

Patrick J. Davis, Esq. (ISB No. 9270)

BEARD ST. CLAIR GAFFNEY

1832 Wayfarer St. Ste. A

Pocatello, Idaho 83202

Telephone: (208) 232-5911

Facsimile: (208) 232-5962

idpdavis@beardstclair.com

Counsel for Millennial Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HAROLD LAVELLE RUPP JR and
CHRISTINE R. PETERSEN, in their
capacities as Trustees of the Harold L. Rupp
Sr. Trust, an Idaho trust; and the Veda J. Rupp
Revocable Living Trust, an Idaho trust,

Plaintiff,

vs.

CITY OF POCA TELLO, an Idaho
municipality; MILLENNIAL
DEVELOPMENT PARTNERS, LLC, a Utah
limited liability company; PORTNEUF
DEVELOPMENT, LLC an Idaho limited
liability company; PORTNEUF BUILDERS,
LLC, an Idaho limited liability company;
KEN PAPE, individually; ARVIL B.
SWANEY, individually; BRIAN BLAD,
individually, and JOHN OR JANE DOES 1-
10,

Defendants.

Case No. CV03-22-0398

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE**

Defendants MILLENNIAL DEVELOPMENT PARTNERS, LLC a Utah limited liability company, and ARVIL B. SWANEY, an individual (hereinafter collectively “Millennial”) by and through their counsel of record, Patrick J. Davis, Esq., of the firm BEARD ST. CLAIR GAFFNEY

PA, hereby submits this *Memorandum of Points and Authorities in Support of Motion to Strike Plaintiffs' Cross Motion for Partial Summary Judgment*, as well as the memorandum and declarations in support thereof on October 10, 2025.

I.

INTRODUCTION

On August 29, 2022 this Court entered a scheduling order setting all deadlines in this case, including the deadline to file dispositive motions, which deadline was March 8, 2023. That date came and went and Plaintiffs filed nothing. Plaintiffs never filed any motion pursuant to I.R.C.P. 56(b) to extend that deadline, let alone demonstrate good cause that such deadline should be extended, and this Court should strike the rogue *Cross Motion for Partial Summary Judgment* filed by Plaintiffs.

II.

ARGUMENT

Plaintiffs Have Neither Sought Nor Received an Order Extending Deadlines.

Plaintiffs have filed their *Cross Motion for Partial Summary Judgment*. However, this Court set its scheduling order and the deadlines to file dispositive motion passed long ago. Plaintiffs neither sought nor received permission from this Court to file dispositive motions over two and a half years after the deadline expired, and their motion should be stricken.

Idaho Rule of Civil Procedure 56(b)(3). That Rule states:

(3) Altering Time Requirements. The court may alter or shorten the time periods and requirements of this rule ***for good cause shown***, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.

IRCP 56(b)(3) (emphasis added).

Here, Plaintiffs did not even bother to file a 56(b)(3) motion seeking to invoke this Court's discretion to alter or lengthen the deadline by multiple years, and have thus not put themselves in a position to benefit from this Court's discretion. Plaintiffs have not offered any explanation for why they never filed *any* dispositive motion prior to the deadline, nor even alleged that for any

reason they were not able to or were not in possession of the purported evidence on which they now attempt to rely.

In addition to Plaintiffs' not requesting the scheduling order be modified, the scheduling order should not be modified as Plaintiffs have not shown good cause for such amendment. Idaho Rule of Civil Procedure 16(a)(3) sets forth the applicable standard for modifying a scheduling order.

(3) Modification of Scheduling Order. The dates set by the court in section (A) above ***must not be modified*** except by leave of the court on a showing of good cause. The dates and deadlines in the scheduling order pursuant to subdivision (B) above ***must not be modified*** except by leave of the court on a showing of good cause or by stipulation of all the parties and approval of the court.

IRCP 16(a)(3) (emphasis added).

In this case Plaintiffs have not requested to modify the scheduling order nor have they made a showing of good cause for a modification. As such, pursuant to Rule 16, the scheduling order "must not be modified," to permit the first dispositive filing over two and a half years past the deadline.

III.

CONCLUSION

For the reasons stated above, Millennial requests that this Court strike Plaintiffs' *Cross Motion for Partial Summary Judgment*.

DATED this Monday, October 20, 2025.

/s/ Patrick Davis

Patrick J. Davis, Esq.

BEARD ST CLAIR GAFFNEY PA

Counsel for Millennial Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this Monday, October 20, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Nathan M. Olsen
Steven L. Taggart
OLSEN TAGGART PLLC
P.O. Box 3005
Idaho Falls, ID 83403
Telephone: (208) 552-6442
nolsen@olsentaggart.com
staggart@olsentaggart.com

- ☐ U.S. Mail – Plaintiff’s
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Electronic Mail (e-mail)
- ☒ E-filing

John M. Avondet, Esq.
Jared W. Allen, Esq.
BEARD ST. CLAIR GAFFNEY PA
955 Pier View Drive
Idaho Falls, ID 83402
Telephone: (208) 523-5171
javondet@beardstclair.com
allen@beardstclair.com

- ☐ U.S. Mail – Plaintiff’s
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Electronic Mail (e-mail)
- ☒ E-filing

Blake G. Hall, Esq.
Sam L. Angell, Esq.
Cory R. Steglemeier, Esq.
HALL ANGELL & ASSOCIATES, LLP
1075 s. Utah Avenue, Ste. 150
Idaho Falls, ID 83402
Telephone: (208) 522-3003
bhg@hasattorneys.com
sla@hasattorneys.com

- ☐ U.S. Mail – Plaintiff’s
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Electronic Mail (e-mail)
- ☒ E-filing

/s/ Patrick Davis
Patrick J. Davis
BEARD ST CLAIR GAFFNEY PA