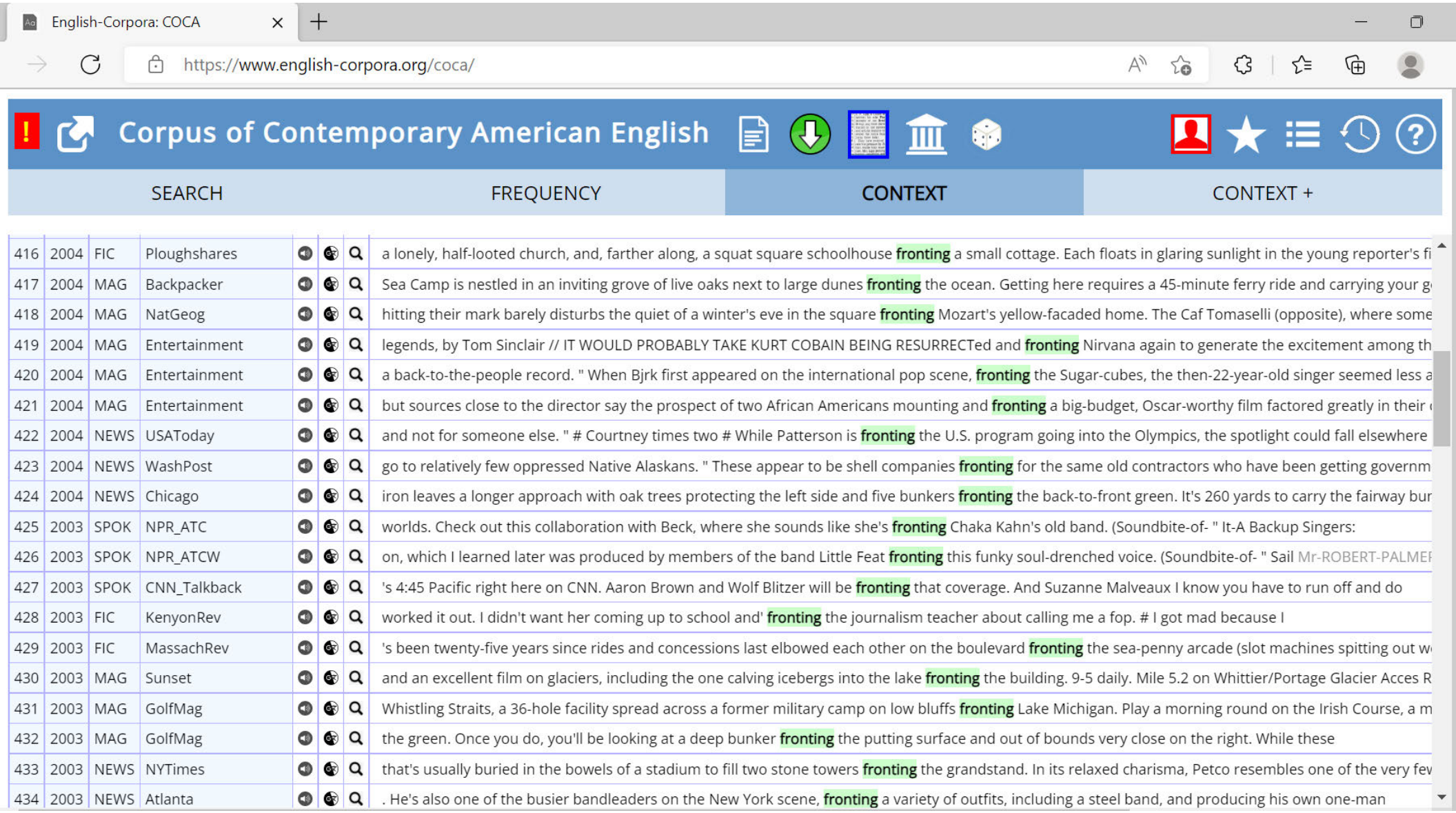
401	2005	FIC	Ploughshares		, wet earth even in summer. The building itself had Doric columns and balustrades fronting an L-shaped porch and other nice flourishes to make the familie
402	2005	FIC	BlackIssuesBook		Literally nothing. I had my writing. I had my two acres of land fronting a shoreline. I had my good health to keep it all going. The
403	2005	FIC	FantasySciFi		been shot down the week before she found out she was pregnant. He was fronting for the Turban-Kings but had developed a deep affection for their brand
404	2005	FIC	FantasySciFi		casings, cops tapping on doors with bad news, teenagers sequestered in closet-sized bedrooms fronting airshafts, listening to mind warping music on cheap
405	2005	FIC	Bk:BlindCurve		Hudson. The car bumped over old cobbles, then parked in a dirt yard fronting a derelict warehouse. Moonlight bounced off the river, creating shadows and
406	2005	FIC	Bk:JaneHisLordships		earth. Four square brick walls, half a dozen chimneys, a simple doorway fronting on the London to Gosport road, and a clutch of outbuildings behind: such
407	2005	FIC	Bk:JaneHisLordships		of his late bailiff's cottage here in Hampshire. If a former alehouse, fronting the juncture of two highways overrun by coaching traffic, with rough-hewn bear
408	2005	MAG	NatGeog		of horseshoes with rounds of fragrant pecorino (first Sunday of September). Sidebar Fronting the ornate Franciscan Basilica, Piazza Santa Croce is Florence
409	2005	MAG	MensHealth		* # " Wow, man, I think she
410	2005	MAG	Esquire		combo of goofy hair and a real rock pedigree. (He spent the eighties fronting the Del Fuegos.) His albums are hip enough for Debbie Harry and Lou
411	2005	MAG	TIME		and relentlessness of Oberst's agony (at 24, he has made nine albums fronting four bands -- most famously Bright Eyes, a rotating group of musically incline
412	2005	NEWS	Denver		helpful staff. # Venice: Hotel des Bains, **25;1060;TOOLONG. On Lido island fronting the Adriatic Sea, with shuttle service to Venice proper. # Information:
413	2004	SPOK	PBS_Tavis		that. We just don't go to jail. A lot of us are fronting and flossing. We're just not going to jail for it. Rabbi Leder
414	2004	FIC	Analog		The entrance side of the lab had been turned into a bunker, steel plate fronting concrete blocks. Three technicians were crowded in there, scrutinizing data
415	2004	FIC	Analog		here? " Ray said. Rokey chuckled and pointed to the section of castle fronting the landing field. " Let's see if that door works. " They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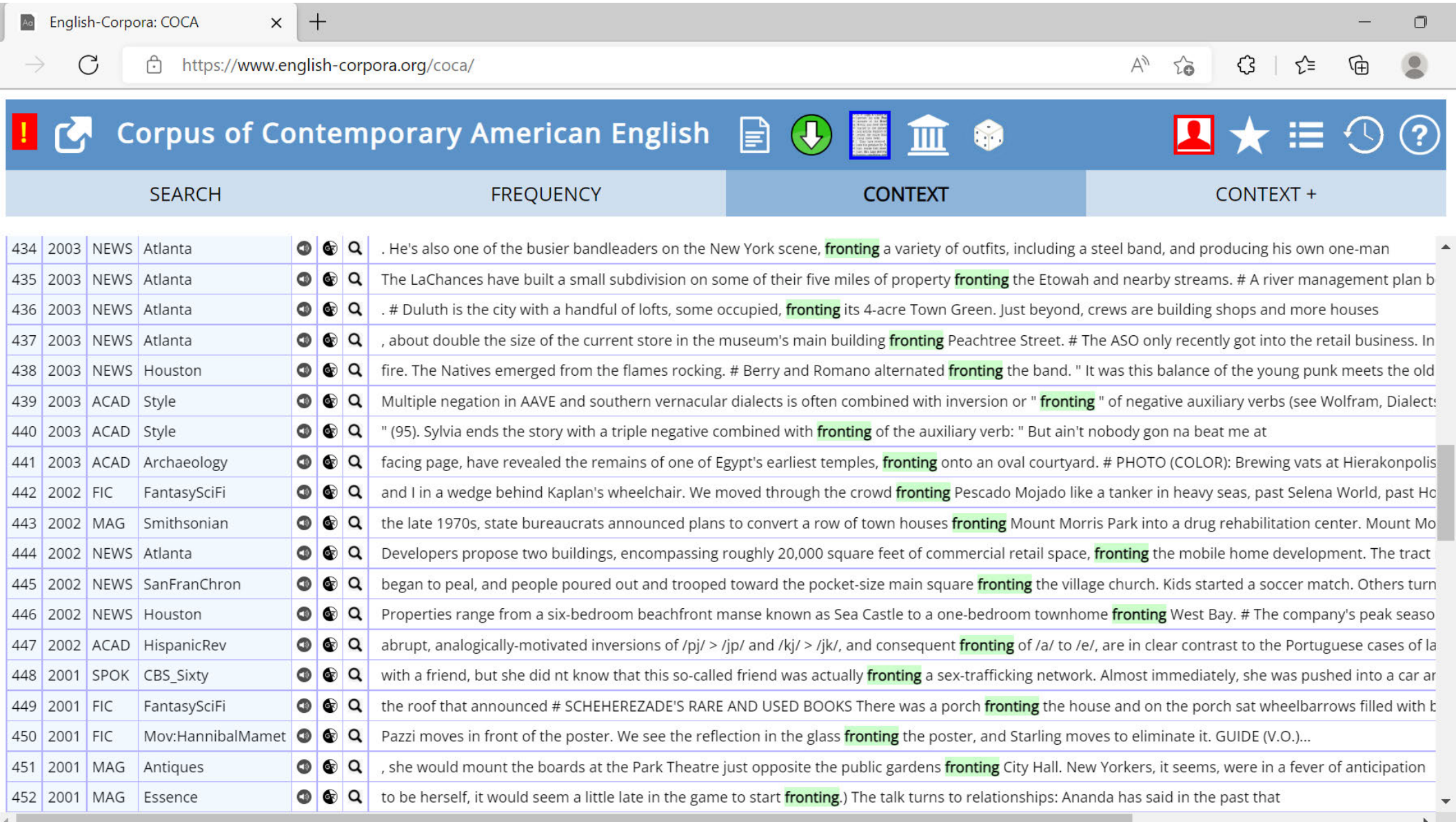
416 2004 FIC Ploughshares a lonely, half-looted church, and, farther along, a squat square schoolhouse fronting a small cottage. Each floats in glaring sunlight in the young reporter's fi
417 2004 MAG Backpacker Sea Camp is nestled in an inviting grove of live oaks next to large dunes fronting the ocean. Getting here requires a 45-minute ferry ride and carrying your g
418 2004 MAG NatGeog hitting their mark barely disturbs the quiet of a winter's eve in the square fronting Mozart's yellow-facaded home. The Caf Tomaselli (opposite), where some
419 2004 MAG Entertainment legends, by Tom Sinclair // IT WOULD PROBABLY TAKE KURT COBAIN BEING RESURRECTed and fronting Nirvana again to generate the excitement among th
420 2004 MAG Entertainment a back-to-the-people record. " When Bjrk first appeared on the international pop scene, fronting the Sugar-cubes, the then-22-year-old singer seemed less a
421 2004 MAG Entertainment but sources close to the director say the prospect of two African Americans mounting and fronting a big-budget, Oscar-worthy film factored greatly in their
422 2004 NEWS USAToday and not for someone else. " # Courtney times two # While Patterson is fronting the U.S. program going into the Olympics, the spotlight could fall elsewhere
423 2004 NEWS WashPost go to relatively few oppressed Native Alaskans. " These appear to be shell companies fronting for the same old contractors who have been getting governm
424 2004 NEWS Chicago iron leaves a longer approach with oak trees protecting the left side and five bunkers fronting the back-to-front green. It's 260 yards to carry the fairway bur
425 2003 SPOK NPR_ATC worlds. Check out this collaboration with Beck, where she sounds like she's fronting Chaka Kahn's old band. (Soundbite-of- " It-A Backup Singers:
426 2003 SPOK NPR_ATCW on, which I learned later was produced by members of the band Little Feat fronting this funky soul-drenched voice. (Soundbite-of- " Sail Mr-ROBERT-PALMER
427 2003 SPOK CNN_Talkback 's 4:45 Pacific right here on CNN. Aaron Brown and Wolf Blitzer will be fronting that coverage. And Suzanne Malveaux I know you have to run off and do
428 2003 FIC KenyonRev worked it out. I didn't want her coming up to school and' fronting the journalism teacher about calling me a fop. # I got mad because I
429 2003 FIC MassachRev 's been twenty-five years since rides and concessions last elbowed each other on the boulevard fronting the sea-penny arcade (slot machines spitting out w
430 2003 MAG Sunset and an excellent film on glaciers, including the one calving icebergs into the lake fronting the building. 9-5 daily. Mile 5.2 on Whittier/Portage Glacier Acces R
431 2003 MAG GolfMag Whistling Straits, a 36-hole facility spread across a former military camp on low bluffs fronting Lake Michigan. Play a morning round on the Irish Course, a m
432 2003 MAG GolfMag the green. Once you do, you'll be looking at a deep bunker fronting the putting surface and out of bounds very close on the right. While these
433 2003 NEWS NYTimes that's usually buried in the bowels of a stadium to fill two stone towers fronting the grandstand. In its relaxed charisma, Petco resembles one of the very fev
434 2003 NEWS Atlanta . He's also one of the busier bandleaders on the New York scene, fronting a variety of outfits, including a steel band, and producing his own one-man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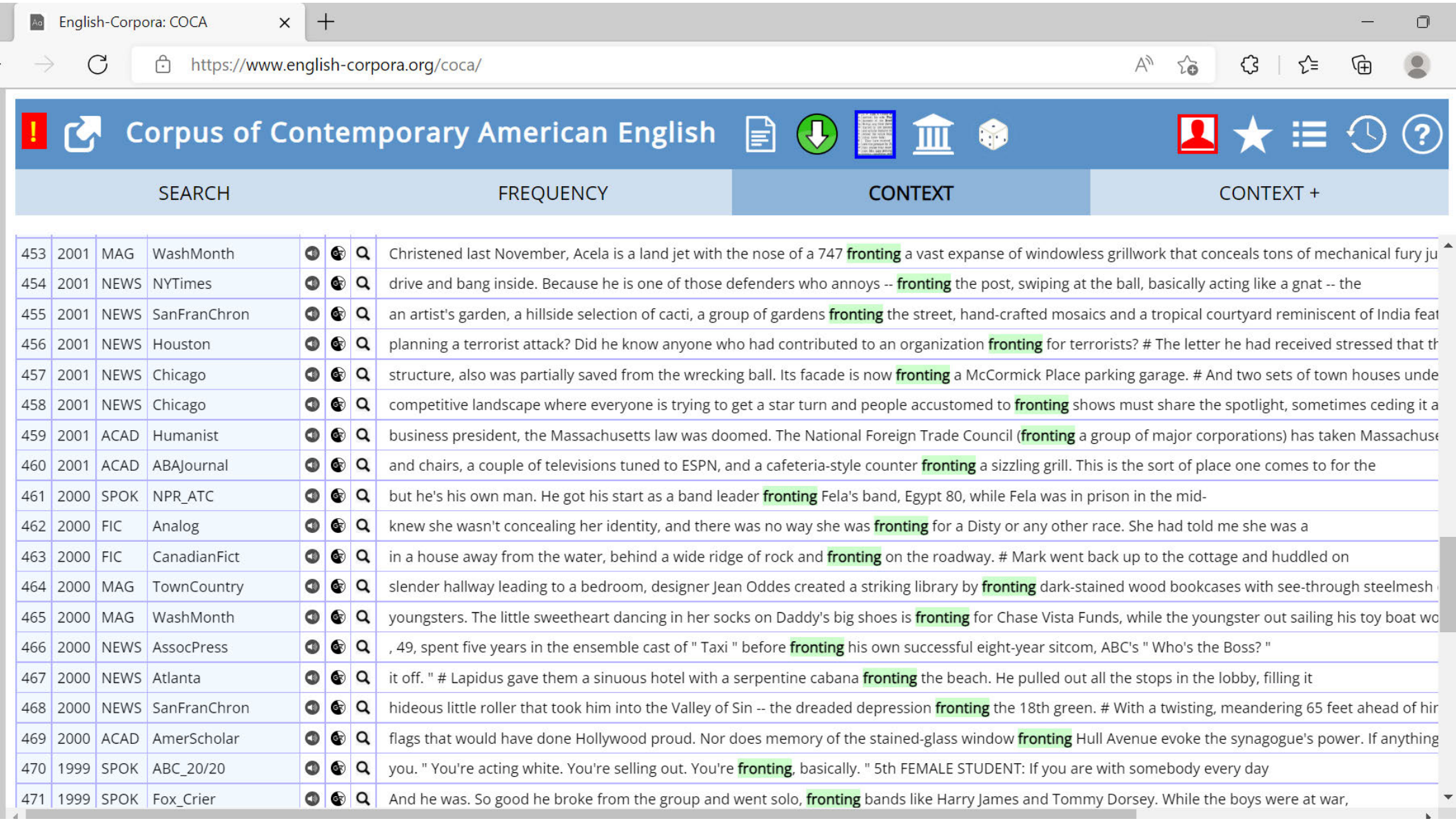
434 2003 NEWS Atlanta . He's also one of the busier bandleaders on the New York scene, fronting a variety of outfits, including a steel band, and producing his own one-man
435 2003 NEWS Atlanta The LaChances have built a small subdivision on some of their five miles of property fronting the Etowah and nearby streams. # A river management plan b
436 2003 NEWS Atlanta . # Duluth is the city with a handful of lofts, some occupied, fronting its 4-acre Town Green. Just beyond, crews are building shops and more houses
437 2003 NEWS Atlanta , about double the size of the current store in the museum's main building fronting Peachtree Street. # The ASO only recently got into the retail business. In
438 2003 NEWS Houston fire. The Natives emerged from the flames rocking. # Berry and Romano alternated fronting the band. " It was this balance of the young punk meets the old
439 2003 ACAD Style Multiple negation in AAVE and southern vernacular dialects is often combined with inversion or " fronting " of negative auxiliary verbs (see Wolfram, Dialects
440 2003 ACAD Style " (95). Sylvia ends the story with a triple negative combined with fronting of the auxiliary verb: " But ain't nobody gon na beat me at
441 2003 ACAD Archaeology facing page, have revealed the remains of one of Egypt's earliest temples, fronting onto an oval courtyard. # PHOTO (COLOR): Brewing vats at Hierakonpolis
442 2002 FIC FantasySciFi and I in a wedge behind Kaplan's wheelchair. We moved through the crowd fronting Pescado Mojado like a tanker in heavy seas, past Selena World, past Ho
443 2002 MAG Smithsonian the late 1970s, state bureaucrats announced plans to convert a row of town houses fronting Mount Morris Park into a drug rehabilitation center. Mount Mo
444 2002 NEWS Atlanta Developers propose two buildings, encompassing roughly 20,000 square feet of commercial retail space, fronting the mobile home development. The tract
445 2002 NEWS SanFranChron began to peal, and people poured out and trooped toward the pocket-size main square fronting the village church. Kids started a soccer match. Others turn
446 2002 NEWS Houston Properties range from a six-bedroom beachfront manse known as Sea Castle to a one-bedroom townhome fronting West Bay. # The company's peak seaso
447 2002 ACAD HispanicRev abrupt, analogically-motivated inversions of /pj/ > /jp/ and /kj/ > /jk/, and consequent fronting of /a/ to /e/, are in clear contrast to the Portuguese cases of la
448 2001 SPOK CBS_Sixty with a friend, but she did nt know that this so-called friend was actually fronting a sex-trafficking network. Almost immediately, she was pushed into a car ar
449 2001 FIC FantasySciFi the roof that announced # SCHEHEREZADE'S RARE AND USED BOOKS There was a porch fronting the house and on the porch sat wheelbarrows filled with b
450 2001 FIC Mov:HannibalMamet Pazzi moves in front of the poster. We see the reflection in the glass fronting the poster, and Starling moves to eliminate it. GUIDE (V.O.)...
451 2001 MAG Antiques , she would mount the boards at the Park Theatre just opposite the public gardens fronting City Hall. New Yorkers, it seems, were in a fever of anticipation
452 2001 MAG Essence to be herself, it would seem a little late in the game to start fronting.) The talk turns to relationships: Ananda has said in the past that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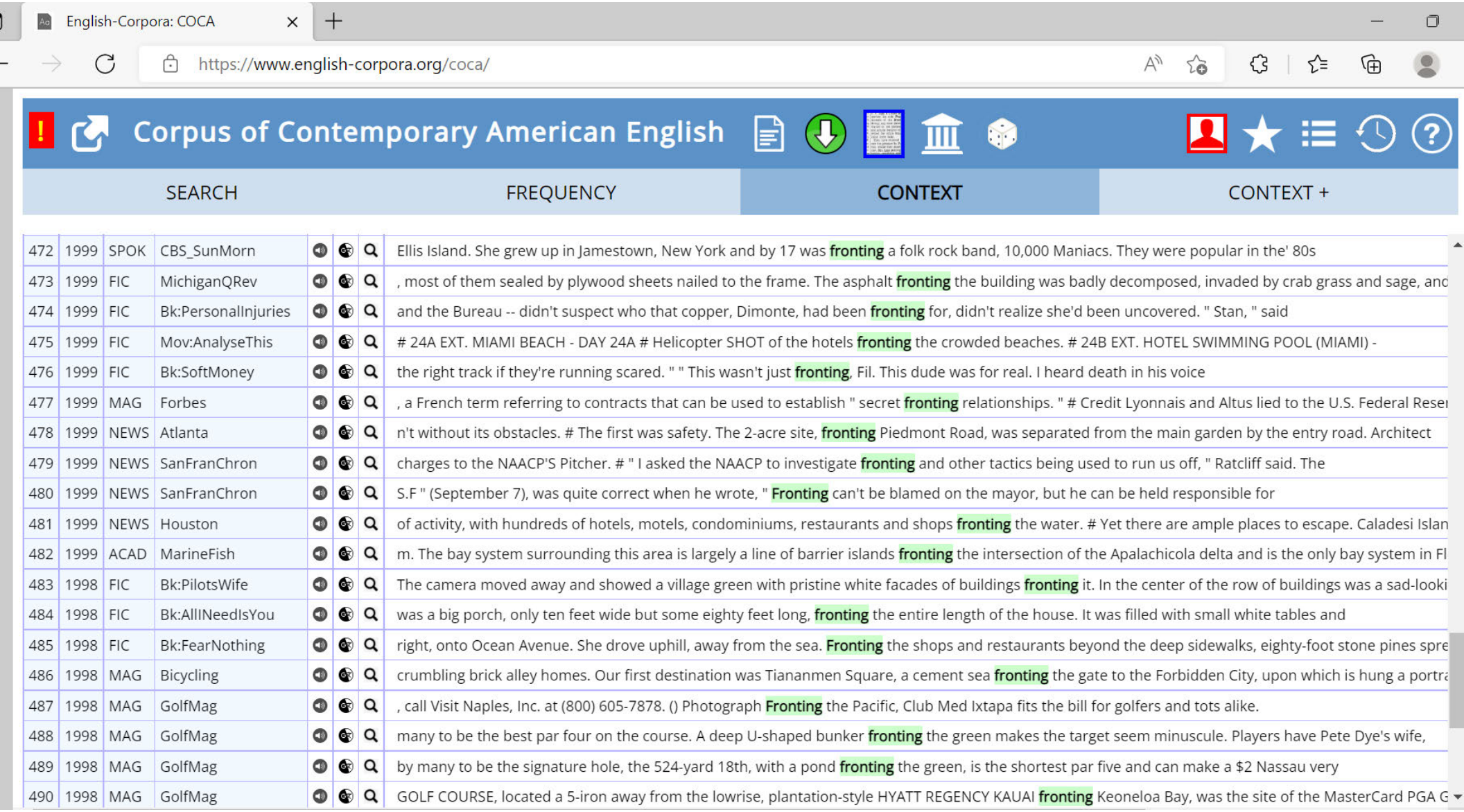
453 2001 MAG WashMonth Christened last November, Acela is a land jet with the nose of a 747 fronting a vast expanse of windowless grillwork that conceals tons of mechanical fury ju
454 2001 NEWS NYTimes drive and bang inside. Because he is one of those defenders who annoys -- fronting the post, swiping at the ball, basically acting like a gnat -- the
455 2001 NEWS SanFranChron an artist's garden, a hillside selection of cacti, a group of gardens fronting the street, hand-crafted mosaics and a tropical courtyard reminiscent of India feat
456 2001 NEWS Houston planning a terrorist attack? Did he know anyone who had contributed to an organization fronting for terrorists? # The letter he had received stressed that th
457 2001 NEWS Chicago structure, also was partially saved from the wrecking ball. Its facade is now fronting a McCormick Place parking garage. # And two sets of town houses unde
458 2001 NEWS Chicago competitive landscape where everyone is trying to get a star turn and people accustomed to fronting shows must share the spotlight, sometimes ceding it a
459 2001 ACAD Humanist business president, the Massachusetts law was doomed. The National Foreign Trade Council (fronting a group of major corporations) has taken Massachuse
460 2001 ACAD ABAJournal and chairs, a couple of televisions tuned to ESPN, and a cafeteria-style counter fronting a sizzling grill. This is the sort of place one comes to for the
461 2000 SPOK NPR_ATC but he's his own man. He got his start as a band leader fronting Fela's band, Egypt 80, while Fela was in prison in the mid-
462 2000 FIC Analog knew she wasn't concealing her identity, and there was no way she was fronting for a Disty or any other race. She had told me she was a
463 2000 FIC CanadianFict in a house away from the water, behind a wide ridge of rock and fronting on the roadway. # Mark went back up to the cottage and huddled on
464 2000 MAG TownCountry slender hallway leading to a bedroom, designer Jean Oddes created a striking library by fronting dark-stained wood bookcases with see-through steelmesh
465 2000 MAG WashMonth youngsters. The little sweetheart dancing in her socks on Daddy's big shoes is fronting for Chase Vista Funds, while the youngster out sailing his toy boat wo
466 2000 NEWS AssocPress , 49, spent five years in the ensemble cast of " Taxi " before fronting his own successful eight-year sitcom, ABC's " Who's the Boss? "
467 2000 NEWS Atlanta it off. " # Lapidus gave them a sinuous hotel with a serpentine cabana fronting the beach. He pulled out all the stops in the lobby, filling it
468 2000 NEWS SanFranChron hideous little roller that took him into the Valley of Sin -- the dreaded depression fronting the 18th green. # With a twisting, meandering 65 feet ahead of hir
469 2000 ACAD AmerScholar flags that would have done Hollywood proud. Nor does memory of the stained-glass window fronting Hull Avenue evoke the synagogue's power. If anything
470 1999 SPOK ABC_20/20 you. " You're acting white. You're selling out. You're fronting, basically. " 5th FEMALE STUDENT: If you are with somebody every day
471 1999 SPOK Fox_Crier And he was. So good he broke from the group and went solo, fronting bands like Harry James and Tommy Dorsey. While the boys were at war,



472	1999	SPOK	CBS_SunMorn				Ellis Island. She grew up in Jamestown, New York and by 17 was **fronting** a folk rock band, 10,000 Maniacs. They were popular in the' 80s
473	1999	FIC	MichiganQRev				, most of them sealed by plywood sheets nailed to the frame. The asphalt **fronting** the building was badly decomposed, invaded by crab grass and sage, and
474	1999	FIC	Bk:PersonalInjuries				and the Bureau -- didn't suspect who that copper, Dimonte, had been **fronting** for, didn't realize she'd been uncovered. " Stan, " said
475	1999	FIC	Mov:AnalyseThis				# 24A EXT. MIAMI BEACH - DAY 24A # Helicopter SHOT of the hotels **fronting** the crowded beaches. # 24B EXT. HOTEL SWIMMING POOL (MIAMI) -
476	1999	FIC	Bk:SoftMoney				the right track if they're running scared. " " This wasn't just **fronting**, Fil. This dude was for real. I heard death in his voice
477	1999	MAG	Forbes				, a French term referring to contracts that can be used to establish " secret **fronting** relationships. " # Credit Lyonnais and Altus lied to the U.S. Federal Reser
478	1999	NEWS	Atlanta				n't without its obstacles. # The first was safety. The 2-acre site, **fronting** Piedmont Road, was separated from the main garden by the entry road. Architect
479	1999	NEWS	SanFranChron				charges to the NAACP'S Pitcher. # " I asked the NAACP to investigate **fronting** and other tactics being used to run us off, " Ratcliff said. The
480	1999	NEWS	SanFranChron				S.F " (September 7), was quite correct when he wrote, " **Fronting** can't be blamed on the mayor, but he can be held responsible for
481	1999	NEWS	Houston				of activity, with hundreds of hotels, motels, condominiums, restaurants and shops **fronting** the water. # Yet there are ample places to escape. Caladesi Islan
482	1999	ACAD	MarineFish				m. The bay system surrounding this area is largely a line of barrier islands **fronting** the intersection of the Apalachicola delta and is the only bay system in Fl
483	1998	FIC	Bk:PilotsWife				The camera moved away and showed a village green with pristine white facades of buildings **fronting** it. In the center of the row of buildings was a sad-looki
484	1998	FIC	Bk:AllINeedIsYou				was a big porch, only ten feet wide but some eighty feet long, **fronting** the entire length of the house. It was filled with small white tables and
485	1998	FIC	Bk:FearNothing				right, onto Ocean Avenue. She drove uphill, away from the sea. **Fronting** the shops and restaurants beyond the deep sidewalks, eighty-foot stone pines spre
486	1998	MAG	Bicycling				crumbling brick alley homes. Our first destination was Tiananmen Square, a cement sea **fronting** the gate to the Forbidden City, upon which is hung a portra
487	1998	MAG	GolfMag				, call Visit Naples, Inc. at (800) 605-7878. () Photograph **Fronting** the Pacific, Club Med Ixtapa fits the bill for golfers and tots alike.
488	1998	MAG	GolfMag				many to be the best par four on the course. A deep U-shaped bunker **fronting** the green makes the target seem minuscule. Players have Pete Dye's wife,
489	1998	MAG	GolfMag				by many to be the signature hole, the 524-yard 18th, with a pond **fronting** the green, is the shortest par five and can make a $2 Nassau very
490	1998	MAG	GolfMag				GOLF COURSE, located a 5-iron away from the lowrise, plantation-style HYATT REGENCY KAUAI **fronting** Keoneloa Bay, was the site of the MasterCard PGA G

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484	1998	FIC	Bk:AllINeedIsYou	was a big porch, only ten feet wide but some eighty feet long, **fronting** the entire length of the house. It was filled with small white tables and
485	1998	FIC	Bk:FearNothing	right, onto Ocean Avenue. She drove uphill, away from the sea. **Fronting** the shops and restaurants beyond the deep sidewalks, eighty-foot stone pines spre
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490	1998	MAG	GolfMag	GOLF COURSE, located a 5-iron away from the lowrise, plantation-style HYATT REGENCY KAUAI **fronting** Keoneloa Bay, was the site of the MasterCard PGA G
491	1998	MAG	SportingNews	getting backed down in the lane, but on racing around bigger players. The **fronting** strategy is similar to the one that former SuperSonics assistant Bob Klop
492	1998	MAG	SportingNews	him being undersized just motivates him to play even harder. " Calipari says the **fronting** scheme is so exhausting that he would prefer to play his starters n
493	1998	MAG	SportingNews	is especially taxing because he is relied upon heavily on the defensive boards. After **fronting**, Williams often will be further from the basket than the other ce
494	1998	MAG	Smithsonian	, long artfully concealed from outsiders. The city's extravagant beauty-the graceful antebellum houses **fronting** picture-perfect squares, the ubiquitous magi
495	1998	NEWS	NYTimes	, they covet the hundreds of acres surrounding them, the potentially lucrative open land **fronting** rivers and highways. # So preservationists, many of whom
496	1998	NEWS	WashPost	public this April. # Today, grand stone walls and a fancy iron gate **fronting** on a busy street surround the venerable property. The late-18th-century brick hou
497	1998	NEWS	Atlanta	preservation. # In 1971, Roswell created its historic district, consisting of properties **fronting** Mimosa Boulevard, Bulloch Avenue and Town Square -- home t
498	1998	NEWS	SanFranChron	round. But at the 215-yard 17th, he mis-hit a 5-iron into the pond **fronting** the green and wound up with a double-bogey 5 to drop himself back into a
499	1998	NEWS	Chicago	who were between 10 and 11 years old. " # Soon, Chayanne was **fronting** a Menudo-like band called Los Chicos. He left his home to tour Latin America
500	1998	ACAD	GeographRev	. (Wagner 1914, 3: 163) # Act III: A valley **fronting** the Wartburg, to the left the Horselberg in fall colors; it is dusk

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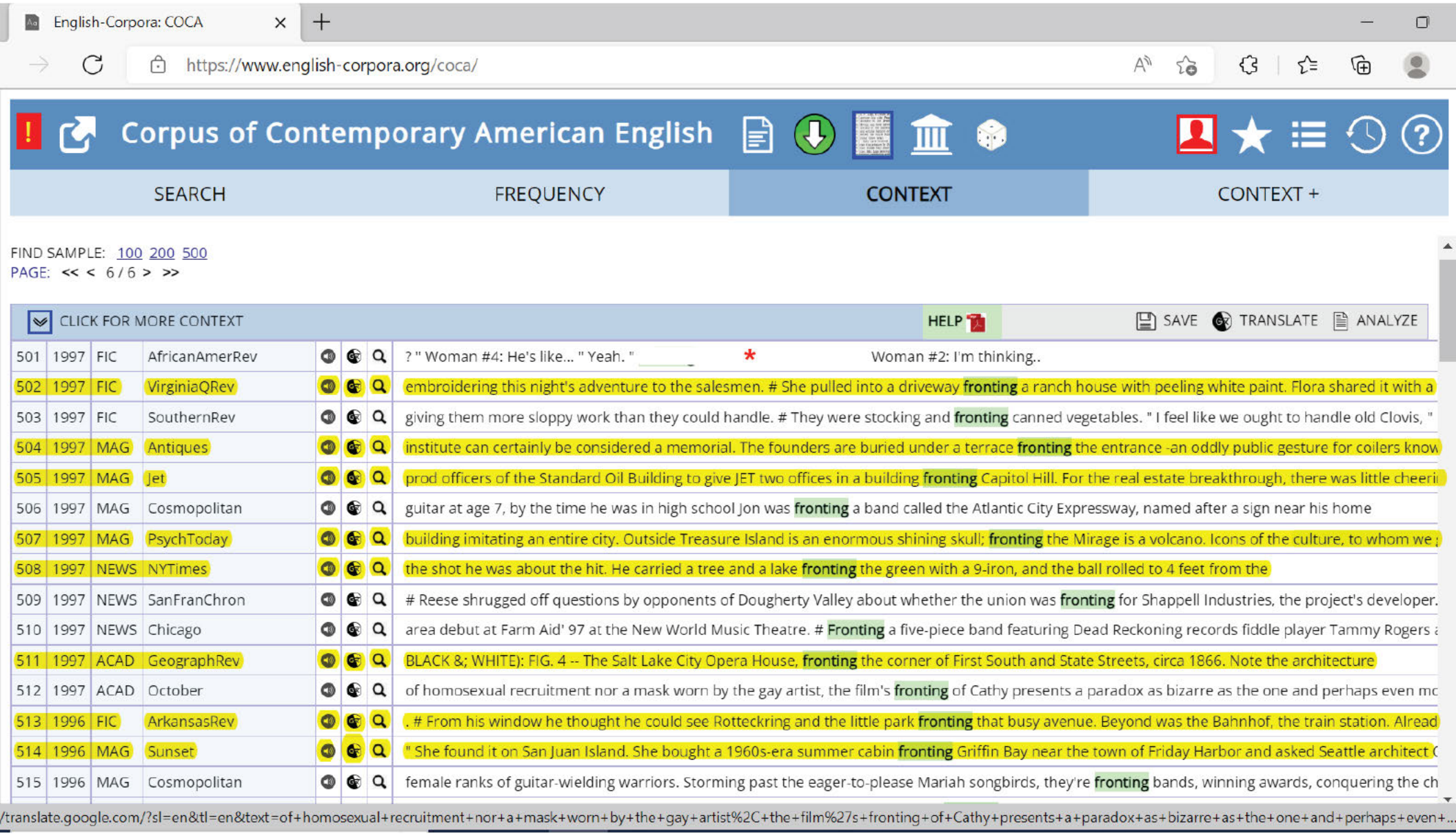
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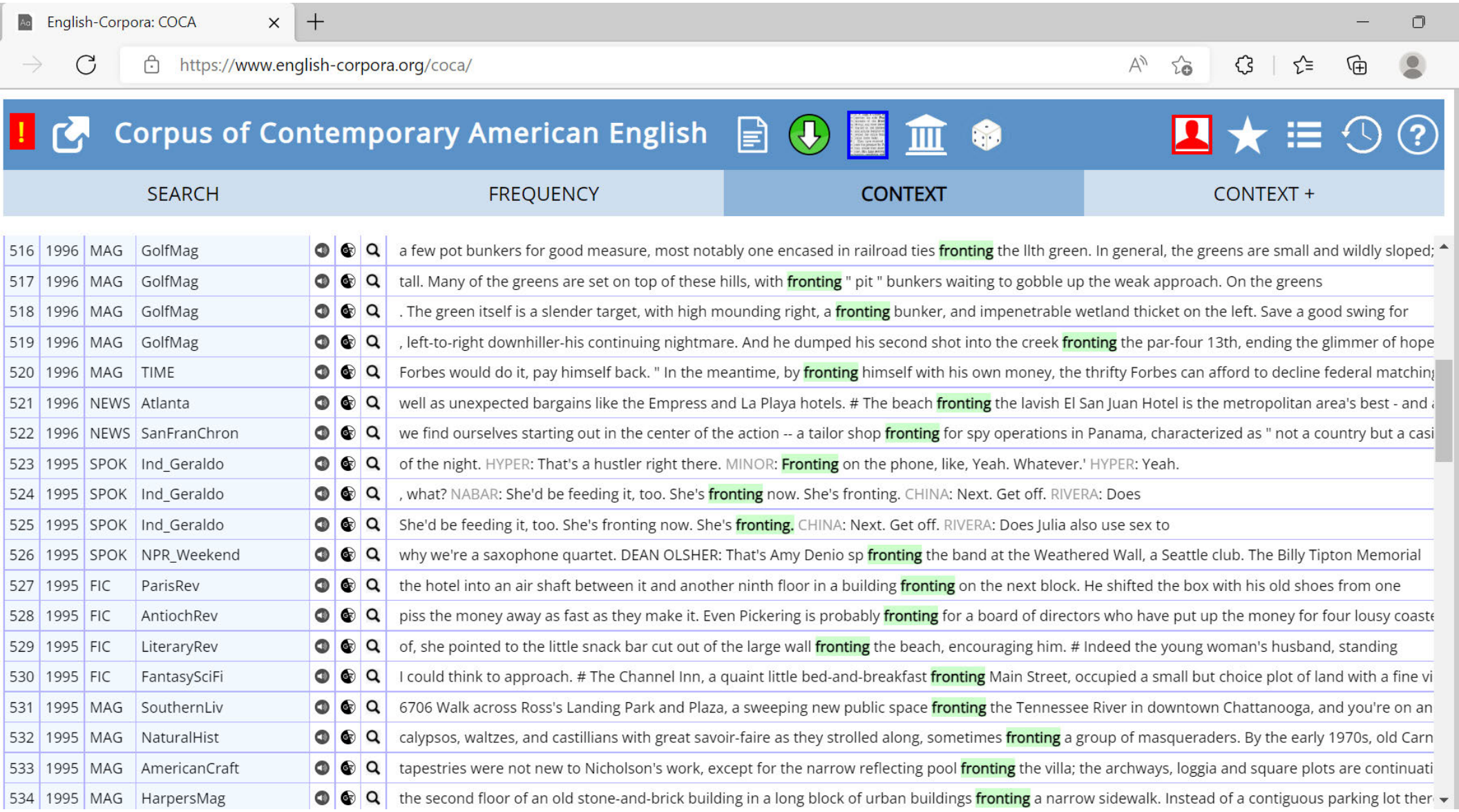
501 1997 FIC AfricanAmerRev ? " Woman #4: He's like... " Yeah. " * Woman #2: I'm thinking..
502 1997 FIC VirginiaQRev embroidering this night's adventure to the salesmen. # She pulled into a driveway fronting a ranch house with peeling white paint. Flora shared it with a
503 1997 FIC SouthernRev giving them more sloppy work than they could handle. # They were stocking and fronting canned vegetables. " I feel like we ought to handle old Clovis, "
504 1997 MAG Antiques institute can certainly be considered a memorial. The founders are buried under a terrace fronting the entrance -an oddly public gesture for coilers know
505 1997 MAG Jet prod officers of the Standard Oil Building to give JET two offices in a building fronting Capitol Hill. For the real estate breakthrough, there was little cheeri
506 1997 MAG Cosmopolitan guitar at age 7, by the time he was in high school Jon was fronting a band called the Atlantic City Expressway, named after a sign near his home
507 1997 MAG PsychToday building imitating an entire city. Outside Treasure Island is an enormous shining skull; fronting the Mirage is a volcano. Icons of the culture, to whom we
508 1997 NEWS NYTimes the shot he was about the hit. He carried a tree and a lake fronting the green with a 9-iron, and the ball rolled to 4 feet from the
509 1997 NEWS SanFranChron # Reese shrugged off questions by opponents of Dougherty Valley about whether the union was fronting for Shappell Industries, the project's developer.
510 1997 NEWS Chicago area debut at Farm Aid' 97 at the New World Music Theatre. # Fronting a five-piece band featuring Dead Reckoning records fiddle player Tammy Rogers
511 1997 ACAD GeographRev BLACK &; WHITE): FIG. 4 -- The Salt Lake City Opera House, fronting the corner of First South and State Streets, circa 1866. Note the architecture
512 1997 ACAD October of homosexual recruitment nor a mask worn by the gay artist, the film's fronting of Cathy presents a paradox as bizarre as the one and perhaps even mo
513 1996 FIC ArkansasRev . # From his window he thought he could see Rotteckring and the little park fronting that busy avenue. Beyond was the Bahnhof, the train station. Alread
514 1996 MAG Sunset " She found it on San Juan Island. She bought a 1960s-era summer cabin fronting Griffin Bay near the town of Friday Harbor and asked Seattle architect
515 1996 MAG Cosmopolitan female ranks of guitar-wielding warriors. Storming past the eager-to-please Mariah songbirds, they're fronting bands, winning awards, conquering the ch
/translate.google.com/?sl=en&tl=en&text=of+homosexual+recruitment+nor+a+mask+worn+by+the+gay+artist%2C+the+film%27s+fronting+of+Cathy+presents+a+paradox+as+bizarre+as+the+one+and+perhaps+even+...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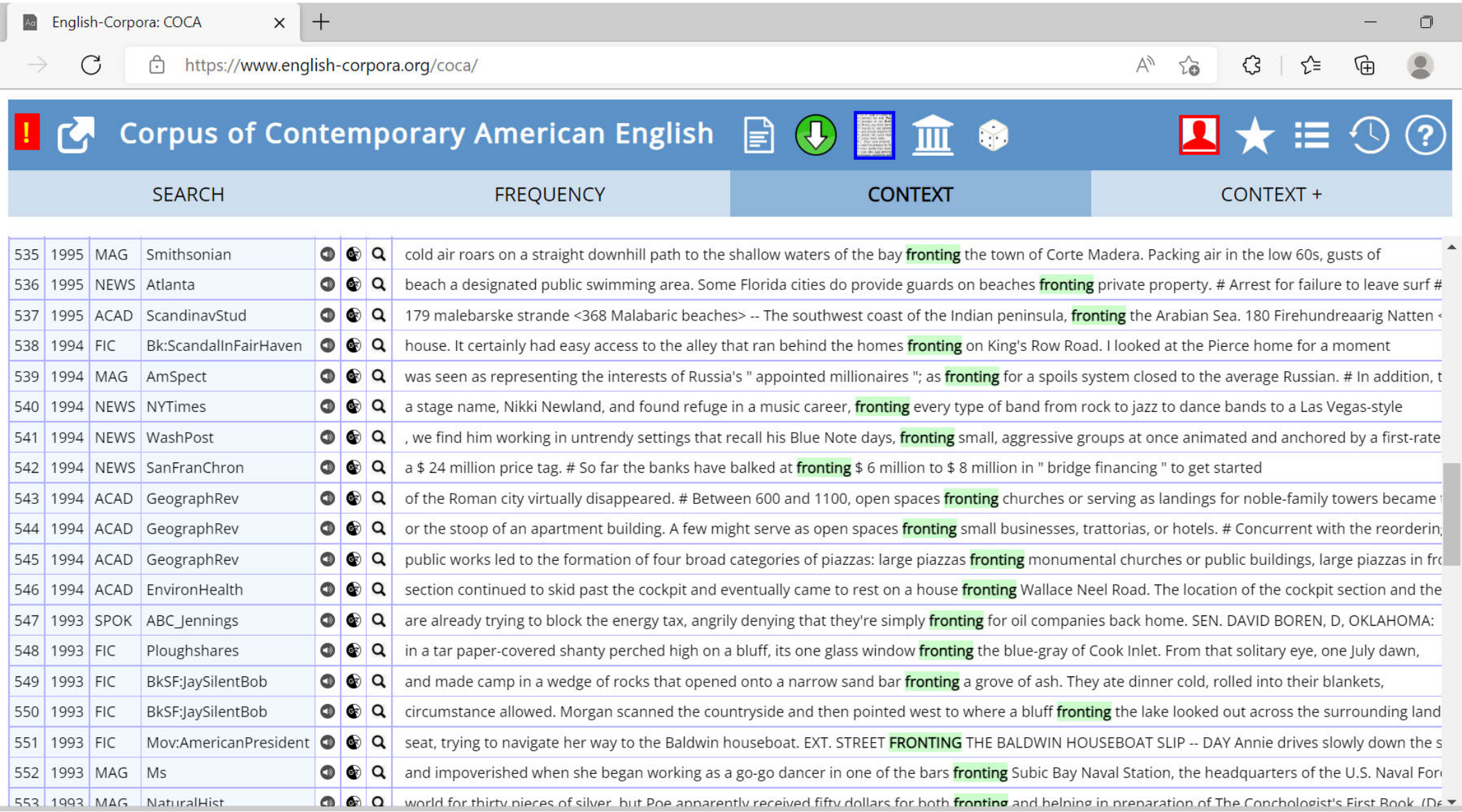
516 1996 MAG GolfMag a few pot bunkers for good measure, most notably one encased in railroad ties fronting the llth green. In general, the greens are small and wildly sloped;
517 1996 MAG GolfMag tall. Many of the greens are set on top of these hills, with fronting " pit " bunkers waiting to gobble up the weak approach. On the greens
518 1996 MAG GolfMag . The green itself is a slender target, with high mounding right, a fronting bunker, and impenetrable wetland thicket on the left. Save a good swing for
519 1996 MAG GolfMag , left-to-right downhiller-his continuing nightmare. And he dumped his second shot into the creek fronting the par-four 13th, ending the glimmer of hope
520 1996 MAG TIME Forbes would do it, pay himself back. " In the meantime, by fronting himself with his own money, the thrifty Forbes can afford to decline federal matchin
521 1996 NEWS Atlanta well as unexpected bargains like the Empress and La Playa hotels. # The beach fronting the lavish El San Juan Hotel is the metropolitan area's best - and
522 1996 NEWS SanFranChron we find ourselves starting out in the center of the action -- a tailor shop fronting for spy operations in Panama, characterized as " not a country but a casi
523 1995 SPOK Ind_Geraldo of the night. HYPER: That's a hustler right there. MINOR: Fronting on the phone, like, Yeah. Whatever.' HYPER: Yeah.
524 1995 SPOK Ind_Geraldo , what? NABAR: She'd be feeding it, too. She's fronting now. She's fronting. CHINA: Next. Get off. RIVERA: Does
525 1995 SPOK Ind_Geraldo She'd be feeding it, too. She's fronting now. She's fronting. CHINA: Next. Get off. RIVERA: Does Julia also use sex to
526 1995 SPOK NPR_Weekend why we're a saxophone quartet. DEAN OLSHER: That's Amy Denio sp fronting the band at the Weathered Wall, a Seattle club. The Billy Tipton Memorial
527 1995 FIC ParisRev the hotel into an air shaft between it and another ninth floor in a building fronting on the next block. He shifted the box with his old shoes from one
528 1995 FIC AntiochRev piss the money away as fast as they make it. Even Pickering is probably fronting for a board of directors who have put up the money for four lousy coaste
529 1995 FIC LiteraryRev of, she pointed to the little snack bar cut out of the large wall fronting the beach, encouraging him. # Indeed the young woman's husband, standing
530 1995 FIC FantasySciFi I could think to approach. # The Channel Inn, a quaint little bed-and-breakfast fronting Main Street, occupied a small but choice plot of land with a fine vi
531 1995 MAG SouthernLiv 6706 Walk across Ross's Landing Park and Plaza, a sweeping new public space fronting the Tennessee River in downtown Chattanooga, and you're on an
532 1995 MAG NaturalHist calypsos, waltzes, and castillians with great savoir-faire as they strolled along, sometimes fronting a group of masqueraders. By the early 1970s, old Carn
533 1995 MAG AmericanCraft tapestries were not new to Nicholson's work, except for the narrow reflecting pool fronting the villa; the archways, loggia and square plots are continuati
534 1995 MAG HarpersMag the second floor of an old stone-and-brick building in a long block of urban buildings fronting a narrow sidewalk. Instead of a contiguous parking lot ther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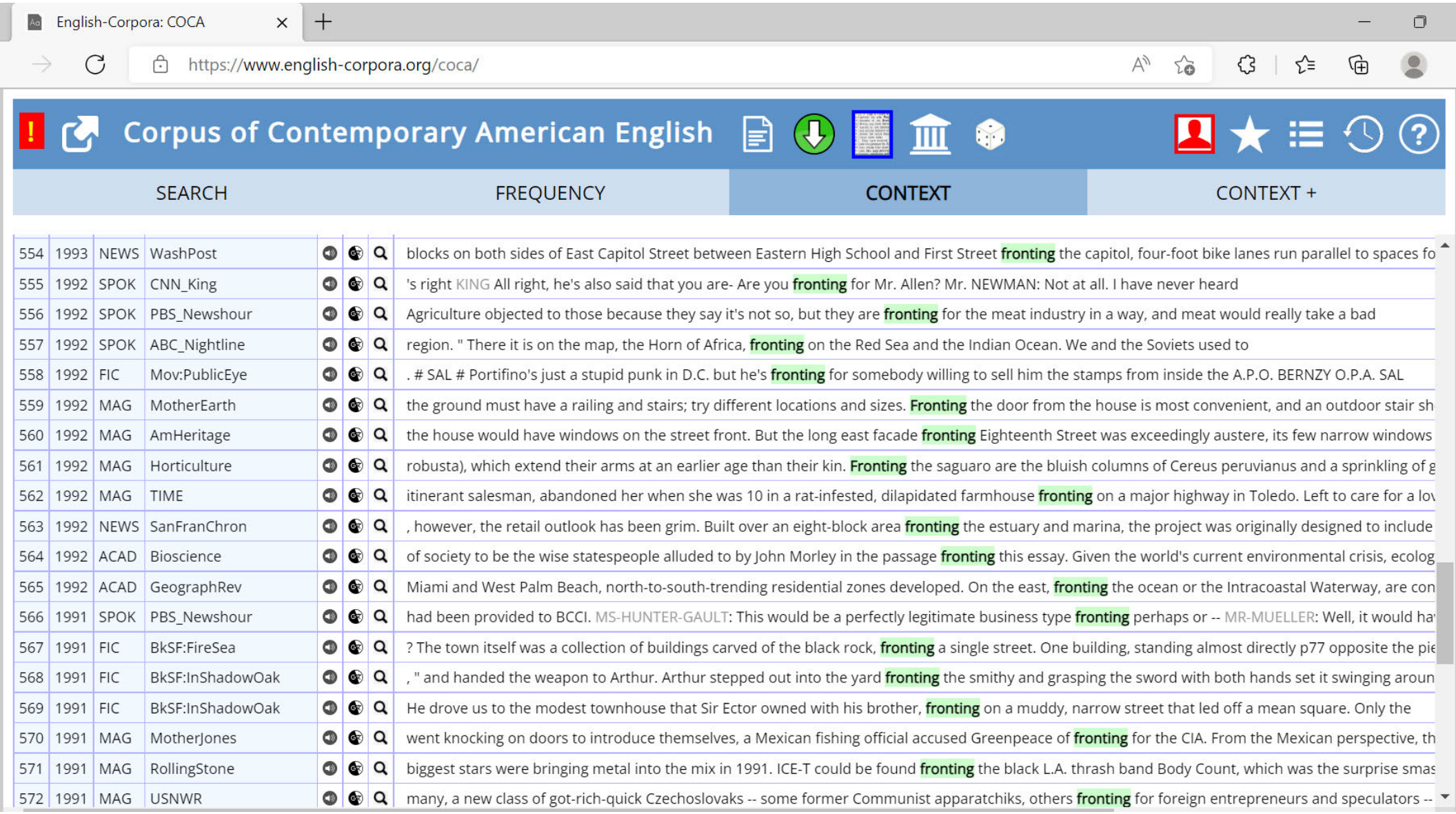
535 1995 MAG Smithsonian cold air roars on a straight downhill path to the shallow waters of the bay fronting the town of Corte Madera. Packing air in the low 60s, gusts of
536 1995 NEWS Atlanta beach a designated public swimming area. Some Florida cities do provide guards on beaches fronting private property. # Arrest for failure to leave surf #
537 1995 ACAD ScandinavStud 179 malebarske strande <368 Malabaric beaches> -- The southwest coast of the Indian peninsula, fronting the Arabian Sea. 180 Firehundreaarig Natten
538 1994 FIC Bk:ScandalInFairHaven house. It certainly had easy access to the alley that ran behind the homes fronting on King's Row Road. I looked at the Pierce home for a moment
539 1994 MAG AmSpect was seen as representing the interests of Russia's " appointed millionaires "; as fronting for a spoils system closed to the average Russian. # In addition, t
540 1994 NEWS NYTimes a stage name, Nikki Newland, and found refuge in a music career, fronting every type of band from rock to jazz to dance bands to a Las Vegas-style
541 1994 NEWS WashPost , we find him working in untrendy settings that recall his Blue Note days, fronting small, aggressive groups at once animated and anchored by a first-rate
542 1994 NEWS SanFranChron a $ 24 million price tag. # So far the banks have balked at fronting $ 6 million to $ 8 million in " bridge financing " to get started
543 1994 ACAD GeographRev of the Roman city virtually disappeared. # Between 600 and 1100, open spaces fronting churches or serving as landings for noble-family towers became
544 1994 ACAD GeographRev or the stoop of an apartment building. A few might serve as open spaces fronting small businesses, trattorias, or hotels. # Concurrent with the reorderin
545 1994 ACAD GeographRev public works led to the formation of four broad categories of piazzas: large piazzas fronting monumental churches or public buildings, large piazzas in fr
546 1994 ACAD EnvironHealth section continued to skid past the cockpit and eventually came to rest on a house fronting Wallace Neel Road. The location of the cockpit section and the
547 1993 SPOK ABC_Jennings are already trying to block the energy tax, angrily denying that they're simply fronting for oil companies back home. SEN. DAVID BOREN, D, OKLAHOMA:
548 1993 FIC Ploughshares in a tar paper-covered shanty perched high on a bluff, its one glass window fronting the blue-gray of Cook Inlet. From that solitary eye, one July dawn,
549 1993 FIC BkSF:JaySilentBob and made camp in a wedge of rocks that opened onto a narrow sand bar fronting a grove of ash. They ate dinner cold, rolled into their blankets,
550 1993 FIC BkSF:JaySilentBob circumstance allowed. Morgan scanned the countryside and then pointed west to where a bluff fronting the lake looked out across the surrounding land
551 1993 FIC Mov:AmericanPresident seat, trying to navigate her way to the Baldwin houseboat. EXT. STREET FRONTING THE BALDWIN HOUSEBOAT SLIP -- DAY Annie drives slowly down the s
552 1993 MAG Ms and impoverished when she began working as a go-go dancer in one of the bars fronting Subic Bay Naval Station, the headquarters of the U.S. Naval For
553 1993 MAG NaturalHist world for thirty pieces of silver, but Poe apparently received fifty dollars for both fronting and helping in preparation of The Conchologist's First Book. (De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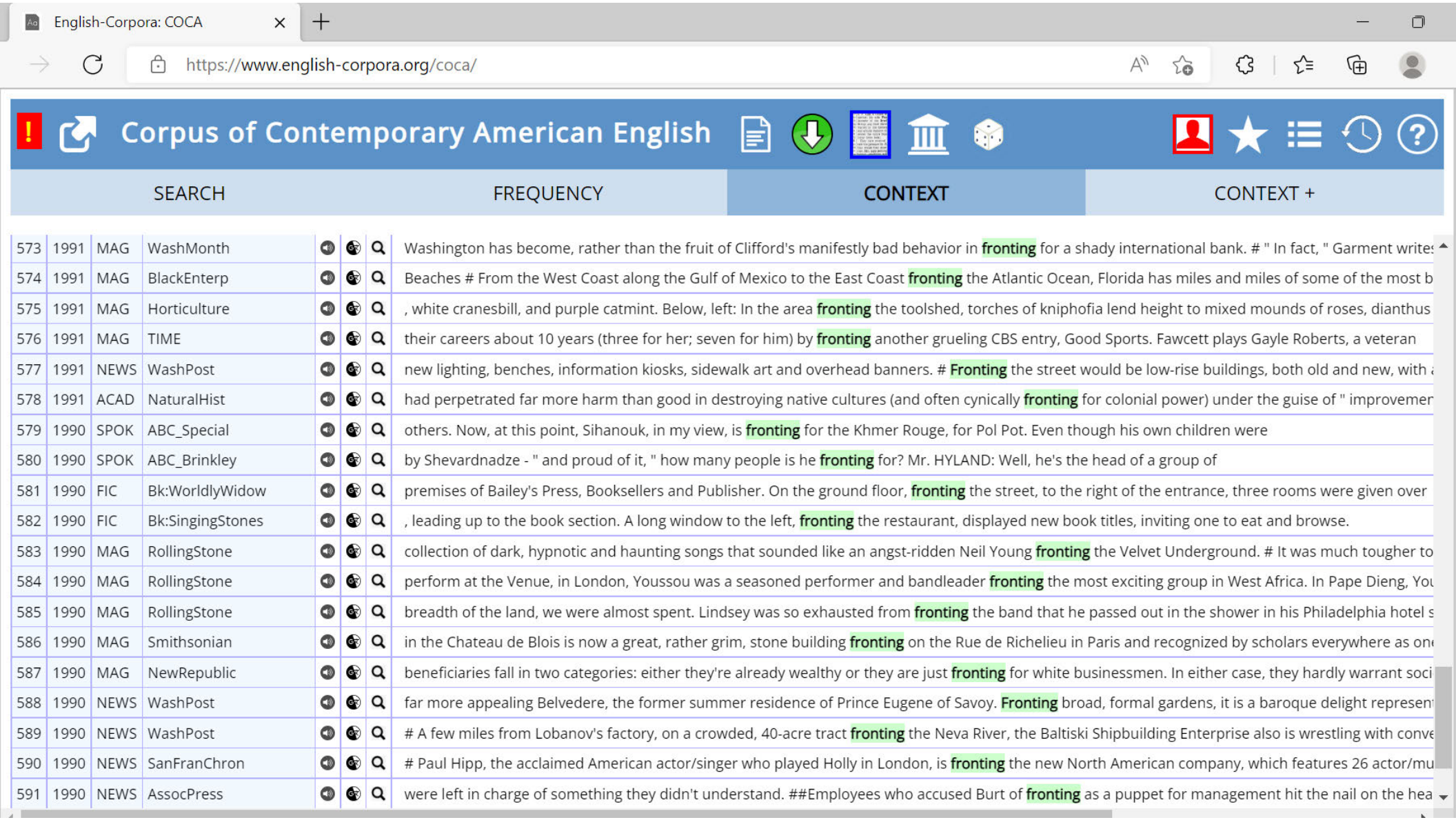
554 1993 NEWS WashPost blocks on both sides of East Capitol Street between Eastern High School and First Street fronting the capitol, four-foot bike lanes run parallel to spaces fo
555 1992 SPOK CNN_King 's right KING All right, he's also said that you are- Are you fronting for Mr. Allen? Mr. NEWMAN: Not at all. I have never heard
556 1992 SPOK PBS_Newshour Agriculture objected to those because they say it's not so, but they are fronting for the meat industry in a way, and meat would really take a bad
557 1992 SPOK ABC_Nightline region. " There it is on the map, the Horn of Africa, fronting on the Red Sea and the Indian Ocean. We and the Soviets used to
558 1992 FIC Mov:PublicEye . # SAL # Portifino's just a stupid punk in D.C. but he's fronting for somebody willing to sell him the stamps from inside the A.P.O. BERNZY O.P.A. SAL
559 1992 MAG MotherEarth the ground must have a railing and stairs; try different locations and sizes. Fronting the door from the house is most convenient, and an outdoor stair sh
560 1992 MAG AmHeritage the house would have windows on the street front. But the long east facade fronting Eighteenth Street was exceedingly austere, its few narrow windows
561 1992 MAG Horticulture robusta), which extend their arms at an earlier age than their kin. Fronting the saguaro are the bluish columns of Cereus peruvianus and a sprinkling of g
562 1992 MAG TIME itinerant salesman, abandoned her when she was 10 in a rat-infested, dilapidated farmhouse fronting on a major highway in Toledo. Left to care for a lov
563 1992 NEWS SanFranChron , however, the retail outlook has been grim. Built over an eight-block area fronting the estuary and marina, the project was originally designed to include
564 1992 ACAD Bioscience of society to be the wise statespeople alluded to by John Morley in the passage fronting this essay. Given the world's current environmental crisis, ecolog
565 1992 ACAD GeographRev Miami and West Palm Beach, north-to-south-trending residential zones developed. On the east, fronting the ocean or the Intracoastal Waterway, are con
566 1991 SPOK PBS_Newshour had been provided to BCCI. MS-HUNTER-GAULT: This would be a perfectly legitimate business type fronting perhaps or -- MR-MUELLER: Well, it would hav
567 1991 FIC BkSF:FireSea ? The town itself was a collection of buildings carved of the black rock, fronting a single street. One building, standing almost directly p77 opposite the pie
568 1991 FIC BkSF:InShadowOak , " and handed the weapon to Arthur. Arthur stepped out into the yard fronting the smithy and grasping the sword with both hands set it swinging aroun
569 1991 FIC BkSF:InShadowOak He drove us to the modest townhouse that Sir Ector owned with his brother, fronting on a muddy, narrow street that led off a mean square. Only the
570 1991 MAG MotherJones went knocking on doors to introduce themselves, a Mexican fishing official accused Greenpeace of fronting for the CIA. From the Mexican perspective, th
571 1991 MAG RollingStone biggest stars were bringing metal into the mix in 1991. ICE-T could be found fronting the black L.A. thrash band Body Count, which was the surprise smas
572 1991 MAG USNWR many, a new class of got-rich-quick Czechoslovaks -- some former Communist apparatchiks, others fronting for foreign entrepreneurs and speculators --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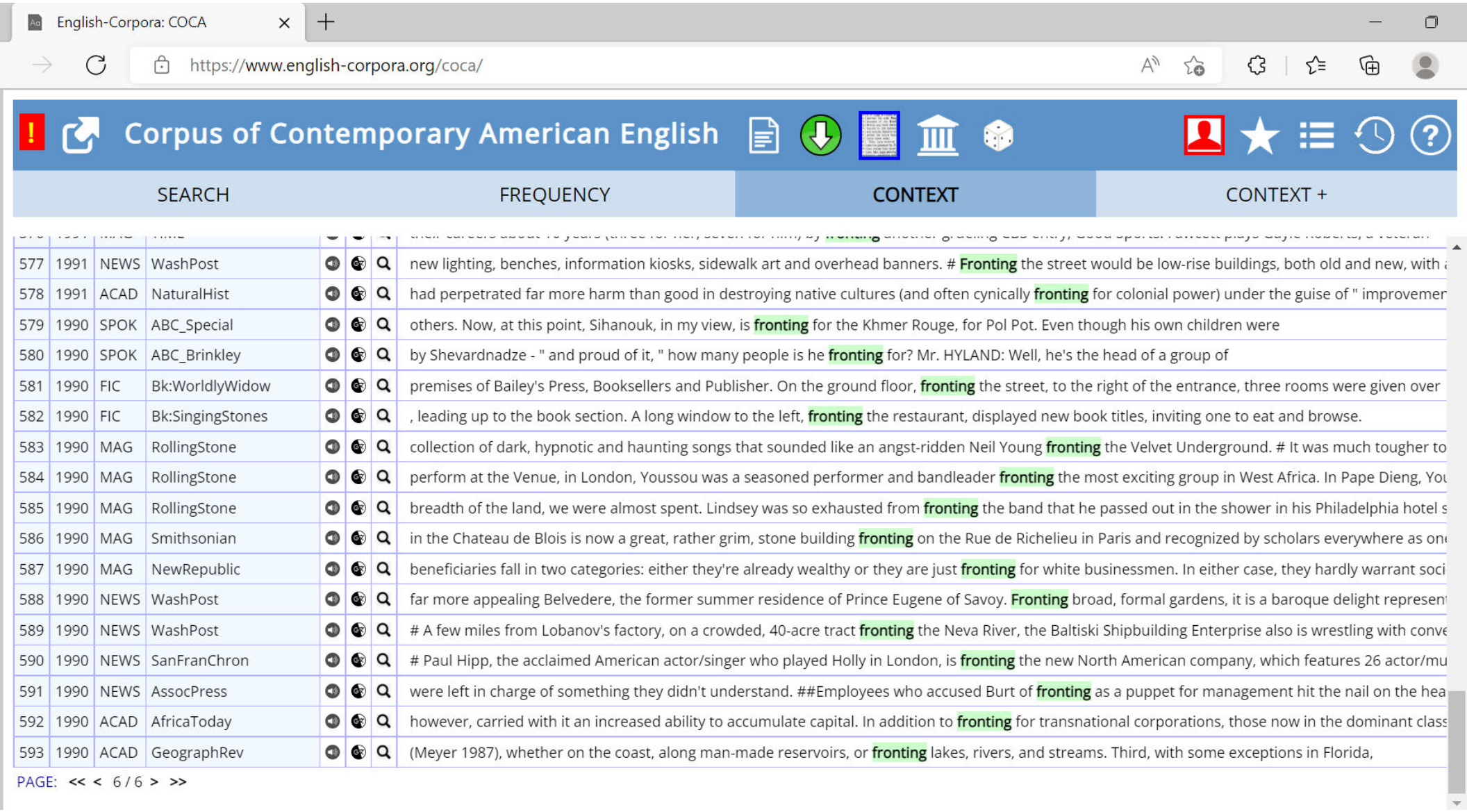
573 1991 MAG WashMonth Washington has become, rather than the fruit of Clifford's manifestly bad behavior in fronting for a shady international bank. # " In fact, " Garment write
574 1991 MAG BlackEnterp Beaches # From the West Coast along the Gulf of Mexico to the East Coast fronting the Atlantic Ocean, Florida has miles and miles of some of the most b
575 1991 MAG Horticulture , white cranesbill, and purple catmint. Below, left: In the area fronting the toolshed, torches of kniphofia lend height to mixed mounds of roses, dianthus
576 1991 MAG TIME their careers about 10 years (three for her; seven for him) by fronting another grueling CBS entry, Good Sports. Fawcett plays Gayle Roberts, a veteran
577 1991 NEWS WashPost new lighting, benches, information kiosks, sidewalk art and overhead banners. # Fronting the street would be low-rise buildings, both old and new, with
578 1991 ACAD NaturalHist had perpetrated far more harm than good in destroying native cultures (and often cynically fronting for colonial power) under the guise of " improvemer
579 1990 SPOK ABC_Special others. Now, at this point, Sihanouk, in my view, is fronting for the Khmer Rouge, for Pol Pot. Even though his own children were
580 1990 SPOK ABC_Brinkley by Shevardnadze - " and proud of it, " how many people is he fronting for? Mr. HYLAND: Well, he's the head of a group of
581 1990 FIC Bk:WorldlyWidow premises of Bailey's Press, Booksellers and Publisher. On the ground floor, fronting the street, to the right of the entrance, three rooms were given over
582 1990 FIC Bk:SingingStones , leading up to the book section. A long window to the left, fronting the restaurant, displayed new book titles, inviting one to eat and browse.
583 1990 MAG RollingStone collection of dark, hypnotic and haunting songs that sounded like an angst-ridden Neil Young fronting the Velvet Underground. # It was much tougher to
584 1990 MAG RollingStone perform at the Venue, in London, Youssou was a seasoned performer and bandleader fronting the most exciting group in West Africa. In Pape Dieng, You
585 1990 MAG RollingStone breadth of the land, we were almost spent. Lindsey was so exhausted from fronting the band that he passed out in the shower in his Philadelphia hotel s
586 1990 MAG Smithsonian in the Chateau de Blois is now a great, rather grim, stone building fronting on the Rue de Richelieu in Paris and recognized by scholars everywhere as on
587 1990 MAG NewRepublic beneficiaries fall in two categories: either they're already wealthy or they are just fronting for white businessmen. In either case, they hardly warrant soci
588 1990 NEWS WashPost far more appealing Belvedere, the former summer residence of Prince Eugene of Savoy. Fronting broad, formal gardens, it is a baroque delight represen
589 1990 NEWS WashPost # A few miles from Lobanov's factory, on a crowded, 40-acre tract fronting the Neva River, the Baltiski Shipbuilding Enterprise also is wrestling with conve
590 1990 NEWS SanFranChron # Paul Hipp, the acclaimed American actor/singer who played Holly in London, is fronting the new North American company, which features 26 actor/mu
591 1990 NEWS AssocPress were left in charge of something they didn't understand. ##Employees who accused Burt of fronting as a puppet for management hit the nail on the hea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591 1990 NEWS AssocPress were left in charge of something they didn't understand. ##Employees who accused Burt of fronting as a puppet for management hit the nail on the hea
592 1990 ACAD AfricaToday however, carried with it an increased ability to accumulate capital. In addition to fronting for transnational corporations, those now in the dominant class
593 1990 ACAD GeographRev (Meyer 1987), whether on the coast, along man-made reservoirs, or fronting lakes, rivers, and streams. Third, with some exceptions in Florida,
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APPENDIX L

HARRIS RANCH COMMUNITY INFRASTRUCTURE
DISTRICT NO. 1 GENERAL OBLIGATION BOND ELECTION
AUGUST 3, 2010

Election results canvassed on August 10, 2010 at 3:15 p.m.

Precincts Reporting	1	100.00%
Qualified Electors	3	100.00%
Ballots Cast	4	100.00%
General Obligation Bond		
Yes	3	75.00%
No	1	25.00%

2010 Harris Ranch Community Infrastructure District No. 1 General Obligation Bond Election Certified:

Craig Croner, District Clerk

8/10/10
Date

BOISE, IDAHO
HARRIS RANCH COMMUNITY
INFRASTRUCTURE DISTRICT NO. 1
MINUTES
AUGUST 10, 2010

The following Harris Ranch Community Infrastructure District No. 1 Board members were present: **CLEGG and EBERLE.** Absent: **SHEALY.**

Chairman **EBERLE** announced that this was the time and place for the Harris Ranch Community Infrastructure District No. 1 Board meeting.

REVIEW AND APPROVAL OF JUNE 29, 2010 MEETING MINUTES

Moved by **CLEGG** and seconded by **EBERLE** that the June 29, 2010 meeting minutes be approved.

Roll call on the motion resulted as follows: **YEAS: CLEGG and EBERLE.**

Motion carried.

CANVASSING OF 2010 HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1 GENERAL OBLIGATION BOND ELECTION RESULTS

Craig Croner, District Clerk and Amanda Horton, Legal Department, presented the staff report.

Moved by **CLEGG** and seconded by **EBERLE** that the Canvassing of the Votes for the 2010 Harris Ranch Community Infrastructure District No. 1 General Obligation Bond Election be approved.

Roll call on the motion resulted as follows: **YEAS: CLEGG and EBERLE.**

Motion carried.

Moved by **CLEGG** and seconded by **EBERLE** that the Harris Ranch Community Infrastructure District No. 1 Board meeting be adjourned at 3:18 o'clock P.M.

Roll call on the motion resulted as follows: **YEAS: CLEGG and EBERLE.**

Motion carried.

EXHIBIT A

FORM OF OFFICIAL BALLOT

OFFICIAL BALLOT

SPECIAL GENERAL OBLIGATION BOND ELECTION
HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1
(CITY OF BOISE, IDAHO)
ADA COUNTY
STATE OF IDAHO

August 3, 2010

QUESTION: Shall the Harris Ranch Community Infrastructure District No. 1 (City of Boise, Idaho), Ada County, Idaho, be authorized by the voters of the District, with any such voter authorization intended to be valid for a period of thirty (30) years from the date of any potential passage at this election, to incur indebtedness and to issue and sell its general obligation bonds, in one or more series of bonds, in an aggregate principal amount for all such bonds of up to $50,000,000, payable over a term which may be less than but which shall not exceed thirty (30) years from the date of issuance of each such series of bonds, and payable from ad valorem taxes, for the purpose of providing for the financing, acquisition, purchase, construction, and/or installation of the District's costs or portions of its costs associated with various community infrastructure projects, facilities and improvements for the District, generally consisting of roadways, parks, recreation areas, public facilities, interest in real property, water, wastewater, storm water, flood control improvements, financing costs, impact fees and such other related costs, items and improvements as allowed pursuant to the terms of the Idaho Community Infrastructure District Act, and more fully described in the General Plan of the District and provided in Resolution No. ___3___ adopted June 29, 2010.

IN FAVOR OF ISSUING BONDS UP TO THE AMOUNT
OF $50,000,000 FOR THE PURPOSES STATED IN
RESOLUTION NO. _____3_____

AGAINST ISSUING BONDS UP TO THE AMOUNT
OF $50,000,000 FOR THE PURPOSES STATED IN
RESOLUTION NO. _____3_____

INSTRUCTIONS TO VOTERS: To vote on the preceding question, make a cross (X) in the space to the right of the words "IN FAVOR OF ISSUING BONDS UP TO THE AMOUNT OF $50,000,000 FOR THE PURPOSES STATED IN RESOLUTION NO. __3__" or "AGAINST ISSUING BONDS UP TO THE AMOUNT OF $50,000,000 FOR THE PURPOSES STATED IN RESOLUTION NO. ___3___", according to the way you desire to vote on the question. All marks otherwise made are forbidden.

The following information is required by §34-439, Idaho Code:

The total existing general obligation indebtedness, including interest accrued as of August 3, 2010, of the District, is - 0 -. The interest rate anticipated on the proposed general obligation bonds is six percent (6.00%). The range of anticipated rates is from four and one-half percent (4.50%) to twelve percent (12.00%). If issued in only one series of bonds, the total amount to be repaid over the life of the proposed general obligation bonds, based on the anticipated interest rate, is $108,973,367.24.

EXHIBIT C

FORM OF ELECTOR'S OATH
(PROSPECTIVE RESIDENT QUALIFIED ELECTOR)

OATH AND AFFIDAVIT OF PROSPECTIVE RESIDENT QUALIFIED ELECTOR

Special General Obligation Bond Election
Harris Ranch Community Infrastructure District No. 1
(City of Boise, Idaho)
Ada County, State of Idaho
August 3, 2010

STATE OF IDAHO)
):ss
County of Ada)

I do solemnly swear or affirm:

1. That I am a person who is qualified to vote in an Idaho general election and I am qualified to vote in this election by reason that I am an actual resident of and my residence address as shown below is located within the existing boundaries of the Harris Ranch Community Infrastructure District No. 1 (City of Boise, Idaho) (the "District").

2. That I am under no legal disqualification to vote, and I am registered to vote in the State of Idaho.

3. That I have not previously voted in this election.

4. That I have received the additional voter information materials and description required by Section 50-3112(5)(a), Idaho Code.

5. That I affirm the above stated facts are true and correct, subject to penalties of perjury, and before signing this oath and affidavit I have been given an opportunity to review and have seen a map illustrating the actual existing boundaries of the District.

DATED this _____ day of _____, 2010.

_____
Signature of Elector

_____
Residence Address (No P.O. Box)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2010.

_____
Judge of Election (and/or Notary Public for Idaho) or Election Board Member

EXHIBIT D

FORM OF ELECTOR'S OATH
(PROSPECTIVE OWNER QUALIFIED ELECTOR)

OATH AND AFFIDAVIT OF PROSPECTIVE OWNER QUALIFIED ELECTOR AS TO OWNERSHIP OF LAND OR OTHER QUALIFICATION TO VOTE PURSUANT TO SECTIONS 50-3112, AND 50-3102, IDAHO CODE, AS AMENDED

Special General Obligation Bond Election
Harris Ranch Community Infrastructure District No. 1
(City of Boise, Idaho)
Ada County, State of Idaho
August 3, 2010

STATE OF IDAHO)
):ss
COUNTY OF ADA)

I do solemnly swear or affirm:

1. I am the authorized representative of _____ (the "Entity"), an entity duly formed and validly existing or recognized pursuant to the law of the State of Idaho.

2. The Entity I so represent owns all or some of the real property in the Harris Ranch Community Infrastructure District No. 1 (City of Boise, Idaho) (the "District").

3. The Entity is qualified to vote as an owner qualified elector pursuant to Sections 50-3112 and 50-3102, Idaho Code, as amended, as the bona fide owner of all or some of the real property within the District, holding title or evidence of title of record of said real property.

4. As the authorized representative of the Entity, I have been designated and authorized by the Entity to represent and vote for and on behalf of the Entity, in the special election being held by the District on the date hereof.

5. I am otherwise a qualified elector under the laws of the State of Idaho and am duly registered to vote in Ada County, Idaho, the county where the District is located, and I and the Entity have not previously voted in this election.

6. I have received the additional voter information materials and description required by Section 50-3112(5)(a), Idaho Code.

DATED this ____ day of _____, 2010.

_____
Signature of Elector

SUBSCRIBED AND SWORN to before me on this ___ day of _____ 2010.

_____
Judge of Election (and/or Notary Public for Idaho) or Election Board Member

FF. Exhibit FF - Petitioners' Reply Brief in the Litigation

IN THE DISTRICT COURT FOR 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

PETITIONERS' REPLY BRIEF

Appeal from the Harris Ranch Community Infrastructure District No. 1
Honorable Nancy A. Baskin, District Judge, Presiding

(Names and addresses of all counsel of record continued on the following page.)

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I. INTRODUCTION

Opponents,[1] in their responses to Residents' Opening Brief, continue a fundamentally false narrative regarding the nature of the actions which are the basis for this judicial review proceeding, as they have done from the outset. They thus continue to cite to authority which has limited if any application to this proceeding, and to argue for the application of principles which make little or no sense in this context. In their fictional account, there was some sort of contested administrative hearing before the Board of the District acting as a tribunal, in which Residents participated as parties and submitted evidence for the record, and that Residents advanced legal arguments at that hearing to which the District responded. This narrative regarding the process and procedure before the Board is untrue in almost every respect, and results in a legal mischaracterization and therefore mistreatment of what has occurred prior to the initiation of this judicial review proceeding.

Contrary to the Opponents' many assertions otherwise, both direct and implied, there was no hearing below; there was no tribunal which heard and considered arguments from the parties now before this Court; there was no evidence taken nor any opportunity for Residents to introduce any; there was no petition, application, complaint or other pleadings and thus no responses to the same; there was no testimony under oath; there was no opportunity to file motions, including for reconsideration; there were no findings of fact or conclusions of law; and there was no decision, order or award from which to appeal. The twelve objection letters submitted by Residents to the Board and other City officials (collectively, "Objection Letters") and the responses to some of those letters from the Developer were not submitted pursuant to a solicitation or request for comment from the Board. In fact, they were not submitted pursuant to any formal process, proceeding or rule. They were not even filed with the City Clerk because no process for doing so

[1] Terms used but not defined herein have the meanings given in Residents' Opening Brief.

existed. They were instead submitted informally by email as part of general civic discourse and Residents' participation in the political process.[2]

The actions which are the subject of this judicial review proceeding consist simply of the adoption of two resolutions by the City Council members of the board of a special purpose local government at a public meeting held for that purpose, the agenda for which was posted only days before that meeting, and at which there was no opportunity to be heard. That is it.[3] Legal precedents, therefore, which apply to and make sense in the context of an appeal from a contested administrative proceeding, and even more so from a civil or criminal trial, with all the elements above which were not present here, largely do not apply and do not make sense in this appeal.

Of particular note is the opening language in the oft-cited statute which is the basis for this judicial review: "***Any person*** ***in interest*** ***who feels aggrieved*** by the final decision of a … district board in the … governing of a district … ***may … seek judicial review***…". Idaho Code § 50-3119 (Emphasis added). As Residents will explain further *infra*, there is no requirement that anyone who feels aggrieved by the final decision appear at the meeting of the board at which such decision was made, or that they submit any comments or make any objections, let alone that they have introduced any evidence, made any legal arguments, or created any record whatsoever, or that they have done anything else to preserve what from the clear and unambiguous language of the statute is their unfettered right to judicial review to contest "the validity, legality and regularity" of that decision. The right to judicial review instead is conditioned *only* upon filing a written notice of appeal within 60 days.

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[2] See, by comparison, Idaho Rule of Civil Procedure 84(f)(1)(B).

[3] This is in marked contrast, for example, to a proceeding under the Idaho Admin. Procedure Act, with which this Court is undoubtedly familiar. Idaho Code §§ 67-5240, *et seq*., including Section 67-5242.

This unfettered right to judicial review is in recognition of the fact that the actions appealed are *not* contested administrative proceedings, with all that entails, but rather the adoption of resolutions, which is the way in which CID boards make "final decisions". A CID is not required under Idaho law to, and the District therefore typically does not, give notice of a board meeting until *only five calendar days before it is held*. Idaho Code § 74-204. And a CID is not required to post the agenda *until 48 hours before the meeting*. *Id*. Moreover, if it is a special meeting (that is, any meeting other than a regularly scheduled meeting), the notice and agenda need not be posted *until 24 hours prior to the meeting*. *Id*. Thus, it generally would in fact be *impossible* for a person aggrieved by the adoption of a resolution to obtain CID documents which may relate to such action pursuant to a public records request, let alone to have counsel undertake a review of those documents, let alone for counsel to formulate legal arguments in opposition, all within a matter of days or even hours before the scheduled adoption of the resolution. Moreover, even if a member of the public did so, there is no procedure under the CID Act for submitting such documents and arguments to a CID board, no requirement for any sort of hearing, no requirement that the board even consider any such documents or arguments (or include them in what they unilaterally designate on appeal as the "record"), and no requirement that the board make any determinations whatsoever even if any information submitted is considered. The board would be free to ignore any or all of that and to adopt the resolution, whether based on a recommendation from staff, or instead on policy or political considerations, or even on personal whims.

In addition, Opponents in their responses repeatedly misstate the content and import of law and authority which they cite in support of propositions that in fact have no legal or factual basis in the record. They also repeatedly mischaracterize the arguments advanced by Residents with the effect, if not the intention, of confusing the issues and misdirecting the attention of this Court. Thus, for example, Opponents repeatedly assert that Residents have alleged some sort of "criminal

conspiracy" on the part of Opponents;[4] that they are challenging "final decisions" made years ago, including the formation of the District;[5] that Residents' factual statements have no support in the record;[6] that they are making arguments which are the opposite of what they presented to the Board;[7] that they are arguing that the Impact Fee Act rather than the CID Act is the controlling statute;[8] that they have ignored statutory definitions;[9] that they are arguing that each bond resolution requires a new bond election;[10] that they are making a "facial attack" on the CID Act;[11] and that Residents suffer from a "fundamental misunderstanding" of applicable law.[12] None of that, however, is true either, as is made clear by Residents' Opening Brief and the pages to follow. What *is* true is that the adoption of the Challenged Resolutions was unlawful, as are the actions which those resolutions authorized.[13]

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[4] Intervenor's Brief (hereinafter "IB"), pp. 1, 27, 38.

[5] Respondents' Brief (hereinafter "RB"), pp. 1, 5, 6, 9-17, 48, 49; IB pp. 3, 9, 35, 38.

[6] RB pp. 5-7, 15-16.

[7] RB p. 18.

[8] RB pp. 17-18, 19-23.

[9] RB pp. 19-23; IB pp. 15-16.

[10] RB pp. 51-52; IB pp. 37-38.

[11] RB pp. 50, 56; IB pp. 35, 39.

[12] IB pp. 26, 29, 30.

[13] Opponents also suggest that Residents are ignoring this Court's prior procedural ruling regarding the scope of the record. RB p. 13; IB pp. 11, 22, 32. That is not the case. Residents do not interpret the Court's prior order as a final order on the issues raised by this appeal. The reasoning underlying the Court's decision was directed at procedural questions regarding the scope of the appellate record rather than the substantive issues. Moreover, the reasoning underlying the Court's decision was based in no small part on the Court's conclusion that Residents lack standing to raise certain issues on appeal. As that issue was not briefed by any party, Residents therefore ask the Court to reconsider that determination. In any event, preservation of arguments within the specific context of the substantive issues presented for appeal is necessary for any subsequent appellate review.

II. ARGUMENT

A. The Payments Resolution Violates the CID Act Because It Approves the Financing of Facilities Which Are Not "System Improvements" and Therefore Do Not Constitute "Community Infrastructure".

Opponents allege that Residents have ignored the definition of "community infrastructure" in the CID Act, and that the Impact Fee Act is irrelevant to an interpretation of the CID Act.[14] In fact, it is Opponents – not Residents – who ignore both critical language in the CID Act and its legislative history, which both make crystal clear that it was the Legislature's intention to restrict funding under the CID Act to "regional community infrastructure" that can be financed from "development impact fees" pursuant to the Impact Fee Act.

Opponents spend many pages of their briefs arguing that the 2021 Projects: (1) are the types of facilities listed or referenced in the definition of "community infrastructure" in Section 50-3102(2) of the CID Act; (2) satisfy the requirements in the first sentence of that definition – that they have "a substantial nexus to the district" and "directly or indirectly benefit the district"; and (3) satisfy the requirements under the Development Agreement.[15] However, none of these issues were raised in Residents' Opening Brief. The arguments offered in opposition are thus both irrelevant to the question before this Court and beyond the scope of permissible opposition.

The issues *actually* presented are whether the 2021 Projects satisfy the *other* requirements under the CID Act for facilities to constitute "community infrastructure". Those include: (i) whether the facilities are publicly owned (Section 50-3101(2)); (ii) whether the facilities are "fronting" individual single family residential lots (Section 50-3102(2)); and (iii) whether the facilities are "regional community infrastructure" eligible for funding from development impact fees (Section 50-3101(1)). **As to that third-listed limitation, *there is no question* that almost all**

[14] RB pp. 17, 19-23; IB pp. 13, 15-16.
[15] RB pp. 25-29, 45-46; IB pp. 16-19.

the 2021 Projects do *not* satisfy that requirement (which Opponents implicitly concede by failing to argue otherwise).

1. The CID Act Only Permits the Financing of Regional Community Infrastructure Eligible for Funding from Development Impact Fees.

The Idaho Supreme Court has held countless times that the goal of statutory interpretation is to give effect to the intent of the legislative body that adopted the act. *E.g., Hood v. Poorman*, 519 P.3d 769 (Idaho 2022); *Kuna Rural Fire Dist. v. Pub. Emp. Ret. Sys. of Idaho Bd.*, 170 Idaho 496, 512 P.3d 1119 (2022) ("Court's aim is to apply the statute as our citizen legislature intended it, not as English or law professors would prefer it to be."). As the Court stated in *Marquez v. Pierce Painting, Inc.*, 164 Idaho 59, 423 P.3d 1011 (2018): "A construing court's primary duty is to give effect to the legislative intent and purpose underlying a statute."[16]

Opponents not only ignore what the language of the CID Act and the legislative history both articulate regarding the legislative intent and purpose of the CID Act, they advocate the adoption of an interpretation *that directly contradicts* that legislative intent and purpose. Opponents go on for pages as to why the various provisions of the CID Act regarding financeable facilities do not create any ambiguity.[17] ***But in all that verbiage, what Opponents fail to explain is why, if the Impact Fee Act has no bearing on the facilities that can be financed under the CID Act, the CID Act explicitly refers to the Impact Fee Act in critical sections***. Those include: (i) in the statement of purpose (Section 50-3101(1)); (ii) in the definition of "community infrastructure" (Section 50-3102(2)); and (iii) in the section *limiting* credits against development impact fees for facilities financed through a CID to "system improvements" and *prohibiting* them for "project improvements" (Sections 50-3120 and 67-8209).

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[16] Citing *City of Idaho Falls v. H-K Contractors, Inc*., 163 Idaho 579, 582, 416 P.3d 951, 954 (2018).

[17] RB pp. 22-23; IB pp. 13-15, 19.

"Where one statute adopts particular provisions of another by reference thereto, the effect is the same as though the adopted provisions were written into the adopting statute." *Norton v. Dep't of Emp't*, 94 Idaho 924, 927, 500 P.2d 825, 828 (1972). The CID Act's statement of purpose unambiguously and affirmatively recites that it is intended as a "tool" to finance regional infrastructure eligible for funding from development impact fees "established in chapter 82, title 67, Idaho Code". Idaho Code § 50-3101(1). Chapter 82, title 67 of the Idaho Code *is* the Impact Fee Act. Only "system improvements," as defined in the Impact Fee Act, are eligible for funding from development impact fees. There thus was no need for the Legislature to restate in the CID Act what is abundantly clear in the Impact Fee Act because the CID Act's statement of purpose explicitly references and incorporates the chapter and title of the Idaho Code in which the Impact Fee Act is contained. Moreover, to the extent that the references within the CID Act's statement of purpose to "regional community infrastructure" and funding from "development impact fees established in the [Impact Fee Act]" are subject to more than one interpretation (as the competing briefing by the parties on this issue would suggest), that ambiguity is resolved by the legislative history which overwhelmingly confirms the interpretation presented by Residents.[18]

2. "Community Infrastructure" as Defined in the CID Act Does Not Include More Types of Facilities Than Those Which Can Be Funded from Development Impact Fees.

Respondents next argue that the definition of "community infrastructure" in the CID Act *adds* to the list of "public facilities" defined in the Impact Fee Act (which are explicitly cross-referenced in the CID Act definition of "community infrastructure").[19] They thus argue that the facilities which can be funded under the CID Act must be *broader* than those that can be funded

[18] Residents separately address *infra* the "public ownership" and "fronting" requirements under the CID Act, which Opponents have honored in the breach.

[19] RB pp. 21-22.

under the Impact Fee Act, and therefore, presumably, cannot be limited to "system improvements". *Id*. This argument fails because it is not consistent with the language of the two statutes.

The Impact Fee Act defines "system improvements" as including public facilities described in Section 50-1702 of the Idaho Local Improvement District Code. Idaho Code § 67-8203(29). That list goes on for an entire page and is much more extensive than the definition of "community infrastructure" in the CID Act. Thus, contrary to Respondents' assertion, the public facilities included in the definition of "community infrastructure" that can be financed under the CID Act are *narrower* than the "system improvements" that can be funded under the Impact Fee Act, and therefore consist of only a subset of "system improvements" that are eligible for funding from development impact fees.[20]

3. Residents Are Not Barred from Advocating an Interpretation of the CID Act that is Consistent with the Legislature's Clear Intent.

In case the Court declines to adopt Opponents' interpretation of the CID Act, which contradicts both its plain language and the legislative history, Opponents argue in the alternative that Residents should be barred from arguing in favor of the interpretation that actually *is* consistent with what the Legislature intended. They do so on two alleged grounds: (1) they argue Residents did not preserve this issue; and (2) they argue Residents made an inconsistent argument to the Board. Neither of those assertions is accurate, and in any event neither would be a bar to raising the issue in this proceeding.

[20] To compound the confusion, Intervenor makes the opposite argument – that the definition of "community infrastructure" in the CID Act is *narrower* than the definition of "system improvements" in the Impact Fee Act (with which Residents agree). They thus argue that the two definitions are "separate" (with which Residents also agree). But that is beside the point. The issue is what limitations the CID Act otherwise imposes on facilities that can be financed. Those limitations include, among others, that the facilities be eligible for funding from development impact fees.

a. The CID Act Does Not Require Residents to Raise Any Issues Whatsoever Before the Board in Order to Contest the Validity, Legality and Regularity of the Challenged Resolutions.

The CID Act imposes *only one condition* on the right of any person in interest who feels aggrieved by the final decision of a CID board to file an appeal challenging the validity, legality or regularity of that action – that they file their petition for judicial review within 60 days of the meeting at which such action was taken. Idaho Code § 50-3119. There is *nothing* in the CID Act or elsewhere that requires them to have appeared at that meeting, to have made any comments, or to have raised any objection before the board, let alone to have submitted evidence or to have made legal arguments to the board. In fact, the CID Act is completely silent as to any process or procedure for the presentation of any argument, evidence, or authority either before or after the initiation of judicial review.

Even though there is no statutory requirement or even statutory mechanism to present argument or evidence to the Board, Opponents nonetheless assert that Residents are barred from presenting any legal arguments that were not submitted at some unspecified point and in some unspecified manner prior to the Board's decisions. *Opponents, however, do not cite to any authority under the CID Act or in any comparable circumstance that so holds*. That is because, so far as Residents have been able to determine, there are no such cases, and understandably so. Opponents therefore cite instead to cases *all of which arise in the zoning context*, *and all of which involved prior contested administrative proceedings under Idaho's Local Land Use Planning Act and Administrative Procedure Act*.[21] However, in all those cases there was an actual contested administrative hearing, with evidence, and legal arguments, and testimony under oath, and findings of fact, and conclusions of law, and a written decision. *That is because there were statutory requirements and other rules creating and setting forth that process*. Those cases *simply do not*

[21] RB p. 19; IB pp. 10.

apply to an appeal under the CID Act from the adoption of two resolutions at a regular meeting by the Board which included none of those things. If they did apply, then this judicial review proceeding would have been over before it even began. That is because ***nobody introduced or admitted a single piece of evidence or made a single legal argument at the meeting where the Challenged Resolutions were adopted***. In fact, because there was no public hearing, there was no opportunity for Residents to say anything at all.[22]

This citation to inapplicable authority is part of the continued advancement by Opponents of a fundamentally false narrative – that the District conducted some sort of contested administrative proceeding in which, among other things, Residents were afforded the opportunity to introduce evidence and to make legal arguments, which the Board considered and based on which the Board made findings of fact and conclusions of law, and then issued its decision. That is a fiction. Included in the record on judicial review are a dozen Objection Letters which Residents sent by email to the Board and to City elected and other officials over the three months prior to the adoption of the Challenged Resolutions.[23] Those letters were the result of Residents' efforts to better understand the District, its past actions, and the reasons for the substantial property tax burden the District is imposing on them. Those efforts included submitting multiple public records requests to the City and beginning Residents' review of the thousands of pages of documents which were produced. ***Residents did so, however, as participants in the political process, and not as***

[22] Residents note that there is a similar provision in Idaho Code § 31-1506 regarding actions by county boards of commissioners: "Unless otherwise provided by law, judicial review of any final act, order or proceeding of the board … shall be initiated by any person aggrieved thereby within the same time and in the same manner as provided in [the Idaho Administrative Procedure Act]." (Emphasis added.) There are no cases under that statute requiring or even suggesting that a "person aggrieved" have done anything whatsoever prior to filing their appeal in order to preserve their right to do so. On the contrary, there are cases which at least suggest that there is no such requirement. *See, e.g., Eastern Idaho Health Services, Inc. v. Burtenshaw*, 122 Idaho 904, 841 P.2d 434 (1992); *overruled in part on unrelated issue, Floyd v. Board of Com'rs of Bonneville County*, 137 Idaho 718, 52 P.3d 863 (2002).

[23] R pp. 583-587, 953-956, 957-960, 969-975, 982-988, 989-994, 999-1003, 1407-1420, 1430-1435, 1436-1443, 1444-1453, 1461-1468.

parties to any sort of legal proceeding, or pursuant to any solicitation from the Board, or pursuant to any other rule, procedure or process. The facts are that the Board held a regular meeting on October 5, 2021, to adopt two resolutions for which it gave the requisite statutory notice and posted the agenda. That is all. There was no public hearing, so there was no opportunity to present evidence or argument. And there was no process or procedure by which authenticated evidence, sworn testimony or legal argument could have been presented to or considered by the Board.

Therefore, there is not only no authority that requires Residents to submit a legal interpretation of the CID Act to the Board before it makes a final decision, but the "process" by which the Board makes final decisions is incompatible with the imposition of any such requirement.

b. The Issue of Whether the CID Act Only Permits the Financing of Regional Community Infrastructure Eligible for Funding from Development Impact Fees Was Preserved.

"[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). An Idaho appellate "Court's 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.

The argument presented by Residents which Opponents allege was not preserved is that "community infrastructure" excludes "local" improvements and is therefore limited to facilities eligible for funding from development impact fees. The Board's adoption of resolutions to fund community infrastructure that is not eligible for development impact fees constitutes "an adverse ruling" that satisfies any preservation requirement. The argument was also presented by both

Residents and the Developer to the Board and thus preserved. Residents argued repeatedly 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.[24] The Developer, arguing otherwise in its reply letters, repeatedly emphasized the "local" nature of the facilities financed by the District, and the fact that many of the improvements benefited "only" the Harris Ranch development.[25] Moreover, the Developer, in support of that argument, not only cited but attached a copy of a portion of the legislative history of the CID Act, including language also cited by Residents in their Opening Brief.[26] Included in that excerpt is the statement that "***only public infrastructure providing a regional or community wide benefit may be funded through a CID***".[27] Whether the 2021 Projects are unlawful because they primarily provide "local" rather than "general" benefits was therefore before the Board, as was the legislative history of the CID Act.

Therefore, if the issue as to whether the CID Act permits the funding of community infrastructure that is not impact fee eligible had to be preserved, it was.

c. Rule 84 Permits Judicial Review of Issues Discovered After Judicial Review Has Been Initiated.

Idaho Rule of Civil Procedure 84(c)(5), which governs this judicial review proceeding, expressly provides in relevant part:

> (c) Petition for Judicial Review--Contents. Unless a different procedure is provided by statute, a petition for judicial review from an agency to the district court filed pursuant to this rule must contain the following information and statement:
>
> * * *

[24] See Objection Letters cited in fn. 23.

[25] R pp. 907-952, 961-968.

[26] R pp. 907-952.

[27] R pp. 907-952. (Emphasis added.)

> (5) a statement of the issues for judicial review that the petitioner then intends to assert on judicial review; provided, … ***the statement does not prevent the petitioner from asserting other issues later discovered***; … [Emphasis added.]

As noted above, Residents argued in several of their Objection Letters that facilities which provide only a "local" benefit cannot be financed under the CID Act.[28] They thus raised this issue with the Board. But even if Residents were otherwise required not only to raise the issue but also to present all the legal grounds on which that argument was based, Rule 84(c)(5) nonetheless permits Residents to argue in this proceeding that the legislative history of the CID Act repeatedly emphasizes that only "system improvements" can be financed under the CID Act. That is 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.

Rule 84(c)(5) allows issues which were not included in the initial "statement of issues for judicial review" but which were "later discovered" to nonetheless be asserted on appeal. That such issues are "later discovered" means by necessary implication that they were not raised previously. So, again, there is no bar to Residents raising the issue in this proceeding.

d. Residents Have Not Contradicted Statements Made in Their Objection Letters.

In yet another attempt to bar Residents from advancing an accurate interpretation of legislative intent, Opponents assert that Residents are now arguing "the opposite" of what they previously contended to the Board.[29] This argument fails for several reasons. First, it lacks legal authority. Opponents cite no authority for the proposition that an issue cannot be preserved for appeal if a party says something contradictory in a letter to public officials. Opponents' argument should be rejected on this basis alone.

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[28] R pp. 583-587, 957-960, 1407-1420, 1444-1453.

[29] RB p. 18-19, 27; IB p. 15.

Second, this argument fails because it is based on a false premise. Opponents suggest that Residents argued in their Objection Letters that the 2021 Projects all provide "general" rather than "local" benefits. But that is untrue, and another mischaracterization of Residents' arguments. Opponents cite the following language in Residents' August 27, 2021, Objection Letter in support of their contention: "To date, the HRCID has been used *almost exclusively* to fund facilities and improvements that are of general benefit to the City and its residents."[30] What Opponents fail to mention is that the letter goes on to list seven projects, the first four of which provide primarily "general" benefits, *but none of which are at issue in this proceeding*. Those include: (1) improvements to a fire station; (2) improvements to the Boise Greenbelt; (3) a Boise Greenbelt wetlands project; and (4) a 20-acre City park.[31] None of these four projects are at issue in this proceeding. There is therefore no contradiction and thus no basis for the assertion of some preclusive effect (even if authority for such an effect existed).

Residents did state in their August 27, 2021, Objection Letter, that the Stormwater Facilities, Warm Springs Extension 3, and Parkcenter Roundabout were facilities which appeared to provide a general rather than a local benefit. But Residents subsequently retracted their statement regarding the Stormwater Facilities after being corrected by counsel for the Developer. Developer's lawyers clarified, in their letter of September 17, 2021, that:

> Finally, [Residents] allege[s] that the storm water collection ponds are also a [sic] regional benefit, extending far beyond the [District]. This is incorrect. The storm ponds are sized and engineered only to retain runoff from within the [District] …[32]

Residents responded in their letter of September 27, 2021, as follows.

> Developer's lawyers state repeatedly in their letters that, among other things, we have "misrepresented" what they assert are "the facts". ***We acknowledge and***

[30] RB p. 18; IB p. 15. (Emphasis in original.)
[31] R pp. 958-960.
[32] R p. 967.

> ***apologize, and have repeatedly admitted, that we are not familiar with all "the facts" regarding a project in which the Developer and its many lawyers and other professionals have been intimately involved for 15 years or more***.[33]

And Residents' understanding of the Warm Springs Extension 3 and Parkcenter Roundabout projects (described by the Developer as the "Warms Springs Bypass") evolved as construction progressed on the web of new local access streets between Warm Springs Extension 3 and East Parkcenter Boulevard in Harris Ranch. It became apparent that this roadway is not a "bypass" around the development, but rather is the primary access road for the south and east sides of Harris Ranch. Residents also expressly stated in their August 30, 2021, Objection Letter:

> Please note that these project descriptions and associated dollar amounts ***are based on our current understanding of the City records provided to us, and are subject to further review and refinement.***[34]

And Residents explained repeatedly in their Objection Letters that their review was ongoing and that they expected to make additional objections as that review progressed. Thus, for example, Residents' August 14, 2021, Objection Letter included the following:

> We again note that ***this letter and our prior letters do not include all our objections to proposed payments to the Developer, let alone to prior payments. We expect to provide additional objections as further information is made available to and reviewed by us.***[35]

For almost all of the 2021 Projects, Residents never made arguments in their Objection Letters inconsistent with their arguments in this proceeding. And in the few instances where they did, Residents corrected those statements with the benefit of additional facts. Therefore, Opponents' assertion of some sort of bar based on alleged inconsistencies in Residents' arguments is without legal or factual basis and should be rejected.

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[33] R p. 1446. (Emphasis added.)
[34] R p. 1409. (Emphasis added.)
[35] R p. 1435. (Emphasis added.)

B. The Payments Resolution Violates the CID Act Because It Approves Payments for Facilities "Fronting" Individual Single-Family Residential Lots.

Faced with a *second* limitation under the CID Act which is also fatal to most of the District's proposed payments for the 2021 Projects – the prohibition against financing facilities "fronting individual single-family residential lots", Opponents present numerous specious arguments in an attempt to avoid the plain, ordinary meaning of the word "fronting". They repeatedly cite authority that does not support the propositions for which that authority is cited and thus misstate the content of that authority. And they repeatedly cite to authority that provides no insight into the intent of the Legislature when it passed the CID Act in 2008 and is therefore irrelevant.

As Residents explain in their Opening Brief, the word "fronting" is generally understood to mean "facing" or "in front of", and *not only* "physically touching". If the Legislature had meant "physically touching", there are words it could have used which mean that. Those include "abutting" and "contiguous" – the latter of which the Legislature *in fact used* in the CID Act in imposing another limitation on CIDs which Opponents effectively ignored. Idaho Code § 50-3102(5) ("A district shall only include contiguous property at the time of formation."). But the Legislature used the word "fronting".

1. The Word "Fronting" Is Not a Technical Term with a Technical Meaning.

Opponents argue that the Legislature intended a technical meaning, limited only to things that physically touch, when it used the word "fronting" in passing the CID Act in 2008.[36] This argument fails because there is no authority to support it, and because all the authority that does exist clearly shows that the word "fronting" does *not* require physical touching.

[36] RB pp. 31-35; IB pp. 20-22.

Respondents do not cite to a single case, from anywhere, that holds or even suggests that the word "fronting" has a technical meaning, let alone one that refers exclusively to things that physically touch.[37] Respondents instead cite to the definition of "fronting and abutting" that appeared in Black's Law Dictionary 54 years ago (4th Ed.) and 32 years ago (6th Ed.).[38] The contents of a legal dictionary from 54 years ago and 32 years ago have no application to what the Legislature intended in 2008. Moreover, that definition was *removed* from Black's Law Dictionary long ago ***because it has no accepted legal meaning***. In fact, the Eighth Edition of Black's Law Dictionary, published in 2004 (and thus the edition in place in 2008 when the CID Act was passed), ***does not contain a definition of the word "fronting"***.

Thomson-Reuters, the publisher of Black's Law Dictionary, explicitly states in the Eleventh and most recent edition that terms that appeared in earlier editions but have since been removed should not be considered as true legal terms. The long-time Editor-in-Chief, Bryan A. Garner, explains in the Preface to the Eleventh Edition:

> This massive new edition of Black's Law Dictionary continues the undertaking begun by Henry Campbell Black in 1891: ***to marshal legal terms to the fullest possible extent and to define them accurately***. But more than that, it continues the effort begun with my seventh edition of 1999: to follow established lexicographic principles in selecting headwords and in phrasing definitions, to provide easy-to-follow pronunciations, ***and to raise the level of scholarship through serious research and careful reassessment***.
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> * * *
>
> Since becoming editor in chief in the mid-1990s, I've tried with each successive edition to make the book at once both more scholarly and more practical. ***Anyone who cares to put this book alongside any of the first six editions (pre-1991 editions) will discover that the book has been almost entirely rewritten, with an***

[37] In the one Idaho case Respondents cite for the general proposition that technical terms should be given their technical meanings, the Supreme Court held that the Legislature, in using the word "livestock" in the Idaho Unemployment Compensation Act, did *not* intend it to have a technical meaning, and that in common usage the word does not refer to "fish". *Meader v. Unemployment Compensation Div. of Ind'l Accident Board*, 64 Idaho 716, 136 P.2d 984 (1943).
[38] RB pp. 32-33.

> ***increase in precision and clarity. It's true that I've cut some definitions that appeared in the sixth and earlier editions***. … ***These [examples] should not count as legal terms worthy of inclusion in a true law dictionary***. [Emphasis added.][39]

Moreover, the definition of "fronting and abutting" in the 1990 Sixth Edition cited by Respondents is derived from a single 1931 Missouri case, cited in that definition, for the notion that "Very often, 'fronting' signifies abutting, adjoining, or bordering on, depending on the context." *Rombauer v. Compton Heights Christian Church*, 328 Mo. 1, 40 S.W.2d 545 (1931). That case is noteworthy for two reasons (in addition to the fact that the definition in which it appears was deleted more than 20 years ago). First, it was a case involving *contract interpretation* rather than statutory construction, where those three terms were used "interchangeably". Second and more importantly, the property which was described variously as "fronting", "abutting" and having "frontage" on the street ***did not physically touch the street***. Rather, as the property plat included in the decision reveals, the property line ended at a public sidewalk approximately 15 feet away from the two streets which the property "bordered". *Id.* at 7.[40]

Black's Law Dictionary, therefore, provides no insight whatsoever into what the Legislature intended in 2008 when it used the word "fronting". And, in fact, the authority on which the anachronistic definitions cited by Opponents rely *contradict* Opponents' assertion that fronting necessarily requires physical touching.

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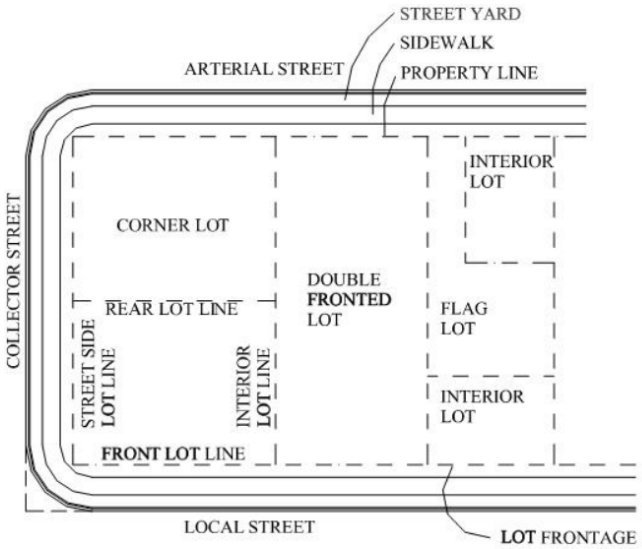
[39] Black's Law Dictionary (11th ed. 2019).

[40] Respondents, in a footnote to their discussion of the long-deleted definition, lay out a confusing series of definitions from the current edition of Black's Law Dictionary, including "frontage", "abut", "abutting property", and "adjoining property". All those definitions, however, are irrelevant, as none of those addresses the meaning of the term "fronting". Respondents then assert that "even the current definitions contemplate immediate adjacency." That conclusion is a *non sequitur*. But even if it were not, that statement does not advance their cause. That is because the word "adjacent" is defined by Merriam-Webster to include not only: "**b:** having a common endpoint or border – '*adjacent* lots', but also: "**1 a**: not distant: **NEARBY**." "Adjacent." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/adjacent. Accessed 7 Dec. 2022. (Emphasis in original.) The word "adjacent" thus is not limited to "physically touching".

Opponents, in arguing that "fronting" has some sort of technical meaning, next cite to the Boise City Code.[41] This argument also fails, again for two reasons. First, the contents of a single city code provision are irrelevant to the intent of the State Legislature. There is no reference to this provision within the CID Act or the legislative history. And there is no authority cited by Opponents that identifies an analysis of a city code provision as a canon of statutory construction. The argument should be rejected on this basis alone.

Second, Respondents' argument is based upon a mischaracterization of the Boise City Code. Respondents assert that a provision of that Code "equates 'fronting' with adjacency or similar terms like 'abutting'".[42] But the Boise City Code does no such thing. ***There is no definition of the word "fronting" in the Boise City Code***. Opponents instead cite to a definition of "Lot, ***Frontage***" – a word not in dispute.[43] (emphasis added). Opponents also neglect to mention that the word "fronting" is used elsewhere in the Boise City Code, but nowhere in a context which clearly requires physical touching. For example, it is used in the context of the City's sewer connection fee to describe a lot "fronting" on a sewer line where there necessarily is no "touching" other than at a presumed point of connection. Boise City Code § 10-2-6-3.C. Moreover, Opponents, in citing to the definition of "Lot, ***Frontage***", fail to note the illustrative diagram in the Boise City Code which accompanies that definition. That diagram (below) shows that the "property lines" for various "lots" with "lot frontage" ***may be separated from the streets by both a "street yard" and by a "sidewalk", and thus do not necessarily physically touch the street***.[44]

[41] RB p. 32; IB p. 22.
[42] RB p. 32.
[43] RB p. 32; IB p. 22.
[44] Boise City Code § 11-012-5, Figure 11-12.4: Lot types.



LOT TYPES

Therefore, none of the authority cited by Opponents is relevant to the interpretation of legislative intent or to establish that the word "fronting" is a technical term with a technical meaning that requires "physical touching". And, in fact, much of the authority they cite indicates the opposite – that "fronting" does *not* require physical touching.

2. The Word "Fronting" Is Not Otherwise Defined by the Idaho Courts.

Respondents state that Residents' use of corpus linguistics in their Opening Brief, as an aid to interpret the commonly understood meaning of the word "fronting", "is the wrong approach".[45,46] But Respondents then undertake their own micro-version of corpus linguistics by citing eight Idaho cases in which the word just appears somewhere in the court's decision.[47] These cases date back to 1892 (plus two Missouri cases from 1891 and 1900) and *on average are almost 100 years old.* They thus are irrelevant to a determination of what the Legislature meant when it

[45] RB p. 31.

[46] Intervenor for their part disparages COCA, a billion-word research database, as "an online colloquy of, essentially, crowd-sourced terms." IB p. 20.

[47] RB pp. 33-34.

used the word in 2008. ***Moreover, the only common characteristic among the eight cases is that the word "fronting" appears somewhere in the text, often only once***.

Respondents then proceed to grossly mischaracterize those cases. ***None*** of those cases stand for the proposition for which they are cited: that the term "fronting" is used by Idaho courts "in a manner synonymous with 'abutting' or 'adjacent to,' or to otherwise denote a common shared boundary."[48],[49] In fact, three of the cases strongly imply that "fronting" does ***not*** mean "abutting", as they use the two words in the disjunctive – "fronting **or** abutting".[50] ***None*** of those cases construes the meaning of the word "fronting", whether in a contractual, statutory or any other context. And ***none*** of those cases describes or suggests, let alone holds, that the word "fronting" requires "physical touching".[51]

But Respondents are not done. They next suggest that "further insight" can be gained as to the meaning of the word "fronting" *not* by looking to *current* dictionary definitions for its commonly understood meaning, or to a *real* corpus linguistics analysis, but instead to the "law regarding LIDs",[52] which they state (incorrectly) are "[s]imilar to CIDs".[53],[54] ***But neither the CID Act nor its legislative history makes any reference to the LID Code. Moreover, the word***

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[48] RB p. 35.

[49] Both Respondents and Intervenor argue at several points that the word "fronting" requires "adjacency". RB pp. 32-36; IB p. 22-24. That further confuses the issue, because that is what *Residents* are arguing. The word "adjacent", as explained in fn. 39 above, means "nearby" although it can also mean "having a common border".

[50] *See*, the *Canady, Glasgow,* and *Knapp* cases cited in RB p. 33.

[51] Intervenor, on the other hand, does not cite any cases at all in support of their argument that "fronting" means something other than "directly in front of or facing". *See*, IB pp. 20-22.

[52] "LIDs" presumably is a reference to "local improvement districts".

[53] RB pp. 34-35.

[54] LIDs are not separate local governments, but rather a mechanism used by local governments to impose special assessments on properties specially benefited. *See*, Idaho Local Improvement District Code, Idaho Statutes, Title 50, Chapter 17 ("LID Code"). The District not only has the authority to utilize LIDs (Section 50-3109), but in fact did so in 2011. District financing through an LID and the payments made to the Developer from the proceeds, all before there were any homes in the District, are not before this Court and are therefore irrelevant and were likely also unlawful.

"fronting" does not appear anywhere in the LID Code. Respondents' implication that the LID Code defines "fronting" or is otherwise relevant to an interpretation of that word within the CID Act is therefore untrue and highly misleading. As the word "fronting" does not appear in the LID Code, Respondents instead explore the use of the term "front-foot method" as used in the LID Code. But the use of a different word in a different statute is irrelevant to this dispute and simply more misdirection.

Respondents then offer yet another *non sequitur*: "Thus, 'fronting' in the similar context of LIDs is used in a manner synonymous with 'abutting'."[55] In support of their untrue statement, Respondents cite two Idaho cases, *Ward v. Ada County Highway Dist*., 106 Idaho 889, 684 P.2d 291 (1984), and *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921). ***Neither*** of those cases, however, stands for the proposition cited. The word "fronting" appears in the *Ward* case *only once* – in quoting the statutory language at issue in the *Amsbary* case. And the *Ward* case had nothing to do with the issue here – whether the word "fronting" has a technical meaning that necessarily requires physical touching. The *Ward* case instead held that a "front foot" special assessment based on property "frontage" was a permissible method under the applicable statute. *Ward*, at 893. The *Amsbary* case held that lots in the center of a block which were *not* "abutting on" or "contiguous to" street improvements could nonetheless be assessed, because they were "tributary". *Amsbary*, at 724. The court did not construe or even address the meaning of the term "fronting" used in the statute, as it was not at issue, other than to note that it was listed in statute in the disjunctive: "fronting **or** abutting on, contiguous or tributary to the street improved". *Id*. (Emphasis added.)

[55] RB p. 35.

Respondents then continue with their misrepresentations. They assert that "[C]ourts outside Idaho have actually addressed and rejected [Residents'] argument that 'fronting' merely denotes 'facing' or 'in front of'."[56] Yet again, that is untrue. The two intermediate appellate cases cited (one of which is *unpublished*) are from the other side of the country – Pennsylvania and New Jersey. And they say no such thing. *Frederici v. Borough of Oakmont Zoning Hearing Board*, 136 Pa. Cmwlth. 310, 583 A.2d 15 (1990), held only that a corner lot is "fronting on" both crossing streets, regardless of which way the building on it faces.[57,58] The case does not address whether "fronting" means "directly in front of", let alone whether the lot "physically touched" the streets. *Leary v. Pepperidge Farm, Inc.*, 2009 WL 2426345 (N.J. Super. Ct., App. Div., Aug. 10, 2009), interpreted the use of the term "fronting" *in a consignment contract*. The court held only that the term as used in the contract was *ambiguous* in reversing a summary judgment order below.[59] Neither case, therefore, even considered Residents' argument that the commonly understood meaning of the word "fronting" is "directly in front of or facing".

3. To Construe the Word "Fronting" to Mean "Directly in Front of or Facing" Is Not Overly Broad.

Respondents next argue that Residents' definition of "fronting" as meaning "directly in front of or facing" would include within the statutory prohibition all sorts of improvements which were intended to be financed by a CID.[60,61] Intervenor goes even further and suggests, among

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[56] RB p. 35.

[57] *Frederici*, at 314.

[58] Moreover, the issue in *Frederici* was whether the building was "fronting on" the streets, not, as is the case with the CID Act, whether the streets and other facilities are "fronting" on single family homes.

[59] *Leary*, at 11.

[60] RB p. 37.

[61] Opponents at various points confuse the statutory prohibition and therefore Residents' argument. The CID Act does not prohibit improvements if single-family homes front on them. It prohibits improvements if they front on single family homes. So, in Intervenor's examples, the issue is not whether the homes face the streets or whether homes face something you could hit with a baseball from the porch, but whether the streets face the homes.

other things, that if "you are able to see the improvements from [your] driveway or front porch" and "hit the community infrastructure with a baseball", those improvements would be prohibited under Residents' definition.[62] Residents, of course, make no such suggestion. Rather, Residents define the term to mean "***directly*** in front of" consistent with the word's generally understood meaning.

In any event, those are not the facts before this Court. The facts instead are that the Developer has interposed between the street and single-family townhomes a 12-foot landscaping strip and sidewalk owned by the homeowners' association *which every owner of those townhomes has the legal right to use and enjoy*. Those strips are not buildable lots, and therefore have an assessed value of zero.[63] Nor are they owned by a third party who can bar entry onto the little strip of grass by the townhome owners or their guests. Residents decline to propose "a limiting principle" of general application to all future cases, despite Opponents' suggestion that they do so, as the Court need not formulate one in this proceeding. The limitation will come into focus as the law in this area develops.

4. The Prohibition in the CID Act Is Against Financing Facilities "Fronting Individual Single Family Residential ***Lots***", Not Facilities "Fronting ***an*** Individual Single Family Residential ***Lot***."

In yet another argument against the clear and unambiguous prohibition in the CID Act against financing facilities "fronting individual single family residential ***lots***", Opponents argue that Section 50-3102(2) only prohibits the financing of facilities fronting ***an*** individual single family residential ***lot***.[64] That, however, ignores the plain language of the statute and is nonsensical on its face. It would mean that, even if a development consisted *entirely* of single-family residential

[62] IB pp. 23-24.
[63] www.adacountyassessor.org/adamaps/
[64] RB pp. 37-41; IB p. 25.

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***, as those facilities would front on *multiple* single-family residential lots, rather than just one.

Finally, Residents note, regarding Respondents' tortured grammatical dissection of the phrase "individual single family residential lots,"[65] that the Legislature, to distinguish the statutory prohibition from "parcels", "plats", "blocks" and "subdivisions", could have started with the term "individual lots". And, to distinguish the statutory prohibition from "individual commercial lots", "individual industrial lots", "individual common area lots", "individual residential lots", and, in particular, "individual multi-family residential lots", they limited the prohibition to "***individual single family residential lots***". The term is clear and unambiguous and does not require any further explication.

For the foregoing reasons, Residents again submit that the term "fronting" as used in the CID Act is commonly understood and widely defined to mean "directly in front of or facing". Moreover, there is no authority that establishes that the word "fronting" is a technical term or that is refers exclusively to things that "physically touch". The CID Act thus prohibits the financing of the local streets and other facilities "directly in front of and facing" the single-family townhomes in the Townhomes #9 and #11 Projects.[66] In addition, the CID Act also prohibits the financing of the other 2021 Projects listed in Residents' Opening Brief which are not only fronting on but also in fact abutting single family residential lots.

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[65] RB pp. 39-40.

[66] Residents note that Respondents assert that: "The townhomes do not have direct vehicular access to the improved roadways." RB p. 36. As is often the case with their brief, that is untrue. What is apparent from the various maps is that the *only* way for townhome owners to access and depart their garages, which are in back, is by driving on those roadways, to which they have "direct vehicular access" via the alleyways down the middle of each block.

C. The Payments Resolution Violates the CID Act Because It Approves Payments for Facilities Which Are Not Publicly Owned.

Residents explain in their Opening Brief that the Stormwater Facilities, including the South Stormwater Ponds which are part of the Town Homes #11 Project, *are still owned by the Developer*, in direct contravention of the express requirement under the CID Act that facilities financed be "publicly owned". Idaho Code § 50-3101(2). Opponents address that largely by ignoring it, and otherwise by mischaracterizing the applicable law and facts.

Respondents explain that the CID Act authorizes the acquisition of interests in real property other than just fee ownership, and that "community infrastructure" may be located on easements owned by the State or a political subdivision.[67] But these are not the issues before the Court, as Residents took pains to explain in their Opening Brief. Residents are not arguing whether the CID Act permits the acquisition of interests in real property other than ownership in fee. And they are not arguing whether "community infrastructure" may be located on easements owned by the government. Residents instead are arguing that ***the facilities themselves cannot be privately owned regardless of whether they happen to be located within a publicly owned easement.*** It is undisputed that there is no publicly owned "community infrastructure" on that or any of the other easements. It is further undisputed that the proposed payments to the Developer are for the costs of construction of those privately-owned stormwater ponds, not for the acquisition of an "easement" of "access" for "maintenance". This runs afoul of the requirement in the CID Act that funding is restricted to facilities that are *themselves* publicly owned.

Intervenor attempts to argue much the same as Respondents. That is, they assert that the granting of the "easement" for "maintenance" is sufficient, even if there is no "community infrastructure" (that is, *publicly owned* facilities) located on that easement. Intervenor then makes

[67] RB pp. 43-44.

the rather pompous and contemptuous assertion that Residents are suffering from a "glaring misunderstanding of real estate law."[68] Residents beg to differ, as is demonstrated *infra*, and note that *it is Intervenor who fails to cite to a single case, statute, or legal treatise in support of arguments derived from their self-proclaimed mastery of real estate law*.

The Developer should be intimately familiar with the granting of an easement by a private landowner to a governmental (or private) entity to construct, operate, maintain, repair, alter and replace governmentally- (or privately-) owned facilities. *That is because the Developer has done so many dozens if not hundreds of times in the Harris Ranch development*. They have granted exactly those types of easements to the City, for example, for sewer, street lighting, sidewalk and other facilities; to Suez (now Veolia) for water facilities; and to Idaho Power for local electric distribution facilities, including with respect to the Town Homes #9 and #11 Projects.[69] And they obtained a "perpetual right of way and easement" from Idaho Power over its transmission facility corridor, for the benefit of ACHD in connection with the Warm Springs Extension 3, for the "construction, maintenance, operation, repair and replacement of a public roadway".[70] All of those facilities are not owned by the Developer, unlike with the Stormwater Facilities, but are instead owned by the public entity or private utility to whom the easements were granted.

If the Developer wanted to be paid for the construction costs of the Stormwater Facilities, they simply could have conveyed ownership in fee of those properties to ACHD, which they did

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[68] IB p. 26.

[69] *E.g*., R pp. 598-602.

[70] For a sampling of the innumerable Idaho cases which discuss the law of easements, including the characteristics of these types of easements, *see, e.g., Hood v. Poorman*, 519 P.3d 769 (2022) (easement for irrigation ditch); *McKay v. Boise Project Bd. of Control*, 141 Idaho 463, 111 P.3d 148 (2003) (easement for water reservoir); *Northwest Pipeline Comp. v. Luna,* 149 Idaho 772, 241 P.3d 945 (2010) (easement for oil and gas pipeline); *Argosy Trust ex. rel. its Trustee v. Wininger*, 141 Idaho 570, 114 P.3d 128 (2005) (easement for road); and *Caldwell v. Cometo*, 151 Idaho 34, 253 P.3d 708 (2011) (implied secondary easement to maintain and repair primary easement for road).

for all the streets in Harris Ranch.[71] Alternatively, they could have conveyed a real (and valuable) "perpetual" easement to ACHD to construct, operate, maintain, repair, alter and replace those stormwater ponds and related drainage systems, ditches and other facilities over, on and under those properties. But they did not. They instead conveyed an arguably worthless "easement" for "access" to "maintain" those privately-owned facilities on privately-owned land, at the City's or ACHD's option, respectively, and only upon the failure of the private parties to do so. That is not, under any legal precedent that was or could be cited by Intervenor, a grant of "ownership" to the City or ACHD of those stormwater ponds. And Intervenor *does not cite a single case, statute or legal treatise* in all its verbal perambulations in support of their arguments.

A simple example illustrates the absurdity of Opponents' argument. If adopted, the Developer could be paid by the District for the entire cost of construction of the Stormwater Facilities if the Developer simply granted an "easement" of "access" to Ada County two days a year to spray weeds at the County's option and without any obligation. There would be no publicly owned "community infrastructure", but there would be a publicly-owned "easement". And so, Opponents argue, the CID money could flow.

What the Legislature obviously intended when it stated that "community infrastructure may be located only in or on land, easements or rights-of-way publicly owned" is exactly what the Developer has done innumerable times in Harris Ranch. That is, the Legislature allowed ***publicly owned*** infrastructure facilities financed through a CID, such as roads, sidewalks, and sewer lines, to be located not only on publicly owned land, but also on easements and rights of way. As the Stormwater Facilities themselves, including the South Stormwater Ponds, are *not* publicly owned, they cannot be financed by the District under the CID Act.

[71] *E.g.,* R p. 598.

D. The Payments Resolution Violates the CID Act Because It Approves Payments for Facilities Undertaken Before the Formation of the District.

Residents explain in their Opening Brief that the Payments Resolution includes the approval of payments for projects undertaken by the Developer *before the District was even formed*. Opponents do not dispute that fact. In fact, Respondents do not address this issue, and Intervenor's response does not directly address Residents' argument. Intervenor instead asserts, despite all the language in the CID Act which clearly indicates that only projects undertaken *after* the formation of a CID can be financed, that there is no language in the statute "expressly precluding" such payments.[72] But they have that backwards.

The CID Act does not grant the District unfettered powers unless such power is expressly excluded. The District has only those powers *expressly granted* and necessarily implied. Thus, if there is *any doubt* as the existence of a power, then it does not exist. As there is no express *grant* under the CID Act of the power to finance, retroactively, facilities constructed *before a CID was even formed* (let alone a development agreement executed between the CID and the developer), the power must be denied.

Intervenor then argues instead that "The ***Development Agreement*** expressly contemplates and permits reimbursement of pre-existing improvements."[73] But whether an action is permitted by the Development Agreement is not the issue before the Court and is irrelevant to a determination of what the statute allows. That statement is also untrue, as Residents explain in fn. 48 of their Opening Brief, because all of the language used in relevant sections of the Development Agreement is forward-looking. Moreover, contrary to Intervenor's assertion, when the Development Agreement permits *later* payment for facilities *previously* dedicated to the public, it is not referring, for example, to facilities dedicated to the public *50 years ago*. It is instead referring

[72] IB p. 28.
[73] IB p. 28. (Emphasis added.)

to facilities dedicated *prior* to such payment, but *after* the execution of the Development Agreement. Otherwise, the Developer could have submitted requests for payments for the value many decades ago of the land under East Warm Springs Avenue and East Barber Drive, which crossed the prior Harris Ranch, when the land under those roads was originally dedicated to the public, plus an extraordinary amount of interest that would have accrued on those amounts over the intervening years. That is not what the Legislature intended and not what the CID Act permits.

It therefore remains clear that the District lacks the authority to approve payments for projects undertaken before the District was even formed and the Development Agreement executed. The District's approval of those payments is therefore unlawful.

E. The Payments Resolution Violates the CID Act Because It Approves Payments for Interests in Land That Do Not Constitute "Community Infrastructure".

Residents explain in their Opening Brief that the Payments Resolution includes the approval of payments for the supposed fair market value of land under Stormwater Facilities even though that land continues to be owned by the Developer. Instead, as Residents explain *supra*, the only interests conveyed to the City and ACHD, respectively, were an "easement" of "access" for "maintenance". Opponents do not dispute that fact. In fact, Respondents ignore the issue entirely, and Intervenor's response fails because it is premised upon yet another series of unsubstantiated and untrue assertions of both fact and law.

For example, Intervenor asserts that: "There is no future private use of these areas that will be allowed as ACHD has permanent control of these areas."[74] This statement not only lacks any citation to the record, there is also no such authority to be found. It is also untrue. The use of *privately-owned* stormwater ponds on *privately-owned* land to manage run-off from a *private*

[74] IB p. 29.

development *obviously does* constitute "private use". And there is nothing in the "easement agreement" which provides ACHD with "permanent control of these areas."[75]

In a tangential comment, Intervenor asserts that "[Residents'] private road hypothetical shows a fundamental misunderstanding of these matters."[76,77] Intervenor continues: "First, any easement to ACHD would constitute a public dedication, meaning such a road would immediately become a public – not a private – roadway upon acceptance. *See, e.g.*, Idaho Code § 40-2302." Section 40-2302, however, says no such thing. That statute instead reads in relevant part:

> (1) By taking or accepting land for a highway, the public acquires the fee simple title to the property. The person or persons having jurisdiction of the highway may take or accept lesser estate as they may deem requisite for their purposes.

Id. There is nothing in this provision that states that the grant of an easement for access to conduct maintenance constitutes a public dedication of the land, or that an easement to access a privately owned facility on privately owned land would automatically convert that facility from private to public ownership.

The CID Act only authorizes the acquisition of interests in land "for community infrastructure". The "easements" of "access" for "maintenance" are not themselves "community infrastructure". As there are no *publicly owned* community infrastructure facilities on those "easements", the payments for the supposed "value" of that land approved pursuant to the Payments Resolution are unlawful under the CID Act.

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[75] R pp. 1018-1030.
[76] IB p. 29.
[77] *See* Residents' Opening Brief at p. 47 for the hypothetical to which they refer.

F. Payments by the District to the Developer for Interests in Land Substantially in Excess of Their Value Would Constitute an Unconstitutional Gift of Public Funds to a Private Enterprise.

Residents explain in their Opening Brief that the Payments Resolution approves payments to the Developer for the supposed fair market value of land on which the Stormwater Facilities are located even though the Developer has only conveyed limited and conditional "easements" for "access" for "maintenance" to the City and ACHD, respectively. Respondents ignore this issue as well. Intervenor responds once again with misdirection and no citation to legal precedent.

Intervenor again alleges that Residents suffer a supposed "fundamental misunderstanding of property law".[78] Intervenor then continues that: "conveyance of an interest in public facilities has value and that value is reimbursable under the CID Act." Whether an interest in a public facility has value or whether that value is reimbursable under the CID Act is irrelevant because it is not the question presented. The issue before the Court is the ***relative value of the interest conveyed***.[79] In response to that issue, Intervenor asserts:

> Finally, … Petitioners have not presented any evidence to show what the correct value should have been; instead, they simply state that there is no value. This is not only illogical, but it also gives the Court no basis on which to overturn any prior determinations of value.[80]

Again, this is not the issue presented. Residents are not asking that this Court overturn any prior determination of value by the District. Rather, Residents 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. This Court *does* have a basis on which to

[78] IB p. 30.

[79] Intervenor's assertion is followed by an entire paragraph of factual statements that almost entirely have no basis in the record, regarding the Boise River, its flood plains, and potential alternative run-off mitigation measures. IB p. 30. In addition to being largely unsubstantiated, those statements are irrelevant as they have no bearing on the unconstitutional lending of credit issue.

[80] IB p. 31.

determine not the *specific* but the *relative* value of the easements, and to make a determination regarding the constitutionality of the conveyance *as a matter of law*.

It is undisputed that the Developer did *not* convey fee title to the Stormwater Facilities to the City or ACHD. It is also undisputed that the Developer did *not* convey any lesser possessory interest, such as a long-term lease. *See, e.g., Wing v. Martin*, 107 Idaho 267, 688 P.2d 1172 (1984). Nor did the Developer 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). *See, e.g., McKay v. Boise Project Bd. of Control*, *supra* (right to construct and operate a reservoir). Rather, the Developer conveyed an "easement" for "access" for "maintenance" of privately-owned facilities which are required to be maintained by private parties and only on the condition that the private parties fail to do so. That is akin to a homeowner granting their neighbor an "easement" for "access" to their yard to trim their trees, mow their lawn and rake their leaves should the homeowner fail to do so. That may be of some value to the neighbor, but it is nowhere near as valuable as fee title to the home itself.

The question is not one of a *specific* value or difference in values, for which evidence may be required. *See, e.g., Bancroft v. Smith*, 80 Idaho 63,323 P.2d 879 (1958) (value of hotel). Rather, the question is one of *relative* value, which is a matter of reasonable deduction. *See, e.g., Miller v. Belknap*, 75 Idaho 46, 266 P.2d 662 (1954) (court's recognition that value of improvements depreciates by mere lapse of time). A court does not need evidence to conclude that $100 is of substantially greater value than $10, or that ten "widgets" are of substantially greater value than one "widget". Nor does a court need evidence to conclude that fee title to a given parcel of land is of substantially greater value than an extremely limited and conditional right of use. So, if a local government approves a payment to the grantor of an extremely limited and conditional easement in an amount equal to the supposed fair market value of a *fee interest* in that property, the local

government necessarily paid substantially more for that interest than its actual value (whatever that may be).

Residents note, finally, that Opponents do not dispute the fact that a payment to the Developer for an interest in property in an amount which is substantially more than the value of that interest is an unconstitutional lending of credit. For these reasons, as the payments to the Developer in an amount equal to the fair market value of a fee interest would be substantially more than the value of the limited and conditional easement granted, they would constitute an unconstitutional lending of credit and gift of public funds by the District to the Developer.

G. Section 50-3119 Provides for Judicial Review of the Accrued Interest Projects Even Though Payments for those Projects May Have Been Approved by the District in the Past.

Section 50-3119 provides Residents the right to challenge the "validity, legality and regularity" of final decisions of the Board of the District if they do so within 60 days. There is no question in this proceeding that Residents did so. But Opponents nonetheless argue that the approval of payments for the Accrued Interest Projects is immune from challenge because the Board has approved payments for those projects in the past.[81] But they do not and cannot cite to any case which so holds, as there is none. Moreover, Opponents' argument is contrary to the plain language of the statute.

Opponents appear to be arguing that the supposed approvals by the Board of payments made in the past constituted not only approval of those *payments* but also approval of those *projects*. Of course, unlike with the Payments Resolution, Opponents do not point to any such specific approvals of specific projects by the Board for most of those projects, because there were

[81] RB pp. 16-17, 48-50; IB pp. 20, 28-30, 32.

none. In any event, Opponents' arguments prove too much, and would eviscerate Residents' right to judicial review.

Thus, for example, Opponents' argument would mean that the Board at its first meeting in 2010 could have approved payments for various projects described in general terms, such as road improvements, water improvements, sewer improvements, Alta Harris Park improvements, Greenbelt improvements, Idaho Power projects, and real property interests, together with estimated amounts, and the authorization of specific payments for specific projects over the ensuing 20 or 30 years would be immune from challenge. ***In fact, that is exactly what the Board did at its first meeting in 2010 in approving the General Plan for the District***,[82] and in exactly those terms. But that would read Section 50-3119 right out of the Idaho Code.

Opponents emphasize that the payments with respect to the Accrued Interest Projects are merely for "interest" with respect to the prior payments.[83] But that distinction makes no difference. The payments, whether denominated as interest payments, or construction cost payments, or payments for land, are nonetheless payments to the Developer that must satisfy the requirements of the CID Act. Opponents' argument would mean that, if ACHD subsequently vacated a public road financed by the District back to the Developer, the District nonetheless could continue to make payments to the Developer for the costs of that road even though it was no longer publicly owned. That would be impermissible under the plain language of the CID Act.

Again, ***Residents are not challenging any prior final decisions of the Board – only the Challenged Resolutions.*** The Payments Resolution approved additional payments for the Accrued Interest Projects (regardless of how they are denominated). Residents therefore are exercising their unfettered right under Section 50-3119 to challenge the validity, legality and regularity of those

[82] District Resolution No. 2-10, adopted on June 22, 2010.
[83] RB p. 48; IB p. 29.

approvals. This judicial review proceeding does *not* involve a challenge to any past decisions of the Board which may have approved those projects, let alone to those payments themselves.

H. Section 50-3119 Does Not Bar Residents from Contesting the Validity and Legality of the Challenged Resolutions on the Ground that the District Was Unlawfully Formed.

Section 50-3119 by its terms does not limit the grounds on which Residents can challenge the "validity, legality and regularity" of a final decision of the Board. In fact, at least by implication, that statute authorizes a person in interest to challenge such decision "for any reason whatsoever", as Residents explain in their Opening Brief.[84]

Respondents nonetheless argue that this reading "would render its limitation period meaningless".[85] And Intervenor argues "this interpretation stretches Section 50-3119 well beyond the breaking point."[86] Both arguments are untrue. All prior final decisions would continue to be deemed "valid and incontestable". Thus, for example, the District would continue to exist; the bonds previously issued pursuant to those decisions would continue to be valid; the taxes authorized by those decisions would continue to be levied and collected and applied to pay the bonds; and the prior payments made from proceeds of those bonds to the Developer would remain in place. But the District, if the challenges to *new* final decisions based on the unlawful formation of the District were sustained, would simply be prohibited from issuing *new* bonds, imposing *new* taxes on homeowners in the District to pay those unlawful bonds, and making *new* payments from the proceeds of those bonds to the Developer. *Prior* bond purchasers and *prior* payments to the Developer would be protected, as the statute obviously intends. And the right of persons in interest to challenge *new* final decisions which seek to impose many tens of millions of dollars in new taxes would be protected as well.

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[84] Opening Brief, at pp. 55-56.
[85] RB p. 10.
[86] IB p. 32.

What Opponents fail to acknowledge is the dynamic tension in Section 50-3119 between the unfettered right granted to persons in interest to challenge the validity, legality and regularity of all *new* final decisions of a CID board, and the protection afforded to all *prior* final decisions against challenge "for any reason whatsoever". Residents' reading of the statute balances those tensions. Opponents' reading does not. In fact, Opponents' reading would create a new and insurmountable issue, as applied to the facts in this judicial review proceeding – it would construe Section 50-3119 in a manner which would constitute a denial of due process of law under both the State and Federal Constitutions.

If the City and the Developer had chosen to follow the law and include within the boundaries of the District all the properties in Harris Ranch which benefited from the facilities to be constructed, they would have included literally hundreds of existing homes already there. There thus would have been many hundreds of "persons in interest" (to use the statutory language) in whose interest it would have been to challenge any legal defects in the formation of the District or the supposed "election" to approve $50 million in bonds and $110 million in special property taxes. But the City and the Developer did not include those homes, and not for any legitimate public purpose. They instead manipulated the boundaries of the District to exclude any properties not then owned by the Developer to ensure that the Developer (and their employee) would be the only ones authorized to "vote". So, the only "persons in interest" were the persons in whose interest it was for the District to be formed, and the bonds to be authorized, as they stood to benefit to the tune of… ***$50 million***. Therefore, under the facts in this proceeding, there was not a single person with an interest adverse to that of the City and the Developer to file an "appeal" to challenge any of those "final decisions".

The essence of the constitutional requirement of due process is the opportunity to be heard. *E.g., Allen v. Partners in Healthcare, Inc.*, 170 Idaho 470, 512 P.3d 1093 (2022), *as amended* (July

5, 2022) ("The touchstone of due process 'is the opportunity to be heard at a meaningful time and in a meaningful manner'."[87]). Opponents argue for an interpretation of Section 50-3119 which would necessarily deprive ***all*** persons in interest, including but not limited to Residents, of ***any*** opportunity to be heard regarding the validity, legality and regularity of the formation of the District and the supposed election to approve the issuance of the bonds. That would be an unconstitutional denial of due process of law to Residents and all other homeowners in the District.

In *W. Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936), for example, the Supreme Court held that a five-day statute of limitations to challenge an LID assessment did not bar a later suit to recover title where the city failed to provide sufficient notice of the assessment. The Court stated: "Due process of law is not necessarily satisfied by any process which the Legislature may by law provide, but by such process only as safeguards and protects the fundamental, constitutional rights of the citizen."[88] *See, also, Oregon Short Line R. Co. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932) (Statute authorizing municipality to create bond guaranty fund from general taxes to pay deficiencies in local improvement district assessments without providing for notice to taxpayers, held void as not affording them due process); *Booth v. Groves*, 43 Idaho 703, 255 P. 638 (1927) (Law authorizing assessment against land of proposed drainage district for expenses without finding of benefits held unconstitutional, as denial of due process).

Courts have long held that statutes must be construed to avoid constitutional defects. *E.g., State v. Abdullah*, 158 Idaho 386, 348 P.3d 1 (2015) ("'In choosing between two constructions of a statute, one valid and one constitutionally precarious,' the Court may 'search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent.'"[89]).

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[87] Quoting with approval *Hopkins v. Pneumotech, Inc*., 152 Idaho 611, 615, 272 P.3d 1242, 1246 (2012) (internal quotation marks omitted) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

[88] Quoting with approval *Abrams v. Jones*, 35 Idaho 532, 546, 207 P. 724, 727 (1922).

[89] Quoting with approval *State v. Breton,* 212 Conn. 258, 562 A.2d 1060, 1066 (1989).

Residents' construction of Section 50-3119 does exactly that. It protects the interests which the Legislature sought to protect without denying Residents and other homeowners in the District their constitutional rights to due process.

I. The Issuance of the 2021 Bond and the Imposition of the Related Taxes Violate the Idaho Constitution Because They Were Not Approved by a Two-Thirds Vote of Qualified Electors.

Residents explain in their Opening Brief that the Bond Resolution violates the Idaho Constitution because the issuance of the 2021 Bond was not approved by the voters in the City, by the voters in the District, or perhaps by any voters at all.

Opponents in their responses mischaracterize Residents' arguments rather than respond directly. They thus allege that Residents argue that a new bond election needed to occur in 2021,[90] and that Residents also argue that a bond election cannot approve the issuance of bonds in series.[91] Residents, however, make no such arguments. Instead, Residents argue that, among other things, the bond election, regardless of when it was held and whether the bonds are issued in series, needed to be submitted to the qualified electors of the City of Boise, or at least the qualified electors within Harris Ranch – as that is the development intended to benefit from the facilities financed.

1. The Issuance of the 2021 Bond Would Violate the Idaho Constitution, as the District Is an Alter Ego of the City and No City-Wide Election Was Held.

Respondents argue that the District cannot be an alter ego of the City because it "was not some invention of the City of Boise, but instead it was established *according to the CID Act*."[92] They then recount the various provisions of the CID Act regarding the governance and management of a CID (already described in Residents' Opening Brief). Intervenor says much the

[90] RB p. 51; IB pp. 37-38.
[91] RB p. 52; IB pp. 37-38.
[92] RB p. 53. (Emphasis in original.)

same thing, referring to the CID Act as a "Safe Harbor" from any such suggestion.[93] Respondents conclude with the following statement: "[Residents] have identified no Idaho authority that would support an alter ego finding under these circumstances."[94] These arguments fail again because they are untrue. Not only do Residents analyze and cite extensively to relevant Idaho cases on pages 60 and 61 of their Opening Brief, but Respondents themselves, as well as Intervenor, *fail to cite to any legal authority whatsoever in response*.[95]

Respondents thus ignore the three principal Idaho Supreme Court cases on this issue, cited by Residents, all of which involved local government agencies *established pursuant to State statutes* (a redevelopment agency, an urban renewal agency, and a college dormitory housing commission). The Court in each of those cases would have found the agencies to be alter egos of their related local governments but for the fact that there was not sufficient control of the latter over the former. Here, by contrast, as Residents explained in their Opening Brief (*and which Respondents do not deny*), *the City of Boise exercises complete control over the District*.

Intervenor, in contrast to Respondents, spends pages attempting to rebut Residents' argument that the District is the alter ego of the City.[96] But they do so largely by mischaracterizing the cases cited by Residents. They begin by alleging that "[t]he cases cited by [Residents] are remarkably consistent in providing for the opposite of [Residents'] claims."[97] That, of course, is untrue. Indeed, Intervenor goes on to quote at length the language from those cases *which proves Residents' point* – if a local government exercises complete control over a sister agency, the sister

[93] IB p. 33.
[94] RB p. 54.
[95] In yet another attempt at misdirection, Intervenor argues that Residents' alter ego argument "appears to be a facial attack on the [constitutionality of] the CID Act." IB p. 35. It is not. There is nothing in the CID Act (or anywhere else) that would preclude a city from holding an election to approve the issuance of bonds by a CID.
[96] IB pp. 34-37.
[97] IB p. 35.

agency is the alter ego of the local government. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 323, 303 P.2d 672, 677 (1956). Intervenor continues by alleging that "the cases finding an alter ego are circumstances where local governments create entities or schemes out of whole cloth to circumvent other applicable restrictions."[98] But the use of a cooperative association rather than, say, a special purpose district was *irrelevant* to the Court's analysis in the *O'Bryant* case (the only case cited by Intervenor in support of their allegation). Rather, again, the sole focus of the Court was on the *degree of control* exercised by the local government over the third party.

As the City exercises complete control over the District, the District is the alter ego of the City. And, as the City failed to hold a City-wide election to approve the issuance of the District's general obligation bonds, including the 2021 Bond, the Bond Resolution authorizing the issuance of the 2021 Bond violates the Idaho Constitution.

2. The Issuance of the 2021 Bond Would Violate the Idaho Constitution Regardless, as No Election Was Held of the Qualified Electors in the District.

Opponents would have this Court believe that the City and the Developer can "cooperate" in establishing the boundaries of a new taxing district to *exclude* hundreds of homeowners from its boundaries for the sole purpose of prohibiting them from voting on $50 million in bonds and $110 million in special taxes, even though those homeowners benefit to the exact same extent as properties *included* in the District.

Why exclude them? If the "improvements" are all that the Developer and the City make them out to be, why would those homeowners not have voted in favor? In any event, it did not have to be that way. The Developer could have included all those properties in the boundaries of the proposed new district. Or the City could have rejected the original petition for formation of the District on the ground that it excluded those properties. But neither did so. They instead

[98] IB p. 37.

"cooperated" with the formation of a special taxing district that ensured that only the Developer (and their employee) would be entitled to a vote. And that the hundreds of then-existing homeowners in Harris Ranch, as well as the thousands of future homeowners in the District, would be deprived of their right to such a vote. That is not what Idaho's Constitution requires.

Respondents have no reply to Residents' argument that Article VIII, Section 3, of the Idaho Constitution requires *at a minimum* that all the homeowners in Harris Ranch have been the ones to vote on the $50 million in bonds and $110 million in special taxes, rather than just the Developer and their one employee. Intervenor responds to this *constitutional* infirmity only by citing the language of the *statute*.[99] Nor do Opponents respond to Residents' argument that the Idaho Constitution requires something more than the vote of a single tenant employed by and living on the property of the party who stood to benefit to the tune of $50 million from that "election", and who would pay none of the resulting $110 million in special property taxes. And Respondents do not dispute the fact that the outcome of that "election" is at best uncertain – they instead argue that the official City records which reveal that fact should be ignored.[100] Finally, Intervenor, prone as they are to hyperbole, alleges instead that Residents have gone "full conspiracy theory" in pointing out the inconclusive results of the election. But in doing so they ignore the undisputed facts regarding the election and the canvas which Residents detail in their Opening Brief.

It is thus apparent from the facts and the law presented by Residents that the Bond Resolution violates the Idaho Constitution because the issuance of the 2021 Bond was not approved by the voters in the City, by the voters in the District, or perhaps by any voters at all.

[99] IB p. 34.
[100] RB pp. 6, 15, 54; IB p. 33, 38.

J. The Adoption of the Bond Resolution and the Imposition of the Related Taxes Violate the Idaho Constitution Because the Taxes Are Not Uniform Across All Properties of a Similar Class Within the City or Even Within Harris Ranch.

Residents explain in their Opening Brief that the Bond Resolution also violates the Idaho Constitution because the special property taxes levied are not uniform across all properties of a similar class within the City or even within Harris Ranch. Opponents do not dispute the fact that the special additional property taxes levied by the District on homeowners are *grossly* disproportionate to the property taxes levied on other similar classes of property not only elsewhere in the City but also even elsewhere in Harris Ranch. What they instead state is that those taxes are proportional *within the boundaries of the District*.[101] But that is not the issue.

The City created a "special limited purpose district", over which it exercises complete control. The sole purpose of this district is to issue bonds to make payments to the Developer for supposed public infrastructure within the Harris Ranch development. The convoluted boundaries of that district, however, were drawn by the City and the Developer to exclude hundreds of then-existing homes that are down the block, across the street and even next door to homes within that district, even though those homes benefit equally and foreseeably from the infrastructure financed. That was not done for any valid public purpose, but instead to guaranty that the Developer would be the only one who could vote in an "election" to approve $50 million in bonds the proceeds of which would be paid to the Developer. The question is whether in doing so *the City* violated the uniform tax requirement under Idaho's Constitution, and also the Equal Protection provisions of both the Federal and Idaho Constitutions. As Residents explain in their Opening Brief, if this were permissible, it would eviscerate the Constitutional requirement.

Respondents allege that Residents "appear to assume, without establishing, that taxing districts in Idaho are unconstitutional if properties outside of taxing district lines are treated

[101] RB pp. 54-55; IB pp. 38-39.

differently than those inside the lines."[102] Residents assume no such thing. Similarly, Intervenor states:

> Idaho law allows for the creation of special taxing districts …, including fire districts, irrigation districts, and library districts … . … It goes without saying that each of these districts have their own unique boundaries, which may change from time to time. In certain circumstances, that may create a situation in which a property owner living on one side of the street pays a different tax than their neighbor.[103]

But those are not the facts here, and that is not the issue. Those residing *outside* a fire district, or an irrigation district, or a library district, and who thus are free of that district's special taxes, *are not entitled to the services those districts provide*. Here, by contrast, the properties *excluded* from the boundaries of the District receive the *exact same benefits* from the facilities financed by the District as the properties *included* in the District, without paying a penny of the special property taxes which finance those facilities – none of which Opponents dispute. That was known to a certainty in advance by the City and the Developer, as the Specific Plan for the District shows, and was in fact their intention when the District was created. See, Section L, *infra*.

As the additional special property taxes levied pursuant to the Bond Resolution are not uniform across similar classes of property within the City or even within the Harris Ranch development, they violate Article VII, Section 5 of the Idaho Constitution and the Equal Protection Clauses of the Idaho and Federal Constitutions.

K. The Issuance of the 2021 Bond Pursuant to the Bond Resolution and the Payments to the Developer Pursuant to the Payments Resolution Would Violate the Lending of Credit Prohibitions Under the Idaho Constitution.

Residents explain in their Opening Brief that the issuance of the 2021 Bonds pursuant to the Bond Resolution and the payments to the Developer pursuant to the Payments Resolution

[102] RB p. 55.
[103] IB p. 38.

would constitute an unconstitutional lending of credit by the District to the Developer. That is premised on the fact that the payments would relieve the Developer from having to pay themselves for the cost of the facilities financed (in contrast with every other developer in the City). Opponents do not dispute this. Opponents in their responses instead allege (again) that Residents are making a "facial" constitutional challenge to the CID Act itself.[104] But that, again, is untrue.

The argument presented and the scope of the challenge being made by Residents are clearly limited to the constitutionality of the District's adoption of the Challenged Resolutions and do not extend to the constitutionality of the statute itself. 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. 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.

Respondents cite *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 955, 703 P.2d 714, 719 (1985) for the proposition that the constitutional lending of credit prohibition is not violated if the primary purpose of the pledge of municipal credit is a public rather than a private one.[105] But that case is inapposite. It involved the sale *by a city* of the output from a *publicly owned*

[104] RB p. 56; IB p. 39.
[105] RB p. 57-58.

hydroelectric facility in excess of the city's needs *to a private utility* for which the private utility agreed to *pay the city* substantial amounts over a term of many years. There were no payments whatsoever *by the city to the private utility*, let alone payments that freed the utility from obligations it would otherwise have had to pay itself.

By contrast, the principal purpose of the payments *by the District to the Developer*, including for the 2021 Projects, is to relieve the Developer from having to pay those costs itself. That is indisputable. That some of those facilities are publicly owned is irrelevant. The key distinction is that, regardless of whether they are publicly or privately owned, their cost was and is in the first instance an obligation of the Developer for which the Developer would have had to pay in the absence of a CID.

Opponents also argue that *Village of Moyie Springs,*[106] cited by Residents in their Opening Brief, is distinguishable on its facts.[107] Residents acknowledge that the facts in that case are different than the facts presented here – the facts presented here are actually more egregious. In *Village of Moyie Springs*, the bonds to be issued by the city were payable solely from *private payments* and *not from public tax dollars*. Here, the bonds are payable solely from *public tax dollars* collected from the homeowners in the District in order to make tens of millions of dollars of payments to a *private developer*. In any event, the legal principle is the same – the credit, borrowing and taxing power of a local government cannot be used to benefit a private party "directly or indirectly, in any manner … for any amount or any purpose." Idaho Constitution, Article VIII, Section 4.[108] This is the principle for which that case was cited and it clearly applies here.

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[106] *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

[107] RB p. 57; IB p. 39.

[108] Intervenor argues that the analysis in *Village of Moyie Springs* is inapplicable here because the District rather than the City is the issuer of the bonds. IB p. 39. That is another *non sequitur*. The issue is not whether a city issues the

L. The Challenged Resolutions Are Invalid Because the Properties in the District Are Noncontiguous in Violation of the CID Act.

Residents explain in their Opening Brief that the Challenged Resolutions are invalid because the District has consisted since the first month of its existence of several large *noncontiguous* sections in violation of the express requirement in the CID Act: "A district shall only include contiguous property at the time of formation." Idaho Code § 50-3102(5). Opponents in response point out that the CID Act permits subsequent amendments to the boundaries of a CID to add noncontiguous properties.[109] Idaho Code § 50-3102(5). Again, however, Residents did not argue otherwise.

Residents instead argue that the City and the Developer, by predesign, could not do in two baby steps what the CID Act *expressly prohibits* them from doing in one. That is because it would render the contiguity limitation in the CID Act meaningless in violation of a fundamental and longstanding rule of statutory interpretation. *E.g., State v. Smalley*, 164 Idaho 780, 784, 435 P.3d 1100, 1104 (Idaho 2019).

Opponents ignore this issue. Respondents instead allege that "[Residents] make unsupported arguments about 'subterfuge' and 'pre-design' by the City of Boise and the Developer with respect to the amendment … ."[110] Residents' characterizations, however, are not unsupported, but rather are apparent from Residents' citations to the Record. The Specific Plan map for Harris Ranch (included as Appendix B to Residents' Opening Brief and as Appendix A to Intervenor's Response Brief) clearly shows that *all* noncontiguous sections are part of the Harris Ranch development.[111] Moreover, as Residents explain in their Opening Brief, the copy of the

bonds rather than a special district, but whether the bonds issued – regardless of whether a city or a special district issues them, are payable from public tax moneys. There is no question here that they are.

[109] RB pp. 13-14; IB pp. 40-41.

[110] RB p. 14.

[111] Intervenor in fact *admits this* but attempts to argue that the existence of the Idaho Power corridor meant that the sections to the east "thereafter [had] to be annexed" "[i]n order to ensure remaining property within [the Specific Plan]

Development Agreement included in the Record includes at the end excerpts from a series of email exchanges between the Developer and the County.[112] Those exchanges clearly and indisputably show that the Developer, several months *before* they filed their *initial* petition for formation of the District, inquired not just once but at least three times as to whether there were any registered voters not just on the original parcels to the *west* of the Idaho Power corridor, but also on the parcels to the *east* of that corridor. Those are the parcels which were added to the District by the "amendment" to its boundaries initiated just *ten days* after the District was approved. These communications substantiate what the maps plainly indicate: all the noncontiguous sections were part of the Harris Ranch development and the purpose of the "amendment" was to circumvent the contiguity requirement.

The Challenged Resolutions therefore are invalid because the properties in the District are noncontiguous in violation of the CID Act.

M. Residents' Statement of Relevant Facts Is Undisputed and Based Entirely on the Record and on Three Public Sources of Unquestionable Accuracy and Authenticity.

Residents include in their Opening Brief a 16-page Statement of Relevant Facts. Each factual assertion is sourced to the Record. The three exceptions are citations to on-line local government public records which do not need to be made part of the record in order to be cited, but are nonetheless the subject of a request for judicial notice to this Court. All the facts described are relevant to and referenced in Residents' arguments in opposition to the Challenged Resolutions. Respondents disparage Residents' factual statements but do not dispute any of them,

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could be included in the [District]." IB p. 40. The record does not contain evidence of any such intention and Intervenor cites to none. As Residents explain in their Opening Brief, all those sections, including the Idaho Power corridor, could have been included in the boundaries of the District in the original petition for formation. But that would have required that Idaho Power join in the petition. Opening Brief p. 76. The decision to form the District in two small steps and thus exclude Idaho Power (in addition to all existing Residents) creates a clear inference that those who were excluded were excluded because their inclusion would have required them to join the petition.

[112] Opening Brief, pp. 9, 64.

as they are all true. There thus are no grounds for disregarding, let alone striking, any of those facts.[113]

1. Residents' Factual Statements Are Taken Directly from the Record, Are Undisputed, and Therefore Should Not Be "Stricken".

Respondents argue that the Court should "strike" or ignore some undefined majority of factual statements which appear within Residents' Opening Brief. Respondents allege that "[m]uch of [Residents'] Statement of Relevant Facts consists of allegations and 'facts' which are not at all relevant to this proceeding, have no support from the Record, and were not among the documents presented to the Board for decision in October 2021."[114] None of these allegations, however, are true.

Contrary to Respondents' assertions, Residents cite to the Record for each and every fact set forth in their Statement of Relevant Facts, which extends to more than 16 pages.[115] Moreover, all factual statements cited are undisputed. They were undisputed before the District even though Opponents had the opportunity to do so in reply letters and the Staff Report. None of the facts included are "irrelevant" as they all relate to the issues presented for consideration. And all the factual statements cited appear within the record that both Opponents and the Court have designated as "the record created before the [District]". Both Respondents (when they created the record) and the Court (when it ruled on the contents of the record) have thus already determined that documents underlying the factual statements within Residents' Opening Brief were presented

[113] Residents note that Intervenor does not object to the inclusion of any of Residents' factual statements, or to this Court taking judicial notice of Residents' citations to public records. In addition, Intervenor does not appear to dispute the veracity of any of Residents' factual statements, and instead accepts them for what they are – true.
[114] RB p. 5.
[115] Opening Brief, pp. 4-20.

to the Board. And to the extent Residents make any statements regarding the intentions of the parties (Residents can find only one),[116] they are simply logical inferences from undisputed facts.

Respondents' request to strike nearly all the statements of fact within Residents' Opening Brief (which is procedurally improper) appears to be based on a challenge to the veracity generally of the factual statements in Residents Objection Letters in the Record, including by referring to them using quotation marks (i.e., "facts").[117] Respondents state that "[t]hese 'facts' should be stricken, or at the very least disregarded by the Court as beyond the settled Record."[118],[119] In fact, however, none of these factual statements are "beyond the settled record" because all are derived from documents *within* the settled record. Moreover, all the factual statements in Residents' Objection Letters are taken *from the City's own documents*. Therefore, the allegation that an undisputed factual statement that cites to an Objection Letter should be ignored simply because it appears in an Objection Letter is not only without basis, but would result in the exclusion of information *which was provided by the Respondents themselves*. In addition, the Objection Letters were all presented to the Board beginning *three months* before the Challenged Resolutions were adopted. The District and the Intervenor therefore had ample opportunity to contest the accuracy of those facts, and Intervenor in fact did so on at least one occasion.[120] There thus is no basis for disregarding, let alone striking, any of those undisputed facts.

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[116] Residents state that "the boundaries of the District were intentionally manipulated by the City and the Developer" to exclude properties not owned by the Developer.

[117] RB pp. 5-7.

[118] RB p. 7.

[119] Residents are confused by Respondents' statement that factual matters drawn from Residents' Objection Letters are "beyond the settled Record", as all those letters are in the settled Record.

[120] Intervenor in their letter of [date] corrected an assertion by Residents in their [date] Objection Letter – that the Stormwater Facilities also benefited properties outside the District – by explaining that they only served properties within the District.

2. This Court Can and Should Take Judicial Notice of the Adjudicative Facts Cited by Residents.

Respondents object to Residents' inclusion of Appendices A, C, D and L in the Opening Brief on the grounds that they are not part of the Record.[121] That is a mischaracterization. Appendix D is simply a summary, for ease of the Court's reference, of the 2021 Projects *which is taken entirely from the Record*, including for the 24 Accrued Interest Projects from the table on pp. 491-492.

Appendix C is *the City's own map of the District*, taken from and sourced to the City's website. It depicts relevant features of the District in a clearer and more accessible fashion than the maps within the Record. *See* I.A.R. 35(g) ("In cases involving easements, boundary disputes, or other types of real property disputes, the brief shall include a map, diagram, illustrative drawing, or other document depicting (i) the lay of the land, (ii) the location of the parcels or pieces of property in dispute, and (iii) the location of any features of or on the land that are pertinent to identify the matters in dispute, including but not limited to easements, roads, trails, boundaries, markers, fences, and structures."). The factual statements for which Appendix C are cited are not only undisputed, but they are not reasonably subject to dispute. That is because the map was created by the City and all information contained within the map is from the City's own records. The map simply illustrates facts set forth in Residents' Statement of Relevant Facts *all of which are taken from the Record*. There is therefore nothing within the map that is unsubstantiated by the existing Record. The map is also self-authenticating. I.R.E 902(5). Residents did not anticipate that Respondents would have any objection to this illustration. And Respondents certainly have no basis for objecting to its authenticity or its accuracy (and Respondents do not object).

[121] RB pp. 5-7.

Appendix A is a copy of the Ada County Assessor's Office on-line interactive property information map. Like Appendix C, Appendix A depicts relevant features of the District in a clearer and more accessible fashion than the maps within the Record. *See* I.A.R. 35(g). The factual statements for which Appendix A are cited are not only undisputed, but not reasonably subject to dispute. That is because the map is maintained by the Ada County Assessor's Office on its official website. There again can be no objection to its authenticity or its accuracy (and Respondents do not object).

Finally, Appendix L consists of official documents of the City, all referenced in the Record. Again, there can no basis for objecting to their authenticity or their accuracy (and Respondents again do not object).[122]

The Court can also take judicial notice of the factual statements for which Appendices A, C, D and L are cited. Idaho Rule of Evidence Rule 101(b) provides in relevant part: "**Scope.** These rules govern *all cases and proceedings in the courts of the State of Idaho* … ." (Emphasis added.) Idaho Rule of Evidence Rule 201(b) then provides in relevant part:

> **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (1) is generally known within the trial court's territorial jurisdiction; or
>
> (2) *can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned*. [Emphasis added.]

Rule 201(d) provides: "**Timing.** The court may take judicial notice *at any stage of the proceeding*." (Emphasis added.) The accuracy of the factual statements for which Appendices A, C, D and L

[122] Residents cite in fn. 9 of their Opening Brief to ACHD's on-line Master Street Map for classifications of streets in Harris Ranch. This map also depicts relevant features of the District in a clearer and more accessible fashion than the maps within the Record. *See* I.A.R. 35(g). That source is more reliable than the Harris Ranch Specific Plan circulation map included in the Record and attached as Appendix F to the Opening Brief. The latter map includes street descriptions which do not reflect ACHD's official classifications. Respondents do not appear to object to citation to this map.

are cited can be accurately and readily determined from official local government public records whose accuracy cannot be reasonably questioned. Residents thus renew their request that the Court take judicial notice of these facts, or in the alternative that they not otherwise be disregarded.

Respondents argue that this Court cannot take judicial notice of adjudicative facts because "this is not an evidentiary proceeding".[123] They cite *Euclid Ave. Tr. V. City of Boise*, 146 Idaho 306, 193 P.3d 853 (2008) as authority for that proposition. But *Euclid Ave. Trust* holds no such thing. It is a case dealing with the difference between civil actions and administrative appeals. There are numerous cases where Idaho appellate courts have taken judicial notice of facts. *E.g., Justice v. Gov't Emps. Ins. Co.*, 100 Idaho 293, 597 P.2d 16 (1979); *Mahoney v. State Tax Comm'n*, 96 Idaho 59, 524 P.2d 187 (1973); *In re Application of Union Pac. R. Co. to Abandon Certain Train Serv. Between Cache Junction, Utah, & Preston, Idaho, & Between Ogden, Utah, & Malad, Idaho*, 64 Idaho 597, 134 P.2d 1073 (1943).

Respondents then assert that "[t]he Court must confine its review to the 'record created before the agency.'"[124] But that statement ignores the express authorization under I.R.E. 201(b) for a court to take judicial notice "at any stage of the proceeding". Respondents continue by asserting: "Furthermore, the Court should not consider documents submitted in this fashion in the context of an appeal …" As authority for that proposition, however, they cite to a footnote in *Ellis v. Ellis*, 167 Idaho 1, 467 P.3d 365 (2020).[125] The Supreme Court noted in that case that the respondents had failed to properly augment the record with documents from a separate lower court case, *which under the Idaho Appellate Rules they could have done at any time up to the issuance*

[123] RB p. 6.
[124] RB p. 6.
[125] RB p. 6.

of the Court's opinion. I.A.R. Rule 30(a). But that case is inapposite, as the language in question was applying the Idaho Appellate Rules to a Supreme Court appeal rather than I.R.C.P. 84.

This Court therefore is free to take judicial notice of the factual statements in Residents Opening Brief which are substantiated by the on-line local government records cited by Residents. Residents renew their request that the Court do so.

N. Residents Are Entitled to an Award of Attorneys' Fees Should They Prevail in this Proceeding, But Opponents Would Not Be.

Residents argue in their Opening Brief that they are entitled to an award of attorneys' fees under the Private Attorney General Doctrine, most recently enumerated by the Idaho Supreme Court in *Reclaim Idaho v. Denney*,[126] should they prevail in this appeal. Opponents argue in their responses not only that Residents would not be entitled to such an award, but that the District, instead, would be entitled to an award of attorneys' fees should they prevail.[127] We respectfully disagree.[128]

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[126] *Reclaim Idaho v. Denney*, 169 Idaho 406, 497 P.3d 160 (2021)

[127] RB pp. 59-60; IB p. 41-43.

[128] Intervenor argues (although Respondents do not) that the Private Attorney General Doctrine is not available in proceedings between a "person" and a State agency or local government. IB pp. 41-42. Intervenor cites *Roe v. Harris*, 128 Idaho 569, 917 P.2d 403 (1996) for that proposition. It is unclear to Residents whether that is the rule. Subsequent Idaho Supreme Court cases have at least suggested that an award of attorneys' fees under the Private Attorney General Doctrine is still available in cases involving a State agency or a local government. *E.g., Thomson v. City of Lewiston*, 137 Idaho 473, 50 P.3d 488 (2002); *Harris v. State, ex rel. Kempthorne*, 147 Idaho 401, 210 P.3d 86 (2009); *Friends of Farm to Mkt. v. Valley Cnty.*, 137 Idaho 192, 46 P.3d 9 (2002); *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005). Moreover, the Idaho Supreme Court more recently held that Section 12-117 is *not* the sole basis for an award of attorneys' fees against a State agency (apparently overruling *Roe v. Harris*, at least to that extent), and that such an award is also available under, among other statutes, Section 12-121. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013). Section 12-121, in turn, is the statutory basis upon which an award of attorneys' fees is made pursuant to the Private Attorney General Doctrine. *E.g., Hellar v. Cenarrusa*, 106 Idaho 571, 682 P.2d 524 (1984). Residents note that Section 12-117 was amended by 2000 Idaho Laws Ch. 241 (S.B. 1333), which is after the *Roe v. Harris* decision, to add at the beginning of subsection (1) the clause "Unless otherwise provided by statute," which is the language the Court relied on in *Syringa Networks*.

1. Residents Are Entitled to an Award of Attorneys' Fees Should They Prevail in this Proceeding.

Respondents suggest that, to secure an award of attorneys' fees under the Private Attorney General Doctrine, the case must involve "voting rights and fundamental principles of democratic governance."[129] Intervenor makes a similar argument.[130] This is a misstatement of the law. The first consideration is "the strength or societal importance of the public policy vindicated by the litigation". *Reclaim Idaho*, 169 Idaho 406, 439, 497 P.3d 160, 193 (2021). The Supreme Court has affirmed an award of attorneys' fees under the Private Attorney General Doctrine in a variety of other circumstances. *E.g., Fox v. Bd. of Cnty. Comm'rs, Boundary Cnty.*, 121 Idaho 684, 685, 827 P.2d 697, 698 (1992) (property owners' challenge to county's grant of liquor licenses, where court adopted petitioner's statement that "this action was pursued to ensure that Boundary County was governed by rule of law, not of man"); *Taggart v. Highway Bd. for N. Latah Cnty. Highway Dist.*, 115 Idaho 816, 771 P.2d 37 (1988) (property owner's challenge to alleged vacation of public road by highway district); *McKay Const. Co. v. Ada Cnty. Bd. of Cnty. Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978) (contractor's challenge to award of public works contract to non-qualifying bidder). Residents in this proceeding are seeking: (i) to have the State's capitol city comply with State law, (ii) to uphold the Constitutional rights of thousands of homeowners to vote, to uniformity of taxation, to equal protection of the laws, and to due process of law, and (iii) to prevent public tax moneys from being used primarily to benefit private parties. Almost all the issues presented are matters of first impression in Idaho. Moreover, this proceeding involves *tens of millions of dollars* in public debt, and up to *$110 million in special additional property taxes* imposed on homeowners. Those are all matters of significant societal importance.

[129] RB p. 58.
[130] IB p. 42.

Opponents also suggest that the number of people standing to benefit from this proceeding are few.[131] Respondents state that "no resident or citizen outside the District would benefit from the decision." Intervenor makes a similar assertion. Respondents cite two cases in support of their argument: *Harris v. State, ex rel. Kempthorne*, 147 Idaho 401, 210 P.3d 86 (2009), and *Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 496 P.3d 873 (2021). The *Harris* case involved a suit by a *husband and wife* against the State to quiet title to sand and gravel on their property. The *Hepworth* case involved a petition by a small Boise law firm for reversal of its disqualification as counsel in a personal injury suit. So, both cases involved the *private economic interests of only a few people*. What Respondents fail to note, by contrast, is that the "residents and citizens" *inside* the District, with its *over 1,000 homes* (and counting), number in the hundreds and over time in the thousands. And Respondents also fail to note that this case will directly affect the *tens of thousands* of current and future homeowners in the Avimor and Spring Valley developments, as Residents explain in their Opening Brief, and *hundreds of millions if not billions of dollars in special property taxes*, as well as an untold number of homeowners in future CIDs throughout the State.

This proceeding thus satisfies the three considerations outlined by the Supreme Court for an award of attorneys' fees under the Private Attorney General Doctrine should Residents prevail.

2. Respondents Are Not Entitled to an Award of Attorneys' Fees Should They Prevail in this Proceeding.

Opponents argue that this Court should award Respondents attorneys' fees under Idaho Code § 12-117 should they prevail in this proceeding. That statute provides for an award of attorneys' fees in a case involving a state agency or political subdivision, if the court finds "that the nonprevailing party acted without a reasonable basis in fact or law." Idaho Code § 12-117(1).

[131] RB p. 59; IB p. 42-43.

Residents have done no such thing. They have acted in good faith to advance arguments based on their detailed recitation of undisputed facts, all based on the Record and other public documents, regarding complex matters, and have cited to numerous cases, statutes and/or treatises in support of all their arguments. *See, e.g., Manwaring Invs., L.C. v. City of Blackfoot*, 162 Idaho 763, 405 P.3d 22 (2017) (property owner did not act without reasonable basis in fact or law, but, instead, argued complex issues in good faith); *Kepler-Fleenor v. Fremont Cnty.*, 152 Idaho 207, 268 P.3d 1159 (2012) (non-prevailing party presented a legitimate question for the appellate court to address). There is no evidence that Residents have acted in "bad faith" (*see*, *e.g., Hoffer v. City of Boise*, 151 Idaho 400, 257 P.3d 1226 (2011) (no showing that appellant acted in bad faith)), nor that the issues presented are "frivolous" *(see, e.g., Aspen Park, Inc. v. Bonneville Cnty.*, 165 Idaho 319, 444 P.3d 891 (2019) (taxpayers petition for review was not frivolous)). More importantly, Idaho courts have held repeatedly that attorneys' fees will not be awarded where the issues presented are matters of first impression. *E.g., Newton v. MJK/BJK, LLC*, 167 Idaho 236, 469 P.3d 23 (2020). So far as Residents can determine, every issue they have presented is a matter of first impression in Idaho.

Respondents assert that Residents "factual and legal contentions have shifted dramatically from prior positions".[132] That is untrue. As Residents explain *supra*, their position on one issue shifted marginally based on their receipt of further information. Respondents next assert that "instead of arguing about whether the [Challenged] Resolutions complied with the CID Act, [Residents'] Brief runs through a series of issues and topics that have nothing to do with this proceeding".[133] That is also untrue, as is apparent from even a superficial review of Residents' Opening Brief – the *entire brief* addresses whether the Challenged Resolutions comply with the

[132] RB p. 59.
[133] RB p. 60.

CID Act, as well as with applicable Constitutional requirements. Finally, Respondents assert that Residents argue issues and topics "which the Court has already excluded" (without identifying what those may be). That is largely untrue. Moreover, to the extent that Residents argued any issues that this Court addressed in its decision on the Record (such as the ability to contest the Challenged Resolutions based on defects in the formation of the District or the bond "election"), Residents have done so to ensure that those issues are preserved for appeal.

Given that Residents have pursued this judicial review proceeding in good faith, that it involves complex and rather esoteric procedural and municipal law issues, that it presents over a dozen issues of first impression, and that none of the issues advanced are "frivolous", "unreasonable", or "without foundation", there is no basis for an award of attorneys' fees to Respondents should they prevail.

III. CONCLUSION

For the foregoing reasons, Residents respectfully request that this Court reject the arguments presented by Opponents, and enter an order finding that the adoption of the Challenged Resolutions and the payments authorized thereby are unlawful, invalid and void, and awarding reasonable attorney fees and costs to Residents under the Private Attorney General Doctrine.

DATED this 22nd day of December 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2022, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

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GG. Exhibit GG – Appellants' Opening Brief in the Litigation

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM DOYLE, an individual; LAWRENCE CROWLEY, an individual; THE HARRIS RANCH CID TAXPAYERS' ASSOCIATION, an Idaho nonprofit association,

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,

And

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership,

Intervenor.

Supreme Court Case No. 51175-2023

Ada County District Court No. CV01-21-18655

APPELLANTS' OPENING BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County, Honorable Nancy A. Baskin, District Judge, Presiding

(Counsel listed on next page)

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I. INTRODUCTION

The secret is out: Idaho is a fantastic place to live. People are moving here by the hundreds of thousands, and that creates pressure to build new homes in undeveloped areas. That growth requires the expansion of public infrastructure to support it. Adding infrastructure is expensive and local governments may struggle to fund it at the pace needed to support the growing population.

The Legislature took action seeking to alleviate the pressure of new growth on local government in 2008 when it passed the Community Infrastructure District Act ("CID Act"). The CID Act allows cities and counties to create special purpose taxing districts called Community Infrastructure Districts ("CIDs") within their boundaries. CIDs have limited powers. They can issue debt, pay that borrowed money to a developer, and collect property taxes to pay that debt. But they can only do that to finance public facilities identified within the CID Act. They can do nothing else.

When the Legislature passed the CID Act it made one thing clear: CIDs are not meant to tax people for facilities that primarily benefit the development. Instead, the purpose of CIDs is to "encourage the funding and construction of *regional* community infrastructure." Idaho Code § 50-3101(1)(a) (emphasis added). This includes things like highways, interstates, and bridges, public safety facilities such as fire and police stations, water treatment and storage facilities, and wastewater collection, treatment, and disposal facilities – i.e., the things local governments need to sustain new growth and which developers are not typically required to build within their new developments. Idaho Code §§ 50-3102(2), 67-8203(24). CIDs are meant to be a tool which cities and counties can use "to allow new growth to more expediently pay for itself." Idaho Code § 50-

3101(1)(c).

This dispute arose in 2021. A group of homeowners who live in a CID created in 2010 by the City of Boise ("City"), acting in collaboration with the Harris family ("Boise CID" or "District"), were concerned about the taxes being imposed on their homes by the CID. They began to educate themselves about its nature and actions[1] and uncovered numerous abuses of the CID Act by the City, acting through the Boise CID, and the Developer which had been ongoing since the Boise CID was first created.

Shortly after the Boise CID was formed, the Board of Directors of the CID ("CID Board") had authorized a special "election" in the District. The purpose of the "election" was to approve the issuance of $50 million in bonds and the imposition of almost $110 million in special property taxes on future homeowners in the CID, all to make payments to the Harris family and their developer (collectively, "Developer"). Residents discovered that the issuance of those bonds and the levy of those taxes, however, were not authorized by a vote of the qualified electors of the City (as required by Idaho's Constitution), or even by the qualified electors who are homeowners and property taxpayers within the boundaries of the Boise CID (as required by the CID Act). Rather, the bonds were authorized by the vote of a single person – an employee on the Harris family's ranch, who lived as a tenant on their property, who registered to vote solely for the "election," and who will never have to pay any of the $110 million in special additional property taxes to be levied

[1] Those homeowners soon thereafter organized into a neighborhood non-profit association which, along with two of its officers, are the Appellants in this proceeding (collectively, "Residents").

over a period of well over 30 years.[2]

Residents also discovered that, when the Boise CID was formed and the bond "election" was conducted immediately thereafter, there was not a single homeowner within the Boise CID's boundaries. That is because the boundaries of the Boise CID were gerrymandered by the City and Developer to exclude the five hundred or more already existing homes in the Harris Ranch development ("Development"). As a result, homes which were excluded from the Boise CID stand across the street and down the block from nearly identical homes within it. There is thus a dramatic and increasing disparity in how homes within the same neighborhood are taxed. Hundreds of homeowners are each forced every year to pay thousands of dollars in special property taxes levied by the Boise CID while hundreds of their neighbors in the Development pay nothing. And that even though their neighbors benefit from the facilities financed to the same extent as homeowners within the Boise CID. Residents also discovered that the Developer had carved out the Harris family's own two homes – privileged "islands" in the center of the Boise CID – from its boundaries. The Developer did so, no doubt, to free the Harris family from any of the $110 million of taxes imposed on all the other homes in the Boise CID. As a result of these abuses, the map of the Boise CID looks like a giant jigsaw puzzle with a third of its pieces missing.

Since its creation, the City, acting through the Boise CID, has issued almost $20 million in bonds,[3] and made more than $17 million in payments to the Developer. Almost every one of those

[2] The bond "election" authorized bonds to be issued in series with the last such issue up to 30 years later, with principal and interest coming due over a period of up to an additional 30 years.
[3] In addition to the $15.4 million in general obligation bonds issued to date, the Boise CID also issued $4 million in "special assessment" bonds in 2011.

payments has been unlawful, often for not just one but several different reasons. For example, almost all the facilities financed constitute "project improvements" which primarily benefit the Development, instead of "system improvements" that primarily benefit the broader region as required by the CID Act. Moreover, most of the financed facilities are directly in front of single-family residential lots and many, rather than being publicly owned, are still owned by the Developer, both again in direct violation of the CID Act.

Residents brought these concerns to the City at a time when the CID Board was considering the approval of two new resolutions. Those resolutions would permit the CID Board to borrow another $5.2 million to make additional payments to the Developer and impose additional property taxes on homeowners in the Boise CID to pay off that debt (collectively, "Challenged Resolutions"). The Challenged Resolutions reflected the same pattern of abuse. Residents spoke out publicly and submitted numerous detailed letters objecting to those abuses and to the adoption of the Challenged Resolutions. The CID Board ignored those objections and adopted the Challenged Resolutions anyway. Residents stated their intention to appeal. In response, the Harris family sued them for defamation and other claims, then offered to dismiss the suit if Residents agreed to waive their statutory right under the CID Act to appeal the Challenged Resolutions.

The CID Act only gives homeowners 60 days to challenge CID decisions. Idaho Code § 50-3119. After that, anything a CID does – even if it is patently unlawful or unconstitutional – is, by statute, deemed "valid and uncontestable." *Id*. Residents persevered despite the Harris family's lawsuit, and filed their appeal of the Challenged Resolutions in district court within the required timeframe. The Harris family's pressure campaign had failed, so they voluntarily

dismissed their suit within days of Residents filing their appeal.

Residents appeal is the first of its kind. Nobody has ever challenged a decision by a CID in Idaho before now. And the rulings of the District Court governing the procedure by which challenges must be brought may cause it to be the last. CIDs approve hundreds of millions of dollars of public debt and taxes. Other than the 24-hour minimum notice period (and related provisions) required by the Open Meeting Act, CIDs can make those decisions without doing anything beforehand. They are not required to give homeowners an opportunity to submit objections to their decisions in advance and they typically do not. And yet, the District Court ruled that all legal arguments must be submitted by a homeowner to the CID before a decision is made, or those arguments are forever waived. The District Court also held that this obligation is not reciprocal. Homeowners have whatever truncated timeframe the CID provides to make their legal arguments (as little as 24 hours). But the CID – the party actually obligated to ensure its decisions are lawful – does not have to formulate or present arguments in response regarding the legality of its actions until they submit their opposition brief on the merits in district court.

CIDs are not under any obligation to consider any information before approving the issuance of millions of dollars in bonds and the levy of millions of dollars in taxes. They also have in their possession all the documents a homeowner would need to develop and submit objections to unlawful decisions. Without those documents, there is no appellate record and any appeal is dead on arrival. And yet, the District Court ruled that a homeowner cannot ask a CID to include those documents within the record on appeal. According to the District Court, the homeowner must instead first submit a public records request to the CID, obtain those documents from the

CID (a process which can take weeks), and then refile the CID's own documents with the CID before the CID board makes its decision. The District Court also held that the record on appeal only includes what the CID board says it considered in reaching its decision. So, even if a homeowner managed to obtain and refile the CID's own documents and to submit all their legal arguments before the CID makes a decision, the board could simply decide to ignore those documents and thus insulate itself from judicial oversight by restricting the record to almost nothing.

The actions of the City through the Boise CID and the Developer have been and continue to be unlawful, unconstitutional, and unconscionable. They have honored the statutory and constitutional requirements applicable to Idaho CIDs largely in the breach.

For these reasons, Residents seek an order that: (1) interprets the CID Act in a manner that conforms with its plain language and legislative history; (2) ensures that as Idaho continues to grow, the integrity of restrictions on the use of public funds and the imposition of taxes within Idaho's Constitution is preserved; and (3) creates a process that allows homeowners a meaningful opportunity to seek judicial review of CID decisions they contend are unlawful.

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal of decisions by the District Court upholding the adoption of two resolutions by the Board of the Boise CID in October of 2021 which approve the issuance of $5.2 million in bonds, the corresponding levy of property taxes on homeowners within the CID, and additional payments to the Developer.

Residents also appeal restrictions placed by the District Court on the process by which judicial review of CID decisions can be sought.

B. The Proceedings Below

Residents brought this judicial review proceeding pursuant to Idaho Code § 50-3119 and Idaho Rule of Civil Procedure ("IRCP") 84. This action challenges the adoption of (i) Resolution No. HRCID-12-2021, which authorizes additional payments by the Boise CID to the Developer ("Payments Resolution"); and (ii) Resolution No. HRCID-13-2021, which authorizes (a) the issuance of additional bonds in the amount of $5.2 million ("2021 Bond") and (b) the levy of additional property taxes on homeowners to pay that Bond ("Bond Resolution").

Section 50-3119 of the CID Act is unusual. It provides a right of "appeal" – not from a judicial or quasi-judicial proceeding – but from the mere adoption of a resolution by the governing body of a CID. As a result, this case has no pleadings, no introduction of evidence, no hearing, no witnesses or cross-examination, no findings of fact, no conclusions of law, and no judgment or ruling by or before the CID Board. It only involves the adoption of the Challenged Resolutions by the CID Board. The District Court, however, made decisions that treat judicial review of the Challenged Resolutions as if it were an appeal from a contested case proceeding, and created a procedure for challenges under the CID Act that is fundamentally inappropriate for proceedings of this kind.

C. Procedural History

The Challenged Resolutions were adopted by the CID Board on October 5, 2021, over

Residents' written objections.[4] AR pp. 1563-1593. On November 3, 2021, the Developer filed a meritless lawsuit ("Developer's SLAPP Suit") against Residents (including Messrs. Doyle and Crowley personally) alleging, among other things, defamation, interference with prospective economic advantage, interference with contract, Federal unfair competition, and common law trademark infringement.[5] The Developer also served a single discovery request asking for the identities of every member of the Association. The Developer then offered to withdraw their SLAPP suit if Residents agreed not to pursue this judicial review proceeding.

Despite the personal and financial impacts of the Developer's abuse of process, Residents filed (i) their Notice of Appeal, and (ii) their Petition for Judicial Review, each on December 3, 2021. R pp. 11-58.[6] Without explanation, the Developer dismissed their SLAPP suit two days later. In doing so, the Developer all but conceded that the purposes of the suit were to dissuade Residents from asserting their statutory right to judicial review, and to break their neighborhood non-profit association.

On March 21, 2022, Residents filed a motion with the District Court to, among other things, compel completion of the record which Residents had requested from the Boise CID in Residents' original Notice of Appeal. R pp. 114-164. The Boise CID had excluded hundreds of pages of documents which served as the original source of the facts Residents presented in this proceeding. AR pp. 1535-1560; R pp. 66-84. The Boise CID refused to include those documents, and thus

[4] Homeowners submitted almost 400 pages of letters and emails to the Boise CID in opposition to the Challenged Resolutions. AR pp. 94-450, 583-587, 982-994, 1407-1420.
[5] Ada County District Court Case No. CV01-21-17077.
[6] Citations to the Clerk's Record on Appeal are referenced with the letter "R."

produced a greatly truncated record (*id*.), in an attempt to limit or even deprive Residents' right of judicial review. The District Court nonetheless denied Residents' motions on August 24, 2022. R pp. 594-608.

The District Court issued its Memorandum Decision on Residents' Petition for Judicial Review on April 25, 2023. R pp. 1011-1074. Of the fifteen or more challenges presented by Residents, the District Court declined to address many of them on procedural grounds, and ruled against Residents on the rest. In doing so, however, the District Court remarked:

> … while the Court ultimately disagrees with [Residents], it finds that they advanced cogent legal arguments that presented legitimate questions for the Court to address. Indeed, *many arguments were close calls for the Court*. … This is the first time the CID Act has been litigated, and [Residents] raised many complex matters of first impression challenging the legality of the District's decisions … . While the Court may disagree with [Residents'] arguments, it finds that they were brought in good faith, and *many raised interesting and debatable legal questions*. [R pp. 1071-1072; (emphasis added).]

Residents filed a Petition for Rehearing on May 12, 2023, which the District Court denied on July 31, 2023. R pp. 1078-1122.

D. Statement of Relevant Facts.

Residents William Doyle and Larry Crowley are two retired homeowners and property taxpayers who live in the Boise CID. R p. 12-13. Appellant Harris Ranch CID Taxpayers' Association ("Association") is a neighborhood non-profit association whose hundreds of members consist of homeowners in the Boise CID. *Id*. There are more than 800 single-family homes in the Boise CID, although there are over 1,800 homes in the Development. *See* Appendices A and B.

1. The City Formed the Boise CID at the Developer's Request and for Their Benefit.

The CID Act was passed in 2008. The legislation was drafted and steered through the legislative process by a lobbyist for the real estate development and construction industries. Fn. 22, *infra*. The Boise CID was established by the City in concert with (i) the Harris family acting through the Harris Family Limited Partnership, and (ii) the Harris family's real estate developer acting through LeNir, Ltd. and Barber Valley Development, Inc. AR pp. 55, 1385.[7]

The Boise CID was created by Resolution No. 20895 of the City Council adopted on May 11, 2010, in response to a petition filed by the Developer. *Id*. Its boundaries were almost doubled by Resolution No. 20944 of the City Council, adopted on June 22, 2010. *Id*. To Residents' knowledge, the Boise CID has no offices, employees, furniture, computers, or other facilities of its own. City staff perform all its administrative functions. *Id*. The City Attorney is the attorney for the CID, and the City is paying the Boise CID's outside legal fees.[8] All the notices, agendas, minutes, and videos of meetings of the CID Board are posted on the City's website, and all meetings of the Board take place in City Hall.[9] The City's Audited Comprehensive Financial Report, with which the Boise CID's financial information is blended, confirms that "management of the [City] has operational responsibility for the [Boise CID]."[10] Moreover, the Report recites that the Boise CID "[is] so intertwined with the City that [it is], in substance, the same as the City." *Id*.

[7] Citations to the "Administrative Record on Judicial Review" are referenced with the letters "AR." All citations including the letters "AR" are to the corrected Administrative Record lodged by the District Court on February 5, 2024.
[8] *See, e.g.,* https://issuu.com/cityofboise/docs/fy23_acfr_final, p. 58.
[9] *See, e.g.,* https://boisecityid.iqm2.com/Citizens/Calendar.aspx, "Harris Ranch Community".
[10] *See* https://issuu.com/cityofboise/docs/fy23_acfr_final, p. 50.

At the time the Challenged Resolutions were adopted, all members of the CID Board were appointed by the City Council. Board members could also be removed by the Council at any time without cause and without a hearing. Idaho Code § 50-3104(2). If the CID Board were to do or propose something that the City Council did not like, the Council could have replaced those Board members with others more amenable. The City therefore effectively exercises complete control over the Boise CID. Therefore, although in form a separate governmental entity, as explained in Section IV.H, *infra*, the Boise CID is in fact an alter ego of the City.

Resolution No. 20944 also authorized the execution of a Development Agreement (AR pp. 499-575) among the City, the Boise CID, and the Developer, dated August 31, 2010 ("Development Agreement"). AR pp. 55, 501. The Development Agreement provides for payments by the Boise CID to the Developer from proceeds of Boise CID bonds. The payments are, in form, reimbursements measured by the costs for facilities previously constructed by the Developer in connection with the very large Harris Ranch development on the east side of the City. AR pp. 508-511.

2. The Boundaries of the Boise CID Were Manipulated by the Developer and the City to Ensure That Nobody Could Object to What They Were Doing.

At the time of its formation, the Boise CID consisted entirely of vacant land. *See, e.g.,* AR pp. 1000-1003.[11] There was not a single homeowner within its boundaries, even though there were

[11] Ownership, property type, lot boundaries, subdivision, and related information, including historical data, are from the Ada County Assessor's Office on-line interactive property information map: www.adacountyassessor.org/adamaps/. A screenshot showing Assessor parcels in the part of the City which includes the Development is attached for convenience of reference as **Appendix A** (R p. 708).

already many hundreds of homes in the Development.[12] That is because the boundaries of the Boise CID were manipulated by the City and the Developer to exclude any homes or other property already sold by the Developer. AR pp. 1000-1003. This guaranteed that the Developer (and the Harris family's employee and tenant) would be the only parties to vote in the planned bond election. Idaho Code § 50-3112.[13]

The Developer and the City carved out six square blocks with 90 homes in the northwest of the Development from its boundaries. *See* Appendices B and C. More than 500 existing homes in the southeast of the Development were similarly excluded. *Id*. Also carved out was property, then owned by the State but later acquired by the Developer, now consisting of more than 40 homes in the northeast of the Development. *Id.* And the Harris family carved out their own two homes in the middle of the Boise CID from its boundaries, thus freeing themselves from $110 million in property taxes they imposed on everyone else. *Id*.

3. The Issuance of the Bonds Was Authorized by a Single Vote Cast by a Ranch Worker Who Was an Employee and Tenant of the Harris Family.

The issuance of the 2021 Bond by the Boise CID, as part of a planned total in $50 million in "general obligation" bonds, was authorized by a single vote. The City, acting through the Boise CID, held a special "election" on August 3, 2010, shortly after its formation. AR pp. 57, 990-998.

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[12] A map of the Development (AR p. 906) is attached as **Appendix B** for reference (R p. 710). The complete map is contained in the Harris Ranch Specific Plan at: https://www.cityofboise.org/media/9160/chapter-2-land-use-plans-compressed.pdf, p. 2.

[13] The City's map of the Boise CID is attached as **Appendix C** (R p. 712). https://www.cityofboise.org/departments/finance-and-administration/city-clerk/harris-ranch-cid/. Overlay descriptions have been added for convenience of reference.

Although four votes were cast, only one was by a "qualified elector" under the CID Act and Idaho law.[14] That voter was a ranch worker for the Harris family living on their property as a tenant. *See* AR p. 997. He registered to vote immediately before the "election," did not own any property in the Boise CID, and thus was never going to pay any of the $110 million of property taxes to pay the $50 million in bonds. *Id*. He was not a registered voter when the Boise CID was created by the City. AR pp. 991, 997.

A total of approximately $15.4 million of the "general obligation" bonds have been issued to date in separate series in 2010 and in 2013 through 2020. AR p. 61. The CID Board, by adopting the Bond Resolution, authorized the issuance of another $5.2 million of such bonds. AR p. 68. The issuance of these bonds and the resulting imposition of property taxes (AR p. 73) on the more than 1,000 current homeowners in the Boise CID were never submitted to the qualified electors of the City, or to homeowners and property taxpayers in the Boise CID.

4. Residents Submitted More Than a Dozen Detailed Objection Letters to the CID Board Prior to Adoption of the Challenged Resolutions.

Residents began their initial legal review of the Boise CID in May 2021. They discovered repeated and ongoing statutory and constitutional violations. Almost every aspect of the Boise CID was unlawful including its formation, the supposed bond election, the bonds it has issued, the property taxes it has levied, and the payments it has made to the Developer. Residents presented a summary analysis of some of those legal issues to City staff and their outside counsel at a meeting

[14] Two votes were cast by Developer entities which cannot vote, as they are not natural persons. *Id*. And one vote was cast by a person who lived in the Development but outside the boundaries of the Boise CID. *Id*.

at City Hall in early July, 2021. *See, e.g.*, AR p. 990. That was followed by additional public records requests for relevant documents and twelve detailed objection letters to the CID Board from July through September 2021 which addressed many of those legal infirmities (collectively, "Objection Letters"). AR pp. 584-587, 954-960, 970-975, 981-994, 1000-1003, 1408-1420, 1431-1453, 1462-1468. The Objection Letters were based on documents publicly available on the City's website, as well as documents obtained by Residents through their public records requests. *Id*.

5. The Payments Resolution Authorized Payments for More than Two Dozen Different Projects.

The Payments Resolution consists of authorizations for payments to the Developer for the following projects in the Development (collectively, "2021 Projects") (AR pp. 18-20):

(i) Project No. GO21-1. The CID Board authorized payments totaling almost $1,400,000 for 24 projects undertaken by the Developer over the past 14 years or more (collectively, "Accrued Interest Projects"). Payments had been approved by the CID Board for these projects in the past. The payments are for interest from the dates those projects were completed to the dates payments with respect to costs of those projects were made to the Developer by the Boise CID. *Id*.

(ii) Project No. GO21-2. The CID Board authorized payment of $1,671,000 for the construction of local access streets and related facilities ("Town Homes #9 Project"). *Id*.

(iii) Project No. GO21-3. The CID Board authorized payment of: (i) $3,072,000 for the construction of several more local access streets and related facilities ("Town Homes #11 Project")[2]; and (ii) $937,000 for the construction of three stormwater retention ponds and related

facilities ("South Stormwater Facilities"). *Id*.

There was no public hearing regarding the Challenged Resolutions. AR pp. 25, 1522-23.[15] The following are summary descriptions of the three principal projects.[16]

No. 1. Town Homes #11 Project. This project consists of several local access residential streets (AR p. 1004, attached as **Appendix E**) (R p. 717), and related facilities on and under such streets. *See, e.g.,* AR pp. 36, 1013-1014, 1211. All the streets are classified as "local streets" by Ada County Highway District ("ACHD"). AR p. 905, attached as **Appendix F**.[17] R p. 719. All but one of the six streets front on single-family residential lots for townhomes. *See, e.g.,* AR pp. 585, 910-911; Appendices A and B.

No. 2. Town Homes #9 Project. This project also consists of several local access residential streets (AR p. 497, attached as **Appendix G**) (R p. 721), and related facilities on and under those streets. *See, e.g.,* AR pp. 28, 595-904. All the streets are classified as "local streets" by ACHD. *See* Appendix F. All but one of the four streets front on single-family residential lots for townhomes. *See, e.g.,* AR pp. 585, 910-911; Appendices A and B.

No. 3. South Stormwater Facilities. This project consists of three stormwater retention ponds and related facilities (*see, e.g*., AR p. 36). *See, e.g.*, AR p. 1005, attached as **Appendix H**.

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[15] The 2021 Projects and the related payments are listed in **Appendix D** attached for convenience of reference (R pp. 714-715). Information for the Accrued Interest Projects is taken from AR pp. 491-492. Project descriptions have been abbreviated and conformed to current street names.

[16] Summary descriptions of the 24 Accrued Interest Projects can be found in Petitioners' Opening Brief before the District Court at AR pp. 638-645. They are not included here due to the page limitation on briefing, and because the District Court declined to address the legality of those projects. *See* Section IV.E., *infra*.

[17] https://www.achdidaho.org/Documents/Projects/MasterStreetMap_36X48.pdf. This is ACHD's Master Street Map which shows current classifications for all streets in Ada County.

R p. 723. The ponds receive run-off only within the Development and thus only serve the Development. *See, e.g.,* AR pp. 910, 967, and 1406, attached as **Appendix I**. R p. 725. Stormwater ponds and related facilities are essential to prevent flooding when you cover hundreds of acres of former pastureland with streets, sidewalks, driveways, patios, homes, and other hard surfaces, and thus were required as a condition of the Development. AR p. 1413.

The South Stormwater Facilities and the 6.4 acres of land on which they are located are still owned by the Developer. AR pp. 1018-1030. The Developer granted what is termed a "Permanent Easement" on and over the property to ACHD, dated as of November 12, 2019. *Id*. ACHD, however, has limited substantive rights under this easement. Those consist of the rights: (i) to retain stormwater runoff on the property, and (ii) at its option and without any obligation, to enter and perform maintenance on the stormwater ponds and related facilities at the cost of the Developer in the event the Developer fails to do so. AR pp. 1019-1020.

III. ISSUES PRESENTED ON APPEAL

1. Does the Payments Resolution violate the CID Act because it authorizes payments for "project improvements" instead of "system improvements"?

2. Does the District Court's imposition of a preservation rule to challenges brought under the CID Act conflict with the language of the CID Act and result in a denial of due process?

3. Does the Payments Resolution violate the CID Act because it authorizes payments for facilities "fronting individual single-family residential lots"?

4. Does the Payments Resolution violate the CID Act because it authorizes payment for the South Stormwater Facilities even though those facilities are not publicly owned?

5. Does Section 50-3119 of the CID Act permit challenges to new payment approvals even if different payments for the same projects were approved in the past?

6. Does the District Court's interpretation of Section 50-3119 deny due process to Residents and existing and future homeowners in CIDs throughout the State?

7. Does the Bond Resolution violate the Idaho Constitution because it authorizes the issuance of debt and the imposition of taxes without the required voter approval?

8. Is the Boise CID an alter ego of the City because the City effectively exercises complete control over the Boise CID?

9. Does the authorization of the 2021 Bond and the levy of taxes violate the Idaho Constitution because the Bond was not authorized by the vote of even one person who would actually pay the resulting taxes?

10. Does the Bond Resolution violate the Idaho and Federal Constitutions because the taxes it levies are not uniform across all properties of a similar class?

11. Do the Challenged Resolutions violate the Idaho Constitution because they authorize the lending of credit and gift of public funds by the Boise CID to private persons?

12. Were Residents entitled to have additional documents identified in their Notice of Appeal included in the record before the District Court?

13. Are Residents entitled to an award of attorneys' fees under the Private Attorney General Doctrine should they prevail in this proceeding?

IV. STANDARD OF REVIEW

Residents seek judicial review of statutory and constitutional violations. Statutory

interpretation is a question of law that receives *de novo* review from a court acting in an appellate capacity. *E.g., State v. Schulz,* 151 Idaho 863, 865, 264 P.3d 970, 972 (2011); *see also, State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020) (citing *In re Estate of Peterson,* 157 Idaho 827, 830, 340 P.3d 1143, 1146 (2014) ("On appeal of a decision rendered by a district court while acting in its intermediate appellate capacity, this Court directly reviews the district court's decision.")); *State v. Dunlap,* 155 Idaho 345, 361, 313 P.3d 1, 17 (2013) (exercising free review over statutory interpretation because it is a question of law.). Appellate courts also exercise free review of the application of constitutional principles to established facts. *State v. Avelar,* 124 Idaho 317, 322, 859 P.2d 353, 358 (Ct.App.1993).

V. ARGUMENT

A. The Payments Resolution Violates the CID Act Because It Authorizes Payments for "Project Improvements" Instead of "System Improvements."

1. Community Infrastructure Which Can Be Funded under the CID Act Is Defined by Reference to the Impact Fee Act.

The CID Act limits the powers of CIDs. Idaho Code § 50-3105(1) ("A district formed pursuant to this chapter … is not a governmental entity of general purposes and powers, *but is a special limited purposes district, with powers only as permitted under this chapter* …") (emphasis added). Idaho common law also restricts local government authority to powers that are expressly granted or necessarily implied. *E.g., City of Grangeville v. Haskin*, 116 Idaho 535, 538, 777 P.2d 1208, 1211 (1989); *Caesar v. State,* 101 Idaho 158, 160, 610 P.2d 517 (1980).

Where there is doubt as to the existence of municipal authority, Idaho law creates a presumption that the authority does not exist. *E.g., Plummer v. City of Fruitland*, 140 Idaho 1, 5,

89 P.3d 841, 845 (2003), *on reh'g*, 139 Idaho 810, 87 P.3d 297 (2004) ("If there is a fair, reasonable, substantial doubt as to the existence of a power, the doubt must be resolved against the city."). The CID Act and its legislative history make clear that CIDs only have the power to pay developers for the costs of "system improvements" that primarily serve the broader region, and not "project improvements" that primarily serve a particular development.

Statutory interpretation "begins with the literal language of the statute ... ." *Burke*, 166 Idaho at 623, 462 P.3d at 601 (citing *Schulz,* 151 Idaho at 866, 264 P.3d at 973). The CID Act states that its purpose is to "encourage the funding and construction of *regional community infrastructure* in advance of actual developmental growth that creates the need for such additional infrastructure[.]" Idaho Code § 50-3101(1)(a) (emphasis added). The Act further states that its purpose is 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*." Idaho Code § 50-3101(1)(b) (emphasis added). Chapter 82, title 67 of the Idaho Code is the Impact Fee Act.

Statutory provisions are interpreted within the context of the whole statute, not as isolated provisions. *Burke*, 166 Idaho at 623, 462 P.3d at 601 (citing *Schulz,* 151 Idaho at 866, 264 P.3d at 973). This includes giving effect "to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Id.* Moreover, "statutes which are *in pari materia* [such as the CID Act and the Impact Fee Act] are to be taken together and construed as one system, and the object is to carry into effect the intention." *E.g., State v. Lantis*, 165 Idaho 427, 429, 447 P.3d 875, 877 (2019) (quoting *City of Idaho Falls v. H-K Contractors, Inc.,* 163 Idaho 579, 583, 416 P.3d

951, 955 (internal citation omitted)).

The term "regional community infrastructure" in Section 50-3101(1) is not defined in the CID Act. The use of the word "regional," however, indicates a limited grant of authority to finance facilities that benefit the region and not just a single development. The meaning of the language is further clarified by the reference in the next clause to "community infrastructure that may be financed [by the Impact Fee Act]." Idaho Code § 50-3101(1)(b). Under the Impact Fee Act, only "system improvements" and not "project improvements" – each as defined in the Impact Fee Act – may be funded.

The CID Act refers to the Impact Fee Act in only two other places. First and most notably, Section 50-3102(2) of the CID Act defines the "community infrastructure" which can be financed under the CID Act to include "all public facilities as defined in section 67-8203(24) [*of the Impact Fee Act*]." As this Court stated in *Norton v. Dep't of Emp't*, 94 Idaho 924, 927, 500 P.2d 825, 828 (1972): "Where one statute adopts particular provisions of another by reference thereto, the effect is the same as though the adopted provisions were written into the adopting statute." The CID Act expressly incorporates certain facilities that are impact fee eligible under the Impact Fee Act within the definition of "community infrastructure." Thus, "regional community infrastructure" which may be financed under the CID Act is defined by reference to the Impact Fee Act.

Second, the CID Act refers to the Impact Fee Act in Section 50-3120(2). This provision states that a CID shall be treated like a local improvement district for purposes of impact fee credits and reimbursements, and expressly incorporates Section 67-8209 of the Impact Fee Act. Section 67-8209(1) states:

> In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of *system improvements* …. Credit or reimbursement shall *not* be given for *project improvement[s]* [sic]." [Emphasis added.]

The CID Act thus expressly limits any credits or reimbursements for facilities funded under the CID Act to "system improvements" and prohibits any such credits or reimbursements for "project improvements," each as defined under the Impact Fee Act. This again reinforces that the "regional community infrastructure" that can be funded under the CID Act is limited to "system improvements" as defined under the Impact Fee Act.

The Impact Fee Act defines "project improvements" and "system improvements" as follows:

> (22) "Project improvements" means 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*.
>
> * * *
>
> (28) "System improvements," *in contrast to project improvements*, means capital improvements to public facilities designed to provide service to a service area…[18]

Idaho Code §§ 67-8202(22) and (28) (emphasis added). The Impact Fee Act is clear and unequivocal in stating that only "system improvements" which primarily serve the broader region can be financed with development impact fees, and not "project improvements" which primarily serve a particular development. *E.g.*, Idaho Code §§ 67-8203(9), 67-8209(1), 67-8210(2). The

[18] The term "service area" is separately defined in the Impact Fee Act to mean a geographic area identified by a local government which is served by the local government's public facilities. Idaho Code § 67-8203(26). ACHD defines all of Ada County as a single service area for purposes of its impact fees for roads, streets, and bridges. ACHD Impact Fee Ord. No. 246A, § 7317.1. The City of Boise defines the entire *city* as a single service area for purposes of its impact fees for regional parks, for fire and for police facilities, respectively. City of Boise Code §§ 9-2-6 to 9-2-9.

corresponding language of the CID Act incorporating portions of the Impact Fee Act makes clear that it cannot be used to finance project improvements.

2. The Legislative History of the CID Act Establishes Indisputably That the Legislature Intended to Prohibit the Financing of "Project Improvements."

This Court has held repeatedly that the goal of statutory interpretation is to give effect to the legislative intent and purpose underlying a statute. *E.g., Hood v. Poorman*, 171 Idaho 176, 519 P.3d 769 (Idaho, 2022). If there is any doubt as to whether the CID Act prohibits the financing of "project improvements," it is eliminated by the legislative history. *E.g., Fell v. Fat Smitty's L.L.C.,* 167 Idaho 34, 38, 467 P.3d 398, 402 (2020) (Legislative history reflects legislative intent and thus resolves statutory ambiguity). The legislative history of the CID Act repeatedly states that the Legislature intended to provide a source of funding only for "regional community infrastructure" that "is impact fee-eligible." In fact, the otherwise limited legislative history of the CID Act says so more than 18 times.

The two identical legislative "Statement[s] of Purpose" for the two nearly identical versions of the bill both state:

> A CID allows the formation of a taxing district comprised by the boundaries of a new development. Taxes and assessments applied only to lands within the new development will secure bonds. ***Those bonds can be utilized to fund regional community infrastructure,*** inside and outside the district. [Emphasis added.][19]
>
> ***Only infrastructure that is impact fee-eligible*** … ***may be funded with bond proceeds generated by a CID***. [Emphasis added.][20]
>
> Only infrastructure that is publicly-owned by the state, county or city, and ***only impact fee-eligible projects may be constructed with the proceeds of a CID***.

[19] Statement of Purpose – RS 18009, p. 1; Statement of Purpose – RS 18135C2, p. 1.
[20] Statement of Purpose – RS 18009, p. 1; Statement of Purpose – RS 18135C2, p. 1.

[Emphasis added.][21]

The Legislature was thus clear in stating the purpose of the legislation. And they did so twice in the two successive Statements of Purpose. Similar language recurs throughout the legislative history for the two bills. And the legislative history of the CID Act goes further to state repeatedly that the purpose of the Act is only to fund projects that benefit the region as a whole. The relevant statements in the legislative history include the following:

> Mr. Pisca[22] stated … **The CID would be tied to impact fee-eligible projects only**, such as highways, roads, bridges, sewer and water treatment facilities, and police, fire and other public safety facilities. [Emphasis added.][23]
>
> Mr. Pisca stated **only public infrastructure** providing a **regional or community-wide benefit** may be funded through a CID. [Emphasis added.][24]
>
> 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 that **the intention of the CID is to provide funds for infrastructure that benefits the whole community**. [Emphasis added.][25]
>
> Mr. Pisca stated that the intent of this legislation was to find ways **to finance impact [fee]-eligible infrastructure** ahead of development. [Emphasis added.][26]

[21] Statement of Purpose – RS 18009, p. 1; Statement of Purpose – RS 18135C2, p. 1.
[22] Jeremy Pisca, identified in the legislative history as a lobbyist for the Idaho Association of Realtors, the Idaho Building Contractors Association, and the M3 Eagle development, appeared at almost all the hearings in both the House and Senate which are included in the legislative history. He appears to have been the principal draftsperson of the legislation. He is quoted extensively in the legislative history, and the outlines of some of his presentations are included in the legislative history. Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 2. In his testimony, Mr. Pisca "proceeded to go through the bill by page and line numbers to describe exactly what the bill would accomplish." Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 3.
[23] Minutes, House Revenue and Taxation Committee, February 27, 2008, p. 2.
[24] Minutes, House Revenue and Taxation Committee, March 6, 2008, p. 1.
[25] Minutes, House Revenue and Taxation Committee, March 6, 2008, p. 2.
[26] Minutes, House Revenue and Taxation Committee, March 10, 2008, p. 1.

> **A CID can only be used to fund "regional community infrastructure" meaning infrastructure that is impact fee eligible**. [Emphasis added.][27]
>
> **Senator Bastion emphasized that this [legislation] is for regional infrastructure.** [Emphasis added.][28]
>
> **Only** public infrastructure providing a **regional or community-wide benefit** may be funded through a Community Infrastructure District. [Emphasis added.][29]
>
> Community infrastructure ***excludes*** **public improvements that only provide a local benefit, such as local roads or sewer connections serving individual residences**. [Emphasis added.][30]
>
> A Community Infrastructure District (CID) will provide a mechanism that will alleviate these problems by creating **a special taxing district that pays for** "**regional community infrastructure**." [Emphasis added.][31]
>
> What types of public infrastructure can a CID acquire and/or construct?
> House Bill 680 limits the types of infrastructure that can be financed through a CID to infrastructure that is: 1) **regional community infrastructure benefiting an entire region;** 2) publicly owned infrastructure; ***and*** (3) **infrastructure that is impact fee-eligible**. The types of **regional community infrastructure** include highways, roads, bridges, interchanges, water and wastewater treatment, parks and public safety facilities such as police and fire stations. … **Again, the focus of H. 680 is on the construction of infrastructure that benefits the entire *region*.** [Bold emphasis added; italics and underlining in original.][32]

The legislative history of the CID Act therefore repeatedly and emphatically confirms that the CID Act can only be used to finance "system improvements" to regional infrastructure eligible for financing under the Impact Fee Act, and not "project improvements" which primarily serve a

[27] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 3.
[28] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 6.
[29] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[30] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[31] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, pp. 2-3.
[32] Community Infrastructure Districts (CID), House Bill 680, [TALKING POINTS], p. 1.

particular development. The CID Board, however, ignored this limitation when it adopted the Payments Resolution and therefore violated the CID Act.

3. The Payments Resolution Violates the CID Act Because It Authorizes Payments for "Project Improvements."

All the 2021 Projects are located within the Development. *E.g.*, AR pp. 28-43, 63; R pp. 636-646. All the projects primarily serve only the Development, and most serve the Development exclusively. *Id*. Therefore, all the 2021 Projects necessarily were "planned and designed to provide services to a particular development project," as the Impact Fee Act recites, rather than the broader region. Idaho Code § 67-8202(22).

These projects, by their location, nature, and function, "are necessary for the use and convenience of the residents and users of [the Development]" rather than residents of the larger Boise community. *Id*. The three principal projects, for example, provide residents and users of the Development access to their homes, the ability to flush their toilets, and a place for the run-off from their properties. And none of the 2021 Projects provide a primary benefit to the broader region. Therefore, all the 2021 Projects constitute "project improvements" rather than "system improvements" and cannot be funded under the CID Act.

B. The District Court's Imposition of a Preservation Rule to Challenges Brought under the CID Act Is Contrary to the Language of the CID Act and Would Result in a Denial of Due Process.

The CID Act imposes only one condition on the right of aggrieved homeowners to seek judicial review of final decisions by a CID – that they file their petition within 60 days of when the decision was made. Idaho Code § 50-3119. There is nothing in the CID Act that requires those aggrieved to have appeared at the meeting at which the decision was made, to have made any

comments, or to have raised any objections, let alone to have submitted any evidence or to have made any legal arguments. In fact, the CID Act is silent as to any process or procedure for the presentation of any argument, evidence, objection, or comment to a CID board prior to judicial review. The District Court nonetheless held that it would not consider arguments which it determined were first raised by Residents in this judicial review proceeding on the grounds that they were not preserved. R pp. 1030-1034. There is no legal authority that supports the imposition of a preservation rule on challenges brought under the CID Act and, in fact, the legal authority governing challenges under the CID Act make clear that the preservation rule cannot be applied as it is in other contexts. The District Court's exclusion of arguments based on the preservation rule should therefore be reversed.

1. Judicial Review Before the District Court Is the Proceeding in Which Aggrieved Persons Are First Required to Raise Legal Challenges to Any Final Decision by a CID Board.

The preservation rule only makes sense if there are corresponding rules mandating a process that provides a meaningful opportunity to present and thus preserve arguments. The CID Act does not do that. It is not like the Idaho Administrative Procedures Act or the Local Land Use Planning Act, and it is not like any other agency proceeding where the agency adopts rules that create a formal process for people to present their grievances. The District Court imposed the preservation rule anyway and created a strict requirement on every homeowner who now or in the future resides within a CID. If left standing, the District Court's ruling will require homeowners to present every possible legal challenge to the adoption of any resolution by a CID board even though by law CID boards are not required to undertake any process that would allow any such

presentation. And, in fact, this particular CID Board over the past 12 years has repeatedly authorized the issuance of millions of dollars in debt and imposed tens of millions of dollars in taxes without having undertaken any process whatsoever prior to such authorization. Subsection IV.K.3., fn. 58, *infra*. The severity of this new standard would all but guarantee that legitimate grievances of homeowners will be foreclosed and that CID boards will be able to make unlawful decisions with impunity, just as the Boise CID has done for more than 13 years.

By both its title and its terms, Section 50-3119 states that judicial review by way of a notice of appeal within 60 days is the "exclusive remedy" available to homeowners aggrieved by CID decisions. If they instead bring a declaratory judgment action, an action for writ of mandate or prohibition, or a civil action seeking injunctive relief, it would be for naught. That is because that same provision states that the challenged resolution would become "valid and incontestable" after 60 days. Idaho Code § 50-3119. That would be the case regardless of: (i) whether there was any hearing in connection with the adoption of that resolution; (ii) whether there was any opportunity to present evidence or legal argument prior to adoption; (iii) whether there was any notice to residents (other than the posting of notice of the meeting and a bare agenda as little as 24 hours prior to the meeting pursuant to the Open Meetings Act); and (iv) whether the CID board considered anything other than the form of the resolution itself prior to its adoption.

It would be impossible for any resident on as little as 24 hours prior notice, and therefore without access to any CID documents other than the agenda for the meeting, to retain counsel and for such counsel to fully research and brief all possible legal challenges to the resolution. The District Court acknowledges this in its decision on Residents' Petition for Rehearing in which it

stated: "This is not a case where a district rushed through a resolution with only 24 hours prior notice, *where an exception to the preservation rule might be appropriate*." R p. 1120 (emphasis added). The District Court, however, misunderstood the argument being made. Residents' point is not that they did not have enough time in this particular case to respond to the Boise CID's proposed action. The point is that the possibility described is inherent in the imposition of the preservation rule where no process allowing an opportunity to preserve is required.

There is no statutory or other process that requires a CID board to provide this opportunity before it makes a decision, and no requirement that the CID board consider any arguments submitted. What Section 50-3119 necessarily contemplates instead is that the requirements of due process are satisfied not by whatever process, if any, is indulged by a CID board in adopting a resolution, but instead by judicial review of the adoption of such resolution by the district court. The CID Act thus cannot be construed to require the presentation of any – let alone all – legal argument until the appeal of a "final decision" to the district court.

2. Residents Were Not Required to Present Any Legal Issues Before the CID Board.

The District Court nonetheless determined that the preservation rule applies to challenges brought under the CID Act. The District Court thus refused to consider arguments which it determined were first raised by Residents in this proceeding. R pp. 1030-1034. In particular, the District Court declined to consider Residents' argument that only "system improvements" and not "project improvements" can be financed under the CID Act. In doing so, the District Court ignored the language in Section 50-3119 which provides in relevant part:

> [I]f 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. [Emphasis added.]

The necessary implication of this language is that the appropriate forum for raising legal issues is "on appeal," and not before the CID board. If the preservation rule is applied as the District Court did, it would in effect revise the statute to read: "If the question of validity of any bonds issued pursuant to this chapter ***is not raised before the CID Board approves the issuance of the bonds***," their legality is presumed.

The District Court argued that "it would be unfair to allow Petitioners to ambush the District on appeal with arguments that the District was not presented when it made its final decision." R p. 1130. That is a rather extraordinary statement given that a judicial review proceeding by its very nature provides all parties an opportunity to formulate and present argument and thus makes "ambush" impossible. Moreover, it is not incumbent on taxpayers to advise a local government that its proposed legislative action is unlawful before it is taken. It is the obligation of a local government to be certain that its proposed action is lawful before proceeding. What would be unfair is to impose a requirement on a CID resident that they present all possible legal objections to a proposed CID board action even though they may have as little as one day's notice of that proposed action, no reasonable opportunity to determine those legal objections, no formal process for submitting any such objections, no hearing at which such legal objections could be heard, and no obligation on the part of the CID board to even consider those objections if they are presented.

The District Court's ruling permits a CID to insulate itself from challenge and to take away

the right of homeowners to judicial review. The CID Act does not require CIDs to give homeowners a chance to formulate and present legal objections. But the Court's ruling requires homeowners to formulate and present all legal objections to a CID Board prior to it making a decision. The District Court's ruling thus incentivizes CID boards to make decisions on as little notice as possible in order to insulate themselves from challenge. The Boise CID has already capitalized on this approach. In stark contrast to the process the Boise CID indulged in connection with the Challenged Resolutions, the CID Board more recently has provided almost no process at all in approving more payments to the Developer. For example, the Boise CID did not post an agenda, the form of the resolution, or a 450-page staff report *until less than three business days before the proposed meeting* for an authorizing resolution adopted on January 30, 2024.[33] They did not post the revised staff report, objection letters from Residents, and other materials – a total of 2,238 pages – *until the day of the meeting*. *Id*. There was again no public hearing, no opportunity to present evidence, and no opportunity to make arguments.

As one would expect, the cases cited by the District Court for the proposition that the preservation rule applies to challenges brought under the CID Act all involve judicial review of statutorily-required due process proceedings in the zoning, licensing, and even criminal law contexts, most arising under the IAPA and the LLUPA. R pp. 1023-1024, 1028-1029. Neither the District Court nor Opponents cited a single case consisting of judicial review of the mere adoption of an ordinance or resolution by a local government that was not preceded by a due process

[33] https://boisecityid.iqm2.com/Citizens/Detail_Meeting.aspx?ID=5017.

proceeding.

The District Court in effect penalized Residents (and set a precedent that will penalize every aggrieved homeowner in CIDs throughout Idaho) because Residents had been actively involved in the political process and submitted Objection Letters which "raise sophisticated legal arguments." R p. 1030. Residents, however, did not submit Objection Letters as part of a statutorily required due process proceeding. In their many letters, Residents repeatedly stated that those letters did not purport to present all possible legal objections, and that they expected more issues to become evident as their review continued. *E.g.*, AR pp. 586, 993. Residents assumed that they would be able to hire counsel to undertake a thorough legal review and to present arguments on appeal to the District Court if the CID Board proceeded to adopt the Challenged Resolutions over Residents' objections.

By the District Court's reasoning, a CID board could adopt a resolution on as little as one day's notice, based solely on a verbal recommendation of staff, with nothing before them other than the resolution itself, and with no opportunity whatsoever for public input, submission of evidence, or legal argument, and if a CID resident and taxpayer filed a petition for judicial review within the 60-day period, it would be summarily dismissed. That is because the resident would not have presented any legal arguments whatsoever to the CID board, and had no opportunity to do so even if they wanted to. Section 50-3119 therefore can only be construed such that the judicial review proceeding *itself* is the due process proceeding to which Residents are constitutionally and statutorily entitled, and in which they first need to raise their legal challenges.

3. The District Court in Any Event Applied Its Preservation Rule Unequally.

Residents in several of their Objection Letters referred to the legal memorandum they had provided to the Boise CID in July 2021. That memorandum presented State and Federal Constitutional challenges to the Boise CID, its bond election, its bonds, its tax levies, and its payments to the Developer which Residents have repeated in this proceeding. In at least one of those letters, Residents detailed those challenges as follows:

> Those include failures by the City, acting through the [Boise CID], to comply with: (1) the 2/3rds voter approval requirement for the issuance of bonds; (2) the requirement of uniformity of taxation of similar properties in the City; (3) prohibitions against the City lending its credit to a private developer; and (4) constitutional protections of due process of law and equal protection of the laws.

AR p. 1000. Those constitutional challenges by Residents were repeated almost verbatim in the Staff Report. AR p. 48. The Staff Report states:

> **E. Constitutionality of the District**
> In its September 13, 2021 letter titled "The HRCID Was Unlawful from the Beginning" (see Exhibit Z), the Association questions [sic] alleges that the "HRCID, the bonds it has issued, and the special taxes and assessments it has imposed violate both the Federal and State Constitutions in numerous ways." They indicated the issues as being:
> 1. [T]he 2/3rds voter approval requirement for the issuance of bonds;
> 2. the requirement of uniformity of taxation of similar properties in the City;
> 3. prohibitions against the City lending its credit to a private developer; and
> 4. constitutional protections of due process of law and equal protection [sic] the laws. [*Id*.]

Residents' challenges included the argument, among others, that the Boise CID is the alter ego of the City. But neither the Developer nor the Boise CID elected to make any legal arguments related to these issues before the CID Board. On the contrary, the Staff Report stated:

> *District Staff Analysis*: The scope of this Memorandum is to cover Projects GO21-1, GO21-2, and GO21-3 therefore [sic] **we will not take up any analysis of those issues** in this document. [*Id*.] [Emphasis added.]

The cases cited by the District Court in support of its imposition of the preservation rule apply that rule to both sides – that is, to both the governmental agency and to its opposing party. R pp. 1028-1029. As neither the Boise CID nor the Opponents made any legal argument before the CID Board in opposition to Residents' constitutional challenges, under the District Court's preservation rule, Opponents should have been precluded from doing so in this proceeding. But not only did the District Court permit Opponents to make those arguments (R pp. 832-841, 882-888), the District Court relied on those arguments in its Decision. That includes what the District Court denominated as the Eleventh, Twelfth, Thirteenth, and Fourteenth issues on appeal, the District Court's discussion of which spans 16 pages. R pp. 1053-1068.

The District Court stated that the Boise CID's refusal to address Residents' constitutional arguments "was based on their determination that those arguments were beyond the scope of the resolutions [then] before the [Boise CID]." R p. 1120. That is not the case, as the Staff Report reflects that Residents presented those issues to the CID Board (R pp. 48-49), and they are among the issues presented by this judicial review proceeding. The District Court then continued: "While the District cannot raise new offensive arguments on appeal, it is entitled to defend itself on appeal against Petitioners' arguments …." R p. 1120. A CID, however, does not bring "offensive" arguments in a judicial review proceeding challenging its decisions: it is always defending itself as the Respondent. It is only the Court's incorrect interpretation of the preservation rule which has allowed the CID to avoid presenting a substantive defense of its actions. Instead, the Court has enabled it to do so on improper procedural grounds.

The ultimate consequence of the District Court's position is that, while an aggrieved citizen

would have to raise all possible legal objections to a proposed action of a CID board before they act, the CID board would not have to respond to or even consider them unless and until they are challenged in court. That only serves to confirm that the adoption of a resolution by a CID board is not a due process proceeding in which *either* party is required to submit or consider legal arguments. That instead occurs before the district court upon judicial review. This Court therefore should either abandon the preservation rule and address the substantive arguments presented by the parties, or uphold Residents' challenges on those grounds because they are unrebutted by any argument properly preserved by the Boise CID.

C. The Payments Resolution Violates the CID Act Because It Authorizes Payments for Facilities "Fronting Individual Single-Family Residential Lots."

The purpose of the CID Act is to provide a mechanism to finance "regional community infrastructure." Idaho Code §§ 50-3101(1), 50-3105(1). "Community infrastructure" is defined to mean "improvements that have a substantial nexus to the district and directly or indirectly benefit the district." Idaho Code § 50-3102(2). The term is further defined by the specific types of facilities which may be financed. *Id*. Those include "all public facilities as defined in section 67-8203(24) [of the Impact Fee Act]." This cross-reference is followed by a largely overlapping list of permissible facilities. *Id*.

The definition of "community infrastructure" also contains an exclusion. Community infrastructure "excludes public improvements fronting individual single-family residential lots." *Id*. The parties have referred to this as the "Fronting Exclusion." Most of the projects approved by the CID Board fall within this Exclusion. The District Court nonetheless upheld those approvals

based on an incorrect interpretation of the meaning of the Exclusion. This Court should decline to do the same.

1. The District Court Incorrectly Determined that the Fronting Exclusion Only Applies to Projects That Front on Just One Lot.

For the twelve years following the formation of the Boise CID in 2010, the City and the Developer both understood the Fronting Exclusion to prohibit payments for facilities which were directly in front of single-family residential lot**s**. The City therefore declined to make payments for streets, sidewalks, storm drains, sewer connections, street lighting, and other facilities directly in front of single-family homes and townhomes. *See, e.g*., AR pp. 471-490, 910-911, 1211-1212. The District Court broke from the general understanding reflected in this history. It concluded instead that the Fronting Exclusion only applies to community infrastructure which fronts on *just one* single-family residential lot. R pp. 1037, 1038. This interpretation is contrary to the plain language of the Exclusion and would render the Exclusion meaningless.

a) The District Court's Interpretation Is Contrary to the Plain Language of the CID Act.

"[I]f statutory language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *E.g., State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). And that is precisely the case here. This Court need not look further than the "plain, usual, and ordinary meaning" of the words "individual" and "lots" in order to resolve the Legislature's intent. *Id*.

This Court has repeatedly referred to the dictionary as a tool to ascertain the ordinary, generally understood meaning of words in statute. *E.g., Arnold v. City of Stanley*, 158 Idaho 218,

221, 345 P.3d 1008, 1011 (2015). Within the Fronting Exclusion, the word "individual" is part of the adjective phrase "individual single family residential" which modifies the noun "lots." Under general rules of grammar,[34] if the words in an adjective phrase are not separated by commas, each adjective modifies the subsequent adjectives and noun.[35] When used as an adjective modifying a plural noun, the word "individual" does not convert the plural noun into a singular noun. It refers to the distinct, separate, or discrete nature of the things within the group being referenced.[36]

Consider the sentence: "The teacher handed out individual No. 2 graphite pencils to the class." The sentence is syntactically and grammatically correct. The word "individual" is used properly. This does not mean that only one pencil was distributed. It means distinct pencils were given separately to multiple students. Consider also the more topically applicable example: "The new development will be comprised of individual half-acre lots." Again, the sentence is syntactically and grammatically correct. It clearly conveys the fact that the development will include multiple discrete half-acre lots.

Returning to the language of the statute itself, consider the sentence: "The highway is in front of individual single-family residential lots." The usual and ordinary meaning of the words in this sentence cannot be reasonably interpreted to mean that the highway is in front of only one lot.

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[34] This Court has held that general rules of grammar are used in construing statutes. *E.g.*, *Kuna Rural Fire Dist. v. Pub. Emp. Ret. Sys. of Idaho Bd.*, 170 Idaho 496, 512 P.3d 1119 (2022).

[35] *E.g.*, https://lawprose.org/lawprose-lesson-143-when-should-you-use-a-comma-between-two-adjectives/, and citations therein.

[36] *See*, "individual," *Dictionary.com*, https://www.dictionary.com/browse/individual, examples of individual in a sentence. Accessed May 22, 2024; "individual," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/individual, examples of individual in a sentence. Accessed May 22, 2024; "individual," *Cambridge Dictionary*, https://dictionary.cambridge.org/dictionary/english/individual. Accessed May 22, 2024.

A statute is only 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-Kath Co., Inc. v. Kit Mfg. Co.*, 137 Idaho 330, 335, 48 P.3d 659, 664 (2002)). The construction adopted by the District Court is not reasonable when the common and ordinarily understood meaning of the words within the Fronting Exclusion is applied.

In support of its interpretation, the District Court stated:

> [T]he 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. … 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. [R p. 1038.]

But what the Court ignored is what a simple internet search reveals – that the phrase "individual single-family residential lot***s***" is commonly used across the United States in the zoning, planning, real estate, and development contexts, often interchangeably with the term "single-family residential lots," to refer to just that – single-family residential lots. Those include jurisdictions in Washington, Arizona, California, Florida, Georgia, Louisiana, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, and Texas, among others.[37]

If the Legislature had intended the interpretation which the District Court adopted, the simpler and more direct phrasing would have been to exclude any facilities "fronting on ***a*** single-family residential ***lot***." That would have been unambiguous and would have prohibited facilities fronting only one such lot. But the Legislature did not.

[37] *See, e.g.,* https://www.google.com/search?q=%22individual+single+family+residential+lots%22&sca_upv=1&uact=5&oq=%22 individual+single+family+residential+lots%22.

b) The District Court's Interpretation Would Rob the Fronting Exclusion of Meaning and Make It Superfluous.

Statutory "[p]rovisions should not be read in isolation, but rather within the context of the entire document." *E.g., State v. Smalley,* 164 Idaho 780, 784, 435 P.3d 1100, 1104 (2019). Reviewing courts must give effect to all the words in the statute so that none will be void or superfluous. *Id.* The Fronting Exclusion is an exception to the definition of community infrastructure. It states a condition under which a project cannot be financed even if it would otherwise satisfy the definition of community infrastructure. For the exclusion to have meaning, there must be circumstances in which projects can meet the definition of community infrastructure but run afoul of the exclusion. Under the District Court's interpretation, there would not be.

A review of the list of projects that qualify as community infrastructure makes this clear. For example, highways are community infrastructure. Idaho Code § 50-3102(2)(a). Highways do not front on only one single-family residential lot. There is therefore no reason for the Legislature to allow financing of highways except the ones that are in front of just one lot. Community infrastructure also includes water supply, production, treatment, storage and distribution facilities, roads, streets and bridges, parks and recreation areas, public safety facilities including fire stations and police stations, public parking facilities, and hiking and bike trails. Idaho Code § 50-3102(2) (incorporating Idaho Code § 67-8203(24)). As a practical matter, none of these facilities would ever be in front of just one single-family residential lot. There is no discernible reason why the Legislature would craft a prohibition that would apply to very few, if any, facilities. The District Court's interpretation thus would render the exclusion meaningless. What the Legislature instead

intended is that the fronting exclusion applies to facilities fronting on one *or more* single-family homes.

2. The Legislative History of the CID Act Does Not Support the District Court's Interpretation of the Fronting Exclusion.

The District Court concluded that the legislative history of the CID Act supports its interpretation of the Fronting Exclusion. R p. 1040. In fact, it contradicts it. Only one passage was cited in the District Court's ruling:

> 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 funds for infrastructure that benefits the whole community. [*Id.*][38]

But "side streets" within a development do not run in front of only one single-family residential lot. Similarly, "curbs" run the length of those streets, and gutters collect stormwater runoff from all along them, as well. "Sewer connections to individual houses" run beneath the street to each lot. Thus, they do not "front" on those lots in the way that streets and other above-ground facilities do. Therefore, even if you assume that Mr. Pisca was discussing the Fronting Exclusion, his statements do not support the District Court's interpretation. But he was not.

A closer look at the legislative history shows that this passage is unrelated to the Fronting Exclusion. In fact, there is no discussion of the Fronting Exclusion at all within the legislative history. The excerpt summarizes a single question and answer from a broader discussion that lasted for over an hour. In it, the Committee Member is asking Mr. Pisca for clarification regarding his

[38] House Revenue and Taxation Committee, March 6, 2008, HB 578, p. 2.

prior testimony. In that testimony, Mr. Pisca explained that the CID Act can only be used to finance facilities which provide a *regional* benefit, and cannot be used to finance facilities that primarily provide a *local* benefit. His reference to "side streets, curbs, gutters, and sewer connections to individual houses" are examples of projects that provide a local benefit and are therefore excluded. This is corroborated by Mr. Pisca's detailed "talking points" for the hearing outlined in the legislative history.[39] In that outline, Mr. Pisca states: "Community infrastructure *excludes* **public improvements that only provide a local benefit such as local roads or sewer connections serving individual residences**." (Bold added). That sentence is immediately preceded by Mr. Pisca's statement that "[o]nly public infrastructure providing a regional or community-wide benefit may be funded through a Community Infrastructure District." *Id*.

What is apparent is that the statement by Mr. Pisca upon which the District Court relied is *not* a discussion about the Fronting Exclusion. He instead is illustrating the difference between infrastructure that provides a *regional* or community-wide benefit, and is thus permissible under the CID Act, and infrastructure which provides a *local* benefit, and therefore is not. This is consistent with the relatively brief legislative history of the CID Act in which that limitation is discussed more than 18 times.

3. The Word "Fronting" As Used in the CID Act Refers to Public Facilities "Facing" or "in Front of" Single-Family Residential Lots and Not Just to Facilities Which "Physically Touch" Those Lots.

The CID Board approved the Payments Resolution based on its staff's conclusion that the

[39] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.

word "fronting" in the Fronting Exclusion applies only to facilities that physically touch single-family lots. *See* AR p. 34.[40] The District Court did not address Residents' challenge to that conclusion because it instead upheld the CID Board's decision based on the determination that the Fronting Exclusion applies only to facilities that front on just one single-family lot. R pp. 1034-1035. The Court, however, appeared persuaded by Residents' argument that the word "fronting" means "directly in front of" and not necessarily "physically touching." R p. 1036 ("[T]he Court appreciates the rationale behind [Residents'] stance that a lot is still 'fronting' a street even if a narrow strip of undevelopable land separates the lot from the street[.]"). This Court should be persuaded as well.

a) Dictionaries Support Residents' Interpretation.

A review of numerous authoritative dictionary definitions establishes that the word "fronting" is generally understood to mean "facing" or "in front of." The word may include physical touching but does not require it. For example, *Dictionary.com* defines "fronting" to include things in front of or facing an object but which are not physically touching: "Front … Verb …: to have the front toward; face: *Our house fronts the lake*; to serve as a front to: *A long, sloping lawn fronted their house*."[41] The *Merriam-Webster Dictionary* defines "fronting" in the same manner:

"Front (2 of 4) verb – fronted; fronting; fronts …: 1: to have the front or principal

[40] Staff offered, as a possible alternative interpretation, that the exclusion may apply to facilities in front of only one single-family residence. AR p. 35, fn. 21. But that was not the basis for their recommendation to the CID Board even though that is ultimately what the District Court adopted as its reasoning.

[41] "Front," *Dictionary.com*, https://www.dictionary.com/browse/front. Accessed May 22, 2024. Italics in original.

> side adjacent to something; also: to have frontage on something // a ten-acre plot *fronting* on a lake; … 2a: to be in front of // a lawn *fronting* the house …; 3: to face toward or have frontage on // the house *fronts* the street."[42]

The *Cambridge Dictionary* defines the verb "front" as to be near, next to or face, but does not require physical touching:

> front *verb* (also front onto) If a building or area fronts (onto) a particular place, it is near it and faces it: *All the apartments front onto the ocean*; Front *verb* (PLACE) to face or be next to something: *Houses fronting (on) the ocean are the most expensive.*[43]

The *American Heritage Dictionary of the English Language*, Fifth Edition (2022), the *Collins English Dictionary*, 12th Edition (2014), and many others contain very similar definitions.[44]

The dictionary definitions of the verbs "front" and "fronting" thus establish that the plain, ordinary, generally understood meaning of the word "fronting" does *not* require physical touching. The CID Act therefore must be read to prohibit funding of public facilities facing or in front of individual single-family residential lots whether or not they physically touch.

b) Corpus Linguistics Supports Residents' Interpretation.

Courts have also employed "corpus linguistics" as a tool to ascertain the generally understood meaning of words in a statute. This Court has utilized and expressed interest in this trend in legal analysis. *E.g.*, *Lantis*, 165 Idaho at 432, 447 P.3d at 880; *see also, id.* (special concurrence by Justices Brody and Burdick); *Burke*, 166 Idaho 621, 462 P.3d 599 (dissent by

[42] "Fronting," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/front. Accessed May 22, 2024. Italics in original.
[43] "Front," *Cambridge Dictionary*, https://dictionary.cambridge.org/us/dictionary/english/front. Accessed May 22, 2024. Italics in original.
[44] *E.g.,* https://www.ahdictionary.com/word/search.html?q=front; and https://www.collinsdictionary.com/us/dictionary/english/front. Accessed May 22, 2024.

Justice Bevan). Corpus linguistics is a linguistic methodology that provides an empirical, data-driven approach to ascertain the "generally understood meaning" of words by reviewing their historical usage patterns. *Lantis*, 165 Idaho at 432, 447 P.3d at 880.

The CID Act was passed in 2008. Given the modern context, the Corpus of Contemporary American English ("COCA") is the language database best suited to ascertain the meaning of the word "fronting" as the Legislature intended it. A search of the word "fronting" within COCA yields results which reflect a clear linguistic usage pattern that establishes that the word "fronting" is commonly understood to mean "facing" or "in front of." AR pp. 661-663, 728-764. While that may include things that physically touch, the objects or things referenced are seldom yet alone exclusively in direct physical contact.

4. Residents' Construction of the Fronting Exclusion Is Not Overly Broad.

The District Court concluded that Residents' construction of the Fronting Exclusion "would result in the exception effectively swallowing the rule." R p. 1039. But that is not the case. The CID Act is intended to finance only regional public infrastructure serving the broader community, and not local public infrastructure that primarily serves the development. Section IV.A, *supra*. As the District Court notes, regional public infrastructure includes such things as "[h]ighways, parkways, expressways, interstates …;" "[t]rails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use;" "[s]tormwater … facilities, flood control facilities, and bank and shore protection and enhancement improvements;" and "[p]arks, open space and recreation areas." R p. 1039. It also includes "[p]ublic safety facilities;" and [w]astewater collection, treatment and disposal facilities." Idaho Code §§ 50-3102(2), 67-

8203(24). Almost without exception, those regional public infrastructure facilities are not facilities that you will find "directly in front of" single-family homes, or that a homeowner would want to find "directly in front of" their home.

The District Court goes on to argue that "[Residents'] 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 … ." R p. 1039. But that is exactly the point – the CID Act prohibits the financing of "local" public infrastructure in a "district with single-family residential lots" that primarily benefits the development. It also prohibits any regional public infrastructure, whether inside or outside the development, that is "fronting on individual single-family residential lots." If the City and the Developer wanted to finance the costs of the street, stormwater, sewer, street lighting, and other *local* improvements in the Development through the issuance of municipal bonds and the imposition of special assessments on properties within the Development, they could have done so using one or more *local* improvement districts ("LIDs"). *See* Idaho Code Title 50, Chapter 17 ("LID Code"). LIDs have been utilized by local governments in Idaho for over a hundred years to do exactly that. *See, e.g., Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921). The LID Code provides exhaustive procedures, including multiple notices and hearings, and other protections to local property owners.

What the District Court overlooked is that there is a wide variety of regional public infrastructure that can be funded through a CID that does not run afoul of the Fronting Exclusion as the Legislature meant it. These include all the facilities that fall within the definition of community infrastructure. Highways, interstates, parks, hiking trails, stormwater facilities, and

everything else on the list can be built in a way that "directly or indirectly" benefits a development, but that is not directly in front of residential lots. As the District Court correctly points out, the purpose of the CID Act is to "encourage the funding and construction of *regional community infrastructure in advance of actual development growth* that creates the need for such additional infrastructure." R p. 1040 (quoting Idaho Code § 50-3101) (emphasis added). It is not to subsidize developers by paying them for projects such as residential streets exclusively within the development which developers normally have to pay for themselves. The District Court therefore erred in interpreting the Fronting Exclusion to apply only to facilities that front on just one single-family residential lot, rather than to facilities fronting on one *or more* of those lots.

Most of the payments to the Developer approved by the Payments Resolution are barred by the Fronting Exclusion. That is because the streets and related facilities financed are directly in front of single-family homes and townhomes, despite the Developer having interposed a narrow landscaping strip, owned by the homeowners' association and with an assessed value of zero, between those homes and those streets. R pp. 636-645.

D. The Payments Resolution Violates the CID Act Because It Authorizes Payment for the South Stormwater Facilities Even Though They Are Not Publicly Owned.

The CID Act states not once but twice that "[o]nly community infrastructure to be **publicly owned** by this state or a political subdivision thereof may be financed pursuant to this [chapter]." Idaho Code §§ 50-3101(2), 30-3107(1) (emphasis added). That requirement is clear and unambiguous. The District Court did not identify any ambiguity in this language because there is none. It is undisputed that the Developer owns the South Stormwater Facilities as well as the land

on which they are located. The inquiry ends here. The Court need go no further. The Stormwater Facilities are privately owned. Therefore, the CID Board cannot take on debt and collect taxes to pay the Developer what it cost to build them.

The District Court did not follow what the statute plainly provides. Instead, it reached the inherently contradictory conclusion that privately owned infrastructure can satisfy the public ownership requirement. The Court reached this conclusion based on two determinations: (i) that the South Stormwater Facilities are "built from the land itself and their ownership cannot be bifurcated from the land" (R p. 1042), and (ii) that the Easement Agreement includes rights which are tantamount to legal ownership. R. p. 1043. These conclusions have no basis in law or fact and should therefore be vacated.

1. The South Stormwater Facilities Are Separate from the Underlying Land.

The District Court's conclusion finds no support within the CID Act. The Act requires public ownership if infrastructure is to be eligible for financing. It does not include an exception for infrastructure "built from the land itself" or any language suggesting that. The Court's conclusion also finds no support in caselaw or other legal authority. The Court cites no cases in support of its reasoning, and Residents' research has revealed none.

The Court does not articulate any standard for determining whether infrastructure is "built from the land itself." The only statement offered by the District Court is that "the [South] Stormwater Facilities . . . are physically built into the landscape and are indivisible from the underlying land." R p. 1044. But the record makes clear that the South Stormwater Facilities are readily divisible from the land. Those facilities include: multiple large stormwater pipes of up to

2-1/2 feet in diameter; large and expensive hydrodynamic separators (costing $275,000);[45] pond inlet and outlet structures; textile fabric pond liners; stone riprap; metal trash racks and debris cages; extensive concrete work; manholes and manhole covers; excavation of the ponds and the construction of berms using "borrow" soil; and tall iron fencing and gates all around the 6.4 acres of ponds. *See generally*, AR pp. 1057-1061, 1128-1191. All these facilities are clearly distinguishable "from the land itself." And most do not consist of "land" at all.

All the facilities which are part of the South Stormwater Facilities are no different than the water, sewer, power, road, and other facilities owned by the City, ACHD, and public and private utilities throughout the Development which are located on and in easements granted to those entities by the Developer. *E.g*., AR pp. 598-602. And the excavation of the ponds and construction of the berms are no different from the excavation, filling and grading done to construct a road owned by a local government over an easement or right-of-way granted for that purpose. In fact, there is just such a road in the Development – a stretch of East Warm Springs Avenue – which is owned by ACHD but located on an easement from Idaho Power.[46]

2. The Easement Agreement with Respect to the Land under the South Stormwater Facilities Is Not Tantamount to Ownership of Those Facilities.

The District Court determined that the rights granted to ACHD by the Developer under the Easement Agreement with respect to the land under the South Stormwater Facilities are tantamount

[45] These are large underground concrete structures which remove sediment and other debris from stormwater. *See, e.g.,* https://en.wikipedia.org/wiki/Hydrodynamic_separator. Accessed May 21, 2024.

[46] The Developer obtained a "perpetual right of way and easement" for the benefit of ACHD over the Idaho Power Corridor, in connection with the Warm Springs Extension 3, for the "construction, maintenance, operation, repair and replacement of a public roadway." R p. 932.

to public ownership. R p. 1044. This reasoning, however, fails as a matter of law because the District Court incorrectly identified the rights conveyed to ACHD under that agreement.

The District Court cited the language in the Easement Agreement that purports to grant ACHD an easement for the purposes of "construction, reconstruction, operation, maintenance, and placement of a Highway … and storm water facilities." R p. 1043. But that grant is largely illusory. To construe the Easement Agreement, a court must look to the document as a whole. *See, e.g.*, *Lattin v. Adams Cnty.*, 149 Idaho 497, 236 P.3d 1257 (2010), *abrogated on other grounds by E. Side Highway Dist. v. Delavan*, 167 Idaho 325, 470 P.3d 1134 (2019).

As the District Court acknowledged, under the Easement Agreement the land under the South Stormwater Facilities must be used solely and in perpetuity for those facilities. R pp. 1045-1046. ACHD therefore cannot construct, reconstruct, operate, or maintain a "highway" on the property. Moreover, ACHD does not need to "construct" a stormwater facility, as that has already been done by the Developer, and the Developer is required in perpetuity to continue it as such. AR pp. 1018-1020. Nor does ACHD need to "reconstruct" the stormwater facility, as that is the obligation of the Developer at its expense. *Id*. The Developer is also obligated to repair any damage to the South Stormwater Facilities. *Id.* The South Stormwater Facilities are a passive system, and thus do not require any ongoing "operation."[47] And by the terms of the Easement Agreement, all light and all heavy "maintenance" of the South Stormwater Facilities are also the obligation of the Developer at its expense, and not ACHD's. *Id*. Finally, the Easement Agreement does not include

[47] *See,* ACHD Policy Manual, Section 8000, Drainage and Stormwater Management, Sections 8014 and 8015. https://achdidaho.org/Documents/ACHDpolicyManual/7000to9000/Section8000_DrainageStormwaterManagement.pdf

any conveyance of ownership by the Developer to ACHD of any of the facilities they constructed on that property. Therefore, the only effective rights granted to ACHD under the Easement Agreement are (i) to retain stormwater runoff on the property, and (ii) "[i]n the event of failure [by the Developer] to maintain, ACHD may enter and perform maintenance of the Easement and Facilities at the cost of [Developer]." AR p. 1020. That does not by any measure amount to ownership of the South Stormwater Facilities by ACHD.

But even if the Easement Agreement did not convey rights that are largely illusory, it is still not the same as legal ownership of the South Stormwater Facilities. The only easement that the Idaho courts have determined to be tantamount to ownership is an easement for the unlimited use of the property. *See Viebrock v. Gill*, 125 Idaho 948, 877 P.2d 919 (1994). The Easement Agreement is certainly not that.

ACHD has almost none of the attributes of ownership in the land or in the South Stormwater Facilities either. The legal attributes of ownership of property consist generally of (i) title; (ii) the right to possession; (iii) the right to use and enjoyment; (iv) the right to exclude others from use; and (v) the right of alienation. *E.g.*, *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949); *Herndon v. City of Sandpoint*, 172 Idaho 228, 531 P.3d 1125 (Idaho, 2023). Legal title to the South Stormwater Facilities remains with the Developer. ACHD does not have possession. ACHD does not have use or enjoyment of the land or those facilities (other than for the limited purpose of retaining stormwater runoff). ACHD cannot exclude others (including the Developer) from use of the land or the facilities. And ACHD cannot sell or otherwise dispose of the land or the facilities. Therefore, as a matter of law, ACHD does not own the South Stormwater

Facilities or the land on which they are located.

The District Court, in furtherance of its conclusion that the Easement Agreement is tantamount to ownership, asserted that, under the terms of the Agreement, "the Developer retains hardly any valuable ownership rights," as the land has been dedicated in perpetuity under the Easement Agreement to stormwater facilities. R p. 1045. But that is not the case. The dedication and continued use of the South Stormwater Facilities as such was and is *very* valuable to the Developer, as it allows them to proceed with an extremely profitable private development. But that in any event is irrelevant. The question is not whether the Developer's rights as owner of the South Stormwater Facilities are still valuable, but whether ACHD has rights commensurate with legal ownership of the South Stormwater Facilities. ACHD unquestionably does not.

E. Section 50-3119 Permits Challenges to New Payment Approvals Even if Different Payments for the Same Projects Were Approved in the Past.

Section 50-3119 requires that challenges to CID decisions be brought within 60 days and eliminates any right of action to challenge CID decisions after 60 days. Many of the payments authorized by the Bond and Payments Resolutions are for projects for which the Boise CID had approved previous payments. Those prior approvals were more than 60 days before the adoption of the Challenged Resolutions. The District Court concluded that because payments for these projects had previously been approved, Residents were barred from challenging new payments for these projects on the grounds that the projects are unlawful. *E.g.*, R pp. 1024-1028. This conclusion, however, is not supported by the language of Section 50-3119. It would deny aggrieved persons their express right under the CID Act to challenge new final decisions of a CID

board and would lead to absurd results.

Section 50-3119 of the CID Act provides that "[a]ny person who feels aggrieved by the final decision of … a district board in the … governing of a district … may, within sixty (60) days after such final decision, seek judicial review …" This language creates an affirmative right to judicial review of any final decision of a CID board. As long as the challenge is brought within 60 days, the CID Act places no limits on the grounds that can be asserted. When the District Court held that payment approvals cannot be challenged if payments for the same projects had been approved in the past, it created a limitation where none exists. R pp. 1049-1051. The CID Act does not bar a challenge to "the legality, formality or regularity of said decision *and any future final decisions which relate to the same subject*." There is nothing in Section 50-3119 that provides prior "final decisions" of a CID board some sort of preclusive effect with respect to subsequent "final decisions" involving the same or related matters.

Moreover, in reaching its conclusion, the District Court relied exclusively on what the CID Act says about what happens *after* the 60 days have passed. At that time, "no one shall have any cause or right of action to contest the legality, formality or regularity of *said decision* for any reason whatsoever …" Idaho Code § 50-3119 (emphasis added). The Court concluded that this language insulated new payment decisions from challenge if payments for the same projects had been approved in the past. R p. 1050. But the Court's reasoning is misguided. It is based on an inaccurate understanding of the nature of the approvals at issue.

The prior decisions only approved *partial* payments for these projects. There was never a decision by the Boise CID which approved all *future* payments for a given project. If there had

been, there would have been no reason for the Boise CID to approve additional payments by way of the Challenged Resolutions. Successive payment approvals for the same project exist independent of one another. A determination that a later payment is unlawful does not disturb the legality of a prior payment because, as the District Court points out, once 60 days passes that prior payment is deemed lawful by statute. *Id*.

Residents' reading gives full effect to both the presumption of validity of *prior* CID actions and the express grant of the right to timely challenge *subsequent* CID actions. Under Residents' interpretation, all prior final decisions of the CID Board would continue to be "valid and incontestable." Thus, for example, the Boise CID would continue to exist; the bonds previously issued pursuant to those decisions would continue to be valid; the taxes authorized by those decisions would continue to be levied and collected and applied to pay the bonds; and the prior payments made from proceeds of those bonds to the Developer would remain in place. Prior bond purchasers and prior payments to the Developer would be protected, as the statute intends. And the right of aggrieved persons to challenge new final decisions which seek to impose many tens of millions of dollars in new unlawful taxes would be protected as well.

Residents note that Section 50-3119 is both a remedial statute and a statute of limitation. That is, it grants any person "aggrieved" by a final decision of a CID board with an affirmative and exclusive right of judicial review. It then imposes a very short limitations period within which such right must be exercised. This Court has held that remedial statutes must be liberally construed to give effect to their purpose. *E.g., Eller v. Idaho State Police*, 165 Idaho 147, 156, 443 P.3d 161, 170 (2019); *Hill v. American Family Mut. Ins. Co*., 150 Idaho 619, 625, 249 P.3d 812, 818 (2011).

Conversely, courts in Idaho and elsewhere have held that statutes of limitation prescribing a relatively short period of time within which to commence an action should be narrowly construed to provide parties a fair opportunity to present their claims.[48] As the California Supreme Court explained in *City of Ontario*:[49]

> [Under the California statute] virtually every taxpayer has become an 'interested person' with regard to virtually every action of a local public agency. It is unreasonable to assume that the members of such a large and amorphous group are likely to have prompt notice of each agency action affecting them. Yet whether such a person has such notice or not, [she or] he is given only 60 days in which (1) to discover the existence, scope and effect of the agency's action, (2) to reach a conclusion as to its validity, (3) to determine whether the agency has instituted a validating proceeding or imminently intends to do so, and (4) if not, to prepare and file a proceeding of [her or] his own. In an age of increasingly complex government, this seems a heavy burden to impose on the vigilant taxpayer.

The purpose of the abbreviated limitations period under Section 50-3119 is not to allow prior unlawful final decisions of a CID board to be repeated in the future without end. The limitations period must therefore be narrowly construed, and the affirmative grant of a remedy must be liberally construed, in order to preserve the right of aggrieved persons to contest final decisions of a CID board.

A contrary interpretation would ignore the plain meaning of the statutory language and

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[48] *E.g., Latham v. Haney Seed Co*., 119 Idaho 427, 429, 807 P.2d 645, 648 (Ct. of App. 1990), *rev'd on other gnds*., *Latham v. Haney Seed Co.*, 119 Idaho 412, 807 P.2d 630 (1991); *Goodman v. Fairbanks North Star Borough School Dist*., 39 P.3d 1118, 1120 (Alaska, 2001); *Safeco Ins. Co. of America v. Honeywell, Inc*., 639 P.2d 996, 1001 (Alaska, 1981); *also, Renner v. Edwards*, 93 Idaho 836, 838, 475 P.2d 530, 532 (1969); *Bowcutt v. Delta North Star Corp*., 95 Wash.App. 311, 319, 976 P.2d 643, 647 (1999), *St. Michelle v. Robinson*, 52 Wash.App. 309, 311, 759 P.2d 467, 468 (1988), *City of Ontario v. Superior Ct.*, 2 Cal.3d 335, 466 P.2d 693 (1970).

[49] *City of Ontario* is the principal case in California under that State's omnibus statute of limitations applicable to governmental actions. Calif. Code of Civ. Proc. §§ 860, 863. There are very few cases in Idaho dealing with these special abbreviated statutes of limitation, but a host of cases under the California omnibus statute.

lead to absurd results. *E.g., Idaho Dept. of Health & Welfare v. Doe*, 151 Idaho 300, 256 P.3d 708 (2010) (Interpretations that would lead to absurd results are to be avoided.). Assume, hypothetically, that the CID Board, at its first meeting in June 2010, adopted a resolution that authorized future payments to the Developer of a total of $50 million from future bond proceeds to fund the construction of private homes rather than public infrastructure. The adoption of that resolution would unquestionably violate numerous constitutional and statutory provisions. But, as there were no homes and thus no homeowners in the Boise CID until years later, there would have been no-one to challenge that "final decision" within the 60-day period. If prior "final decisions" had some sort of preclusive effect with respect to all future "final decisions," all subsequent resolutions of the CID Board approving the payments to the Developer would be immune from challenge, even if clearly and undeniably unlawful. There is simply no authority for this.

F. The District Court's Interpretation of Section 50-3119 Would Deny Due Process to Residents and Current and Future Homeowners in CIDs Throughout the State.

The essence of due process is the meaningful opportunity to be heard. *E.g., Allen v. Partners in Healthcare, Inc.*, 170 Idaho 470, 512 P.3d 1093 (2022). In *W. Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936), this Court held that a five-day statute of limitations to challenge an LID assessment did not bar a later suit to recover title where the city failed to provide sufficient notice of the assessment. This Court stated: "Due process of law is not necessarily satisfied by any process which the Legislature may by law provide, but by such process only as safeguards and protects the fundamental, constitutional rights of the citizen."

Courts have long held that statutes must be construed to avoid constitutional defects. *E.g.,*

State v. Abdullah, 158 Idaho 386, 348 P.3d 1 (2015) ("'In choosing between two constructions of a statute, one valid and one constitutionally precarious,' the Court may 'search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent.'"). The District Court's interpretation of Section 50-3119 would insulate local government actions from judicial review. There were no homeowners within the Boise CID at the time it was formed because the boundaries of the CID were gerrymandered to exclude the hundreds of homeowners who lived in the Harris Ranch development at that time. Therefore, there was no one to challenge the formation of the District and the "election" to authorize the issuance of bonds.

The District Court's interpretation would necessarily deprive *all* persons in interest, including Residents, of *any* opportunity to be heard regarding the validity, legality and regularity, among other things, of the formation of the Boise CID and the supposed election to authorize the issuance of the bonds. That would be an unconstitutional denial of due process of law to Residents and all future homeowners in the Boise CID. The absence of homeowners within a CID at the time of formation is common, as they are typically formed before construction of the development has begun. The District Court's interpretation would thus preclude judicial review of the lawfulness and constitutionality of the formation of CIDs throughout Idaho both in the past and in the future. Residents' construction does the opposite. It protects the interests which the Legislature sought to protect without denying Residents and other homeowners their constitutional right to due process.

G. The Bond Resolution Violates the Idaho Constitution Because It Authorizes the Issuance of Debt and the Imposition of Taxes Without the Required Voter Approval.

Article VIII, Section 3 of the Idaho Constitution prohibits local governments from

"incur[ring] any indebtedness . . . for any purpose . . . without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose . . ." Imbedded within this requirement is the principle that local governments cannot incur debt payable from taxes without prior approval by the people who will pay the taxes. Voters weigh the benefits of the public purposes funded by the debt against the costs to them of additional property taxes. Future owners of property step into the shoes of the prior owners and purchase their property subject to the added tax burden. But they do so knowing that there was a prior vote in which those who were going to pay the taxes approved those taxes overwhelmingly.

This case represents a perversion of that principle and a violation of Article VIII, Section 3. Not a single person who would pay the estimated $110 million in additional property taxes was entitled to vote. Every homeowner within the Harris Ranch development at the time of the "election" now benefits from what has been funded by those taxes, but they pay none of the taxes because the boundaries of the Boise CID were drawn to deliberately exclude them. The Harris family stood to receive a windfall of $50 million from the favorable vote of their employee and tenant. His "Yes" vote is therefore no surprise. This is a far cry from the bond election contemplated by the drafters of Idaho's Constitution.

There is a long line of cases in Idaho which have struck down various attempts to circumvent the two-thirds voter approval requirement. *E.g., City of Challis v. Consent Caucus*, 159 Idaho 398, 361 P.3d 485 (2015) (city water distribution system); *City of Idaho Falls v. Fuhriman*, 149 Idaho 574, 237 P.3d 1200 (2010) (city long-term power purchase agreement); *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006) (city airport parking facilities); *Asson v. City*

of Burley, 105 Idaho 432, 670 P.2d 839 (1983) (contracts by cities to purchase "capability" of planned nuclear power plants). As this Court stated in *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931):

> The Idaho Constitution is imbued with the spirit of economy, and in so far as possible it imposes upon the political subdivisions of the state a pay-as-you-go system of finance. The rule is that, without the express assent of the qualified electors, municipal officers are not to incur debts for which they have not the funds to pay.

Efforts by State legislators and local officials to circumvent the voter approval requirement have at times, as in this case, involved the creation or use by the State or local governments of separate entities to take on debt without obtaining voter approval. This Court has repeatedly struck down those attempts and it should do so here. *E.g., O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956) (use of cooperative gas association); *State Water Conservation Board v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936) (use of State-created water "board"); *Williams*, *supra* (use of private company as lessor under a rental agreement); *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843 (1930) (use of private company as seller under an installment purchase agreement); *see also, Hollingsworth v. Thompson*, 168 Idaho 113, 480 P.3d 150 (2020) (use of non-profit corporation created by county); *Koch v. Canyon County*, 145 Idaho 158, 177 P.3d 372 (2008) (use of Idaho Association of Counties shell corporation).

The authorization of the 2021 Bond violates the voter approval requirement because there has not been a City-wide election to authorize its issuance. AR p. 23. The District Court determined that the Boise CID is an entity separate from the City, and thus that the supposed "election" held by the Boise CID to authorize the issuance of bonds is sufficient. R pp. 1056-1062. But the Boise

CID, although in form its own "district," is in fact simply an alter ego of the City. As such, it cannot be used to circumvent the constitutional requirement.

The sole criterion this Court has applied in determining whether one governmental entity is the alter ego of another is the extent of the control exercised by the latter over the former. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 882, 499 P.2d 575, 581 (1972) (Agency was not alter ego of City because commissioners could only be removed for cause after a hearing, and thus City did not exercise control over its powers or operations); *Wood v. Boise Junior College Dormitory Housing Commission*, 81 Idaho 379, 384, 342 P.2d 700, 702 (1959) (Housing commission was not alter ego of junior college district because commissioners were appointed and subject to removal only by Governor and not by trustees of the district, and because the commission could not impose an obligation upon taxpayers of the district.); *Urban Renewal Agency of the City of Rexburg v. Hart*, 148 Idaho 299, 222 P.3d 467 (2009) (Urban renewal agency was not alter ego of city because city could only remove a commissioner of the agency for cause after a hearing and thus "the [Urban Renewal] Law does not allow a city to usurp the powers and duties of the urban renewal agency."). The control lacking in those cases, however, is present here.

Under the CID Act, three members of the City Council, chosen by the City Council, served as the "Board" of the Boise CID. The Mayor is the "Manager" of the CID, the City Treasurer is the "Treasurer" of the CID, and the City Clerk is the "Clerk" of the CID. Idaho Code § 50-3104. The City Attorney is the attorney for the CID,[50] and the City is paying the Boise CID's outside

[50] Given that the City Attorney represents both the City and its District, there apparently is such a unity of identity and interests that no conflict of interest is presented by such representation.

legal fees. City staff perform all the administrative functions of the CID. *Id*. All the Boise CID's expenses are paid through the City's accounting systems. All the notices, agendas, minutes, and videos of meetings of the CID Board are posted on the City's website, and all meetings of the Board take place in City Hall.[51] The Boise CID does not have a single official or employee of its own.

At the time the Challenged Resolutions were adopted, all members of the CID Board were appointed by the City Council and could be removed by the Council at any time, without cause and without a hearing. Idaho Code § 50-3104(2). If the CID Board were to do or propose something that the City Council did not like, the Council could have replaced those Board members with others more amenable. Therefore, as a practical matter, the Boise CID does not exercise any judgment or authority independent from the City. The legislative history of the CID Act confirms this by stating that "the governing body of the local jurisdiction that establishes a district *maintains control of it* through the district board."[52]

The Boise CID in fact has no powers or purposes separate from or in addition to those of the City with two notable exceptions. The Boise CID is given the power under the CID Act: (1) to issue debt without a vote of the qualified electors in the City, and (2) to thereby impose additional property taxes on a small fraction of the property owners within the City. Idaho Code § 50-3108. As everything else the Boise CID does could instead be done directly by the City, the primary if not sole reason for the existence of the Boise CID is to circumvent State constitutional limitations

[51] *See* https://boisecityid.iqm2.com/Citizens/Calendar.aspx, "Harris Ranch Community."
[52] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008 (emphasis added).

on indebtedness and taxation that apply to the City.

The District Court emphasized that the CID Act provides that "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 city council." Idaho Code § 50-3104(8); R p. 1061. But what the District Court failed to recognize is that this language, which has no practical effect, has no bearing on the extent of actual control exercised by the City over the Boise CID. It is undisputed that the City appoints and can remove Board members at will and without a hearing. This is without a doubt the exercise of significant control. There are no CID personnel – just City personnel. There is therefore complete identity among the people that administer and operate both. All CID systems, resources, physical location, website, even furniture, belong to the City and are not separate from the City. They are one and the same. And the only things the CID can do which the City cannot do is take on debt and collect taxes without a City-wide vote.

There is not just "a high degree of interrelatedness between City officials and the District," as the District Court described it. R p. 1059. Rather, the Boise CID *is* the City, and the City *is* the Boise CID. The City even **admitted this reality** in its own financial reporting in which it stated plainly that "**management of the [City] has operational responsibility for the [Boise CID]**"[53] and that the Boise CID "**[is] so intertwined with the City that [it is], in substance, the same as the City**." *Id*. (emphasis added). The two exist as separate entities in name only. The City by its own admissions exercises control over the Boise CID in all the ways this Court has found critical

[53] *See* https://issuu.com/cityofboise/docs/fy23_acfr_final, p. 50.

to its alter ego analysis in prior cases. As the City did not hold a City-wide election to authorize the issuance of the 2021 Bond, the authorization of the 2021 Bond and the levy of taxes pursuant to the Bond Resolution is unconstitutional under Article VIII, Section 3 of the Idaho Constitution.

H. The Authorization of the 2021 Bond and the Levy of Taxes Violate the Idaho Constitution Because the Bond Was Not Authorized by the Vote of Even One Person Who Would Actually Pay the Resulting Taxes.

The authorization of the 2021 Bond is fatally flawed even if examined only within the gerrymandered boundaries of the Boise CID. That is because Article VIII, Section 3 of the Idaho Constitution must be interpreted to require the vote of at least one qualified elector who will actually have to pay the property taxes.

What the framers of Idaho's Constitution contemplated is that the voters on whom the taxes to pay bonds will be imposed have the right to vote on those bonds. They do so on behalf of not only themselves but also future taxpayers. There are repeated references in the colloquies during the Idaho Constitutional Convention to a "vote of the people," to the "voters," and to votes and elections, all by citizens within existing counties, cities, towns, and school districts. *See Proceedings and Debates of the Constitutional Convention of Idaho, 1889*, pp. 588, 589, 592, 595, 596, 1671, and 1686. The Constitution requires a vote of the "qualified elector**s**" of the "county, city, board of education, or school district, or other subdivision of the state." Idaho Const. Art. VIII, Sec. 3 (emphasis added). The drafters of the Idaho Constitution could never have imagined that the vote of a single tenant living in a yet-to-be built development could vote to authorize $50 million in bonds and $110 million of taxes which he would never have to pay. If such a scheme were permissible, it would gut the constitutional voter approval requirement.

The District Court asserted that Residents' argument that the Idaho Constitution requires the approval in a bond election of at least one person who will actually pay the authorized taxes "essentially amounts to a facial challenge of a CID's authority to issue bonds in a series." R p. 1053. Again, this is incorrect. Residents are not arguing that each series of bonds issued by a CID must be approved by a vote of the then-current homeowners and taxpayers in the CID. Rather, Residents are arguing that, whether bonds are issued in series or all at once, homeowners cannot be bound under the Idaho Constitution by a prior bond election held when there was not a single homeowner and taxpayer who resided there who could vote.

As the issuance of the 2021 Bond was not authorized by the vote of even one person who would pay the resulting special taxes, the authorization of the 2021 Bond pursuant to the Bond Resolution violates Article VIII, Section 3 of the Idaho Constitution.

I. The Bond Resolution Violates the Idaho and Federal Constitutions Because the Taxes It Levies Are Not Uniform Across All Properties of a Similar Class.

Article VII, Section 5 of the Idaho Constitution ("Uniformity Clause") mandates that: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax …." 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 …." And 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."

This Court has not looked kindly on unequal property taxation. *E.g., County of Ada v. Red Steer Drive-Ins of Nevada, Inc*., 101 Idaho 94, 609 P.2d 161 (1980) (Taxes based upon differing

rates of valuation as between residential and commercial properties unconstitutional); *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980) (Different tax treatment of properties removed from the county and those brought into county within same tax year unconstitutional); *C.M. St. P.R.R. v. Shoshone Co*., 63 Idaho 46, 116 P.2d 225 (1941) (Differing rates of taxation of properties within a county unconstitutional). Unequal taxation constitutes a violation of the Equal Protection Clauses as well. *See, e.g., Viking Construction v. Hayden Lake*, 149 Idaho 187, 233 P.3d 118 (2010) (water system connection fees); *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980) (county real property tax revaluation plan); *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969) (inventory tax exemption).

The taxes imposed by the Bond Resolution are not uniform across similar classes of property within the City. The average single-family home in the Boise CID paid $2,400 more property taxes in the last fiscal year than a single-family home of the same value anywhere else in the City. AR p. 56; R p. 708. The latter include the homes *within the Harris Ranch development* which were cut out of the Boise CID so that those homeowners could not oppose the formation of the District or vote against its issuance of bonds. The latter also includes property not yet owned by the Developer at the time the Boise CID was formed, but which was later acquired by the Developer.[54] That property now consists of more than 40 homes in the Harris Ranch North subdivision which are free of the Boise CID's special and substantial additional property taxes. Those homes are next door to and down the street from homes within the Boise CID which are

[54] That property had been included in the Specific Plan for the Development in anticipation of such acquisition. https://www.cityofboise.org/media/9154/chapter-1-intro-and-general-information.pdf, p. 18.

burdened by those taxes.

The result is that a large group of homeowners in the Development pay 40% more in property taxes than their neighbors for infrastructure within the development which benefits everyone who lives there equally. Property taxes in the Boise CID are not subject to the 3% annual limitation on budgetary increases which applies to other local governments.[55] They can therefore be increased in direct proportion to increases in assessed values of homes. As a result, the disparity of the tax burden between homes within the CID and other homes within the Development and throughout the city will continue to increase over time. All of these facts are undisputed.

The framers of Idaho's Constitution placed clear strictures on taxation. They intentionally made the imposition of taxes difficult. The integrity of constitutionally mandated uniformity and equal protection cannot be protected and preserved if people within the same community or neighborhood, or even on the same street, can be taxed very differently, especially if it is for the cost of public infrastructure that benefits them all equally. This is consistent with the CID Act's requirement that only "community" infrastructure – not "half the community" infrastructure – can be financed by CID tax levies. The Uniformity and Equal Protection Clauses of our State and Federal Constitutions must therefore be read to require that the levy of taxes for community infrastructure be the same across similar properties throughout the community that infrastructure serves. The Bond Resolution does not do that. It is therefore unconstitutional.

The District Court nonetheless determined that the Bond Resolution satisfies the

[55] Idaho Code § 63-802. Most of the Boise CID's expenditures, consisting of payments to the Developer, are funded from bond proceeds, and thus are apparently not subject to this limitation.

Uniformity and Equal Protection Clauses. R pp. 1062-1064. The Court noted that the Uniformity Clause requires uniformity "within the territorial limits of the authority levying the tax" (Idaho Const. art. VIII, § 3), and that equal protection prohibits discrimination "by taxing authorities" (*Justus*, 101 Idaho at 746, 620 P.2d at 780); R pp. 1062-1063. Here, the taxing entity is the Boise CID and the resulting tax levy will be proportional within the boundaries of the Boise CID. That is not in dispute. It is also not the end of the inquiry. The Boise CID is an alter ego of the City. Section IV.G, *supra*. Uniformity is therefore required across the same class of properties on either side of the Boise CID's boundaries.

But even if that were not the case, the record makes clear that the City created the Boise CID *knowing* that it would result in unequal taxation across similar properties within the same community. The Bond Resolution approves one of the bonds which the City *knew*, at the time it created the Boise CID, would result in unequal taxation not only within the City but also throughout the Harris Ranch development. Where, as here, a taxing authority creates a smaller taxing entity within its boundaries knowing that taxation across the same class of properties will not be uniform, the "territorial limits of the authority levying the tax" must be the larger taxing authority which establishes that entity for purposes of the Uniformity and Equal Protection Clauses. Otherwise, cities and counties throughout the State could create special taxing entities to fund public facilities which benefit everyone, but then compel only a subset of otherwise similar classes of properties to pay for those facilities. The result would be the very patchwork of decidedly unequal property tax bills among homes within the same city, community, or neighborhood, and even on the same street, that the Uniformity and Equal Protection Clauses are intended to prohibit.

The District Court's ruling on this point is so formalistic that it threatens to vitiate the very constitutional provisions it claims to uphold. This Court should decline to do the same.

J. The Challenged Resolutions Violate the Idaho Constitution Because They Authorize the Lending of Credit and Gift of Public Funds by the Boise CID to Private Persons.

1. The Issuance of the 2021 Bond and the Payments to the Developer Constitute a Classic Lending of Credit Violation.

Article VIII, Section 4 of the Idaho Constitution provides that no city or other political subdivision "shall lend … the credit … thereof *directly or indirectly, in any manner, to ... any individual, association or corporation, for any amount or any purpose whatsoever*." (Emphasis added). This Court has stated that the framers of the Idaho Constitution included Article VIII, Section 4, because they "were primarily concerned about private interests gaining advantage at the expense of the taxpayer." *Idaho Falls Consolidated Hospitals, Inc., v. Bingham County Board of Commissioners*, 102 Idaho 838, 642 P.2d 553 (1982); *Boise Redevelopment Agency, supra*, 94 Idaho at 885, 499 P.3d at 583. But that is exactly what the Challenged Resolutions would do.

The elements of a classic lending of credit violation consist of: (i) the issuance of bonds by a local government; (ii) the levy of taxes by that local government to pay those bonds; (iii) the payment of the proceeds of the bonds to or their us by a private firm; and (iv) only incidental benefits to the public. *See Board of County Commissioners of Twin Falls County v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1974) (issuance of bonds by Authority and loan of proceeds to private hospital not unconstitutional because the bonds were payable solely from payments by the private hospital, and not from taxes or other assets of the State or any local government); *Hansen v. Independent School Dist. No. 1 in Nez Perce County,* 61 Idaho 109, 98

P.2d 959, 961 (1939) (to constitute a violation of the lending of credit prohibition there must be an imposition of liability on the public body); *Village of Moyie Springs v. Aurora Manufacturing Co*., 82 Idaho 337, 353 P.2d 767 (1960) (issuance of revenue bonds by city to finance facilities leased to private enterprises unconstitutional even though bonds were payable from private lease payments and not from public moneys, because the "primary purpose" was to benefit private enterprise).[56]

The payments to the Developer pursuant to the Challenged Resolutions satisfy all four criteria. First, the Boise CID would be borrowing money by issuing bonds. Second, those bonds would be payable from taxes levied on homeowners in the CID. Third, the proceeds of the bonds would be paid outright to the Developer and not just loaned to them. Fourth, the benefits to the public would at most be incidental.

2. The Issuance of the 2021 Bond and the Payments to the Developer Would Provide Only Incidental Benefits to the Public.

As explained in Section IV.A.3, *supra*, all the 2021 Projects are located within the Development, primarily serve only the Development, and most serve the Development exclusively. *E.g.*, AR pp. 28-43, 63; R pp. 636-646. The streets, gutters, stormwater facilities, and other facilities that comprise the 2021 Projects are all things the Developer was required to build in order to undertake the Development. The people who live within the Development would have had the benefit of that infrastructure regardless of whether the Challenged Resolutions had been passed. Without the Challenged Resolutions, however, the Developer would have to finance,

[56] Although the reasoning in *Moyie Springs* remains valid, the holding was overruled in effect by a constitutional amendment which permits that type of financing. Idaho Const. Art. VIII, Sec. 5.

construct, and dedicate the 2021 Projects to public use. The Developer would recover those costs when they sold the developed land to private purchasers, as does every other developer in the State. Therefore, the primary purpose of the Challenged Resolutions is *not* to fund public facilities. Instead, they subsidize the cost of private development by giving the Developer public moneys payable from property taxes that they are free to spend for any purpose they choose.

The District Court cited *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985) for the proposition that the lending of credit prohibition is not violated if the primary purpose of the pledge of municipal credit is a public rather than a private one. In the District Court's view, "the District, and by extension the public, directly benefit from the construction and acquisition of community infrastructure." R p. 1067. Therefore, in the District Court's view, nothing financed under the CID Act can be an unconstitutional lending of credit because the purpose of the CID Act is to benefit the public. However, the focus of the incidental benefit analysis is not whether the 2021 Projects constitute community infrastructure. The issue is whether the payments authorized by the Challenged Resolutions will result in a benefit to homeowners that they would not otherwise receive. In other words, what is the public getting in exchange for its tax dollars? Here, the answer is "Nothing." People who live in the Development undoubtedly benefit from a street in the Development. But they receive no benefit from the payment of tax dollars to the Developer measured by the costs of building that street because the Developer would have had to build that street regardless. Paying the Developer for the costs of that street thus primarily benefits the Developer and not the public.

Moreover, *Utah Power and Light* did not involve the payment by a local government of

public moneys to a private party, but rather the opposite – payments of substantial sums by a private party to the local government. There thus were no payments by the local government that freed that private party from obligations they otherwise would have had to pay themselves. By contrast, the principal purpose of the Challenged Resolutions is to do just that. There is not even an incidental benefit to the public, as the Developer would have had to construct all the 2021 Projects and dedicate them to the public anyway – at no cost whatsoever to the public. The fact that many of those facilities are publicly owned is irrelevant. The key distinction is that their cost was an obligation the Developer would have had to pay, without reimbursement, in the absence of the Challenged Resolutions.

3. Residents Are Not Making a "Facial Challenge" to the CID Act.

The District Court asserted that Residents' lending of credit challenge "is a facial challenge in all but name" to the CID Act. R p. 1065. But that is not the case. Residents' challenge is *only* to those payments to the Developer authorized by the Challenged Resolutions for local infrastructure that the Developer is *required* to construct as a condition for their Development. Developers are not required to construct *regional* infrastructure, all or a portion of the costs for which would instead be paid from development impact fees or other sources. And it is precisely those types of regional facilities that the CID Act is intended to finance. Section IV.A, *supra*.[57] The Boise CID has in fact been used to finance such *regional* community infrastructure, including a fire station,

[57] The District Court refused to address this critical point because "it is an extension of an argument not raised below." R p. 1068. But it is undisputed that the lending of credit objection was raised before the CID Board in the early going. *E.g.*, R p. 1000. And review of the legislative history in order to decipher legislative intent is a necessary component of statutory interpretation.

Boise Green Belt improvements, and a City park (AR p. 63), which Residents do not challenge. Residents therefore are not seeking to thwart the purposes of the CID Act, but instead to advance them.

K. The District Court Erred When It Declined to Include Documents in the Record Which Were Requested by Residents.

1. Residents Were Authorized by IAR 17(i) and 28(c) to Request Inclusion in the Record of Additional Documents Filed with the Boise CID.

Under the CID Act, the "exclusive remedy" for challenging actions of the Boise CID is judicial review in district court. Idaho Code § 50-3119. The Act also states that the only way to seek judicial review is "by filing a written notice of appeal with the clerk of the [CID] and the clerk of the district court of the judicial district" in which the CID is located. *Id*. The Act says nothing about the contents of the required "notice of appeal." The party appealing must therefore look elsewhere for guidance.

Such guidance is found in the first instance in IRCP 84, which applies to "judicial review of the actions of . . . a local government . . . when judicial review is expressly authorized by statute." Id. R. Civ. Pro. 84(a)(1). Rule 84 also provides "[t]he procedures and standards of review applicable to judicial review of . . . local government actions [when] . . . no stated procedure or standard of review is provided by statute." Id. R. Civ. Pro. 84(a)(2).

Subsection 84(b)(1) states that "[j]udicial review is commenced *only by filing a petition for judicial review with the clerk of the appropriate district court*." (emphasis added). Subsection 84(c) then specifies the required contents of the petition for judicial review to the district court "unless a different procedure is provided by statute." The CID Act *does* provide a different

procedure, as it requires filing of a "notice of appeal," and not only with the district court but also with the clerk of the CID. Idaho Code § 50-3119.

Rule 84 does not provide a procedure for filing a "notice of appeal" with the clerk of the CID, or for the contents of that notice. But it does provide guidance for these circumstances. Subsection (r) provides that "[a]ny procedure for judicial review not specified or covered by these rules must be in accordance with the appropriate rule of the Idaho Appellate Rules *to the extent not contrary to this Rule 84*." (emphasis added). Unlike Rule 84, the Idaho Appellate Rules contain detailed guidance regarding the filing of a notice of appeal, including its required contents.

IAR 17(i) requires the notice to include "[a] designation of documents, if any, to be included in the clerk's or agency's record *in addition to those automatically included pursuant to the following Rule 28*." (emphasis added). There is nothing in IAR 17(i) that is "contrary" to IRCP 84. These requirements therefore apply pursuant to IRCP 84(r).

Not surprisingly, the list of documents required to be included as part of the agency's record by IAR 28(b)(3) with respect to contested administrative proceedings is almost identical to the list of documents required to be included as part of the agency's record by IRCP 84(f)(1)(B), also with respect to contested administrative proceedings. In addition, IAR 28(c) states that the record "***shall also include all additional documents requested by any party in the notice of appeal***" and that "[a]ny party may request any written document filed . . . with the . . . agency to be included in the . . . agency's record … ." (emphasis added). IAR 17 and 28, applicable pursuant to IRCP 84(r), thus allow a party to specify any additional documents filed with the agency to be included in the record on appeal.

This Court has stated that judicial economy favors inclusion of items in the record on appeal if there is any doubt as to their relevance. As the Court stated in *Lamar Corporation v. City of Twin Falls*, 133 Idaho 36, 981 P.2d 1146 (1999):

> [T]he Supreme Court has the determination as to what information in the record it will consider as relevant. However, the Supreme Court cannot consider items outside of the record on appeal. Because of this, judicial economy would dictate that it is better to include an item that the Supreme Court is free not to consider than to wrongly strike it and go through the additional process of augmentation.

(internal citations omitted). Consistent with this general presumption, IAR 28(c) mandates that the record "shall" include "all additional documents requested by any party in the notice of appeal" and that the request may include "any written document filed . . . with the … agency."

Residents included in their Notice of Appeal requests for additional documents filed with the Boise CID relating to: (i) the prior authorizations by the CID Board of projects for which additional payments were authorized pursuant to the Payments Resolution; and (ii) the bond election held by the Boise CID in 2010 which supposedly authorized its issuance of general obligation bonds, including the 2021 Bond. The truncated record filed by the Boise CID failed to include these documents, all of which are material to the issues presented by Residents' appeal.

2. The District Court Excluded Documents from the Record the Boise CID Relied on When It Approved the Challenged Resolutions.

The proceeding before the District Court was for judicial review of the adoption of the Challenged Resolutions. There was no public hearing, no initial or responsive pleadings, no introduction of evidence, no discovery, no witnesses or cross-examination, no prohibition on *ex parte* communications with CID Board members, no findings of fact, no conclusions of law, and no reasoned decision. The CID Board simply adopted the Challenged Resolutions.

Residents included in their Notice of Appeal to the District Court with respect to the Challenged Resolutions a request for, among other things, all documents before or considered by the CID Board in connection with (i) the prior approvals of payments for the Accrued Interest Projects, and (ii) the adoption of resolutions or other official action with respect to the bond "election" held by the Boise CID on August 3, 2010. R p. 57, Sec. 8, B & C. Those documents include many of the facts material to this judicial review proceeding. And those documents corresponded to those that the Boise CID had elected to include in the 1,500-page Staff Report presented to the CID Board in connection with the adoption of the Challenged Resolutions. The CID Board, however, excluded all those documents from the greatly truncated record it filed with the District Court. R pp. 72-75, Sec. 4; 79-80.

Those documents were excluded even though the prior CID Board actions for which documents were requested were expressly referenced in the Challenged Resolutions and relied upon by the CID Board. The Payments Resolution in Section 1 refers to the amount due and owing "pursuant to … prior District approvals of the related projects." AR p. 1564. And the Bond Resolution in the Recitals refers to the prior approval "by the requisite two-thirds (2/3) majority of qualified electors of the District" of the "issuance of the aforementioned general obligation indebtedness of the District." AR p. 1566. The District Court therefore erred in failing to order the inclusion in the record of the documents requested by Residents.

3. The Record in a Judicial Review Proceeding Brought Under the CID Act Cannot Be Limited to the Documents a CID Board Chooses to Consider in Adopting a Resolution.

The District Court nonetheless ruled that, under IRCP 84, the record for judicial review is

limited to those documents which the CID Board chose to have before it at the meeting or otherwise reviewed in adopting the Challenged Resolutions. R pp. 599-601. But the District Court's interpretation excluded documents requested by Residents in the Notice of Appeal which were filed with the Boise CID in connection with its prior approvals, which serve as the factual and legal bases for the actions authorized by the Challenged Resolutions, and which thus were material to this appeal. Moreover, the District Court's interpretation of IRCP 84 would lead to absurd results and necessarily to a denial of due process.

IRCP 84(e) provides in relevant part that "[w]hen judicial review is authorized by statute ***but the statute does not provide the procedure or standard for judicial review***, judicial review of agency action ***must be based upon the record created before the agency***." (emphasis added.) The CID Act does not provide a procedure or standard for judicial review. Therefore, IRCP 84(e)(1) applies. The question then becomes what is "the record created before the agency" in these circumstances. The District Court held that the record consisted only of those documents before the CID Board in adopting the Challenged Resolutions. *Id*.

IRCP 84, however, does not define the term "record created before the agency." Instead, Subsection (f) lays out what "must" be contained within the agency's record where, as here, its contents are not provided by statute. That list includes 12 categories of documents including, among other things, "pleadings," "answers," "findings of fact," "conclusions of law," and "final decisions." There are two things notable about Rule 84(f)(1)(B). First, the rule specifies what "must" be included in the record. But it does not say that *only* the items specified can be included. Second, it is abundantly clear that the list contemplates judicial review of a formal contested case

proceeding that satisfies the requirements of due process and not judicial review of the mere adoption of a resolution. In fact, none of the twelve categories of documents that have to be included in the record are created when the Boise CID adopts a resolution.

That is the fundamental problem with the District Court's interpretation of the term "record created before the agency." The Court applied principles and interpreted rules as if the Challenged Resolutions had been adopted after a formal contested case or administrative proceeding. But they were not. In this rather unique context, the District Court's restrictive view would mean that the CID Board could adopt a resolution without having before it or otherwise considering anything other than the resolution itself. That is not a theoretical issue, as that is exactly what the CID Board has done on innumerable prior occasions, including when adopting prior resolutions approving additional bonds and additional payments to the Developer.[58]

Under the District Court's interpretation of IRCP 84(e)(1)(A) and (f)(1)(B), a CID board could authorize or reject a developer's request for payment for facilities they have constructed

[58] *E.g.*, https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=1779&Inline=True, pp. 27-56 (2015 bond resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=1800&Inline=True;, pp. 93-96 (2015 payments resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=2325&Inline=True, pp. 97-125 (2016 bond resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=1895&Inline=True, pp. 31-34 (2016 payments resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=2592&Inline=True, pp. 8-41 (2017 bond resolution; no separate payments resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2332&Inline=True, pp. 5-33 (2018 bond resolution; no separate payments resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2754&Inline=True, pp. 5-30, 58 (2019 bond resolution; no separate payments resolution); https://boisecityid.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2920&Inline=True, pp. 6-32 (2020 bond resolution; no separate payments resolution).

based solely on a verbal recommendation from staff. Homeowners and property taxpayers, in the case of approval, and the developer, in the case of disapproval, would then have *no record whatsoever* (other than the text of the resolution itself) on which to base a judicial review proceeding. There would be no facts, no request for payment and supporting documentation, no factual or legal analysis – nothing. The CID board could elect to exclude from the meeting and otherwise ignore letters in support or raising objections, including the facts and legal argument within those letters, submitted by homeowners or the developer. The result would be a judicial review proceeding over before it even began, as there would be nothing upon which the district court could base its review. That unquestionably would constitute a denial of due process to the party appealing, as their "exclusive" remedy is judicial review.

The District Court made the rather extraordinary suggestion that anyone who desires to contest the proposed adoption of a resolution should file a public records request with the CID for copies of the documents related to the resolution, analyze them, develop legal arguments, and *then submit all those documents together with the legal arguments back to the CID* prior to the consideration of the resolution by the CID board. R p. 601-604. That would be impossible for interested persons to do within the typical timeframe allowed. *See* Subsection IV.B, *supra*. Moreover, even if an interested person were able to do so, there is no requirement that a CID board even consider them, let alone include all those in the documents before the board at the meeting.

The term "record created before the agency," in the context of a judicial review proceeding under the CID Act, must therefore be read to include all documents, as requested by the appealing party, filed with the CID either by the agency itself or by third parties, upon which the actions

authorized by a resolution may be based. It cannot be limited to only those documents, if any, which a CID board chooses to have before it in connection with the "final decision" being challenged. For this additional reason, the District Court erred in failing to order the inclusion in the record of the documents requested by Residents.

VI. ATTORNEYS' FEES

A. Residents Are Entitled to an Award of Attorneys' Fees Under the Private Attorney General Doctrine Should They Prevail in this Proceeding.

Residents seek attorneys' fees pursuant to IAR 41, IRCP 54(e), and Idaho's Private Attorney General Doctrine. In determining whether to award attorneys' fees under Idaho's Private Attorney General Doctrine, the court considers three factors: (1) the strength or societal importance of the public policy indicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, and (3) the number of Idahoans standing to benefit. *Reclaim Idaho v. Denney*, 169 Idaho 406, 440, 497 P.3d 160, 194 (2021); *Smith v. Idaho Commission on Redistricting*, 136 Idaho 542, 546, 38 P.3d 121, 125 (2001).

This proceeding satisfies all three criteria. First, as in *Reclaim Idaho*, this is exactly the kind of case for which the doctrine was created: one pursued to protect the public and uphold the Idaho Constitution and Idaho statutes. This is the first challenge of its kind. Thus, the issues presented are all matters of first impression and all present questions of constitutional and statutory interpretation and application. Residents are not seeking to vindicate a private contractual breach between two parties. Rather, they seek to uphold, among other things, the constitutional rights of homeowners and taxpayers to vote, to uniformity of taxation, and to equal protection of the laws. The public policies implicated by this litigation are therefore many and substantial.

Second, private enforcement was necessary because City officials have failed for more than 13 years to protect the constitutional and statutory rights of thousands of homeowners and taxpayers at stake in this case. In fact, Idaho's capitol city – Boise – acting through its Boise CID, is the opposing party, and is funding the Boise CID's legal fees. Residents have spent three years, thousands of volunteer hours, and many tens of thousands of dollars in donations investigating and seeking to redress the many abuses by the Developer and to uphold the constitutional and statutory protections afforded homeowners and taxpayers under Idaho law, including by this judicial review proceeding.

Finally, the City of Boise and the State of Idaho continue to grow faster than almost anywhere else in the country. Development projects will continue to increase in number and size to keep pace with that growth, as will the use of CIDs to finance them. This litigation stands to benefit the tens of thousands of current and future homeowners in the Development, in the two even larger existing CIDs in Idaho – Spring Valley and Avimor,[59] and in all future Idaho CIDs, over many decades, and to save them hundreds of millions if not billions of dollars in unlawful taxes. Residents are therefore entitled to an award of attorneys' fees should they prevail.

VII. CONCLUSION

For the foregoing reasons, Residents respectfully request an order from this Court reversing the District Court and sustaining Residents' challenges, including that (i) the adoption of the Challenged Resolutions, and (ii) the issuance of the 2021 Bond, the imposition of new and

[59] https://www.ktvb.com/article/news/local/eagle-development-could-grow-economic-success/277-363982703; https://www.ktvb.com/article/news/local/growing-idaho/growing-idaho-avimor-community-finally-coming-fruition/277-bd469970-77be-4d66-a633-dac6f8b114af

additional special *ad valorem* property taxes, and the additional payments to the Developer authorized thereby, are unlawful, invalid, and void, and awarding reasonable attorney fees and costs to Residents under the Private Attorney General Doctrine. If the Court determines that the District Court erred when it excluded documents from the record, Residents request that this case be remanded for the production of those documents and the application of this Court's determinations on the law to those facts. If this Court holds that the District Court improperly declined to consider issues based on its preservation rule or its interpretation of the limitations period under Idaho Code § 50-3119, Residents request that the Court: (i) address the issues of law which the District Court declined to consider; and (ii) remand to the District Court with direction to apply those determinations to the applicable facts.[60]

DATED: May 30, 2024

Respectfully submitted,

BAILEY & GLASSER LLP

/s/ *Nicholas A. Warden*
Nicholas A. Warden
Attorneys for Appellants

[60] *E.g., Izaguirre v. R & L Carriers Shared Servs., LLC*, 155 Idaho 229, 308 P.3d 929 (2013) (This Court can exercise its plenary jurisdiction to review any issue presented to the district court.); *E.g., Goodman Oil Co. of Lewiston v. Idaho State Tax Comm'n,* 136 Idaho 53, 28 P.3d 996 (2001) Where factual issues are not in dispute, this Court can apply the law to those facts and draw its own conclusions).

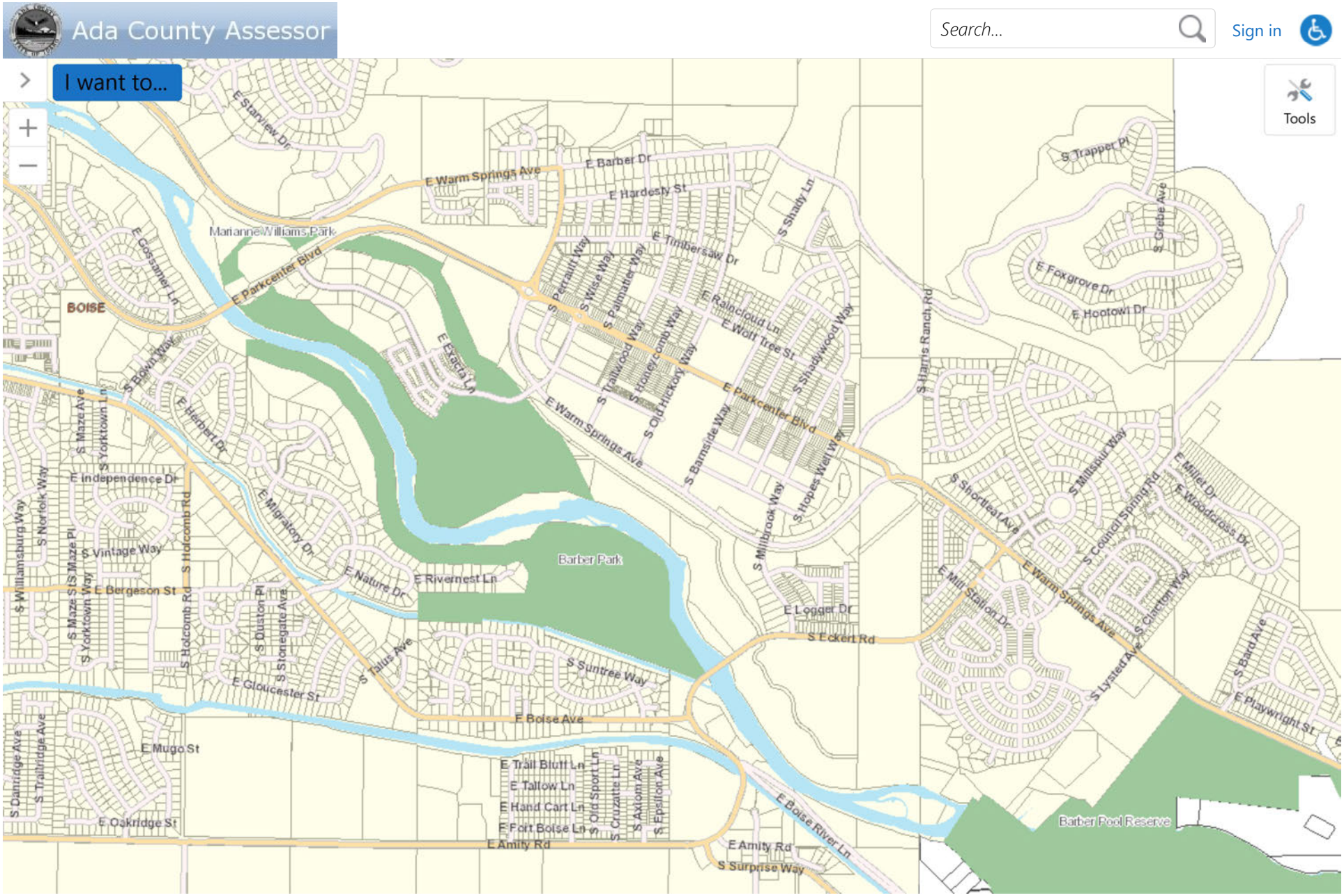
CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2024, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Bradley J. Dixon, ISB No. 6167 Melodie A. McQuade, ISB No. 9433 Blake Ringer, ISB No. 11223 **GIVENS PURSLEY LLP** 601 West Bannock Street PO Box 2720 Boise, ID 83702 Phone: (208) 388-1200 Fax: (208) 388-1300 *Attorneys for Respondents*	☐ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☒ iCourt file & serve: bradleydixon@givenspursley.com melodiemcquade@givenspursley.com blakeringer@givenspursley.com
T. Hethe Clark, ISB No. 7265 Joshua J. Leonard, ISB No. 7238 **CLARK WARDLE LLP** 251 E. Front Street, Suite 301 Boise, ID 83702 Telephone: (208) 388-1000 Facsimile: (208) 388-1001 *Attorneys for Intervenor Harris Family Limited Partnership*	☐ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☒ iCourt file & serve: hclark@clarkwardle.com jleonard@clarkwardle.com
Wade Woodard, ISB No. 6312 **KIRTON McCONKIE** 999 W. Main Street, Ste. 100 Boise, ID 83702 Telephone: (801) 426-2100 Facsimile: (801) 426-2010 *Attorneys for Intervenor Harris Family Limited Partnership*	☐ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☒ iCourt file & serve: wwoodard@kmclaw.com

/s/ *Nicholas A. Warden*
Nicholas A. Warden

APPENDIX A


Ada County Assessor
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Tools
Marianne Williams Park
BOISE
Barber Park
Barber Pool Reserve
E Warm Springs Ave
E Parkcenter Blvd
E Barber Dr
E Hardesty St
E Timbersaw Dr
E Raincloud Ln
E Wolf Tree St
E Starview Dr
E Gossamer Ln
S Brown Way
E Exacta Ln
S Perrault Way
S Wise Way
S Palmatier Way
S Tallwood Way
S Honeycomb Way
S Old Hickory Way
S Barnside Way
S Millbrook Way
S Hopes Well Way
S Shadywood Way
S Shady Ln
S Harris Ranch Rd
S Trapper Pl
S Grebe Ave
E Foxgrove Dr
E Hootowl Dr
S Millspur Way
S Shortleaf Ave
E Miller Dr
E Woodcross Dr
S Council Spring Rd
S Claxton Way
S Lysted Ave
S Bard Ave
E Playwright St
E Mill Station Dr
E Logger Dr
S Eckert Rd
E Herbert Dr
E Migratory Dr
E Nature Dr
E Rivernest Ln
E Independence Dr
S Maze Ave
S Yorktown Ln
S Norfolk Way
S Williamsburg Way
S Vintage Way
E Bergeson St
S Maze St
S Maze Pl
S Holcomb Rd
S Duston Pl
S Stonegate Ave
E Gloucester St
S Tallus Ave
S Suntree Way
E Boise Ave
E Mugo St
S Daintridge Ave
S Trailridge Ave
E Oakridge St
E Trail Bluff Ln
E Tallow Ln
E Hand Cart Ln
E Fort Boise Ln
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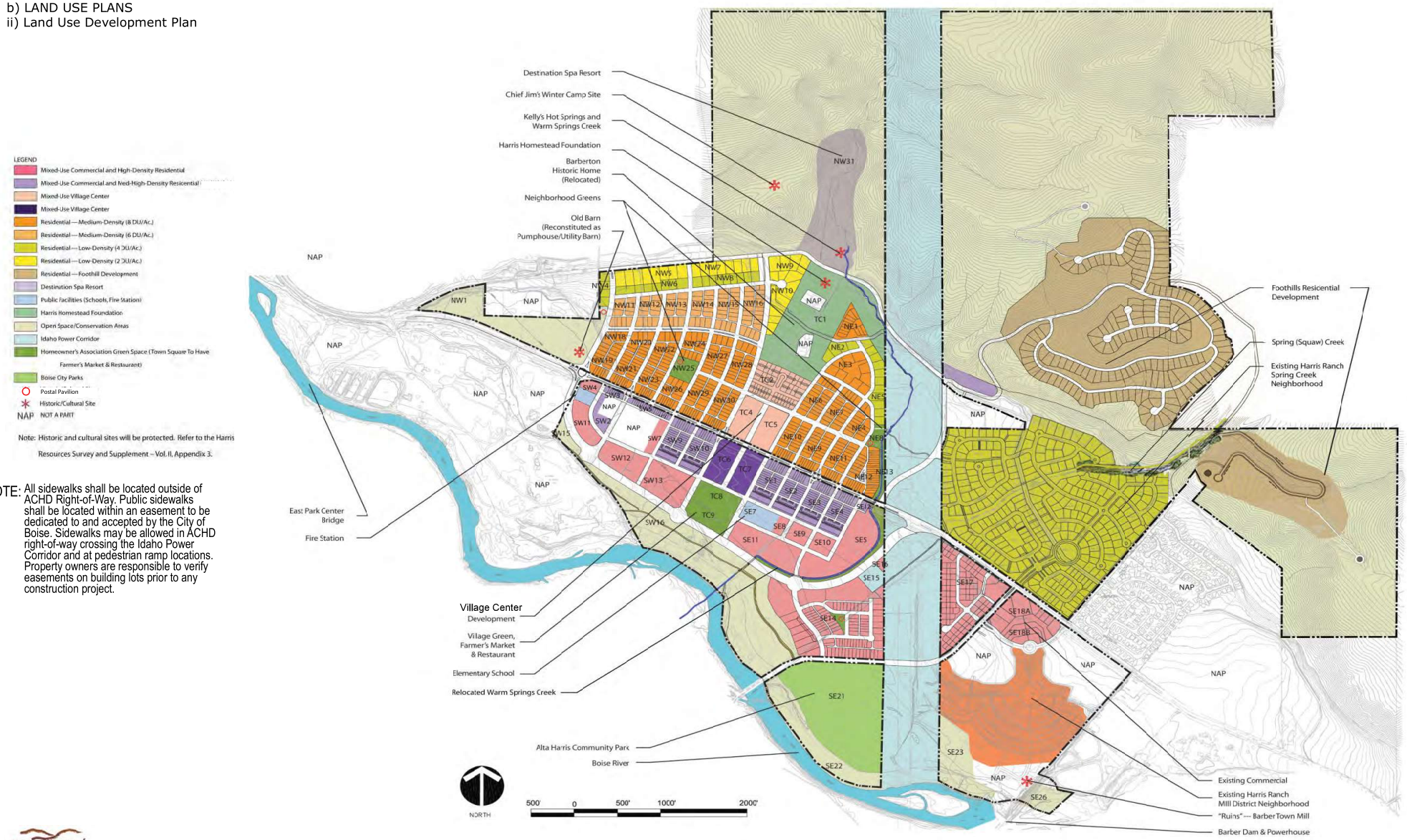
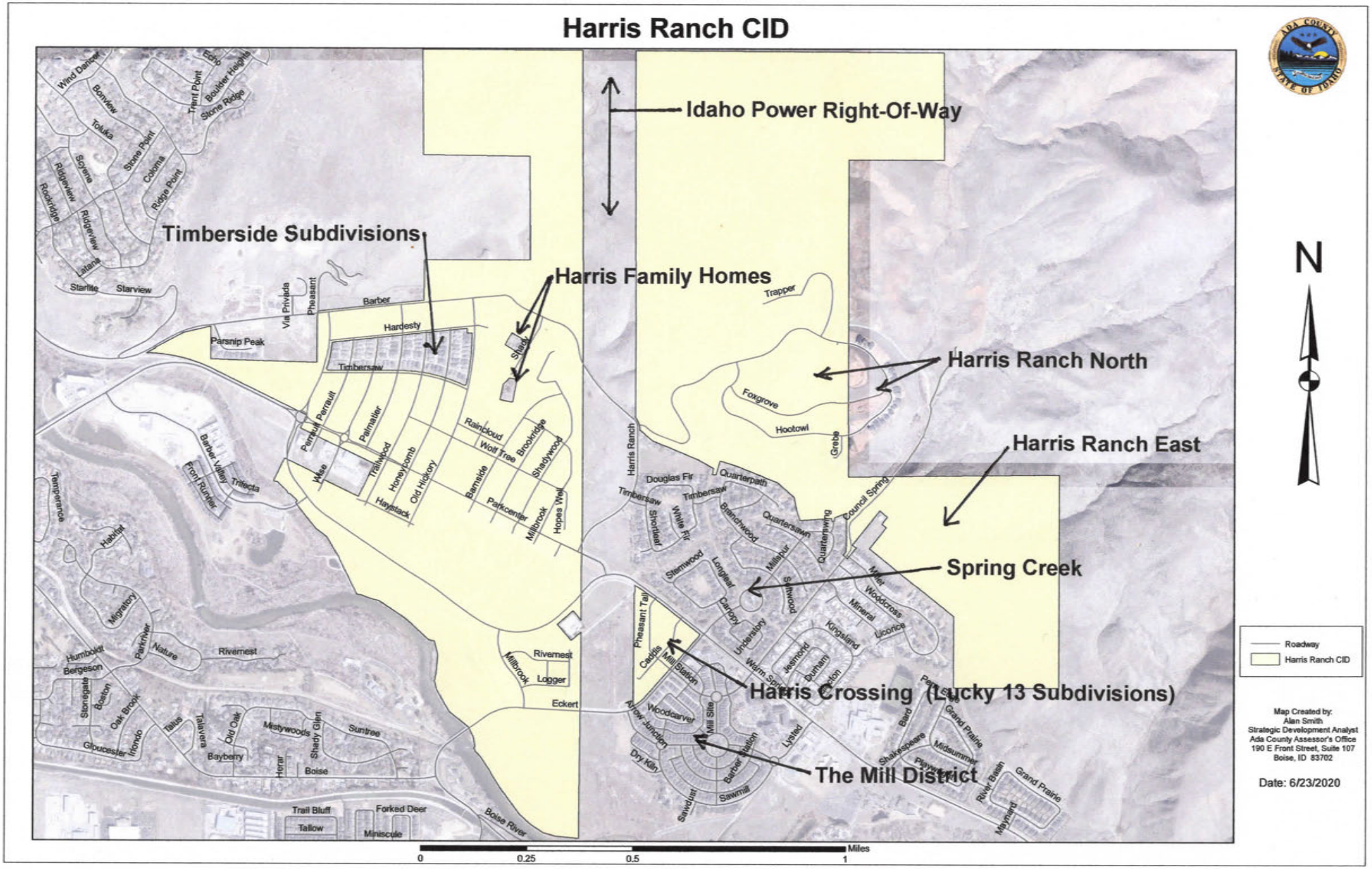
APPENDIX B



NOTE: All sidewalks shall be located outside of ACHD Right-of-Way. Public sidewalks shall be located within an easement to be dedicated to and accepted by the City of Boise. Sidewalks may be allowed in ACHD right-of-way crossing the Idaho Power Corridor and at pedestrian ramp locations. Property owners are responsible to verify easements on building lots prior to any construction project.

APPENDIX C

Harris Ranch CID



APPENDIX D

Appendix D

Individual Projects for Which Payments Were Approved Through the Adoption of the Challenged Resolutions[1]

No.	Project Description	City ID No.	Completion Date	Prior Payment	Payment Approved
1	Town Homes #11 Project	GO21-3	5/24/2021		$3,072,455
2	Town Homes #9 Project	GO21-2	2/11/2021		$1,670,901
3	South Stormwater Ponds	GO21-3	5/24/2021		$937,036
4	West Stormwater Ponds – Land Value	GO19-1	7/30/2010	$958,979	$503,070
5	E. Parkcenter Blvd. Project[2]	GO20-6	6/1/2018	$1,208,674[3]	$197,027
6	Deflection Berm	GO15B-5	11/4/2008	$420,800	$151,125
7	E. Warm Springs Ave. Extension 1[4]	GO16-4	11/2/2009	$345,839	$124,727
8	Barber Junction Ponds – Land Value	GO19-1	4/1/2017	$654,000	$111,471
9	E. Warm Springs Ave. Extension 3[5]	GO17A-2	1/12/2016	$1,088,081	$110,068
10	E. Warm Springs Ave. Extension 3	GO19-2	1/12/2016	$328,510	$78,197
11	E. Barber Dr. Sediment Basins – Construction	GO19-2	7/6/2017	$366,025	$56,619
12	E. Warm Springs Ave. Extension 3	GO18-2	1/12/2016	$289,713	$47,372
13	Warm Springs Creek Realignment – Land Value	GO19-1	4/15/2019	$1,230,000	$42,309
14	E. Barber Dr. Sediment Basins – Land Value	GO19-1	7/6/2017	$194,000	$30,008
15	Idaho Power – S. Wise Way	GO19-2	9/19/2013	$60,444	$21,736
16	E. Parkcenter Blvd./E. Warm Springs Ave. Roundabout Construction	GO16-2	8/18/2015	$308,145	$17,391
17	Idaho Power – Bury/Relocate E. Parkcenter Blvd. Power Lines	GO15-9	11/3/2014	$375,976	$16,440
18	E. Warm Springs Ave. Extension 3 – Fuel Remediation	GO15B-8	1/5/2012	$70,492	$13,556

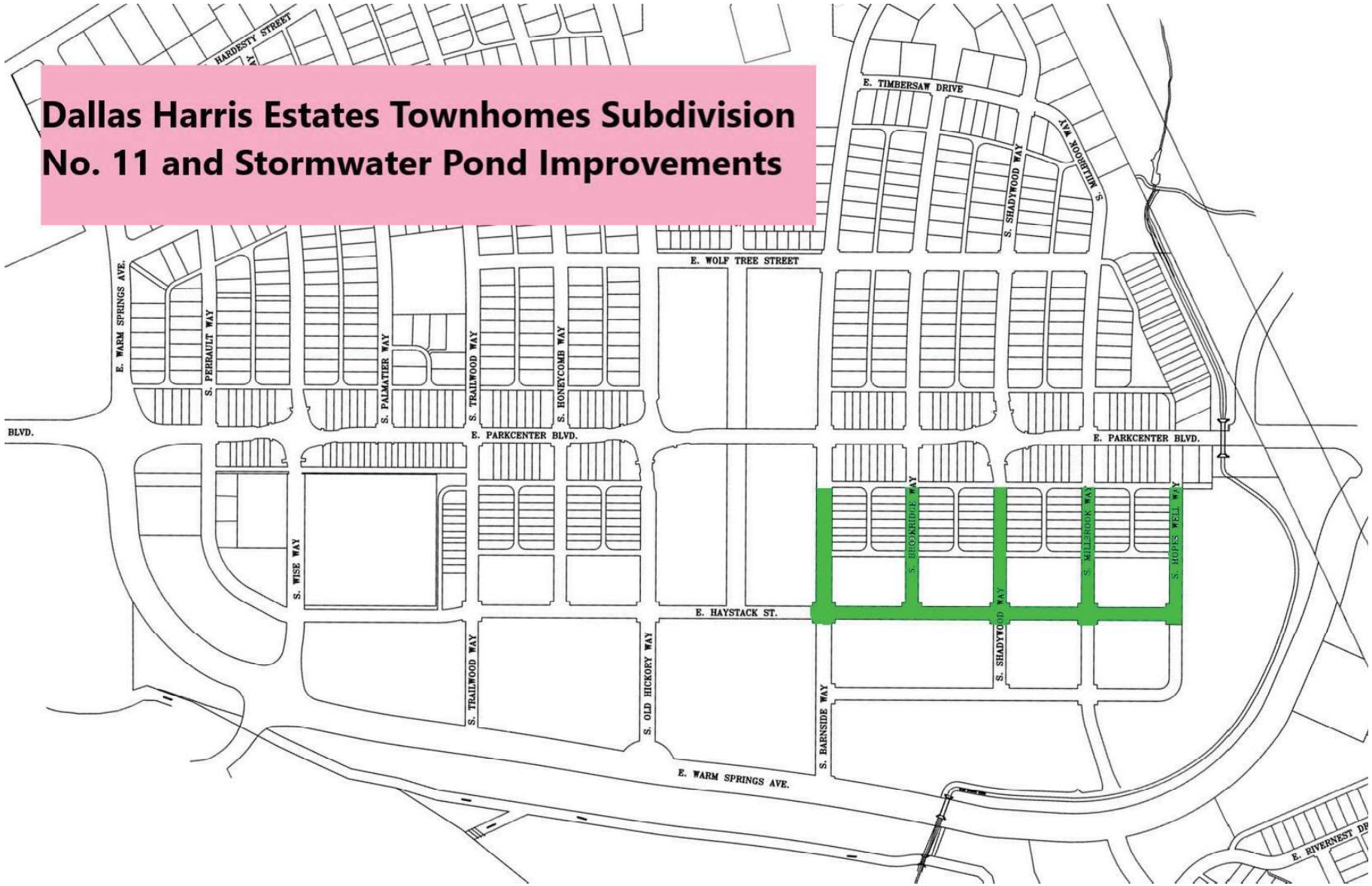
[1] Street names have been revised to conform to their current designations for ease of reference.
[2] (R p. 27).
[3] This partial payment was made from proceeds of the District's 2020 bond. (R p. 27).
[4] This was formerly E. Barber Dr. (now E. Warm Springs Ave.) from east of Starview Dr. to the intersection with what is now the end of E. Barber Dr., and was referred to as "Barber Road Segment B".
[5] This has been referred to colloquially as the "Warm Springs Bypass".

19	E. Warm Springs Ave. Extension 3	GO16-5	1/12/2016	$347,781	$12,263
20	E. Warm Springs Ave. Extension 2[6]	GO15B-1	11/2/2009	$39,972	$12,252
21	E. Parkcenter Blvd./E. Warm Springs Ave. Roundabout Design	GO16-3	8/18/2015	$186,818	$10,544
22	Idaho Power – Connection to Fire Station	GO16-1	8/26/2010	$29,266	$9,292
23	E. Barber Dr. Design and Surveying	GO13-7	11/30/2009	$37,107	$8,454
24	North ½ E. Barber Dr. Engineering	GO13-8	11/30/2009	$25,034	$5,704
25	E. Parkcenter Blvd./E. Warm Springs Ave. Roundabout Construction	GO15B-7	8/18/2015	$999,628	$2,301
26	E. Warm Springs Ave. Extension 3 – Idaho Power ROW Easement	GO13-5	7/13/2012	$33,000	$2,297
27	Right-of-Way Vacation – E. Parkcenter Blvd.	GO19-2	4/13/17	$12,980	$2,187
28	Wetland Improvements	GO15B-6	1/9/2015	$42,578	$1,451
	TOTALS			**$9,653,842**	**$7,268,253**

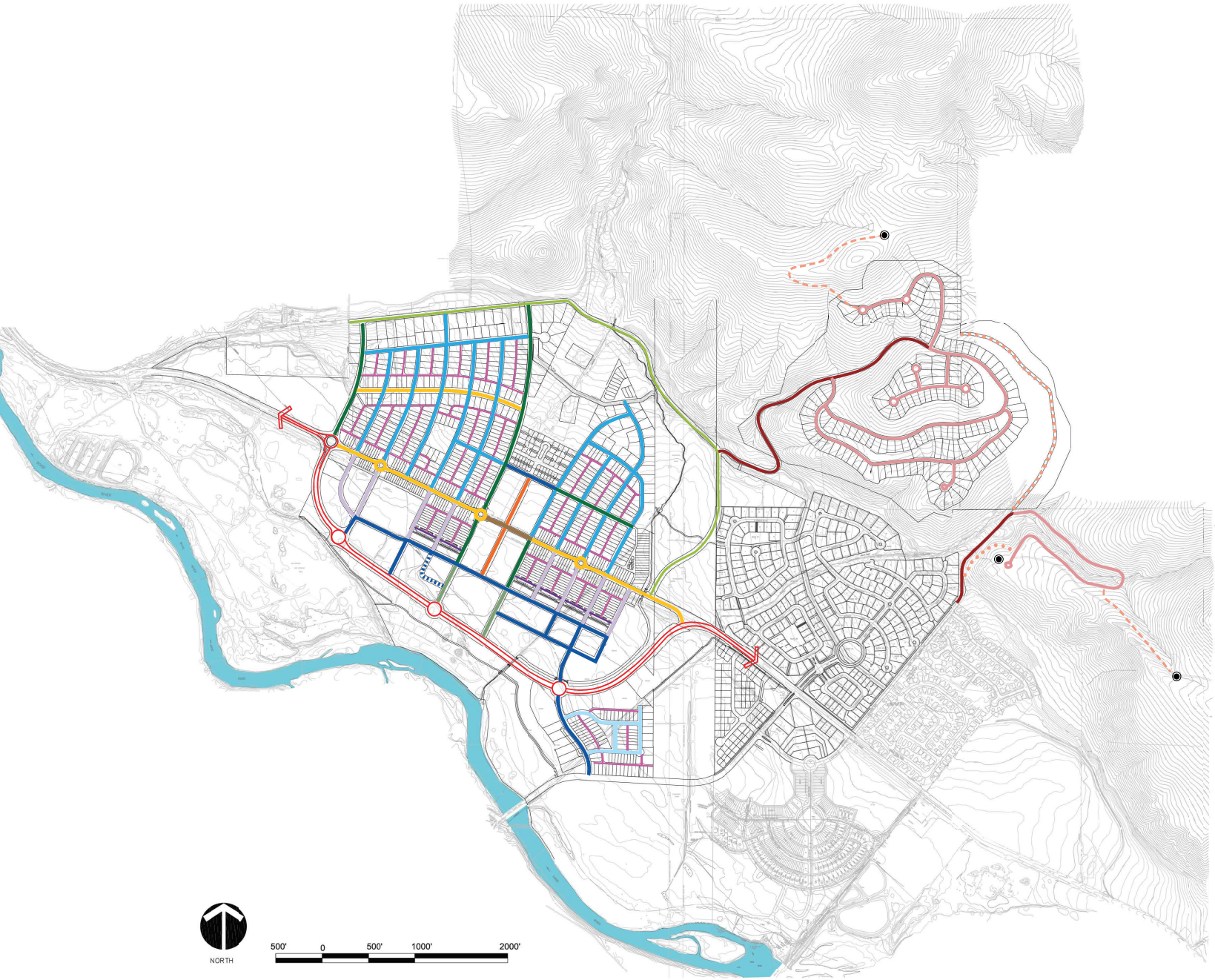
[6] This has been referred to as "Warm Springs Segment C", and consists of a new segment of E. Warm Springs Ave. from the intersection with E. Barber Dr. down to the intersection with E. Parkcenter Blvd.

APPENDIX E

AA. Exhibit AA – Detailed Map for DHE TH #11 – Street Improvements



APPENDIX F



LEGEND

1	Two-lane Parkway with Roundabouts (4-lane R.O.W.)
2	Two-lane Street with Diagnal Parki
3	Two-lane Collector with Green Med and Roundabouts
3A	Two-lane Collector with Green Med
4	Two-lane Collector with Green Median and Urban Sidewalk
5	Two-lane Collector
5A	Two-lane Collector with Urban Side
6	Two-lane Rural Road Preserve
7	Two-lane Residential Local Street
7A	Two-lane Residential Local Street with One Side Ribbon Curb
8	Two-lane Mixed Use Local Street with Urban Sidewalk
8A	Two-lane Mixed Use Local Street
9	Foothills Two-lane Collector
10	Foothills Two-lane Local Street
11	Two-lane Commercial Alley
12	Two-lane Residential Alley
	Potental Roundabout
	Easement Access For United Water
	Secondary Emergency Access

Notes :

1. A traffic impact study may be required if there is a change in the current land use plan.

2. A turn lane warrant analysis may be required on case basis depending on the proposed land use. Cont to determine if a turn lane analysis is required prior to su development application.

3. When parcels abutting Warm Springs Avenue are p platted provide current roadway segment traffic co intersection counts (raw data) for the segment of Warm Avenue abutting the site and the nearest intersection Way/Warm Springs, Old Hickory Way/Warm Springs, or Way /Warm Springs). ACHD will analyze the data to de roadway or intersection improvements are needed to m development.

4. Requests for modifications of ACHD policy will be r preliminary plat applications.

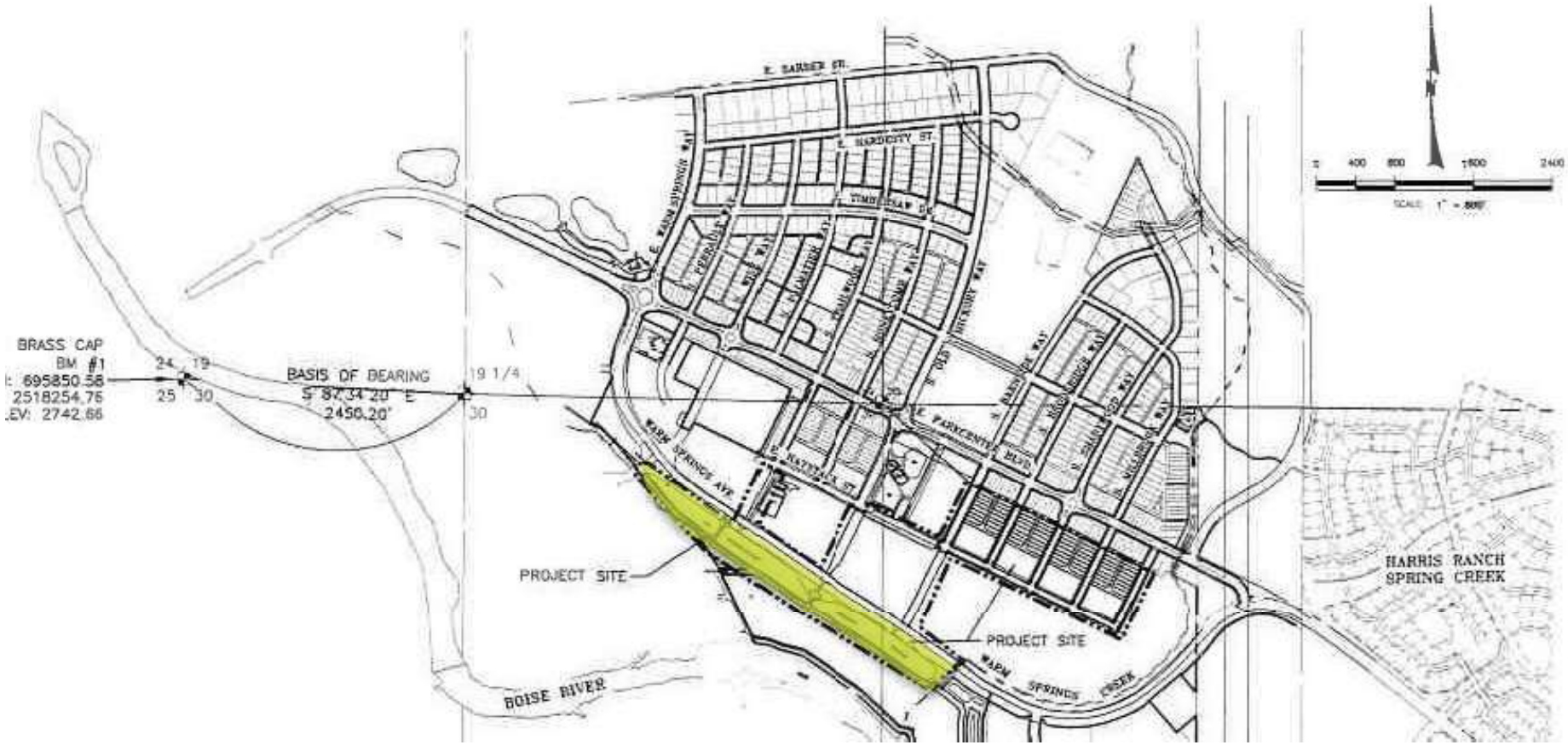
5. All sidewalks shall be located outside of ACHD Way. Public sidewalks shall be located within an easem dedicated to and accepted by the City of Boise. Sidewal allowed in ACHD right-of-way crossing the Idaho Powe and at pedestrian ramp locations.

APPENDIX G

J. Exhibit J – Detailed Map for DHE TH #9

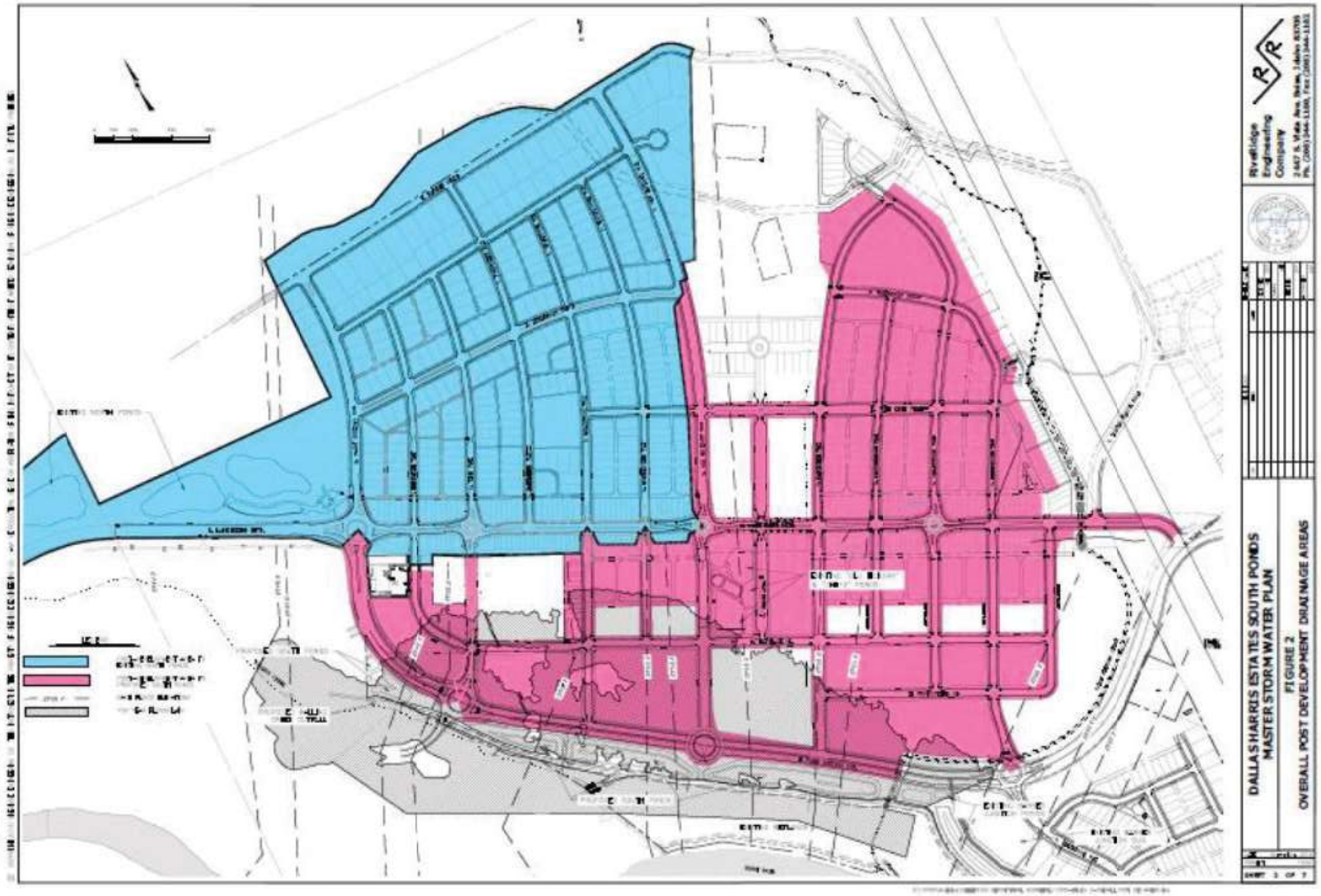
APPENDIX H

BB. Exhibit BB – Detailed Map for DHE TH #11 - Storm Water Improvements



APPENDIX I

DD. Exhibit DD – DHE TH #11 – South Ponds Master Storm Water Plan



HH. Exhibit HH – Respondents' Brief in the Litigation

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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Melanie Gagnepain, Clerk

In the Supreme Court of the State of Idaho

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.

Supreme Court Docket No.: 51175-2023

Ada County No.: CV01-21-18655

RESPONDENTS' BRIEF

Appeal from the District Court of the Fourth Judicial District of The State of Idaho, in and for the County of Ada

Honorable Nancy A. Baskin, District Judge, Presiding

RESPONDENTS' BRIEF

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Attorneys for Intervenors

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I. STATEMENT OF THE CASE

A. Nature of the Case.

This is a judicial review proceeding in which William Doyle, Lawrence Crowley, and The Harris Ranch CID Taxpayers' Association ("**Association**") (collectively, "**Petitioners**") seek review of decisions made by The Harris Ranch Community Infrastructure District No. 1 (the "**District**") through its board members TJ Thomson, Holli Woodings, and Elaine Clegg (collectively, "**Respondents**"). Although Petitioners only appealed decisions made in October of 2021, they asked the District Court—and now ask this Court—to review the legality of numerous past decisions and events.

They seek the ability to challenge the formation of the District and the general obligation bond election, both of which occurred in 2010. They seek to attack past approved projects. They seek an order allowing them to request whatever records they want to be added to the appeal record in a judicial review, even if the records were never presented to, or considered, by the District in connection with the appealed decision. In short: Petitioners ask this Court for a significant departure from the statutes, case law, and rules of procedure governing judicial review proceedings and appeals in Idaho. None of those historical decisions were appealed within the statutory period, and therefore the District Court appropriately declined to review most of them.

Petitioners did timely appeal the District's approval of three infrastructure projects in October of 2021. Those projects meet the requirements of the Community Infrastructure District Act, Idaho Code sections § 50-3101-3121 ("**CID Act**"), which is the controlling statute. The District Court affirmed the District's decisions. This Court should do the same.

B. Course of the Proceedings Below.

On December 3, 2021, Petitioners filed their Petition for Judicial Review ("**Petition**"), challenging the District's 2021 Resolutions (defined *infra*). Clerk's Record ("**Record**" or "**R.**") pp. 11-58. The Administrative Record ("**Administrative Record**" or "**A.R.**"[1]) was filed with the District Court on February 11, 2022. R. pp. 82-84. On March 21, 2022, Petitioners filed a Motion to Compel Completion of Record and Transcript, to Delete Documents from Record, and to Augment Record. R. pp. 114-116. That motion was denied by the District Court's Order on Motions to Complete Record, to Delete Documents from Record and to Augment Record dated August 22, 2022 ("**Record Decision**"). R. pp. 594-608.

Following briefing and oral argument by the parties, on April 25, 2023 the District Court entered its Memorandum Decision and Order on Petition for Judicial Review ("**Judicial Review Decision**") and a corresponding Judgment. R. pp. 1011-1077. The District Court denied the Petition and affirmed the 2021 Resolutions. R. p. 1073. Petitioners filed a Petition for Rehearing on May 12, 2023. R. pp. 1078-1080. The Court denied the Petition for Rehearing in its Memorandum Decision and Order on Petition for Rehearing, filed July 31, 2023 ("**Rehearing Decision**"). R. pp. 1111-1122.

Petitioners filed their Notice of Appeal and Amended Notice of Appeal on September 6, 2023. R. pp. 1123-1157. Petitioners filed their Appellants' Opening Brief in this Court on May 30, 2024 ("**Opening Brief**").

[1] This is the Supplemental Appeal Exhibit filed in this Court on February 5, 2024.

C. Statement of Facts.

1. Overview of the District.

The District is a community infrastructure district ("**CID**") organized and operating under the CID Act. The District was formed in 2010. A.R. p. 23. The District is a political subdivision of the State of Idaho and a special limited purposes district with powers only as permitted in the CID Act, including the power to issue and sell bonds to finance the acquisition of community infrastructure and levy taxes and assessments to pay the debt service on the bonds issued. I.C. § 50-3105(1). The CID Act requires record notice upon real property parcels in the District that will be encumbered with bond repayment liability. I.C. § 50-3115.

The Board of Directors of the District ("**Board**") is the District's governing body and is constructed pursuant to Idaho Code section 50-3104. The Board was comprised of Respondents TJ Thomson, Holli Woodings, and Elaine Clegg at all times relevant to this appeal. A.R. p. 1598.

Barber Valley Development, Inc. leads the development and construction of community infrastructure within the District on behalf of The Harris Family Limited Partnership (collectively, "**Developer**"). A.R. p. 55. The Developer has developed real property within the District since its inception, and was a party to the District Development Agreement No. 1, signed in 2010 ("**Development Agreement**"). A.R. pp. 499-575. Over the years, the Board adopted resolutions authorizing the acquisition of community infrastructure projects from the Developer, approving projects, and issuing general obligation bonds, among other things. A.R. pp. 23-25, 491-492.

2. Projects at issue in this appeal.

In the Fall of 2021, the Developer submitted applications to the Board for approval of three

projects for acquisition and reimbursement by the District (collectively the "**Projects**"). A.R. pp. 589, 1007, and 1428-29. The Projects are summarized as follows:

- Project GO21-2 – Dallas Harris Estates Town Homes #9 ("**Town Homes #9 Project**"). This project consisted of improvements to public right-of-ways within the Dallas Harris Estates Town Homes #9 Subdivision. A.R. pp. 594, 595-596, and 603. The improvements included construction of roadways, sidewalks, storm drains, sewer, streetlights, and other related installations. A.R. pp. 593 and 610.
- Project GO21-3 – Dallas Harris Estates Town Homes #11 ("**Town Homes #11 Project**"). This project consisted of improvements to public right-of-ways within the Dallas Harris Estates Town Homes #11 Subdivision. A.R. pp. 1004 and 1033. The improvements included roadway improvements, street signage and traffic markings installation, sewer installation, domestic water systems installation, storm water collection and drainage, and related work. A.R. pp. 1033 and 1004-1005. The Town Homes #11 Project also sought reimbursement for large stormwater ponds and related facilities on the southern edge of the District ("**South Stormwater Facilities**"). A.R. p. 1005.
- Project GO21-1 – Accrued Interest ("**Interest Project**"). The Development Agreement allows the Developer to recover interest that accrues between the date of dedication, contribution, or expenditure for a particular project and the date upon which the project price is finally reimbursed to the Developer. A.R. p. 509. Thus, this "project" was a request by the Developer to expend general obligation bond proceeds to pay accrued interest on twenty-four previously approved projects. A.R. pp. 41-42; 491-492.

3. The District's consideration of the Projects.

Notice of the Developer's applications regarding the Projects was published on the District website, providing information regarding the Projects to be considered by the Board at its October 5, 2021 meeting. A.R. pp. 93-94. The notice invited the public to submit written comments to the Board. A.R. p. 94. Members of the public submitted many written comments. A.R. pp. 95-468.

The Board met on October 5, 2021 to determine whether to approve via resolution the District's purchase of, and reimbursement to the Developer for, the Projects. A.R. pp. 1522-1524. The Board considered two resolutions: HRCID-12-2021 and HRCID-13-2021 (collectively, "**2021 Resolutions**"). A.R. pp. 9-10, 1522-1524. The first resolution, HRCID-12-2021 ("**Payments Resolution**"), approved the Projects. A.R. pp. 1563-1565. The second resolution, HRCID-13-2021 ("**Bond Resolution**"), authorized the issuance and sale of the District's General Obligation Bond, Series 2021, in the principal amount of up to $5,200,000 to finance the Projects approved in the Payments Resolution. A.R. pp. 1566-1593.

In preparation for the October 5 Board meeting, District Staff ("**Staff**") prepared a detailed report that set forth the basic facts regarding the District and the Projects, analyzed whether the Projects were eligible for reimbursement under the Development Agreement and the CID Act, and included the letters and public comments submitted to the District. A.R. pp. 21-51. This report was presented to the Board in advance of the October 5 meeting. A.R. p. 21. The Staff report ultimately recommended that the Board approve the Projects and adopt the 2021 Resolutions. A.R. pp. 27-44 and 1526-1533. The Board did not hear oral testimony at the October 5 meeting, but considered the Staff report, including the various letters sent by Petitioners and the Developer. A.R. p. 1526.

The Board voted unanimously to adopt the 2021 Resolutions, which were later signed. A.R. pp. 1563-1593 and 1597-1614. The Petition challenges both 2021 Resolutions. R. pp. 11-58.

4. Response to Petitioners' Factual Assertions.

a. This Court should disregard any unsupported factual statements.

Petitioners make factual statements without reference to the Record or Administrative Record throughout the Opening Brief. In particular, the Introduction includes numerous unsupported allegations regarding the intentions and actions of various parties with regard to passage of the CID Act, formation of the District, and other matters. Petitioners allege "numerous abuses by the District," District boundaries that were "gerrymandered," and that the District and the Developer have taken actions that are "unlawful, unconstitutional, and unconscionable." Opening Brief pp. 1-6; *see also* Opening Brief p. 8 (discussing a separate lawsuit).

There is some precedent holding that Idaho Appellate Rule 35 does not require record citations outside a brief's Argument section. *IDHW v. Jane Doe (2023-16)*, No. 50712, 2023 WL 5340381, at *2 (Idaho Ct. App. Aug. 21, 2023) (unpublished opinion) ("Citations to the record are not required in the statement of the case, I.A.R. 35(a)(3), but are required in the argument section of the brief. I.A.R. 35(a)(6)."). But, to the extent any factual assertions are intended to support Petitioners' Argument section, Respondents ask this Court to disregard all unsupported factual statements in the Opening Brief, or otherwise find they do not support Petitioners' Argument. I.A.R. 35(a)(6) ("The argument shall contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon."); *Woods v. Sanders*, 150 Idaho 53, 58, 244 P.3d 197, 202

(2010) ("Conclusory allegations and assertions of fact contained in the brief without citation to the record below are not sufficient to support an argument on appeal.").

Respondents are not responding to each and every one of Petitioners' allegations because of page limitations and many of the statements are opinion statements or otherwise unsupported by any record. Respondents' silence, however, does not equate to agreement with Petitioners' perspective and opinions on the history of the District. Instead, Respondents address the relevant factual issues by responding to Petitioners' Argument in the Argument section herein.

b. The Court should disregard facts submitted by Petitioners that are not relevant to the Projects and are outside of the Administrative Record.

Similarly, much of Petitioners' Statement of Relevant Facts consists of allegations which are not relevant to this proceeding, have no support from the Administrative Record, and were not among the issues presented to the Board for decision in October 2021. Opening Brief pp. 9-16.

i. Response to Subsection 1.

Petitioners include a background section on the creation of the District, which includes their perspective on how the District is governed and operated. Opening Brief pp. 9-11. Petitioners open by taking issue with a lobbyist involved with the passage of the CID Act in 2008, which is an irrelevant issue. Opening Brief p. 10. Next, Petitioners present their version of the facts surrounding the District's formation in 2010. Opening Brief p. 10. Those issues were not presented to the Board for a decision in October 2021, and aside from a brief summary that is part of the Staff report (A.R. p. 55), no record regarding the District's formation is included in the Administrative Record.

Petitioners also discuss their view of the interplay between the City of Boise ("**City**") and

the District. Opening Brief pp. 10-11. Petitioners cite documents available on the internet, which are not part of the Administrative Record, and which should not be considered. Petitioners' Footnotes 8 and 10 contain links to the 156-page "City of Boise Annual Comprehensive Financial Report" for the year ending September 30, 2023, and dated February 26, 2024—well after this case was already on appeal. Footnote 9 contains a link to the City's meeting calendar website. These documents should not be considered because they are outside the Administrative Record.

First, as discussed herein at Argument Section K, the District Court properly confined the Administrative Record to the "record created before the agency" in connection with the District's consideration of the 2021 Resolutions, and the submission of new facts at this stage is not consistent with the judicial review rules. I.R.C.P. 84(e)(1)(A). Second, Petitioners have not filed a motion for judicial notice or to augment the appeal record with these documents, and even if such a motion were made, it should be denied:

> Even though a court may "take judicial notice at any stage of the proceeding," I.R.E. 201(d), the record on appeal must be settled in the district court, I.A.R. 29(b), and then filed with the Supreme Court. Matters to be judicially noticed by the Supreme Court must be augmented in the settled record by motion under I.A.R. 30(a), with a motion and all relevant documents attached. If the party requesting that notice fails to comply with these requirements, the documents for which judicial notice is sought will not be considered by this Court.

Ellis v. Ellis, 167 Idaho 1, 5 n. 2, 467 P.3d 365, 369 n. 2 (2020). The Court should not consider documents submitted in this fashion on appeal, particularly where they post-date the decisions of the District and the District Court.

ii. Response to Subsection 2.

Petitioners present their view of the District's property boundaries that were established in

2010, arguing the boundaries were "manipulated by the City and the Developer…." Opening Brief pp. 11-12. For this accusation, Petitioners cite to their own objection letter. A.R. pp. 1000-1003. To further describe the District boundaries, Petitioners cite to the Ada County Assessor's online interactive map (Opening Brief p. 11, n. 11) which is not part of the Administrative Record, and to Appendices A, B, and C to the Opening Brief. Opening Brief pp. 11-12. Appendix B is part of the Administrative Record. A.R. pp. 462 and 906. Appendices A and C to the Opening Brief are not in the Administrative Record but were attached as Appendices A and C to Petitioners' Brief below (R. pp. 707-708, 711-712), and Respondents objected to their presentation to the District Court. R. p. 788. Below, Petitioners asked the District Court to take judicial notice of Appendix A and the Assessor's online interactive map (R. p. 632, n. 1), but have not done so in their Opening Brief even though the document was not augmented to the Administrative Record.

This Court should disregard and should not take judicial notice of these documents or to the content available at the various web pages cited in the Opening Brief at footnotes 11-13, all of which is outside the Administrative Record. *See Woods*, 150 Idaho at 58, 244 P.3d at 202 ("…documents merely appended to the brief that are not otherwise contained in the record may not be relied upon to support an argument on appeal.").

iii. Response to Subsection 3.

Similarly, Petitioners discuss the election history of the District. Opening Brief pp. 12-13. Aside from a brief reference to the 2010 election in the Staff report (A.R. p. 57), there is nothing in the Administrative Record beyond letters cited for these allegations about the election. Opening Brief pp. 12-13 (citing A.R. pp. 990-998). The 2010 bond election, which authorized the issuance

of the District's general obligation bonds in one or more series, was not presented to the Board for a decision in October 2021, and the election is not properly before this Court on appeal. Nor are the prior bond issuances referenced by Petitioners. A.R. p. 61.

iv. Response to Subsection 4.

Petitioners describe their legal review of the District. Opening Brief pp. 13-14. Petitioners are correct that beginning in July 2021, the Association began submitting letters to the District regarding its formation and practices. A.R. p. 954. These letters spanned a variety of topics relating to the District and CID Act. A.R. pp. 583-587, 953-960, 969-975, 982-994, 999-1003, 1407-1420, 1430-1453, and 1461-1468. The Developer submitted response letters addressing the various challenges. A.R. pp. 907-952, 961-968, 976-981, 995-998, 1421-1426, and 1454-1460. Some of these letters from the Developer and Association addressed the Projects, many did not.

v. Response to Subsection 5.

Petitioners next describe the Projects, and as part of that background Petitioners describe the projects underlying the Interest Project. Opening Brief pp. 14-16. These are all projects that were approved by the District years ago. A.R. pp. 491-492. None of these past projects, or details about them, were presented to the Board. The only question presented to the Board in October 2021 was the proper amount of interest owed on these projects per the Development Agreement. A.R. p. 1528. The Administrative Record contains the necessary details to calculate the interest owed. A.R. pp. 491-492. Petitioners requested to add documents related to the historical resolutions approving projects and payments related to the Interest Project (R. p. 129), and the District Court denied the motion in the Record Decision. R. pp. 594-608.

Petitioners cite to Appendix D, which is a document they prepared regarding the Projects, including the past approved projects. Opening Brief p. 15, n. 15. This is another document that was not part of the Administrative Record, was attached to Petitioners Brief below (R. pp. 714-715), and to which Respondents objected. R. p. 788. Similarly, Petitioners state that descriptions of the past projects underlying the Interest Project can be seen in their brief to the District Court. Opening Brief p. 15, n. 16 (citing R. pp. 638-645). Consideration of those eight pages is not appropriate as it is beyond the overlength page limits granted to Petitioners by this Court. Even if those additional briefing pages were considered, past projects approved by the District were not appealed and are not before this Court. The only issue before this Court related to the Interest Project is whether the interest due was properly calculated (which Petitioners have not disputed).

Petitioners also present background on the Town Homes #9 Project and the Town Homes #11 Project. To the extent Petitioners cite the Administrative Record and present their view of the projects, Respondents address those issues in the Argument herein. However, Petitioners' references to Appendix A (Opening Brief p. 15) are objectionable for the reasons previously stated, as is the reference to an interactive map of the Ada County Highway District (Opening Brief p. 15, n. 17), because these documents are outside the Administrative Record.

In summary, Petitioners' Statement of Relevant Facts discusses numerous documents and web site content that is outside the Administrative Record. As discussed herein at Argument Section K, the District Court properly confined the Administrative Record to the record presented to the District in connection with its consideration of the 2021 Resolutions. This Court should likewise disregard all facts outside of the Administrative Record.

II. ADDITIONAL ISSUE PRESENTED ON APPEAL

Are Respondents entitled to an award of attorney fees and costs on appeal pursuant to Idaho Code section § 12-117?

III. STANDARD OF REVIEW

"Idaho Rule of Civil Procedure 84, which governs judicial review of administrative and local governing bodies, does not provide a specific standard of review." *Idaho Historic Pres. Council, Inc. v. City Council of City of Boise*, 134 Idaho 651, 654, 8 P.3d 646, 649 (2000) (declining to apply standard of review from the Idaho Administrative Procedure Act absent statutory authorization for its application). If the appropriate scope of review were set forth by statute, this Court would be required to follow it. Idaho R. Civ. P. 84(e)(2); *see also Roberts v. Bd. of Trustees, Pocatello, Sch. Dist. No. 25*, 134 Idaho 890, 892–93, 11 P.3d 1108, 1110–11 (2000). But, the CID Act does not identify a standard of review for decisions challenged on judicial review.

Under these circumstances, the Court should "apply the general standard of review for cases in which the district court acts in an appellate capacity." *Idaho Historic Pres. Council, Inc.*, 134 Idaho at 654, 8 P.3d at 649. "This Court exercises free review over questions of law." *Id.*; *Gatsby v. Gatsby*, 169 Idaho 308, 313, 495 P.3d 996, 1001 (2021) ("this Court exercises free review over questions of law … including constitutional questions and questions of statutory interpretation."). 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 (Ct. App. 2000).

IV. ARGUMENT

A. The District did not err in analyzing the eligibility of the Projects under the CID Act, which is the governing statute.

When analyzing whether the District Court erred in upholding the 2021 Resolutions, the Court should look no further than the CID Act to see whether the Projects met the statutory requirements. Petitioners, mistakenly, look elsewhere. Petitioners argue that the CID Act "make[s] clear" that CIDs can only finance "system improvements," and not "project improvements." Opening Brief p. 19. Yet, the terms "system improvements" and "project improvements" do not appear *anywhere* in the CID Act. These terms belong to a different statute—the Idaho Development Impact Fee Act, Idaho Code sections § 67-8201-8216 ("**IDIFA**").

In a strained statutory interpretation, Petitioners seek to not only take these foreign terms from IDIFA and import them into the CID Act, but also make them the governing language of the latter. Opening Brief pp. 18-25. The Court should reject Petitioners' suggested interpretation because it ignores the governing statute. *In Re Decision on Joint Motion to Certify Question of L. to Idaho Supreme Ct. (Dkt. 31, 32, 45)*, 165 Idaho 298, 302, 444 P.3d 870, 874 (2018) ("Statutory definitions provided in one act do not apply 'for all purposes and in all contexts but generally only establish what they mean where they appear in that same act.'") (citation omitted). The only reason Petitioners' argument drifts so far from the CID Act is because the plain language of the CID Act authorizes reimbursement for the Projects and does not suit their purposes.

In the proceedings below, the District Court refused to consider the merits of Petitioners' argument because Petitioners did not preserve the issue for appeal. R. pp. 1028-1034. Petitioners contend that this was error. Respondents disagree, and discuss the preservation issue *infra*.

However, if this Court considers Petitioners' IDIFA argument, it should be rejected.

1. Whether a project can be funded by a CID is determined by the CID Act.

This Court's analysis should focus on the text of the CID Act and, more specifically, on the CID Act's definition of "community infrastructure." *See* I.C. § 73-113(1) ("The literal words of a statute are the best guide to determining legislative intent."). The CID Act does not use the terms "system improvement" or "project improvement." Rather, the CID Act provides funding mechanisms for "community infrastructure"—a defined term. I.C. §§ 50-3101; 50-3102(2). The CID Act begins by stating that its purpose is:

> (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(1) (emphases added) (the "**Purpose Provision**").

To accomplish these purposes, the CID Act provides for the creation of *community infrastructure* districts that have broad enumerated powers to: finance *community infrastructure*; enter into contracts and expend moneys for any *community infrastructure* purposes; acquire interests in real property and personal property for *community infrastructure*; plan, design, engineer, acquire, construct and install *community infrastructure*; and incur and repay loans for any *community infrastructure*; among other things. I.C. § 50-3105(1). As one would expect, the

CID Act provides a definition for this pivotal term. The CID Act broadly defines "community infrastructure" and includes specific infrastructure meeting the definition:

> "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). Per the emphasized language above, the following types of "public facilities" listed in IDIFA are incorporated into the list of improvements that qualify as "community infrastructure":

> (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(24). This "community infrastructure" definition ultimately dictates what a CID can finance; the contracts it can enter into; the moneys it can expend; the property interests it can acquire; what it can plan, design, and construct. I.C. § 50-3105(1). However, except for their analysis on the fronting issue, which makes up a part of this definition, Petitioners offer little substantive discussion on this definition and steer clear of it because, as they admitted to the District Court, the Projects fall squarely within the categories of improvements that are included in the definition. Tr. p. 171, L. 12 – p. 172, L. 13.

2. Petitioners' suggested application of IDIFA ignores the CID Act's definition of "community infrastructure."

Petitioners navigate their way to IDIFA by relying almost exclusively on the Purpose Provision in the CID Act, quoted above. I.C. § 50-3101(1). The Purpose Provision does little more than use the term "regional community infrastructure" once and references IDIFA. On that basis, Petitioners make the incredible argument that "community infrastructure" is actually "defined by reference to [IDIFA]," as if the CID Act's own definition of that term did not exist. Opening Brief p. 18. The Court should interpret the CID Act based on the clear definitions and parameters set forth within its own text. *In Re Decision on Joint Motion to Certify Question of L. to Idaho Supreme Ct. (Dkt. 31, 32, 45)*, 165 Idaho at 302, 444 P.3d at 874. ("Statutory interpretation that turns on '[l]egislative definitions of terms included within a statute' presents a straight-forward analysis, as those definitions 'control and dictate the meaning of those terms as used in the statute.'").

Petitioners' approach to interpreting the CID Act is flawed for a number of reasons. First, they place improper weight on the Purpose Provision of the CID Act while ignoring the CID's Act's "community infrastructure" definition. This Court has explained that a "purpose provision" in a statute "is not a source of specific substantive criteria[.]" *Idaho Dept. of Health & Welfare v. Doe*, 151 Idaho 498, 506, 260 P.3d 1169, 1177 (2011). "[W]hile the purpose and policy provisions may shed some light on the statutes, the specific provisions govern." *Id*. Petitioners emphasize the term "regional community infrastructure" found in the Purpose Provision of the CID Act. In fact, the Purpose Provision is the only place in the entire CID Act that uses the term "*regional* community infrastructure" instead of, simply, "community infrastructure." Nevertheless, Petitioners insist that this one-off adjective must mean something. They give this adjective meaning by conflating it with IDIFA's concept of "system improvements." Petitioners jump to IDIFA by turning to the next subsection of the Purpose Provision, which states that one purpose of the CID Act is to "provide a means for the advance payment of development impact fees established in [IDIFA], and the community infrastructure that may be financed thereby[.]" I.C. § 50-3101(1)(b). Petitioners mistakenly interpret the last clause of this sentence to mean that IDIFA, not the CID Act, actually dictates what "community infrastructure" may be financed by a CID. Opening Brief p. 20. But, just as IDIFA's defined terms "system improvements" and "project improvements" appear nowhere in the CID Act, neither do "regional," nor "community," nor "infrastructure" appear anywhere in IDIFA.

Second, Petitioners' interpretation is flawed because there are no references to IDIFA in the CID Act that suggest that the IDIFA is incorporated into, and controls the CID Act. There is a

reference to IDIFA in the Purpose Provision of the CID Act, but only to explain that CIDs are intended, among other things, to "provide a means for the advance payment of development impact fees established in [IDIFA] . . . ." I.C. § 50-3101(1)(b). And, there is a reference to one subsection of IDIFA in the definition of "community infrastructure," quoted above, but only for purposes of *adding* to the list of facilities that fall within the CID Act's otherwise comprehensive definition of "community infrastructure." I.C. § 50-3102(2). Finally, the CID Act provides that, for purposes of authorizing development impact fee credits under IDIFA, a CID is to be treated as a local improvement district. I.C. § 50-3120. This statement, by its terms, relates only to authorization of development impact fee credits, which make up a small part of everything a community infrastructure can finance. I.C. § 50-3102(2)(g) ("impact fees" included in list of "community infrastructure"). Petitioners argue that because Idaho Code section 50-3120 states CIDs are treated like a local improvement district for certain purposes and refers to the impact fee credit calculation rules in the referenced Idaho Code section 67-8209, that statute's rules on credits for system improvements and project improvements means that other IDIFA provisions completely supplant the CID Act's definition of "community infrastructure." Opening Brief pp. 20-21. Nowhere, however, does the CID Act incorporate IDIFA's definitions of "project improvements" and "system improvements" found in Idaho Code sections 67-8203(22) and § (28).

Third, Petitioners argue that IDIFA and the CID Act are so intertwined as to be *in pari materia*, and must, therefore, be construed together. Opening Brief p. 19. In doing so, however, Petitioners stretch *in pari materia* too far. "The rule of *in pari materia* is a 'canon of statutory construction' used to effectuate legislative intent." *In re Adoption of Doe*, 156 Idaho 345, 350, 326

P.3d 347, 352 (2014). "Statutes are *in pari materia* when they *relate to the same subject*." *In re Ord. Certifying Question to Idaho Supreme Ct.*, 167 Idaho 280, 283, 469 P.3d 608, 611 (2020) (emphasis in original). "Such statutes are 'taken together and construed as one system.'" *Id*. "It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions." *Id*. In one case, the Court concluded that multiple statutes, all found in Title 20 of the Idaho Code and all relating to the employment of prisoners, were *in pari materia*. *Id*. IDIFA and the CID Act are not related to the same subject, nor are they so intertwined such that they must be construed together. One relates to development impact fees, the other to CIDs. Indeed, the CID Act "create[s] *additional* financial tools and financing mechanisms" that did not previously exist in IDIFA or elsewhere in Idaho law. I.C. § 50-3101(1)(c) (emphasis added). Where these new financial tools interact with impact fees, the CID Act addresses it. *See, e.g.*, I.C. § 50-3120. But the two statutes are not otherwise related to the same subject.

When defining "community infrastructure" in the CID Act, the legislature incorporated the improvements listed as "public facilities" in IDIFA within the definition of "community infrastructure," *but also added to that list*. I.C. § 50-3102(2). The fact that "community infrastructure" is, by definition, broader in scope than "system improvements" under IDIFA, indicates that both the CID Act and the financing authority of a CID are broader in scope than IDIFA. Moreover, "[a]s a rule of statutory construction, [the rule of *in pari materia*] would be inapplicable when a statute is unambiguous, because in that case, 'the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of

statutory construction.'" *In re Adoption of Doe*, 156 Idaho at 350, 326 P.3d at 352. Petitioners improperly seek to apply this rule despite identifying no ambiguity in the CID Act that would invite statutory construction on this topic.

Finally, Petitioners make the same mistake when turning to the legislative history of the CID Act. There is no basis upon which to engage in the statutory construction they seek:

> Statutory interpretation is a question of law that receives de novo review from this Court. We begin statutory interpretation with the literal language of the statute, giving words their plain, usual, and ordinary meanings. In addition, provisions are interpreted within the context of the whole statute, not as isolated provisions. This includes giving effect "to all the words and provisions of the statute so that none will be void, superfluous, or redundant." Where the language is unambiguous, we need not consider the rules of statutory construction. "Ambiguity is not established merely because differing interpretations are presented to a court; otherwise, all statutes subject to litigation would be considered ambiguous."

State v. Burke, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020) (internal citation omitted); *CMJ Properties, LLC v. JP Morgan Chase Bank, N.A.*, 162 Idaho 861, 863, 406 P.3d 873, 875 (2017) ("Where the language of the statute is clear and unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.").

Because Petitioners identify no ambiguity regarding the definition of "community infrastructure" in the CID Act, there is no occasion for the Court to examine the legislative history on this issue. Even if Petitioners did claim the CID Act was ambiguous, the plain language of the CID Act does not support Petitioners' argument, nor does Petitioners' argument create any ambiguity in that language such that the Court should consult legislative history. In any case, Petitioners do not identify where the terms "system improvements" or "project improvements"

appear in the legislative history. Opening Brief p. 24. And, Petitioners' proposed reading of the CID Act would render its definition of "community infrastructure" void, superfluous, or redundant, which is not permitted. *Burke*, 166 Idaho at 623, 462 P.3d at 601.

When analyzing whether the District has the power or authority to finance or reimburse a particular project, that analysis must center on whether the project constitutes "community infrastructure." The District correctly analyzed the Projects under the CID Act.

B. The District Court did not err in holding that Petitioners failed to preserve their IDIFA argument for appeal.

The District Court refused to consider the merits of Petitioners' IDIFA argument on grounds they did not preserve the issue. R. pp. 1028-1034. The District Court's ruling centered on the fact that a district court entertaining a petition for judicial review does so in an appellate capacity and its review is limited to those issues presented to the governing body and thereby preserved for appeal. Petitioners raise all manner of hypothetical situations where they might not have adequate notice of a District meeting in the future, but there is no dispute that Petitioners had an adequate opportunity to raise their IDIFA argument to the District in *this particular case*.

1. Petitioners did not just fail to preserve their IDIFA argument, but they actually argued the opposite to the District.

Petitioners' position that CIDs can only finance "system improvements" that serve a region broader than the District is a position at odds with their position taken before the District. For example, in an August 27, 2021 objection letter to the District, the Association complained:

> To date, the HRCID has been used *almost exclusively* to fund facilities and improvements that are of *general* benefit to the City and its residents. Almost *NONE* of the expenditures to date have been for "local amenities" that are enjoyed primarily by the homeowners in the Harris Ranch development.

A.R. p. 958 (emphases in original). Petitioners set forth projects located within District boundaries but which also would be used by people living outside the District boundaries, and argued those projects should not have been reimbursed because the amenities were not for local amenities enjoyed primarily by District homeowners. A.R. p. 958. Petitioners now argue the reverse:

> All the 2021 Projects are located within the Development. All the projects primarily serve only the Development and most serve the Development exclusively. Therefore, all of the 2021 Projects necessarily were "planned and designed to provide services to a particular development project," as [IDIFA] recites, rather than the broader region.

Opening Brief p. 25 (internal citations omitted).

Petitioners' legal argument likewise made an about-face. In an August 7, 2021 letter, the Association objected to reimbursement for the South Stormwater Facilities on the grounds that they were improvements that benefited "an area many times the size of the Harris Ranch CID," and the cost thereof "should be borne by the City as a whole and not by the relatively few properties within the CID." A.R. p. 585. This argument was raised by Petitioners as an issue in their Petition. R. p. 16 (issue "i"). Petitioners now contend it is precisely that benefit *to a region broader than the District* that renders an improvement *eligible* for reimbursement. Opening Brief p. 25.

It was in this landscape that the District Court was asked to determine whether Petitioners' IDIFA argument had been preserved. The District Court correctly found that Petitioners' argument was entirely novel and had not been preserved. R. pp. 1028-1034. None of the Association's objection letters, the District Court noted, "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.'" R. p. 1033; *Hungate v. Bonner Cnty.*, 166 Idaho 388, 395, 458 P.3d 966, 973 (2020) (in petition for judicial review, Court affirmed district court's refusal to hear argument "not raised *before the Board*.") (emphasis in original). The District Court held that other arguments raised by Petitioners in their comments and letters to the District were preserved. R. p. 1030.

2. The District Court's exclusion of issues not presented to the District was appropriate in the context of judicial review.

The District Court's decision was well-supported by Idaho law. As discussed *infra* at Argument Section E, judicial review is not a civil action, it is an appellate process under Idaho Rule of Civil Procedure 84. "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*, 147 Idaho 660, 662, 214 P.3d 646, 648 (2009). "Appellate court review is limited to the evidence, theories and arguments that were presented below." *Obenchain v. McAlvain Const., Inc.*, 143 Idaho 56, 57, 137 P.3d 443, 444 (2006) (cleaned up); *see Carver v. Hornish*, 171 Idaho 118, 124, 518 P.3d 1175, 1181 (2022) ("We require that issues be raised below to be heard on appeal.").

This means that "failure to raise an issue before an administrative agency will preclude that issue from being heard upon review by the district court." *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); *see also State v. Miramontes*, 170 Idaho 920, 924, 517 P.3d 849, 853 (2022) ("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."). Rule 84, which governs

petitions for judicial review, likewise requires that, except where directed by statute, the district court's review "must be based upon the record created before the agency." Idaho R. Civ. P. 84(e)(1)(A). The District Court's decision was consistent with these broad principles, these cases and similar cases, and its position sitting in an appellate capacity. R. pp. 1028-1034.

3. Petitioners advance no authority showing that the District Court erred.

Petitioners cite not a single case in support of their argument that the District Court erred and violated their due process rights in excluding their IDIFA argument. Opening Brief pp. 25-34. There is no analysis of the due process clause or of Idaho precedent on due process requirements in this context, only a passing and general rejection of cases relied on by the District Court (Opening Brief pp. 30-31), and no case citations supporting a different result. Opening Brief pp. 25-34. Petitioners cite only to Idaho Code § 50-3119, which is the CID Act's appeal provision and does not speak to this issue. Opening Brief pp. 25-34. For these reasons alone, this appeal issue should be rejected. *See BABE VOTE v. McGrane*, 546 P.3d 694, 714 (Idaho 2024) ("In order to be considered by this Court, the appellant is required to identify legal issues and provide authorities supporting the arguments in the opening brief.") (citation omitted).

Petitioners argue that the CID Act does not require objections to be made in order to challenge a final decision under Idaho Code section 50-3119, and therefore no preservation rule should apply when a District decision is appealed to the district court. Opening Brief pp. 25-31. Petitioners also argue that all of the authority cited to support the imposition of the preservation rule arises from cases under the Idaho Administrative Procedure Act ("**IAPA**"), and therefore should not apply here. Opening Brief p. 30. But, neither of these arguments change the fact that

Petitioners' case remains a Rule 84 appeal from an agency decision (analogous to the cases processed under IAPA for these purposes) and that the law discussed above applies.

Given this authority, the District Court correctly held that the preservation doctrine applied broadly to all courts sitting in an appellate capacity, including in this case, notwithstanding the CID Act's silence on procedure[2] and the fact that IAPA procedures did not apply. R. p. 1029.

4. Petitioners had notice and an adequate opportunity to present their position.

The bulk of Petitioners' remaining argument on this issue presents possible future facts and hypothetical scenarios that have no relevance to the present proceeding. Opening Brief pp. 26-31. Petitioners discuss Board decisions made "over the past 12 years[.]" Opening Brief p. 27. They discuss a recent Board decision that is not the subject of this appeal.[3] Opening Brief p. 30. They discuss hypotheticals where a Board decision might be made without an opportunity to present evidence or legal argument, without notice, or without the Board considering anything at all. Opening Brief pp. 27-31. Petitioners do not contend "that they did not have enough time in this particular case to respond to the [District's] proposed action," just that the other "possibility described is inherent in the imposition of the preservation rule…." Opening Brief p. 28.

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[2] Respondents dispute Petitioners' contention that the "necessary implication of" certain language in Idaho Code section 50-3119 "is that the appropriate forum for raising legal issues is 'on appeal [to the district court]. . . .'" Opening Brief pp. 28-29. This provision of the CID Act merely states that if a question is not raised in a timely appeal, it cannot later be raised in some other legal proceeding. I.C. § 50-3119. The statute does not state, nor is there any implication, that such questions should be raised for the first time on appeal instead of to the District.

[3] Respondents dispute the facts alleged by Petitioners regarding the January 30, 2024 meeting. Opening Brief p. 30. But as that meeting and decision are not part of the present appeal, Respondents will not discuss the merits of Petitioners' allegations. Respondents further object to Petitioners' Footnote 33, which cites to material outside the Administrative Record.

In short, Petitioners are asking for an advisory opinion on whether the preservation rule should be applied in different circumstances that did not occur here and may never occur in the future. There is no reason for the Court to offer such an opinion. *Westover v. Idaho Ctys. Risk Mgmt. Program*, 164 Idaho 385, 389, 430 P.3d 1284, 1288 (2018) (justiciability doctrine "precludes courts from deciding cases which are purely hypothetical or advisory.").

Correctly focusing on the facts of *this* appeal, the District Court stated in its Rehearing Decision: "This is not a case where a district rushed through a resolution with only 24 hours prior notice, where an exception to the preservation rule might be appropriate." R. p. 1120. Rather, in this case, 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, and inviting comment. R. p. 1030. The notice was posted twelve days before the October 5, 2021 hearing. A.R. p. 9. By this point, however, there were already existing comments, concerns, and objections from the Association, homeowners, and other interested parties, which were included with the notice. R. p. 1030. Hundreds of pages of comments were submitted to the Board, along with twelve letters from the Association. R. p. 1030. The Staff report analyzed nearly all of the arguments raised by these public comments, and explained Staff's position on each issue. A.R. pp. 21-49. The Board acknowledged its review of the Staff report and public comments. A.R. pp. 1608-1609. On these facts, the District Court correctly concluded that there was "adequate opportunity to be heard," and the preservation rule precluded any arguments not raised to the Board. R. pp. 1030, 1120.

5. Petitioners present no law making the District subject to a preservation rule.

Petitioners argue the District Court unevenly applied the preservation rule and should have

precluded Respondents from responding to Petitioners' constitutional challenges because the Staff report did not analyze those issues. Opening Brief pp. 31-34. The District Court addressed this argument in its Rehearing Decision, finding it had not applied the preservation rule unequally, that there might be "offensive" arguments the District could be prevented from making, but that the District could *defend* against the constitutional challenges though District Staff had not analyzed the issues, finding the issues beyond those presented to the Board for decision. R. pp. 1120-1121.

Respondents note that neither Petitioner nor the District Court has identified law for the proposition that an agency or government body like the District must analyze and respond to every public comment submitted in advance of a public meeting, in writing, in order to later defend itself should its decision be appealed.[4] That rule would be quite burdensome for government entities. Nonetheless, Respondents agree with the ultimate conclusion that Respondents did not have to

[4] Petitioners state that "[t]he cases cited by the District Court in support of the imposition of the preservation rule apply that rule to both sides – that is, to both the governmental agency and to its opposing party. R pp. 1028-1029." Opening Brief p. 33. This is incorrect; none of the cases imposed the preservation rule on an agency in a judicial review proceeding. *See Burns Holdings, LLC*, 147 Idaho at 662, 214 P.3d at 648 (finding no statute authorizing judicial review, and not addressing preservation); *Ater v. Idaho Bureau of Occupational Licenses*, 144 Idaho 281, 283, 160 P.3d 438, 440 (2007), *overruled by City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012) (reviewing a decision from The Board of Professional Counselors and Marriage and Family Therapists, and not addressing preservation); *State v. Castrejon*, 163 Idaho 19, 20, 407 P.3d 606, 607 (Ct. App. 2017) (considering whether the State of Idaho, as prosecutor in a criminal action, had preserved an appeal issue by making the argument to the district court); *In re Idaho Dep't of Water Res. Amended Final Ord. Creating Water Dist. No. 170*, 148 Idaho at 206, 220 P.3d at 324 (objection that hearing was not recorded was not raised to IDWR was waived, explaining "a proper objection to the record would have provided IDWR with an opportunity to reconsider the sufficiency of the record, and at a minimum would have preserved the issue for appeal."); *Whitted v. Canyon Cnty. Bd. of Comm'rs*, 137 Idaho 118, 121, 44 P.3d 1173, 1176 (2002) (parties who objected to conditional use permit waived their argument that they should have been able to present surrebuttal because they did not request surrebuttal).

analyze the constitutional issues raised in certain letters by the Association in order to defend this appeal. The District Court's decision not to consider the IDIFA argument should be upheld.

C. The District Court did not err in affirming approval of the Town Homes #9 Project and Town Homes #11 Project because the Fronting Exclusion does not apply.

While the CID Act's definition of "community infrastructure" is quite inclusive, reciting numerous facilities and improvements that fall within its scope, it also contains an exclusion. "Community infrastructure excludes public improvements fronting individual single-family residential lots." I.C. § 50-3102(2). This is the "**Fronting Exclusion**," and Petitioners argue that the 2021 Resolutions violate the Fronting Exclusion because "most of the projects" approved by the Board fall within this exclusion. Opening Brief p. 34. The District Court disagreed. It first found the Fronting Exclusion ambiguous, but ultimately concluded that the word "individual" in the Fronting Exclusion means it does not exclude improvements that front *multiple* single-family residential lots. R. pp. 1034-1040. There is another reason none of the improvements are "fronting" any single-family residential lots. "Fronting" entails adjacency or physical contact between parcels and, here, the townhomes and the improvements are separated by parcels of common area owned by the Harris Ranch Master Association, and are thus not "fronting" one another.

1. The improvements are not fronting "individual" single-family residential lots.

Statutes must be "construed as a whole without separating one provision from another." *Izaguirre v. R&L Carriers Shared Servs., LLC,* 155 Idaho 229, 234, 308 P.3d 929, 934 (2013). In similar fashion, the Court should 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). Rather, "[s]tatutes must be read to give effect to every word, clause and sentence." *Wright v.*

Willer, 111 Idaho 474, 476, 725 P.2d 179, 181 (1986). "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." *Sweitzer*, 118 Idaho at 572, 798 P.2d at 31. The CID Act provides that sidewalks, landscaping, parks, bike lanes, roads, water lines, wastewater collection, stormwater collection, street lighting, and signage improvements are all expressly *included* in the definition of "community infrastructure." I.C. §§ 50-3102(2); 67-8203(24). This Court should, therefore, interpret the Fronting Exclusion by seeking to harmonize and reconcile it with the remainder of the "community infrastructure" definition. *Sweitzer*, 118 Idaho at 572, 798 P.2d at 31.

Again, the Fronting Exclusion states: "[c]ommunity infrastructure excludes public improvements fronting *individual* single-family residential lots." I.C. § 50-3102(2) (emphasis added). "Individual" is a word in the Fronting Exclusion that Petitioners seek to ignore, now arguing that "individual" is superfluous because, according to their quick Google search,[5] "single-family residential lots" and "individual single-family residential lots" mean the same thing. Opening Brief p. 37. Respondents, and the District Court, disagree. The word "individual" has meaning, and it ultimately plays a crucial role in harmonizing the Fronting Exclusion with the remainder of the "community infrastructure" definition.

"Individual" is used in the Fronting Exclusion as an adjective, modifying the noun "lots."

[5] Respondents object to Petitioners' footnote citation to a web address for a Google search. Opening Brief p. 37, n. 37. This citation is neither a factual citation to the Administrative Record nor could it constitute a citation to any sort of legal authority and should be disregarded.

Indeed, all of the words "individual single-family residential" are adjectives modifying "lots." "Single-family residential" is a common phrase used in zoning and land use to designate areas that consist of lots with residential structures occupied by a single family.[6] In that regard, "single-family residential" is a compound adjective modifying "lots." However, the other adjective, "individual," immediately precedes this compound adjective and also serves to modify "lots."

There is significance to the word "individual." In preventing reimbursement for improvements fronting *individual* single-family residential lots, the Legislature sought to avoid reimbursement for those improvements that benefit only a single lot owner. In other words, the Fronting Exclusion was meant only to prevent the scenario where the entire District is paying for an improvement that benefits a single residential lot. Contrary to Petitioners' argument that "individual" can be ignored and left without meaning, the Court's own precedent requires it to ascribe some meaning to the term. *Wright*, 111 Idaho at 476, 725 P.2d at 181 ("[s]tatutes must be read to give effect to every word, clause and sentence."); *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007) ("effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant"). It should not be presumed that the Legislature placed a meaningless word in the statute, or that "individual" can simply be absorbed into the subsequent adjective—"single-family residential." If that were so, "individual" would be rendered surplusage, which is contrary to Idaho law. *Sweitzer*, 118 Idaho at 572, 798 P.2d at 31.

Respondents' interpretation of the Fronting Exclusion is the only interpretation that

[6] *See e.g.* Boise City Code §§ 10-4-1-6 and 11-02-07(1)(E)(f).

accounts for every term in the statute. It also harmonizes and reconciles the Fronting Exclusion with the rest of the definition of "community infrastructure," such that what is *included* in that definition is not swallowed up by what is *excluded*. *Sweitzer*, 118 Idaho at 572, 798 P.2d at 31. The District Court agreed that the Fronting Exclusion only applied to improvements fronting on "single or particular single-family residential lots." R. p. 1038.

Petitioners argue that, had that been the Legislature's intention, it would not have referred to "lots" in the plural form, but would have simply stated that the definition excludes "improvements fronting on ***a*** individual single-family residential ***lot***." Opening Brief p. 37 (emphasis in original). The District Court disagreed, explaining that Petitioners' interpretation:

> overlooks the fact that the entire sentence, which concerns "public improvement**s**," is written in the plural[7] 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."

R. p. 1038 (emphasis in original).

When interpreted correctly, the Fronting Exclusion serves harmoniously as one of two bookends to CID authority that appear in the first two sentences of the "community infrastructure" definition. The first sentence states that "'community infrastructure' means improvements that have a substantial nexus ***to the district*** and directly or indirectly benefit ***the district***." I.C. § 50-

[7] Petitioners' other example sentences suffer from this same flaw. Opening Brief p. 36.

3102(2) (emphasis added). Thus, the definition begins by requiring that an improvement to be financed by a CID must be tethered to that CID by having a substantial nexus to it and benefitting it in some way. The second sentence then creates the second bookend on CID authority, stating that "[c]ommunity infrastructure excludes public improvements fronting individual single-family residential lots." I.C. § 50-3102(2). In other words, CID residents cannot be made to finance a sewer line to an individual residence.

Should the Court find the Fronting Exclusion ambiguous on this particular point, as did the District Court, the legislative history is instructive. Extrinsic evidence such as legislative history should be consulted only if the statute is ambiguous. *Robison v. Bateman-Hall, Inc.*, 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). When a sponsor of the CID Act was asked about the Fronting Exclusion, his answer was consistent with Respondents' interpretation:

> 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. p. 952 (*Minutes of H. Revenue and Taxation Comm.*, 61st Leg. 2 (March 6, 2008) (emphasis added)).[8] Thus, Mr. Pisca stressed, the purpose of a CID is to fund infrastructure that benefits the

[8] Petitioners rebut this excerpt from the CID Act's legislative history by arguing that the testimony summarized here was unrelated to the Fronting Exclusion. Opening Brief pp. 39-40. This argument is inconsistent with the legislative history. The quote begins with a member of the committee asking for clarification on "what is *excluded* from community infrastructure." Undoubtedly, that question was asking for clarification on what we have come to refer to as the Fronting Exclusion, which is contained in the definition of "community infrastructure." It is the only specific exclusion from the definition of "community infrastructure."

entire community, and not infrastructure that benefits a single lot owner. The District Court put it similarly: "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." R. p. 1040. Streets or sewer or other utility connections to individual homes are a perfect example of the kind of infrastructure that would not be considered "*community* infrastructure," as such improvements would be "fronting individual single-family residential lots" and serving only one lot.

If the roadways, storm drains, sewers, and sidewalks built for the Projects here are fronting single-family residential lots at all, they are fronting *multiple* single-family residential lots. A.R. pp. 497 and 700. None of these improvements are fronting just one lot, but instead front many lots and benefit the entire District. Accordingly, the Fronting Exclusion does not apply.

2. "Fronting" requires adjacency or physical contact between parcels.

The second reason the Fronting Exclusion does not apply to the Projects is because none of the improvements made in the Projects are "fronting" or "touching" any single-family residential lots. The District Court did not address this argument because it adopted the argument set forth above. But, even if this Court agrees with Petitioners on the issue of "*individual* single-family residential lots," the Court should still affirm the District Court's decision that the Fronting Exclusion does not apply to the Projects. *Kosmann v. Gilbride*, 161 Idaho 363, 366, 386 P.3d 504, 507 (2016) ("When a judgment on appeal reaches the correct conclusion, but employs reasoning contrary to that of this Court, we may affirm the judgment on alternate grounds.").

"Fronting" is not defined in the CID Act or elsewhere in the Idaho Code. Statutory

interpretation "must begin with the literal words of the statute," and "those words must be given their plain, usual, and ordinary meaning." *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). If a statute is unambiguous, a court does not "construe it, but simply follows the law as written." *Id*. (citations omitted).

To define "fronting," Petitioners turn to general dictionary definitions and "corpus linguistics." Opening Brief pp. 41-43. By its nature, corpus linguistics is a broad and general method of interpretation because it "look[s] at the way words are used across a large body of sources." *State v. Lantis*, 165 Idaho 427, 432, 447 P.3d 875, 880 (2019).[9] Relying on these sources, Petitioners argue that "fronting" does not require physical contact or adjacency between parcels, but merely means "in front of" or "facing," such that a property "facing" an improvement is "fronting on" that improvement. Opening Brief pp. 41-43.

Petitioners' approach—looking broadly to generic definitions or how "fronting" is used in a variety of unrelated contexts—is the wrong approach. "Fronting" is a technical term in the development industry and within the context of real property. Guidance for statutory interpretation of such terms is provided in Idaho Code section 73-113 which reads, in pertinent part:

(3) Words and phrases are construed according to the context and the approved

[9] The concurring opinion in *Lantis* raises questions regarding whether corpus linguistics should be used as an interpretive tool, how it should be used, and how the results of a database search should be interpreted. 165 Idaho at 433, 447 P.3d at 881 (Burdick, C.J., concurring). These same concerns arise with regard to Petitioners' use of corpus linguistics here. In particular, Petitioners have not produced any sort of report or analysis interpreting the results of their corpus linguistics search. Rather, they included a screenshot of search results for the term "fronting," with only limited information on the context of that term's use, its frequency, or the meaning applied in each use, and with portions of the search results cut off. R. pp. 728-764. As seen in the screenshot, the results from Petitioners' search vary wildly depending on the context of the term's use and amount to nothing more sophisticated than a Google search.

> 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(3). This Court has likewise explained that "[i]n construing a statute, words and phrases are to be assumed to have been used in their popular sense, *if they have not acquired a technical meaning*." *Meader v. Unemployment Compensation Div. of Indus. Accident Board*, 64 Idaho 716, 136 P.2d 984, 986 (1943) (emphasis added). Thus, the term "fronting," as used in the CID Act, should be defined consistent with its use in the context of land use, development, and assessments on real property.

Sources operating within this context define the term "fronting" as involving adjacency or physical contact between parcels, and the term is often equated with synonyms like "abutting" or "adjoining," which likewise denote physical contact.[10] Black's Law Dictionary historically defined "fronting" and "abutting" in the same entry, and explains how that term is to be understood in the context of statutes like the CID Act:

> Fronting and Abutting: "Very often, 'fronting' signifies abutting, adjoining, or bordering on, depending largely on the context. *As used in statutes relating to assessment for improvements, property between which and the improvement there is no intervening land.*"

[10] For instance, the Boise City Code equates "fronting" with adjacency or similar terms like "abutting." It defines "Lot, Frontage" as "[t]hat portion of a lot that *abuts* a public right-of-way or other access." Boise City Code § 11-06-03 (emphasis added). Previously, Petitioners have argued that this language from the Boise City Code is not conclusive on the question of whether "fronting" requires something to be "abutting." R. pp. 924-5. But the fact alone that the term "abut" is a necessary part of the definition of "frontage" is conclusive enough of the latter's relationship with the former.

Fronting and Abutting, BLACK'S LAW DICTIONARY (revised 4th ed. 1968) (emphasis added); *see Fronting and Abutting*, BLACK'S LAW DICTIONARY (6th ed. 1990).[11] In one Idaho case, the court held that a property owner challenging the vacation of certain public streets could not do so unless the owner's property abutted the streets being vacated. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830, 833-34 (1911). The court approvingly quoted from two Missouri cases that reached the same conclusion, while using the terms "fronting" and "abutting" interchangeably:

> In *Glasgow v. St. Louis*, 107 Mo. 198, 17 S. W. 743, it is said: "There is no doubt but a property owner has an easement in a street upon which property abuts which is special to him, and should be protected; but here the plaintiffs own no property fronting or abutting on the part of the street which was vacated. Their property is surrounded by streets, not touched or affected by the vacating ordinance. They will be obliged to go a little further to reach Twelfth street, but that is an inconvenience different in degree only from that suffered by all other persons, and it furnishes no ground whatever for injunctive relief."
>
> In *Knapp, Stout & Co. v. St. Louis*, 153 Mo. 560, 55 S. W. 104, the court said: "Moreover, to entitle plaintiff to relief as an adjoining proprietor, it devolved upon it to allege and prove that it owned property fronting or abutting on the part of the street which the ordinance in question vacated."

Id. Other Idaho courts have likewise used the term "fronting" in a manner synonymous with

[11] Petitioners have previously criticized Respondents' reliance on these earlier versions of Black's Law Dictionary. R. pp. 922-3. The current version of Black's Law Dictionary does not define "Fronting and Abutting" together as it used to. But it does define the noun "Frontage" as "1. The part of land ***abutting*** or lying between a building's front and a street, highway, or body of water[.]" *Frontage*, BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added). And it defines "Abut" as "[t]o join at a border or boundary; to share a common boundary with[.]" *Abut*, BLACK'S LAW DICTIONARY (11th ed. 2019). The definition of "abutting property" refers to the definition of "adjoining property," which in turn is defined as "[a] property that is immediately next to another property." *Abutting Property*, BLACK'S LAW DICTIONARY (11th ed. 2019); *Property (adjoining property)*, BLACK'S LAW DICTIONARY (11th ed. 2019). Thus, even the current definition of "frontage" contemplates immediate adjacency.

"abutting" or "adjacent to," or to otherwise denote a common shared boundary between two properties by indicating the length of that common boundary.[12] Further, law regarding local improvement districts ("**LIDs**") provides further insight on how the term "fronting" should be interpreted here.[13] Unlike Petitioners' interpretation, Respondents' interpretation of the Fronting Exclusion properly takes into account the context in which the term "fronting" is used.

[12] *Stockton v. Herron*, 3 Idaho 581, 32 P. 257 (1893) (discussing number of feet by which certain lots were "fronting" on an avenue); *Hilleary v. Meyer*, 91 Idaho 775, 430 P.2d 666 (1967) (mentioning how one property was "fronting for two hundred feet on Priest Lake" and another was "fronting" for eighty feet); *Bayhouse v. Urquides*, 17 Idaho 286, 105 P. 1066, 1067 (1909) (a strip of land depicted in a plat was "fronting on Main street" and "fronting on the alley" between two streets); *Hughes v. State*, 80 Idaho 286, 290, 328 P.2d 397, 398 (1958) ("appellants maintained two points of access to their property for business purposes, one fronting South Railroad Avenue, and one fronting Third Street") *overruling on other grounds recognized by Moon v. North Idaho Farmers Ass'n*, 140 Idaho 536, 96 P.3d 637 (2004); *City of Orofino v. Swayne*, 95 Idaho 125, 126, 504 P.2d 398, 399 (1972) ("390 feet of land fronting on the old highway"); *Redway v. Moore*, 2 Idaho 1036, 29 P. 104 (1892) ("property adjacent to and fronting upon Main street"); *Payette Lakes Protective Ass'n v. Lake Reservoir Co.*, 68 Idaho 111, 118, 189 P.2d 1009, 1012 (1948) ("property fronting upon and having beaches along the shores of the Lake").

[13] Similar to CIDs, LIDs are a means by which assessments may be levied on real property to pay for local improvements. I.C. § 50-1703(b). In the context of LIDs, the term "fronting" is used to denote adjacency to or a common, shared boundary with an improvement. For example, one method for calculating the amount to be assessed against each property in an LID is called the "front-foot method." *See* I.C. § 50-1707(c). The front-foot method is "a method by which the entire cost of an improvement, or such part thereof as is assessed against abutting property, is imposed on, and apportioned to, *abutting property according to the frontage thereof on the improvement*. . . . 64 C.J.S. Municipal Corporations § 1574 (2021) (emphasis added). Thus, "fronting" in the similar context of LIDs is used in a manner synonymous with "abutting." *See generally Ward v. Ada County Highway Dist.*, 106 Idaho 889, 684 P.2d 291 (1984) (discussing LID assessments made on abutting properties via the front-foot method); *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723, 724 (1921) (discussing a former version of the LID statute, the front-foot method, and associating "fronting" with "abutting").

3. Petitioners' interpretation of the Fronting Exception is overly broad and unworkable in practice.

Petitioners conclude that "fronting" "is commonly understood to mean facing or in front of." Opening Brief p. 43. Petitioners' interpretation of "fronting" creates more questions than it resolves.[14] Currently, there are 12-foot common area lots between the townhome lots and the roadways included in the Projects. A.R. pp. 700, 1189. If the Court were to decide that these roadways are "fronting" individual single-family residential lots because these improvements are "in front of" or "facing" the lots, the question arises: how large would an intervening property need to be in order for an improvement to remain outside of the Fronting Exclusion?

For instance, if a park was built across the street from single-family residential lots, would it be "fronting" on those lots simply because the homes on the lots are facing it? Petitioners would answer in the affirmative, barring the park even though "parks" are a form of public facility expressly included in the definition of "community infrastructure." I.C. §§ 50-3102(2) and § 67-8203(24)(e). The only limiting principle that Petitioners proposed to the District Court to their otherwise unreasonably broad definition of "fronting" is that it only relates to improvements "***directly*** in front of" residential lots. R. p. 929 (emphasis in original); Opening Brief p. 45. But "directly" does not suggest a distance, and so the problem remains unresolved. If this Court were

[14] Courts outside Idaho have addressed and rejected Petitioners' argument that "fronting" merely denotes "facing" or "in front of." *See Federici v. Borough of Oakmont Zoning Hearing Bd.*, 136 Pa.Cmwlth. 310, 583 A.2d 15 (1990), *appeal dismissed*, 531 Pa. 454, 613 A.2d 1205 (1992) (in real property context, fronting involving abutting); *Leary v. Pepperidge Farm, Inc.*, 2009 WL 2426345 (N.J. Super. Ct. App. Div. Aug. 10, 2009) (explaining that "New Jersey case law typically uses 'fronting' to indicate that a lot is adjacent to a road, with no regard to the orientation of the building on that lot.").

to adopt the interpretation that improvements located "in front of" or "facing" individual single-family residential lots are ineligible, the Fronting Exclusion could potentially disallow a significant amount of infrastructure otherwise identified as eligible under the CID Act—because much of the infrastructure could face single-family residential lots. As the District Court pointed out, based on the broad definition of "community infrastructure," the "Petitioners' interpretation of the Fronting Exclusions would result in the exception effectively swallowing the rule." R. pp. 1039-1040.

The fact that "fronting" necessarily entails adjacency or physical contact between parcels is significant because the improvements constructed for the Projects here are not adjacent or physically touching any individual single-family residential lots. Instead, per the plats, the townhome parcels are separated from the actual roadways by "common lot" parcels. A.R. pp. 700-701 (Town Homes #9 Project) and 1185-1191 (Town Homes #11 Project). The townhomes do not have direct access to the improved roadways, and are accessed via alleys that wrap around the lots. Because none of the townhome lots (or any other single-family residential lots) are adjacent to, abutting, or physically touching the improvements for the Projects, the Fronting Exclusion does not apply to prevent reimbursement for these improvements.

D. The District Court did not err in affirming approval for the South Stormwater Facilities portion of the Town Homes #11 Project because the project meets the requirements of the CID Act.

The Town Homes #11 Project included a reimbursement request for large stormwater ponds on the southern edge of the District (previously defined as the "South Stormwater Facilities"). A.R. pp. 36-40, 1005. The South Stormwater Facilities were designed as a stormwater collection and detention area for a large part of the District. A.R. p. 1406.

With regard to the South Stormwater Facilities, Petitioners concede that "[s]tormwater ponds and related facilities are essential to prevent flooding when you cover hundreds of acres of former pastureland with streets, sidewalks, driveways, patios, homes, and other hard surfaces, and thus were required as a condition of the development." Opening Brief p. 16. Petitioners do not assert that the South Stormwater Facilities improvements do not meet the definition of "community infrastructure" under Idaho Code section 50-3102(2), and the definition of "public facilities" under the section of IDIFA referenced therein, Idaho Code section 67-8203(24)(d) ("Stormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements").

Petitioners, however, argue that the South Stormwater Facilities improvements should not have been approved for reimbursement by the District because the Developer retains ownership of the underlying fee. Opening Brief pp. 45-50. This argument ignores the nature of the permanent exclusive easement in favor of a governmental entity, the Ada County Highway District ("**ACHD**"), and it was properly rejected by the District Court. R. pp. 1040-1046.

1. The CID Act requires community infrastructure to be publicly owned.

Petitioners are correct that 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." I.C. § 50-3101(2); *see* I.C. § 50-3107(1). Critically, the definition of "community infrastructure" includes "[a]cquiring interests in real property for community infrastructure." I.C. § 50-3102(2)(e). Petitioners, consistent with their argument that IDIFA provides the definition of "community infrastructure," completely ignore Idaho Code section 50-3102(2)(e) in their South

Stormwater Facilities argument. Opening Brief pp. 45-50. The CID Act does not define "interests" in this context, but the language is clear that "community infrastructure" is not limited to infrastructure where fee ownership occurs. It is also clear that an easement constitutes an interest in real property. *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007) ("An express easement, being an interest in real property, may only be created by a written instrument."); *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012) (same); *Bob Daniels & Sons v. Weaver*, 106 Idaho 535, 541, 681 P.2d 1010, 1016 (Ct. App. 1984) ("…easements are interests in real property").

Consistent with the CID Act's definition of community infrastructure as including interests, the District is empowered to, among other things, "acquire interests in real property and personal property for community infrastructure, within or without the district…." I.C. § 50-3105(1)(d). Petitioners ignore this statute too. Opening Brief pp. 45-50. In the same statute regarding District powers, the CID Act provides that "[c]ommunity infrastructure other than personalty, 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. § 50-3105(2) (emphasis added). Thus, "community infrastructure" may be located within easements.

2. The South Stormwater Facilities improvements meet the public ownership requirement of the CID Act.

In considering Petitioners' South Stormwater Facilities argument, the District Court looked to these statutory provisions and also the language of the Permanent Easement itself. R. pp. 1040-1046. The Permanent Easement granted ACHD a permanent exclusive easement on, over, and

across approximately 6.43 acres of real property owned by Barber Valley Development, Inc. for use by the public and the following uses and purposes:

> (a) placement of public rights-of-way…;
> (b) construction, reconstruction, operation, maintenance and placement of a Highway…and any other facilities or structures incidental to the preservation or improvement of the Highway including storm water facilities located on Exhibit A…;
> (c) statutory rights of ACHD, utilities and irrigation districts to use the Highway and/or Public Right-of-Way.

A.R. pp. 1018-1019. The Permanent Easement is an easement appurtenant, with ACHD as the dominant estate. A.R. pp. 1018-1019. As this Court has explained:

> The difference between an easement appurtenant and an easement "in gross" is summed up as follows:
>
> An easement ... "appurtenant" is one whose benefits serve a parcel of land. More exactly, it serves the owner of that land in a way that cannot be separated from his rights in the land. It in fact becomes a right in that land and, as we shall see, passes with the title. Typical examples of easements appurtenant are walkways, driveways, and utility lines across Blackacre, leading to adjoining or nearby Whiteacre.
>
> Easements ... "in gross" are those whose benefits serve their holder only personally, not in connection with his ownership or use of any specific parcel of land.... Examples are easements for utilities held by utility companies, street easements, and railroad easements.

Abbott v. Nampa Sch. Dist. No. 131, 119 Idaho 544, 550, 808 P.2d 1289, 1295 (1991).

The fact that ACHD left certain maintenance requirements with the servient estate holder (the Developer) instead of assuming those obligations itself does not negate the fact that ACHD has the legal right to construct and maintain a highway, rights-of-way, structures, and facilities within the easement area. A.R. pp. 1018-1019. And, ACHD has the right, among other things, to

operate the stormwater facilities within the Permanent Easement as the dominant estate. A.R. pp. 1018-1019. As the District Court pointed out, the Developer ceded control of the land burdened by the Permanent Easement to ACHD and cannot interfere with ACHD's easement rights. R. p. 1045 (citing *Nampa & Meridian Irr. Dist. v. Mussell*, 139 Idaho 28, 33, 72 P.3d 868, 873 (2003) (finding the owners of the servient estate "could use their property in any manner not inconsistent with, or which did not materially interfere with, the [dominant estate's] use of its easement").

As such, even though the Developer retained fee ownership, the fee is encumbered by the Permanent Easement to such a degree that ACHD has exclusive control over the premises, except that the Developer may perform certain maintenance (though even certain heavy maintenance must be done at ACHD's direction). A.R. p. 1019. Furthermore, the Permanent Easement provides: "GRANTOR covenants to ACHD that ACHD shall enjoy the quiet and peaceful possession of the Servient Estate…." A.R. p. 1020.

Notwithstanding the language of the Permanent Easement, Petitioners argue that the South Stormwater Facilities are somehow separate from the underlying land, even though Petitioners explain how the improvements are constructed within the land itself. Opening Brief pp. 46-47. Petitioners again rely on documents outside the Administrative Record which should not be considered. Opening Brief p. 47, n. 45 (citing to a Wikipedia web page concerning hydrodynamic separators); Opening Brief p. 47, n. 46 (citing to page 27 of the Petitioners' Brief to the District Court, where no record is cited regarding the perpetual right of easement for the Idaho Power Corridor, only case law). With regard to documents Petitioners cited in the Administrative Record, those documents do reflect the significant construction undertaken with regard to the

improvements. Opening Brief p. 47 (citing A.R. pp. 1057-1061, 1128-1191). The District Court correctly found that Petitioners' argument "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." R. p. 1044.

Petitioners also argue that ACHD has almost no ownership attributes in the South Stormwater Facilities, so ACHD's Permanent Easement does not amount to public ownership of the improvements. Opening Brief pp. 47-50. There is nothing "illusory" about the conveyance of rights to ACHD in the Permanent Easement, at Petitioners suggest. Opening Brief pp. 48, 49. Their argument ignores the specific language of the Permanent Easement reflecting ACHD's ownership of the Permanent Easement, its possessory rights, and control of essentially all but the fee itself. The argument also relies on documents outside the Administrative Record. Opening Brief p. 48, n. 47 (citing to the online ACHD Policy Manual for the proposition that the South Stormwater Facilities are a passive system and do not require ongoing operation). To find that ACHD "cannot construct, reconstruct, operate, or maintain a 'highway' on the property," and cannot take multiple other actions as Petitioners suggest (Opening Brief p. 48), this Court would need to ignore the language of the Permanent Easement, which says exactly the opposite. A.R. pp. 1018-1019.

Petitioners also argue that only an "unlimited" easement is tantamount to ownership. Opening Brief p. 49. Although *Viebrock v. Gill* stated that "[a]n unlimited easement is virtually a conveyance of ownership, rather than an easement," the Court did not find that only an "unlimited" easement is tantamount to ownership. 125 Idaho 948, 953, 877 P.2d 919, 924 (1994). The *Viebrock* court even explained the extent to which exclusive easements, like the Permanent Easement to

ACHD, burden the servient estate: "[b]ecause an exclusive right to an easement effectively strips the servient estate owner of the right to use his or her land for certain purposes, thus limiting his or her fee, exclusive easements are not generally favored by the courts. Of course, the parties may agree to create an exclusive easement." *Id.* at 952, 877 P.2d at 923. As such, *Viebrock* does not support Petitioners' position. Nor do *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401, (1949) (addressing non-conforming use challenge to a zoning ordinance), or *Herndon v. City of Sandpoint*, 172 Idaho 228, 531 P.3d 1125 (2023) (addressing a constitutional challenge to a firearm regulation and a related leasing issue), neither of which discussed the nature of easements, let alone exclusive easements. *See* Opening Brief p. 49.

The District Court, reading the applicable provisions of the CID Act, found that "[w]hen 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." R. p. 1044. This was appropriate. *State v. Smalley*, 164 Idaho 780, 784, 435 P.3d 1100, 1104 (2019), *holding modified on other grounds by State v. Roman-Lopez*, 171 Idaho 585, 524 P.3d 864 (2023) ("Provisions should not be read in isolation, but rather within the context of the entire document. Thus, the statute must be considered as a whole, with words being given their plain, usual, and ordinary meanings. The Court must give effect to all the words in the statute so that none will be void or superfluous.") (internal citations omitted). The District Court correctly found that ACHD's ownership of the Permanent Easement, in which the South Stormwater Facilities are located, satisfied the public ownership requirement.

E. The District Court did not err in finding that many of Petitioners' challenges are jurisdictionally barred by the unambiguous language of Idaho Code section 50-3119.

"A party's right to 'appeal' an administrative decision, i.e., to obtain judicial review, is governed by statute." *Burns Holdings, LLC*, 147 Idaho at 662, 214 P.3d at 648. A petition for judicial review is not a civil action. *Euclid Ave. Tr. v. City of Boise*, 146 Idaho 306, 309, 193 P.3d 853, 856 (2008). Rather, judicial review is a separate creature and is subject to its own procedures. *See generally* Idaho R. Civ. P. 84. "The separation of civil actions and administrative appeals is supported by good policy underpinnings. After all, one proceeding is appellate in nature and the other is an original action. They are processed differently by our courts." *Euclid Ave. Tr.*, 146 Idaho at 309, 193 P.3d at 856; *accord Burns Holdings, LLC*, 147 Idaho at 662, 214 P.3d at 648 ("When a district court entertains a petition for judicial review, it does so in an appellate capacity."). "Judicial review of an administrative decision is wholly statutory; there is no right of judicial review absent the statutory grant." *Cobbley v. City of Challis*, 143 Idaho 130, 133, 139 P.3d 732, 735 (2006). "Thus, a party's failure to physically file a petition for judicial review with the district court within the time limits prescribed by statute and the Rules of Civil Procedure is jurisdictional and results in a dismissal of the appeal." *Id.* This legal framework and the unambiguous language of the CID Act requires rejection of Petitioners' request to challenge historical District decisions. Opening Brief pp. 50-54.

1. The CID Act's sixty-day appeal period is unambiguous and bars any challenge not pursued within the appeal period.

The CID Act provides for judicial review of certain decisions, provided the appeal is brought within 60 days of the decision:

> 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. …

I.C. § 50-3119 (emphasis added). Accordingly, Section 50-3119 only authorizes appeals of District decisions brought within sixty days of a decision. After expiration of the sixty days, there is no statutory authorization for judicial review.

After the appeal period runs, the decision is shielded from legal challenge:

> … *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). Accordingly, the only decisions that could be challenged in this proceeding are the 2021 Resolutions, and not because of an alleged problem with a historical decision that is itself now insulated from challenge by the statute.

Petitioners have only sought review of the 2021 Resolutions, but they rely on a distorted analysis of Section 50-3119 to support their position that the District Court could consider and even invalidate decisions spanning more than a decade. These arguments fail because they are contrary to the plain language of Section 50-3119.

2. Idaho Code section 50-3119 prohibits Petitioners' challenges to numerous decisions made in the past.

Petitioners argue that the District Court improperly found that they could not challenge past decisions that were not appealed within the statutory period for judicial review. Opening Brief pp. 50-54. Because Petitioners do not explicitly come out and say which past decisions they want to be able to challenge at any time, and instead refer vaguely to challenging "prior approvals" of the District, some background is necessary to explain why the Court arrived at the decision it did. Opening Brief p. 50; R. pp. 1024-1028.

Petitioners asked the District Court to entertain numerous challenges to the 2021 Resolutions based on the alleged illegality of *past* decisions that are themselves protected from challenge under Section 50-3119. For instance, Petitioners argued the 2021 Resolutions were unlawful because the formation of the District in 2010 was illegal. R. pp. 681-682. Similarly, Petitioners argued the 2021 Resolutions were unlawful because of how the boundaries of the District were amended in 2010. R. pp. 700-703. They also argued the 2021 Resolutions were unlawful because the 2010 general obligation bond election was unlawful. R. pp. 634-636; 683-692. Finally, Petitioners sought to challenge past projects and the approval of the Interest Project, not because the interest calculation on the past projects was incorrect (which was the only issue presented to the Board in October of 2021), but because the District's past approvals of the infrastructure projects underlying the Interest Project were allegedly unlawful for various reasons. R. pp. 636-645, 668-674, and 676-679.

Similar to their argument to the District Court, Petitioners argue that so long as they challenge a new District decision within 60 days, they can raise any legal argument whatsoever—including a challenge to the current authority of the District based on a perceived flaw in a District

decision made years ago. Petitioners argue that "[a]s long as the challenge is brought within 60 days, the CID Act places no limits on the grounds that can be asserted." Opening Brief p. 51. This perspective completely ignores the second half of Section 50-3119, which *does* place a limit on challenging past decisions, providing that after the 60-day appeal period passes, "no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever…." I.C. § 50-3119; *see Smalley*, 164 Idaho at 784, 435 P.3d at 1104 (statute must be "considered as a whole" and the "Court must give effect to all the words in the statute so that none will be void or superfluous").

The District Court correctly found that Petitioners' position, if accepted, would render the limitations in Section 50-3119 meaningless. In the Judicial Review Decision, the District Court reiterated its reasoning first set forth in its Record Decision, in which it had refused to add numerous historical documents to the Administrative Record as requested by Petitioners to support their challenges to past decisions:

> When Idaho Code section 50-3119 is read in whole and in context it sets forth: l) 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.
> …
> The Court declines to reconsider this portion of its prior ruling and will not consider challenges to the District's formation or past final decisions.

R. p. 1027.

With regard to the Interest Project specifically, the District Court then found that the District's consideration of whether interest was due did not open the door for the District Court to examine past final decisions, explaining:

> 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.

R. pp. 1050-1051. The District Court's reasoning was right and should be upheld by this Court. Significantly, Petitioners have provided no Idaho law in the context of judicial review which supports their theory that the statutory appeal period should be "liberally construed" to allow challenges to past decisions. Opening Brief pp. 52-53 (citing out-of-state cases, as well as inapposite Idaho cases not addressing judicial review proceedings[15]).

[15] *See Eller v. Idaho State Police*, 165 Idaho 147, 156, 443 P.3d 161, 170 (2019) (considering the extent of damages available under Idaho's Whistleblower Act); *Hill v. Am. Fam. Mut. Ins. Co.*, 150 Idaho 619, 625, 249 P.3d 812, 818 (2011) (considering whether uninsured motorist exhaustion clause violated public policy); *Latham v. Haney Seed Co.*, 119 Idaho 427, 429, 807 P.2d 645, 647 (Ct. App. 1990), *rev'd*, 119 Idaho 412, 807 P.2d 630 (1991) (determining which of two statutes of limitations were applicable to claim for breach of employment agreement involving life insurance

Judicial review is a creature of Idaho statute, and appeal periods are established by the Idaho Legislature and enforced by Idaho courts. *Cobbley*, 143 Idaho at 133, 139 P.3d at 735. There is nothing "absurd" about enforcing appeal periods, as Petitioners suggest. Opening Brief pp. 53-54. Consistent with the language of Section 50-3119, Petitioners could challenge the decisions made by the District in 2021, and not on the basis that decisions made in prior years were unlawful.

F. The District Court's interpretation of Idaho Code section 50-3119 does not result in the deprivation of Petitioners' due process rights.

Petitioners argue that the District Court's interpretation of Section 50-3119 results in a due process violation. Opening Brief pp. 54-55. They argue that because homeowners did not yet live in the District boundaries when it was formed and thus could not appeal the 2010 formation of the District and the result of the 2010 general obligation bond election, due process is somehow violated. Opening Brief pp. 54-55. Petitioners do not identify the precise property interest being violated. *See Viking Const., Inc. v. Hayden Lake Irr. Dist.*, 149 Idaho 187, 198, 233 P.3d 118, 129 (2010), *abrogated on other grounds by Verska*, 151 Idaho 889, 265 P.3d 502.

In support of their argument, Petitioners cite three Idaho cases, none of which holds that due process requires the ability to challenge historical governmental decisions under a statutory appeal process, and none of which should persuade this Court to ignore the unambiguous appeal period set forth in Section 50-3119.[16] They cite *State v. Abdullah*, in which the Court construed

policy); *Renner v. Edwards*, 93 Idaho 836, 838, 475 P.2d 530, 532 (1969) (determining when a cause of action accrued in a medical malpractice negligence action).

[16] This due process issue and these cases were not included in Petitioners' Brief to the District Court (R. pp. 612-774), though Petitioners raised the argument in their Reply Brief (R. pp. 942-944) and Memorandum in Support of Petition for Rehearing (R. p. 1105). The District Court

statutory aggravating circumstances in the context of a death penalty criminal case. 158 Idaho 386, 464, 348 P.3d 1, 79 (2015). The *Abdullah* court found it was "within its constitutional authority to narrowly construe an aggravating circumstance to avoid an unconstitutionally vague statute." *Id.* In the context of that statutory construction, the Court explained that "'[i]n choosing between two constructions of a statute, one valid and one constitutionally precarious,' the Court may 'search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent.'" *Id.* at 465, 348 P.3d at 80 (citation omitted). *Abdullah* was decided in the criminal law context and dealt with a statutory vagueness argument that does not exist in this case. *Abdullah* does not stand for the proposition that a court can ignore an unambiguous appeal period for judicial review in favor of an interpretation that would be at odds with the clear language of the statute, which is what Petitioners seek here.

Petitioners also cite *Allen v. Partners in Healthcare, Inc.*, involving a very different situation than the instant matter, where the Court analyzed whether an Idaho Industrial Commission's hearing process satisfied due process of the unemployment benefits claimant, and explained that "[t]he touchstone of due process 'is the opportunity to be heard at a meaningful time and in a meaningful manner.'" 170 Idaho 470, 480, 512 P.3d 1093, 1103 (2022), *as amended* (July

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did not analyze this argument in the Judicial Review Decision (R. pp. 1011-1074) or the Rehearing Decision (R. pp. 1111-1122), and it may be because the argument was not raised in the first brief. *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005) ("A reviewing court looks only to the initial brief on appeal for the issues presented because those are the arguments and authority to which the respondent has an opportunity to respond in the respondent's brief."); *Myers v. Workmen's Auto Ins. Co.*, 140 Idaho 495, 508, 95 P.3d 977, 990 (2004) ("this Court will not consider arguments raised for the first time in the appellant's reply brief.").

5, 2022) (citation omitted). The *Allen* court found the appeals examiner's hearing was not conducted improperly and the claimant "was provided with an opportunity to be heard at a meaningful time and in a meaningful manner." *Id. Allen* is not instructive here as it does not involve an appeal period for a judicial review proceeding.

Finally, Petitioners cite *Western Loan & Building Co. v. Bandel*, where the Court considered a situation where a local improvement district was created, but where notice of the district was not properly made on the assessment rolls and thus a seller of a property did not have notice of the district's assessment. 57 Idaho 101, 63 P.2d 159, 159-163 (1936). Based on that lack of notice, the seller was not estopped from arguing the seller's title was good and valid by virtue of not appealing the district's assessment within five days. *Id.* The Court explained why the five-day appeal period did not constitute a basis for an estoppel defense in the quiet title case:

> To hold these statutory provisions effectual to preclude a property owner who has not been named in the assessment roll, whose property has not been therein described, and who has not been shown to have had knowledge, either actual or constructive, of the assessment proceeding would make them violative of article 1, § 13 of the Constitution which expressly prohibits depriving any person of property without due process of law.
>
> Due process of law demands that the assessment roll to which the taxpayer may look for information, if it be made the basis of proceedings to deprive him of his property, must conform to the requirements of the statute which provides for the assessment and must name him, if his name is known, and if it is not known that fact must be stated; his property must be described in order that he may be advised of the purpose of the municipality to assess it and, if necessary, to sell it to raise the amount of the assessment. These requirements do not relate to mere irregularities in the assessment proceedings, they are jurisdictional and, where they have not been conformed to, the statutes providing for an appeal within five days, and making that the only remedy, cannot be made to apply.

57 Idaho 101, 63 P.2d at 163. Unlike in *Western Loan and Building Company* where the Court

found the appeal period did not preclude an equitable defense in a case between private parties, in this case the Petitioners seek to avoid the appeal period against the governing body itself.

The instant situation is also distinguishable from *Western Loan & Building Company* because here there is no record that Petitioners did not have notice of the District when they purchased their homes. As the District Court explained, although it is true that the future homeowners were not residents of the District in 2010 because the development was not yet constructed, residents of the District have record notice of the District and the related taxes when they decide to purchase homes within District boundaries. R. pp. 1016, 1054-1055, 1112-1117. And, the CID Act requires recording "with the county clerk in each county in which the district is located, upon the records of each parcel of real property within the district that will be encumbered with any future general obligation bond or special assessment bond repayment liability, a notice" setting forth various matters about the District taxes and obligations. Idaho Code § 50-3115. The District Court also pointed to sections of the Administrative Record evidencing that residents, including Petitioners Doyle and Crowley, had notice of the District before purchasing their homes (A.R. pp. 978-980); the Development Agreement (A.R. pp. 499-568); and the form of notice in the recorded Development Agreement (A.R. pp. 565-568). R. pp. 1016, 1112-1117.

For all of these reasons, the facts in this appeal are distinguishable from the facts in *Western Loan and Building Company*, and in any event, that case should not be relied upon to ignore the 60-day appeal period of Section 50-3119. To the extent this Court were to find that Section 50-3119 is ambiguous and must be construed, and that due process considerations factor into the construction, there is no due process basis upon which to construe it in the manner proposed by

Petitioners. They have failed to show that the District Court's interpretation—which simply applies the statute as it is written—results in the deprivation of their due process rights.

G. The District Court did not err in rejecting Petitioners' alter ego argument and finding that the Bond Resolution does not violate Article VIII, Section 3 of the Idaho Constitution.

Petitioners argue that the Bond Resolution was not approved by two-thirds of the qualified electors in violation of Article VIII, Section 3 of the Idaho Constitution, which 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; *see* Opening Brief pp. 55-61. This argument should be rejected because the 2010 election is barred from judicial review by Idaho Code section 50-3119, because it is based on documents outside the Administrative Record, and because it rests on the false premise that the District is the alter ego of the City and thus a City-wide vote was required in 2010.

1. Petitioners' challenge to the 2010 election is barred by Section 50-3119.

As discussed in Argument Section E herein, Section 50-3119 only authorizes appeals of District decisions brought within sixty days. Notwithstanding this limited statutory appeal right, Petitioners seek to challenge the general obligation bond election that occurred in 2010. Despite finding throughout the Judicial Review Decision that it did not have authority to examine past decisions, the District Court addressed the election issue and related alter ego argument. R. pp. 1055-1062. This Court, however, should enforce the appeal period of Section 50-3119 and find that Petitioners cannot challenge the events of the 2010 election in this judicial review proceeding.

Further, although Petitioners raised certain constitutional arguments to the Board, at least in passing (A.R. pp. 48-49, 989-994, 999-1005, 1411), it does not appear the alter ego argument was ever submitted. *See* A.R., *passim*. The District Court nevertheless considered the argument.

2. Petitioners' argument relies on documents outside the Administrative Record.

As discussed in Statement of the Case Section C(4) herein, Petitioners improperly rely on documents outside of the Administrative Record to support their challenge to the 2010 election. As in their factual background section, Footnote 53 in their alter ego argument contains a link to the 156-page document dated February 26, 2024. Footnote 51 contains a link to the City's meeting calendar website. This Court should not consider those materials.

3. The District is not an alter ego of the City.

If the Court considers the challenge to the 2010 election based on the alter ego theory, it should be rejected. Petitioners argue that the 2010 general obligation bond election needed to be approved by two-thirds of the qualified electors of the City, on the theory that the District is an alter ego of the City. Opening Brief pp. 55-61.

An alter ego situation may be found between one governmental entity where there is too much control by one entity over the other, and where there is evidence of an effort to circumvent a constitutional limitation. In *Boise Redevelopment Agency v. Yick Kong Corp.*, the Court considered a challenge to the Idaho Urban Renewal Law in which the argument was made that the urban renewal agency was an alter ego of the City of Boise or a subdivision of the State, making the agency subject to Article VIII, Section 3. 94 Idaho 876, 881, 499 P.2d 575, 580 (1972). The Court began its alter ego analysis by noting that the agency at issue was "an entity of legislative

creation and it is the legislature that established its powers, duties and authorities." *Id.* The Court went on to analyze the level of control exercised by the City over the agency and found that "[t]he degree of control exercised by the City of Boise does not usurp the powers and duties of the plaintiff, and the close association between the two entities at most shows two independent public entities closely cooperating for valid public purposes." *Id.* at 882, 499 P.2d at 581.

The *Yick Kong* Court also referred to *Wood v. Boise Junior College Dormitory Housing Commission*, 81 Idaho 379, 342 P.2d 700 (1959), where "the contention was made that the Commission was merely an alter ego of the Boise Junior College District and as such was forbidden by the provisions of Article 8, Section 3, to issue bonds." *Yick Kong*, 94 Idaho at 882, 499 P.2d at 581. In *Wood*, though there was some control by the Boise Junior College District:

> 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.
>
> … The close association at most shows two independent public boards closely cooperating for the purpose of furnishing facilities in furtherance of education.

81 Idaho at 384, 342 P.2d at 702-03. The *Yick Kong* Court also considered whether the agency was created by the City to circumvent its own constitutional limitations, as the City of Idaho Falls had done in *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956):

> It is apparent that this case is distinguishable from the case of *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956). Therein the 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 Daho [sic] Falls. The facts on that record showed that the cooperative was merely an attempt by the City to do indirectly that which it could not do directly. Herein such facts do not exist.

Yick Kong, 94 Idaho at 882, 499 P.2d at 581.

Then, in *Urban Renewal Agency of City of Rexburg v. Hart*, the Idaho Supreme Court confirmed that urban renewal agencies are not alter egos of municipalities, even though the governing statute had been amended *to allow the local governing body to appoint itself* as a commissioner on the urban renewal agency. 148 Idaho 299, 302, 222 P.3d 467, 470 (2009). The *Hart* Court explained:

> 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."

Id. (emphasis in original) (citation omitted). The *Hart* Court found there was no alter ego situation between urban renewal agencies and cities. *Id.* at 303, 222 P. 3d at 471.

Based on these cases, the District Court found there was no alter ego relationship notwithstanding the high degree of interconnectedness between the City and the District mandated by the CID Act. R. pp. 1055-1062. That is the right decision.[17] Here, the District was not some

[17] Petitioners cite to *Yick Kong*, *Wood*, *Hart*, and *O'Bryant* in their alter ego argument, but also to many inapposite cases not dealing with the alter ego question. *See City of Challis v. Consent of Governed Caucus*, 159 Idaho 398, 400, 361 P.3d 485, 487 (2015) (analyzing the proviso "ordinary and necessary" clause of Article VIII, Section 3 rather than an alter ego issue); *City of Idaho Falls v. Fuhriman*, 149 Idaho 574, 578, 237 P.3d 1200, 1204 (2010) (same); *City of Boise v. Frazier*, 143 Idaho 1, 3, 137 P.3d 388, 390 (2006) (same); *Asson v. City of Burley*, 105 Idaho 432, 441, 670 P.2d 839, 848 (1983) (same); *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475, 476 (1931) (same); *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779, 780 (1936) (subsequent overruling history omitted) (involving a challenge to multiple constitutional provisions but not addressing an alter ego argument); *Miller v. City of Buhl*, 48 Idaho 668, 284 P.

invention of the City, but instead it was established *according to the CID Act*, which provides that board members are generally determined by the location of the particular district (such that a board could be comprised of a mix of city and county officials, depending on the location of the land). I.C. § 50-3104(2)50-3104(2).[18] At the time of the 2021 Resolutions, the Board was comprised of City council members because the District is located entirely within City limits, and the CID Act *required* them to be board members. Notably, "[t]he 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." *Id.* § 50-3104(8). Similarly, with regard to District staff:

> The district manager shall be the manager or equivalent of the city or county, the district treasurer shall be the treasurer of the city or county, the district clerk shall be the district clerk of the city or county, respectively, unless the district board engages an outside firm to perform the tasks of the district's manager, treasurer and clerk as well as other duties as may be prescribed by the district board….

I.C. § 50-3104(4).

Though there is a high degree of cooperation between the District and the City, and the

843, 843 (1930) (violation of Article VIII, Section 3 where city devised a plan to enter into an installment purchase agreement to own and operate an electric light and power system); *Hollingsworth v. Thompson*, 168 Idaho 13, 18, 478 P.3d 312, 317 (2020) (analyzing whether plaintiff could have known Idaho Tort Claims Act applied to his claims, where it was not clear that hospital was owned by Gem County); *Koch v. Canyon Cnty.*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008) (considering challenge to lease agreement under Article VIII, Section 3, but no alter ego argument).

[18] Note that the CID Act was amended in 2022 to provide that a homeowner sits on the district board where a city has district elections, like the City does now. *See* I.C. § 50-3104(2)(g).

District is effectively run by City staff, that cooperation is mandated by the CID Act. The Idaho Legislature did not require CIDs to have separate staff from cities or counties, but that fact should not be dispositive, as Petitioners assert. As in *Yick Kong*, there is no evidence that the City attempted to create the District to do indirectly what it could not do directly (as was the case in *O'Bryant*). Just like in *Hart*, where there was no alter ego relationship notwithstanding the ability for the City of Rexburg to appoint members to the urban renewal agency, the District's board composition should not be found to cause an alter ego situation to exist, where the statutory language similarly makes clear that the District Board is a separate entity. In 2010, the City participated in the creation of the District pursuant to the requirements of the CID Act—which the City was not free to ignore. This Court should not find an alter ego relationship under these facts, and should not find that a City-wide bond election was required.

H. The District Court did not err in rejecting Petitioners' voter-taxpayer argument and finding that the Bond Resolution does not violate Article VIII, Section 3 of the Idaho Constitution.

Petitioners argue that the authorization of the Bond Resolution is "fatally flawed" because "Article VIII, Section 3 of the Idaho Constitution must be interpreted to require the vote of at least one qualified elector who will actually have to pay the property taxes." Opening Brief p. 61. This Court should reject this argument because the 2010 election is barred from judicial review by Idaho Code section 50-3119, because it is based on documents outside the Administrative Record, and because it is legally unsupported and inconsistent with the language of the Idaho Constitution.

1. Petitioners' challenge to the 2010 election is barred by Section 50-3119.

As discussed in Argument Section E herein, Section 50-3119 only authorizes appeals of

District decisions brought within sixty days of a decision. Despite this limited statutory appeal right, Petitioners seek to challenge the general obligation bond election that occurred in 2010. Although finding throughout the Judicial Review Decision that it did not have authority to examine past decisions, the District Court addressed this election issue. R. pp. 1053-1055. This Court, however, should enforce the appeal period of Section 50-3119 and find that Petitioners cannot challenge the events of the 2010 election in this judicial review proceeding.

2. Petitioners' argument relies on documents outside the Administrative Record.

As with their alter ego argument, and as discussed in Statement of the Case Section C(4) herein, Petitioners improperly rely on documents outside of the Administrative Record to support their challenge to the 2010 election. This Court should not consider those documents.

3. Petitioners argue for a constitutional requirement that does not exist.

If this Court considers Petitioners' argument, it should be rejected. Petitioners cite no case to support their argument that Article VIII, Section 3 requires the governing body to ensure not only that a voter is a qualified elector, but also that the voter is one who will ultimately pay the property taxes imposed by the eventual bond issuance, whenever the taxes are ultimately levied. Petitioners make various policy arguments and argue that their review of the proceedings of the Idaho Constitutional Convention of 1889 supports their position. Opening Brief pp. 61-62.

However, Petitioners' argument is inconsistent with the plain language of the Idaho Constitution, which only requires "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. There is no ongoing requirement to ensure, with respect to the CID Act, that a qualified elector remains within the

District boundaries after the election and ultimately pays the resulting taxes after the infrastructure is constructed and reimbursed under the CID Act. It is worth noting that Petitioners' voting argument is also contrary to the language of Idaho Code section § 50-3108(3), and Petitioners have made no facial challenge to that statute. R. p. 1054. The statute provides in relevant 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,* and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or projects in phases....

I.C. § 50-3108(3) (emphasis added); *accord* I.C. § 50-3111 (bonds may be issued in series).

The District Court initially found that Petitioners' single voter argument was really a facial challenge to the District's authority to issue bonds in a series. R. pp. 1053-1055. In the Rehearing Decision, the District Court considered the argument and found that the plain language of Article VIII, Section 3 did not support Petitioners' position, and that there are other statutory situations where those who will not pay the taxes are still entitled to vote to levy property taxes. R. pp. 1117-1118. The District Court also pointed out that the CID Act's definition of "qualified elector" in Idaho Code section 50-3102(13) does not include a requirement that a voter ultimately pay the taxes, and that Petitioners have not challenged that statute as unconstitutional. R. pp. 1118-1119. For all of these reasons, the District Court properly rejected Petitioners' request to invalidate the 2010 election based on a requirement which is not found in the Idaho Constitution.

I. The District Court did not err in finding the Bond Resolution does not violate Article VII, Section 5 of the Idaho Constitution or the Equal Protection Clauses.

Petitioners make another argument premised on their (incorrect) conclusion that the District is an alter ego of the City. They argue they are being taxed unequally and their equal protection rights are violated because property located within the District's boundaries is taxed differently than property located outside of it but within City boundaries. Opening Brief pp. 62-66. This argument relies on inapposite case law where taxpayers within a particular taxing district were alleged to be taxed in a disparate manner,[19] and also relies on factual assertions unsupported by the Administrative Record.[20] Opening Brief pp. 62-64.

Article VII, Section 5 of the Idaho Constitution provides: "All taxes shall be uniform *upon the same class of subjects within the territorial limits, of the authority levying the tax*, and shall be

[19] *Xerox Corp. v. Ada Cnty. Assessor*, 101 Idaho 138, 145, 609 P.2d 1129, 1136 (1980) (considering a county-wide personal property tax exemption); *Ada Cnty. v. Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 96, 609 P.2d 161, 163 (1980) (analyzing county-wide difference in manner of taxing commercial versus residential and farm properties); *Justus v. Bd. of Equalization of Kootenai Cnty.*, 101 Idaho 743, 744, 620 P.2d 777, 778 (1980) (analyzing county-wide real property tax revaluation plan); *Scandrett v. Shoshone Cnty.*, 63 Idaho 46, 116 P.2d 225, 227 (1941) (considering differences in county-wide levy); *Viking Const., Inc.*, 149 Idaho at 200, 233 P.3d at 131 (determining whether irrigation district connection fees were different among same classes of individuals in district); *Leonardson v. Moon*, 92 Idaho 796, 807, 451 P.2d 542, 553 (1969) (considering statewide business inventory tax exemption).

[20] Petitioners make statements about the percentage difference in their taxes versus taxes of homeowners outside of the District boundaries, pointing to the Administrative Record at 56 (which does not contain the information referenced), the Ada County Assessor's website attached at Appendix A to the Petitioner's Brief below (as discussed, Respondents object to this Appendix as outside the Administrative Record), another document available online and outside the Administrative Record (*see* Footnote 54), and other "undisputed facts" not supported by citation to the Administrative Record. Opening Brief pp. 63-64. Even if supported, Petitioners have not shown how these facts affect the legal analysis.

levied and collected under general laws…." IDAHO CONST. art. VII, § 5 (emphasis added). The "authority levying the tax" in this case is the District, and Petitioners make no argument that within the District itself, taxes are not uniform. Instead, they argue "[t]he taxes imposed by the Bond Resolution are not uniform across similar classes of property *within the City*." Opening Brief p. 63 (emphasis added). Again, this argument assumes the City and the District are one and the same entity, but they are not.

Petitioners also argue that taxes are not "uniform *within the Harris Ranch development*…." Opening Brief p. 63 (emphasis added). Again, the constitutional question is whether taxes are uniform with respect to the same class of subjects within the territorial limits of the authority levying the tax (the District), not whether the taxes are different with regard to parcels inside of a taxing district versus outside of it. IDAHO CONST. art. VII, § 5; *see Scandrett*, 63 Idaho 46, 116 P.2d at 227 ("The tax levy, by the county commissioners, must be uniform on all the taxable property throughout the county; whereas, the tax levied by the school districts is only required to be uniform on all the taxable property within the particular district making the levy."). Petitioners concede the tax levy will be proportional within District boundaries, and their uniformity argument depends upon the premise that the District is an alter ego of the City. Opening Brief p. 65.

For the same reasons, there is no equal protection violation. Article I, Section 2 of the Idaho Constitution provides: "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature." IDAHO CONST. art. I,

§ 2. Under the United States Constitution, "No state shall … deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. Amend. XIV, § 1; *see Justus*, 101 Idaho at 746, 620 P.2d at 780 ("Both Art. 7, s 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.") (citation omitted). As with their uniformity argument, Petitioners have identified no unlawful discrimination by the District with respect to taxing of similar classes of property *within the District*. Instead, Petitioners appear to assume, without establishing, that taxing districts in Idaho are unconstitutional if properties outside of taxing district lines are treated differently than those inside the lines. Opening Brief pp. 65-66 (discussing hypothetical situations not at issue here). Their argument ignores the crucial fact that the District was created under a statutory authorization, not through the City's creative invention.

The District Court followed this law and found no constitutional violation. R. pp. 1062-1064. The 2021 Resolutions should not be reversed on uniformity or equal protection grounds.

J. The District Court did not err in finding that the 2021 Resolutions do not violate the lending of credit prohibitions of Article VIII, Section 4 of the Idaho Constitution.

1. Petitioners' lending of credit argument was not raised to the District, and it depends on their IDIFA argument, which also was not raised to the District.

Petitioners argue they are not challenging the District's financing for "regional infrastructure" that meets the requirements of IDIFA, but only the "local infrastructure" like the Projects approved by the 2021 Resolutions. Opening Brief pp. 69-70. The Projects were approved because they meet the CID Act requirements. The District Court was, therefore, correct in

concluding that Petitioners are making a facial challenge to the CID Act, despite disavowing a facial challenge. R. p. 1065. Petitioners attack the general structure of the CID Act that establishes financing for "community infrastructure" instead of leaving the Developer to pay for the public infrastructure in another way. Opening Brief p. 69. The District Court was also correct in finding that this constitutional challenge is an extension of their IDIFA argument, which was not raised below. R. p. 1068. This is because their lending of credit argument depends on a finding that IDIFA controls what the District can finance, and omits an analysis of what the CID Act permits.

Similarly, as Respondents objected to the District Court, this lending of credit argument goes far beyond what was presented to the District. R. p. 833. Petitioners assert they preserved this argument by raising it below in the Administrative Record at 1000. Opening Brief p. 69, n. 57. That is the only place Respondents have found in the Administrative Record where Petitioners referenced the lending of credit argument, and all that was said on this issue was that the "City, acting through the District" had in the past failed to comply with various constitutional provisions, including the "prohibitions against the City lending its credit to a private developer[.]" A.R. p. 1000. Two things should be noted from this statement. First, Petitioners' short objection rested on their alter ego argument, which is incorrect. Second, Petitioners never made the objection they make on appeal: that the Bond Resolution violates Article VIII, Section 4 of the Idaho Constitution based on the particular Projects considered by the Board in connection with the 2021 Resolutions. The Staff report thus properly did not analyze the issue. A.R. p. 48. Based on the preservation law discussed *supra*, the District Court did not need to consider the lending of credit argument because it was not presented to the District, and neither should this Court.

2. The 2021 Resolutions do not result in an impermissible lending of credit.

If Petitioners' argument is considered, it should be rejected. First, instead of analyzing the credit clause against the CID Act, their argument rests on their incorrect argument that IDIFA, not the CID Act, controls. Opening Brief pp. 69-70. There is no analysis of the District itself, the CID Act's bond requirements, or the terms of the particular bonds at issue. *See, e.g.*, A.R. pp. 1566-1593; I.C. § 50-3107(5) (District cannot encumber assets of City or State of Idaho).

Second, the District's reimbursement for the Projects constructed by the Developer does not violate Article VIII, Section 4 of the Idaho Constitution, which 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. Broadly speaking, Article VIII, Section 4 prohibits "the lending of credit by the state and its political bodies *in aid of private objectives*." *Hansen v. Indep. Sch. Dist. No. 1 in Nez Perce Cnty.*, 61 Idaho 109, 98 P.2d 959, 960–61 (1939) (emphasis added). The *Yick Kong* court explained that the term "credit" in this context "implies the imposition of some new financial liability upon the State (here the City of boise) *which in effect results in the creation of State debt for the benefit of private enterprises*." *Yick Kong Corp.*, 94 Idaho at 883, 499 P.2d at 582 (emphasis added) (explaining the historical underpinnings of the prohibition).

Petitioners argue that the CID Act creates a funding mechanism which benefits private enterprise (the Developer) rather than serving a public purpose. Opening Brief pp. 66-69. Their theory is that because the Projects seek reimbursement for infrastructure that "the Developer was

required to build in order to undertake the Development," the infrastructure had to be built no matter what. Opening Brief p. 67. While acknowledging that absent the CID Act, the Developer would recover infrastructure costs "when they sold the land to private purchasers," Petitioners nonetheless assume that "people who live within the Development would have had the benefit of that infrastructure regardless of whether the Challenged Resolutions had been passed." Opening Brief pp. 67-68. Petitioners' argument ignores the reality that the specific infrastructure at issue might never have been constructed absent the CID Act, the formation of the District, and the corresponding Specific Plan (SP01) for Harris Ranch. *See, e.g.*, A.R. pp. 905-906. Petitioners' argument thus rests on an unsupportable assumption.

Respondents agree with Petitioners, however, that the infrastructure associated with the 2021 Resolutions benefits the development within the District. Opening Brief p. 67. This public purpose is the focus of the CID Act and renders it constitutional. In enacting the CID Act, the Idaho Legislature determined, among other things, that it was appropriate to "allow new growth to more expediently pay for itself." I.C. § 50-3101(1). The statutory declaration of purpose "is entitled to the utmost consideration, but it is not binding and conclusive upon the question of public purpose." *Bd. of Cnty. Comm'rs of Twin Falls Cnty. v. Idaho Health Facilities Auth.*, 96 Idaho 498, 502, 531 P.2d 588, 592 (1974). Further, there is a "strong presumption of constitutionality to which every legislative enactment is entitled." *Id.* at 501, 531 P.2d at 591. Petitioners have not overcome this presumption.

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 950, 955, 703 P.2d 714, 719 (1985). "A public purpose is an activity that serves to benefit the community as a whole and which is directly related to the functions of government." *Idaho Water Res. Bd. v. Kramer*, 97 Idaho 535, 558, 548 P.2d 35, 59 (1976). Here, the CID Act has a public purpose—to encourage funding and construction of infrastructure ahead of growth and to provide a way for new growth to pay for itself. And, the infrastructure purchased from the Developer must be publicly owned. I.C. § 50-3101(1)-(2). This is unlike the situation in *Village of Moyie Springs, Idaho v. Aurora Manufacturing Co.*, 353 P.2d 767 (1960), where the Idaho Supreme Court found unconstitutional a statute authorizing cities to issue revenue bonds to finance acquisition of land and construction of facilities to be leased to *private* enterprises. As the District Court found, this case is more similar to the situation in *Hansen v. Kootenai County Board of County Commissioners*, where Kootenai County's occasional lease of fairgrounds to a private party did not violate Article VIII, Section 4 because the county had a public use for the fairgrounds. 93 Idaho 655, 660–61, 471 P.2d 42, 47–48 (1970).

Significantly, "the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction." *Utah Power & Light Co.*, 108 Idaho at 955, 703 P.2d at 719. Thus, even if the Developer derives a benefit from being reimbursed for the public infrastructure by the District instead of being reimbursed for the infrastructure construction costs in other ways (such as passing costs to home buyers), that benefit does not invalidate the otherwise public purpose of the CID Act: to encourage construction ahead of growth and to have new growth

pay for itself.[21] The District Court's decision on this issue was correct. R. pp. 1064-1068. The CID Act has a primarily public purpose of funding publicly-owned infrastructure, notwithstanding any incidental benefit to the Developer.

K. The District Court correctly denied Petitioners' request to add records to the Administrative Record which were not presented to the Board.

"In most petitions for judicial review of agency action, the district court does not conduct a trial de novo, and instead bases its determination on the record as created before the agency." *Idaho Power Co. v. Idaho State Tax Comm'n*, 141 Idaho 316, 321, 109 P.3d 170, 175 (2005). Indeed, as was the case here where the enabling statute—Idaho Code section 50-3119—"does not provide the procedure or standard for judicial review, judicial review of agency action *must be based upon the record created before the agency*." Idaho R. Civ. P. 84(e)(1) (emphasis added). *Crown Point Development, Inc. v. City of Sun Valley* demonstrates the limited nature of the agency record on judicial review. 144 Idaho 72, 156 P.3d 573 (2007).

In *Crown Point Development*, a developer submitted to the city preliminary plat review and design review applications for Phase 5 of a subdivision. In its review, the city considered some

[21] Additionally, the District retains control to purchase infrastructure only if it meets the CID Act requirements. *See id.* at 954, 703 P.2d at 718 (finding adequate consideration for the ground lease and power sales contract at issue) ("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. These words clearly limit the scope of the credit clause to cases in which the public credit is under the control of private interests.") (emphasis in original). Finally, the nature of public infrastructure purchased here weighs against a finding of a credit clause violation. *See, e.g., Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362, 368 (1939) ("The inherent official and governmental nature of the service for which the expenditure is made and for which the advance is allowed determines its character as not giving or loaning the credit of the state.") (addressing similar lending of credit provision).

information related to the previously approved Phases 1-4 of the same subdivision, but only to the extent that information had been provided to it by the developer with its Phase 5 applications. *Id.* at 76, 156 P.3d at 577. The city denied the applications, the developer appealed, and on judicial review, the district court ordered that the record be augmented with the documents and applications related to the previous approval of Phases 1-4 of the subdivision. *Id*. at 75, 156 P.3d at 576. The city appealed, arguing that the augmentation of the record was improper. The Idaho Supreme Court agreed with the city and held that the district court had abused its discretion by augmenting the record. The Court first pointed out that "items of public record do not necessarily become part of the agency record." *Id*. at 76, 156 P.3d at 577. Thus, the mere fact that the applications and related documents for Phases 1-4 were in the city's possession did *not* make them part of the record, and the applications and documents could not be added into the record because they were not presented to the city in its review of the Phase 5 application and IAPA's limited exceptions for augmenting the record did not apply. *Id*. at 77, 156 P.3d at 578.

Despite its obvious relevance here and the District Court's reliance on the case (R. p. 600), Petitioners omit *Crown Point Development* from their briefing altogether and advance the same arguments that were rejected in that case.[22] Further, Petitioners rely on Idaho Appellate Rules 17(i) and 28(c) for the notion that they can unilaterally dictate which documents are added to the record on judicial review, regardless of whether the agency was presented with, or reviewed, those

[22] Petitioners argue the Board "relied on" documents regarding the bond election and approval of prior projects because the 2021 Resolutions made brief references to these events. Opening Brief p. 73. Respondents disagree. The District Court found that there was "no evidence" that the Board relied on any older agency records in passing the 2021 Resolutions. R. p. 599.

documents in the underlying proceeding. Opening Brief pp. 70-73. Petitioners argued that the Administrative Record violated these rules because the District was required to include every single document requested by Petitioners in their Notice of Appeal, even if the documents were not presented to the Board in connection with the 2021 Resolutions, and they asked the District Court to require inclusion of those records. *See, e.g.*, R. pp. 56-57, 127-129 (seeking preparation of transcript of prior Board meetings related to past projects and the bond election, and inclusion of all records related to prior projects underlying the Interest Project and the bond election). They argue the District Court erroneously denied their request, but the rules do not support their position.

First, Rule 28(c) does not require inclusion in the record of any document requested by the appellant, as it requires documents to be added to the record to have been "filed or lodged with the district court or agency[.]" I.A.R. 28(c). Second, this argument runs contrary to Rule 84(e)(1), which makes clear the record is not made up of Petitioners' wish list, but must be based upon "the record created before the agency" unless provided otherwise by statute. Idaho R. Civ. P. 84(e)(1). The District Court agreed, holding it need not resort to the Idaho Appellate Rules under Idaho Appellate Rule 84(r) because Rule 84 itself provided the appropriate procedure. R. pp. 598-603.

Finally, the District Court's decision on this issue should be reviewed for an abuse of discretion. *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 40, 981 P.2d 1146, 1150 (1999) (not dealing with Rule 84, but finding district court acted within its discretion in denying request to delete documents from the record); *Crown Point Dev., Inc.*, 144 Idaho at 75, 156 P.3d at 576 (reviewing "decision to admit additional evidence pursuant to I.C. § 67-5276 under an abuse of discretion standard"). Petitioners have not analyzed the District Court's decision under the

applicable four-part test, so Respondents cannot respond to that analysis. *See Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018). In any event, the District Court correctly followed *Crown Point Development* and Rule 84, the Court should affirm this decision.[23]

L. Petitioners are not entitled to attorney fees should they prevail.

Petitioners argue they are entitled to fees under the private attorney general doctrine. Opening Brief pp. 77-78 (Respondents object to footnote 59 as outside the Administrative Record). Petitioners must first prevail in this appeal. *Friends of Farm to Mkt. v. Valley Cnty.*, 137 Idaho 192, 201, 46 P.3d 9, 18 (2002). The decision to award fees under this doctrine is a discretionary one for the Court, considering the following factors:

> (1) the strength or societal importance of the public policy indicated by the litigation; (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff; and (3) the number of people standing to benefit from the decision.

State v. Dist. Ct. of Fourth Jud. Dist., 143 Idaho 695, 702, 152 P.3d 566, 573 (2007). Considering the first element, Petitioners compare their case to *Reclaim Idaho v. Denney*, 169 Idaho 406, 439-40, 497 P.3d 160, 193-94 (2021), which related to an unconstitutional statute that raised the threshold for initiatives or referenda to appear on the ballot. Other cases that have found this element satisfied related to similar concerns regarding voting rights and fundamental principles of democratic governance. *See, e.g., Smith v. Idaho Com'n on Redistricting*, 38 P.3d 121, 124-25 (2001); *Hellar v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984).

[23] The remainder of Petitioners' argument addresses hypothetical scenarios, none of which have occurred in this case. Opening Brief pp. 75-76. Respondents also object to Petitioners' citations to documents outside of the Administrative Record. Opening Brief p. 75, n. 58.

The present dispute does not rise to this level of societal importance. Even if Petitioners' contentions are correct, they are challenging the manner by which a government entity approved the payment of and property taxes for a series of roadway improvements that Petitioners themselves enjoy in their community, and they cited no cases analogous to this one. Petitioners also fail to show any analogous cases with regard to the second element—the necessity for private enforcement. On the third element, even if Petitioners were to secure a favorable decision, no resident outside the District would benefit from the decision. *Harris v. State, ex rel. Kempthorne*, 147 Idaho 401, 407, 210 P.3d 86, 92 (2009); *Dist. Ct. of Fourth Jud. Dist.*, 143 Idaho at 702, 152 P.3d at 573. This Court should deny Petitioners' fee request.

V. ATTORNEY FEES ON APPEAL

This Court should grant Respondents fees under Appellate Rule 41 and Idaho Code section 12-117 if Respondents prevail. This statute "mandates an award of reasonable attorney fees to the prevailing party 'in any proceeding involving as adverse parties a state agency or a political subdivision and a person,' where 'it finds that the nonprevailing party acted without a reasonable basis in fact or law.'" *Grace at Twin Falls, LLC v. Jeppesen*, 171 Idaho 287, 294, 519 P.3d 1227, 1234 (2022) (citation omitted). "When parties to appeals before this Court have advanced arguments based on a disregard for plain language, we have found them to have acted without a reasonable basis in law." *Id.* This standard is "substantially similar" to the standard in Idaho Code section § 12-121 for pursuing an action "frivolously, unreasonably, or without foundation." *S Bar Ranch v. Elmore Cnty.*, 170 Idaho 282, 313, 510 P.3d 635, 666 (2022), *as amended* (June 14, 2022). The statute also permits a partial award of fees when appropriate. I.C. § 12-117(2).

"Apportionment of attorney fees is appropriate for those elements of the case that were frivolous, unreasonable, and without foundation." *Idaho Mil. Hist. Soc'y, Inc. v. Maslen*, 156 Idaho 624, 632, 329 P.3d 1072, 1080 (2014) (construing Idaho Code § 12-121); *see Galvin v. City of Middleton*, 164 Idaho 642, 648, 434 P.3d 817, 823 (2019).

Petitioners have made several arguments that are without a reasonable basis in fact or law. First, Petitioners' factual and legal contentions have shifted dramatically from prior positions. Second, instead of arguing about whether the 2021 Resolutions complied with the CID Act, the Opening Brief runs through a series of issues and topics that have nothing to do with that proceeding, and includes numerous documents outside of the Administrative Record and Record. Finally, Petitioners repeatedly ignore the plain language of the CID Act and Rule 84. A fee award is appropriate under the circumstances.

VI. CONCLUSION

For the reasons stated herein, Respondents request that this Court deny the Petition and affirm the District's approval of the 2021 Resolutions.

DATED: July 19, 2024.

GIVENS PURSLEY LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on July 19, 2024, I caused a true and correct copy of the foregoing to be served electronically through the iCourt system, which caused the following parties or counsel to be served by electronic means, as more fully reflected below:

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II. Exhibit II – Appellants' Reply Brief in the Litigation

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9/29/2024 9:11 PM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM DOYLE, an individual; LAWRENCE CROWLEY, an individual; THE HARRIS RANCH CID TAXPAYERS' ASSOCIATION, an Idaho nonprofit association,

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,

And

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership,

Intervenor.

Supreme Court Case No. 51175-2023

Ada County District Court No. CV01-21-18655

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County, Honorable Nancy A. Baskin, District Judge, Presiding

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I. INTRODUCTION

The District and the Developer cannot prevail for one simple reason: they insist that we live in a world which cannot exist. In their world:

- Legislation means the opposite of what the Legislature said it does;
- Homeowners can be forced to subsidize a private real estate development through over $100 million in property taxes which they were denied the right to vote on;
- People must present all possible legal arguments against a proposed local government action on as little as one day's notice, and if they do not, they are forever barred from objecting, even if that action is undeniably unlawful;
- Private facilities and private land on which those facilities sit become "publicly owned" if the government is granted an easement over that land to build a "highway" that the easement forbids them from building;
- An unconstitutional local government action becomes incontestable long before it is possible for the people harmed by that action to know about it yet alone challenge it;
- A city can create a taxing district which carves out anyone who might vote against $50 million in bonds to make payments to a developer, with a hole in the middle that spares the property of the developer from having to pay any of the resulting taxes;
- Over $100 million in taxes can be "approved" by the vote of a single person employed by and a tenant of the developer to whom all $50 million of such bond moneys will be paid; and
- A small group of homeowners must pay for public facilities which benefit both them and their next-door neighbors equally while their next-door neighbors pay nothing.

Residents do not believe, however, that the foregoing is what the Constitution and laws of the State of Idaho provide.

II. ARGUMENT

A. The Language of the CID Act Repeatedly Indicates, and the Legislative History Indisputably Confirms, That the Legislature Intended to Permit the Financing Only of Regional Community Infrastructure.

The first issue is whether the CID Act permits the financing of local improvements within a new development, which is what the Challenged Resolutions authorize. Opponents argue that the definition of "community infrastructure" in the CID Act is *not* ambiguous, and therefore that this Court "should look no further than the CID Act" to determine whether the 2021 Projects can be financed. Respondents' Brief ("RB") pp. 13-21; Intervenor's Brief ("IB") pp. 15-23. Opponents have no choice but to argue a lack of ambiguity for one simple reason: their interpretation of the CID Act is directly contradicted by its legislative history. That history is extraordinary for the extent to which, in only 28 pages of text, the Legislature emphasizes at least 20 times that only *regional* community infrastructure eligible for funding under the Impact Fee Act can be financed.[1]

Opponents are thus forced to make the untenable argument that the intent of the Legislature is not what the Legislature repeatedly stated that it is. The fundamental purpose of statutory interpretation is to ascertain legislative intent. A close review of the statutory language shows that

[1] Residents have attached as **Appendix A** the legislative history of the CID Act, excluding the text of the legislation itself. Relevant language is highlighted. The identical cover pages for the two almost identical versions of the bill which became the CID Act both declare, *twice*, that only regional community infrastructure that is impact fee-eligible may be funded by a CID. Contrary to Intervenor's assertion (IB p. 22), these are not "gratuitous comments by a lobbyist." That "lobbyist," Jeremy Pisca, is identified in the legislative history as the "Sponsor" of the bills.

the Legislature intended to limit the CID Act to the financing of regional community infrastructure. And the legislative history emphatically confirms that.[2]

1. An Understanding of the Legislature's Intent in Adopting the CID Act Begins with Its Statement of Purpose.

Opponents argue that Residents give undue emphasis to the "purpose" provisions of the CID Act, and even that Residents look to those provisions as a "source of specific substantive criteria." RB pp. 16-18; IB pp. 17-20. But that is not the case. Rather, Residents look to the "purpose" provisions for the intent of the Legislature in adopting the CID Act.

This Court has held innumerable times that "the objective of statutory interpretation is to derive *the intent of the legislative body that adopted the act*." *E.g.*, *D.L. Evans Bank v. Dean*, 173 Idaho 20, 538 P.3d 793 (2023), *reh'g denied* (Dec. 5, 2023), *cert. denied*, 144 S. Ct. 1459, 218 L. Ed. 2d 691 (2024) (emphasis added). Opponents each make repeated bows to this maxim. RB pp. 14, 18, 19, 20; IB pp. 22, 23. But they then argue strenuously that the portions of the statute which reveal the Legislature's intent and contradict their interpretation should be ignored.

As this Court stated in *Marquez v. Pierce Painting, Inc.*, 164 Idaho 59, 23 P.3d 1011 (2018):

> *A construing court's primary duty is to give effect to the legislative* ***intent and purpose*** *underlying a statute*. Moreover, the court must construe a statute as a whole, and consider all sections of applicable statutes together to determine the intent of the [L]egislature. It is incumbent upon the court to give the statute an interpretation that will not deprive it of its potency. *In construing a statute, not only must we examine the literal wording of the statute, but we also must study the statute* ***in harmony with its objective****.* [Emphasis added; internal quotations and citations omitted.]

[2] An attorney for the City, testifying before the Legislature in opposition to the CID Act, stated that: "the bill does not clearly define what improvements are excluded." House Revenue and Taxation Committee Minutes, March 6, 2008, p. 2.

An obvious source to determine the "objective" and "purpose" of a statute is its statement of purpose. *See, e.g.*, *State v. Teninty*, 70 Idaho 1, 212 P.2d 412 (1949); *Mix v. Gem Invs., Inc.*, 103 Idaho 355, 647 P.2d 811 (Ct. App. 1982).

As the parties have all noted, the CID Act begins with a statement that its purpose is "(a) to encourage the funding and construction of *regional* community infrastructure in advance of actual developmental growth." Idaho Code ("I.C.") § 50-3101(1) (emphasis added).[3] In the very next clause, the CID Act makes direct reference to the Impact Fee Act in stating that its purpose is also "(b) to provide a means for the advance payment of development impact fees established in [***the Impact Fee Act***] and the community infrastructure that may be financed thereby." *Id*. Those two clauses are unambiguous – the purpose of the CID Act is to provide a means to fund regional community infrastructure that can be funded from development impact fees.

The third clause of that introductory section of the CID Act states that its purpose is also "(c) to create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself." *Id*. Not surprisingly, given the two clauses which immediately precede it, the third clause echoes similar language in the Impact Fee Act:

> It is the intent by enactment of this chapter to: … (2) Promote orderly growth and development by … requir[ing] that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed

[3] Respondents dismiss the word "regional" as a "one-off adjective" which means nothing. RB p. 17. The ten corresponding appearances of that word in the legislative history demonstrate that this is incorrect. This argument is also ironic, given Respondents' citation, in discussing the Fronting Exclusion, that "[s]tatutes must be read to give effect to every word, clause and sentence." *Wright v. Willer*, 111 Idaho 474, 476, 725 P.2d 179, 181 (1986). RB pp. 28-29. Intervenor, on the other hand, ignores the word "regional" altogether.

to serve new growth and development.

I.C. § 67-8202. Nonetheless, Opponents encourage this Court to read subsection (c) in isolation to permit the financing not only of regional community infrastructure which can be funded under the Impact Fee Act, but also of local public improvements within a new development which cannot. But that is not the end of the inquiry. Statutes must be read as a whole to ascertain their meaning. *E.g., State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020); *Marquez*, *supra*. Opponents' interpretation fails to do so.

2. Because the Definition of "Community Infrastructure" in the CID Act Is Ambiguous, This Court Should Look to the Legislative History To Determine Its Meaning.

Respondents argue that Residents are "ignoring" the CID Act's definition of "community infrastructure." RB p. 17. That is not the case. Residents instead are very focused on that definition, including the fact that "community infrastructure" is defined by reference to the facilities which can be funded under *the Impact Fee Act*. The obvious implication is that the Legislature intended to permit the financing pursuant to the CID Act only of facilities which can be funded under the Impact Fee Act. A closer examination confirms this interpretation, but does not do so definitively.[4]

This Court has held repeatedly that "a statute is ambiguous where reasonable minds might

[4] Opponents assert that Residents are arguing "that the [Impact Fee Act] is incorporated into, and controls, the CID Act" (RB p. 17), "that any community infrastructure reimbursements must also satisfy the requirements of the [Impact Fee Act]," (IB p. 15), and "that the Impact Fee Act's requirements are grafted onto the CID Act." IB p. 21. But that again is not the case. Residents are instead arguing that the Legislature, by expressly incorporating the definition of "public facilities" from the Impact Fee Act into the definition of "community infrastructure" in the CID Act, intended to and did incorporate the limitation under the Impact Fee Act on funding only regional community infrastructure. Residents are not arguing that any of the many other provisions of the Impact Fee Act are also incorporated into the CID Act.

differ or be uncertain as to its meaning. *E.g., Marquez, supra*. The definition of "community infrastructure" which can be financed pursuant to the CID Act follows immediately on the statute's statement of purpose. I.C. § 50-3102(2). Unfortunately, that definition is a long, complicated, curious, and confusing mishmash of provisions.

The definition begins not with a listing of the facilities which can be financed pursuant to the CID Act, but with the requirements that those facilities must (i) "have a substantial nexus to the district" and (ii) "directly or indirectly benefit the district." *Id*. Local public improvements *within* a new development, such as local streets, sidewalks and water lines, necessarily satisfy those requirements. Therefore, there would be no reason for the Legislature to enumerate these restrictions unless those requirements were directed at regional community infrastructure *outside* a new development, such as water and wastewater treatment plants, highways, interstates and bridges, and police and fire stations (to name a few). Those types of facilities may or may not have a substantial nexus or provide a benefit to the district. The implication therefore is that these two requirements are limitations on the types of *regional* facilities that otherwise can be financed pursuant to the CID Act.

Those two requirements are followed by a prohibition on facilities "fronting" individual single-family residential lots (discussed in Sec. II.C, *infra*), and then by a long list of costs and expenses which are "incident to and reasonably necessary to carry out the purposes of the [CID Act]." Although not definitive, the "fronting" prohibition again suggests that the Legislature intended to prohibit the financing pursuant to the CID Act of *local* improvements in a residential neighborhood. That is because local public improvements *within* a new development, such as

streets, sidewalks and sewer lines, are likely to violate this exclusion.

Incorporation of Impact Fee Act Definition. Next, rather than listing the specific facilities which can be financed under the CID Act, the definition instead states that: "Community infrastructure includes all public facilities as defined in section 67-8203(24) [***of the Impact Fee Act***] …". That again indicates, directly, that the CID Act is "an additional financial tool" (to use the language from the CID Act's purpose statements), intended by the Legislature to finance those public facilities which can be funded *under the Impact Fee Act*. And there is no dispute that only *regional* community infrastructure can be funded under the Impact Fee Act.

The Impact Fee Act's definition of "public facilities" in Section 67-8203(24), expressly incorporated in the definition of "community infrastructure" within the CID Act, is as follows:

> "Public facilities" means:
> (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. [Emphasis added.]

If that were the end of the definition, a person could reasonably conclude that the only things the Legislature intended to be financed pursuant to the CID Act are the regional public facilities that can be funded under the Impact Fee Act. But the definition of "community infrastructure" does not end there. Rather, it then adds:

> …and, to the extent not included within the definition in section 67-8203(24) [of the Impact Fee Act], 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 non-motor 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. [Emphasis added.]

Supposed "Additions" to Definition. Opponents argue that these "added" provisions to the definition of "public facilities" indicate that the Legislature must have intended that the CID Act be used to finance facilities *in addition* to the regional community infrastructure authorized to be funded under the Impact Fee Act. RB pp. 19-20; IB p. 21. But their interpretation is unfounded because those "added" provisions in fact are not additions at all. Although it is not immediately apparent from the patchwork drafting, the "added" facilities are simply a *subset* of the facilities which can be funded under the Impact Fee Act. Therefore, their inclusion within the definition of "community infrastructure" does not indicate an intention by the Legislature to finance anything other than the regional community infrastructure which can be funded under the Impact Fee Act.

First, subsections (a), (c), and (d) of the "additions" are merely restatements of subsections (c), (e), and (f), respectively, of the definition of "public facilities" in the Impact Fee Act. The words used and their ordering are slightly different, but nothing substantive is added.

- Subsection (a) includes highways, expressways, interstates, bridges, and other similar roadways. Subsection (a) of Section 67-8203(24) of the Impact Fee Act

includes roads, streets, bridges and highways.

- Subsection (c) includes trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use. Subsection (e) of Section 67-8203(24) of the Impact Fee Act includes parks, open space and recreation areas.

- Subsection (d) includes public safety facilities. Subsection (e) of Section 67-8203(24) of the Impact Fee Act includes the same thing.

Second, subsection (b) adds "public parking facilities" to the definition of "community infrastructure" in the CID Act. But parking facilities are also authorized to be funded by the Impact Fee Act. The term "system improvements," which are authorized to be funded under the Impact Fee Act, includes not only "public facilities," as defined, but also "the type of improvements described in section 50-1703, [of the Idaho Local Improvement District Code]." I.C. § 67-8203(29) (emphasis added). That section of the LID Code includes "off-street parking facilities." So, the supposed "addition" of "public parking facilities" to the list of "community infrastructure" is again simply another restatement of facilities authorized to be funded under the Impact Fee Act.

Third, subsections (e) and (f) of the "additions," consisting of "interests in property for community infrastructure" and "financing costs," respectively, are not "public facilities" at all, but rather related costs authorized elsewhere in the CID Act. *See*, *e.g.*, I.C. § 50-3105(1) ("… include the power to finance community infrastructure …") and (1)(d) ("[a]cquire interests in real property … for community infrastructure …"). Yet again, the inclusion of these costs within the definition of "community infrastructure" is not an indication that the Legislature intended to fund projects beyond those permitted by the Impact Fee Act when it adopted the CID Act.

Finally, subsection (g) of the definition provides for "impact fees." This is also not an additional type of "facility" which can be financed under the CID Act. Rather, it is an authorization

to pay fees which in turn can only be used to fund "system improvements" authorized by the Impact Fee Act.

Therefore, contrary to Opponents' assertions, there is nothing within the definition of "community infrastructure" which establishes that the Legislature, in adopting the CID Act, intended to "add to" the regional community infrastructure which can be funded under that Act's sister statute – the Impact Fee Act.

No *Local* Improvements. The definition of "community infrastructure" is also noteworthy for what it excludes. Nowhere in that definition can you find references to "local" streets, sidewalks and alleys, or to curbs, gutters, sewers, drains, crosswalks, driveways, storm sewers, ditches, manholes, pipes, mains, hydrants, or street lighting. Those instead are included among the *local* public improvements that can be funded through a *local* improvement district. *See* I.C. § 50-1703. Section 50-1703 in fact includes almost all the local improvements which Opponents seek to finance pursuant to the Payments Resolution. But none of these facilities are included in the definition of "community infrastructure." The fact that the Legislature chose not to include any of those local improvements within the listing of facilities that can be financed pursuant to the CID Act indicates, yet again, that the Legislature intended to permit the financing pursuant to the CID Act only of *regional* community infrastructure and not *local* public improvements.

Residents further note that the definition of "community infrastructure" in the CID Act instead consists primarily of "regional community infrastructure" which is not a part of almost any residential development. Those include: "highways, parkways, expressways, [and] interstates," "water supply, treatment … [and] storage facilities," "wastewater … treatment and storage

facilities," "public safety facilities," and "public parking facilities." This once again indicates that the Legislature intended to finance regional community infrastructure outside a new development, and not local improvements within that development, pursuant to the CID Act.

There thus are strong and repeated indications in the CID Act that it can only be used to finance *regional* community infrastructure and not *local* public improvements within a new development, consistent with limitations under the Impact Fee Act. But the CID Act does not say so expressly. Therefore, it is possible for reasonable minds to differ, or at least to be uncertain, as to the meaning of the definition of "community infrastructure" in the context of the CID Act taken as a whole. This Court thus can look to the Act's legislative history for further guidance as to the Legislature's intentions. And that legislative history is unequivocal and overwhelming – the Legislature intended the CID Act to only be used to finance "regional community infrastructure … that is impact fee-eligible."[5]

3. The CID Act and the Impact Fee Act Are *In Pari Materia* and Thus Must Be Construed Together.

Residents argue in their Opening Brief that the CID Act and the Impact Fee Act should be construed together because they are *in pari materia* – "in the same matter." Opening Brief ("OB") pp. 19-20. This Court has held repeatedly that:

[5] Opponents make much of the fact that the term "system improvements" does not appear anywhere in the CID Act. RB pp. 13, 14, 17, IB pp. 20, 21. But these statements are misleading. Section 50-3120 of the CID Act incorporates Section 67-8209 of the Impact Fee Act, which uses the term "system improvements" within a provision regarding impact fee credits. Opponents' argument also misses the point. Residents are arguing that the *limitation* under the Impact Fee Act on funding only regional community infrastructure – described in that Act as "system improvements" – is what has been incorporated, and not the term itself.

> The rule that statutes *in pari materia* are to be construed together means that each legislative act is to be interpreted with other acts relating to the same matter or subject. Statutes are *in pari materia* when they relate to the same subject. *Such statutes are taken together and construed as one system, and the object is to carry into effect the intention*. [Emphasis added.]

E.g., *Saint Alphonsus Reg'l Med. Ctr. v. Elmore Cnty.*, 158 Idaho 648, 653, 350 P.3d 1025, 1030 (2015) (internal citations omitted). Respondents argue in response, however (although Intervenor does not), that the CID Act and the Impact Fee Act are **not** *in pari materia* because the two statutes do not relate to the same subject. RB pp. 18-19. Residents are at a loss to understand that, given that both statutes deal *exclusively* with the funding of public infrastructure made necessary by new development.

The CID Act also refers specifically and repeatedly to the Impact Fee Act, as Residents have already explained. If the two statutes were unrelated, one would not expressly reference and incorporate provisions of the other. As this Court stated in *Searcy v. Idaho State Bd. of Correction*, 160 Idaho 546, 376 P.3d 750 (2016) (internal quotations and citations omitted):

> [I]t is axiomatic that this Court must assume that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed in accord with the legislative policy embodied in those prior statutes.

Thus, the CID Act must be construed together with the Impact Fee Act to provide for the financing of the same facilities intended to be funded under the Impact Fee Act – –regional community infrastructure.

B. The Imposition of a Preservation Rule in a Judicial Review Proceeding Pursuant to Section 50-3119 of the CID Act Is Inappropriate.

Residents explain in their Opening Brief that it is inappropriate to impose a preservation

rule in the context of a judicial review proceeding under Section 50-3119 of the CID Act because: (1) such a rule would ignore the fact that the CID Act does not provide for a proceeding in which legal arguments could be presented; (2) in any event, the presentation of such legal arguments in many circumstances would be a practical impossibility, and the imposition of such a rule would thus constitute a denial of due process; (3) there are no cases in Idaho which hold that the preservation rule applies in this context; (4) Residents submitted objection letters in advance of the adoption of the Challenged Resolutions as part of their participation in a political process and not as part of a legal proceeding; and (5) the District Court imposed its preservation rule unequally. OB pp. 25-34.

Opponents directly address only Residents' fifth point, above. They avoid addressing Residents' first four points by instead arguing: (1) Residents presented arguments to the CID Board which are the "opposite" of what they are arguing in this proceeding; (2) Residents interpretation of Section 50-3119 is based on mere "hypotheticals" which this Court need not consider; (3) Residents do not cite to any cases in Idaho that hold that the preservation rule does *not* apply in this context; and (4) Residents had the opportunity to present legal arguments to the CID Board in this particular case prior to the adoption of the Challenged Resolutions. RB pp. 21-28; IB pp. 23-26. Those arguments, however, all lack merit.

1. Residents Did Not Present Legal Arguments to the CID Board Which Are the "Opposite" of What They Are Presenting in this Judicial Review Proceeding.

As Residents have explained, their Objection Letters were not submitted as part of a formal contested administrative proceeding let alone a judicial proceeding. Rather, Residents submitted

letters to their elected representatives on the Boise City Council as participants in the *political* process. And this was long before Residents hired counsel to undertake a *legal* review of the issues presented after the Challenged Resolutions were adopted.

In any event, Respondents mischaracterize Residents statements in those two letters. Respondents include the following quote from Residents' August 27, 2021, Objection Letter:

> To date, the HRCID has been used *almost exclusively* to fund facilities and improvements that are of *general* benefit to the City and its residents. Almost *NONE* of the expenditures to date have been for "local amenities" that are enjoyed primarily by the homeowners in the Harris Ranch development. [Emphasis in original.]

What Respondents neglect to explain, however, is that *none* of the facilities addressed in that letter are the subject of this proceeding. The letter instead objected to more than eight projects previously funded by the Boise CID, totaling more than $13.8 million, all of which appeared to provide benefits primarily to the broader region. AR pp. 958-960. Those projects included a City fire station, improvements to the Boise Greenbelt, a large City park, a road bypassing the Development, and other stormwater collection and retention ponds.[6] The letter was a response to public assertions by the CID Board and the Developer that the Boise CID was being used to fund "local amenities." Residents did not make a single legal argument in that letter, but instead presented only policy arguments. So that letter is entirely consistent with the legal arguments Residents make here.

Respondents next cite to Residents' August 7, 2021, Objection Letter, which did address

[6] At that time Residents mistakenly believed, because of their size and number, that those ponds served the broader region. But Residents later learned from the Developer that they only serve the Development, as explained in the next paragraph.

the projects which are the subject of this proceeding. AR pp. 584-587. That letter, however, again was submitted as part of a political process, not a legal proceeding. The only "legal" argument made by Residents in that letter was that most of the facilities to be funded are expressly prohibited by the CID Act, as they are "fronting single-family residential lots." Residents did argue, as a matter of policy and not law, against the funding of the South Stormwater Ponds on the mistaken belief that they benefit not just the Development, but also the broader region. But Residents were corrected by a letter from the Developer's counsel to the CID Board, dated August 27, 2021, which stated: "These stormwater ponds collect drainage only from areas within the [Boise] CID." AR p. 910. It was not until after the adoption of the Challenged Resolutions, and after Residents had retained counsel, that they were alerted to the limitation under the CID Act of funding only "regional community infrastructure." So, again, Residents did not make any legal argument in that letter that was inconsistent with the legal arguments Residents make here.

2. Residents Are Not Asking This Court to Rule on "Hypotheticals" But Instead to Construe the Meaning of a Statute.

Opponents both assert that Residents are asking this Court to rule on "hypotheticals." RB pp. 33, 37; IB pp. 24-25. Respondents go further and assert that Residents are seeking an "advisory opinion" from the Court. RB p. 26. But those assertions are incorrect. Residents instead are asking the Court to properly construe a statute, which it clearly has the authority to do. *E.g.*, *State v. Schulz*, 151 Idaho 863, 865, 264 P.3d 970, 972 (2011). There is no prohibition against this Court considering hypothetical scenarios as part of its analysis, and doing so in the context of statutory interpretation is commonplace. In fact, one longstanding principle of statutory interpretation is to

interpret statutory provisions so as to avoid absurd results. *E.g., Idaho Dept. of Health & Welfare v. Doe*, 151 Idaho 300, 256 P.3d 708 (2010). It is also axiomatic that statutes are to be interpreted to avoid constitutional defects. *E.g., State v. Abdullah*, 158 Idaho 386, 348 P.3d 1 (2015).

In arguing for reversal of the District Court's preservation ruling, Residents are simply explaining the logical consequences of that ruling, some of which have already been realized. What Opponents cannot dispute is the following fact: the imposition of a preservation rule, in the limited context of a judicial review proceeding under the CID Act, would necessarily deprive aggrieved CID residents of due process. That is because the presentation of any legal argument in advance of the adoption of a resolution by a CID board would often be a practical impossibility. And that is a critically important fact in construing Section 50-3119.

3. The Imposition of a Preservation Rule in a Judicial Review Proceeding under Section 50-3119 Makes No Sense In the Absence of a Statutory Process for the Preparation, Presentation, and Consideration of Evidence and Legal Argument.

Respondents complain that Residents do not cite a single case which holds that imposition of a preservation rule is inappropriate in this context. RB pp. 24-25. But there is a simple explanation for that – there is no case in Idaho which addresses the issue, as it is a matter of first impression, along with all the other issues Residents have presented in this proceeding. Residents instead distinguish the cases cited by Respondents and the District Court in support of a preservation rule as inapposite. Furthermore, Opponents are unable to cite a single case which holds that a preservation rule *should* be imposed in this context. Nor do they cite a single case even in an analogous context – where the judicial review proceeding was of the mere adoption of a

resolution or ordinance by a local government without any due process proceeding.

As Residents have explained previously, the cases cited by the District Court for application of a preservation rule to challenges brought under the CID Act all involved judicial review of formal statutorily required legal proceedings, primarily under the Idaho Administrative Procedures Act ("IAPA") and the Local Land Use and Planning Act ("LLUPA"). OB p. 30. Those two Acts, however, include detailed provisions imposing due process requirements regarding notice, public hearings, submission and rebuttal of evidence, testimony, cross-examination, due consideration, and detailed findings and conclusions, prohibiting conflicts of interest and *ex parte* communications, and requiring a detailed record. All of those are lacking under the CID Act, including, for example, prohibitions against a developer making political contributions to members of a CID board to win their favor, and having private conversations with CID board members about matters pending before the board. The CID Act provides no process whatsoever for the preparation, presentation and consideration of evidence or legal argument prior to the adoption of a resolution.

Contrary to the arguments by Opponents (RB pp. 23-25; IB pp. 23-25), there is nothing in IRCP 84 which requires the imposition of a preservation rule in this limited context. IRCP 84(a)(1) provides that "[t]his rule addresses judicial review of the actions of state agencies or officers, or actions of a local government, its officers or its units when judicial review is expressly authorized by statute." IRCP 84(a)(3)(A) defines "action" to mean "any rule, order, *ordinance* or other decision or *lack of decision* of an agency made reviewable by statute." (Emphasis added.) The references to "ordinance" and to "lack of decision" indicate that Rule 84 applies to judicial review of actions such as this one, that do not involve any kind of prior due process proceeding which

ensures a meaningful opportunity to present evidence and legal argument. The imposition of a preservation rule in the context of a judicial or quasi-judicial proceeding does not result in the denial of due process because those proceedings provide a meaningful opportunity for the preparation and presentation of evidence and legal argument and require their consideration. Here it would result in such a denial to aggrieved persons within a CID.

Section 50-3119 does not require any sort of due process proceeding in connection with "final actions" for which judicial review is sought. Nor does IRCP 84 require that. In fact, a CID does not have statutory authority to conduct any such proceeding. *See* OB Subsec. IV.A.1. Rather, Section 50-3119 contemplates and Rule 84 provides that the due process proceeding will instead consist of judicial review by the district court. The application of rules and precedents which necessarily assume that a due process proceeding was held previously from which an "appeal" is being taken simply make no sense in this context, and therefore should not apply.

As Residents explain in their Opening Brief, due process requires a meaningful opportunity to be heard. *E.g.*, OB p. 54. The interpretation advanced by Opponents and accepted by the District Court – that all possible legal arguments must be made before a CID board adopts a resolution – would necessarily deprive future CID homeowners of any meaningful opportunity to be heard, and thus deny them due process. As Residents also explain in their Opening Brief, statutory interpretations which are "constitutionally precarious" are to be avoided. OB pp. 54-55. Section 50-3119 therefore should be construed to require that legal arguments do not need to be presented by aggrieved persons challenging a final decision by a CID board unless and until they bring a judicial review proceeding before the district court.

4. The Issue Presented Is Whether Aggrieved Persons Generally Must Prepare and Present All Possible Legal Challenges to a CID Board Before It Adopts a Resolution, Not Whether Residents Had the Opportunity To Do So Here.

Opponents argue that Residents had plenty of time in advance of the adoption by the CID Board of the Challenged Resolutions to present legal objections. RB pp. 25-26; IB pp. 24-25. But that is not the issue. The issue is whether Residents were *required* to do so or would have to forever hold their peace. The twelve Objection Letters submitted by Residents (most of which were unrelated to the Challenged Resolutions) and the hundreds of pages of comments from homeowners in the Boise CID were not submitted as part of any formal legal proceeding conducted by the CID Board. Rather, they were all part of a political effort to persuade the CID Board, as a matter of policy, not to proceed with further payments to the Developer.

The twelve Objection Letters repeatedly recited that they did not include all Residents' objections, and that Residents expected to provide additional objections as their review of the Boise CID and its actions continued. *E.g.*, AR pp. 993, 1003, 1419, 1467. Residents assumed that, if their political efforts were unsuccessful and the Challenged Resolutions were adopted, they would have to retain counsel to pursue judicial review under Section 50-3119. They never imagined, and were never advised by the Boise CID, that they would have to present all possible legal objections *before* the Challenged Resolutions were even considered by the CID Board.

5. If a Government Agency Declines to Respond to an Opposing Party's Argument in a Due Process Proceeding, It Cannot Contest That Issue on Appeal.

The principal case cited by Respondents and the District Court for the proposition that a district court in entertaining a petition for judicial review does so "in an appellate capacity," *Burns*

Holdings, LLC v. Madison Cnty. Bd. of Cnty. Commissioners, 147 Idaho 660, 214 P.3d 646 (2009), is inapposite. RB p. 23; R p. 1023. That case did not involve a judicial review proceeding and did not involve the preservation rule. This Court instead found that the landowners did not have a statutory right to judicial review of an application for a zoning change. *Id.* at 664.

Of the six other cases cited by Respondents and the District Court in support of a preservation rule (RB p. 27; R pp. 1028-1029), two do not address the preservation issue at all (*Ater v. Idaho Bureau of Occupational Licenses,* and *Lane Ranch Partnership v. City of Sun Valley*); and only two impose the preservation rule against a nongovernmental appellant (*In re Idaho Dep't of Water Res. Amended Final Ord. Creating Water Dist. No. 170,* and *Whitted v. Canyon Cnty. Bd. of Comm'rs*). In the other two cases, the court stated that *the State* must also preserve legal arguments for purposes of an appeal. In *State v. Casterjon*, the Court of Appeals stated:

> We first turn to the issue of whether the State preserved its arguments for appeal. Appellate court review is limited to the evidence, theories, and arguments that were presented below. … Generally, issues not raised below may not be considered for the first time on appeal.

163 Idaho 19, 20, 407 P.3d 606, 607 (Ct. App. 2017) (citations omitted). And in *State v. Johnson*, in the context of whether the State had preserved arguments for appeal, this Court again stated: "Of course, '[a]ppellate court review is limited to the evidence, theories and arguments that were presented below.'" 148 Idaho 664, 670, 227 P.3d 918, 924 (2010) (citations omitted).

There are innumerable cases which hold that a party to an appeal, including the State and local governments, may not raise issues on appeal which were not raised below. *E.g.*, *S. Valley*

Ground Water Dist. v. Idaho Dep't of Water Res., 548 P.3d 734 (Idaho 2024), *as amended* (Jan. 12, 2024) (preservation rule applies to State agency); *State v. Hoskins*, 165 Idaho 217, 443 P.3d 231 (2019); *Taylor v. Taylor*, 169 Idaho 806, 504 P.3d 342 (2022), *reh'g denied* (Mar. 2, 2022). There are also numerous cases which hold that, even if an issue is preserved for appeal, a party may not present legal arguments which were not made below. *E.g.*, *S. Valley Ground Water Dist.*, *supra*; *Alpha Mortg. Fund II v. Drinkard*, 169 Idaho 446, 497 P.3d 200 (2021); *Burns Concrete, Inc. v. Teton Cnty.*, 168 Idaho 442, 483 P.3d 985 (2020) ("This argument was not preserved [by the County]. Our review is limited to the evidence, theories and arguments that were presented below."); *Casterjon*, *supra*; *Johnson, supra*. [7,8]

Residents' Legal Memorandum. During a meeting at City Hall in early July 2021, Residents presented a lengthy legal memorandum, drafted by Appellant Doyle, to the City's Deputy Treasurer, who serves as the Administrator for the Boise CID, and the City's outside bond counsel. In that memorandum, a copy of which is included in the Record (R pp. 152-164), Residents detailed their constitutional challenges to the Boise CID, its bonds, its tax levies, and its

[7] This Court uses the terms "issue" and "argument" interchangeably in the preservation context in many of these cases. The requirement is not that a party must make every possible persuasive argument on a given issue to preserve it for appeal, but rather that they have identified the issue and made at least some argument in support.

[8] Respondents allege that Residents are arguing "that an agency or government body like the District must analyze and respond to every public comment submitted in advance of a public meeting, in writing, in order to later defend itself should its decision be appealed." RB p. 27. That is not the case. But Respondents' statement also unintentionally buttresses Residents' actual position. Residents are arguing that, because the October 5, 2021, meeting was simply a "public meeting" prior to which only "public comments" were invited, and not a formal legal proceeding, *neither* the Boise CID *nor* Residents were required to provide any "legal arguments."

payments to the Developer (including the alter ego and lending of credit arguments), all of which Residents presented again in this judicial review proceeding. The Boise CID's Administrator summarized those constitutional challenges in his 30-page Staff Report to the CID Board. AR p. 48. That Staff Report analyzed the legal and other issues presented to the Boise CID and provided recommendations. AR pp. 27-49. It is undisputed, however, that neither the Boise CID nor the Developer made any legal arguments in opposition to Residents' constitutional challenges.

Therefore, if this Court were to uphold the District Court's imposition of a preservation rule in this judicial review proceeding, then it should strike all Respondents' and Intervenor's arguments regarding those constitutional issues and uphold Residents' challenges on the grounds that they were unrebutted by any legal argument preserved by Opponents.

6. To Treat the Mere Adoption of a Resolution as If It Were a Formal Contested Case Proceeding Would Produce Absurd Results.

There is an additional and substantial reason why the mere adoption of a resolution by a CID board should not be treated as if it were a contested case administrative proceeding – it would produce absurd results. Intervenor notes in their Response Brief, in arguing that Residents cannot challenge the approval of additional payments for the Accrued Interest Projects, as follows:

> Indeed, if the [Boise CID] were to agree with [Residents] and re-open prior project approvals, it would be running afoul of *City of Burley v. McCaslin Lumber Co*., 107 Idaho 906, 693 P.2d 1108 (Ct.App. 1984), which stands for the proposition that even the jurisdiction issuing an approval is subject to the same jurisdictional requirements for appeal … . In other words, there is no unilateral right of an administrative body to revisit prior, settled, and unappealed decisions … .

IB p. 38. The District Court in fact said much the same thing in denying Residents motion to include documents related to the Accrued Interest Projects in the record on appeal:

> [T]here is no unilateral right of an administrative board to revisit prior decisions that were not appealed. A board seeking to challenge a prior decision must follow the same procedure as any challenger. *See City of Burley v. McCaslin Lumber* …

R p. 605. Those are rather extraordinary statements. They would mean that, if the CID Board decided to "revisit" a prior resolution to, for example, remove a Developer project which it later determined did not qualify for reimbursement, they could not simply do so at their next meeting. Rather, they would have to file an "appeal" pursuant to Section 50-3119 with the District Court, and do so within 60 days, or the prior resolution would be set in concrete forever. That further underscores the fact that the adoption of the Challenged Resolutions was not a due process proceeding to which a court-fashioned procedural rule like the preservation requirement should apply.

C. The Fronting Exclusion Applies to Public Facilities Directly in Front of But Not Necessarily "Touching" One or More Single-Family Residential Lots.

The Fronting Exclusion is a second limitation under the CID Act which is fatal to many of the Boise CID's proposed payments to the Developer – the prohibition against financing facilities "fronting individual single-family residential lots." Respondents' have advanced arguments in this appeal regarding the meaning of the word "fronting" which are nearly identical to those they made to the District Court. *E.g.*, R pp. 814-820; RB pp. 33-37. Those arguments remain fatally flawed, and for the same reasons. Just as they did below, Respondents repeatedly cite to authority which does not support the propositions for which that authority is cited and thus misstate the content of that authority. *Id*. And they repeatedly cite to authority which is unrelated to the issue presented

and therefore irrelevant. *Id*.[9]

The District Court, however, did not address any of those arguments, and instead decided, based on a labored grammatical analysis of the word "individual," that the plural word "lots" must instead be read as the singular word "lot." R pp. 1034-1040. But that is contrary to the plain meaning of the statutory language and ignores the simpler and widely understood meaning of the word "individual" in this context. The District Court's interpretation of the word "individual" should therefore be rejected by this Court, and the meaning of the word "fronting" should instead be addressed.

As Residents explain in their Opening Brief, pursuant to a variety of authorities accepted by this Court, the word "fronting" is generally understood to mean "facing" or "in front of," and not only "physically touching." OB pp. 40-43. If the Legislature had meant "physically touching," there are words it could have used which mean that. Those include "abutting" and "contiguous" – the latter of which the Legislature in fact used in the CID Act in imposing another limitation on CIDs which Opponents effectively ignored. I.C. § 50-3102(5) ("A district shall only include contiguous property at the time of formation.")[10] But the Legislature used the word "fronting."

1. The Fronting Exclusion Applies to Public Facilities in Front of One *or More* Single-Family Residential Lots.

[9] Residents moved to strike those arguments in the District Court. R pp. 965-977. The District Court declined to do so because, it explained: "[t]he Court is well-positioned to ignore or reject statements and arguments that it feels are not supported by the law … .". R p. 1008. The District Court, however, did not reach those arguments as it instead ruled that the word "lots" means "lot." Respondents' arguments should be stricken or ignored for the same reasons presented by Residents below.

[10] Residents have not argued the contiguity issue here due to the page limitations on briefing.

The District Court held, and Opponents argue at length, that the Fronting Exclusion applies only to community infrastructure fronting on *just one* single-family residential lot. R p. 1040; RB pp. 28-33; IB pp. 26-27. They do so despite the literal language of the statute, which prohibits facilities "fronting individual single family residential lot**s**." Their argument turns on a strained interpretation of the word "individual" in that phrase, which runs contrary to the commonly understood meaning of that word in this context. Residents argue instead that the statutory phrase is synonymous with the equally common and self-explanatory phrase "single-family residential lots."[11] OB pp. 35-39. But there is another and more definitive meaning of the word "individual" in this context.

The Legislature could have chosen to use the term "single family residential lots" to describe the properties to which the Fronting Exclusion applies. But they instead chose to use the term "*individual* single family residential lots." The question presented is what meaning to attach to the word "individual." The simplest and therefore likeliest explanation is that the word is intended to distinguish residential lots on which only an "individual" single family home can be located from residential lots on which "multiple" single family homes can be located. There are several common and widely known examples of "single family residential lots" which are zoned for not just one but rather for multiple single-family residences. Those include, among others, single lots zoned for duplexes, which consist of two single-family residences (*see, e.g.*, Boise City

[11] Respondents object to Residents' citation to an internet search for the term "individual single-family residential lots" to show that it is used across the country interchangeably with "single-family residential lots." RB p. 29. Residents thus have attached as **Appendix B** a representative listing of those references taken from that search.

Code 11-06-03 – "Dwelling, Duplex"), and single lots zoned for mobile home parks, which can include many single-family manufactured homes (*see, e.g.*, Boise City Code 11-03-02.2.L).

Therefore, the Fronting Exclusion can most reasonably be read to prohibit community infrastructure fronting on single-family residential lots zoned only for "individual" and not for "multiple" single-family residences. *See also* I.C. § 67-6509A(2). The definition in the CID Act thus should be read to prohibit community infrastructure fronting on one or more *individual* single-family residential lot**s**.

2. The Fronting Exclusion Applies to Public Facilities Directly in Front of But Not Necessarily Touching Single-Family Residential Lots.

a. The Word "Fronting" Does Not Have a Technical Meaning.

Opponents argue that the Legislature intended a technical meaning, limited to things that physically touch, when it used the word "fronting" in the CID Act. RB pp. 34-35; IB pp. 26-30. There is no legal authority, however, which supports this argument. The applicable authority instead shows that the generally understood meaning of the word "fronting" does *not* require physical contact.

Respondents do not cite to a single case that holds or even suggests that the word "fronting" has a technical meaning in any context, let alone one that refers exclusively to things that physically touch. Respondents instead cite to the definition of "fronting and abutting" that appeared in Black's Law Dictionary 56 years ago (4th Ed.) and 34 years ago (6th Ed.). RB pp. 35-36. Definitions in long-supplanted legal dictionaries from 56 years ago and 34 years ago, however, are not relevant to what the Legislature intended in 2008. Moreover, that definition was *removed* from Black's Law Dictionary 25 years ago because it had no accepted legal meaning. Thus, the

Eighth Edition of Black's Law Dictionary, published in 2004 (and the edition therefore in place in 2008 when the CID Act was passed), does not contain a definition of the word "fronting."

Thomson-Reuters, the publisher of Black's Law Dictionary, explicitly states in the Eleventh Edition (2019) that terms which appeared in earlier editions but that have since been removed should not be considered as true legal terms. The long-time Editor-in-Chief, Bryan A. Garner, explains in the Preface to the Eleventh Edition:

> This massive new edition of Black's Law Dictionary continues the undertaking begun by Henry Campbell Black in 1891: ***to marshal legal terms to the fullest possible extent and to define them accurately***.
>
> * * *
>
> Since becoming editor in chief in the mid-1990s, I've tried with each successive edition to make the book at once both more scholarly and more practical. ***Anyone who cares to put this book alongside any of the first six editions (pre-1991 editions) will discover that the book has been almost entirely rewritten, with an increase in precision and clarity. It's true that I've cut some definitions that appeared in the sixth and earlier editions***. … ***These [examples] should not count as legal terms worthy of inclusion in a true law dictionary***. [Emphasis added.]

Moreover, the definition of "fronting and abutting" in the 1990 Sixth Edition, cited by Respondents, in turn cites to a single 1931 Missouri case where the court stated: "[v]ery often, 'fronting' signifies abutting, adjoining, or bordering on, depending on the context." *Rombauer v. Compton Heights Christian Church*, 328 Mo. 1, 40 S.W.2d 545 (1931). That case is noteworthy for two reasons. First, it was a case involving contract interpretation rather than statutory construction, where those three terms were used "interchangeably." Second, and more importantly, the property which was described variously as "fronting," "abutting" and having "frontage" on the street did *not* physically touch the street. Rather, as the property plat included in the decision reveals, the property line ended at a public sidewalk approximately 15 feet away from the two

streets on which the property "bordered." *Id*. at 7.[12] Black's Law Dictionary, therefore, does not provide any insight into what the Legislature intended when it used the word "fronting."[13] And, in fact, the anachronistic definitions cited by Opponents instead contradict their assertion that "fronting" requires physical touching.

Opponents, in arguing that "fronting" has some sort of technical meaning, also cite to the Boise City Code. RB p. 35, fn. 10; IB p. 29. That argument also fails, and for two reasons. First, Opponents do not cite any authority that identifies the Boise City Code as a source for statutory construction. Second and more importantly, Opponents mischaracterize the Boise City Code. Respondents contend that a provision of that Code "equates 'fronting' with adjacency or similar terms like 'abutting.'" RB p. 35, fn. 10. But that is untrue. There is no definition of the word "fronting" in Boise City Code. Opponents instead cite to a definition of "Lot, *Frontage*" – a term not in dispute.[14] *Id*.; IB p. 29. Opponents also neglect to mention that the word "fronting" *is* used

[12] Respondents, in a footnote to their discussion of the long-deleted definition, lay out a confusing series of definitions from the Eleventh Edition of Black's Law Dictionary, including of the terms "frontage," "abut," "abutting property," and "adjoining property." RB p. 36, fn. 11. All those definitions, however, are irrelevant, as none addresses the meaning of the word "fronting." Respondents then assert that "even the current definition of 'frontage' contemplates immediate adjacency." But that statement does not advance their cause either, but instead buttresses Residents' argument. That is because the word "adjacent" is defined by Merriam-Webster to include not only: "**b:** having a common endpoint or border – '*adjacent* lots', but also: "**1 a**: not distant: **NEARBY**." "Adjacent." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/ adjacent. Accessed Sept. 16, 2024. (Emphasis in original.) The word "adjacent" is thus not limited to "physically touching."

[13] The Twelfth Edition of Black's Law Dictionary, released in June 2024, also excludes any definition of the word "fronting."

[14] Intervenor states that they "provided the District Court with dozens of examples of how the terms "fronting" and "front" are used in zoning codes throughout the State of Idaho," and that "[t]hese … examples consistently show that the terms "fronting", "front", or "to front" require adjacency."

elsewhere in the Boise City Code, but nowhere in a context that requires physical touching. For example, it is used in the context of the City's sewer connection fees to describe a lot "fronting" on a sewer line where there necessarily is no "touching" (other, presumably, than upon a future connection). Boise City Code § 10-2-6-3.C.3, 4 & 6.

Therefore, none of the authority cited by Opponents is relevant as to whether the word "fronting" is a technical term with a technical meaning that requires "physical touching." And much of the authority Opponents cite indicates the opposite – that "fronting" does not require physical touching.

b. The Word "Fronting" Is Not Otherwise Defined by the Idaho Courts.

Respondents assert that Residents' use of corpus linguistics as an aid to interpret the commonly understood meaning of the word "fronting," "is the wrong approach."[15] RB p. 34. But Respondents then undertake their own micro-version of corpus linguistics by citing eight Idaho cases (plus two Missouri cases, from 1891 and 1900, cited in a 1911 Idaho case), that on average

IB p. 30. Those two statements are untrue and misleading. Of the 57 examples provided, *all* of them instead define or otherwise use the word "frontage."

[15] Respondents then criticize Residents because "they have not produced any sort of report or analysis interpreting the results of their corpus linguistics search." RB p. 34, fn. 9. This is untrue. Residents include an analysis of the search results within their briefing and attach the results themselves as an appendix. *See* OB pp. 42-43. And Residents do not understand how such a "report" could be introduced in this judicial review proceeding. Moreover, it is unclear why a party would need an expert to account for the number of search results which use the word "fronting" in a way that means physically touching and those that do not. In *State v. Lantis*, 165 Idaho 427, 433, 447 P.3d 875, 881 (2019), this Court cited corpus search results as "research" which "empirically shows" how the words at issue in that case were used in the past. That is the same analysis Residents have performed here. Chief Justice Bevan performed that analysis and relied on those search results without the aid of an expert.

are over 100 years old, in which the word appears somewhere in the court's decision, but is not otherwise discussed yet alone defined. RB pp. 36, 37 fn. 12. Their only common characteristic is that the word "fronting" appears somewhere in the text, often only once.

Respondents then proceed to mischaracterize those cases. None of those cases stand for the proposition for which they are cited: that the term "fronting" is used by Idaho courts "in a manner synonymous with 'abutting' or 'adjacent to,' or to otherwise denote a common shared boundary."[16] *Id*. In fact, three of the cases strongly imply that "fronting" does *not* mean "abutting," as they use the two words in the disjunctive – "fronting or abutting."[17] None of those cases construes the meaning of the word "fronting," whether in a contractual or statutory context. And none of those cases hold that the word "fronting" requires "physical touching."[18]

Respondents next suggest that "further insight" can be gained as to the meaning of the word "fronting" not by looking to dictionary definitions or to an actual corpus linguistics analysis, but instead to the "law regarding LIDs," which they state (incorrectly) are "[s]imilar to CIDs."[19] RB

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[16] Opponents argue that the word "fronting" requires "adjacency". *E.g.,* RB pp. 33-36; IB pp. 30-31. That further confuses the issue, however, because that is what *Residents* are arguing. The word "adjacent," as explained in fn. 12, *supra*, means "nearby" although it can also mean "having a common border."

[17] *See*, the *Canady, Glasgow,* and *Knapp, Stout & Co.* cases cited in RB p. 36.

[18] Intervenor, on the other hand, does not cite a single case in support of their contention that "fronting" means something other than "directly in front of or facing."

[19] LIDs are not legally separate taxing districts, but rather a mechanism used by local governments to impose special assessments on properties specially benefited by local public improvements. *See* Idaho Local Improvement District Code, Idaho Statutes, Title 50, Chapter 17 ("LID Code"). They do not involve any bond election, nor the imposition of property taxes. The Boise CID not only has the authority to utilize LIDs (Section 50-3109) but did so in 2011. However, the Boise CID's prior financing through an LID is not before the Court in this proceeding.

pp. 37, fn. 13. But the word "fronting" does not appear in the LID Code. Therefore, Respondents' suggestion that the LID Code defines "fronting" or is otherwise relevant to an interpretation of that word within the CID Act is untrue and misleading. As the word "fronting" does not appear in the LID Code, Respondents instead explore the use of the term "front-foot method" which is used in the LID Code. But the use of a different term in a different statute is irrelevant to this dispute.

Respondents then offer yet another mischaracterization: "Thus, 'fronting' in the similar context of LIDs is used in a manner synonymous with 'abutting'." RB p. 35. In support of this untrue statement, Respondents cite two Idaho cases, *Ward v. Ada County Highway Dist*., 106 Idaho 889, 684 P.2d 291 (1984), and *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921). Neither of those cases, however, stands for the proposition for which they are cited. The word "fronting" appears only once in the *Ward* case – in quoting the statutory language at issue in the *Amsbary* case. And the *Ward* case had nothing to do with the issue here – whether the word "fronting" has a technical meaning and requires physical touching. The *Ward* case instead held that a "front foot" special assessment based on property "frontage" was a permissible method under the applicable statute. *Ward*, at 893. *Amsbary* held that lots in the center of a block which were *not* "abutting on" or "contiguous to" street improvements could nonetheless be assessed, because they were "tributary." *Amsbary*, at 315. The court did not construe or even address the meaning of the term "fronting," as it was not at issue, other than to note that it was listed in the statute in the disjunctive: "fronting or abutting on, contiguous or tributary to the street improved." *Id*.

Respondents continue their mischaracterizations by then asserting that "[c]ourts outside Idaho have addressed and rejected [Residents'] argument that 'fronting' merely denotes 'facing'

or 'in front of'." RB p. 35. Yet again, that is untrue, and Respondents once again mischaracterize those cases to try to cobble together some form of authority for their untenable position. The two intermediate appellate cases cited (one of which is unpublished[20]) are from the other side of the country – Pennsylvania and New Jersey. And they say no such thing. *Frederici v. Borough of Oakmont Zoning Hearing Board*, 136 Pa. Cmwlth. 310, 583 A.2d 15 (1990), held only that a corner lot is "fronting on" both crossing streets – which presumably do not physically touch the lot because of a sidewalk between them, regardless of which way the building on it faces. *Frederici*, at 314. The case does not address whether "fronting" means "directly in front of," let alone whether the lot "physically touched" the streets. *Leary v. Pepperidge Farm, Inc.*, 2009 WL 2426345 (N.J. Super. Ct., App. Div., Aug. 10, 2009), interpreted the use of the term "fronting" in a consignment contract, not a statute. The court held only that the term as used in the contract was ambiguous in reversing a summary judgment below. Neither case, therefore, considered Residents' argument that the commonly understood meaning of the word "fronting" is "directly in front of or facing."

c. Residents' Interpretation of the Fronting Exclusion Is Neither Overbroad Nor Unworkable.

Opponents next argue that Residents' definition of "fronting" as meaning "directly in front of or facing" would leave open the question of how close community infrastructure would have to be to single-family residential lots to run afoul of the prohibition. RB pp. 38-39; IB p. 32. Respondents ask whether a park across the street from single-family residential lots would be

[20] Respondents cite to an unpublished opinion despite this Court's instruction that "No unpublished opinion shall constitute precedent or be binding upon any court . . . [and] no unpublished opinion shall be cited as authority to any court." https://isc.idaho.gov/appeals-court/coaunpublished.

"fronting" on those lots. *Id*. And Intervenor asks whether you "have to be able to hit the community infrastructure with a baseball, or will a strong frisbee throw suffice?" *Id*. Those, however, are not the facts before this Court. District courts can resolve any such questions on a case-by-case basis if they should arise in a future challenge to a CID "final decision." The facts here are that the Developer has interposed a narrow landscaping strip, owned by the HOA, between the street and single-family townhomes which every owner of those townhomes has the legal right to use and enjoy.[21] Those landscaping strips are not buildable lots. Nor are they owned by a third party who could bar entry to those owners. So, there is no question that the Townhomes #9 and #11 Projects are "directly in front of" single family residential lots.[22]

Opponents' argument would also lead to absurd results. For example, a developer could interpose a *one-inch* strip owned by the HOA between a street and single-family residential lots and thereby circumvent the Fronting Exclusion. The District Court recognized this absurdity in its Opinion, but chose not to reach the issue and instead based its ruling on other grounds. R p. 1040 ("[T]he Court appreciates the rationale behind Petitioners' stance that a lot is still 'fronting' a

[21] Opponents describe this as a "12-foot" strip. RB p. 39; IB p. 32. What they omit is that there is a 6-foot-wide City sidewalk on an easement inside of that strip. *E.g.,* AR p. 1189. They also omit that the Boise CID denied reimbursement to the Developer for construction of those sidewalks apparently because they are "fronting" on single-family townhomes. *E.g*., AR p. 484, Item 12000. Opponents nonetheless argue that the streets only 6 feet further away are *not* "fronting" on those same homes.

[22] Respondents' assertion that townhomes directly in front of the local streets for which payments were authorized by the Payments Resolution "do not have direct access to the improved roadways" (RB p. 39) is untrue. The owners can park on the street and walk across the narrow grass strips to their townhomes. And, as the homes are designed so that garages are at the rear, owners can drive down their local street to any of the several alley entrances to park in their garages.

street even if a narrow strip of undevelopable land separates the lot from the street … .") Thus, as the Townhomes #9 and #11 Projects are "fronting" on one or more individual single-family residential lots, they cannot be financed under the CID Act, and the Payments Resolution which approved that is therefore unlawful.

D. The South Stormwater Facilities Are Not Publicly Owned and Thus Cannot Be Financed Under the CID Act.

The CID Act provides that only community infrastructure that is publicly owned may be financed. I.C. §§ 50-3101(2), 50-3107(1) ("Only community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter."). That is an unambiguous and self-explanatory requirement. Opponents throw up a lot of dust to obscure the simple fact that the South Stormwater Facilities and the land on which they are located are *not* publicly owned. Residents, however, can clear the air.

1. Community Infrastructure Located on an Easement Must Still Be Publicly Owned.

Respondents first note that Section 50-3102(2)(e) of the CID Act authorizes CIDs to "acquir[e] interests in real property" including easements "*for community infrastructure*." RB p. 40 (emphasis added). Residents do not dispute that. Opponents then note that Section 50-3105(2) provides that "[c]ommunity infrastructure other than personalty, may be located *only* in or on lands, easements or rights-of-way publicly owned by this state or a political subdivision thereof." *Id.* (emphasis added). Residents do not dispute that, either. That subsection, however, is not a grant of authority but rather a limitation on its exercise. It is a corollary to the requirement that community infrastructure itself must be publicly owned. Section 50-3102(e) thus authorizes, for example, a

publicly owned road to be constructed either on publicly owned land or on an easement or right-of-way granted to the public entity for that purpose.[23]

But what Opponents instead argue is that privately owned improvements, constructed by a private property owner, but which are located on a public easement, do *not* need to be publicly owned so long as they constitute "community infrastructure." RB pp. 40-41; IB p. 33. This argument fails because it ignores the plain language of Sections 50-3101(2) and 50-3107(1) which requires that such community infrastructure *itself* must be publicly owned. Moreover, it would produce the absurd result which Respondents approved in this case. It would also allow privately owned water supply facilities on privately owned land which primarily benefit a private development nonetheless to be financed under the CID Act. The private owner could simply grant an easement to the city to connect to those facilities and to maintain them only upon the private owner's failure to do so and at the private owner's expense. But there is no such exception under the CID Act to the public ownership requirement. It is the community infrastructure itself, and not just the easement on which it is located, which must be publicly owned.

2. Opponents Confuse an Easement Which Is Exclusive of Everyone Else, Including the Property Owner, with an Easement Which Is Not.

Opponents cite language in the Easement Agreement for the South Stormwater Facilities that describes the grant of the easement to ACHD as "exclusive." RB pp. 44-45; IB pp. 35-36. They then argue that, because the easement is "exclusive," it amounts to ownership of the land and

[23] If, as Intervenor asserts, portions of the South Stormwater Facilities located on the easement instead "are inseparable from the land and indistinguishable from the real property," (IB p. 34) then what the CID Act plainly requires is that such land and real property also be publicly owned.

the improvements. *Id*. But Opponents have misunderstood the use of that term in the Easement Agreement.

The case cited by Intervenor which describes an "exclusive easement" as amounting "to almost a conveyance of the fee" was an easement for a roadway *which excluded everyone else*, *including the property owner*, from the use of that property. *Latham v. Garner*, 105 Idaho 854, 673 P.2d 1048 (1983).[24] Here, on the other hand, the Developer retains not only the right but also the obligation under the Easement Agreement to operate, inspect, maintain, repair and even reconstruct the South Stormwater Facilities, and at the Developer's sole cost and expense. AR pp. 1018-1020.

Moreover, the Developer remains free to grant additional easements to third parties on and over the South Stormwater Facilities which are not in conflict with ACHD's rights under the Easement Agreement. *E.g., Nampa & Meridian Irr. Dist. v. Mussell*, 139 Idaho 28, 72 P.3d 868 (2003) (Owners can use their property in any manner not inconsistent with, or which does not materially interfere with, the easement granted to another.); *Ruddy-Lamarca v. Dalton Gardens Irr. Dist.*, 153 Idaho 754, 291 P.3d 437 (2012) (Owner is entitled to make uses of the property that do not unreasonably interfere with the holder's enjoyment of the easement.). Thus, for example, the Developer, as legal owner of the property and facilities, is free to grant an easement for light, air and view, or a conservation easement, or even an easement for compatible recreational uses, such

[24] Residents cite *Viebrock v. Gill*, 125 Idaho 948, 877 P.2d 919 (1984) in their Opening Brief for its statement that "[a]n unlimited easement [as to use] is virtually a conveyance of ownership, rather than an easement." (Citations omitted.) OB p. 49. The Easement Agreement here is clearly not that.

as fishing or birdwatching, on or over such property and facilities.[25] And the use by both ACHD and the Developer of the South Stormwater Facilities continues to be very valuable to the Developer, as those facilities are allowing the Developer to proceed with a very large and profitable real estate development.

The only way in which the Easement Agreement is "exclusive" is that it prohibits the grant of another easement by the Developer to a third party for use of the property *as stormwater facilities*. Therefore, the Easement Agreement does not amount to a conveyance of a fee interest in the South Stormwater Facilities or the property on which they are located to ACHD.

3. The Easement Agreement Only Grants ACHD an Easement to Construct, Operate and Maintain the South Stormwater Facilities and Not a Highway.

Opponents emphasize that the Easement Agreement grants ACHD the authority to construct, operate and maintain a "Highway including [the South Stormwater Facilities]." RB p. 42; IB p. 34 (emphasis added). But the term "Highway" is used in the Easement Agreement as defined in I.C. § 40-109 so as to include the South Stormwater Facilities. AR p. 1019. Both Opponents and the District Court nonetheless assert that ACHD has the right under the Easement Agreement to construct and maintain an actual "highway" on the land on which the South Stormwater Facilities are located, and that this supports their conclusion that the rights granted under the Easement Agreement are tantamount to ownership. RB p. 42; IB p. 36; R pp. 1042-1044. But those assertions are both nonsensical and untrue. That is because the Developer has the

[25] Opponents' assertions that "ACHD has exclusive control over the premises" (RB p. 44), that ACHD has "control of essentially all but the fee itself" (*Id*.), and that the South Stormwater Facilities "are controlled by ACHD" (IB p. 36) therefore are untrue.

"permanent" obligation under the Easement Agreement:

> … to maintain the physical integrity of the [stormwater] facilities and this Easement in good condition and repair and as required to satisfy all requirements of applicable laws, the policies of ACHD and sound engineering practices at [Developer]'s sole cost and expense … ,

and to do so "forever" AR p. 1018-1020, Secs. 2(b), 3, 5 and 7.

The South Stormwater Facilities occupy almost all of the narrow parcels on which they are located. *E.g.*, AR pp. 1133-1139. It would be impossible to build a highway on that property without destroying those facilities. The grant of authority to construct a "highway" is thus illusory. Moreover, ACHD may only enter the property to perform any needed maintenance on the stormwater facilities "[i]n the event of a failure to maintain [by Developer]," and only "after providing [Developer] with ten (10) days' written notice and an opportunity to cure." AR pp. 1019-1020, Sec. 5. ACHD therefore has very limited rights to do anything at all on its easement.[26]

4. The Grant of an Easement to a Public Entity to Use Privately Owned Improvements on Privately Owned Property Does Not Convey Ownership of Those Improvements to the Public Entity.

The parties do not dispute the fact that a property owner can construct, operate and maintain whatever facilities they would like on their own property and that they will be the legal owner of those improvements. And there can be no dispute that, if a third party is granted an easement by a property owner to construct, operate and maintain facilities on the private owner's property, the holder of that easement is the legal owner of those facilities. *See, e.g.*, *Northwest Pipeline Comp.*

[26] The Easement Agreement was drafted such that it appears to convey a broad grant of rights to ACHD while in fact providing ACHD very few actual rights. And it is only the extent of the actual substantive rights granted that are material to an analysis of whether ACHD's rights under the Easement Agreement are tantamount to ownership.

v. Luna, 149 Idaho 772, 241 P.3d 945 (2010) (easement for private oil and gas pipeline); *Neider v. Shaw*, 138 Idaho 503, 65 P.3d 525 (2003) (easement for private railroad facilities); *Abbott v. Nampa Sch. Dist. No. 131*, 119 Idaho 544, 808 P.2d 1289 (1991) (easement for private irrigation ditch). The holder of that easement thus can build, repair, improve or even remove those facilities as they choose, so long as it is not contrary to the terms of the easement and does not otherwise interfere with the private owner's use and enjoyment of their property. *See., e.g*., *Nampa & Meridian Irr. Dist.* and *Ruddy-Lamarca, supra*. But Opponents make the startling assertion that if a private property owner grants an easement to a *public* entity to use stormwater facilities which are owned and constructed by the *private* property owner, that grant somehow transfers legal ownership of those private facilities to the public entity. RB pp. 40-43; IB pp. 32-34 There is simply no authority for that assertion.[27]

The one case cited by Intervenor for the proposition that ACHD is the owner of the South Stormwater Facilities is inapposite. *Kolouch v. Kramer*, 120 Idaho 65, 813 P.2d 876 (1991), addressed whether non-use by the holder of a recorded "easement by grant" constitutes an

[27] Intervenor also asserts that the South Stormwater Facilities "were dedicated to and accepted by ACHD." IB p. 36. But there is nothing in the Record which supports that. The letter in the Record from ACHD to which Intervenor cites instead only "accepts *the public street improvements* … for public maintenance." AR p. 1016 (emphasis added.) Moreover, ACHD did not need to "accept" the South Stormwater Facilities "for public maintenance" because under the terms of the Easement Agreement maintenance of the stormwater facilities is the obligation of the Developer. AR pp. 1019-1020. The stand-alone statement on the divider page at AR p. 1018 that "Storm Water Pond Improvements are owned by the Ada County Highway District" is by the Developer, as part of their request for reimbursement to the Boise CID, and in any event is untrue. The only documentation in the Record of ACHD's interest in the South Stormwater Facilities is the Easement Agreement itself. AR pp. 1018-1030.

abandonment of the easement. This Court held that it does not. *Id*. at 69 The case also addressed whether an easement which granted "a right of way for ingress and egress" entitled the holder to build a road on the easement. This Court held that it does. *Id*. The case did not present, and the Court did not otherwise address, whether an easement to use a pre-existing road *already constructed* by a private property owner constitutes a conveyance by the property owner to the holder of the easement of legal title to the road.[28] And there is no authority which so holds.

If the Developer wanted to convey ownership of the South Stormwater Facilities to ACHD, they could have done so by conveying legal title to the land and the facilities to ACHD, or by granting an easement over the land plus legal title to the facilities. But they did not do so. Thus, the South Stormwater Facilities cannot be financed under the CID Act.

E. Section 50-3119 Provides for Judicial Review of the Accrued Interest Projects Even Though Partial Payments for Those Projects Have Been Approved by the Boise CID in the Past.

Section 50-3119 provides Residents the right to challenge the "validity, legality and regularity" of final decisions of the CID Board if they do so within 60 days. By its terms, Section 50-3119 does not limit the grounds on which Residents can do so. The statute then prohibits a challenge to such decision "for any reason whatsoever" after 60 days. The implication of that language, however, is that a challenge may be brought within the limitations period "for any reason whatsoever."[29] But the statute does not end there. The final sentence includes a more

[28] The Administrative Record does not reflect, despite Intervenor's assertion, that the South Stormwater Ponds "are constructed to the specifications of [ACHD]." IB p. 34. But that in any event is irrelevant to the question of whether ACHD is the legal owner of those facilities.

focused prohibition as follows:

> [I]f the question of *validity of any bonds* . . . 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. [Emphasis added.]

That language would be superfluous if an aggrieved person did not have the affirmative right to challenge "the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same" within the 60-day appeal period. *See, e.g.*, *State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020) (statutes must be interpreted to give all words meaning).

Opponents nonetheless argue that the approval of additional payments for the Accrued Interest Projects is immune from challenge because the CID Board has approved payments for those projects in the past. RB pp. 46-51; IB pp. 36-38. Opponents, of course, cannot cite to any case which so holds, as this is another issue of first impression. In any event, Opponents' argument is contrary to the plain language of the statute.[30]

What Opponents are arguing, in effect, is that the prior approvals by the CID Board of payments for the Accrued Interest Projects constituted approval not only of those *payments* but also of those *projects*. But, unlike with the Payments Resolution, which does approve specific projects, the CID Board never approved most of the Accrued Interest Projects – just the payments.[31] Opponents' argument thus collapses under its own weight because it presupposes an

[30] Opponents both cite extensively to cases and procedural rules regarding judicial review of administrative actions, including to the requirement that they be timely filed. RB p. 46; IB p. 37. Those cases are inapposite because there is no question that Section 50-3119 provides a right to judicial review, and that Residents' petition for judicial review was timely filed.

[31] The District Court refused Residents' request to include documents in the Administrative Record

underlying decision different than the one the Boise CID actually made.

In any event, Opponents' arguments prove too much because they would negate Residents' right to judicial review. Thus, for example, Opponents' argument would mean that the CID Board, at its first meeting in 2010, could have approved payments for various projects such as "Road Improvements," "Sewer Improvements," and "Alta Harris Park Improvements," together with "Estimated Costs," and the subsequent authorization of payments for those projects over the ensuing 20 or 30 years would be immune from challenge. That, in fact, is exactly what the CID Board did at its first meeting in 2010 in approving the General Plan for the District,[32] and in exactly those terms. But that would read Section 50-3119 right out of the Idaho Code.

Each payment by the Boise CID for "community infrastructure" must satisfy the requirements of the CID Act. The additional payments to the Developer for the Accrued Interest Projects are no exception. Assume hypothetically that ACHD vacated back to the Developer a public road, a portion of the costs of which had been previously reimbursed to the Developer by the Boise CID. Opponents' argument would mean that the Boise CID nonetheless could continue to make payments to the Developer for costs of that road, even though it was no longer publicly owned, because the Boise CID had approved partial payments for those projects in the past. But that obviously would be impermissible under the plain language of the CID Act.

What Opponents decline to acknowledge is the dynamic tension in Section 50-3119 between the unfettered right granted to persons in interest to challenge the validity, legality and

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which demonstrate that fact. R p. 601.

[32] District Resolution No. 2-10, adopted on June 22, 2010. *See, e.g.*, AR p. 1410; AR pp. 922-949.

regularity of *new* final decisions of a CID board, and the protection afforded to *prior* final decisions against challenge "for any reason whatsoever." Residents' reading of the statute balances those tensions. Opponents' reading does not.

F. Due Process Is Not Satisfied by the Lack of Any Process at All.

As Residents have explained, the City and the Developer manipulated the boundaries of the Boise CID to exclude hundreds of existing homes in the Development from the District. OB pp. 11-12. Thus, the only "persons in interest" (to use the statutory language) within the Boise CID at the time of its formation and bond election were the persons in whose interest it was for the Boise CID to be formed and the bonds to be authorized, as they stood to benefit to the tune of $50 million.

Due process requires timely notice and the right to be heard in a meaningful forum. *E.g.*, *Von Jones v. Bd. of Cnty. Comm'rs, Cassia Cnty.*, 129 Idaho 683, 931 P.2d 1201 (1997). The District Court's decision, for which Opponents argue, has deprived Residents, and would necessarily deprive all CID owners, of any process if the formation of a CID, its bond election, or other actions taken before there were any homes in a development, were unlawful (as they were here).[33] After the passage of only 60 days, and months or even years before a single home is built, and thus before anyone could have voiced any objections, those actions would become immune from challenge. Residents' interpretation of Section 50-3119 avoids that rather fundamental

[33] Respondents assert that Residents "do not identify the precise property interest being violated." RB p. 51. The property interest implicated is the millions of dollars in property taxes unlawfully exacted from homeowners by the Boise CID.

constitutional infirmity.[34]

Record Notice Is Irrelevant. Respondents contend that Residents had at least record notice of the Boise CID, its bonds, and its special taxes. RB p. 54; I.C. § 50-3115. But whether Residents received record notice, or even actual notice that the Boise CID's actions were unlawful, is irrelevant. That is because, even if Residents had been provided such notice, there is nothing they could have done about it under the District Court's interpretation of Section 50-3319, as the statutory appeal periods had long since expired.

In any event, there is nothing in the "record" which put Residents on notice that the Boise CID's formation, bond election, special taxes, and payments to the Developer were all unlawful. To determine that, a prospective home purchaser would have had to: (a) review the dozens of pages of their preliminary title insurance commitment in their 100 or more pages of closing documents to spot reference to the CID; (b) identified the handful of lines about a "CID" as potentially important; (c) hired legal counsel; (d) made multiple and successive public records requests for thousands of pages of City and Boise CID documents to determine the import of the CID and its

[34] Respondents note that Residents' due process *argument* was not presented in their opening brief before the District Court. RB pp. 51-52, fn. 16. But that was not the *issue* presented by Residents. The issue presented by Residents in their opening brief and briefed and argued extensively before the District Court was the proper construction of Section 50-3119. *E.g.,* R pp. 676-682. Residents' due process argument before the District Court regarding that issue was properly raised in reply to Opponents' argument in their response briefs, in which they argued for a construction of Section 50-3119 which would deny Residents due process. *E.g*., R pp. 941-944. Courts look to a party's opening brief for all the *issues* presented by the case, not necessarily for every argument that can be made in support, let alone every argument which rebuts the responsive brief yet to be filed by an opposing party. *See, e.g*., *Midtown Ventures, LLC v. Capone as Tr. to Thomas & Teresa Capone Living Tr.*, 173 Idaho 172, 539 P.3d 992 (2023).

actions; and (e) reviewed and analyzed those documents in great detail. That is not an undertaking which can reasonably be expected of a prospective home purchaser who has no notice or even reason to suspect that many of those actions were unlawful. Moreover, Opponents fail to cite to any case to the effect that bare notice of the existence of a fact shifts the burden to the recipient to inquire as to whether there is some underlying unlawful action. Record notice of the existence of an easement, for example, does not alert a prospective purchaser to the fact that the easement was obtained fraudulently.

Due process requires "timely notice which adequately informs the parties ***of the specific issues*** they must prepare to meet." *State v. Gibbs*, 94 Idaho 908, 500 P.2d 209 (1972) (emphasis added); *see also Giacobbi v. Hall*, 109 Idaho 293, 707 P.2d 404 (1985); *State v. Doe*, 147 Idaho 542, 211 P.3d 787 (Ct. App. 2009). Record notice of the mere existence of the Boise CID and its taxes certainly did not adequately inform Residents of the unlawful actions which they have since uncovered.

Statutes of Limitation and Due Process. Intervenor contends that "[t]his Court has determined that application of a statute of limitations does not violate an individual's due process rights in a number of cases." IB p. 39. But that misstates the holdings in those cases. Intervenor first cites *Guzman v. Piercy*, 155 Idaho 928, 318 P.3d 918 (2014) for the proposition that "[t]he government's interest in providing its citizens and the county with some reliability and finality for its herd district ordinances is permissible and legitimate." *Id*. Residents do not dispute that. But that is not the holding in that case. The Court instead held that defendant Piercy did *not* have a protected property interest of which he was deprived by the statute of limitations. *Id*. at 940.

Mr. Piercy had been the owner of a bull which wandered onto a roadway and was hit by the plaintiff's vehicle, who then filed a personal injury lawsuit. *Id*. at 932. Mr. Piercy wished to avail himself of immunity for the collision under Idaho's "open range" laws. *Id*. But he was barred from doing so by the formation 23 years prior to the accident of a "herd district" which covered the area of the accident. *Id*. This Court held that Mr. Piercy did not have a protected property interest in the statutory immunity previously provided to him by the "open range" laws prior to formation of the herd district. *Id*. at 940. The Court therefore held that the statute of limitations which barred Piercy's belated challenge to the formation of the herd district could not, by definition, constitute a violation of his constitutional right to due process. *Id*. Here, there is no question, however, that the exaction from homeowners in a CID of millions of dollars in property taxes is a very substantial property interest protected by the Constitution. The District Court's interpretation of Section 50-3119, which would prohibit any challenge by CID homeowners to that unlawful exaction, therefore would violate those homeowners' due process rights.

Intervenor next cites *Wadsworth v. Dep't of Transp.*, 128 Idaho 439, 915 P.2d 1 (1996), for the proposition that "[s]tatutes of limitation are designed to promote stability and avoid uncertainty … ." Residents do not dispute that either. But that case is again inapposite. This Court held that plaintiff Wadsworth could not bring an action for inverse condemnation almost 30 years after the action complained of had taken place, which Mr. Wadsworth *was aware of when it occurred*, and almost 25 years after the expiration of the applicable statute of limitations. *Id*. at 443. Mr. Wadsworth thus had more than an adequate opportunity to assert his constitutionally protected property interest well before the limitations period expired. Residents had no such opportunity to

challenge the Accrued Interest Projects, let alone the formation of the Boise CID or its bond election, because they were not aware of those unlawful actions when they occurred and, in fact, could not possibly have known about those actions until after the limitations period had run.

The interpretation of Section 50-3119 adopted by the District Court and argued by Opponents would necessarily insulate the unlawful actions of a CID from any challenge by those ultimately affected. It would allow municipal governments to create unlawful and unconstitutional special purpose taxing districts with impunity. That interpretation thus would deny aggrieved persons in CIDs across the State of their constitutional right to due process just as it did here. The District Court's interpretation of Section 50-3119 must therefore be rejected.

G. A City-Wide Election Was Required to Approve the 2021 Bond Because the Boise CID Is the Alter Ego of the City.

Residents challenge the Bond Resolution and the proposed issuance of the 2021 Bond on the ground that the Boise CID's bonds were not approved by two-thirds of the City's voters as required by Article VIII, Section 3 of the Idaho Constitution. Opponents defend the Bond Resolution and the 2021 Bond by offering five scattershot arguments. RB pp. 56-60; IB pp. 40-46. But their arguments are all lacking in merit.[35]

As Residents explain in their Opening Brief (OB pp. 57-61), the sole criterion this Court has used to determine whether one governmental entity is the alter ego of another is the degree of control exercised by the latter over the former. *E.g.*, *Urban Renewal Agency of the City of Rexburg*

[35] Respondents also argue that Residents' challenge to the Bond Resolution on the grounds there was no City-wide election is barred by the limitations period under Section 50-3119. But the *absence* of a City-wide election is not a "final decision" subject to that limitations period.

v. Hart, 148 Idaho 299, 222 P.3d 467 (2009); *Boise Redev. Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972); *Wood v. Boise Jr. College Dorm. Housing Comm.*, 81 Idaho 379, 342 P.2d 700 (1959); *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).[36]

The *Hart* Case Is Not Helpful. Respondents note that, in the *Hart* case, although the Urban Renewal Law "had been amended *to allow the [city] governing body to appoint itself* as a commissioner on [sic] [as the commission of] the urban renewal agency," this Court held that the agency was not the alter ego of the city. RB p. 58 (emphasis by Respondents). Respondents therefore argue that the Boise CID is not the alter ego of the City even though "the [CID] Board was comprised of City council members." RB p. 59. But Respondents neglect to mention three crucial distinguishing facts in the *Hart* case which make it of little help to this Court.

First, the city in the *Hart* case had not appointed itself as the commission of the agency, and the commissioners of the agency were subject to removal only for cause and only after a hearing. *Hart*, at 302. Therefore, as in *Yick Kong*, the city was not exercising effective control over the agency. The Boise City Council, on the other hand, could remove CID Board members at any time and for any reason. Second, the *Hart* case involved a challenge to the *constitutionality* of the Urban Renewal Law, which must overcome a very high hurdle. *Id*. This case, on the other hand, seeks only an *interpretation* of the constitutional requirement. Residents argue that, in addition to the election required under the CID Act, the Idaho Constitution also requires a separate City-wide

[36] Residents are not alone in their concern about the control exercised by the City over the Boise CID. Counsel for the City, testifying in opposition to the CID Act, "expressed concern about the conflict of interest issues of the governing board [of a CID] being made up of City Council members ... ." House Revenue and Taxation Committee Minutes, March 6, 2008, p. 2.

election. That is not a challenge to the constitutionality of the CID Act. Third, the *Hart* case arose 37 years after the *Yick Kong* case, in which this Court had upheld the Urban Renewal Law against an alter ego constitutional challenge. The Court noted that more than 60 urban renewal projects had been financed since the *Yick Kong* case in reliance on that holding. The Court thus determined: "We are unable to conclude that our decision in *Yick Kong* is 'manifestly wrong.' Accordingly, 'the rule of stare decisis dictates that we follow it... .'" *Hart*, at 303 (citations omitted). This case, on the other hand, is the first time this Court has addressed issues arising under the CID Act, including the voter approval requirement. So, unlike in *Hart*, the Court is presented with a clean slate. Therefore, the *Hart* case does not support an argument that the City's effective control over the Boise CID can be disregarded in determining that the latter is the alter ego of the former.

Creature of State Statute. Respondents assert that "the [Boise CID] is not some invention of the City, but instead it was established *according to the CID Act*." *E.g.*, RB pp. 58-59 (emphasis in original). Intervenor asserts that "the [Boise CID] was established strictly in accordance with its statutory authorization, which … leads to a conclusion that there is no valid alter ego theory." *E.g.*, IB p. 44. But statutory authorization is not the dispositive or even predominant factor under this Court's analysis in its alter ego cases, cited above. In all four cases, the Court focused instead on whether the governmental entity exercised effective control over its alleged alter ego. Moreover, the first three cases involved a challenge to a governmental entity *which was a creature of State statute*. The existence of statutory authorization, although noted by the Court in its analysis, was not determinative. The Legislature has no greater power to circumvent the Constitution's voter approval requirement than does a local government. Therefore, the fact that the legal entity which

is used to do so is a creature of State statute does not save it from constitutional infirmity.

Effort to Circumvent the Constitution. Respondents suggest that the alter ego analysis requires "evidence of an effort to circumvent a constitutional limitation." RB pp. 56, 57, 59. Intervenor suggests that the alter ego analysis requires "circumstances where local governments created entities or schemes out of whole cloth to circumvent otherwise applicable restrictions." IB p. 46. That is simply not the law. This Court's alter ego analysis is *not* based on some amorphous concept of an "effort to circumvent," but rather on the *factual* issue of effective control.

Separate Legal Entities. Respondents assert that "the District's board composition should not be found to cause an alter ego situation to exist, where the statutory language similarly makes clear that the District Board is a separate entity." RB p. 60. And Intervenor cites the City's Comprehensive Annual Financial Report ("CAFR") for the statement that "the [Boise CID] **is a separate legal entity**…" IB p. 46 (emphasis in Intervenor's citation).[37] But the Boise CID's separate legal existence is irrelevant to the analysis. Where there is only one governmental entity and not two, it is self-evident that it cannot issue bonds without voter approval. The question is not whether there are two separate legal entities, but whether one has effective control over the other.

Facial Challenge. Intervenor asserts that Residents' constitutional challenge "appears to be a facial attack on the CID Act" as it "would be applicable to any CID." But that is not the case. Residents are not challenging the constitutionality of the CID Act. Residents instead are arguing

[37] Opponents complain about Residents' citation to the City's 2023 CAFR (to which Intervenor also cites), as the "document did not exist when this appeal was filed." RB p. 8; IB p. 46. But the exact same language quoted by Residents also appears in the City's 2020 CAFR when this appeal was filed. https://issuu.com/cityofboise/docs/fy20-annual-report, p. 50.

that, in addition to an election within the Boise CID required by the CID Act, the Idaho Constitution separately requires a City-wide election. Therefore, a successful challenge by Residents to the 2021 Bond leaves the CID Act completely intact.

2021 Bond as General Obligation of the City. Intervenor emphasizes that "the full faith and credit of the city is not implicated" by the Boise CID's issuance of bonds. *E.g.*, IB pp. 43, 44. Intervenor appears to be arguing that the Boise CID cannot be the alter ego of the City because the District has more limited powers. But whether the Boise CID is imposing its taxes on less than all the City's taxpayers or its powers otherwise are more limited than the City's is irrelevant in determining whether the City exercises effective control over the Boise CID, whether the CID is thus the City's alter ego, and thus whether the City's voters needed to approve the 2021 Bond.

As the Boise CID, under long-established precedents of this Court, is the alter ego of the City, it cannot issue the 2021 Bond without a City-wide election. And it is undisputed that no such City-wide election has been held.

H. Idaho's Constitution Requires the Approval of At Least One Voter Who Will Actually Have to Pay the Bonds and Related Taxes.

This appeal presents yet another question of first impression – is the vote of just one person, who is an employee and tenant of the family to whom the $50 million in bond proceeds will be paid, and who therefore will not pay any of the resulting taxes, sufficient to approve those $50 million in bonds and over $100 million in property taxes to be imposed on thousands of homeowners over many decades? Residents believe that the question answers itself – No, it is not. As Residents explain in their Opening Brief, Article VIII, Section 3 of the Idaho Constitution must

be interpreted to require the vote of at least one qualified elector who will actually have to pay the property taxes voted on. OB pp. 61-62. Opponents skirt this very narrow but nonetheless fundamental constitutional question by mischaracterizing Residents' arguments in order to set up straw men which they can then knock down.

Opponents' Spurious Arguments. Respondents first contend that Residents' interpretation of the constitutional voter approval requirement would mean that at least one qualified elector who voted in favor of proposed bonds would have to continue to live within the boundaries of a taxing district and pay the resulting taxes. RB pp. 61-62. That is not what Residents argue. As Residents explain in their Opening Brief, imbedded in the constitutional requirement is the principle that new debt to be issued by a local government must be approved by a vote of the people who will pay the taxes. OB p. 56. New residents step into the shoes of former residents knowing that there was a prior vote in which those who were going to pay the taxes in the first instance approved them and did so overwhelmingly. This principle does not require a new vote if all the voters who voted for the proposed bonds move out of the taxing district before any pay the resulting taxes (as unlikely as that would be).[38]

Intervenor makes similar arguments: that Residents' interpretation of Article VIII, Section 3 of the Idaho Constitution would require a new election if no original voter remained in a taxing district (IB p. 40), or even when any voter moves in or out of the taxing district (IB p. 42).

[38] The District Court noted that renters get to vote in a bond election even though they would not be responsible for paying the related property taxes. R p. 1118. But the owners of those rental properties necessarily factor into the rents they charge the amounts the owners will have to pay for property taxes. So, renters bear that burden indirectly.

But that again is not the case. What Residents instead argue, again, is that at least one qualified elector who will actually have to pay the property taxes must have voted to approve them.

Intervenor also argues that Residents' interpretation of the Idaho Constitution would require a new election for the issuance of each additional series of bonds. IB p. 47. It is difficult to take this argument seriously. A single vote, with at least one qualified elector who will actually have to pay the property taxes, is sufficient, whether the bonds are issued in series or all at once.

Lastly, Respondents argue that Residents' interpretation amounts to a facial challenge to the constitutionality of the CID Act. RB p. 62. But, as Residents also explain in their Opening Brief, that is not the case. OB p. 62. Rather, this appeal represents a challenge only to how the CID Act was applied by the City and the Developer in this particular case. Opponents carved out the Harris family's two homes in the center of the Boise CID from its boundaries, thus sparing them from any of the $100 million in property taxes they imposed on others. OB pp. 11-12. And Opponents also carved out hundreds of existing homes from the boundaries of the CID, even though they benefit equally from the local improvements financed. *Id*. They did so to bar those homeowners from voting on the bonds and related property taxes. OB pp. 12-13. If Opponents had not done so, the Bond Resolution and the 2021 Bond would not be subject to challenge on these constitutional grounds.[39]

As the issuance of the 2021 Bond was not authorized by the vote of even one person who would pay the resulting special taxes, the authorization of the 2021 Bond pursuant to the Bond

[39] A favorable ruling by the Court on this very narrow issue would dispense with this entire appeal.

Resolution violates Article VIII, Section 3 of the Idaho Constitution.

I. The Bond Resolution Violates the Idaho Constitution Because the Taxes It Imposes Are Not Uniform Across All Properties of a Similar Class Within the City or Even Within the Harris Ranch Development.

Residents argue that the Bond Resolution also violates the Idaho Constitution because the special taxes it levies are not uniform across all properties of a similar class within the City or even within the Development. Opponents do not dispute that. What they instead argue is that those taxes are proportional *within the boundaries of the Boise CID*. RB pp. 63-65; IB pp. 47-48.

If, as Residents argue, the Boise CID is the alter ego of the City (see Sec. II.G, *infra*), the special property taxes levied pursuant to the Bond Resolution are unconstitutional because they are not uniform across similar classes of property across the City as a whole. But those taxes are unconstitutional even if examined at the level of the Boise CID.

Respondents assert that Residents "appear to assume, without establishing, that taxing districts in Idaho are unconstitutional if properties outside of taxing district lines are treated differently than those inside the lines." RB p. 65. Similarly, Intervenor asserts:

> Idaho law allows for the creation of special taxing districts …, including fire districts, irrigation districts, and library districts … . … It goes without saying that each of these districts have their own unique boundaries, which may change from time to time. In certain circumstances, that may create a situation in which a property owner living on one side of the street pays a different tax than their neighbor. This is just the reality of geography—not a criminal conspiracy.

IB pp. 47-48. But that is not what Residents argue.

Those residing outside a fire district or an irrigation district, and who thus are free of that district's special taxes, are not entitled to the services those districts provide. Here, by contrast, the properties excluded from the boundaries of the Boise CID receive the exact same benefits from

the facilities financed as the properties within the Boise CID, without paying any of the special property taxes which finance those facilities. That was known to a certainty by the City at the outset, as the Specific Plan for the Boise CID shows. OB pp. 11-12. Opponents do not cite any case in which one home on a street is taxed and its neighbor next door is not for the cost of streets, sidewalks, stormwater ponds, or other facilities which benefit both equally.

Classification Lacking Any Public Purpose. The City created a captive "special limited purpose district" in 2010 over which it exercises effective control. The convoluted boundaries of the Boise CID, however, were drawn by the City to exclude hundreds of then-existing homes that are down the block, across the street and even next door to homes within the District, even though those homes benefit equally and foreseeably from the infrastructure financed. *Id*. That was not done for any valid public purpose. Rather, it was done to guarantee that the Developer's tenant and employee would be the only one who could vote in an election to approve $50 million in bonds the proceeds of which would be paid to the Developer. The question is whether the adoption of the Challenged Resolutions violates the Uniformity and Equal Protection Clauses because they would impose a tax burden only upon homes within a gerrymandered portion of the Development even though the local improvements to be funded benefit the Development as a whole.

The Idaho Constitution permits the City to classify properties differently for purposes of taxation. But those classifications "must be reasonable and founded upon differences between the parties." *E.g., John Hancock Mut. Life Ins. Co. v. Haworth*, 68 Idaho 185, 191 P.2d 359 (1948) (citations omitted). The Uniformity Clause "prohibits the singling out of one taxpayer's property for more burdensome taxation than applies to like property within the taxing jurisdiction." *E.g.,*

Idaho Tel. Co. v. Baird, 91 Idaho 425, 432, 423 P.2d 337, 344 (1967). To withstand constitutional challenge, a classification must have some rational basis. *E.g.*, *Tarbox v. Tax Comm'n*, 107 Idaho 957, 695 P.2d 342 (1984). That requires "that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives." *Id*.

What the City did, in establishing the Boise CID, and what the Boise CID is continuing by imposing even more special property taxes pursuant to the Bond Resolution, is to create a classification for purposes of property taxation consisting of properties inside and outside the boundaries of the District. Under that classification, otherwise identical properties, both within the City and even within the Development, are paying grossly disproportionate property taxes. And Opponents have not offered any rational basis related to a legitimate public purpose for doing so.[40]

If this were permissible, it would eviscerate the constitutional uniformity requirement. It would allow a city to create a checkerboard of captive taxing districts within its boundaries, where property owners in the red squares pay additional taxes to finance facilities that also benefit the black squares, but the property owners in the black squares pay nothing. Those taxes would be uniform within each checkerboard square, but unequal across the city as a whole. That cannot be what the Uniformity Clause requires. *See Idaho Cnty. v. Fenn Highway Dist.*, 43 Idaho 233, 253 P. 377 (1926) (the Uniformity Clause prohibits a county from imposing property taxes only within the boundaries of a smaller highway district to pay the costs of repairs to a highway upon the

[40] If, for example, the City had included all the properties within the Development reasonably determined to benefit from the facilities financed, that may have constituted a rational basis for the differing classification of properties inside versus outside the Boise CID.

failure of the highway district to do so).

The special property taxes levied pursuant to the Bond Resolution are not uniform across similar classes of property within the City or even within the Development, and thus violate the Uniformity and Equal Protection Clauses. The new tax levies are not saved from constitutional infirmity by the fact that the classification of properties was created by the City in the past. It is not the original action establishing the classification which is being challenged here, but the new imposition of more unequal property tax levies pursuant to the Bond Resolution.

J. The Challenged Resolutions Constitute an Unconstitutional Lending of Credit by the Boise CID to a Private Enterprise.

Residents argue that the Challenged Resolutions violate the Idaho Constitution because they authorize the lending of credit by the Boise CID to a private enterprise.[41] OB pp. 66-70. Opponents offer six arguments in response, each of which is lacking in merit.

Opponents first argue that Residents mistakenly rely on the assumption "that [the Impact Fee Act], not the CID Act, controls." RB pp. 17-18; IB p. 15. That is not the case. As explained in their Opening Brief (OB pp. 18-22), Residents argument does *not* assume that the Impact Fee Act is controlling. Residents' argument, quite simply, is that the Challenged Resolutions, adopted pursuant to the CID Act, provide for the financing by the Boise CID of costs that the Developer

[41] In addition, Article XII, Section 4 of the Idaho Constitution provides that no city or other municipal corporation "shall … raise money for, or make donation or loan its credit to, or in aid of" "any joint stock company, corporation or association." It is unclear whether this provision applies to CIDs, as it unclear whether a CID is a "municipal corporation." Other local government entities formed by cities, such as urban renewal agencies, are subject to this prohibition even though they are not expressly described in authorizing legislation as "municipal corporations." *E.g., Urban Renewal Agency of the City of Rexburg v. Hart, supra.*

must otherwise bear themselves. That does not implicate the Impact Fee Act in any respect.

Opponents' second argument appears to be that the Challenged Resolutions are not unconstitutional because it is the Boise CID and not the City which is lending its credit. RB p. 67; IB pp. 48-49. This argument fails because it assumes, without any basis, that the lending of credit prohibition only applies to the City and not the Boise CID. The constitutional prohibition is not against one governmental entity lending the credit of a *different* governmental entity. Rather, the constitutional prohibition is against any "county, city, town … or other subdivision" lending *its* credit to "any individual, association or corporation … ." Idaho Constitution, Art. VIII, Sec. 4. The Boise CID is a "political subdivision of this state." I.C. § 50-3105(1). It is therefore subject to the constitutional prohibition. As the Court explained in *Board of Cnty Comm'rs of Twin Falls Cnty v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1974), the constitutional prohibition is implicated where a "local governmental unit, [or] any other state-created agency or subdivision, has been obligated to meet the obligations of the bonds and notes."

Opponents third argument is that "the specific infrastructure at issue might never have been constructed absent the CID Act, the formation of the [Boise CID], and the corresponding Specific Plan (SP01) for [the Development]," and that Residents therefore would not have had the benefit of those improvements. RB p. 68. This argument, however, makes no sense. It is indisputable that the Developer would have had to construct the local improvements to be financed pursuant to the Challenged Resolutions even in the absence of the Boise CID. If the local streets, curbs, storm drains, and sewers in front of every home in Harris Ranch to be financed pursuant to the Payments Resolution had not been constructed, then the Development would not exist, Residents' homes

would not have been built, the Challenged Resolutions would not have been adopted, and this judicial review proceeding would not have been necessary.

The payments by the Boise CID to the Developer for local improvements which it was required to construct in the Development are a more egregious abuse than the payments this Court held to be unconstitutional in *Village of Moyie Springs v. Aurora Manufacturing Co*., 82 Idaho 337, 353 P.2d 767 (1960). There, the facilities financed were publicly owned, as they are required to be with CIDs. *Id*. at 346-7. But in *Moyie Springs* the bonds were payable solely from payments made by private enterprise, and not from taxes imposed on Village residents. *Id*. Here, the 2021 Bond would instead be payable from property taxes levied on homeowners in the Boise CID.

Opponents fourth claim is that Residents' argument constitutes a facial challenge to the CID Act. RB pp. 65-66. But this is another red herring and a continuation of Opponents' repeated mischaracterizations of Residents' positions. Residents are not making a facial challenge to the constitutionality of the CID Act. If Residents prevail on this issue, the financing of regional community infrastructure pursuant to the CID Act, including such things as a fire station, city park, or an expressway, rather than local improvements within a development, will still be permissible.

Opponents fifth argument is that "the CID Act has a public purpose – to encourage the funding and construction of infrastructure ahead of growth." RB p. 69. This argument is also a red herring because Residents are not arguing that the CID Act lacks a public purpose. Rather, Residents explain that the purpose of the CID Act, consistent with the language of the Act itself and its legislative history, is to provide a means of financing *regional* community infrastructure that is impact fee-eligible. I.C. § 50-3101(1). It is only the financing of *local* improvements that

developers otherwise must pay for themselves that is prohibited.

Finally, Opponents argue that the benefits to the Developer from the Challenged Resolutions are only "incidental." RB p. 69. The benefits to the Developer in this case are not "incidental" by any measure – $50 million is a lot of money. And the Developer can spend those moneys on anything they please, including private homes, summer vacations, new cars, and lots of dinners out if they so choose. They would have to pay the costs of the local improvements within the Development regardless. Getting "reimbursed" for those costs is simply "gravy."

The District Court cited *Hansen v. Kootenai Cnty. Bd. of Cnty. Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970), as do Respondents, for the proposition that incidental benefits to private parties do not constitute an unconstitutional lending of credit. They argue that the primary purpose of the CID Act is to fund public facilities. That is true generally. But in this case, the Challenged Resolutions would finance public facilities which, in the absence of the Boise CID, the Developer would have to finance themselves. The primary purpose of the Challenged Resolutions is therefore *not* to finance public facilities, but to relieve the Developer from having to finance those facilities themselves. It is for that reason that these particular Resolutions are unconstitutional.

The primary purpose of the Challenged Resolutions is to allow the Developer to use the Boise CID's credit, including its borrowing and taxing powers, to finance and pay for costs of local improvements that would otherwise have to be financed and paid for by the Developer. That is the essence of an unconstitutional lending of credit to a private enterprise by a local government and the adoption of the Challenged Resolutions was therefore unlawful.

K. The District Court Was Required to Include in the Record the Documents Requested by Residents.

Residents argue that, in a judicial review proceeding under I.C. § 50-3119, IRCP 84 and the Idaho Appellate Rules require inclusion in the record of documents requested by Residents and on file with the Boise CID which are related to the issues they present. Opponents beat on the drum of the "record created before the agency" while sidestepping most of the arguments presented by Residents. But the fundamental problem Opponents fail to address is that the CID Act does not provide for any formal proceeding prior to the adoption of a resolution by a CID board. Therefore, in this case, unlike any other relied upon by Opponents, those who would challenge a CID board resolution have no power to participate in the "creation" of the record.

If the Idaho Personnel Commission fails to consider certain evidence introduced at hearing, that evidence is still part of the record on judicial review. If a planning and zoning commission ignores testimony presented at a hearing, that testimony is still part of the record on appeal to a district court. None of that applies to the adoption of CID board resolutions, however, because the CID Act does not provide for it. Opponents' contention that the record only includes what a CID board deigns to "consider" draws a false equivalency without a basis in law. Opponents offer six arguments in defense of their position, but none have merit.

Crown Point Development Case. First, Respondents cite *Crown Point Dev., Inc. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007), as did the District Court, for the proposition that the "record created before the agency" in a judicial review proceeding under Section 50-3119 must be limited to the documents that the CID Board chose to have before it in adopting the

Challenged Resolutions. RB pp. 70-71; R p. 600. But that case is inapposite. *Crown Point Development* was an appeal from a formal zoning application proceeding under LLUPA and IAPA. In that case, there was a formal proceeding which provided for the introduction of evidence, a hearing, formal testimony, findings of fact, conclusions of law, and a decision. The "record created before the agency" thus was extensive and well-defined.

That stands in stark contrast to the CID Act, which does not require any process at all for the adoption of a resolution by a CID board. There was no opportunity in advance of the adoption of the Challenged Resolutions to formally introduce evidence into the record, to present argument, or to elicit testimony at a hearing. There were no findings of fact, conclusions of law, or any sort of written decision which memorialized the CID Board's reasoning. And unlike *Crown Point Development* and every other decision subject to LLUPA or the IAPA, the Board is not required to solicit, consider, or even accept any information from aggrieved residents prior to adopting a resolution. If the "record created before the agency" is limited to the documents (if any) that a CID board chooses to have before it in adopting a resolution, it may consist of nothing more than the resolution itself regardless of anything an aggrieved resident might do. An appeal of a "final decision" therefore would be over before it even began, as there would be no record on which to base any challenge. As Residents explain in their Opening Brief, that would gut the right of aggrieved persons in CIDs to judicial review, and therefore constitute a denial of due process. Thus, the record in a judicial review proceeding under Section 50-3119 cannot be limited to the documents that the CID board chooses to have before it in adopting a resolution.

Reliance on Prior Approvals. Respondents next argue that there was "no evidence" that

the CID Board relied on prior approvals in adopting the Challenged Resolutions. RB p. 71, fn. 22. That is simply untrue. The "brief references," as Respondents describe them, instead are *express recitals* in the Challenged Resolutions that those resolutions were being adopted "pursuant to … prior District approvals of the related projects," and to the "special election" at which "the requisite two-thirds (2/3) majority … approved the issuance of the aforementioned general obligation indebtedness of the District." AR pp. 16, Sec. 1; 65. There is no question, therefore, that the CID Board was relying on those prior approvals in adopting the Challenged Resolutions.

Notice of Appeal Not Addressed by Rule 84. Opponents' third argument is that IAR 17(i) and 28(c) do not permit Residents to add to the record documents not before the CID Board when it adopted the Challenged Resolutions because they are not part of the "record created before the agency." RB pp. 70-72; IB pp. 49-50. But that is not the case. Neither Section 50-3119 nor IRCP 84 address the contents of the "notice of appeal" required to be filed with a CID to challenge a "final decision." An appellant therefore must look to the Idaho Appellate Rules for guidance. IRCP 84(r). And IAR 17(i) and 28(c) expressly authorize Residents to request the inclusion in the record of documents filed with the Boise CID in addition to those listed in IRCP 84(f)(1)(B) and IAR 28(b)(3). IAR 17(i) requires the notice of appeal to include "[a] designation of documents, if any, to be included in the clerk's or agency's record *in addition to those automatically included pursuant to the following Rule 28*." (emphasis added). And IAR 28(c) states that the record "*shall also include all additional documents requested by any party in the notice of appeal*" and that "[a]ny party may request any written document filed ... with the ... agency to be included in the ...

agency's record … ." (emphasis added). And that is precisely what Residents did.[42]

Documents on File with Agency. Opponents' fourth argument is that IAR 28(c) only permits the addition of documents "filed or lodged with the district court or agency." RB p. 72. The implication is that Residents, prior to the CID Board's adoption of the Challenged Resolutions, would have had to file with the Boise CID the hundreds of pages of documents they requested on appeal. That is nonsensical and would also be impossible. By definition, those are documents the Boise CID already had in its possession, so it would be a pointless exercise to request those documents only to submit them back to the CID. And it also would be impossible, on as little as one day's notice of the proposed adoption of a resolution, for an aggrieved person to make a public records request for a voluminous number of documents, receive them, review them, determine which are material, and submit them back to a CID. All the documents requested by Residents for inclusion in the record had necessarily been "filed or lodged with the … agency," or they could not have been produced. The purpose of that language is to limit requests to documents in the possession of the agency. All the documents requested by Residents were in the possession of the Boise CID and related to the appeal.

"Record Created Before the Agency" Not Defined. The fifth argument advanced by Respondents is that IRCP 84(e) limits the documents to be considered on appeal again to "the record created before the agency." RB pp. 70-72; IB pp. 49-50. But that begs the question as to

[42] To commence this proceeding, Residents filed (i) a "petition for judicial review" with the District Court pursuant to IRCP 84(b), and (ii) a "notice of appeal" with the Clerk of the Boise CID and the District Court pursuant to Section 50-3119 and IAR 17(i) and 28(c). R pp. 11-58.

what that record consists of. The term "record created before the agency" in IRCP 84(e)(1)(A), when read in context, distinguishes documents already on file with the agency from documents which would be produced if the district court took additional evidence pursuant to the succeeding subsections IRCP 84(e)(1)(B) or (C). It does not specify what that "record" may include.

The term "record created before the agency" itself is not defined in IRCP 84. But that Rule permits the inclusion in the record of many more documents than those listed in IRCP 84(f)(1)(B). That is apparent from the fact that most of the more than 1,500 pages of documents which the CID Board chose to have before it when it adopted the Challenged Resolutions are *not* listed in IRCP 84(f)(1)(B). Those are the same documents Residents requested related to the Accrued Interest Projects. As Residents explain in their Opening Brief, Rule 84 thus permits the inclusion in the "record created before the agency" of additional documents on file with an agency which are requested by an appellant pursuant to IAR 17(i) and 28(c).

Abuse of Discretion Standard Inapplicable. Finally, Respondents argue that the District Court's exclusion from the record of the documents requested by Residents should be reviewed by this Court under an abuse of discretion standard. RB pp. 72-73. But the issue is not whether the District Court reasonably exercised its discretion to exclude requested documents from the record, but whether it violated a procedural mandate to include them. The cases cited by Respondents are inapposite. Neither case involved a dispute as to the scope of the required record under the applicable statutes and Court rules. Both cases instead involved appeals from local agency zoning

decisions under IAPA and LLUPA.[43] This case, on the other hand, involves statutory interpretation of Section 50-3119 and related Court rules, which receive *de novo* review from a court acting in an appellate capacity. *E.g., State v. Schulz,* 151 Idaho 863, 865, 264 P.3d 970, 972 (2011).

For the foregoing reasons, I.C. § 50-3119 and IRCP 84 cannot be construed to limit the record on judicial review to only those documents a CID board chooses to have before it in adopting a resolution. The District Court's interpretation of the statute, which would permit that, therefore should be rejected.

L. Residents' Factual Statements in Their Opening Brief Should Not Be Disregarded.

Residents' Opening Brief includes a Procedural History and a Statement of Relevant Facts. Each factual assertion is sourced to the Administrative Record, with several exceptions. Those exceptions consist of citations to: (i) an Ada County District Court case not directly related to this judicial review proceeding; (ii) on-line City, Ada County and ACHD official public records which are self-authenticating (*see* IRE 902(5)), and (iii) Appendices which were included in Residents' opening brief to the District Court and which are reproductions of either documents in the Administrative Record, or on-line City or Ada County official public records.[44] Opponents do not

[43] In *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 981 P.2d 1146 (1999), this Court explained that a strong presumption of validity attaches to a local agency's interpretation of its own zoning ordinances. Similarly, in *Crown Point Development,* the Court explained that an agency's zoning decisions generally are entitled to a strong presumption of validity.

[44] Appendix C, for example, is the City's own map of the Boise CID, taken from and sourced to the City's own website. It depicts relevant features of the Boise CID more clearly than the maps within the Administrative Record. *See* IAR 35(g) ("In cases involving easements, boundary disputes, or other types of real property disputes, the brief shall include a map, diagram, illustrative drawing, or other document depicting . . . the location of any features of or on the land that are pertinent to identify the matters in dispute . . ."). The factual statements for which Appendix C are

question the veracity of any of these documents or factual statements.

Residents' Opening Brief also includes citations in the Argument (i) to on-line City and Ada County official public records, and (ii) to several other sources, including a Google search, a Wikipedia article, and two on-line KTVB news articles, the facts in which are locally known or otherwise cannot reasonably be questioned. Opponents offer six arguments objecting to various of Residents' factual statements. Those arguments, however, are without merit.

No Required Citations to Record. First, Respondents argue that Residents' Introduction and Procedural History include "unsupported allegations" without reference to the Record or the Administrative Record which therefore should be disregarded. RB p. 6. But the only part of an appellate brief which requires citations to the record is the argument. *E.g.*, *Int. of Doe I*, 168 Idaho 74, 479 P.3d 467 (Ct. App. 2021) ("Citations to the record are not required in the statement of the case."); *see also* IAR 35(a)(6), regarding the contents of appellants' briefs, which provides:

> Argument. The argument shall contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, *with citations to* the authorities, statutes and *parts of the transcript and record relied upon*. [Emphasis added.]

Opponents' assertions that citations to the record are required in the Statement of the Case therefore are without merit.[45,46]

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cited are not only undisputed, but not reasonably subject to dispute. That is because the map was created by the City and all information contained within the map is from the City's own records. The map is self-authenticating. IRE 902(5). Much the same can be said for Appendices A and B, to which Opponents also object.

[45] Respondents again cite to an unpublished opinion despite this Court's admonition that "no unpublished opinion shall be cited as authority to any court," *See* fn. 20, *supra*.

[46] Respondents also contend that Residents make unsupported allegations regarding the intentions

Relevancy. Respondents next argue that Residents make factual assertions which are "not relevant." RB p. 7. This Court, however, can determine which facts offered by Residents the Court believes are relevant to the issues in this proceeding.

Judicial Notice Permitted. Opponents' third argument is that Residents cite to documents in their Statement of Relevant Facts which are outside the Administrative Record and therefore should not be considered. RB p. 8; IB p. 12. But courts may take judicial notice of facts outside the administrative record even in judicial review proceedings which are otherwise confined to the "record created before the agency." *E.g.*, *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner Cnty. Bd. of Comm'rs*, 168 Idaho 705, 717, 486 P.3d 515, 527 (2021) (judicial review proceeding under LLUPA and IAPA); *see also* I.C. § 9-101. Thus, Opponents' contention that facts should be ignored because they are from sources outside the record is also without merit.

Motion Not Required. Respondents' fourth argument is that Residents have failed to bring a motion for judicial notice or to augment the record for documents outside the "record created before the agency," and that any such motion should be denied. RB p. 8. But Residents are not required to bring a motion before this Court for judicial notice except for "adjudicative facts." Idaho Rules of Evidence ("IRE") 201(a). An "adjudicative fact" is defined as:

> **fact … – adjudicative fact**, A controlling or operative fact, rather than a background fact; a fact that is particularly related to the parties to a proceeding and that helps the tribunal determine how the law applies to those parties. For example, adjudicative facts include those that the jury weighs.

Black's Law Dictionary (12th Edition, 2024); *see, e.g.*, *In re Doe*, 160 Idaho 154, 369 P.3d 932

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of various parties. RB p. 6. But Residents' characterizations of those intentions are simply logical inferences based on undisputed facts.

(2016). None of the facts cited by Residents from outside the record are "controlling or operative facts," but instead are all "background facts," as is apparent from each. And judicial notice of non-adjudicative facts is not limited to those listed in I.C. § 9-101. As this Court stated in *City of Lewiston v. Frary*, 91 Idaho 322, 325, 420 P.2d 805, 808 (1966):

> [I]t must be remembered that the statutory rule, I.C. s 9-101, is not exclusive and is not one of limitation. *Facts within common knowledge are not mentioned in the statute, yet universally such facts are judicially noticed by the courts*. [Emphasis added.]

Consistent with IRE 201(b), courts may take judicial notice of facts, among others, that are "not subject to reasonable dispute" because they are:

> … either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

And judicial notice of "background facts" need not meet that standard. Courts in Idaho have held in innumerable cases that they can take judicial notice of a wide variety of facts.[47] Moreover, appellate courts can take judicial notice of anything which a lower court could, and at any stage of the proceeding. *E.g., Lewiston, supra*, 91 Idaho at 326, 420 P.2d at 809; *see also Hennig v. Money Metals Exch.,* ___ Idaho __, 551 P.3d 1237 (Idaho 2024); IRE 201(d).

Respondents cite *Ellis v. Ellis*, 167 Idaho 1, 467 P.3d 365 (2020), for the proposition that Residents should have filed a motion for judicial notice or to augment the record below. RB p. 8.

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[47] *E.g.*, *Lowery v. Bd. of Cnty. Comm'rs for Ada Cnty*., 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988) (city and county ordinances); *Fuller v. Fuller*, 101 Idaho 40, 607 P.2d 1314 (1980) (the decline in purchasing power of dollar); *Just. v. Gov't Emps. Ins. Co.*, 100 Idaho 293, 597 P.2d 16 (1979) (that pickup camper units are common); *Mahoney v. State Tax Comm'n*, 96 Idaho 59, 524 P.2d 187 (1973) (contents of government maps); *Pern v. Stocks*, 93 Idaho 866, 477 P.2d 108 (1970) (population of a town).

But that case is inapposite. It involved the attempt to add material documents, including adjudicative facts, from an entirely different case to the record on appeal. The appropriate procedure to do so was *not* a motion to augment pursuant to IAR 31, as that only applies to documents which were formally filed with the district court in the proceeding appealed from. As that attempt involved *adjudicative* facts, the Court determined that the appropriate procedure instead was a motion for judicial notice pursuant to IRE 201. Residents in this case, however, cite to *non*-adjudicative facts, which require neither a motion for judicial notice pursuant to IRE 201(c)(2) nor a motion to augment pursuant to IAR 31.

Respondents also cite *Woods v. Sanders*, 150 Idaho 53, 58, 244 P.3d 197, 202 (2010), for the propositions that (i) assertions of fact in a brief without citation to the record, and (ii) documents appended to a brief but which were not part of the record below, may not support an argument on appeal. RB pp. 6, 9. But that case is also inapposite. The case involved allegations, on appeal by the mother in a custody dispute, that the father was a "habitual domestic violence abuser." But the mother had failed to appear at trial or to present any such evidence at trial. This Court held that the mother waived all issues on appeal by failing to properly preserve them below and by failing to provide proper support for them in her appellate brief. The mother sought to introduce new *adjudicative* facts on appeal – that the father was a "habitual domestic violence abuser" and therefore should not have been awarded custody of the child. *Id*. She did so via attachments to an otherwise unsubstantiated brief, and without compliance with the procedural requirement for doing so. Therefore, that case simply has no bearing on this proceeding.

Residents' Objection Letters. Respondents' fifth argument is that Residents' factual

recitations which are based on their Objection Letters should be disregarded. RB p. 9. Residents' Objection Letters, however, including the facts which they recite, *are* part of the Administrative Record. They were delivered to the Boise CID before the CID Board's adoption of the Challenged Resolutions and were all included in the Staff Report to the CID Board. The facts in those letters were obtained by Residents from the City's own public documents, either through public records requests or on the City's website. Those facts are all true and uncontested. And to the extent that any were not true, Opponents had ample opportunity to dispute them below and did not, with one exception. Intervenor disputed Residents' assertion regarding the areas benefitted by the stormwater facilities. *See* AR pp. 910. Thus there is no basis for disregarding those facts.

Factual Summary Permissible. Finally, Opponents argue that Residents' summary of the 2021 Projects in Appendix D is not itself part of the Administrative Record and should also be disregarded. RB p. 11; IB p. 12. Residents' inclusion in Appendix D of a summary of the 2021 Projects is for the Court's convenience. It includes facts all drawn from the Administrative Record. *See, e.g.*, AR pp. 23-25. It is a synthesis of information in the Administrative Record so that the Court does not have to comb through that lengthy record in order to find certain facts. Opponents again do not dispute any of these facts. Therefore, there is no basis to disregard that Appendix.

III. ATTORNEYS' FEES

A. Residents Are Entitled to an Award of Attorneys' Fees Should They Prevail

To secure an award of attorneys' fees under the Private Attorney General Doctrine, the first consideration is "the strength or societal importance of the public policy vindicated by the litigation." *E.g.*, *Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160, 193 (2021).

Opponents suggest that, to satisfy this criterion, the case must involve "voting rights and fundamental principles of democratic governance." RB p. 73; IB pp. 51-52. But that is not the case. This Court has affirmed an award of attorneys' fees under the Private Attorney General Doctrine in a variety of other circumstances. *E.g., Fox v. Bd. of Cnty. Comm'rs, Boundary Cnty.*, 121 Idaho 684, 685, 827 P.2d 697, 698 (1992) (property owners' challenge to county's grant of liquor licenses); *Taggart v. Highway Bd. for N. Latah Cnty. Highway Dist.*, 115 Idaho 816, 771 P.2d 37 (1988) (property owner's challenge to alleged vacation of public road by highway district); *McKay Const. Co. v. Ada Cnty. Bd. of Cnty. Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978) (contractor's challenge to award of public works contract to non-qualifying bidder).[48]

Residents in this proceeding are seeking (i) to have the State's capitol city comply with State law, (ii) to uphold the Constitutional rights of thousands of homeowners to vote, to uniformity of taxation, to equal protection, and to due process, and (iii) to prevent public tax dollars from being used primarily to benefit private parties in violation of the State's Constitution. Moreover, this proceeding involves over $5 million in public debt, and over $10 million in special property taxes imposed on homeowners, and ultimately much more in terms of the authorized but

[48] Intervenor argues (although Respondents do not) that the Private Attorney General Doctrine is not available in proceedings between a person and a State agency or local government. IB pp. 50-51. They cite *Roe v. Harris*, 128 Idaho 569, 917 P.2d 403 (1996) for that proposition. Numerous cases since then, however, have assumed and even held that the Private Attorney General Doctrine is a separate ground for award in addition to I.C. §§ 12-117 and 12-121, including *Reclaim Idaho*, *infra*. *See, e.g., Harris v. State, ex rel. Kempthorne*, 147 Idaho 401, 210 P.3d 86 (2009); *State v. Dist. Ct. of Fourth Jud. Dist.*, 143 Idaho 695, 152 P.3d 566 (2007); *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005). In any event, the *Roe v. Harris* case would not prevent an award of attorney's fees against Intervenor as they are not a State agency or local government.

unissued Boise CID bonds and related special property taxes. Those are all matters of significant societal importance.[49] This proceeding therefore satisfies the first consideration for an award.

The second consideration is the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff. There is no question that, absent Residents' efforts, there was no one else who would have pursued this challenge. And there is also no question that these three years of intensive litigation have imposed an extraordinary financial and emotional burden on Residents, including the SLAPP suit pursued against them by Intervenor in an effort to scare them off. This proceeding thus satisfies the second consideration for an award of attorneys' fees.

The third consideration is the number of Idahoans standing to benefit from this proceeding. Opponents assert that there are few people who would benefit from a successful challenge. RB p. 74; IB pp. 51-52. That assertion is untrue. The taxpayers inside the Boise CID, with its over 800 homes, will number in the many thousands over time. And this case will directly affect the tens of thousands of current and future homeowners in the *Avimor* and *Spring Valley* developments, as Residents explain in their Opening Brief, and the purposes for which hundreds of millions if not *billions* of dollars in special property taxes are spent. It will also directly affect untold numbers of homeowners in future CIDs throughout the State. This Court in *Smith v. Idaho Comm'n on Redistricting*, 136 Idaho 542, 38 P.3d 121 (2001) held that the Private Attorney General Doctrine was applicable where petitioners "pursued the vindication of [a] right vigorously and the pursuit

[49] As additional "salt in the wound," the Boise CID's legal costs are being paid from the property taxes it is imposing *on the homeowners who are challenging its unlawful actions*. This Court in *Reclaim Idaho* noted, as an aggravating factor, that the State's opposition to the plaintiffs which brought that consolidated litigation was being paid from taxpayer funds. *Reclaim Idaho*, at 440.

of such benefited a large number of Idahoans." That is certainly true here.

Respondents cite two cases in support of their assertion that "no resident outside the [Boise CID] would benefit from the decision" and therefore that this case is of little societal importance: *Harris v. State, ex rel. Kempthorne*, 147 Idaho 401, 210 P.3d 86 (2009), and *Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 496 P.3d 873 (2021). RB p. 74. The *Harris* case, however, involved a suit by a couple against the State to quiet title to sand and gravel on their property. And the *Hepworth* case involved a petition by a small Boise law firm for reversal of its disqualification as counsel in a personal injury suit. Both cases involved the private economic interests of only a few people. This proceeding bears no resemblance to those cases.

This proceeding therefore satisfies all three criteria established by the Court for an award of attorneys' fees under the Private Attorney General Doctrine should Residents prevail.

B. Respondents Are Not Entitled to Attorneys' Fees Should They Prevail.

Respondents argue that this Court should instead award attorneys' fees to Respondents under I.C. § 12-117 should Respondents prevail. There are no grounds in this case for such an award, and the District Court so held:

> [T]the Court does not find [Residents'] arguments were brought "without a reasonable basis in fact or law." The Court finds [Residents] have acted in good faith, and while the Court ultimately disagrees with [Residents], 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 [Residents] 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. … This is the first time the CID Act has been litigated, and [Residents] raised many complex matters of first impression challenging the legality of the [Boise CID's] decisions and, by implication, the CID Act itself.

R pp. 1071-1073 (internal citation omitted). Residents have acted in good faith throughout these

proceedings to advance arguments based on their detailed recitation of undisputed facts, all based on the Administrative Record and other public documents, regarding complex matters, and have cited to innumerable cases, statutes and other authority in support of all their arguments. *See, e.g., Manwaring Invs., L.C. v. City of Blackfoot*, 162 Idaho 763, 405 P.3d 22 (2017) (property owner did not act without reasonable basis in fact or law, but, instead, argued complex issues in good faith); *Kepler-Fleenor v. Fremont Cnty.*, 152 Idaho 207, 268 P.3d 1159 (2012) (non-prevailing party presented a legitimate question for the appellate court to address). There is no evidence that Residents have acted in bad faith (*see*, *e.g., Hoffer v. City of Boise*, 151 Idaho 400, 257 P.3d 1226 (2011) (no showing that appellant acted in bad faith)), nor that the issues presented are frivolous *(see, e.g., Aspen Park, Inc. v. Bonneville Cnty.*, 165 Idaho 319, 444 P.3d 891 (2019) (taxpayers petition for review was not frivolous)). Idaho courts have held repeatedly that attorneys' fees will not be awarded where the issues presented by the non-prevailing party are matters of first impression, as they are here. *E.g., Newton v. MJK/BJK, LLC*, 167 Idaho 236, 469 P.3d 23 (2020).

Thus, there is no basis for an award of attorneys' fees to Respondents should they prevail.

IV. CONCLUSION

For the foregoing reasons, Residents respectfully request that the Court grant the relief set forth in their Opening Brief.[50]

[50] Residents included a summary of the relief requested in their Opening Brief. OB pp. 78-79. Given the complexity of the issues in this case, and the extent to which resolution of one issue may affect the resolution of others, Residents have included as **Appendix C** a more detailed reiteration of those requests for the convenience of the Court.

Dated: September 29, 2024

Respectfully submitted,

BAILEY & GLASSER LLP

/s/ *Nicholas A. Warden*
Nicholas A. Warden
Attorneys for Residents/Appellants William Doyle, Lawrence Crowley, and The Harris Ranch CID Taxpayers' Association

APPENDIX A

STATEMENT OF PURPOSE

RS 18009

Idaho continues to experience rapid growth. As a result, new highways, roads, bridges, sewer, water, fire, and police stations must be constructed. Often, existing public facilities must be improved to provide for the increased demands. Idaho citizens are asking for ways to ensure that "growth pays for growth."

This legislation creates a financial tool to allow new growth to more expediently pay for itself through the creation of Community Infrastructure Districts (CIDs). A CID allows the formation of a taxing district comprised by the boundaries of a new development. Taxes and assessments applied only to lands within the new development will secure bonds. Those bonds can be utilized to fund and construct regional community infrastructure, inside and outside the district. Only infrastructure that is impact fee-eligible, such as highways, roads, bridges, sewer and water treatment facilities, and police, fire and other public safety facilities may be funded with bond proceeds generated by a CID.

The legislation also creates a mechanism for the prepayment of development impact fees. Impact fees are typically collected at the time of building permit issuance. Those are generally paid in arrears or collected after the need for funding and infrastructure improvement has occurred. The prefunding of developmental impact fees will allow for the construction of adequate public facilities prior to developmental growth and in advance of the need for increased facility capacities.

A CID can only be formed within the boundaries of a city or within the boundaries of a city's comprehensive planning zone and with the city's consent. Only infrastructure that is publicly-owned by the state, county or city, and only impact fee-eligible projects may be constructed with the proceeds of a CID.

FISCAL NOTE

This legislation will have no impact on the general fund.

Contact: Representatives Dennis Lake, Ken Roberts, Jim Clark, Leon Smith, and James Ruchti. Senators Brent Hill, Brad Little, John McGee, Stan Bastian, David Langhorst.

AGENDA

HOUSE REVENUE AND TAXATION COMMITTEE

9:00a.m.
Room 240
Wednesday, February 27, 2008

BILL NO.	DESCRIPTION	SPONSOR
RS 18038	Legislation relating to Local Improvement Districts (LID)	Rep. Labrador
RS 18019	Legislation to criminal background check as part of the application for change of name	Rep. John Vander Woude
RS 18009	Legislation relating to the creation of Community Infrastructure Districts (CID)	Jeremy Pisca
RS 17901	Legislation relating to limitation of property taxes	Rep. Wills
HB 0544	Legislation to expand the Circuit Breaker to provide relief for the next tier of property taxpayers	Rep. King

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS:
Chairman Dennis Lake
Vice Chairman Gary Collins
Rep Lenore Barrett
Rep Mike Moyle
Rep Robert Schaefer

Rep Leon Smith
Rep Dell Raybould
Rep Ken Roberts
Rep JoAn Wood
Rep Jim Clark
Rep Dick Harwood
Rep Scott Bedke
Rep Phil Hart

Rep George Sayler
Rep Wendy Jaquet
Rep Nicole LeFavour
Rep Bill Killen
Rep James Ruchti

MINUTES

HOUSE REVENUE AND TAXATION COMMITTEE

DATE: February 27, 2008

TIME: 9:00a.m.

PLACE: Room 240

MEMBERS: Chairman Lake, Vice Chairman Collins, Representatives Barrett, Moyle, Schaefer, Smith(24), Raybould, Roberts, Wood(35), Clark, Harwood, Bedke, Hart, Sayler, Jaquet, LeFavour, Killen, Ruchti

ABSENT/ EXCUSED: Representatives Roberts, Clark, and Schaefer

GUESTS: Representative Labrador; Rep. Vander Woude; Jeremy Pisca; Representative King; William Bonner, AARP.

A quorum being present, Chairman Lake called the meeting to order at 9:00a.m. The secretary took a silent roll.

MINUTES: Representative Jaquet moved to accept the minutes for February 26, 2008 as amended. The motion **passed** on a voice vote.

Chairman Lake recognized Representative Labrador.

RS 18038 RS 18038 - legislation relating to Local Improvement Districts (LIDs)

Representative Labrador presented a new RS having made significant changes to H 535 previously heard by the Committee. Questions raised by some cities in Idaho as to the legality of a vote of just property owners and an opinion by the Attorney General prompted some significant changes to the previous bill.

Chairman Lake stated that because there were significant changes to the previous bill, the new bill should come back to the Committee for a public hearing.

MOTION: Representative Wood moved to **introduce** RS 18038. The motion **passed** on a voice vote.

Chairman Lake recognized Representative Moyle.

RS 17901 RS 17901 - legislation to amend Idaho Code with regard to limiting a taxing district's budget.

Representative Moyle stated that this legislation will amend Chapter 8, Title 63, of Idaho Code to allow by a vote of the people that a taxing district's budget could be limited, thus lowering property taxes. This legislation would exempt school budgets.

Representative Moyle stated budget limitation elections may be initiated by

residents equal to or exceeding ten percent (10%) of the number of voters voting at the last election of the taxing district. The budget limitation vote must pass by a 66 2/3% or more majority.

MOTION: Representative Barrett moved to **introduce** RS 17901. The motion passed on a voice vote. Representative Jaquet asked to be recorded as voting **NAY**.

Chairman Lake recognized Representative Vander Woude.

RS 18019 RS 18019 - legislation to require a criminal background check as part of a name change application.

Representative Vander Woude stated the proposed legislation would amend Idaho Code, Section 7-802, making a criminal background check a part of the application for a petitioner's change of name.

MOTION: Representative Harwood moved to **introduce** RS 18019 and refer it to the House Judiciary, Rules & Administration Committee. The motion **passed** on a voice vote. Representatives Barrett, Smith, Jaquet, and LeFavour asked to be recorded as voting **NAY**.

Chairman Lake recognized Jeremy Pisca.

RS 18009 RS 18009 - legislation relating to the creation of Community Infrastructure Districts (CIDs).

Mr. Pisca stated that growth needs to pay for itself. A CID would allow the state of Idaho to create special taxing districts to prefund developmental impact fees. The CID would be tied to impact fee-eligible projects only, such as highways, roads, bridges, sewer and water treatment facilities, police, fire, and other public safety facilities.

Mr. Pisca further stated the infrastructure that would be financed must be set forth in a development agreement between the city and the developer, but would be under local control of the projects.

Members of the Committee asked questions regarding a CID's relationship to state departments such as the Idaho Transportation Department, who collects the administrative fees, how homeowners are notified that the property they are purchasing has a tax liability connected with it, and how the developer would handle impact fees should some of the houses in the new development remain empty.

Mr. Pisca noted that if the legislation is introduced, there would be experts who could better answer those questions at the public hearing on the bill.

MOTION: Representative Raybould moved to **introduce** RS 18009. The motion **passed** on a voice vote. Representatives, Barrett, LeFavour, and Killen asked to be recorded as voting **NAY**.

Chairman Lake recognized Representative King.

AGENDA

HOUSE REVENUE AND TAXATION COMMITTEE

9:00a.m.
Room 240
Thursday, March 6, 2008

BILL NO.	DESCRIPTION	SPONSOR
HB 578	Legislation relating to Community Infrastructure Districts (CIDs)	Jeremy Pisca
Concurrent Resolution No. 45	Resolution to authorize the Legislative Council to establish an interim committee to study Idaho's property tax system	Rep. Clark

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS:

Chairman Dennis Lake
Vice Chairman Gary Collins
Rep Lenore Barrett
Rep Mike Moyle
Rep Robert Schaefer
Rep Leon Smith
Rep Dell Raybould
Rep Ken Roberts
Rep JoAn Wood
Rep Jim Clark
Rep Dick Harwood
Rep Scott Bedke
Rep Phil Hart
Rep George Sayler
Rep Wendy Jaquet
Rep Nicole LeFavour
Rep Bill Killen
Rep James Ruchti

MINUTES

HOUSE REVENUE AND TAXATION COMMITTEE

DATE: March 6, 2008

TIME: 9:00a.m.

PLACE: Room 240

MEMBERS: Chairman Lake, Vice Chairman Collins, Representatives Barrett, Moyle, Schaefer, Smith(24), Raybould, Roberts, Wood(35), Clark, Harwood, Bedke, Hart, Sayler, Jaquet, LeFavour, Killen, Ruchti

ABSENT/ EXCUSED:

GUESTS: Jeremy Pisca; Carter Froelich; Valencia Bilyeu; Susan Buxton.

A quorum being present, Chairman Lake called the meeting to order at 9:00a.m. The secretary took a silent roll.

MINUTES: Representative Raybould moved to accept the minutes for March 5, 2008 as written. The motion **passed** on a voice vote.

Chairman Lake recognized Jeremy Pisca.

BILL # 578 HB 578 - legislation relating to Community Infrastructure Districts (CIDs).

Mr. Pisca, representing the Idaho Association of Realtors, presented the bill stating Idaho is a high-growth state not able to keep up with the infrastructure demands of the high growth. The purpose of this bill is to create a new tool to fund public infrastructure in advance of new development.

Mr. Pisca stated CIDs may only be formed within a city's municipal boundaries or in unincorporated areas designated within a city's comprehensive plan with the city's consent.

Mr. Pisca stated only public infrastructure providing a regional or community-wide benefit may be funded through a CID. A district development agreement must be established between property owners and the local jurisdiction to provide both parties with assurance that implementation of the CID will be mutually agreeable.

Mr. Pisca further stated 100% of the property owners in a proposed district must petition the local government to establish the CID and adopt a general plan for the district.

If the CID is established within a city, three members of the City Council will be the governing board. If the CID is established within a county, three members from the County Commissioners will be the governing board. If the CID is established in a city and a county, then a blended governing board of City Council members and County Commissioners with a tie vote

being broken by the area that contains the most land mass.

The CID is a separate political subdivision apart from the local jurisdiction. Therefore, the governing board would be acting separately from their duties as council members or commissioners.

A Member of the Committee asked a 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.

Members of the Committee asked questions about full disclosure to property owners and protection of the property owners. Mr. Pisca yielded to Mr. Froelich. Mr. Froelich stated much depends on the type of bond. If it is a special assessment bond, the developers would be responsible for the assessments on lots not sold and vacant homes. If it is a general obligations bond, it is going to encompass the entire district and, to the extent the developer is not paying his prorata share, the homeowners who are still paying their property taxes, will pick up his share.

Mr. Pisca stated the disclosure to potential property owners regarding being in a CID is atypical of the disclosure language usually used. This language goes above and beyond what is normally required.

Chairman Lake recognized Valencia Bilyeu.

Ms. Bilyeu, an attorney representing the City of Boise, spoke in opposition to the bill stating the bill does not clearly define what improvements are excluded. She also expressed concern about the conflict of interest issues of the governing board being made up of City Council members and County Commissioner members.

Chairman Lake recognized Susan Buxton.

Ms. Buxton, an attorney, spoke in favor of the bill stating it is a good step and a good tool to assist local governments.

Chairman Lake asked Ms. Buxton to return tomorrow, Friday, March 7, 2008 to continue her testimony before the Committee as the Committee needed to adjourn in order to report to the House floor for the session.

ANNOUNCEMENT The Revenue and Taxation Committee will meet on Friday, March 7, 2008 at 9:00a.m. in Room 240.

ADJOURN: Chairman Lake adjourned the meeting at 10:05 a.m.

Representative Dennis Lake
Chairman

Marsha Palmer
Secretary

Sign-In Sheet

REVENUE & TAXATION COMMITTEE

Date 3/6/08

Name, Address, & Phone PLEASE PRINT	Title	Representing Company/Organization	Legislation Interested In	Wish to Testify	Pro	Con
CARTER FREELICH	Mg. PRINCIPAL	IA OF REALTORS, MBEagle	HB578	NO	✓	
ROB PLOTZ	IBCA STATE REPS	IDAHO BUILDING CONTRACTORS		NO	✓	
[illegible]	[illegible]	[illegible]				
Joe Kunz	Lobbyist	BCA	HB 578	NO	✓	
Lee Flinn	lobbyist	Coy Potatoes		NO		
Robin Nettinga	Dir of Public Policy	ICA		NO		
Coll. Gannon	Lobbyist	Sullivan & Reberger	HB578	No		
JEREMY PISCA	Atty	IAR, IBCA, MB Eagle	H 578	Yes	✓	
Valencia Bilyeu	Atty	Boise city	H578	Yes		✓
[illegible]	Attorney	Moore Smith Buxton & Turcke	H 578	yes	✓	
[illegible]	Secretary	Dist 14 Committee	H578	yes	✓	
[illegible]	Lobbyist	REALTORS	H578	yes	✓	
Joe Bolton	lobbyist	Noble Holdings	H578	yes		✓
[illegible]	Attorney	Ace's Rental	H578	yes	X	
Lyn Darrington	lobbyist	City of Boise	H578	No		

If you are testifying, please give a copy of your testimony and your business card to the secretary

AGENDA

HOUSE REVENUE AND TAXATION COMMITTEE

9:00a.m.
Room 240
Friday, March 7, 2008

BILL NO.	DESCRIPTION	SPONSOR
HB 578	Legislation relating to Community Infrastructure Districts (CIDs)	Jeremy Pisca
Concurrent Resolution No. 45	Resolution to authorize the Legislative Council to establish an interim committee to study Idaho's property tax system	Rep. Clark
RS 18047	Legislation to exclude property owners from a modified Local Improvement District	Lynn Tominaga Lindsey Lateral Water Users Association
HB 518	Legislation relating to a modified Local Improvement District	Lynn Tominaga
RS 18082	Legislation relating to Urban Renewal Districts	Rep. Hart

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS:

Chairman Dennis Lake
Vice Chairman Gary Collins
Rep Lenore Barrett
Rep Mike Moyle
Rep Robert Schaefer
Rep Leon Smith
Rep Dell Raybould
Rep Ken Roberts
Rep JoAn Wood
Rep Jim Clark
Rep Dick Harwood
Rep Scott Bedke
Rep Phil Hart
Rep George Sayler
Rep Wendy Jaquet
Rep Nicole LeFavour
Rep Bill Killen
Rep James Ruchti

MINUTES

HOUSE REVENUE AND TAXATION COMMITTEE

DATE: March 7, 2008

TIME: 9:00a.m.

PLACE: Room 240

MEMBERS: Chairman Lake, Vice Chairman Collins, Representatives Barrett, Moyle, Schaefer, Smith(24), Raybould, Roberts, Wood(35), Clark, Harwood, Bedke, Hart, Sayler, Jaquet, LeFavour, Killen, Ruchti

ABSENT/ EXCUSED:

GUESTS: Susan Buxton; JoAnn Butler; John Eaton; Senator Bastain; Joe Barton.

A quorum being present, Chairman Lake called the meeting to order at 9:00a.m. The secretary took a silent roll.

MINUTES: Representative Collins moved to accept the minutes for March 6, 2008 as written. The motion **passed** on a voice vote.

Chairman Lake recognized Susan Buxton.

BILL # 578 HB 578 - legislation relating to Community Infrastructure Districts (CIDs).

Ms. Buxton, at the request of the Chairman, returned for questions on her testimony of March 6, 2008. Chairman Lake asked Ms. Buxton if she wished to comment on what effect the lawsuit talked about yesterday has on the legislation we are considering today.

Ms. Buxton stated she was not prepared to give a legal opinion, but felt that the legislation adequately addressed the concerns of the lawsuit.

A Member of the Committee asked who Ms. Buxton was representing at the hearing. Ms. Buxton stated her firm represents 23 cities, but she was not representing any one of them per se.

Chairman Lake asked Ms. Buxton if any of the 23 cities represented by her firm had expressed opposition to this legislation. Ms. Buxton stated none of them had expressed opposition to this legislation.

Chairman Lake recognized JoAnn Butler.

Ms. Butler, an attorney, spokein favor of the legislation. Ms. Butler stated she has represented the Harris Family in the development of Harris Ranch and has been involved in community planning issues for landowners and developers.

Ms. Butler stated that growth needs to pay for growth, but that growth cannot be paid for in a piecemeal process. Paying in arrears for growth is

not the optimum way to pay for growth. Being able to plan for infrastructure in advance of development will ensure that growth pays for growth.

Chairman Lake recognized John Eaton.

Mr. Eaton, representing the Idaho Association of Realtors, spoke in favor of the bill stating this legislation is a mechanism that will finance development in advance of construction. This legislation also necessitates that infrastructure plans must be put in the comprehensive plan.

Mr. Eaton gave two real-world examples speaking about a development that required a bridge in order to access the development or a city that required a freeway interchange before the development could be built. Both the bridge and interchange were too expensive for the developer to build. This legislation would provide a financial tool to pay for the bridge or the interchange.

Mr. Eaton also addressed Committee concerns regarding the disclosure statements given to home buyers at closing informing them that they are buying a home under a CID. He stated these disclosures were clear and easily understandable by the average homeowner. He also stated it is the realtor's responsibility to inform their clients of these types of issues.

A Member of the Committee asked Mr. Eaton if the section on the definition of qualified electors had been vetted through bond experts. Mr. Eaton asked Mr. Pisca to answer the question. Mr. Pisca stated that the section had been reviewed by competent legal counsel. A Member of the Committee asked if the legislation had been vetted through the Attorney General's office. Mr. Pisca stated it had not been looked at by the Attorney General's office.

Chairman Lake recognized Senator Bastian.

Senator Bastian spoke in favor of the bill stating that in previous years he has opposed this type of legislation, but now supports this bill because the language is different. Senator Bastian stated that we should not ask long-term residents of a city or county to pay for infrastructure needs caused by new development.

Chairman Lake recognized Joe Barton.

Mr. Barton spoke to the bill stating this is a tool that both the large and small developers can use to build necessary infrastructure. He further stated the developers would be held to a very high standard by the CID governing board.

Mr. Barton stated he would support an amendment to the bill that restricts the boundaries stating he believes the CID should be allowed statewide.

A Member of the Committee asked Mr. Barton if he believed removing that restriction would be making the legislation too broad. Mr. Barton stated it would be broad, but would not be out of control.

Chairman Lake stated that the Committee would hear from Mr. Pisca on Monday, March 10, 2008 for final statements and questions. After that, the Chair would entertain motions from the Committee.

ANNOUNCEMENT The Revenue and Taxation Committee will meet on Monday, March 10, 2008 at 8:30a.m. in Room 240.

ADJOURN: Chairman Lake adjourned the meeting at 10:10 a.m.

Dennis Lake
Representative Dennis Lake
Chairman

Marsha Palmer
Marsha Palmer
Secretary

Sign-In Sheet

REVENUE & TAXATION COMMITTEE

Date 3/7/08

Name, Address, & Phone PLEASE PRINT	Title	Representing Company/Organization	Legislation Interested In	Wish to Testify	Pro	Con
Robin Nettinga		[illegible]	H [illegible]			
GARY INGRAM	Citizen	[illegible]	[illegible]	✓	✓	
Jeremy Pisca	Atty	[illegible]	H [illegible]	✓	✓	
Susan Burke	Atty	Greenlaw / [illegible] Moore Smith Buck & Thor	H 578	✓	✓	
Lyn Darrington	lobbyist	City of Boise	H578	No		
John Bick	Attorney	Harris Ranch	H578	yes	X	
JIM Ellison	lobbyist	REALTORS	H578	yes	X	
Jon Beeton	lobbyist	Noelle Mines	H578	yes		X

If you are testifying, please give a copy of your testimony and your business card to the secretary

AGENDA

HOUSE REVENUE AND TAXATION COMMITTEE

8:30am

Room 240
Monday, March 10, 2008

BILL NO.	DESCRIPTION	SPONSOR
HB 578	Legislation relating to Community Infrastructure Districts (CIDs)	Jeremy Pisca
Concurrent Resolution No. 45	Resolution to authorize the Legislative Council to establish an interim committee to study Idaho's property tax system	Rep. Clark
RS 18047	Legislation to exclude property owners from a modified Local Improvement District	Lynn Tominaga Lindsey Lateral Water Users Association
HB 518	Legislation relating to a modified Local Improvement District	Lynn Tominaga
RS 18082	Legislation relating to Urban Renewal Districts	Rep. Hart
RS 18001	Legislation to conform the Idaho income tax law to changes made to the Internal Revenue Code	Sen. Hill

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS:

Chairman Dennis Lake
Vice Chairman Gary Collins
Rep Lenore Barrett
Rep Mike Moyle
Rep Robert Schaefer
Rep Leon Smith
Rep Dell Raybould
Rep Ken Roberts
Rep JoAn Wood
Rep Jim Clark
Rep Dick Harwood
Rep Scott Bedke
Rep Phil Hart
Rep George Sayler
Rep Wendy Jaquet
Rep Nicole LeFavour
Rep Bill Killen
Rep James Ruchti

MINUTES

HOUSE REVENUE AND TAXATION COMMITTEE

DATE: March 10, 2008

TIME: 8:30a.m.

PLACE: Room 240

MEMBERS: Chairman Lake, Vice Chairman Collins, Representatives Barrett, Moyle, Schaefer, Smith(24), Raybould, Roberts, Wood(35), Clark, Harwood, Bedke, Hart, Sayler, Jaquet, LeFavour, Killen, Ruchti

ABSENT/ EXCUSED: Representative Bedke

GUESTS: Jeremy Pisca; Representative Black; Senator Hill.

A quorum being present, Chairman Lake called the meeting to order at 9:00a.m. The secretary took a silent roll.

MINUTES: Representative Collins moved to accept the minutes for March 7, 2008 as written. The motion **passed** on a voice vote.

Chairman Lake recognized Jeremy Pisca.

BILL # 578 HB 578 - legislation relating to Community Infrastructure Districts (CIDs).

Mr. Pisca stated the intent of this legislation was to find ways to finance impact-eligible infrastructure ahead of development.

Mr. Pisca addressed several issues of concern heard over the two days' of testimony. 1) No city has to agree to a formation of a CID. It is optional. It is the city's decision to incur the indebtedness. The city makes the decision what to construct.

2) It was asked if this legislation would survive a Blaha challenge. Mr. Pisca stated that it would and that Blaha is not applicable to this legislation.

3) Mr. Pisca addressed annexation issues stating voluntary annexation must be tied to an annexation plan.

4) Mr. Pisca stated that the discussion regarding including schools in the CID was discussed and vetted during the drafting of the legislation. The conclusion was that there exists in Idaho code today mechanisms for schools to do just what this legislation is attempting to do for the rest of the city or county. Therefore, it was decided not to include schools in the legislation.

MOTION: Representative Clark moved to **send** HB 578 to the floor with a **do pass** recommendation.

SUBSTITUTE MOTION: Representative Jaquet moved to **send HB 578 to general orders** with the proposed amendment.

Representative Jaquet spoke to her motion stating the amendment would resolve the issues large cities have regarding providing services to the annexed areas.

A Member of the Committee debated against the amendment stating the bill already addresses the annexation issue.

A Member of the Committee debated for the amendment stating the amendment was necessary to protect large cities from paying for infrastructure for unincorporated areas.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Voting **AYE** - Representatives Moyle, Schaefer, Smith, Wood, Hart, Sayler, Jaquet, and Killen.

Voting **NAY** - Chairman Lake, Vice Chairman Collins, Representatives Barrett, Raybould, Roberts, Clark, Harwood, LeFavour, and Ruchti.

Absent/Excused - Representative Bedke.

The motion failed 9 - 8 - 1.

ROLL CALL VOTE ON ORIGINAL MOTION: Voting **AYE** - Chairman Lake, Vice Chairman Collins, Representatives Smith, Raybould, Roberts, Wood, Clark, Harwood, Sayler, and Ruchti.

Voting **NAY** - Representatives Barrett, Moyle, Schaefer, Hart, Jaquet, LeFavour, Killen.

Absent/Excused - Representative Bedke.

The motion passed 10 - 7 - 1.

Chairman Lake recognized Representative Clark.

HOUSE CONCURRENT RESOLUTION #45 Representative Clark stated the resolution authorizes the Legislative Council to establish an interim committee to study Idaho's property tax systems, including the expenditure of property tax revenues, to determine if such expenditures might more reasonably be covered from other revenue sources. In additional, the interim committee would make recommendations to provide property tax relief while encouraging economic development, meeting the needs of local governments, and furthering the improved administration of Idaho's criminal justice, juvenile justice, and court systems.

MOTION: Representative Jaquet moved to **send** House Concurrent Resolution #45 to the floor with a do pass recommendation. The motion **passed** on a voice vote.

Chairman Lake recognized Representative Black.

RS 18047 RS 18047 - legislation to exclude property owners from a modified Local

Date: March 10, 2008
Bill #: HB 578

COMMITTEE
ROLL CALL VOTE

ORIGINAL MOTION				SUBSTITUTE MOTION				AMENDED SUBSTITUTE MOTION			
MOTION: Send to floor w/Do Pass				MOTION: Send to general orders				MOTION:			
MOVED: Rep. Clark				MOVED: Rep. Jaquet				MOVED:			
	AYE	NAY	A/E		AYE	NAY	A/E		AYE	NAY	A/E
Chairman Dennis Lake	X			Chairman Dennis Lake		X		Chairman Dennis Lake			
Vice Chairman Collins	X			Vice Chairman Collins		X		Vice Chairman Collins			
Representative Barrett		X		Representative Barrett		X		Representative Barrett			
Representative Moyle		X		Representative Moyle	X			Representative Moyle			
Representative Schaefer		X		Representative Schaefer	X			Representative Schaefer			
Representative Smith (24)	X			Representative Smith (24)	X			Representative Smith (24)			
Representative Raybould	X			Representative Raybould		X		Representative Raybould			
Representative Roberts	X			Representative Roberts		X		Representative Roberts			
Representative Wood (35)	X			Representative Wood (35)	X			Representative Wood (35)			
Representative Clark	X			Representative Clark		X		Representative Clark			
Representative Harwood	X			Representative Harwood		X		Representative Harwood			
Representative Bedke			X	Representative Bedke			X	Representative Bedke			
Representative Hart		X		Representative Hart	X			Representative Hart			
Representative Sayler	X			Representative Sayler	X			Representative Sayler			
Representative Jaquet		X		Representative Jaquet	X			Representative Jaquet			
Representative LeFavour		X		Representative LeFavour		X		Representative LeFavour			
Representative Killen		X		Representative Killen	X			Representative Killen			
Representative Ruchti	X			Representative Ruchti		X		Representative Ruchti			
TOTALS	10	7	1	TOTALS	8	9	1	TOTALS			

MOTION PASSED: XXX
MOTION FAILED:

MOTION PASSED:
MOTION FAILED: XXX

MOTION PASSED: _____
MOTION FAILED:

Community Infrastructure Districts (CID)
House Bill 578

TALKING POINTS
DRAFT 3/4/2008

Background

- The purpose of the Community Infrastructure District Act ("the Act") is to create a new tool to fund public infrastructure in advance of new development. (Pg. 1, 27 – 29)
- Community Infrastructure Districts will help ensure that "growth pays for growth" by enabling those that most directly benefit from new public infrastructure to bear the responsibility for paying its costs. (Pg. 1, 33 – 34)

Applicability

- Community Infrastructure Districts may only be formed within a city's municipal boundaries, or in unincorporated areas designated within a city's comprehensive plan with the City's consent. (Pg. 1, 37 – 39)

Community Infrastructure

- Only public infrastructure providing a regional or community-wide benefit may be funded through a Community Infrastructure District.
- Infrastructure that can be funded using a Community Infrastructure District include both on-site and off-site infrastructure such as:
  - Highways and interchanges
  - Public safety facilities
  - Impact fees; and,
  - Regional infrastructure specified in sections of the Idaho Code pertaining to development impact fees. (Pg. 2, 25 – 46)
- Community infrastructure *excludes* public improvements that only provide a local benefit such as local roads or sewer connections serving individual residences. (Pg. 2, 25 – 26)
- Community infrastructure must be publicly bid pursuant to Section 67-2320 and chapter 28, title 67, Idaho Code. (Pg. 8, 19 - 23)

District Development Agreement

- A district development agreement must be established between property owners and the local jurisdiction to provide both parties with assurance that implementation of the District will be mutually agreeable. (Pg. 3, 7 – 27)

Creation of the District

- 100% of property owners in a proposed district must petition the local government to establish it and adopt a general plan for the district. (Pg. 4, 16 – 40)
- The governing body of the local jurisdiction must hold a public hearing and decide whether the district should be established. (Pg. 4, 41 – 42)
- Notice of the public hearing must be distributed to special service districts such as schools and fire. (Pg. 5, 11 – 15)

District Organization

- The district is a separate political subdivision apart from the local jurisdiction that established it; however, the governing body of the local jurisdiction that establishes a district maintains control of it through the district board.

- If the petition to establish the district is granted, the governing body must appoint three of its own members to serve as a district board. (Pg. 5, 50-51)
- As an independent political subdivision of the State of Idaho, a district would be separate and apart of the local jurisdiction that formed it. (Pg. 7, 5 – 8)
- The district board must appoint or hire staff to administer the district. (Pg. 6, 41-46) For administrative purposes, the district board can impose an ad valorem property tax equal to 0.01% of the assessed value of property within the district. (Pg. 17, 2 – 15)

Finances

- Community infrastructure districts can be used to finance infrastructure through future property tax payments, special assessments, or other revenues.
- Three types of financing mechanisms can be used to pay for community infrastructure: 1) general obligation bonds; 2) special assessment bonds; or, 3) revenue bonds. (Pgs. 9 – 14)
- Public indebtedness incurred by a district *is not the obligation* of the local jurisdiction that established the district. (Pg. 9, 27 – 31)
- A district can enter into intergovernmental agreements. For example, a district can enter into an agreement with ITD to finance a state highway interchange. (Pg. 7, 21- 22)

General Obligation Bonds

- Consistent with the Idaho Constitution, general obligation bonds must be approved by 2/3 of qualified electors in an election. (Pg. 9, 48 – 50)
- The total amount of general obligation debt allowed by the Act may not exceed 12% of the total assessed value for property within a district. (Pg. 10, 19 – 24)

Special Assessment Bonds

- Special assessment bonds may be imposed when 100% of property owners within a proposed assessment area submit a petition. (Pg. 11, 16 – 18)
- Special assessment bonds may only be imposed if the aggregate fair market value of the property within the assessment area is at least three times the aggregate principal amount of the special assessment bonds. (Pg. 11, 47 – 54)

Disclosure

- Property buyers are protected from unexpected taxes or assessments related to a district by the disclosure requirements set forth in the Act.
- The details of the Community Infrastructure District must be recorded on the county records for property within a district. (Pg. 26 – 42)
- Additionally, property buyers must sign a form disclosure prior to purchase acknowledging that they are aware of their future obligations. (Pg. 18, 48 – 50)

Relationship of Community Infrastructure Districts and Impact Fees

- This financing tool complements the use of impact fees, which are usually collected after the public infrastructure needed by new development has already been built. A Community Infrastructure District can be used to prepay impact fees. (Pg. 1, 30 – 31)

Effect on Housing Affordability

- The Community Infrastructure District Act could make housing more affordable. Home buyers can pay for infrastructure over time, rather than up-front in their home purchase price.

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 82
DEVELOPMENT IMPACT FEES

67-8203. DEFINITIONS. As used in this chapter:

. . . . .

(24) "Public facilities" means:
(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) Storm water 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, emergency medical and rescue and street lighting facilities.

IDAHO TRANSPORTATION DEPARTMENT
P.O. Box 7129
Boise ID 83707-1129

(208) 334-8000
itd.idaho.gov

March 4, 2008

Representative Dennis Lake
Idaho Legislature

Dear Chairman Lake:

The Department of Transportation is writing in support of House Bill 578 which is under consideration by your committee.

Of particular value to ITD in this proposed legislation is the fact that it will allow for off-site improvements to state highways utilizing non-state and non-federal dollars. As you may be aware, funding for road projects and construction has become increasingly competitive and this proposed mechanism will allow for others to be involved in that funding process.

Additionally, the Department actively works with many planners and developers from around the state on how and when projects are accomplished and who will pay for the impacts those projects have on the state highway system. This proposed legislation will add another valuable tool to this process both from the funding perspective and the planning perspective.

Thank you and please do not hesitate to contact me if you should have further questions.

Sincerely,

PAMELA K. LOWE, P.E.
Director

Cc: Scott Turlington

City of
Garden City
Office of the Mayor

6015 Glenwood Street, Garden City, ID 83714 Phone: 208-472-2900 / Fax: 208-472-2996

Nestled by the River

March 5, 2008

Chairman Dennis Lake
State of Idaho House of Representatives
Revenue & Taxation Committee
Capitol Annex
514 West Jefferson Street
Boise, ID 83702

Dear Chairman Lake:

Let this letter serve as Garden City's support for House Bill 578 ("HB 578") related to establishment of Community Infrastructure Districts ("CID").

It is our belief that passage of HB 578 will provide Idaho cities and counties with a much needed financial tool to allow for the provision of regional public improvements in advance of growth and allow "growth to pay for growth".

Additionally, HB 578 provides the city and/or county with the ultimate control over whether the CID will be established and will grant the authorizing jurisdiction extraordinary latitude to negotiate the provision of additional public improvements which without the use of CID financing would otherwise not be possible.

Finally, I see that CID's may be employed as an economic development tool to encourage the development community to redevelop under utilized sites. For example should the Ada County Fairgrounds in Garden City redevelop I believe it and the city could benefit from this financing tool.

Sincerely,

Mayor John Evans
Garden City

JE/cf

VISION FIRST LLC

Randal S. Clarno
Senior Partner, Chief Executive Officer

Jeff Solscheid
Partner, Chief Financial Officer

651 S. Riverstone Lane, Suite 220
Eagle, Idaho 83616
(208) 939-4655 phone
(866) 939-4655 toll free
(208) 938-4765 fax

March 4, 2008

The Honorable Dennis Lake,
Chairman - Revenue and Taxation Committee
Annex
514 W. Jefferson
Boise, ID 83720

Re: HB-578

Dear Chairman Lake:

I offer the following comments upon reviewing proposed HB-578. I am generally in support of this tool; however, it should be available to all jurisdictions throughout the state including counties. In its current form, it appears to apply only to cities that are fortunate enough to have comprehensive plans inclusive of very large projects. Why shouldn't you also allow counties to utilize the same tools available to the more urbanized cities under the proposed bill? Given that the elected officials in a jurisdiction will still have the authority to approve or deny any proposed improvement district, why not make the tool available across the State, inclusive of counties, to help solve the impending and overwhelming infrastructure needs we are facing? These infrastructure shortfalls are not isolated to the more urbanized cities of our state; and I would offer that the infrastructure needs across the state are equally as important as those contained within the urbanized cities and their comprehensive planning areas.

The result would not be unimpeded growth or the creation of new growth in areas unfit for development; it would simply allow a City or County to implement the improvement district tool if they approve of well thought out and worthy projects bringing economic diversity and opportunity to an area. In order for a project to garner approvals for both an improvement district and land use entitlements, that project would, out of necessity, provide far more positive impacts to an area than negative impacts or else it would not gain approval.

I encourage you to expand the applicable uses for Community Improvement Districts as described in this letter. Thank you for your consideration

Sincerely,

VISION FIRST, LLC

Craig Driver
Vice President of Commercial Development

CD:tj

AGENDA

HOUSE REVENUE AND TAXATION COMMITTEE

8:30a.m.

Room 240
Friday, March 21, 2008

BILL NO.	DESCRIPTION	SPONSOR
RS 18135C2	Legislation relating to CIDs	Jeremy Pisca
RS 18137	Legislation relating to bond limits for library districts	John Watts Idaho Library Association

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

Chairman Dennis Lake
Vice Chairman Gary Collins
Rep Lenore Barrett
Rep Mike Moyle
Rep Robert Schaefer

COMMITTEE MEMBERS:
Rep Leon Smith
Rep Dell Raybould
Rep Ken Roberts
Rep JoAn Wood
Rep Jim Clark
Rep Dick Harwood
Rep Scott Bedke
Rep Phil Hart

Rep George Sayler
Rep Wendy Jaquet
Rep Nicole LeFavour
Rep Bill Killen
Rep James Ruchti

MINUTES

HOUSE REVENUE AND TAXATION COMMITTEE

DATE: March 21, 2008

TIME: 8:30a.m.

PLACE: Room 240

MEMBERS: Chairman Lake, Vice Chairman Collins, Representatives Barrett, Moyle, Schaefer, Smith(24), Raybould, Roberts, Wood(35), Clark, Harwood, Bedke, Hart, Sayler, Jaquet, LeFavour, Killen, Ruchti

ABSENT/ EXCUSED: Representatives Wood and Jaquet

GUESTS: John Watts, Jeremy Pisca.

A quorum being present, Chairman Lake called the meeting to order at 8:30a.m. The secretary took a silent roll.

MINUTES: Representative Raybould moved to accept the minutes for March 19, 2008 as written. The motion **passed** on a voice vote.

Chairman Lake recognized John Watts.

RS 18137 RS 18137 - legislation relating to bond limits for library districts.

Mr. Watts, representing the Idaho Library Association, stated this proposed legislation increases the bond limit for library districts from 4/10th of one percent (1%) up to two percent (2%) of assessed value within this new district. This new cap will provide library districts a larger value base from which to request voters to approve general obligation bonds for library capital projects.

Mr. Watts stated he was attempting to get this bill introduced and that he would work with legislators during the months up to the next session regarding this legislation.

MOTION: Representative Bedke moved to **introduce** RS 18137. The motion **passed** on a voice vote. Representative Barrett asked to be recorded as voting **NAY**.

Chairman Lake recognized Jeremy Pisca.

RS 18135C2 RS 18135C2 - legislation relating to CIDs.

Mr. Pisca, representing the Idaho Association of Realtors, stated that the Committee had heard three or four days of testimony on HB 578 regarding Community Infrastructure Developments. Representative Killen requested an opinion on HB 578 from the Attorney General's office. The Attorney General did have some concerns regarding the language in HB 578 and

the constitutionality of the bill.

Mr. Pisca worked with the concerns of the Attorney General's office and crafted the language to satisfy those concerns. The result is this new RS.

Mr. Pisca walked the Committee through the concerns of the Attorney General's office.

1) the AG was concerned about the provision regarding qualified electors. The language on page 3, line 13 is changed to read, "Qualified elector" means a person who possesses all of the qualifications required of electors under the general laws of the state of Idaho and: (a) Resides within the boundaries of a district or a proposed district....(b) is an owner of real property that is located within the district....."

2) Under 578 only landowners would get notice. On page 4, line 51, the language has been changed to read, "such notice shall also be mailed to each district resident and each owner of real property in the district..."

3) On page 15, line 34 the language has been changed to read, "A copy of such notice shall also be mailed to each district resident and each owner of real property in the district..."

4) The Attorney General's office had concern about the "one man, one vote" concept. Under HB 578, there was a voting calculation based on how much land was owned. The language on page 16, line 45, has been changed to read, "(I) each resident qualified elector shall be entitle to one (1) vote; and (ii) each owner qualified elector shall be entitle to one (1) vote..."

MOTION: Representative Raybould moved to **introduce** RS 18135C2 and send it **to the second reading calendar.**

SUBSTITUTE MOTION: Representative Moyle moved to **introduce** RS 18135C2.

AMENDED SUBSTITUTE MOTION: Representative LeFavour moved to **hold** RS 18135C2 in Committee.

ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION: Voting **AYE** - Representative LeFavour.

Voting **NAY** - Chairman Lake, Vice Chairman Collins, Representatives Barrett, Moyle, Schaefer, Smith, Raybould, Roberts, Clark, Harwood, Bedke, Hart, Sayler, Killen, and Ruchti.

Absent/Excused: Representatives Wood and Jaquet.

The motion failed 15 - 1 - 2.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Voting **AYE** - Representatives Barrett, Moyle, Bedke, Hart, LeFavour, and Killen.

Voting **NAY** - Chairman Lake, Vice Chairman Collins, Representatives

Schaefer, Smith, Raybould, Roberts, Clark, Harwood, Sayler and Ruchti.

Absent/Excused: Representatives Wood and Jaquet.

The motion failed 10 - 6 - 2.

ROLL CALL ON ORIGINAL MOTION:

Voting **AYE** - Chairman Lake, Vice Chairman Collins, Representatives Schaefer, Smith, Raybould, Roberts, Clark, Harwood, Sayler and Ruchti.

Voting **NAY** - Representatives Barrett, Moyle, Bedke, Hart, LeFavour, and Killen.

Absent/Excused - Representatives Wood and Jaquet.

The motion passed 10 - 6 - 2.

ANNOUNCEMENT

The Revenue and Taxation Committee will not meet on Monday, March 24, 2008.

ADJOURN:

There being no further business before the Committee, Chairman Lake adjourned the meeting at 8:50a.m.

Representative Dennis Lake
Chairman

Marsha Palmer
Secretary

Date: March 21, 2008
Bill #: RS 18135C2

COMMITTEE ROLL CALL VOTE

ORIGINAL MOTION				SUBSTITUTE MOTION				AMENDED SUBSTITUTE MOTION			
MOTION: Introduce to 2nd reading calendar MOVED: Rep. Raybould				MOTION: Introduce MOVED: Rep. Moyle				MOTION: Return to Sponsor MOVED: LeFavour			
	AYE	NAY	A/E		AYE	NAY	A/E		AYE	NAY	A/E
Chairman Dennis Lake	X			Chairman Dennis Lake		X		Chairman Dennis Lake		X	
Vice Chairman Collins	X			Vice Chairman Collins		X		Vice Chairman Collins		X	
Representative Barrett		X		Representative Barrett	X			Representative Barrett		X	
Representative Moyle		X		Representative Moyle	X			Representative Moyle		X	
Representative Schaefer	X			Representative Schaefer		X		Representative Schaefer		X	
Representative Smith (24)	X			Representative Smith (24)		X		Representative Smith (24)		X	
Representative Raybould	X			Representative Raybould		X		Representative Raybould		X	
Representative Roberts	X			Representative Roberts		X		Representative Roberts		X	
Representative Wood (35)			X	Representative Wood (35)			X	Representative Wood (35)			X
Representative Clark	X			Representative Clark		X		Representative Clark		X	
Representative Harwood	X			Representative Harwood		X		Representative Harwood		X	
Representative Bedke		X		Representative Bedke	X			Representative Bedke		X	
Representative Hart		X		Representative Hart	X			Representative Hart		X	
Representative Sayler	X			Representative Sayler		X		Representative Sayler		X	
Representative Jaquet			X	Representative Jaquet			X	Representative Jaquet			X
Representative LeFavour		X		Representative LeFavour	X			Representative LeFavour	X		
Representative Killen		X		Representative Killen	X			Representative Killen		X	
Representative Ruchti	X			Representative Ruchti		X		Representative Ruchti		X	
TOTALS	10	6	2	TOTALS	6	10	2	TOTALS	1	15	2

MOTION PASSED XXX
MOTION FAILED:

MOTION PASSED:
MOTION FAILED:

MOTION PASSED: ____
MOTION FAILED: XXX

STATEMENT OF PURPOSE

RS 18135C2

Idaho continues to experience rapid growth. As a result, new highways, roads, bridges, sewer, water, fire, and police stations must be constructed. Often, existing public facilities must be improved to provide for the increased demands. Idaho citizens are asking for ways to ensure that "growth pays for growth."

This legislation creates a financial tool to allow new growth to more expediently pay for itself through the creation of Community Infrastructure Districts (CIDs). A CID allows the formation of a taxing district comprised by the boundaries of a new development. Taxes and assessments applied only to lands within the new development will secure bonds. Those bonds can be utilized to fund and construct regional community infrastructure, inside and outside the district. Only infrastructure that is impact fee-eligible, such as highways, roads, bridges, sewer, and water treatment facilities, and police, fire, and other public safety facilities may be funded with bond proceeds generated by a CID.

The legislation also creates a mechanism for the prepayment of development impact fees. Impact fees are typically collected at the time of building permit issuance. Those are generally paid in arrears or collected after the need for funding and infrastructure improvement has occurred. The prefunding of developmental impact fees will allow for the construction of adequate public facilities prior to developmental growth, and in advance of the need for increased facility capacities.

A CID can only be formed within the boundaries of a city or within the boundaries of a city's comprehensive planning zone and with the city's consent. Only infrastructure that is publicly-owned by the state, county, or city and only impact fee-eligible projects may be constructed with the proceeds of a CID.

FISCAL IMPACT

This legislation will have no impact on the general fund.

Contact:

Rep. Dennis Lake	Sen. Brent Hill
Rep. Ken Roberts	Sen. Brad Little
Rep. Jim Clark	Sen. John McGee
Rep. Leon Smith	Sen. Stan Bastain
Rep. Gary Collins	Sen. Leland Heinrich
Rep. Dell Raybould	Sen. Tim Corder
Rep. James Ruchti	Sen. Mike Jorgensen
	Sen. David Langhorst

AGENDA

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

NOTE DAY AND TIME CHANGE

8:30 a.m.
Room 211
Friday, March 28, 2008

BILL NO.	*DESCRIPTION*	SPONSOR
	Roll Call	
	Minutes: March 11	
H 664	Relating to Income Tax Credits for Research Activity to repeal a tax credit for research activities.	Representative Lake
H 656	Relating to Development Impact Fees to clarify that the definition of "development" does not include public facilities constructed by taxing districts.	Representative Snodgrass and Ken Harward, AIC
H 680	Relating to Community Infrastructure Districts to create a taxing district comprised by the boundaries of a new development and to allow for funding within that development district.	Representative Lake and Jeremy Pisca

Please present to the committee secretary a written copy of your testimony to ensure accuracy of records.

OFFICE

Twyla Melton, Committee Secretary
Telephone: (208) 332-1315
Room: 2nd Floor-Vault
Legislative Switchboard: (208) 332-1000
e-mail: TMelton@senate.state.id.us
WATS: 1-800-626-0471
Fax: (208) 332-1350

COMMITTEE MEMBERS

Sen Brent Hill, Chairman
Sen Tim Corder, Vice Chairman
Sen Joe Stegner
Sen Curt McKenzie
Sen Jeff Siddoway
Sen Leland Heinrich
Sen Shirley McKague
Sen David Langhorst
Sen Diane Bilyeu

Sign-In Sheet

LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: 3-28-08

Name, Address, & Phone **PLEASE PRINT**	Occupation	Representing Company/Organization	Legislation Interested In	Wish to Testify	Pro	Con
Scott Talkington	Lobbyist	Principle Strategies Inc	680		✓	
CARTER FROEHLICH	✓	~~IDP~~ M3 IDAHO Realty	680		✓	
Stan Bastian	Senator	Dist 14	H680	✓	✓	
Jeremy Tisea	Atty	IHA, IWEAGLE, IBCA	H680	✓	✓	
Jimmy deWeerd	Mayor	City of Meridian	H656	no	✓	

LOCAL GOVERNMENT AND TAXATION COMMITTEE
ROLL CALL

DATE: 3-28-08

MEMBER	PRESENT	ABSENT/EXCUSED
Sen Brent Hill, Chair	✓	
Sen Tim Corder, Vice Chair	✓	
Sen Joe Stegner	✓	
Sen Curt McKenzie	✓	
Sen Jeff Siddoway	✓	
Sen Lee Heinrich	✓	
Sen Shirley McKague	✓	
Sen David Langhorst	✓	
Sen Diane Bilyeu		

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE:	March 28, 2008
TIME:	8:30 a.m.
PLACE:	Room 211
MEMBERS PRESENT:	Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
MEMBERS ABSENT/ EXCUSED:	
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENED:	**Chairman Hill** called the meeting to order at 8:35 a.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
PRESENTATION:	**Chairman Hill** presented Austin Porter, Committee Page, with a letter of appreciation signed by all members of the Committee, a letter of recommendation, a book autographed by the author, and a memory book of his days spent at the Legislature in appreciation of a job well done.
MINUTES:	**Senator Bilyeu** moved to accept the March 11, 2008 minutes as written. **Senator Langhorst** seconded the motion.
VOTE:	The motion carried by a unanimous voice vote.
H 664	***Relating to Income Tax Credits for Research Activity to repeal a tax credit for research activities.***
	Representative Dennis Lake explained that the Research and Development Tax Credit went into effect in 2001. The purpose of this bill is to repeal that credit as a result of the recommendations from the Interim Committee on Exemptions.
MOTION:	**Senator Heinrich** moved to send H 664 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.
	Senator Heinrich stated that there will be approximately $2.0 million in savings to the State and removing the credit will not prevent any company from doing research.
	Senator McKenzie said this is part of the work on the personal property tax bill to get it through the process. This bill was the bait and switch bill.
	Senator Langhorst said he appreciates that this bill will remove some

exemptions and it does have a positive fiscal impact. However, this is not the way to do it. He believes that our system of exemptions favors the wrong kind of businesses, ones that are declining and don't pay well. But this exemption could have helped new types of businesses that are growing and which pay well. He will vote against the motion.

VOTE: The motion carried by voice vote.
Senator Langhorst is on record as voting no.

H 656 ***Relating to Development Impact Fees to clarify that the definition of "development" does not include public facilities constructed by taxing districts.***

Representative Mark Snodgrass presented H 656 to the committee stating that this bill excludes any public utility from falling under the definition of "development" under the Idaho Development Impact Fee law. This would include: 1) Water production, treatment, storage and distribution facilities; 2) Wastewater collection, treatment and disposal facilities; 3) Road construction and associated components both state or federal; 4) Storm and flood water containment; 5) Parks and recreation areas and related capital improvements; and 6) Public safety facilities i.e. law enforcement, fire, medical/rescue, and street lighting.

This bill is basically a clarification of the definition. It has no fiscal impact to the State and very little for local jurisdictions. The impact fees that are received are offset by the impact fees that are paid out.

Chairman Hill recognized Mayor Tammy deWeerd from the City of Meridian as being present.

MOTION: **Senator McKenzie** moved to send H 656 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Fulcher will sponsor H 656 on the Senate floor.

H 680 ***Relating to Community Infrastructure Districts to create a taxing district comprised by the boundaries of a new development and to allow for funding within that development district.***

Jeremy Pisca, representing the Idaho Building Contractors Association, Idaho Association of Realtors and M3 Eagle, presented this legislation to the Committee. Idaho is a high growth state and the citizens of Idaho want growth to pay for itself and H 680 will provide an economic development tool to do that. It is impossible to decouple residential growth from economic development. Roads are congested and something must be done to address this issue. Up to this point, tax dollars and impact fees have been appropriated but these methods come too late in the process.

Developers do not pay these fees, builders pay fees at the time permits are issued and as homes are built and sold the money trickles in after the roads, water and sewer systems have gone into the subdivisions and nothing has been done to upgrade the arterial infrastructure. A

Community Infrastructure District (CID) will provide a mechanism that will alleviate these problems by creating a special taxing district that pays for "regional community infrastructure." This is a tool to prepay development impact fees and it is directly related to the residents moving into the development. Existing residents would not be responsible to pick up these costs. A taxing district is established, bonds are secured and that bonding capacity allows for the prepayment of the construction of the infrastructure to a jurisdiction prior to the construction of the development.

A CID is a flexible tool in that it allows a jurisdiction to choose any combination of three types of financing:

1) General Obligation Bonds limited to 12% of the assessed value of the lands within the district.
2) Special Assessment Bonds at a ratio of 3 to 1, land value to debt.
3) Revenue Bonds using future user fees (water/sewer) as security.

The formation of a CID **is optional at the local level.** No jurisdiction will be forced to use a CID, it only gives them a tool. A CID can only be used to fund "regional community infrastructure" meaning infrastructure that is impact fee eligible. A CID cannot fund private infrastructure, only community infrastructure which will be owned publicly by the State, city, or county; a city in its incorporated area and a county in an area contained within a city's comprehensive plan but only with that city's approval. A CID is subject to all applicable municipal/county codes.

When a CID is formed, the users of the infrastructure will have a slightly higher tax than existing users. A notice of the CID must be recorded on the title of each parcel that is associated with the CID. The notice must include the current financial obligation of the property owner, future obligations, and the estimated maximum tax or assessment. There must also be a statement of disclosure of the CID signed and acknowledged by a purchaser. The governing agency may add more requirements above what the law requires.

A landowner/developer or 2/3 of all landowners would petition the local unit of government who would then have a hearing. If an infrastructure district was created it would define what kind of infrastructure should be built and how it should be built.

Mr. Pisca proceeded to go through the bill by page and line numbers to describe exactly what the bill will accomplish. There were intermittent questions as follows:

Senator Heinrich asked if a city's comprehensive plan was the same as the area of impact? **Mr. Pisca** said it was not. The comprehensive plan is more detailed and would most likely be within the area of impact.

Senator Bilyeu asked for confirmation that the comprehensive plan is not in the area of impact. **Mr. Pisca** said that most plans are contained within an area of impact.

Senator Bilyeu said that if there are many cities, do they all approve of the CIDs? **Mr. Pisca** said that with the CID, the landowner must petition the city and the city must approve.

Senator Bilyeu asked if it is possible to have competing cities with comprehensive plans that overlap one another? **Mr. Piscan** said yes.

Senator Bilyeu asked if there is more than one comprehensive plan, who decides which one will apply? **Mr. Pisca** said that one way would be whichever city approved the petition or they may come to some agreement between the two cities.

Senator Bilyeu asked if a petition required 2/3 of the landowners, could there be just one owner? **Mr. Pisca** responded yes.

Senator Bilyeu referred to the bonding issue, and asked who holds the elections and who votes? **Mr. Pisca** read from the bill: "Any election pursuant to this chapter shall be a nonpartisan election, and in regard to election dates, shall be held in compliance with Idaho Code."

Senator McKenzie asked if, under the general obligation bonds, do only those in the district vote? **Mr. Pisca** said that only those in the district would vote and the CID would be the same as the boundaries of the development.

Chairman Hill asked if the bonds are only for the district. **Mr. Pisca** concurred. **Chairman Hill** asked if the petition could only be initiated by the landowners or residents, not a city? **Mr. Pisca** stated that only landowners or residents could petition.

Senator Langhorst stated that if a city wanted to prioritize infrastructure improvements, the city could propose the idea of a CID to a landowner/developer but the city could not use a CID as a tool by itself.

Chairman Hill asked for an explanation of the difference between a general obligation bond and a special assessment bond. **Mr. Pisca** described a general obligation bond as a levy which had to be voted on and a special assessment bond as one that occurs after a petition is submitted. A hearing is held to determine whether a special assessment should by imposed. Again, **Mr. Pisca** emphasized that this is a local option, a city or county can say yes or no to the petitioner.

Chairman Hill asked whose obligation is it to pay the debt incurred by the bonds? **Mr. Pisca** responded that the bonds were not paid by the city or county. The bill states "Bonds issued by a district shall not be a general obligation of this state .....county or city in which the district is located and shall not pledge the full faith and credit of this state.....county or city in which the district is located. The property owners within the district pay for the debt incurred.

Chairman Hill asked what would happen in the case of default? **Mr. Pisca** responded that cases of default are diminimus. **Carter Froelich**, representing Idaho Board of Realtors and M3 Eagle, interjected to answer this question. In the case of revenue bonds, the security is the asset, water/sewer fees. Security for the general obligation bonds would be the land itself.

Senator Bilyeu asked if there is a large piece of land being developed,

and it goes into default, will the remaining people be obligated to pay? **Mr. Froelich** said yes that could happen at the target tax rate.

Chairman Hill asked when ownership transferred to the community? **Mr. Pisca** referred to the bill, "ultimate public ownership of the community infrastructure financed by the district." The community would be the owner from the initial contract or agreement.

Senator Bilyeu requested an explanation of the estimated tax rate and how it is determined. **Mr. Pisca** responded that the estimated tax rate would be determined using the fair market value.

Senator Bilyeu questioned the reason for not including personal property for taxation purposes within a CID. **Mr. Pisca** stated that loans are not available that include personal property.

Senator Stegner asked if the bonds would be able to participate under the State Bond Bank? **Mr. Froelich** responded that these are known as "dirt bonds" and would not qualify.

Chairman Hill asked the will of the Committee because time was short. Senator Corder was excused. Discussion continued.

Senator Bilyeu asked why a city would not favor this bill? **Mr. Pisca** said that he couldn't say exactly why they wouldn't but it is a choice. It is a local option. There have been three cities that objected to this bill and it is only speculation as to the reason.

Senator Stegner said these kinds of development costs have been traditionally born by the private developer and passed on to the buyers of property would now be financed through other vehicles and passed on to the buyers of property and then attaching liens to the property. Why is this change in the financing mechanism for development good public policy? **Mr. Pisca** stated that no matter how it is financed, it is passed on to the buyer. This method makes it more transparent and the development pays for the main arterial infrastructure. The CID becomes a political subdivision of the State and must comply with all the statutes of the State.

Senator Bilyeu asked if these parcels were going to be a subdivision, then how does the city get property taxes from that subdivision? **Mr. Pisca** stated they would pay the property tax the same as anyone else, the CID amount would be added on.

Chairman Hill stated that this will not affect anything else in any way.

Senator Bilyeu asked if this is a "sneaky way" to annex property? **Mr. Pisca** said that annexation could not happen unless both sides agree. Sometimes the developer and city have an agreement before the development is started.

Senator Langhorst stated that as far as annexation goes, this gives cities one more bargaining chip.

Senator Siddoway asked if there is a question of double taxation, would

the city agreement avoid that? **Mr. Pisca** said that if the developer is paying impact fees, he would be getting a credit.

Senator Bastion emphasized that this is for regional infrastructure.
1) To overbuild trunk lines on water/sewer and improve streets/roads.
2) This is done with all parties consent and goes through public notification.
3) Development is done when it is needed not later.
4) There are caps that prevent incurring debt beyond the ability of the security to cover it.

Senator Bilyeu asked if this is market value or assessed value? **Senator Langhorst** stated market value is assessed value. **Senator Bilyeu** concurred that it was fair market value as appraised by a Master Appraiser of Idaho (MAI).

Senator Bastion stated that this is a good tool for communities and urged support of this bill.

MOTION: **Senator Heinrich** moved to send H 680 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by voice vote.
Senator Bilyeu is recorded as voting no.

ADJOURNED: There being no further business, **Chairman Hill** adjourned the meeting at 9:45 a.m. until announcement of the next meeting place and time at the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

3/28/08

Jeremy Pisca
Evans Keane, LLP

Idaho Building Contractors Association
M3 Eagle
Idaho Association of REALTORS

1. Idaho is a high growth state.

- we encourage economic development
- cannot decouple economic development from residential growth

2. Idahoans want growth to pay for itself.

- Currently chosen to do that through general tax and Impact fees.
- Impact fees are a necessary tool but have some inherent drawbacks
  - They come too late
    - People think developers pay impact fees – they don't. It's the builder.
      - Builder's pay at the time the building permit is issued. By that point its too late. The subdivision has been platted roadwork within the subdivision is completed and construction commenced.
      - The need for widening roadways getting to the project, increasing water and sewer capacity, was before not after those houses go in.
      - Because the money trickles in as homes are built, the money can't be collected fast enough to pay for growth efficiently.
    - Builder typically has to finance the impact fee. Costs interest. Impact fee is buried into the cost of the home and the consumer never knows how much they paid for infrastructure. Consumer then pays mortgage interest for the next 30 years – part of which is to finance and impact fee.
- H. 600 is a mechanism to allow growth to pay for itself through allowing the creation of a special taxing district that pays for "regional community infrastructure."

- Taxing district is comprised 100% by the boundaries of new development. Residents moving into the development would pay a slightly higher property tax to fund infrastructure. *Existing residents would not be responsible to pick up these costs.* I *directly* ties the cost of paying for infrastructure to those that are causing its need.

- With est. of taxing district, bonds are secured. That bonding capacity allows for the prepayment of developmental impact fees to a jurisdiction, or the construction of infrastructure prior to growth.

- Three things must be remembered at all times

    - The formation of a CID is *completely optional* at the local level.
        - No jurisdiction will be forced to use a CID – but it will give them a tool to deal with infrastructure deficiencies if the tool works for their circumstances.
        - This can only be used to fund "regional community infrastructure" – Infrastructure that is "Impact Fee eligible."
        - And the cities hold all the cards to formation. – managed growth – comprehensive planning area.

- What is "infrastructure: defined on p. 2
    - Improvements that directly or indirectly benefit the district – on site/off site
    - They are impact fee eligible projects;
        - Highways, roadways, interstates, interchanges and bridges
        - Water supply and treatment,
        - Sewer collection, treatment and disposal facilities
        - Parks and open space
        - Impact fees
    - Important to note that these improvements cannot be used for improvements fronting individual single family residential lots.
- How is a district created? P. 4
    - Petition by 2/3 or by all landowners to the local unit of government
    - Publicly noticed hearing
    - Developer provides map and a general plan.
    - City council or county commissions will vote upon a resolution as to whether to allow the creation of a district.
        - Again, this is entirely local option.

        - Local government can just say "no." to any petition.
    - If approved, city council or county commission becomes the CID district board.
- What gets financed and who decides? District development agreement. P. 3
    - A negotiated process between the district board (either city council or county commissioners) and the developer.
        - Establishes the obligations
        - Financing, construction and development of infrastructure.
        - Financial assurances
        - Future annexations
        - Total amount of bonds
        - Amount of impact fees to be prepaid.
    - Not only is this *local option* it is *local control.*
- Flexible tool because it allows a jurisdiction to choose any combination of three types of financing.
        - GO Bonds –secured by gen. property taxes within the district
            - 12% valuation cap on borrowing.
        - SA Bonds – secured by an assessment lien on the property
            - 3 to 1 land to loan ratio
        - Revenue Bonds – secured by future user fees of the distring (sewer, etc.)
    - Local can choose one, two, all, or none of these types of financing depending upon what their needs are.

- Disclosure, p. 18

Community Infrastructure Districts (CID)
House Bill 680

Background

Several states across the nation, but particularly high growth states, provide local governments the ability to establish special taxing districts in order to provide land-secured financing of necessary community facilities and infrastructure. A CID is solely established for the purposes of funding, constructing and/or acquiring a prescribed set of community facilities. CIDs provide local governments an additional financing mechanism to ensure that "growth pays for growth" more expediently by directly linking the beneficiaries of new public infrastructure with the responsibility to repay its costs.

A CID is created as a subdivision of the state that is separate and distinct from the local jurisdiction that caused it to be established. That CID may then levy taxes (only on the lands within the district which is typically new growth), incur debt, enter into agreements and contracts, acquire property, and acquire or construct public improvements outside or within the CID's boundaries. It is important to note that such improvements made by a CID may occur *outside* of the CID's borders. This is particularly noteworthy as Idaho grapples with increased road construction issues.

What types of public infrastructure can a CID acquire and/or construct?

House Bill 680 limits the types of infrastructure that can be financed through a CID to infrastructure that is: 1) regional community infrastructure benefitting an entire region; 2) publicly owned infrastructure; *and* 3) infrastructure that is impact fee-eligible. The types of regional community infrastructure include highways, roads, bridges, interchanges, water and wastewater treatment, parks and public safety facilities such as police and fire stations. Specifically excluded from the definition in H. 680 is infrastructure fronting individual single family residential lots. Again, the focus of H. 680 is on the construction of infrastructure that benefits the entire *region.*

H. 680 would also create a mechanism for the advance payment – or prepayment – of impact fees. Because impact fees are typically collected in arrears (at the time of individual building permit issuance, well after the need for infrastructure construction) jurisdictions are constantly in a state of "catch up" with regard to application of the funds received. Through the establishment of a CID, those fees can be paid up-front allowing for infrastructure expansion, such as roads and sewers, *before* the actual growth occurs.

What advantages would CIDs provide compared to other public sources?

CIDs provide local units of government certainty that the funding necessary complete public improvements required to meet the demand of new growth will be available when needed. CIDs ensure that "growth pays for growth" by tying payment for community

improvements to the property owners benefited by the district rather than burdening the municipality's general funds or other property owners who are not generating the impact.

While CIDs are not intended to replace development impact fees, they do represent a more favorable approach to financing public infrastructure. Again, this is because developmental impact fees trickle in over time and do not allow for timely construction of the public improvements in advance of the growth, when it is most needed.

How is a CID established?

The establishment of a CID is initiated by a petition of *all* landowners or 2/3 of the residents within the CID's proposed boundaries. If the petitioners are within a city, the petition would be filed with the city council. If the petitioners are outside of the incorporated city limits, they may petition the county commissioners to form the district *but only if:* 1) a city has included the proposed area within its comprehensive plan for future growth; *and* 2) the city *consents* to the district's formation. Thereafter the governing body of either the city (if within the city limits) or the county (if outside of a city, but within a comprehensive plan, and with the city's consent) holds a public hearing and decides whether to grant or deny the landowners' petition.

CIDs may be established in such a manner so as to allow smaller projects and larger to benefit. For instance, a municipality may establish a CID for the purpose of prefunding development impact fees. To the extent that other contiguous or non-contiguous property owners want to annex into the CID and prefund their development impact fees, they would be allowed to do so. This not only benefits the smaller landowner/home builder but the jurisdiction as well.

How is a CID governed and administered?

A CID is governed by a district board comprised of members of the governing body of the local jurisdiction (either the city council or board of county commissioners). After establishment, the district board will have the responsibility of administering and overseeing the construction and/or acquisition of public improvements.

Who decides what infrastructure will be constructed and when?

House Bill 680 provides for a "district development agreement." It would be incumbent upon the local unit of government, acting as the CID board, through a cooperative agreement with a district developer to determine what infrastructure needs must be constructed. The district development agreement will set forth the obligations of the parties, the collection of impact fees, financial assurances, public ownership of the infrastructure, and the total amounts of bonds and which types of bonds will be authorized.

How does a CID raise revenues?

A CID is vested with the power to assess property taxes, levy assessment liens, and/or other user charges or fees (*only within the district*) to construct and/or acquire public infrastructure – both outside and inside the district – as well as servicing debt issued for such purposes.

How will a property owner know they are moving into a CID with a higher tax rate?

A notice of the CID *must* be recorded on the title of each parcel subject to the CID. That notice *must* set forth: the current financial obligation of the property owner, the property owner's future financial obligations, and the estimated *maximum* tax or special assessment. Further, every purchaser of real property *must* be given a form disclosure that is titled "CID TAX AND SPECIAL ASSESSMENT DISCLOSURE NOTICE." H. 680 *requires* that the form be *signed* and *acknowledged* by each purchaser, that the form "specifically and conspicuously" sets forth that "YOU ARE PURCHASING REAL PROPERTY THAT IS INCLUDED WITHIN THE BOUNDARIES OF A COMMUNITY INFRASTRUCTURE DISTRICT." Each district board can include other disclosures that the board deems relevant, in addition to the above minimum notice required by the bill.

How does a CID raise and secure debt?

CIDs are able to issue tax-exempt public debt as General Obligation Bonds, Special Assessment Bonds, and/or Revenue Bonds. A jurisdiction can utilize all or a combination of those three vehicles, in its judgment, and as per the district development agreement to ensure that the types of financing meet the needs of the types of infrastructure to be financed. Allowing for the utilization of all three makes the CID an extremely useful mechanism to finance infrastructure. Under H. 680, the bonding capacity for General Obligation bonds is limited to a percentage of the assessed value of the lands within the district (12%). CIDs have the power to issue General Obligation bonds using future property tax revenues as security.

CIDs may also issue Special Assessment Bonds using special assessment liens on individual properties as security. The land values are required to be at a ratio of 3 to 1 (land value to debt). Alternatively, Revenue Bonds may also be issued using future user charges or fees (user fees such as sewer and water fees) as security.

Debt issued by a CID does not impair the ability of the local government to issue debt, nor is the local government responsible for repaying CID's debt in the case of default because the CID is a separate political subdivision from that of the jurisdiction. In such a case, the only recourse available to bondholders is that of the land within the CID (in the case of a Special Assessment bond), CID property tax revenues (in the case of General Obligation Bonds) or the pledged revenue source (in the case of a Revenue Bond).

Does a CID affect public bidding requirements?

Infrastructure acquired or constructed by a CID is subject to public bidding requirements pursuant to Idaho statutes.

Can a CID interfere with local land use and capital improvement plans?

Creation of a CID will not interfere with local land use and capital improvement plans. A unit of local government ensures consistency with land use and capital improvement plans by maintaining the authority to decide whether to establish the CID and who should govern it. Development within a CID would be subject to the applicable municipal or county codes related to planning, zoning, and infrastructure design.

APPENDIX B

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State and Local Government Official References to "Individual Single Family Residential Lot(s)" (Representative Listing from Google Search)

- City of Pismo Beach, California, Municipal Code Sec. 17.106.010 ("… the placement of mobile homes as well as single family residences on ***individual, single family residential lots***.") https://codelibrary.amlegal.com/codes/pismobeach/latest/pismo_ca/0-0-0-7904 (emphasis added).

- "State of Rhode Island Stormwater Management Guidance for ***Individual Single-Family Residential Lot*** Development," https://dem.ri.gov/media/29791/download (emphasis added).

- Thurston County, Washington, Code of Ordinances Sec. 23.36.040 ("… with the exception of ***individual single-family residential lots*** …") https://library.municode.com/wa/thurston_county/codes/code_of_ordinances?nodeId=TIT23OLURGRARZO_CH23.36LASC (emphasis added).

- City of Franklin, Tennessee, Zoning Ordinance Sec. 11.1.4.D ("… acreage for ***individual single-family residential lots*** …") https://web.franklintn.gov/FlippingBook/FranklinZoningOrdinance2023/187/ (emphasis added).

- City of Olympia, Washington, Municipal Code Sec. 18.36.040 ("… with the exception of ***individual single-family residential lots*** …") https://www.codepublishing.com/WA/Olympia/html/Olympia18/Olympia1836.html (emphasis added).

- State of Florida Administrative Code Rule 62-330.477 ("… for ***individual single family residential lots*** …") https://www.flrules.org/gateway/ruleno.asp?id=62-330.477 (emphasis added).

- City of Anaheim, California, Municipal Code Sec. 18.44.180 ("For ***individual single-family residential lots***, one (1) maximum five (5) square-foot sign is permitted.") https://codelibrary.amlegal.com/codes/anaheim/latest/anaheim_ca/0-0-0-69698 (emphasis added).

- City of Goodyear, Arizona, Zoning Ordinance Sec. 5-1-4.J ("… other than ***individual single family residential lots*** …") https://goodyear.municipal.codes/ZoningOrds/5-1-4 (emphasis added).

- Palm Beach County, Florida, Planning, Zoning And Building Department, Zoning Division, Application ("… ***individual single-family residential lots*** are exempt from perimeter landscaping and buffering requirements.") https://www.pbcgov.com/pzb/zoning

/bcc/september242007/12.pdf (emphasis added).

- New Castle County, Delaware, Department of Land Use, Current Land Development Projects ("… to subdivide parcel into five ***individual single family residential lots***.") https://www.newcastlede.gov/410/Active-Plans (emphasis added).

- Warren County, Kentucky, Joint Zoning Ordinance Sec. 4.9.1.E.1.5 ("… except on existing ***individual single family residential lots*** …") https://warrenpc.org/wp-content/uploads/2021/03/Article-4_April2021.pdf (emphasis added).

- Coweta County, Georgia, Zoning Ordinance Amendment, Ord. No. 030-14 ("***Individual Single Family residential lots*** shall be prohibited from encroaching upon …") https://mcclibraryfunctions.azurewebsites.us/api/ordinanceDownload/14179/666632/pdf (emphasis added).

- City of Augusta, Kansas, Code, Appendix C, Zoning Regulations Sec. 13.4 ("Submittals for ***individual single-family residential lots*** may utilize …") https://augustaks.citycode.net/index.html#!articleSitePlanReview (emphasis added).

- City of Tarpon Springs, Florida, Comprehensive Zoning and Land Development Code Sec. 296.00.A ("… development of ***individual single family residential lots*** …") https://www.ctsfl.us/wp-content/uploads/2023/06/Public-Art-Program-Acknowledgment.pdf (emphasis added).

- Cabarrus County, North Carolina, Development Ordinance Sec. 4-5.7. ("Maximum impervious coverage for ***individual single family residential lots*** …") https://www.cabarruscounty.us/files/assets/public/v/1/planning-and-development/planning-and-zoning/documents/chapter4-development-ordinance.pdf (emphasis added).

- City of St. John, Missouri, Government Code Sec. 405.110.A.10 ("… except ***individual single-family residential lots***, which shall …") https://ecode360.com/29084247#29084375 (emphasis added).

- Beaufort County, South Carolina, Community Development Code Sec. 5.11.100.F.1.a. ("On any ***individual single-family residential lot*** …") https://library.municode.com/sc/beaufort_county/codes/community_development_code?nodeId=ART5SUZO_DIV5.11REPRST_5.11.100TRPR (emphasis added).

- City of Mason, Ohio, Ord. No. 99-183 ("… into ***individual single family residential lots***") https://imaginemason.org/download/Legislation%20and%20Minutes/1999/1999%20Legislation/ord1999-183.pdf (emphasis added).

- City of Biloxi, Mississippi, Proposed Resolution to Grant Preliminary Subdivision Re-Plat

Approval ("… into eleven (11) ***individual single family residential lots***") https://www.biloxi.ms.us/agendas/citycouncil/2021/080321/080321apc.pdf (emphasis added).

- City of Richmond, Michigan, Zoning Ordinance Sec. 20.05.C.4.e. ("… setbacks on ***individual single-family residential lots*** …") https://www.cityofrichmond.net/DocumentCenter/View/486/Article-20---Planned-Unit-Development-_PUD_-Overlay-District?bidId= (emphasis added).

- City of Castle Pines, Colorado, Unified Development Ordinance Sec. 3101 ("… may be required for ***individual single-family residential lots***.") https://online.encodeplus.com/regs/castlepines-co/doc-viewer.aspx#secid-1511 (emphasis added).

- Town of Plymouth, Vermont, Town Plan Sec. II, p. 10 ("Nearly all of the ***individual single family residential lots*** …") https://outside.vermont.gov/agency/ACCD/bylaws/Bylaws%20and%20Plans%20Approved/Plymouth_Adopted_MunicipalPlan_June_2012.pdf (emphasis added).

- Town of Kilmarnock, Virginia, Comprehensive Plan, p. 55 ("… as opposed to ***individual single family residential lots*** …") https://www.kilmarnockva.com/wp-content/uploads/2019/08/comp.plan_.Final-Draft.4.23.14-3.pdf (emphasis added).

- City of Hammond, Louisiana, Unified Development Code, Sec. 4.1.4.A ("Fill for ***Individual single family residential lots*** …") https://hammond.org/wp-content/uploads/2023/01/Amended-UDC_2022.pdf (emphasis added).

- City of Athens, Alabama, Proposed Ordinance Amending Zoning Ordinance, Sec. 6.10.5.D, p. 21 ("The area for ***individual single-family residential lots*** …") https://athensalabama.us/DocumentCenter/View/1874/PROPOSED-ORDINANCE---2020-Proposed-Zoning-Changes---City-Council---2020-10-12 (emphasis added).

- City of Batavia, Illinois, Zoning Code Sec. 4.303.H. ("… other than ***individual single family residential lots*** …") https://www.bataviail.gov/DocumentCenter/View/133/Chapter-43Landscape-Regulations-PDF (emphasis added).

- City of Owasso, Oklahoma, Subdivision Regulations Sec. 3.2.2 ("***Individual single-family residential lots*** shall …") https://www.cityofowasso.com/DocumentCenter/View/382/Owasso-Subdivision-Regulations-PDF?bidId= (emphasis added).

- City of Southlake, Texas, Subdivision Ordinance Sec. 1.04 ("… divided into ***individual single-family residential lots*** …") https://mcclibrary.blob.core.usgovcloudapi.net/codecontent/13152/388356/Article%20I%20-%20Historical%20Record,%20Title,%20Table%20of%20Contents,%20and%20General%20Provisions.pdf (emphasis added).

APPENDIX C

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REQUESTED RELIEF

The following includes the specific relief requested by Residents broken out by issue presented for appeal. Residents also include a statement of the appropriate remedy in the event the relief requested is granted.

Residents request that this Court:

1. Hold, that the CID Act permits the financing only of regional community infrastructure that benefits the broader community, and not local public improvements that primarily benefit a development, consistent with the Impact Fee Act; and, therefore, hold, that the Payments Resolution violates the CID Act because it authorizes payments for the Townhomes #9 and #11 Projects and the South Stormwater Facilities which primarily benefit the Development.

2. Hold, that the District Court erred in imposing a preservation rule in a judicial review proceeding pursuant to Section 50-3119 of the CID Act; and, therefore, reach the issue regarding the proper construction of the definition of "community infrastructure" in Section 50-3102(2) of the CID Act; and remand to the District Court to review the Challenged Resolutions consistent with those holdings.

3. Hold, that the District Court erred in holding that Section 50-3102(2) of the CID Act prohibits the financing only of community infrastructure fronting just one single-family residential lot; and hold, that Section 50-3102(2) instead prohibits the financing of community infrastructure directly in front of one or more individual single-family

residential lots; and, therefore, hold, that the Payments Resolution violates the CID Act because it authorizes payments for the Townhomes #9 and #11 Projects because those facilities are directly in front of individual single-family residential lots.

4. Hold, that the District Court erred in holding that the easement granted to ACHD by the Developer is equivalent to public ownership of the South Stormwater Facilities and the land on which they are located; and, therefore, hold, that the Payments Resolution violates the CID Act because it authorizes payments for the South Stormwater Facilities even though they are not publicly owned as required by Sections 50-3101(2) and 50-3107(1) of the CID Act.

5. Hold, that the District Court erred in holding that Section 50-3119 bars judicial review of projects for which payments have been approved in the past; and, therefore, hold, that Section 50-3119 of the CID Act provides for judicial review of the payments for the Accrued Interest Projects approved by the Payments Resolution; and, thus, remand, to the District Court the determination as to whether each of the Accrued Interest Projects may be financed pursuant to the CID Act, consistent with this Court's holdings herein.

6. Hold, that the District Court erred in holding that the Boise CID is not the alter ego of the City of Boise even though the City exercises effective control over the Boise CID; and/or hold, that the District Court erred in holding that the vote of just one person who would not pay any of the resulting taxes is sufficient to approve $50 million in bonds and over $100 million in property taxes imposed on thousands of homeowners over many decades; and, therefore, hold, that the Payments Resolution violates the voter approval requirement of

the Idaho Constitution because it was not approved by the qualified electors in the City and/or even by at least one voter who would have to pay the bonds and related taxes.

7. Hold, that the District Court erred in holding that the adoption of the Bond Resolution and its imposition of special taxes on homeowners in the Boise CID does not violate the uniformity requirement of the Idaho Constitution; and, therefore, hold, that the Bond Resolution violates the Idaho Constitution because the taxes it imposes are not uniform across all properties of a similar class within the City and/or even within the Harris Ranch development.

8. Hold, that the District Court erred in holding that the adoption of the Challenged Resolutions does not violate the lending of credit prohibition under the Idaho Constitution; and, therefore, hold, that the Challenged Resolutions violate the Idaho Constitution because they authorize the issuance of bonds payable from property taxes and the payment of proceeds of those bonds to a private developer for their private benefit.

9. Hold, that the District Court erred in failing to require the inclusion in the record for judicial review of the documents requested by Residents; and, thus, remand to the District Court for production of the requested documents, including without limitation documents regarding the Accrued Interest Projects and the 2010 bond election.

10. Hold, that Residents citations in their Opening and Reply Briefs to non-adjudicative facts should not be disregarded.

11. Hold, that Residents, should they prevail on one or more issues in this proceeding, are entitled to their legal fees and costs under the Private Attorney General Doctrine; and hold,

that Respondents and Intervenor, should they prevail on one or more issues in this proceeding, are not entitled to their legal fees and costs.