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Patrick Braden, KOOTENAI COUNTY PROSECUTING ATTORNEY'S OFFICE, for Respondents Kootenai County and the Board of Commissioners of Kootenai County: Rick Currie, Rich Piazza, and Todd Tondee.

Susan P. Weeks, JAMES VERNON & WEEKS, P.A., for Respondents East Side Highway District and the Board of Commissioners of the East Side Highway District: Lawrence R. Edinger, Terry Sverdsten, and Jimmie Dorsey.

I. STATEMENT OF FACTS AND COURSE OF PROCEDURE

The Petitioners are the owners of approximately 7 acres located on a "country road" named "Arrow Road," in Kootenai County, Idaho. (R., pp.30-91.) The acreage and Arrow Road are located in the East Side Highway District ("ESHD"). (Id.) The Petitioners desire, pursuant to KCC § 10-2-2, to subdivide the acreage into a four lot "minor subdivision": three lots "located below the country road to the north," and one lot "on the south side of country road." (Id.) There is no access to the proposed lots from Highway 97; Arrow Road provides the only access to the proposed lots. (Id.)

In anticipation of submitting an application for the subdivision, the Petitioners met with representatives of Respondent Kootenai County Building Department ("Building Department") in November 2005. (R., p.433.) According to the Petitioners, the Building Department staff informed the Petitioners that because Arrow Road in its current condition did not meet ESHD standards, the Petitioners would need to pay \$3,500.00 per lot to ESHD as a "fee in lieu of construction" as per Section 208.1 of the 2005 "Highway Standards for the Associated Highway Districts" ("2005 Highway District Standards"). This section provides:

"In Lieu of Construction Fees – All adjoining roads must be constructed to Highway District Standards or, in subdivisions with four or less lots, in lieu of actual construction, a \$3,500 per lot fee will be accepted for each additional lot created."

(Section 208.1, 2005 Highway District Standards, p.6.) Later, on February 5, 2007, the Petitioners met with the staff of ESHD and the ESHD staff also informed the Petitioners that the Petitioners would have to pay \$3,500.00 as a fee in lieu of construction because Arrow Road did not meet the 2005 Highway District Standards. (R., p.434.)

However, later, on September 10, 2007, the Petitioners met a second time with ESHD staff and were informed that the Petitioners would be responsible for the total cost of improving Arrow Road to meet the 2005 Highway District Standards, and that ESHD would not accept a fee in lieu of construction pursuant to Section 208.1. (Id.) The parties estimate the cost of the improvements to Arrow Road to bring it to the 2005 Highway District Standards at \$350,000-\$400,000. (R., p.86.)

On September 17, 2007, pursuant to Kootenai County Code § 10-2-2, the Petitioners submitted a "Minor/Preliminary Subdivision and PUD Application" ("Application") to the Building Department. (R., 30-91.) On October 16, 2007, ESHD sent a letter to the Petitioners, copying the Building Department, setting forth eleven deficiencies in the Application. (R., pp.298-299.) Importantly, the third concern noted by ESHD was that "Arrow Road leading to this Plat, and within this Plat, will need improvements to bring it to Highway District Standards for width and road structure." (R., p.298.) On October 30, 2007, the Petitioners responded that they would be able to meet ten of the eleven concerns ESHD noted in its October 16, 2007, letter, but the Petitioners disagreed with the ESHD's third concern. (R., p.86.) The Petitioners asserted that the cost to improve Arrow Road would be burdensome, and that another

person who constructed a minor subdivision on the same road paid a fee in lieu of construction and was not responsible for the total cost of improving Arrow Road. (Id.)

On March 25, 2008, counsel for the Petitioners sent ESHD a letter stating that it was the Petitioners' position that ESHD must accept a \$3,500 per lot fee in lieu of construction according to Section 208.1 of the 2005 Highway District Standards. (R., pp.99-100.) On June 10, 2008, counsel for the Petitioners sent ESHD another letter stating that the Worley Highway District of Kootenai County had advised the Petitioners that "in the case of a minor subdivision they were bound legally to charge no more than \$3,500 per lot for a minor subdivision." (R., p.98.)

ESHG issued a letter to Petitioners dated June 16, 2008, stating that ESHD decided to withhold recommending approval of the Application until Arrow Road was brought up to the 2005 Highway District Standards. (R., p.307.) ESHD believed it was not required to give a positive recommendation regarding the Application to the Building Department, nor was it required to accept \$3,500 in lieu of construction until the Building Department approved the Application. (Id.) The Petitioners disputed this conclusion and in a letter dated August 26, 2008, stated that they would remit \$3,500 per lot in lieu of construction and that they were prepared to send ESHD a check for \$10,500. (R., pp.101-102.)

On September 28, 2009, the Petitioners sent a check for \$10,500 to ESHD (R., p.416), but ESHD returned the Petitioners' check on October 21, 2009, with a letter stating that because the Building Department had not approved the Application, ESHD would not accept the check at that time (R., p.413).

On November 10, 2009, the Building Department emailed ESHD and referenced the letter of October 21, 2009. According to the email, the Building Department requested clarification as to whether “if the County approves the 4 lot Minor Subdivision request and conditions it to say the Applicant shall comply with the requirements of the East Side Highway District, will you accept a fee of \$3,500 for each newly created lot (\$10,5000.00) in lieu of construction?” (R., p.415.)

ESHD then issued a letter to the Building Department on November 16, 2009, recommending denial of the Petitioners’ Application. According to the letter, ESHD is “very concerned with [the Petitioners’] subdivision application” because:

Arrow Road in its entirety, including the SH 97 intersection, (which is recommended for improvements in the SH 97 Corridor Study) is inadequate for any additional traffic that would be generated by further subdivision of properties accessed by this road.

The Highway District also has concerns with the sewer line easement that lies within the proposed roadway and utility easement and the ability to control overlying easements in the future.

The plat needs to read “Exclusive roadway drainage and utility easement” which is (sic) does not at this time.

The Commissioners recommend that Kootenai County deny [the Petitioners’] application until Arrow Road is constructed to Highway District Standards and the above listed concerns are addressed.

(R., p.414.)

On December 28, 2009, the Building Department denied the Application and issued its “Findings of Fact, Applicable Legal Standards, Conclusions of Law and Findings and Order of Decision” (“Building Department Order”). (R., pp.272-279.) Section II of the Director’s Order is entitled “Findings of Fact” and subsection 2.13 is entitled “Access.” (Id.) The Building Department included verbatim the October 16,

2007, letter from ESHD in subsection 2.13, as well as quotations from letters between ESHD and the Petitioners dated December 11, 2007, September 28, 2009, October 2, 2009, and November 16, 2009. (Id.)

In the portion of the Building Department's Order entitled "Staff Analysis," the Building Department Order states:

During the subdivision process, it has been the policy of the Kootenai County Building & Planning Department to submit a request for comment(s) to the applicable agencies and rely on their comments. The East Side Highway District indicated in their November 16, 2009, letter that Arrow Road in its entirety, including the SH 97 Intersection is inadequate for additional traffic that would be generated by further subdividing of properties accessed by Arrow Road, further indicating access to the proposed lots does not meet the requirements of the District. Pursuant to Subdivision Ordinance No. 394, the Highway District is required to sign the plat and that in order to gain ultimate approval the application will have to meet their requirements.

Pursuant to Ordinance No. 394 Section 10-2-2, with the exception of a common driveway and/or community water system, the Director may only grant approval of a minor subdivision when no other shared infrastructure or improvements requiring engineering is required. In this case, the subdivision requires the improvement of Arrow Road, which is infrastructure requiring engineering. As such this 4 lot subdivision cannot be approved as proposed until the requirements of the East Side Highway District have been met or can be successfully mitigated.

Through the department review and after agency comment, Staff has determined that this application has not met the requirements of all the applicable agencies, particularly the requirements of ESHD for the provision of adequate access. As such, the proposal has not met all of the requirements of Kootenai County Subdivision Ordinance No. 394."

(R., pp.278-279 (emphasis added).) In the portion of the Building Department's Order titled "Conclusions of Law and Findings," the Building Department denied the Petitioners' Application:

All requirements set forth in the Kootenai County Subdivision Ordinance No. 394 have not been met.

- A. The impacts and/or inadequacies of Arrow Road have not been adequately mitigated; and,
- B. Negative environmental, social and economic impacts have not been mitigated, and
- C. The plat does not meet the requirements of the ESHD as it relates to providing adequate access; mitigation has not been achieved commensurate with the impacts of the subdivision, and,
- D. Road maintenances services related to access are not adequate to support the subdivision; and
- E. The subdivision will not create lots of reasonable utility and livability due to inadequate access,
- F. Public notice and the processing of this application met the requirements set forth in this Title and Idaho Code.

(R. p.279.)

The Petitioners timely appealed the Building Department's Order to Respondent Board of Commissioners of Kootenai County ("BOCC") and requested a hearing examiner. (R., p.335; 340-345.) The Petitioners alleged that the Building Department relied on an improper recommendation because ESHD failed to apply its own standards, that being Section 208.1. (Id.) A hearing examiner was appointed, but prior to the hearing on the Petitioners' appeal, the Building Department submitted a "Supplemental Analysis." (R., pp.700-704.) This document is not signed, contains legal analysis and argument, as well as statements and information not referenced by the Building Department's Order. (Id.) Importantly, the Supplemental Analysis states:

"The bottom line is that the Applicant must deal with the District if the Applicant believes that any of the Standards have been misapplied. The County does not have a dog in that fight – its role is merely to require that the Applicant and the District come to agreement as to how the issue regarding Arrow Road will be addressed before the proposed subdivision can be approved."

(R., p.702 (emphasis added).)

After both parties briefed the issues, the Hearing Examiner held hearings on April 15, 2010, June 2, 2010, and June 15, 2010. (Transcript of Record, pp.1-72.) On June 29, 2010, the Hearing Examiner issued her "Findings of Fact, Applicable Legal Standards, Conclusions of Law, and Findings and Recommendations" ("Hearing Examiner's Recommendation"). (R., pp.826-833.) The Hearing Examiner recommended approval of the Petitioners' Application because:

The highway district incorrectly interpreted its standards [Section 208.1], and thus the county planning director should've taken that into account when rendering a decision in this matter.

...

This seems so clear. The language is mandatory – "will be" accepted in lieu of actual construction. Based on the clear meaning of this standard, the highway district is required to accept the fee. Since this section of the standards appears to be the basis of the director's denial of the minor subdivision application, that should be reversed.

(R., p.832.)

At the BOCC hearings on July 8, 2010, and July 9, 2010, the BOCC considered whether the Building Department has any obligation to "administer" the ESHD 2005 Highway District Standards, and reviewed the arguments of the parties and the Hearing Examiner's Recommendation. (Transcript of Record, pp.73-116.) The BOCC, however, disagreed with the Hearing Examiner when the BOCC issued its "Findings of Fact, Applicable Legal Standards, Conclusions of Law and Findings, and Final Decision and Order on Appeal" ("Final Order"). (R., pp.841-849.) In Section II, titled "Findings of Fact," the BOCC addressed "Access" in subsection 2.11, stating:

Access to the subject property from State highway 97 is from Arrow Road, which is a public road maintained by East Side Highway District. It is a

single lane road paved with aggregate, and is not constructed to current Highway District Standards.

(R., p.843.) The BOCC then addressed the ESHD recommendation in subsection 2.12 (R., pp.843-844), summarizing the same information the Building Department included in the "Staff Analysis" portion of the Building Department's Order (R., pp.278-279). Notably, the BOCC included a subsection entitled "Board Analysis" (R., pp.847-848) which contains significant portions of the "Supplemental Analysis" (R., pp.701-704) submitted to the Hearing Examiner. The Board then issued its "Conclusions of Law," concluding in pertinent part:

7.03 The [Building Department's] decision to deny the application for approval of the Arrow View Estates Minor Subdivision in Case No. MIN07-0019 was based on a sound interpretation and application of the standards set forth in section 10-2-2 of the Subdivision Ordinance, and is supported by substantial evidence in the record as a whole.

7.04 The [Building Department's] decision was not arbitrary or capricious, and was not an abuse of the Director's discretion.

(R., p.848.) The Petitioners' seek review.

III. STANDARD OF REVIEW

The Idaho Administrative Procedures Act (IDAPA) governs the review of local zoning decisions. Price v. Payette County Bd. of County Comm'rs, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998). A board is treated as an administrative agency for purposes of judicial review. Stevenson v. Blaine County, 134 Idaho, 756, 759, 9 P.3d 1222, 1225 (2000). The district court does not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). The court defers to the agency's findings of fact unless they are clearly erroneous. Stevenson, 134 Idaho at 759, 9 P.3d at 1225. The agency's factual determinations are binding on the reviewing

court, even where there is conflicting evidence before the agency, so long as the determinations are supported by evidence in the record. Id.

There is a strong presumption favoring the validity of the actions of county boards, which includes the application and interpretation of their own ordinances. Howard v. Canyon County Bd. of Comm'rs, 128 Idaho 479, 480, 915 P.2d 709, 711 (1996). The court defers to the board's interpretation and application of its ordinances, unless such interpretation or application is capricious, arbitrary or discriminatory. Rural Kootenai Organization, Inc. v. Board of Comm'rs, 133 Idaho 833, 842, 993 P.2d 596, 605 (1999).

A Board's decision may only be overturned where its findings: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. §§ 67-5279(3)(a)(e); *see also* Payette River Property Owners Ass'n v. Board of Comm'rs of Valley County, 132 Idaho 551, 554, 976 P.2d 477, 480 (1999). The party attacking a board's action under I.C. § 67-5279(3) must first demonstrate that the board erred in a manner specified in I.C. § 67-5279(3) and must then show that a substantial right of the party has been prejudiced. Id.; *see also* Castaneda v. Brighton Corp., 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998).

II. ANALYSIS

The Petitioners assert that given the entire agency record, the denial of the Petitioners' Application is arbitrary, capricious and an abuse of discretion, and argue that the BOCC and Building Department failed to make required factual findings. While

the Petitioners raise other issues on review to this Court, this Court finds these issues dispositive. As a result, this Court will not reach other issues raised on appeal.

A. Respondent's Denial of the Petitioners' Application is Arbitrary, Capricious, and an Abuse of Discretion that Prejudiced the Petitioners' Substantial Rights, and the Respondent Failed to Make Required Factual Findings.

Kootenai County Code § 10-2-2 governs minor subdivision applications. The first paragraph of KCC § 10-2-2 provides:

The minor subdivision process may be used to create up to and including four (4) lots, when no shared infrastructure or improvements, other than a water system and/or a common driveway that does not require engineering, must be constructed to meet the requirements of the county or other agencies.

(Emphasis added.) Kootenai County Code § 10-2-2(B)(8) states "if the proposal meets these requirements [KCC § 10-2-2(B)(8) (a)-(m)] it shall be approved. If it does not meet these requirements, or if insufficient information was provided to determine compliance, it may be denied." The Idaho Supreme Court has held that the word "may" is a permissive term expressing a right of discretion, whereas, the words "must" or "shall" are mandatory. Wheeler v. Idaho Transp. Dept., 148 Idaho 378, 384, 223 P.3d 761, 767 (Ct. App. 2009), *citing* Rife v. Long, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995).

By the plain language of KCC § 10-2-2(B)(8) then, if a minor subdivision application does not contain sufficient information the decision to approve or deny the application is a discretionary decision. However, if a minor subdivision application is complete, then it must be approved. The Petitioner argues that the Application is complete and must be approved. However, as discussed in detail below, the record shows that the Application is incomplete due to an inadequate recommendation from

ESHD. As a result, approval of the Application is not mandatory, but instead the decision to approve or deny is discretionary.

The question, then, is whether the decision to deny the Application is arbitrary and capricious, such that the BOCC and Building Department abused their discretion. “A [board’s] actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, or without adequate determining principles.” Lane Ranch Partnership v. City of Sun Valley, 145 Idaho 87, 91, 175 P.3d 776, 780 (2007), *citing* Enterprise, Inc. v. Nampa City, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). “A County’s actions are considered an abuse of discretion when the actions are arbitrary, capricious or unreasonable.” Lane Ranch Partnership, 145 at 91, 175 P.3d at 780, *citing* Enterprise, 96 Idaho at 739, 536 P.2d at 734.

The BOCC and Building Director concluded that the Petitioners’ Application did not meet the requirements of KCC § 10-2-2(B)(8)(e): “the plat, the project and the lots meet the requirements of other agencies.” To determine whether the Petitioners’ Application met the requirements of other agencies, the BOCC and Building Department sought “Agency Review” from ESHD pursuant to KCC § 10-2-2(B)(6), because ESHD is the agency with “relevant expertise and jurisdiction” regarding access onto Arrow Road. When agency review is requested, an agency must respond and

. . . should explain whether the proposal . . . will meet the agency’s requirements; . . . any action needed to mitigate negative effects If an agency requests actions or fees to mitigate impacts of the subdivision, the requested mitigation must be commensurate with the impacts and fees must be authorized by law.

(Id.; emphasis added.) In its responsive letter of November 16, 2009, ESHD states that the Petitioners’ Application did not meet the 2005 Highway District Standards because

of the current condition of Arrow Road. (R., p.414.) However, this letter is the only information ESHD provided the Building Department and BOCC; much of the information required by KCC § 10-2-2(B)(6) is missing from ESHD's letter of November 16, 2009, but is contained in letters between ESHD and the Petitioner.

Notably, ESHD's recommendation fails to provide any information regarding "action needed to mitigate negative effects," that being the specific highway standards and the necessary improvements to Arrow Road, as well as the cost of the improvements. Further, ESHD failed to mention in the November 16, 2009, recommendation that it had "requested actions or fees to mitigate the impacts of the subdivision." As shown by the correspondence in this case, ESHD asked the Petitioners to accept the entire expense of improving Arrow Road and the Petitioners declined to perform the requested mitigation but made a counter offer of paying a fee in lieu of construction. However, the correspondence between ESHD and the Petitioner is not a "recommendation."

Most importantly however, ESHD failed to include in its November 16, 2009, recommendation that the "actions and fees to mitigate the impacts of the subdivision" that ESHD requested from the Petitioners was "commensurate with the impacts and fees . . . authorized by law." This is important because Section 208.1 governs the actions and fees available to mitigate impacts of the Petitioner's Application. This section states:

"In Lieu of Construction Fees – All adjoining roads must be constructed to Highway District Standards or, in subdivisions with four or less lots, in lieu of actual construction, a \$3,500 per lot fee will be accepted for each additional lot created."

(2005 Highway District Standards, p.6 (emphasis added).) This Court agrees with the Hearing Examiner that a plain reading of Section 208.1 contains mandatory language that requires ESHD to accept a fee of \$3,500 per lot in lieu of construction, and that this is the only “action or fees to mitigate the impacts of the subdivision” that ESHD may request of the Petitioners. ESHD cannot, then, request that the Petitioners be responsible for the entire cost of improvements to Arrow Road because such a request is not “authorized by law,” and fail to include the request, the applicable law, and the offered mitigation from the Petitioners in its November 16, 2009, recommendation. Thus, the ESHD recommendation is inadequate, rendering the Application incomplete.

The BOCC and the Building Department cannot ignore the failure of ESHD to follow its own rules when requesting mitigation from the Petitioners, and cannot ignore the incomplete recommendation from ESHD. While the BOCC and Building Department argue that they are not charged with the enforcement or interpretation of ESHD’s rules, these entities must comply with Kootenai County Code provisions. Kootenai County Code § 10-2-2(B)(6) requires that if ESHD “requests actions or fees to mitigate impacts of the subdivision, the requested mitigation must be commensurate with the impacts and fees . . . authorized by law.” (Emphasis added.) This provision clearly tasks the BOCC and the Building Director with ensuring that as part of its recommendation, ESHD made a proper mitigation request and that the request complies with applicable law.

Additionally, the record shows that the BOCC and the Building Department abdicated their decision making role to ESHD by adopting the statements of ESHD. The Building Department Order and the Final Order show that the BOCC and Building

Department failed to make any independent factual or legal conclusions regarding 1) the necessary improvements to Arrow Road and the cost of the improvements, and 2) whether ESHD's mitigation request complied with applicable law and was "commensurate with the impacts" of the project. As a result, the BOCC and Building Director disregarded "the facts and circumstances" of the mitigation dispute between the Petitioners and ESHD, and denied the Application without a reasonable basis. See Lane Ranch Partnership v. City of Sun Valley, 145 Idaho 87, 91, 175 P.3d 776, 780 (2007), *citing* Enterprise, Inc. v. Nampa City, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). The decisions of the BOCC and the Building Department, therefore, are arbitrary and capricious, and therefore an abuse of discretion. Id.

Even though the BOCC and Building Department abused their discretion, the Petitioner must also show that "a substantial right" has been prejudiced. Payette River Property Owners Ass'n v. Board of Comm'rs of Valley County, 132 Idaho 551, 554, 976 P.2d 477, 480 (1999); see *also* Castaneda v. Brighton Corp., 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998). "[T]he right to develop one's property is a substantial right." Nobel v. Kootenai County ex rel Kootenai County Bd. of Commr's, 148 Idaho 937, 942, 231 P.3d 1034, 1040 (2010). Given the facts and circumstances of this case, the inadequacy of the ESHD's recommendation, and the mandatory nature of Section 208.1, the Petitioners' Application was not given full consideration by the BOCC and the Building Department. As a result, the Application was denied, thereby preventing the Petitioners from developing their property. The Petitioners' substantial right to develop their property was therefore prejudiced.

The Petitioner's Petition for Review, then, is granted in part on these grounds and for these reasons, and this matter is remanded for further findings and conclusions regarding 1) the necessary improvements to Arrow Road and the cost of the improvements, and 2) whether ESHD's mitigation request is commensurate with the impacts and fees authorized by law, i.e. Section 208.1 of the 2005 Highway District Standards.

B. Petitioners' Request for Attorney Fees Pursuant to I.C. § 12-117.

Pursuant to I.C. § 12-117, the Petitioners requested attorney fees on administrative appeal to the Board of County Commissioners. (R., p.594.) The Hearing Examiner, relying on Rammell v. Idaho State Dept. of Agriculture, 147 Idaho 415, 210 P.3d 523 (2009), recommended denial of the Petitioners' request for attorney fees under I.C. § 12-117, but stated that if the Rammell case had not prohibited fees, she would have awarded fees because the Building Department acted without a reasonable basis in fact or law. Conversely, the BOCC concluded that the Building Department properly denied the Petitioners' Application and, as a result, did not address the Petitioners' request for attorney fees. (R., pp.848-849.) On review to this Court, the Petitioners seek an award of attorney fees for the administrative appeal to the BOCC.

Importantly, the Idaho Legislature amended I.C. § 12-117 during the 2010 legislative session to read:

Unless otherwise provided by statute in any administrative proceeding . . . involving as adverse parties a . . . political subdivision and a person, the . . . political subdivision . . . shall award the prevailing party reasonable attorney's fees . . . and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

(Emphasis added.) The Idaho Legislature specifically made these changes in order to

reverse the effect of Rammell. (House Bill No. 421.) This statute came into effect on July 1, 2010, two days after the Hearing Examiner issued her decision. However, according to the 2010 Session Laws, the changes are retroactive and apply to all cases filed and pending as of June 1, 2009. (S.L. 2010, ch. 29, § 2.) Because the Petitioners' appealed the denial of the Application to the BOCC on January 22, 2010, it appears that the Petitioners' request for attorney fees is no longer barred by Rammell. Thus, on remand, the BOCC must reconsider the Petitioners' request for attorney fees in light of this Court's decision.

The Petitioners also seek fees pursuant to I.C. § 12-117 on appeal to this Court. However, in Smith v. Washington County, the Idaho Supreme Court concluded that the 2010 amended version of I.C. § 12-117 "does not allow a court to award attorney fees in an appeal from an administrative decision." 2010 Opinion No. 105, Docket No. 35851 (October 6, 2010). Because the Petitioners filed their Petition for Review on August 24, 2010, after the enactment of the 2010 version of I.C. § 12-117 on July 1, 2010, and because of the Smith v. Washington County case, this Court cannot grant the Petitioners' request for attorney fees under I.C. § 12-117. The Petitioner's request for attorney fees is denied.

III. CONCLUSION

The Petitioners' Petition for Review is hereby GRANTED, and the matter is REMANDED for further proceedings.

DATED this 24th day of January, 2011.



John Patrick Luster
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPINION ON PETITION FOR REVIEW was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the 24 day of January 2011, to the following:

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CLIFFORD T. HAYES
Clerk of the District Court

By: 

Deputy Clerk