IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA-24-0661

DOUGLAS W. BYRON, CAROL ANN BYRON, DENNIS D. BYRON, CINDY BYRON, MARK GOLDADE, LELAND GOULET, DOUGLAS R. KIRKPATRICK, GERI KIRKPATRICK, MITCHELL FAMILY REVOCABLE TRUST dated 9/11/208, PIERCE J. SCHMAUS, BARBARA A. SCHMAUS, CRAIG SICKLER, MICHELLE SICKLER, and MURRAY VESTER,

Plaintiffs and Appellees,

v.

RAINBOW ESTATES HOMEOWNERS' ASSOCIATION, INC., MATTHEW G. TIEDJE, and TARA D. TIEDJE

Defendants and Appellants.

APPELLANTS' OPENING BRIEF

On appeal from the Montana Seventh Judicial District Court, Dawson County Cause No. DV 24-28, The Honorable Yvonne Laird, Presiding.

APPEARANCES:

Dylan L. Gallagher (Bar #36437097)
Silverman Law Office, PLLC
P.O. Box 4423
Helena, MT 59604
Telephone: (406) 449-4829
dylan@mttaxlaw.com
Attorney for Defendants and Appellants, Matthew G. Tiedje and Tara D. Tiedje

Albert R. Batterman
Batterman Law Offices, P.C.
P.O. Box 985
Baker, MT 59313
Telephone: (406) 778-3006
Attorney for Plaintiffs and Appellees

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STATEMENT OF THE CASE

On April 16, 2024, Douglas and Carol Byron, with several of their neighbors (collectively, the "Neighbors"), filed an application for preliminary injunction and temporary restraining order ("Application") against Matthew and Tara Tiedje (collectively, "the Tiedjes"). (R. 1). On May 21, 2024, the District Court issued a temporary restraining order, and set a show cause hearing on the preliminary injunction. (R. 8). On motion by the Neighbors, the Court vacated the Show cause hearing set for May 28, 2024, and instead set a status conference for that date. (R. 10). Following the status hearing, the Court set a new status hearing for July 1, 2024. (R. 13). At the status hearing, the Tiedjes requested a hearing be set on the preliminary injunction. (R. 17 at 1). That day, the Tiedjes also filed their response to the Application, (R. 14), and filed an amended response on July 2, 2024, (R. 16).

On July 3, 2024, the Court issued an order setting the hearing for August 1, 2024. (R. 13). On July 29, 2024, due to an unspecified scheduling conflict, the Court issued an order vacating the hearing and, instead, setting a scheduling

conference for July 30, 2024. (R. 18 at 2, ¶ 2). Following this scheduling conference, the Court issued another order, setting the hearing on preliminary injunction for September 13, 2024. (R. 19). On September 4, 2024, the Neighbors filed another motion to continue the hearing due to a conflict with Neighbors' attorney's schedule. (R. 21 at 2). That same day, the Court issued an order, again postponing the show cause hearing until September 20, 2024. (R. 22).

On September 20, 2024, the parties appeared for the show cause hearing on the Plaintiffs' application for preliminary injunction. On October 8, 2024, the Court issued the preliminary injunction. (R. 28). The Tiedjes have since moved the District Court to stay the preliminary injunction pending appeal, pursuant to Rule 22, Mont. R. App. P. (R. 29). That motion is fully briefed, but the District Court has not yet issued a decision.

STATEMENT OF FACTS

The Rainbow Estates Subdivision ("Subdivision") was established in Glendive, Montana, on June 1, 1982, pursuant to the Articles of Association and By-Laws of Rainbow Estates ("Bylaws"). (R. 1, Ex. 1). The Tiedjes moved to the Subdivision in early 2021. (R. 35 at 101:12; 103:20-104:2). Since then, the Tiedjes have operated Montana Hidden Treasures, a thrift store where they sell goods that they previously purchased from abandoned storage sheds. (R. 35 at 103:1-17).

In January of 2024, the Tiedjes sent emails to other property owners in the Subdivision, describing their plan to build a storage facility, and asking for the

other owners' opinions on that issue. (R. 35 at 109:10-17). Based on responses they received, the Tiedjes requested signatures to amend the Bylaws. (R. 35 at 109:18-20). The Tiedjes obtained signatures from individuals owning 71 lots in the Subdivision. (R. 1, Ex. 2). The Tiedjes also moved forward with purchasing additional lots and materials to construct the storage facility. (R. 35 at110:9-111:8).

After the Tiedjes began developing their lots to construct the storage facility, the Neighbors filed their Application seeking a temporary restraining order and injunction to prevent further development. (R. 1). The Application did not define a specific cause of action, but it includes 21 paragraphs alleging that the Tiedjes violated bylaws of the Rainbow Estates Homeowners Association (the "HOA"), of which the Neighbors and Tiedjes are members by virtue of being property owners in the Subdivision. (R. 1, ¶¶ 1-21).

The Plaintiffs alleged that the Tiedjes initially violated the Bylaws by recording a purported amendment that had not been voted on at a membership meeting. (R. 1. at ¶¶ 7-9). They further appear to allege that the Tiedjes would continue to violate the Bylaws by moving forward with developing and operating a private storage facility. (R. 1 at ¶¶ 10-18).

On October 8, 2024, after a hearing, the District Court issued a preliminary injunction, asserting that the "Tiedjes did not rebut the possible impacts their activities may cause..." (R. 28 at 3). The District Court's order discusses testimony presented about ongoing commercial activity in the Subdivision by residents other

than the Tiedjes, but states, "The Plaintiffs have established that they are likely to suffer irreparable harm in the absence of an injunction through the testimony on the impacts of the development." (R. 28 at 6, ¶ 7). The order does not expound on the specific purported harm that may arise from the development, or how those harms are irreparable. Furthermore, despite the Tiedjes' request, included in their responses to the Neighbors' Application, (R. 15 at 6), the District Court has never addressed the bond required by Mont. Code Ann. § 27-19-306(1), except for a cursory statement when granting the temporary restraining order that "any requirement of security for damages should be waived in the interests of justice." (R. 28 at 1-2, ¶ 2)

STANDARD OF REVIEW

This Court reviews a district court's grant or denial of a preliminary injunction for a manifest abuse of discretion. *Planned Parenthood of Mont. v. State*, 2022 MT 157, ¶ 5, 409 Mont. 378, 515 P.3d 301 (citation omitted); *Driscoll v. Stapleton*, 2020 MT 247, ¶ 12, 401 Mont. 405, 473 P.3d 386 (citation omitted). A court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason resulting in a substantial injustice. *State v. Sage*, 2010 MT 156, ¶ 21, 357 Mont. 99, 235 P.3d 1284. "A manifest abuse of discretion is one that is 'obvious, evident, or unmistakable.'" *Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200, ¶ 8, 418 Mont. 78, 555 P.3d 759 ("MAID") (citing *Driscoll*, ¶ 12).

To the extent that a discretionary ruling is based upon a conclusion of law, this Court's review is plenary. *Lamb v. Dist. Court of the Fourth Judicial Dist. of Mont.*, 2010 MT 141, ¶ 11, 356 Mont. 534, 234 P.3d 893. "Like interpretations of contracts, a district court's interpretation of a restrictive covenant is a conclusion of law reviewed for correctness." *Myers v. Kleinhans*, 2024 MT 208, ¶ 7, 418 Mont. 113, 116, 556 P.3d 529 (citing *Lewis & Clark Cnty. v. Wirth*, 2022 MT 105, ¶ 14, 409 Mont. 1, 510 P.3d 1206).

SUMMARY OF THE ARGUMENT

The District Court improperly considered the operation of Montana Hidden Treasures, without notice to the Tiedjes, when issuing the preliminary injunction. The Fourteenth Amendment to the United States Constitution and Article II, § 17 of the Montana Constitution provide that no person shall be deprived of property without due process of the law. The Neighbors' Application and their own testimony at the hearing demonstrate that they only filed their application in response to the development of the storage facility, not the ongoing operation of Montana Hidden Treasures. The District Court's Order Granting Preliminary Injunction, however, clearly considers Montana Hidden Treasure's activities in determining whether the Neighbors were entitled to a preliminary injunction. By improperly considering the purported impacts of the thrift store, Montana Hidden Treasures, in determining whether the Neighbors met the requirements for issuance of a preliminary injunction, the District Court violated the Tiedjes' rights to due

process.

Apart from a due process violation, the District Court erred by failing to limit its consideration of what is necessary to preserve the status quo when it conflated the alleged impacts resulting from the Tiedjes' operation of Montana Hidden Treasures with the impacts that the Neighbors claim may result from developing and operating the storage facility. The ultimate equitable purpose of injunctive relief remains preservation of the status quo. Nonetheless, the District Court inappropriately relied on the purported impacts of Montana Hidden Treasures in issuing the preliminary injunction, contrary to testimony by the Neighbors and the Tiedjes that this controversy only started with the development of the storage facility.

Additionally, the Neighbors have failed to meet their burden of proof to establish the four factors required for issuing a preliminary injunction: a likelihood of succeeding on the merits; a likelihood of suffering irreparable harm; that the balance of equities tips in their favor and that a preliminary injunction is in the public interest.

Under the first factor, the likelihood of succeeding on the merits, this Court has adopted the Ninth Circuit's "serious questions" test, which also considers whether the balance of the hardships tips sharply in the applicant's favor. The Neighbors have not demonstrated any of the four factors, let alone that the balance of hardships tips sharply in their favor. Therefore, the Court need not analyze

whether Plaintiffs have demonstrated serious questions going to the merits of this case. Regardless, a review of the record shows that the Neighbors failed to meet their burden of proof, even under the serious questions test.

Under the second and perhaps most important factor for issuing a preliminary injunction, the applicant must show a likelihood of suffering irreparable harm. All harms alleged by the Plaintiffs, as confirmed by the Neighbors testimony, are temporary, if they exist at all. None of the alleged harms are incapable of being redressed later, if a court finds on the merits of this case that a permanent injunction is warranted, and there is no information in the record that allowing the Tiedjes to continue developing a storage facility, pending a decision on the merits, would defeat a court's ability to restore the parties to their original position.

Similarly, the balance of the equities, the third factor in considering whether to issue a preliminary injunction, tips in favor of the Tiedjes. The Neighbors have not demonstrated that they will suffer irreparable harm without a preliminary injunction; the Tiedjes, however, have clearly established that they will suffer life-altering and irreparable injury if the preliminary injunction is allowed to remain, as they will be driven to bankruptcy. This imminent injury to the Tiedjes is exacerbated by the delay in holding a hearing on the preliminary injunction and by the District Court's failure to require the Neighbors to make a written undertaking, as requested by the Tiedjes and as required under Mont. Code Ann. § 27-19-

306(1).

Finally, public interest favors vacating the preliminary injunction because it would allow this matter to proceed on the merits of the case. The purpose of a preliminary injunction is to preserve the relative positions of the parties until a trial on the merits can be held. The Tiedjes have shown through the testimony and evidence presented at the hearing – and intend to continue developing the record to demonstrate – that they are entitled to a decision in their favor on the merits. However, the risk of irreparable harm to the Tiedjes threatens to render this matter moot. Conversely, a decision by this court reversing the preliminary injunction presents no risk of rendering this matter moot.

ARGUMENT

I. THE DISTRICT COURT ERRED BY CONSIDERING THE IMPACTS OF MONTANA HIDDEN TREASURES, RATHER THAN LIMITING ITS REVIEW TO THE IMPACTS OF THE STORAGE FACILITY.

A. The Tiedjes Due Process Rights Were Violated Due To The Lack Of Notice That Montana Hidden Treasures Would Be Considered As Part Of The Preliminary Injunction.

Before the District Court issued the preliminary injunction, neither the District Court nor the Neighbors put the Tiedjes on notice that the operations of Montana Hidden Treasures would be reviewed as part of the decision to grant a preliminary injunction.

The Fourteenth Amendment to the United States Constitution and Article II, § 17 of the Montana Constitution provide that no person shall be deprived of

property "without due process of the law." *Bates v. Neva*, 2013 MT 246, ¶ 14, 371 Mont. 466, 308 P.3d 114. As such, a party generally "cannot recover beyond the case stated by him in his complaint." *Gallatin Trust & Sav. Bank v. Darrah,* 152 Mont. 256, 261, 448 P.2d 734, 737 (1968). Rule 15(b), Mont. R. Civ. P., allows parties to try issues that were not raised in the pleadings, subject to the other party's express or implied consent; however, this rule "is carefully cabined, so to avoid 'question[s] of due process.' *Bates* ¶ 15 (citing *Brothers v. Surplus Tractor Parts Corp.,* 161 Mont. 412, 418, 506 P.2d 1362, 1365 (1973)). "[F]air notice to the other party remains essential, and pleadings will not be deemed amended to conform to the evidence because of 'implied consent' where the circumstances were such that the other party was not put on notice that a new issue was being raised." *Darrah*, 152 Mont. at 261–62, 448 P.2d at 737. If the "'party proceeded against was not given an opportunity to defend himself, an adverse finding on that issue… does violate due process.'" *Bates*, ¶ 16 (citing *Golden Grain Macaroni Co. v. F.T.C.,* 472 F.2d 882 at 886 (9th. Circ. 1972).

The District Court improperly considered the Tiedjes' operation of Montana Hidden Treasures, without any notice to the Tiedjes' that the operation of Montana Hidden Treasures would be at issue in determining whether to grant the preliminary injunction. The Neighbors' Application makes no reference to Montana Hidden Treasures, and the first action that the Neighbors take issue with is the February 12, 2024 "purported amendment to the Bylaws," followed by the

Tiedjes' actions towards developing the storage facility. (R. 1 at ¶¶1-21).

The Neighbors' own testimony at the hearing demonstrates that they filed this action in response to the development of the storage facility, not the ongoing operation of Montana Hidden Treasures. (R. 35 at 18:4-8) (Geri Kirkpatrick ("Geri") testified that she had "good communication" with the Tiedjes until "the request to put in the storage sheds has surfaced"); (R. 35 at 20:2-3) (Geri's household has "adjusted their lifestyle" based on Tiedje's operation of Montana Hidden Treasures); (R. 35 at 60:14-16) (Michele Sickler ("Michelle") explicitly stated that it was "in response to [the Tiedje's] resumed activity [of developing the storage facility] that this matter was initiated"); (R. 35 at 97:1-16) (Douglas Byron ("Doug") testified that he does not have a problem with Montana Hidden Treasures, but he does take issue with developing a storage facility without following the Bylaws). (R. 35 at 107:4-9) (Matthew Tiedje testified that, to his knowledge, everyone in the Subdivision has been aware of Montana Hidden Treasures for the past three years).

The District Court's order, however, clearly considers activities from continuing to operate Montana Hidden Treasure in determining whether to issue a preliminary injunction. (R. 28 at 3) ("At the hearing, several residents of the subdivision testified regarding the impact *of the current thrift store operated out of the Tiedjes' garage* and the anticipated impacts of expansion"); (R. 28, Finding of Fact 17) ("A 72-unit storage facility *and retail thrift store* are not equivalent to a

neighbor selling products such as Scentsy and Mary Kay, altering garments, or renting out a residence to short or long term renters); (R. 28, Finding of Fact 18) ("The storage facility *and retail thrift store* will cause an increase in traffic in the subdivision which will result in increased wear and tear of the subdivision infrastructure and disruption to the residential nature of the subdivision) (emphasis added).

The District Court inappropriately considered purported impacts of the continued operation of the thrift store, Montana Hidden Treasures, in determining whether the Neighbors met the requirements for a preliminary injunction. However, neither the Application, nor the testimony at the hearing provided "fair notice" to the Tiedjes, *Darrah*, 152 Mont. at 261–62, 448 P.2d at 737, that this case would include alleged impacts of Montana Hidden Treasures. The Tiedjes did not provide express or implied consent for the District Court to rely on these additional allegations in issuing the injunction. Such adverse findings, based on an issue about which the Tiedjes did not have notice and an opportunity to defend against, violates their due process rights under U.S. and Montana Constitutions.

B. Consideration Of Maintaining The Status Quo Must Be Limited Solely To The Development Of The Storage Facility, Not The Operation Of Montana Hidden Treasures.

The District Court conflated alleged impacts resulting from the Tiedjes' operation of Montana Hidden Treasures with the alleged impacts that could result from developing and operating a storage facility. To consider whether to issue a

preliminary injunction, and thereby maintain the status quo, the District Court was required to limit its decision to the development of the storage facility. Separate from the Tiedjes' right to due process, the District Court erred as a matter of law by considering the alleged impacts of Montana Hidden Treasures when deciding whether to issue a preliminary injunction.

The ultimate equitable purpose of injunctive relief remains preservation of the status quo. *Stensvad v. Newman Ayers Ranch, Inc.*, 2024 MT 246, ¶ 29, 418 Mont. 378, 557 P.3d 1240. The Court determines status quo by looking at "the last actual, peaceable, noncontested condition which preceded the pending controversy." *Weems v. State*, 2019 MT 98, ¶ 26, 395 Mont. 350, 440 P3d 4. Maintaining the status quo is necessary to allow the Court to "restore the parties to their original position." *Plains Grains Ltd. P'ship v. Bd. of Cnty. Comm'rs of Cascade Cnty.*, 2010 MT 155, ¶ 49, 357 Mont. 61, 238 P.3d 332.

As discussed above, the District Court relied on the purported impacts of Montana Hidden Treasures in issuing the preliminary injunction, contrary to testimony by the Neighbors and the Tiedjes that this controversy started with the development of the storage facility. Any conditions preceding that controversy are irrelevant whether a preliminary injunction is necessary to maintain the status quo. As such, the District Court's consideration of impacts from Montana Hidden constitutes error, as a matter of law.

II. THE DISTRICT COURT ERRED IN DETERMING THE NEIGHBORS ESTABLISHED ALL FACTORS NECESSARY FOR A PRELIMINARY INJUNCTION

The Neighbors, as the applicants for the preliminary injunction, bear the burden of proof to establish that they meet four factors, thereby entitling them to a preliminary injunction. The District Court abused its discretion by finding the Neighbors met this burden.

"A preliminary injunction is an extraordinary remedy never awarded as of right." *MAID*, ¶ 10 (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376, 172 L.Ed.2d 249 (2008). Following a legislative change in 2023, applicants for a preliminary injunction must demonstrate four factors:

(a) the applicant is likely to succeed on the merits;
(b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;
(c) the balance of equities tips in the applicant's favor; and
(d) the order is in the public interest.

Mont. Code Ann. § 27-19-201(1). "The applicant for an injunction provided for in this section bears the burden of demonstrating the need for an injunction order." Mont. Code Ann. § 27-19-201(3). Because it is an extraordinary remedy, an injunction is only awarded "upon a clear showing that the plaintiff is entitled to such relief." *MAID.* at ¶ 19.

This Court has confirmed that the four-part factor test in Mont. Code Ann. § 27-19-201(1) is conjunctive, rather than disjunctive. *MAID*, ¶12. Therefore, the

applicant bears the burden to prove each of the four elements and failure to prove one is fatal to the application for preliminary injunction. *Id.* These factors are "not just considerations but rather separate showings that a plaintiff 'must establish.'" *Stensvad*, ¶ 11 (citing *Winter*, 555 U.S. at 20, 129 S. Ct. at 374).

A. The Neighbors Did Not Show A Likelihood To Succeed On The Merits.

The record thus far demonstrates that the Neighbors failed to make a clear showing that they are likely to succeed on the merits, the first factor for issuing a preliminary injunction. Mont. Code Ann. § 27-19-201(1)(a).

In *Stensvad*, this Court adopted the Ninth Circuit's "serious questions" test, as it pertains to this first factor. *Stensvad*, ¶ 25. Although applicants must demonstrate that they satisfy all four factors of Mont. Code Ann. § 27-19-201(1), the serious questions test allows the court to consider these factors, to some extent, on a sliding scale. *Id.* at ¶ 15. In other words, a "preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips *sharply* in the plaintiff's favor." *Stensvad*, ¶23 (citing *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (emphasis added)). However, applicants must still demonstrate all other factors. *Stensvad*, ¶23. The Court adopted the serious questions test in the spirit of recognizing the flexibility of equity jurisdiction, and to avoid forcing the parties "to conduct a trial on the merits without the benefit of

full discovery." *Stensvad*, ¶27.

As an initial matter, the Neighbors have not demonstrated any of the four factors under Mont. Code Ann. § 27-19-201(1), as discussed further below. Therefore, the Court need not analyze whether Plaintiffs have demonstrated serious questions going to the merits of this case. Regardless, a review of the record shows that the Neighbors failed to meet their burden under Mont. Code Ann. § 27-19-201(1)(a), even under the serious questions test.

Enforcement of a covenant, condition, or restriction ("CCR"), like the Bylaws at issue here, is a matter of contract. *See Graziano v. Stock Farm Homeowners Ass'n, Inc.*, 2011 MT 194, ¶ 19, 361 Mont. 332, 258 P.3d 999; *Myers*, ¶ 9. Defendants in such enforcement actions may raise defenses applicable to contract disputes, generally. *See Id.* Additionally, if no action has been undertaken to enforce a particular CCR, then that condition may be deemed abandoned and unenforceable. Mont. Code Ann. § 70-17-210(2). Finally, Montana courts, generally do not provide injunctive relief where an action sounds in contract, like claims for violation of CCRs, if monetary damages could adequately compensate for harm. *Stensvad*, ¶ 36.

In response to the Neighbors' Application, the Tiedjes raised several affirmative defenses, including that the Neighbors are prohibited from obtaining the relief they request due to waiver and estoppel, the unenforceability or abandonment of the Bylaws, the Neighbors' initial breach of contract and failure to

perform, and the lack of causation between the Tiedjes conduct and the Neighbors' claimed injuries. (R. 16 at 4-5). The Tiedjes also raised counterclaims against the Neighbors. (R. 16 at 5-6).

Although the parties have only engaged in a preliminary injunction hearing and have not had any opportunity to establish facts through discovery or at a hearing on the merits, the current record is replete with evidence that these defenses apply and that the Neighbors are not likely to succeed in this matter.

The injuries asserted by Neighbors include a right to enforce certain provisions of the Bylaws. A breach of contract, like the Bylaws at issue here, could be grounds for a cause of action, but the breach is not, in itself, proof of any injury. Moreover, each of the Neighbors who testified at the hearing testified to some level of violation of the Bylaws in which they either engaged or acquiesced. *Compare* (R. 35 at 21:8-14) (Geri testified that she did not receive notice of a membership meeting to consider the storage facility) *with* (R. 35 at 34:17-36:1034:17-36:10; 62:17-63:9; 90:24-91:16); (Geri, Michelle, and Doug, each testified about the HOA failing to hold annual meetings on the date prescribed in the Bylaws, and failing to follow the notice provisions required under the Bylaws); (R. 35 at 75:5-11) (Michelle admitted to maintaining junk vehicles around her house, in violation of the Bylaws); (R. 35 at 80:13-81:5) (Doug testified regarding his concern that development of the storage facility would constitute a deviation from the Bylaws, without having gone through the appropriate process for

amending those bylaws); (R. 35 at 84:12-25; 98:7-99:3; 94:1-16) (Doug clarified that his specific concern about the storage facility was only that he believed the Bylaws were not specifically followed, and that commercial development would be in violation of the Bylaws; however, Doug also testified that if other property owners in the Subdivision are operating businesses out of their home, then it is "none of [his] business" and he does not really care.); (R. 35 at 95:21-96:7) (Doug admitted engaging in several violation of Bylaws, himself).

Where the Neighbors testified to actual, rather than speculative, physical conditions that they assert has caused them harm, the Tiedjes dispute those allegations.[1] To the extent that those conditions exist, the only issue preventing them from being corrected is the preliminary injunction. (R. 35 at 22:12-23:3; 23:14-24:4; 24:13-20) (Gravel piles brought in by the Tiedjes have grown weeds, created excess dust on Geri's property, and caused issues with parking); (R. 35 at 29:10-30:7) (gravel has also caused water drainage issues); (R. 35 at 54:5-19; 55:7-12; 71:1-15) (Michelle testified that she is concerned that additional commercial development could cause increased traffic in the Subdivision and may require additional road maintenance. However, she clarified that the increased traffic – and her use of another road to avoid traffic – does not cause any problems in her life); (R. 35 at 130:12-20; 131:13-16) (Matthew Tiedje testified that, contrary to Geri's

[1] Even a cursory review of the Tiedjes' testimony at the hearing, (R. 35 at 100-167), contradicts the District Court's finding that "The Tiedjes did not rebut the possible impacts of their activities may cause..." (R. 28 at 3).

testimony, the developments so far, including bringing in gravel and building materials, have not caused increased dust or water drainage issues); (R. 35 at 166:4-13; 168:14-17) (Tara Tiedje also testified regarding the lack of dust or water drainage issues and, if those were present, they would be mitigated through further development); (R. 35 at 131:5-132:5) (The Tiedjes have been prohibited from mitigating concerns solely because of the temporary restraining order imposed against them).

Although the parties have not had an opportunity to develop the full record in this matter, the Tiedjes have already shown a likelihood that they will succeed on their defenses to the Neighbors' claims. Also, to the extent that there are any injuries at issue in this case, such injuries would no longer be at issue if the preliminary injunction were not in place. As such, the Neighbors have failed to make a clear showing that they established the first factor necessary for a preliminary injunction.

B. The Neighbors Failed To Show Any Likely Irreparable Harm From Developing The Storage Facility.

All harms alleged by the Plaintiffs that are associated with the development of a storage facility are temporary, as confirmed by the Neighbors' own testimony at the preliminary injunction hearing.

"Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted, the applicant is

likely to suffer irreparable harm before a decision on the merits can be rendered." *MAID*, ¶15. The applicant for preliminary injunction bears the burden of proving that irreparable injury is likely in the absence of a preliminary injunction, not merely speculative. *Id.* "[G]eneralized fears and supposition about potential" injuries are not sufficient to meet the requirements of Mont. Code Ann. § 27-19-201(1)(b). *MAID*, ¶ 19. A district court abuses its discretion if it relies on the mere possibility of harm when issuing a preliminary injunction. *Id.*

The impacts alleged by the Neighbors, if the Tiedjes develop and operate a storage facility, are: 1) Excess dust and water drainage issues caused by the gravel piles; 2) The possibility of increased traffic; 3) the possibility of light and noise pollution from the storage facilities; and 4) the possibility of operating the storage facility without meeting the requirements of the HOA bylaws. Regarding the first three points, if the Neighbors are successful on a hearing on the merits, a permanent injunction preventing the operation of the storage facility would immediately eliminate those concerns. Regarding the last point, as discussed above, a breach of contract – like the Bylaws – is not an injury. Moreover, all who testified at the preliminary injunction hearing concede that some level of commercial operation has been ongoing in the Subdivision since at least 2021, if not since 1997,[2] and the Bylaws make no distinction between certain levels or

[2]The Tiedjes intend to continue developing the record in this matter about the widespread disregard of the Bylaws by every resident of the Subdivision.

characteristics of commercial operation that may or may not be acceptable, *See* (R. 35 at 31:14-17) (Geri testifying that "it technically wouldn't matter what business was proposed out there"); *see also Myers*, ¶ 15 (finding that, depending on the language of the CCR, operation of an "Airbnb" could be considered residential, but it certainly violates any CCR provision prohibiting commercial use of property). Therefore, to the extent a storage facility might violate certain provisions of the Bylaws, those provisions have long-since been abandoned.

The Neighbors who testified at the hearing spoke about what they anticipate further development of a storage facility may involve, and their concern about possible harm caused by the development. (R. 35 at 25:22-26:5) (Geri believes the storage facility may require fencing, lighting and additional traffic); (R. 35 at 27:4-16) (possible additional traffic presents some safety concerns).

However, none of the Neighbors are able to state, with any level of confidence, what will actually occur; (R. 35 at 51:16-19) (Although Geri has seen a picture of the Tiedje's proposed storage facility, she does not know of any specific schematics, proposals or plans related to the property and, as such, she does not know what the development will require); (R. 35 at 85:1-9) (Doug has "no idea" what the scope of the storage facility development would require).

The Tiedjes, as the party who would be developing and operating the storage facility, provided the only competent testimony regarding the likely impacts of that operation. (R. 35 at 112:20-113:8; 149:7-11; (the storage facility will not cause any

substantial increase in traffic); (R. 35 at 149:21-50:8) (the storage facility would only be in operation between 7 a.m. and 7 p.m., mitigating any disruptions at night, including any negative effects from lighting, and renters would have to sign contracts regarding acceptable use of the storage unit).

To the extent that the Neighbors are relying on a violation of the HOA Bylaws, even assuming that such a violation would be occurring by developing the storage facility, they have failed to articulate any alleged injury that would occur to them, let alone how such a violation would constitute an irreparable injury. Moreover, as discussed above the record is replete with HOA members – including Plaintiffs – habitually violating those Bylaws.

All injuries asserted by the Neighbors in this matter are speculative, reparable, or both. There simply is no evidence in the record that allowing the conditions in the Subdivision to continue, pending a decision on the merits of a permanent injunction, would cause likely or irreparable injury, or defeat a court's ability to "restore the parties to their original position." *Plains Grains* ¶ 49.

C. The Balance Of The Equities Tips In The Tiedjes' Favor.

As previously discussed, the Neighbors have not demonstrated that they will suffer irreparable harm, absent a preliminary injunction; the Tiedjes, however, have clearly established that they will suffer life-altering and irreparable injury if the preliminary injunction is allowed to remain. This imminent injury to the Tiedjes is exacerbated by the four-month delay in holding a hearing on the

application for preliminary injunction; by District Court's failure to require the Neighbors to make a written undertaking, as requested by the Tiedjes, and as required under Mont. Code Ann. § 27-19-306(1); and by the District Court's delay in issuing a ruling on the Tiedjes' motion to stay.

A court or judge may issue a temporary restraining order until a hearing and decision on an application for preliminary injunction can be held. Mont. Code Ann. § 27-19-314. However, the restraining order must expire in ten days, unless it is extended under Mont. Code Ann. § 27-19-317. An extension is allowed "for good cause shown, for 10 days or, if the party against whom the order is directed consents, for a longer period. The reason for extension must be entered in the record." Mont. Code Ann. § 27-19-317. Also, unless waived in the interest of justice, an applicant for a preliminary injunction must provide a written undertaking "for the payment of costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Mont. Code Ann. § 27-19-306(1). A party that is preliminarily enjoined is entitled to request a stay of the injunction, pending appeal. Rule 22(1)(a)(iii), Mont. R. App. P. If the party submits a motion for stay, the District Court "must *promptly* enter a written order on a motion filed under this rule and include in findings of fact and conclusions of law, or in a supporting rationale, the relevant facts and legal authority on which the district court's order is based." Rule 22(1)(d) (emphasis added).

On May 21, 2024, the District Court issued the temporary restraining order and initially set the preliminary injunction hearing for one week later. (R. 8 at ¶ 4). The District Court also waived the Neighbors requirement to post a written undertaking, stating only that it "should be waived in the interests of justice pursuant to Section 27-19-306(1)(b)(ii), MCA." (R. 8 at ¶ 2). The District Court did not provide an explanation regarding its assertion that the interests of justice warranted waiving security for damages or an undertaking. (R. 8). Then the District Court, either *sua sponte* or upon request by the Neighbors, repeatedly rescheduled and delayed the show cause hearing, often with no regard to whether the Tiedjes consented or objected to the delays. Far from the ten to twenty days contemplated by Mont. Code Ann. § 27-19-317 to hold a hearing, the Tiedjes remained subject to the temporary restraining order for four months. Finally, although the Tiedjes have requested a stay of the injunction, which has been fully briefed since December 10, 2024, the District Court has failed to "promptly enter an order" on that motion, as required by Rule 22(1)(d), Mont. R. App. P.

That the Neighbors have never been required to post a written undertaking, as required by Mont. Code Ann. § 27-19-306(1), is particularly concerning, given the Tiedjes' undisputed testimony regarding the imminent threat of bankruptcy. (R. 35 at 112:11-19) (Matthew Tiedje testified that, if he is unable to develop the storage facility, he will be unable to pay back the loan that he secured to develop the storage facility).

Early last year, the Tiedjes relied on signatures that they received from HOA members who agreed to amend the Bylaws – including a signature from at least one of the Neighbors named in this action and the Director of the HOA, who holds the duty to call a special meeting of the HOA if one is required – before they secured a loan to develop the storage facility. (R. 35 at 110:15-111:8-21; 120:23-121:2; 155:13-18). If the Tiedjes are unable to continue developing the storage facility and earning income, they will be unable to make payments on that loan. (R. 35 at 112:1-14). If the Tiedjes are unable to repay the loan, they will be forced to file bankruptcy. (R. 35 at 112:15-19). Such an eventuality demonstrates that the Tiedjes, themselves, are likely to suffer irreparable harm. On the other hand, none of the Neighbors face such dire consequences if the development of a storage facility is allowed to continue, pending a decision on the merits in this case. As such, the balance of the equities clearly tips in the Tiedjes' favor.

D. A Preliminary Injunction In This Matter Is Not In The Public Interest.

Public interest favors vacating the preliminary injunction to allow this matter to proceed on the merits of the case.

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *MAID*, ¶ 21 (citing *Winter*, 555 U.S. at 24, 129 S. Ct. at 376-77. The purpose of a preliminary injunction is "to preserve the relative positions of the

parties until a trial on the merits can be held." *Stensvad*, ¶28. If a court "cannot restore the parties to their original position," then a matter becomes moot. *Povsha v. City of Billings*, 2007 MT 353, ¶ 23, 340 Mont. 346, 174 P.3d 515. Therefore, if a preliminary injunction would render a decision on the merits to be moot, such a decision clearly weighs against the public interest.

The Tiedjes intend to continue developing the record to demonstrate their right to a decision in their favor on the merits, if that was not already established through the testimony and evidence presented at the hearing. Regardless, allowing the preliminary injunction to remain in place, pending a decision on the merits, would render this case moot and disrupt the status quo.

As discussed above, the Neighbors' asserted injuries, if they exist at all, are capable of being remedied. The Tiedjes, on the other hand, will suffer irreparable harm if the injunction remains in place. The Tiedjes secured a loan to develop the storage facility. (R. 35 at 11:9-13). They have invested approximately $127,000 of that loan so far in developing the facility. (R. 35 at 111:6-8) That loan accrues approximately $26 of interest per day. (R. 35 at 112:1-2). If the Tiedjes are unable to complete the storage facility and start earning income, they will default on the loan and the collateral used to secure the loan – the Tiedjes' land – will be foreclosed. (R. 35 at 112:15-19). Finally, because that collateral is insufficient to cover the entire loan, the Tiedjes will be forced to file for bankruptcy. (R. 35 at 112:15-19). Such an eventuality would render any ongoing litigation in this matter

moot, not to mention having the potential to ruin the Tiedjes' lives.

Vacating the preliminary injunction in this matter presents no risk of rendering this matter moot. On the other hand, the undisputed testimony demonstrates that failing to vacate the injunction would do just that, thereby prohibiting the court from being able to restore the parties to their original position. Because the public interest favors a decision on the merits of litigation, the fourth and final factor under Mont. Code Ann. § 27-19-201(1) weighs in favor of the Tiedjes, rather than the Neighbors.

CONCLUSION

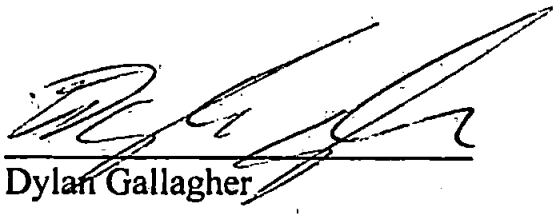
For the foregoing reasons, the Court should reverse the District Court and vacate the preliminary injunction.

DATED this 31st day of January, 2025.

Dylan Gallagher

CERTIFICATE OF COMPLIANCE

Pursuant to rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with proportionately-spaced, 14-point Times New Roman font; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word is 6,413 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance and appendix.



Dylan Gallagher

CERTIFICATE OF SERVICE

I certify that on January 31, 2025, I filed this Appellant's Opening Brief with the Clerk of the Montana Supreme Court; and that I have mailed, or hand delivered copies to the following:

Batterman Law Offices, PC
Albert R. Batterman
PO Box 985
Baker, MT 59313

Tammy Helmuth,
Clerk of District Court
207 W. Bell St.
Glendive, MT 59330

Rainbow Estates Homeowner's Association, Inc.
918 South Gallatin Street
Glendive, MT 59330

Ronda Middlemas

Ronda Middlemas, Paralegal