

## IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause 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.

## APPELLEES' BRIEF

On Appeal from the Montana Seventh Judicial District Court, Dawson County  
Cause No. DV 2024-28,  
Before the Honorable Yvonne Laird

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## **STATEMENT OF ISSUES**

**ISSUE I:** The Appellants had notice of the issues addressed at the hearing.

**ISSUE II:** The Appellants waived any objection to the admission of evidence.

**ISSUE III:** The District Court correctly determined that the Appellees were entitled to injunctive relief.

**ISSUE IV:** The District Court correctly found that the Appellees were at risk of irreparable harm in the absence of injunctive relief.

## **STATEMENT OF THE CASE**

On April 16, 2024, the Plaintiffs (the Neighbors), all of whom are residents of the Rainbow Estates Homeowners' Association, Inc. (the HOA), filed a Verified Petition seeking a preliminary injunction pursuant to Section 27-19-201, MCA, in the Montana Seventh Judicial District, Dawson County, to prevent Matthew Tiedje and Tara Tiedje (the Tiedjes) from operating a thrift store from their house, and constructing a 72-unit storage complex in the middle of the residential subdivision in violation of HOA Bylaws. The Tiedjes acknowledge that they did not follow the requirements of the Bylaws in the preparation of the storage facility.

On September 20, 2024, a hearing was held before the Honorable Yvonne Laird. On October 8, 2024, the district court restrained the Tiedjes from proceeding continuing their commercial activities. The Tiedjes appealed.

///

## **STATEMENT OF FACTS**

The Neighbors reside in the Rainbow Estates Subdivision, a 109-lot residential subdivision near the City of Glendive in Dawson County. Finding of Fact (FOF) 2. The subdivision was established in 1982, and is governed by Articles of Association and Bylaws of the Rainbow Estates Homeowners' Association, Inc. (the Bylaws). Among the rules implemented by the Bylaws is a ban on commercial activity in the subdivision, except for one lot used as a church. Ex. 1; Tr. p. 21, l. 4-9. The Bylaws may be amended only at a duly called member meeting by an affirmative vote of 75% of the unit owners. FOF 10.

The Tiedjes moved into the Subdivision in 2021 and own Lots 1, 2, and 3AP, in Block 2. Notwithstanding the Bylaws, the Tiedjes established a thrift store in their garage called Montana Hidden Treasures on Lot 1, Block 2. FOF 8; Tr. p.116, l.12-14. The Tiedjes then sought to amend the Bylaws to permit commercial activities only on their residential lots. However, the Tiedjes did not follow the specified process to amend the Bylaws. Instead of a properly noticed meeting, Matthew Tiedje presented a sheet of paper only to HOA members whom he believed would support his request. FOF 12. The Tiedjes claimed to have secured the support of Dan Vondercheck by proxy, although no evidence of a proxy was presented. FOF 13. In all, the Tiedjes claim to have secured 73 votes, less than the number required to amend the Bylaws, and in violation of the specified amendment

procedure. FOF 15, 16. Based upon this “vote” Matthew Tiedje, as HOA Secretary, recorded a purported Bylaw amendment permitting him to develop his lots for commercial purposes. Ex. 2. The Bylaws were otherwise unchanged.

The Tiedjes began constructing the storage facility, putting scoria down on Lots 2 and 3A, Block 2, and filling in a cul de sac. Tr. p. 117, l.8-11. The impacts of the Tiedjes’ activities are severe. Residents have observed a increase in dust and traffic through the subdivision. Tr. p. 20, l.18-20. Outdoor lighting is a constant annoyance. Tr. p. 27, l. 14-22. Water runoff from the resurfaced lot has damaged the streets, which increases the burden on the residents for road maintenance. Tr. p. 30 , l. 14-25, p. 31, l. 1-7, p. 56, l. 5-12. The thrift store operates seven days a week, at all hours. Tr. p. 20, l. 11-16.

Following an evidentiary hearing on September 20, 2024, the district court granted the Neighbors a preliminary injunction, ordering the Tiedjes to cease their commercial activities and stop construction of the storage facility in the middle of the residential subdivision. The Tiedjes sought to stay enforcement of the injunction and appealed.

### **STANDARD OF REVIEW**

Injunctive relief is an equitable remedy governed by Title 27, Chapter 19, and is not reliant upon the nature of the underlying claim. **Davis v. Westphal**, 389 Mont. 251, 405 P.3d 73 (2017). An injunction is available “as an alternative or



supplemental remedy to those ordinarily available by statute or common law.” **Id.**

The purpose of a preliminary injunction is “to maintain the status quo pending trial”, which is “the last actual, peaceable, noncontested condition which preceded the pending controversy.” **Planned Parenthood of Montana v. State**, 409 Mont. 378, 515 P.3d 301 (2022). A district court has broad discretion to grant injunctive relief, and its order will not be disturbed absent a manifest abuse of discretion, which is an obvious, evident, or unmistakable error. **Yockey v. Kearns Properties, LLC**, 326 Mont. 28, 106 P.3d 1185 (2005).

The district court’s grant of a preliminary injunction is reviewed for manifest abuse of discretion, which occurs when it acts arbitrarily, without the employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. **Mercer v. Mont. HHS**, 420 Mont. 201, 562 P.3d 502 (2025).

“Appellate review of a district court's grant of injunctive relief is meant to be ‘limited and deferential’ and ‘does not extend to the underlying merits of the case.’” **Id.** (citations omitted).

Fact findings are reviewed for clear error, which is a lack of substantial evidence, misapprehension of the effect of the evidence, or if the Court is left with a definite and firm conviction that the district court made a mistake. **Whitehorn v. Whitehorn Farms, Inc.**, 346 Mont. 394, 195 P.3d 836 (2008). Substantial evidence is evidence reasonably sufficient to support a conclusion; it is more than a

scintilla of evidence but may be less than a preponderance. **Barret v. Asarco, Inc.**, 245 Mont. 196, 799 P.2d 1078 (1990). The Court reviews a district court's conclusions of law for correctness. **Hidden Hollow Ranch v. Fields**, 311 Mont. 505, 92 P.3d 1185 (2004).

At the injunction stage neither the Court nor the district court are to determine the merits of the underlying case, which are reserved for trial. **Stand Up Mont. v. Missoula Public Schools**, 409 Mont. 330, 514 P.3d 1062 (2022).

### **SUMMARY OF THE ARGUMENT**

The standards to be applied to the interpretation and application of Section 27-19-201, MCA, have been recently clarified. Montana courts apply the substantial questions test as enunciated by the Ninth Circuit. This is a flexible analysis of the statutory factors originally established by the U.S. Supreme Court and allows courts to weigh the relative strength of each and to craft an appropriate remedy based on the facts of each case.

The district court correctly determined that injunctive relief is appropriate. The lower court found facts supporting each factor and determined that the Neighbors had a likelihood of success under various contract and tort theories. The district court correctly found that the Neighbors would suffer irreparable harm if the Tiedjes continued with their commercial activities and expanded them with the construction of a 72-unit storage unit. The lower court specifically found that

the potential impacts of commercial activity outweighed the risks of not developing. The district court's preliminary injunction should be affirmed.

## ARGUMENT

### **I. The Tiedjes were on notice that the thrift store was at issue.**

The Tiedjes claim to have been unaware that evidence regarding the thrift store on their property would be an issue at the hearing. The Tiedjes operate their thrift store on their property known as Lot 1 in Block 2 of the subdivision, and they were beginning to construct a 72-unit storage facility on Lots 2 and 3A in Block 2 of the subdivision. Tr. pp. 116-117, **supra**. The Neighbors' Verified Application references that the HOA Bylaws are violated by "commercial activities on the lots in the subdivision owned by Matthew and Tara Tiedje known as Lots 1, 2, and 3 [sic], in Block 2." Verified Application, p.2, Para. 8. The Neighbors sought the following relief:

**"For a Temporary Restraining Order prohibiting the Rainbow Estates Homeowners Association, Inc. and its officers, members, directors, agents, employees, attorneys, or assigns, and Matthew Tiedje and Tara Tiedje, and their contractors, and assigns, from violating the HOA Bylaws, including but not limited to constructing, building, developing, or operating a commercial business on any lot within the Rainbow Estates Subdivision pursuant to any purported Bylaw amendment or otherwise, without further order from the Court.** The order should specifically restrain all development activity on order [sic] shall particularly restrain all activity on Lots 1, 2, and 3 [sic], in Block 2, of the Rainbow Estates Subdivision, now owned by Matthew and Tara Tiedje;"

Verified Application, p.4-5, Para. 20 (emphasis added). The Application was not limited to restraining the construction of the storage facility but extended to “operating a commercial business on any lot.” The district court incorporated this language into its preliminary injunction. Temporary Restraining Order, May 21, 2024, p. 2, Para. 3. The Tiedjes had actual notice that the case involved both the storage unit and the continued operation of the thrift store in violation of the HOA Bylaws.

**II. The Tiedjes waived any objection to the presentation of evidence concerning the thrift store.**

Assuming, **arguendo**, that the Court will examine the issue further, the Tiedjes did not follow proper procedure with respect to the presentation of allegedly extraneous information as required by Rule 15(b), M.R.Civ.P. A party must object to the introduction of materials outside of the pleadings so the court can determine whether to permit the opponent to amend their pleadings. R. 15(b)(1), M.R.Civ.P. Amendment is to be freely granted when “doing so will aid in presenting the merits”. **Id.** The Tiedjes did not object, which deprived the district court of the opportunity to address the issue and afford the Neighbors an opportunity to amend, if indeed amendment was necessary. The failure to object prejudiced the Neighbors’ ability to respond to the issue.

Parties may expressly or impliedly consent to try an issue that is not explicitly raised in the pleadings. **Id.** At (b)(2). Neither party objected to questioning or

evidence concerning the operation of the thrift store. A party impliedly consents to the introduction of evidence if no objection is raised to the introduction of alleged extraneous evidence. **Armbrust v. York**, 314 Mont. 260, 65 P.3d 239 (2003). The failure to object is not the only factor to consider; for example, consent may be implied if a party who later objects has introduced evidence on the matter. **Id.** The Tiedjes questioned all witnesses extensively about the thrift store's impacts in the subdivision, apparently to show acquiescence to the impacts of commercial activity, or that the impacts were minimal. **See, e.g.**, Tr. p. 36, l.17-25, p. 37, l.1-25, p.38, l.1-25, p.39, l.1-15, p.41, l.11-25 (Cross-examination of Geri Kirkpatrick); Tr. p.68, l.18-25, p.69, l.1-25, p.70, l.1-16, p.72, l.1-11 (Cross-examination of Michelle Sickler); Tr. p.92, l.6-23, p.93, l.1-21, p.94, l.17-25 (Cross-examination of Douglas Sickler); Tr. p.103, l.23-25, p.104, l.1-25, p.105, l.1-25, p.107, l.6-25, p.108, l.4-9, p.113, l.20-25, p.114, l.1-10, p.116, l.12-25, p.117, l.1-7 (direct examination of Matthew Tiedje). The Tiedjes' questioning focused extensively on the thrift shop. They consented to the presentation of evidence concerning the thrift shop as it was evidence that they presented themselves.

The trial court has broad discretion to admit evidence and to conduct a fair and appropriate hearing. **Jacobsen v. Allstate Ins. Co.**, 371 Mont. 393, 310 P.3d (2013). When a party feels that the trial court has made a mistake, the matter should be brought to the court's attention so that it may be considered and, if

necessary, remedied. As it is unfair to the lower court and to an opponent not to timely address the issue, the failure to contemporaneously object is deemed to be a waiver for purposes of appeal. **In re Marriage of Williams**, 392 Mont. 484, 425 P.3d 1277 (2018). The Tiedjes never objected at the hearing to evidence relating to the thrift store and must be found to have waived the matter.

The Tiedjes made a strategic decision not to object to the introduction of evidence concerning the thrift shop. They presented extensive testimony, on both direct and cross-examination, concerning the thrift shop's operation and its adverse impacts. When their evidence and argument were unavailing, the Tiedjes now wish to exclude this evidence, claiming error. The Court does not entertain issues first raised on appeal or a change in legal strategy. **Tai Tam v. Missoula County**, 410 Mont. 465, 520 P.3d 312 (2022). The Tiedjes introduced the very evidence about which they complain. They cannot object to their own conduct.

The Tiedjes' claim that their due process rights were violated is unavailing. Both the Montana and U.S. constitutions protect substantive and procedural due process rights. Mont. Const. Art. II, Sec. 17. Substantive due process claims generally apply to deprivations as the result of state action. **Montanans v. State**, 334 Mont. 237, 146 P.3d 759 (2006). Procedural due process requires notice and an opportunity for a hearing appropriate to the nature of the case. **In re Conservatorship of H.D.K.**, 405 Mont. 479, 497 P.3d 1171 (2021). The required

procedure is flexible. **Estate of Hannum**, 378 Mont. 540, 348 P.3d 672 (2015).

The Tiedjes do not contend that they were unaware of the proceedings, only that the process in which they participated was somehow flawed. The pleadings and temporary order notified the Tiedjes that the thrift shop was at issue. At the hearing they did not object to the alleged extraneous evidence and presented their own testimony and argument on the matter. The Tiedjes received the process afforded every litigant in a Montana trial court. They are due nothing more.

The hearing sought to enjoin both the operation of the thrift store and the construction of the 72-unit storage facility. The district court properly received and considered evidence on the impacts presented by both uses. It determined that the blatant violation of the HOA Bylaws, and the corresponding impacts on the HOA infrastructure and the use and enjoyment of the Neighbors' property, outweighed any interest that the Tiedjes may have in continuing their violation of the HOA Bylaws. The controversy was not limited to the new development; it began when the Tiedjes first commenced commercial activity. The status quo ante is the condition before the Tiedjes flouted the Bylaws and degraded their neighbors' property. The injunction preserves that status quo pending further proceedings.

### **III. The District Court correctly determined that the Neighbors are entitled to injunctive relief.**

The Court recently adopted the "serious questions" version of the sliding scale test articulated in **Winter v. NRDC**, 555 U.S. 7, 129 S. Ct. 365 (2008), in

evaluating preliminary injunctions, which evaluates the same factors found in Section 27-19-201(1), MCA: (1) the applicant is likely to succeed on the merits; (2) the applicant is likely to suffer irreparable harm; (3) the balance of hardships between the parties tips in the applicant's favor; and (4) an injunction is in the public interest. An applicant must make some showing for each factor but a stronger showing on one factor may offset a weaker showing on another. **Stensvad v. Ayers**, 418 Mont. 378, 557 P.3d 1240 (2024); **Alliance for the Wild Rockies v. Cottrell**, 32 F.3d 1127 (9<sup>th</sup> Cir. 2011). The test is inherently flexible and allows the trial court to craft relief specific to the facts of each case. **Stensvad, supra**. The district court correctly applied the serious questions test in this case and granted the Neighbors injunctive relief.

Preliminary injunction is an equitable remedy. **Davis, supra**. The Court may consider all relevant factors in evaluating the propriety of relief afforded by a preliminary injunction. Section 3-2-204(5), MCA. The district court's order references breach of contract and tort theories. The district court made findings on each factor of Section 27-19-201, MCA, and correctly determined that injunctive relief is proper:

**1. Likelihood of success/serious questions going to the merits.**

The first prong of the test, the likelihood that a party will succeed on the merits, is to be evaluated flexibly and independently of the other factors. This is



due to the nature of preliminary injunctions, which are not intended to weigh the merits of a claim. It is often impossible for a court to determine whether a claim will succeed until the issue is tried:

“predicting the likelihood of success is much more difficult [at the time a preliminary injunction is sought]; ‘[t]he parties are often mostly guessing about important factual points that go, for example, to whether a statute has been violated, whether a noncompetition agreement is even valid, or whether a patent is enforceable.’”

**Stensvad, citing Alliance for the Wild Rockies v. Cottrell, supra.** The inquiry is more properly characterized as determining whether there are “serious questions going to the merits and the balance of hardships tips sharply in the plaintiff’s favor.” “Unless it is clear that an applicant fails to raise serious questions going to the merits, a district court should likewise consider and address each of the remaining factors.” **Mercer, supra, citing Stensvad, Para. 29.**

The Neighbors established a prima facie case of breach of contract and demonstrated that they have the probable right to enforce the parties’ HOA Bylaws. **Kostelecky v. Peas in a Pod, LLC**, 410 Mont. 239, 518 P.3d 840 (2022)(elements of breach of contract). The HOA Bylaws are an enforceable written contract with identifiable parties, consent, a lawful subject, and good consideration. The terms of the Bylaws can be changed only with an affirmative vote of 75% of the unit owners at a duly noticed meeting. Matthew Tiedje, in his capacity as the Secretary of the Rainbow Homeowners Association, Inc., attempted to change the HOA

Bylaws without following the prescribed procedure. He did not call a meeting of the HOA, nor did he provide all members with information concerning his proposed amendment. He selectively presented his amendment request, then filed a purported amendment that benefited only himself and his property. The district court found the potential harms that the Neighbors faced from the Tiedjes' continuing or expanded commercial activities to be compelling.

The Neighbors have tort claims independent of the contract. The district court received facts indicating that the Tiedjes quite possibly engaged in fraudulent conduct. As noted, Matthew Tiedje testified that he was aware of the HOA Bylaws, and that he deliberately ignored the express procedure to amend them to benefit himself. Whether Mr. Tiedje's intent was to defraud is a matter that will require further examination and evidence.

The Neighbors may also have claims against the HOA and Matthew Tiedje as an officer of the corporation for breach of fiduciary duty. Mr. Tiedje acted in his official capacity as Secretary of the corporation to prepare, circulate, sign, and record a Bylaw amendment that benefited only himself, to his neighbors' detriment.

The Neighbors are likely to succeed on the merits of their claims and establish that the Tiedjes' commercial activities are clear violations of the HOA Bylaws. The district court made extensive findings of fact, but substantial

questions remain. The parties have not had the opportunity to discover and present all relevant facts. The Neighbors must be allowed to preserve their homes and properties until they can prove their claims. If the Tiedjes are allowed to continue to operate their businesses in violation of HOA rules, and complete the construction of a major commercial enterprise in the subdivision, the Neighbors will experience increased harms and their ability to bring a successful suit will be largely moot.

## **2. Likelihood of irreparable harm.**

The Neighbors bear the burden to demonstrate that they are likely to experience irreparable harm in the absence of injunctive relief. **Mercer, supra.** The district court found that they have lost, or are at risk to lose, important legal rights in the absence of injunction. The district court found that the Neighbors face significant and irreparable harm in the use and enjoyment of their properties, and the impairment of vested rights as members of the HOA. The Neighbors testified at length concerning the daily impacts they were experiencing: increased traffic in the subdivision causing damage to roads and threatening safety of residents, congested parking, uncontrolled weeds, increases in dust and other air pollution, light pollution from unshielded security lights, offensive storage containers and displays of used goods, among others. While Mathew Tiedje suggested that he

could implement steps to minimize these impacts, it is noteworthy that he had not done so in the nearly four years that he has operated his thrift store.

While enforcement of covenants is a matter of contract, injunctive relief is still available. Montana law permits an award of both money damages and injunctive relief. **St. James Healthcare v. Cole**, 341 Mont. 368, 178 P.3d 696 (2008); **Rice v. C.I. Lanning**, 322 Mont. 487, 97 P.3d 580 (2004). **St. James** approved injunctive relief to restrain future business interference, noting as well that money damages would be appropriate to remedy any past loss. Injunctive relief was appropriate to afford the parties complete relief and prevent serial lawsuits.

The **Rice** Court held that money damages were appropriate to address diminution in property value, and injunctive relief was necessary to prevent the infliction of further damages from continuing the operation of an auto body repair shop in violation of restrictive covenants. The continuing violation of another's property rights "justifies injunctive relief so an injured party is not forced to bring a multiplicity of actions at law to be compensated for ongoing injury." **Rice v. C.I. Lanning**, 322 Mont. 487, 97 P.3d 580 (2004). In this case the Tiedjes' actions are a continuous trespass upon and adverse impact to the Neighbors' properties. The harms are significant and continuing and injunctive relief is necessary.

The Neighbors contemplate other injuries beyond the immediate trespass claims. If the Tiedjes are allowed to continue to violate the HOA Bylaws they will potentially impair the Neighbors' property values by compromising the residential nature of the subdivision. The contract rights of every member of the Rainbow Estates Homeowners' Association, Inc., will be affected. The Tiedjes' "amendment" now creates internal inconsistencies in the Bylaws. While the Tiedjes purport to have authorization to construct the storage unit, there has been no amendment to the Bylaws regulating the types of permitted construction, the types of buildings that can be moved and sited, landscaping requirements, and activities causing "annoyance of [sic] nuisance to neighboring properties, among others. See Bylaws, Section 3(a-h), Article VI, Exhibit 1. These inconsistencies create uncertainty as to future development in the subdivision. These impacts are extremely difficult to quantify and are not readily compensable with an award of money damages. The failure to enforce the HOA Bylaws opens the prospect that other parties will begin violating the Bylaws, leading to a multiplicity of lawsuits. This is precisely something that injunctive relief serves to avoid. Cf., *Rice, supra*. Money damages alone are insufficient.

### **3. Balance of hardships.**

Considering the threat of significant losses, whether pecuniary or not, the balance of hardships tips sharply in the Neighbors' favor. The injunction preserves

the status quo and protects their property and contract rights. The Tiedjes assert that they face severe financial consequences. However, the economic impacts that may be visited upon the Tiedjes are speculative:

“Q. Can you tell me a little bit about the terms of this loan? What’s the principal, interest payment obligations?

A. Okay. It’s a construction loan. Interest is accruing right now, \$26 a day interest. There’s no payment- it’s a balloon payment ‘cuz it’s a construction loan after 12 months. And we had it timed to be up and running this summer. **Right now, it’s being delayed and my first payment’s gonna be due in February which the bank is already aware of that. And we’re gonna have to, uh, figure out some other plan with the bank to be able to re-route this loan or re-do the loan, pay the interest.** Uh, however the bank needs to have it done.”

Test. of Matthew Tiedje, Tr. p. 112, l.22-24, Tr. p. 113, l.1-10 (emphasis added). At no time did the Tiedjes testify that they were facing a bankruptcy, merely that they were having to re-work the construction loan pending resolution of this case.

The Tiedjes complain of consequences of their own wrongful conduct. They did not and do not make any claim that they have not violated the HOA Bylaws. The Tiedjes presented no evidence of any pending financial penalty or consequence, only speculation. If they are successful at a subsequent trial they will, at worst, have a potential delay in revenue. The district court appropriately balanced the equities.

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#### **4. Public Interest.**

It is in the public interest for the injunction to issue. The enforcement of contracts is a public interest, and the preservation and protection of contract rights is constitutional in nature. Mont. Const. Art. III, Sec. 3. While protection of a business's right to exist and grow is important, that growth cannot be made in violation of another's property interests. If the restrictive covenants adopted by the members of residential subdivisions are unenforceable there will be a severe impact on property law throughout the state. The Tiedjes' business activities should be enjoined until the court can determine the merits of each party's rights in their respective properties under the HOA Bylaws.

#### **IV. The District Court correctly found that the Neighbors at risk of irreparable harm in the absence of injunctive relief.**

The district court correctly found that the Neighbors were at risk of irreparable harm. Irreparable harm, as that phrase is used in 27-19-201, MCA, is an injury that: (1) cannot be remedied by compensatory damages; (2) adequate, non-speculative compensation is difficult to determine; or (3) is of a recurring or continuous nature such that effective redress would require a multiplicity of successive legal actions. **Davis, supra.** Damages of this type include damage to property interests, including ongoing trespass and violation of restrictive covenants. **Rice, supra.** Section 27-19-201(1)(b), MCA, requires only that the Neighbors are "likely" to suffer irreparable harm. The district court found that

they established facts, or at least raised substantial questions, showing that the use and enjoyment of their homes was severely compromised by the Tiedjes' current commercial activity, and that those effects would likely be exacerbated by the construction of a 72-unit storage facility on the same site.

The Tiedjes want this Court to limit the Neighbors' claims to those related to breach of the HOA Bylaws, e.g. contract claims. Matters of contract are traditionally ineligible for injunctive relief, but in this case the Bylaw violations will be ongoing, and there are other potential claims that give rise to injunctive relief, including multiple tort claims like breach of fiduciary duty and fraud.

The Neighbors face property impairment and injuries that cannot be readily valued. The ability to use and enjoy one's property, e.g., sitting in your front yard, allowing your grandchildren to play without fear of getting struck by a car, and the right to be free from choking dust, invasive lights, and degraded streets, are rights that cannot be resolved by a single award of money damages.

### **CONCLUSION**

The district court correctly issued a preliminary injunction preventing the Tiedjes from conducting commercial activities in the residential subdivision in violation of the HOA Bylaws. The lower court found that the Tiedjes' activities were not permitted under the Bylaws, that the Bylaw amendment was suspect, and that the Neighbors faced serious and irreparable injury from the continuation of



those activities. The Neighbors presented facts that showed that there were significant questions regarding the merits of the claim, and that they were likely to succeed on the merits. The Appellants ignore the required analysis of the statutory factors. Finally, the public interest supports the injunction as part of a reasonable process to protect the Neighbors' homes and to enforce their contractual interests as members of the homeowners' association. The Appellees request that the Court affirm the district court's order.

DATED this 31<sup>ST</sup> day of March, 2025.



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### **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing Respondent's Brief complies with Rule 27, M.R.App.P. The brief is double-spaced, except for indented material that has been single spaced. The brief is proportionately spaced using Microsoft Word 2003, using a 14-point Times New Roman font. The total word count is 4,801. The page count of the brief is 20 pages, exclusive of covers, Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendix.

DATED this 31<sup>ST</sup> day of March, 2025.



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Albert R. Batterman  
Attorney for the Plaintiffs and Appellees

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I sent a true and correct copy of the foregoing

Appellee's Brief via U.S. Mail, with first class postage prepaid, to the following:

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this 31<sup>st</sup> day of March, 2025.



Albert R. Batterman  
Batterman Law Offices, P.C.

## **TABLE OF APPENDIX**

1. Order Granting Preliminary Injunction, Montana Seventh Judicial District Court, Dawson County, Cause No. DV 2024-28
2. Articles of Association and Bylaws of Rainbow Estates, June 1, 1982, Tr. Ex. 1
3. Attempted Amendment to Bylaws, February 12, 2024, Tr. Ex. 2
4. Plat of Rainbow Estates Subdivision, Tr. Ex. 3

## **CERTIFICATE OF SERVICE**

I, Albert R Batterman, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-31-2025:

David Christopher Walker (Attorney)  
P.O. Box 4423  
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Representing: Matthew G. Tiedje, Tara D. Tiedje  
Service Method: eService

Rainbow Estates Homeowners' Association, Inc. (Other)  
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Glendive MT 59330  
Service Method: Conventional

Electronically signed by Ramona Madler on behalf of Albert R Batterman  
Dated: 03-31-2025