DA 22-0312

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 208

LANNY HANSON, JAMIE HANSON and
WINDSOCK LAND AND CATTLE PARTNERSHIP, LLC,

Plaintiffs and Appellees,

v.

TOWN OF FORT PECK, a political subdivision
of the State of Montana,

Defendant and Appellant.

APPEAL FROM: District Court of the Seventeenth Judicial District,
In and For the County of Valley, Cause No. DV-19-52
Honorable Yvonne Laird, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

John G. Crist, Harlan B. Krogh, Crist, Krogh, Alke & Nord, PLLC, Billings, Montana

For Appellees:

Shawn P. Cosgrove, Geoffrey T. Cunningham, Parker, Heitz & Cosgrove, PLLC, Billings, Montana

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Submitted on Briefs: January 11, 2023

Decided: November 7, 2023

Filed:

Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 The Town of Fort Peck, Montana (Town), appeals from the April 2022 and June 2022 judgments of the Montana Seventeenth Judicial District Court, Valley County, enforcing the parties' April 2021 mediated memorandum of understanding (MOU) regarding a subdivision dispute, and then implementing it in the form of a more formal final settlement agreement proposed by Plaintiffs (Developers) for Town Council approval. We address the following restated issue:

> *Whether the District Court erroneously concluded that the mediated MOU was a valid and enforceable contract duly approved by the Town Council at its closed April 2021 meeting?*

Affirmed in part, reversed in part, and remanded for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In separate series of contractual agreements with the Town, Developers purchased and subdivided certain Town-owned tracts into two separate residential subdivisions (Windsock Sky Park Subdivision and Windsock Subdivision) in accordance with Title 76, chapter 3, MCA (Montana Subdivision and Platting Act).[1] Pursuant to those contractual agreements, and resulting Town approval of the proposed subdivisions, the contemplated infrastructure for each subdivision included, *inter alia*, paved streets to be constructed by Developers in accordance with certain agreed specifications which the Town would then accept and maintain as public streets upon construction approval.

[1] The parties' compliance with the pertinent requirements of the Montana Subdivision and Platting Act is neither of record, nor at issue, in this case.

¶3 In 2016, years after Town approval of each subdivision, a dispute arose as to whether the recently paved Windsock Sky Park Subdivision streets complied with a previously agreed minimum street width requirement. The Town asserted that the governing subdivision approval and contracts required 24-foot wide streets, rather than the 21-foot wide streets constructed. In November 2017, following various back-and-forth communications, the Town Mayor notified Developers that the Town Council rejected the newly paved streets for public maintenance on the asserted ground that they did not comply with the previously agreed minimum width requirement. In August 2019, Developers filed a contract claim asserting that the Town breached its contract duty to accept the subject streets as constructed. The claim thus prayed for compensatory damages and prevailing-party contract attorney fees.

¶4 Upon initial and amended answers, the Town moved for summary judgment pursuant to M. R. Civ. P. 56 on the asserted grounds that the stated contract claim was time-barred by § 76-3-625(1), MCA (180-day limitation period regarding compensatory claims against local governments based on a final subdivision action/decision/order or subdivision regulation), and/or § 27-2-209(5), MCA (six-month limitations period regarding claims against municipalities "arising from" an adverse decision "relating to a land use, construction, or development project"). However, in April 2021, the parties engaged in mediated settlement negotiations in which Developers participated personally and through counsel, and the Town through the Town Attorney and Mayor. The day-long mediation resulted in an informal typewritten MOU which set forth 17 points of agreement

and was undersigned by the Town Attorney, Developers, and Developers' counsel. In pertinent part, the MOU specified that: (1) the "20 foot" minimum "paving width" prescribed by "the 1982 Montana Model Subdivision Regulations" applied to all streets in both subdivisions; (2) "the Town will accept maintenance of" the previously constructed Sky Park subdivision streets upon Developers' provision of road "cross-section" drawings "confirm[ing]" that those roads "met" the agreed 20-foot minimum paving width standard; and (3) "each side [will] bear[] its own costs and attorney fees."

¶5 The MOU also included a line for the Mayor's signature upon the contemplated subsequent approval of the Town Council. At the time of initial signing of the MOU, the parties verbally agreed that Developers' counsel would draft a formal settlement agreement incorporating the MOU provisions for formal Town Council consideration and approval. Developers' counsel and the Town Attorney thus subsequently cosigned and filed a stipulated motion to that effect, to wit as pertinent:

> Plaintiffs . . . and Defendant[] Town . . . by and through [their respective] attorney[s] of record . . . [report that] Plaintiffs and Defendants' representatives, following mediation, have reached an *agreement in principle*. The *agreement requires approval from the Town Council* and roadway testing. . . . Therefore, the parties ask that the Court vacate the present scheduling order and extend all pending deadlines indefinitely. The parties intend to file a status report with the Court within 45 days confirming settlement or to establish a new scheduling order going forward.

(Emphasis added—case original.)

¶6 On April 19, 2021, as previously agreed, Developers' counsel emailed the Town Attorney a proposed final settlement agreement intended to formalize the mediated MOU for Town Council approval. Later that day, the Town Council and Town Attorney met in

a closed "executive session" to discuss the mediated MOU and resulting Developers-proposed final settlement agreement. Strangely, the record on appeal includes no contemporaneous meeting minutes or other official record refencing even the general purpose or subject matter of the closed meeting, much less who was present or what action resulted, if any.[2] In a subsequent litigation-related affidavit, however, the Town Clerk attested that she was personally present at the April 19th meeting and that:

> [the Town Council discussed the MOU], the fact that the points in the MOU would be included in a formal settlement agreement, and that [the Council] would have to vote to approve the final agreement at a regular Town Council meeting. [Developer] Lanny Hanson was not present in the executive session[]. There was *no vote taken* by the Town Council in the executive session. The Town Council can only take action approving or disapproving a contract in regular or special session of the Town Council open to the public.

[2] See §§ 7-5-4122 and -4123, MCA (municipal "council must cause a journal of the proceedings" or "special meeting[s]"). Compare 2021-09-22 "Regular Meeting" and 2021-10-11 "Special Meeting" minutes attached to subsequent Town Clerk affidavit, in pertinent part noting that council subsequently met in closed "executive session[s]" with the Town Attorney to discuss the then-pending litigation in this case pursuant to § 2-3-203(4)(a), MCA (litigation exception to statutory Montana open meeting requirement). See also § 2-3-212, MCA (minutes requirements in re open and closed meetings of public or governing bodies *inter alia*); *Raap v. Wolf Point Sch. Bd.*, 2018 MT 58, ¶ 14, 391 Mont. 12, 414 P.3d 788 ("[u]nder Article II, Section 9, and § 2-3-203(1) and (3), MCA, meetings of public bodies and agencies are *presumptively* open to all absent "*a showing* of individual privacy rights" or other recognized exception "sufficient to override" the public right to know"—"[t]he burden of overcoming the presumption of openness is squarely on the public body or agency, not the public or persons seeking to observe government deliberations" and the public body thus has the burden "[a]t the time of closure . . . to articulate a rationale for closure that is sufficiently descriptive to afford reasonable notice to the public of the legal and factual basis for closure without disclosing [the] private [or confidential] information" at issue).

(Internal enumeration omitted—emphasis added.) At or after the closed meeting, however, the Mayor signed the informal MOU on the line previously left blank, but did not similarly sign the resulting Developers-proposed final settlement agreement.

¶7 The next day, the Town Attorney emailed a copy of the Mayor-signed MOU to Developers' counsel and requested an editable version of Developers' earlier-submitted proposed final agreement for contemplated Town amendments. In a responsive email remittal of the draft agreement, Developers' counsel asked, "[d]oes this mean things got approved last night?" An email string included with a later filed affidavit of the Town Attorney manifested that she responded, "[y]es[,] [t]he [MOU] was approved, but we did not act on the settlement agreement yet because I'd like to add more content." The affidavit email string further manifested the Town Attorney also referred to her contemplated additional content as "substantial additions" to the Developers-proposed settlement agreement.

¶8 A week later the Town Attorney sent Developers' counsel a Town-edited version of the proposed final settlement agreement, with an email assertion that the edited draft "matches [the Town's] understanding of our settlement." In regard to the MOU requirement for Developers to provide "street paving cross-section drawings" prepared by a qualified engineer, the Town-edited version of the proposed final agreement included new language further requiring Developers to provide and pay for a supporting

geotechnical engineering investigation and report.[3] However, nothing in the language of the informal mediated MOU referenced or otherwise manifestly implied such a requirement. Developers' counsel thus later remitted a red-lined version of the Town-edited draft striking-out, *inter alia,* all references to a geotechnical investigation requirement.

¶9 By email dated May 20, 2021, the Town Attorney advised Developers' counsel that "we might have a serious problem" because "[t]he Town is insisting that the [street] development cross section include[] a geotechnical evaluation." The email explained that the Town's geotechnical investigation demand stemmed from a notation in a 2019 street cross-section drawing quote independently obtained by the Mayor from a third-party engineering firm stating that its proposed "[r]oadway section thicknesses" specification would be "based on the results of a geotechnical investigation." In a follow-up email on May 26, 2021, apparently recognizing that the parties had not previously agreed to such requirement, the Town Attorney asked whether Developers would "object to *the Town* performing a geotechnical investigation of the [subject] roads." (Emphasis added.) In June 2021, after responding that the parties' mediated agreement did not include a geotechnical investigation and report requirement, Developers provided the Town with

[3] We take notice that the manifest purpose of the Town-requested geotechnical engineering investigation and report was to provide the Town assurance that the previously constructed Sky Park subdivision streets were constructed in a manner to provide lasting durability under prevailing geotechnical conditions. See ASTM International Road and Paving Standards, https://www.astm.org/products-services/standards-and-publications/standards/road-standards-and-paving-standards.html. The pertinent issue, however, was whether Developers in fact agreed at mediation to provide such assurance.

engineer-prepared street cross-section drawings showing that the constructed Sky Park subdivision streets complied with the 20-foot minimum width requirement specified in the MOU.

¶10 In August 2021, Developers' counsel filed a district court status report with a copy of the parties' mediated MOU. The report explained that the "the parties ha[d] reached an agreement, in principle, through mediation," but a disagreement remained "regarding [the] formal language of the settlement" which the parties expected to resolve in the next month. When no agreement regarding the disputed geotechnical investigation requirement resulted in that time, the Town Council later unanimously approved the Town-edited version of the proposed final settlement agreement, including the still-disputed geotechnical investigation requirement, at a regularly scheduled public meeting on September 20, 2021. When Developers did not sign the Town-edited version of the proposed agreement due to inclusion of the disputed geotechnical investigation requirement, the Town Council unanimously voted to "rescind" its prior approval of the Town-edited version of the proposed final settlement agreement at another regularly scheduled meeting on October 11, 2021.

¶11 Over four months later, based on their assertion that the Town Council approved it in closed session in April 2021, Developers filed a February 2022 motion seeking court enforcement of the parties' mediated MOU, and for court "adopt[ion]" of their implemented proposed final settlement agreement as submitted to the Town in advance of the meeting. The motion was supported with an affidavit from Developer Lanny Hanson

attesting to his "personal knowledge" of what allegedly took place during the Council's April 2021 closed meeting.[4] The Hanson affidavit also referenced various attached copies of selected email communications between the parties' respective counsel, the competing proposed final settlement agreements, various subdivision approval documents, and Developers' previously submitted June 2021 engineering report (including, *inter alia*, the referenced Sky Park subdivision street "paving cross-section" drawings and an engineering review of the completed Sky Park subdivision streets with recommendations for similar construction of the as-yet completed Windsock Subdivision streets). Developers cited no legal authority as the procedural basis or framework for the motion, but asserted that the issue of validity and enforceability of the mediated MOU was a question of law for court determination.

¶12 In opposition, the Town asserted, *inter alia*, that the informal MOU was not a valid and enforceable contract because it was only a tentative agreement subject to later Town Council approval and formalization in a superseding final agreement signed by the parties. Contrary to Developers' assertion, the Town asserted that the Town Council did not vote to approve the MOU or implement Developers-proposed final agreement at its April 2021 closed meeting. The Town further asserted that any such action at a closed meeting would have been invalid *ab initio* in violation of §§ 7-1-4141 through -4143, MCA (municipal

[4] The Town Clerk's subsequent affidavit attested that "Lanny Hanson was not present in the executive session[]."

governing body notice and open meeting requirements).[5] The Town also filed separate supporting affidavits of the Town Attorney and Town Clerk, with referenced attachments (*inter alia* including various email communications and meeting minutes regarding the 2021-09-20 and 2021-10-11 Town Council meetings).

¶13 In April 2022, without hearing or reference to any procedural basis or framework for the adjudication, the District Court issued a written judgment and supporting analysis granting Developers' motion. In substantive essence, construed in the light most favorable to Developers, the court concluded as matters of law that:

(1) the express language of the mediated MOU was clear and unambiguous to the extent of its express terms;

(2) it was beyond genuine material dispute on the record facts that the express language of the MOU clearly and unambiguously stated the mutual intent and agreement of the parties regarding the matters specified therein regarding the matter contemporaneously in dispute, i.e., the compliance of existing and contemplated subdivision streets with *previously agreed* construction specifications;

(3) the express language of the MOU neither expressly included, nor manifestly implied, any requirement for Developers to provide the referenced "street paving cross-section drawings" based on or in conjunction with a related geotechnical engineering analysis;

(4) it was beyond genuine material dispute on the record facts that the parties' underlying oral agreement at mediation did not include or otherwise contemplate a street paving geotechnical investigation and report, or any agreement that the disputed subdivision streets must conform thereto;

(5) it was beyond genuine material dispute on the record facts that the Town's disputed demand for a geotechnical investigation and report "was a new

[5] *See also* §§ 2-3-103, -104, and -203, MCA (public notice/participation and open meeting requirement applicable to all "public or governmental bodies," *inter alia*).

demand" not made until "over a month after [the] mediation" and resulting MOU;

(6) the parties were thus not operating under a mutual mistake of fact at the time of agreement and signature as to whether the MOU-specified paving cross-section drawing would necessarily further include a supporting geotechnical investigation;[6] and

(7) regardless of the parties' mutual contemplation of a more formal superseding final settlement agreement, the written MOU "contains all . . . essential terms" required for contract formation (i.e., capable and identifiable parties, mutual assent, lawful object, and mutual consideration), but that the Town's "consent" to those terms was subject to a mutually agreed parol condition requiring subsequent Town Council approval of the MOU terms.

The District Court thus concluded that the enforceability of the MOU as an independent contract ultimately depended on the disputed issue of fact as to whether the Town Council voted to approve the MOU at its April 2021 closed meeting as asserted by Developers or, alternatively, only tentatively discussed it in advance of formal action at a subsequent open meeting as asserted by the Town. In resolution of that issue, the court expressly found the Town Clerk's affidavit assertion that the Council took "no vote" approving the MOU at its closed April 2021 meeting "to be *uncredible*" in juxtaposition to various noted circumstantial facts. (Emphasis added.) By inference from those noted circumstantial

[6] The court expressly noted that the Town Attorney's subsequent record email statements "over a month after the mediation indicate[] that the geotechnical evaluation was a new demand made by the Council around that time." The Court further noted that the "record shows" that the 2019 engineering quote independently obtained by the Mayor, and later identified by the Town Attorney as the basis for the Town's post-mediation demand for a geotechnical investigation, distinctly listed the cross-section drawings and geotechnical investigation as separate cost-items, thereby indicating that they are "different things," and there was thus no record basis upon which to support a finding or conclusion that the parties "were operating under a mutual misunderstanding concerning the" MOU-referenced "cross-section drawings."

facts, the District Court thus found that the Town Council "took action to approve the MOU" in its closed April 2021 meeting. (Emphasis added.)

¶14 Based on that critical finding of fact in context of the above-noted conclusions of law, the District Court ultimately concluded that the mediated MOU was an independently valid and enforceable contract, in accordance with its written terms, and as approved by the Town Council at its ensuing April 2021 closed meeting. In regard to the Town's open meeting law violation argument, the Court concluded that, unlike an aggrieved member of the public, a municipal governing body lacks jurisprudential standing to later assert on remorse that a prior imprudent action was void due to the governing body's own violation of applicable open meeting requirements. The Court thus rejected the Town's apparent alternative defense that any approval vote taken by the Town Council at its closed April 2021 meeting was in any event void in violation of applicable open meeting requirements. Finally, on the stated ground that the enforceable MOU expressly provided that the parties were responsible for their own attorney fees, the court denied Developers' claim for attorney fees under the prevailing-party attorney fees provision of their prior subdivision contract(s). The Town timely appeals the court's grant of Developers' "[m]otion to [e]nforce and [i]mplement" the mediated MOU.[7]

[7] The Developers' motion and briefing requested two distinct but related remedies, i.e., validation and enforcement of the mediated MOU *and* implementation of it in the form of their more formal proposed final settlement agreement as subsequently tendered to the Town Attorney for Town Council approval. In light of the District Court's narrow analytical focus, we limit our review to the independent enforceability of the MOU and whether the court correctly concluded that the Town Council approved it, either alone or as incorporated in Developers proposed final settlement agreement, in its closed April 2021 meeting.

STANDARD OF REVIEW

¶15 Summary judgment rulings are subject to de novo review on appeal for conformance with applicable M. R. Civ. P. 56 standards and requirements. *Dick Anderson Constr. v. Monroe Prop. Co.*, 2011 MT 138, ¶ 16, 361 Mont. 30, 255 P.3d 1257.[8] Courts may grant summary judgment only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). The moving party has the initial Rule 56 burden of showing a complete absence of any genuine issue of material fact on the Rule 56 factual record, and that the movant is entitled to judgment as a matter of law. *Weber v. Interbel Tel. Coop.*, 2003 MT 320, ¶ 5, 318 Mont. 295, 80 P.3d 88; *Thelen v. City of Billings*, 238 Mont. 82, 85, 776 P.2d 520, 522 (1989). The burden then shifts to the opposing party to either demonstrate the existence of a genuine issue of material fact precluding judgment as a matter of law, or that the moving party is in any event not entitled to judgment as a matter of law. *Osterman v. Sears, Roebuck & Co.*, 2003 MT 327, ¶ 17, 318 Mont. 342, 80 P.3d 435 (citing *Bruner v. Yellowstone Cty.*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995)). Whether a genuine issue of material fact exists or whether a party is entitled to judgment as a matter of law are questions of law subject to de

[8] "As a narrow exception to the de novo [Rule 56] standard of review" not implicated here, "preliminary rulings admitting or excluding evidence proffered for Rule 56 consideration as to whether the subject evidence issue satisfies or complies with a pertinent rule of evidence or procedure, and thus qualifies for consideration under Rule 56, are, like other evidentiary rulings normally within the discretion of the trial court, subject to review for an abuse of discretion." *Kipfinger v. Great Falls Ob. & Gyn. Assocs.*, 2023 MT 44, ¶ 14 n.19, 411 Mont. 269, 525 P.3d 1183.

novo review for correctness. *Ereth v. Cascade Cty.*, 2003 MT 328, ¶ 11, 318 Mont. 355, 81 P.3d 463.

¶16 A genuine issue of material fact remains for factfinder determination only if the Rule 56 record manifests a nonspeculative factual basis upon which the factfinder could make a finding of fact on an essential element of proof required for the legal claim or defense at issue which would then preclude judgment as a matter of law. *See Davis v. Westphal*, 2017 MT 276, ¶ 12, 389 Mont. 251, 405 P.3d 73; *State Med. Oxygen & Supply, Inc. v. Am. Med. Oxygen Co.*, 267 Mont. 340, 344, 883 P.2d 1241, 1243 (1994); *Weinberg v. Farmers State Bank*, 231 Mont. 10, 27, 752 P.2d 719, 730 (1988) (exclusive domain of factfinder to resolve questions of fact subject to reasonable dispute);[9] *Doe v. Univ. of Denver*, 952 F.3d 1182, 1189 (10th Cir. 2020) ("fact is material if" it could affect the outcome of the claim or defense at issue and "genuine" if the finder of fact could reasonably find "in favor of the nonmoving party" on the evidence at issue—citation omitted). The appellate court must view the Rule 56 factual record in the light most favorable to the non-moving party and draw all reasonable inferences in favor thereof. *Weber*, ¶ 5; *Gamble Robinson Co. v. Carousel Properties*, 212 Mont. 305, 311-12, 688 P.2d 283, 286-87 (1984). The Rule 56 factual record includes "the pleadings, the discovery and disclosure materials on file, and any affidavits" of record. M. R. Civ. P. 56(c)(3). On de novo review, the appellate court may "examine the entire record" in assessing whether a genuine issue

[9] *See also* §§ 25-7-103 and 26-1-202, MCA (exclusive domain of finder of fact).

of material fact precluded summary judgment. *Hudson v. McDonald*, 229 Mont. 426, 429, 747 P.2d 221, 223 (1987) (citing *Shimsky v. Valley Credit Union*, 208 Mont. 186, 189-90, 676 P.2d 1308, 1310 (1984)).

DISCUSSION

¶17 *Whether the District Court erroneously concluded that the mediated MOU was a valid and enforceable contract duly approved by the Town Council at its closed April 2021 meeting?*

¶18 As a preliminary matter, we must first identify and adhere to the applicable procedural context and framework, and attendant standards for decision, for proper review of the assertions of error at issue. Peculiarly, neither the parties, nor the District Court, asserted or otherwise referenced below the procedural context and framework for adjudication of Developers' motion, whether M. R. Civ. P. 56 (summary judgment), trial on the merits, or other special proceeding authorized by statute. That fundamental oversight is now compounded by the parties' narrow focus on appeal on various assertions of substantive law and related fact, unmoored from the governing procedural framework and standards for decision below, and corresponding standards of appellate review.

¶19 "[E]xcept as stated in Rule 81," the Montana Rules of Civil Procedure "govern the procedure in all civil actions and proceedings in district courts." M. R. Civ. P. 1 (special treatment of Uniform Probate Code proceedings omitted). Subject to exception not applicable here, Rule 81 similarly provides that the Rules govern all civil proceedings, including "special statutory proceeding[s]," for which the Rules do not otherwise specifically provide, to wit:

> Where any statute . . . , whether or not applicable to a special statutory proceeding, provides that any act in a civil proceeding in a district court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

M. R. Civ. P. 81(b). Here, the only special statutory scheme applicable to mediation and enforcement of mediated settlement agreements under current state law is the recent Montana enactment of the Uniform Collaborative Law Act. *See* Title 25, chapter 40, MCA (2015).[10] In essence, the Act defines and provides for the initiation, conduct, and termination/conclusion of a defined "collaborative law process," and "enforce[ment]" of a resulting defined "collaborative law participation agreement." *See* §§ 25-40-102(3), (12), (14), -103, -104, and -119, MCA. Here, however, there is no record indication that the parties consciously initiated and proceeded under the technical requirements of the Act. *See* §§ 25-40-102(2), -103, and -104(1), MCA (defined "collaborative law process" and "collaborative law participation agreement[s]"). The Act nonetheless provides that the court may still "enforce" a technically non-compliant mediated settlement agreement "in the interests of justice" under certain circumstances (i.e., an "agreement evidenced by a record resulting from the process in which the parties participated" and court "findings" that the parties "signed a record indicating an intention to enter into" an Act-defined

[10] Section 26-1-813, MCA, provides for limited confidentiality and privilege protections regarding the mediation process but specifies no process or special proceeding for enforcement of mediated settlement agreements. *See also Kluver v. PPL Montana, LLC*, 2012 MT 321, ¶¶ 52-59, 368 Mont. 101, 293 P.3d 817 (referencing unenacted Uniform Mediation Act (2001)). The mediation confidentiality and nondisclosure privilege and protections provided by § 26-1-813, MCA, are thus not at issue in this case.

"collaborative law participation agreement" under "reasonabl[e] belie[f] they were participating in" an Act-defined "collaborative law process"). Section 25-40-119(2), MCA. While the record manifests that the parties' mediation process and resulting MOU largely tracked the Act-provided "collaborative law process" under §§ 25-40-102(3), (5), (7), (10), (12)-(14), -104, and -105, MCA, they did not request, and the District Court did not make, any of the requisite findings specified by § 25-40-119(2), MCA. The parties' apparent disregard of the Act is ultimately of no consequence because it in any event does not specify any special or abbreviated procedure for enforcement of mediated settlement agreements. *See* Title 25, chapter 40, MCA (2015). The pertinent Montana Rules of Civil Procedure, and any applicable supplemental statutory rules, thus applied and governed the adjudication of Developers' mediation agreement enforcement motion here. *See* M. R. Civ. P. 1 and 81(b), *supra*.

¶20 Accordingly, the record manifests that neither party sought adjudication of the subject motion by trial on the merits in accordance with Title 25, chapter 7, parts 1-7, MCA, and M. R. Civ. P. 38-52. Based on their respective assertions that they were each entitled to judgment as a matter of law, and given that Developers' motion was in substance neither a Rule 12 or 41 motion to dismiss, nor Rule 37 discovery motion, the only remaining procedural path available for adjudication of the subject motion was Rule 56 summary judgment. *See* M. R. Civ. P. 56, *supra*. We thus construe Developers' motion for enforcement of the parties' mediated MOU as a Rule 56 motion for summary judgment. Within the framework of M. R. Civ. P. 56, we construe the cognizable essence of the

Town's pertinent assertion of error to be that the District Court erroneously granted summary judgment to Developers based on erroneous conclusions of law that the:

(1) MOU was a valid and enforceable contract based on the mutual assent of the Town as culminated in Town Council approval of the MOU, and/or Developers-proposed final settlement agreement, at its April 2021 closed meeting;

(2) MOU was neither ambiguous, nor based on a mutual mistake of fact, as to whether the expressly referenced street paving cross-section drawings requirement necessarily required or included a supporting geotechnical analysis; and

(3) Town lacked jurisprudential standing to later assert that any Town Council approval of the MOU, and/or proposed final settlement agreement, at its April 2021 closed meeting was in any event invalid in violation of statutory open meeting requirements.

For analytical clarity, we address those assertions in inverse order.

1. Town Standing to Assert Invalidity of Alleged Town Council Action at the April 2021 Closed Meeting Due to Open Meeting Violation.

¶21 As a matter of law, the Town Council was and is a "public or governmental body" as referenced in § 2-3-203(1), MCA, and a "municipal governing body" as referenced in §§ 7-1-4141(1) and -4142, MCA. *See* §§ 7-1-4101, -4111, 4121(6), (15), -4122, -4123, 7-3-113, -122(4), 7-5-4101, and -4121, MCA. The District Court thus correctly recognized that the Town Council was at all times subject to the open meeting requirements of §§ 2-3-203(1) and 7-1-4141(1), MCA.

¶22 Jurisprudential standing is one of several threshold justiciability prerequisites to the exercise of independently existing subject matter jurisdiction. *Larson v. State*, 2019 MT 28, ¶¶ 18 and 45, 394 Mont. 167, 434 P.3d 241. As pertinent here, jurisprudential standing

requires, *inter alia*, assertion of a substantively cognizable claim for relief "based on an alleged wrong or illegality that has in fact caused, or is likely to cause, the [claimant] to personally suffer specific, definite, and direct harm to person, property, or exercise of right." *Larson*, ¶ 46. Whether a party lacks standing to assert a particular legal claim or defense is a question of law subject to de novo review on appeal. *Chipman v. Northwest Healthcare Corp.*, 2012 MT 242, ¶ 16, 366 Mont. 450, 288 P.3d 193. The open meeting requirements of §§ 2-3-203(1) and 7-1-4141(1), MCA, are statutory implementations of Article II, Section 9, of the Montana Constitution (right of "person[s] . . . to observe deliberations of all public bodies . . . of state government and its subdivisions[] except where the demand of individual privacy clearly exceeds the merits of public disclosure"). *Citizens for Open Gov't, Inc. v. City of Polson*, 2015 MT 55, ¶ 15, 378 Mont. 293, 343 P.3d 584 (citing *Common Cause v. Comm'r of Political Practices Candidates Nomination Comm.*, 263 Mont. 324, 328-29, 868 P.2d 604, 607 (1994)). As a referenced "public body" to which Mont. Const. art. II, § 9 applies, the Town Council is not a referenced "person" protected by Mont. Const. art. II, § 9 from the non-compliant acts or conduct of that same "public body." *See* Mont. Const. art. II, § 9. Without regard for the disputed issue of fact as to what occurred at the April 2021 closed meeting of the Town Council, we thus hold that the District Court correctly concluded that the Town lacked jurisprudential standing to assert that any act by the Council in closed session approving the subject MOU, and/or accompanying proposed final settlement agreement, was in any event invalid due to violation of the open meeting requirements of §§ 2-3-203(1) and 7-1-4141(1), MCA.

2. MOU Unenforceability Due to Mutual Mistake of Fact or Ambiguous Terms.

¶23 Even if a contract is otherwise validly formed and enforceable, a party to a contract may rescind or seek rescission of the contract if the parties formed the contract based on a mutual mistake of fact. Section 28-2-1711(1), MCA.[11] For purposes of contract formation and rescission, a "mutual mistake of fact" is "an unconscious ignorance or forgetfulness of a fact . . . material to the contract," or a "belief in the present existence of a thing material to the contract which does not exist or in the past existence of such a thing which [did] not exist." Section 28-2-409, MCA. If at all, a "mutual mistake occurs" at the time of contract formation, and only if all "parties share a common misconception about a vital fact upon which they based their bargain." *Mitchell v. Boyer*, 237 Mont. 434, 437, 77 P.2d 384, 386 (1989). *See similarly South v. Transp. Ins. Co.*, 275 Mont. 397, 401, 913 P.2d 233, 235 (1996) (fact is material to a contract if a "vital fact upon which the parties based their bargain"). An otherwise validly formed contract is thus subject to rescission due to mutual mistake of fact only if *both* parties entered into the contract under a mistake of fact "so substantial and fundamental as to defeat the object of the contract." *Van Hook v. Baum*,

[11] The mutual assent required, *inter alia*, as an essential element for valid contract formation, *see infra*, may not be mutual and free for purposes of contract formation if the product of undue influence, duress, menace, fraud, or mistake of fact or law as those terms are narrowly defined by law. *See* §§ 28-2-301, -302, and -401, MCA. However, those formation defects do not render the resulting contract void *ab initio*, but merely voidable and thus subject to rescission or judicial reformation upon election of the aggrieved party under certain circumstances. *See* §§ 28-2-302, -1611, -1701, and -1711 through -1715, MCA; *Montana Ass'n of Underwriters v. State*, 172 Mont. 211, 217-18, 563 P.2d 577, 581 (1977) (citing 1 Williston on Contracts, 3d ed., § 15); *Beebe v. James*, 91 Mont. 403, 414-17, 8 P.2d 803, 806-07 (1932); *Mut. Ben. Life Ins. Co. v. Winne*, 20 Mont. 20, 29-32, 49 P. 446, 449-50 (1897).

245 Mont. 407, 409, 800 P.2d 151, 152 (1990). *Accord South*, 275 Mont. at 401, 913 P.2d at 235.

¶24 In contrast, a contract is subject to rescission due to the unilateral mistake of fact of one party only if that party entered into the contract under a substantial mistake or misapprehension of material fact due to unconscious ignorance or oversight, *and* the mistake or misapprehension of fact was not the result of the party's own failure to exercise reasonable care under the circumstances. Section 28-2-409, MCA; *Silva v. McGuines*, 189 Mont. 252, 256-57, 615 P.2d 879, 881-82 (1980); *Quinn v. Briggs*, 172 Mont. 468, 475-78, 565 P.2d 297, 301-02 (1977). *See similarly* Restatement (Second) Of Contracts § 153 (1981) (unilateral mistake of fact). Absent a showing of "fraud, misrepresentation or other wrongful act by the other contracting party," a party "who executes a written contract is presumed to know the contents of the contract and to assent to" the terms specified therein. *Silva*, 189 Mont. at 256, 615 P.2d at 882; *Quinn*, 172 Mont. at 476, 565 P.2d at 301. "Absent incapacity to contract, ignorance of the contents of a written contract is not a ground for relief from liability." *Silva*, 189 Mont. at 256, 615 P.2d at 882; *Quinn*, 172 Mont. at 476, 565 P.2d at 301. "A party to a contract cannot avoid the contract on the ground that [the party] made a mistake where there has been no misrepresentation, no ambiguity in the terms of the contract, and the other party has no notice of such mistake and acts in good faith." *Silva*, 189 Mont. at 256, 615 P.2d at 881-82; *Quinn*, 172 Mont. at 475, 565 P.2d at 301. "[E]ven if one of the contracting parties believes the words of the contract mean something different, the parties . . . are bound by the plain meaning of the

words . . . as properly interpreted," unless the party claiming mistake can prove that the other party was aware of the mistake. *Silva*, 189 Mont. at 256, 615 P.2d at 881-82; *Quinn*, 172 Mont. at 475-76, 565 P.2d at 301. If a party fails to exercise reasonable care under the circumstances and "acts . . . in such a manner as to lead" the other party to believe that it assents to the terms of the written contract, the party "will be bound in law and in equity, even though . . . the party supposes the writing is an instrument of entirely different character." *Silva*, 189 Mont. at 256, 615 P.2d at 882; *Quinn*, 172 Mont. at 476, 565 P.2d at 301. "The integrity of written contracts would be destroyed if contracting parties, having admitted signing the instrument, were allowed to rescind the contract on the basis [that] they neither read nor understood the expressed agreement." *Silva*, 189 Mont. at 256, 615 P.2d at 882; *Quinn*, 172 Mont. at 476, 565 P.2d at 301.

¶25 Here, the District Court effectively concluded that it was beyond genuine material dispute on the record presented that there was no contemporaneous mutual or unilateral mistake among the parties at mediation regarding the meaning of the MOU-referenced "paving cross-section drawings." The court further concluded that the plain and unambiguous, albeit limited, language of the MOU included no express or manifestly implicit requirement for the referenced "paving cross-section drawings" to include or be supported by an accompanying geotechnical investigation and analysis. In that regard, the factual record manifests without contradiction that the Town did not communicate or otherwise assert any such desire and demand until over three weeks *after* the mediation when it appeared for the first time in the Town-edited proposed final settlement agreement.

The Town has further made no supported evidentiary showing that the referenced Sky Park "paving cross-section drawings," discussed at mediation in the context of the narrow precipitating dispute (as to whether the already-constructed streets complied with previously-agreed minimum street width requirement), would necessarily include or require a supporting geotechnical analysis.[12] We hold that the District Court correctly concluded as a matter of law that the MOU unambiguously included no express or manifestly implicit requirement for a Developers-provided geotechnical investigation, and that the mediated agreement was not based on either a mutual mistake of fact or a qualifying unilateral mistake of fact made by the Town.

3. Contract Validity and Enforceability of Mediated MOU and/or Developers' Proposed Final Settlement Agreement.

¶26 A contract is a legally enforceable "agreement" that requires a party "to do or not do a certain thing." Section 28-2-101, MCA. *See also* § 27-1-105, MCA (contract "obligation is a legal duty" binding a party "to do or not do a certain thing"). The essential elements generally required for formation of a valid and enforceable contract include: (1) identifiable parties capable of contracting; (2) a lawful object (including lawful underlying terms and conditions); (3) the communicated mutual assent of the parties to the

[12] The Town has made no assertion, much less showing, that the previously agreed street construction specifications expressly or implicitly included a requirement for a supporting geotechnical analysis.

same contract terms and conditions;[13] and (4) sufficient reciprocal consideration.[14] *See* §§ 28-2-101, -102, -202, -301, -303, -501 through -503, -601 through -604, -701, and -801 through -803, MCA; *Lenz v. FSC Sec. Corp.*, 2018 MT 67, ¶¶ 17-18, 391 Mont. 84, 414 P.3d 1262; *AAA Constr. Of Missoula, LLC v. Choice Land Corp.*, 2011 MT 262, ¶ 19, 362 Mont. 264, 264 P.3d 709; *Keesun Partners v. Ferdig Oil Co., Inc.*, 249 Mont. 331, 337, 816 P.2d 417, 421 (1991).

¶27 Even if a contemplated more formal superseding agreement does not materialize due to subsequent party recalcitrance or disagreement regarding other ancillary or related terms, the terms of an informal settlement agreement are still independently enforceable as a contract if the informal agreement both satisfies the essential elements required for contract formation, and the terms of the agreement do not clearly and unambiguously require the parties to execute a more formal superseding agreement as a condition

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[13] Mutual assent "is established when there has been an offer" from one party and "unconditional acceptance" of the terms and conditions of "that offer" by another. *Keesun Partners*, 249 Mont. at 337, 816 P.2d at 421 (citations omitted). Parties mutually assent only to the extent that they "all agree upon the same thing in the same sense." Section 28-2-303, MCA.

[14] Sufficient consideration generally requires: (1) a benefit offered by a party/promisor to the other party, or the party/promisor's offer to suffer a detriment; (2) in exchange for or to induce a reciprocal benefit from or detriment suffered by the other; and (3) the offered exchange or inducement involves a benefit to which the benefitted party is not already lawfully entitled or a detriment which the party/promisor is not already lawfully bound to incur. *Associated Mgmt. Servs., Inc. v. Ruff*, 2018 MT 182, ¶ 28, 392 Mont. 139, 424 P.3d 571 (citing § 28-2-801, MCA—internal punctuation omitted). *See also Bucy v. Edward Jones & Co., L.P.*, 2019 MT 173, ¶ 27, 396 Mont. 408, 445 P.3d 812 ("mutuality of consideration" requires "valuable consideration on or for both sides of the agreement"). "Absent [contrary] affirmative proof . . . , a written contract is presumed to be supported by 'good and sufficient consideration.'" *Ruff*, ¶ 28 (citing §§ 26-1-602(38) and 28-2-804, MCA).

precedent to contract formation (i.e., a condition precedent to the parties' mutual assent to be bound by the tentatively agreed settlement terms). *See, e.g.*, *Kluver v. PPL Montana, LLC*, 2012 MT 321, ¶¶ 31-33, 35-39, and 42, 368 Mont. 101, 293 P.3d 817 (informal electronic MOU of mediated agreement contemporaneously drafted by plaintiff's counsel and promptly emailed to other counsel valid and enforceable on its terms despite subsequent repudiation of the client/party several weeks later where MOU included no manifestation of party intent that the mediated agreement would be conditional or not binding, extrinsic evidence manifested contemporaneous mutual assent to its express terms, encompassed complete agreement of the parties on all essential terms, and included "all . . . information necessary to create" contemplated final settlement agreement and related transaction instruments); *Marta Corp. v. Thoft*, 271 Mont. 109, 113, 894 P.2d 333, 335 (1995) (valid and enforceable contract formed where represented parties personally agreed to various unconditional "general terms" subsequently memorialized in a written stipulation cosigned by respective counsel—parties thus bound by the subsequently filed stipulation regardless of a party's subsequent second-thought repudiation and refusal to sign contemplated final settlement agreement); *Hetherington v. Ford Motor Co.*, 257 Mont. 395, 398-403, 849 P.2d 1039, 1042-44 (1993) (valid and specifically enforceable settlement contract formed where represented plaintiffs authorized counsel to notify other party/counsel of their unconditioned acceptance of other's unconditional offer—later disagreement as to whether final settlement documents should include a nondisclosure clause or liability admission were immaterial/ancillary matters not addressed or reserved

as conditions of parties' prior assents to the agreed terms); *Long v. Needham*, 37 Mont. 408, 423-24, 96 P. 731, 736 (1908) ("where the parties make the reduction of the contract to writing and its signature by them a condition precedent to its completion, it will not be a contract until it is reduced to writing and signed"—"[b]ut, where they assent to all of its terms, the mere reference to a future contract in writing will not negat[e] the existence of a present and completed one"—citation omitted). *Compare Jarussi v. Sandra L. Farber Trust*, 2019 MT 181, ¶¶ 15 and 17-24, 396 Mont. 488, 445 P.3d 1226 (email communications stating or manifesting informal settlement agreement not enforceable as validly formed contract despite clear offer and unconditional acceptance where a disagreement remained as to the scope or meaning of the agreed terms);[15] *Patton v. Madison Cty.*, 265 Mont. 362, 367-68, 877 P.2d 993, 996 (1994) (informal settlement agreement not enforceable as validly formed contract due to lack of mutual assent to all essential contract terms where disagreement remained regarding issues "central to the very performance of the contract" and record clearly manifested parties' intent that the agreed settlement would not be effective until later incorporated in a more formal written agreement). Moreover, upon satisfaction of other contract formation requirements, a

[15] *Kluver* also addressed various related matters, not at issue here including, *inter alia*, the sufficiency of the electronic agreement and transmittal email as a signed writing in compliance with applicable statutes of frauds, whether plaintiff's counsel had sufficient client authorization to agree to or sign the MOU on the client/plaintiff's behalf, whether the court erroneously considered extrinsic evidence as to what occurred during the course of the mediation in violation of § 26-1-813, MCA (mediation confidentiality and privilege), and whether the court erroneously considered extrinsic evidence regarding privileged attorney-client communications. *Kluver*, ¶¶ 21-30 and 52-62.

"party to a settlement agreement is bound if [the party] has manifested assent to the agreement's terms[,] *and* has not manifested an[y] intent *not* to be bound by that assent." *Lockhead v. Weinstein*, 2003 MT 360, ¶ 12, 319 Mont. 62, 81 P.3d 1284 (citing *Hetherington*, 257 Mont. at 399, 849 P.2d at 1042—emphasis added).[16] Consequently, a party's undisclosed intent to not be bound, subsequent change of mind, or later assertion of new or different terms does not preclude or vitiate formation of a valid and enforceable informal settlement agreement if the informal agreement independently satisfies all essential contract formation requirements. *See Kluver*, ¶¶ 7 and 31-42; *Marta Corp.*, 271 Mont. at 113, 894 P.2d at 335; *Hetherington*, 257 Mont. at 398-403, 849 P.2d at 1042-44.

¶28 Of course, the essential contract requirements for mutual assent and reciprocal consideration necessarily require agreed terms that are sufficiently specific, descriptive, and complete to make the parties' respective reciprocal obligations under the informal agreement clearly identifiable or ascertainable from those terms. *Kluver*, ¶¶ 37-38. But, enforceability requires only that the informal agreement state the agreed terms of settlement in a reasonably certain and complete manner sufficient to identify and permit required performance and enforcement of the manifestly intended reciprocal obligations of the parties, thereby accomplishing the manifest intended purpose of the agreement. *See Kluver*, ¶¶ 36-38 ("absolute certainty and completeness in every detail is not a prerequisite" to enforcement— "only reasonable certainty and completeness" regarding the agreed terms

[16] *Accord Kluver*, ¶ 33 (citing *Lockhead*, ¶ 12).

and purpose of the agreement required—quoting *Steen v. Rustad*, 132 Mont. 96, 106, 313 P.2d 1014, 1020 (1957)). Thus, the independent validity and enforceability of an informal settlement agreement does not depend on the inclusion or specification of other related but unstated "matters which are merely subsidiary," ancillary, "collateral," or immaterial to performance of the central or primary terms of the agreement. *See*, *e.g.*, *Kluver*, ¶ 36 (quoting *Steen*, 132 Mont. at 106, 313 P.2d at 1020).

¶29 It is beyond genuine material dispute on the evidentiary record presented here that the parties' informal MOU, as contemporaneously signed by Developers, their counsel, and the Town Attorney, completely and accurately stated their complete agreement regarding the matters expressly referenced therein. The express MOU terms were manifestly clear and unambiguous on their face, with no non-speculative supported extrinsic evidentiary showing that the referenced "new paving cross-section drawings for Sky Park Subdivision" meant anything other than the type of engineer-prepared street cross-section drawings later provided to the Town by Developers in June 2021.

¶30 Moreover, as analyzed *supra*, it is further beyond genuine material dispute on the record presented that neither party agreed to the written terms stated in the MOU while laboring under a contemporaneous mistake of fact regarding their meaning. In that regard, the language of the mediated MOU neither included, nor manifested, any express or implied requirement or intent that the referenced "new paving cross-section drawings for Sky Park Subdivision" would necessarily include, or be accompanied by, a geotechnical analysis conducted by a qualified engineer at Developers' expense. It is similarly beyond

genuine material dispute that the Town did not first assert a request or demand for an accompanying geotechnical investigation regarding the Sky Park streets until well after the close of the parties' mediated settlement negotiations, and the Town Attorney's contemporaneous signing of the informal MOU. We hold that the District Court correctly recognized that the parties' mediated settlement did *not* include any express or implied agreement or intent that the referenced requirement for "new paving cross-section drawings for Sky Park Subdivision" would include, or be accompanied by, a supporting geotechnical analysis conducted by a qualified engineer at Developers' expense.

¶31 "A contract condition is the subsequent occurrence of a specific uncertain act, event, or circumstance." *Davidson v. Barstad*, 2019 MT 48, ¶¶ 20-23, 395 Mont. 1, 435 P.3d 640 (citing § 28-1-401, MCA, and Restatement (Second) of Contracts § 224 (1981)). As distinct from a condition precedent to a performance of an obligation required by the terms of an already validly formed contract, "[a] condition precedent to contract formation is a specific condition, usually an extraneous event or circumstance or third-party act, the occurrence upon which the reciprocal promises constituting the contract consideration depend." *Davidson*, ¶ 20. *See also* § 28-1-403, MCA (a "condition precedent" *inter alia* includes a condition to be satisfied "before some right dependent thereon accrues"). "[F]ailure or non-satisfaction of a condition precedent to contract formation renders the contemplated contract non-existent as never [fully] formed[,] and thus non-binding and unenforceable." *Davidson*, ¶ 21. In other words, an agreement satisfying the essential elements required for valid contract formation (i.e., identifiable parties capable of

contracting, communicated mutual assent of the parties to the same contract terms and conditions, sufficient reciprocal consideration, and lawful object, terms, and conditions), but which is subject to a condition precedent to formation, is a valid contract that is conditionally binding and enforceable (i.e., effective) only upon satisfaction of the agreed condition precedent to formation. *See* § 28-1-403, MCA (a "condition precedent" *inter alia* includes a condition to be satisfied "before some right dependent thereon accrues"); *Davidson*, ¶¶ 20-21.

¶32 Here, it is beyond genuine material dispute on the factual record presented that the parties did not ultimately agree on the terms of a contemplated final settlement agreement incorporating and formalizing the terms of their mediated settlement agreement due to a post-mediation dispute as to whether the more formal final agreement should also further require a supporting geotechnical analysis regarding Sky Park Subdivision streets. However, nothing in the express language of the MOU, or in the extrinsic evidentiary showing made by the Town in opposition to Developers' enforcement motion, manifests any mutual assent to a requirement for the parties' subsequent approval and execution of a superseding final settlement agreement as a condition precedent to their mutual assent to the terms of their mediated agreement as stated in the MOU. Rather, it is beyond genuine material dispute that the only agreed condition precedent to their mutual assent to the mediated agreement was subsequent approval of the express terms stated in their resulting

MOU by the Town Council.[17] We hold that the parties' mediated settlement agreement, as stated in their resulting unintegrated MOU, satisfied all essential requirements for valid contract formation, but was only conditionally binding and enforceable (i.e., effective) upon satisfaction of a mutually agreed parol condition precedent to formation—Town Council approval of those terms.[18]

¶33 Thus, as recognized by the District Court, the ultimately dispositive issue was whether the Town Council in fact approved the MOU-specified settlement terms, and/or

[17] Without breaching the statutory confidentiality of the parties' communications at mediation, the agreed parol condition precedent to formation was extrinsically evidenced, *inter alia*, by the open Mayor's signature line in their resulting MOU, and the substantive language of their contemporaneous joint post-mediation motion for vacation of the litigation scheduling order (i.e., "following mediation" the parties "have reached an agreement in principle . . . requir[ing] approval from the Town Council").

[18] Under the common law parol evidence rule, extrinsic evidence is generally not admissible to contradict, vary, or supplement the express terms of an integrated written agreement. *See Mary J. Baker Revocable Tr. v. Cenex Harvest States, Cooperatives, Inc.*, 2007 MT 159, ¶ 21 n.2, 338 Mont. 41, 164 P.3d 851 (quoting *Williston on Contracts* § 33:1, at 541); *Habets v. Swanson*, 2000 MT 367, ¶ 24, 303 Mont. 410, 16 P.3d 1035; *Savik v. Entech, Inc.*, 278 Mont. 152, 156-58, 923 P.2d 1091, 1094-95 (1996); *Baker v. Bailly*, 240 Mont. 139, 143, 782 P.2d 1286, 1288 (1989) (citing *Williston on Contracts*, 3d ed., § 631); John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 3-2 at 135-36 and § 3-4 at 145 (3d ed. 1987). An integrated agreement is a written agreement intended by the parties as the full, final, and exclusive expression of the terms of the agreement, thus superseding any and all prior or contemporaneous agreements, understandings, or negotiations regarding its scope or meaning. *Woodruff v. Bretz, Inc.*, 2009 MT 329, ¶ 19 n.3, 353 Mont. 6, 218 P.3d 486 (citing *Black's Law Dictionary* (Bryan A. Garner ed., 8th ed., West 2004)); *Bonner Sch. Dist. No. 14 v. Bonner Educ. Ass'n*, 2008 MT 9, ¶ 36, 341 Mont. 97, 176 P.3d 262; *Brimstone Min., Inc. v. Glaus,* 2003 MT 236, ¶ 46, 317 Mont. 236, 77 P.3d 175; *The Law of Contracts* § 3-2 at 135. An integrated agreement is typically indicated by an express integration clause (i.e., merger clause), or by inference from the express terms of the agreement regarding their manifest scope and completeness). *See* §§ 28-2-301 through -302, MCA (required interpretation of contracts to give effect to manifest intent of the parties to extent ascertainable from clear and unambiguous express language); *Brimstone*, ¶ 46; *The Law of Contracts* § 3-6 at 156. Here, the written MOU included no integration or merger clause, and it is undisputed that it was subject to an agreed parol condition requiring subsequent Town Council approval of its terms.

the Developers-proposed final settlement agreement, in closed session on April 2021.[19] Developers assert that the Mayor's act of adding his signature to the MOU after the Town Council's April 2021 closed meeting manifests the Council's approval of the MOU, and thus satisfaction of that condition precedent to contract formation. Certainly, the Town, as a municipality, has general power to contract with private and other governmental parties. Sections 7-1-4124(4) and 7-5-4301, MCA. While the Town Mayor was at all times vested with various statutory authority as the chief executive and administrative officer of the Town, *see* §§ 7-1-4121(2), (5), (11), 7-3-113, -201, -202(1), -203, -212 through -216, 7-5-4102, and -4205, MCA, he had no unilateral authority to "mak[e] . . . any contract" with Developers, or even "execute" a council-made or approved contract, without "approval of" the Town Council. *See* §§ 7-1-4123(4), -4124(3), 7-3-203(7), and 7-5-4121, MCA. The Town Council was and is the ultimate "governing body" of the Town with the exclusive authority, *inter alia*, to "mak[e] . . . any [municipal] contract." *See* §§ 7-1-4122(6), -4123, 7-3-113, -122(4), -201, 7-5-4101, and -4121, MCA. However,

[19] The Town again asserts in support of its contrary factual assertion that the Town Council could not possibly have done so as a matter of law because any such action at a closed meeting would necessarily have been invalid in violation of the public notice and open meeting requirements of §§ 2-3-203(1) and 7-1-4141 through -4143, MCA. Putting aside the Town's manifest lack of standing for such defensive assertion under the circumstances, and without need to address whether the closed April 2021 Council meeting in fact violated open meeting laws as concluded by the District Court, we note that an open meeting violation does not necessarily render any action taken at an unlawfully closed meeting invalid as a matter of law. *See* § 2-3-213, MCA ("[a]ny decision made in violation of [§] 2-3-203 *may* be declared void by a district court having jurisdiction"—emphasis added); *Citizens for Open Gov't*, ¶¶ 19-26 (district court "discretion to void a decision made in violation of . . . open meeting laws" when necessary under the circumstances if government body/agency failed to subsequently "cure" the violation by affording "subsequent opportunities for public comment" prior to final decision).

general powers municipalities may exercise granted statutory power only in the manner provided by law. *See* §§ 7-1-4101, -4111, -4121(9), (15), -4122, and -4124, MCA (municipalities as corporate political subdivisions of the state and distribution of municipal powers).

¶34 In the exercise of granted authority, the Town Council can lawfully act only upon a majority vote of a quorum of its members. Section 7-5-4121, MCA. Consequently, while possibly non-conclusive circumstantial evidence indicating that the Town Council voted to approve the MOU-specified settlement terms at the April 2021 closed meeting, and thus concomitantly authorized the Mayor to then sign the MOU, the Mayor's signing of the MOU neither conclusively effected the requisite Town assent to those terms as a matter of law, nor conclusively evidenced Town Council approval of the MOU as a matter of law or fact. Thus, the Town Council could have lawfully approved the terms of the MOU at its closed April 2021 meeting, thereby satisfying the agreed parol condition precedent to contract formation, only upon a majority vote of a quorum of the council at that meeting. Section 7-5-4121, MCA. Whether the Town Council approved the terms of the MOU at the April 2021 closed meeting upon a majority vote of a quorum was and is a question of evidentiary fact.

¶35 Based on its finding that the Town Clerk's affidavit assertion, that the Town Council took "no vote" approving the MOU at the closed April 2021 meeting, was "uncredible" in juxtaposition to various noted circumstantial facts, including the Mayor's subsequent signature of the MOU, the District Court found that the Town Council "took

action to approve the MOU" at the April 2021 closed meeting, thus satisfying the agreed condition precedent to contract formation. However, under M. R. Civ. P. 56, the question of whether a genuine issue of material fact precludes summary judgment on an essential element of proof of the legal claim or defense at issue is a question of law dependent upon whether the non-speculative record facts would support only one reasonable finding of fact. *Davis*, ¶ 12; *Ereth*, ¶ 11; *State Med. Oxygen & Supply*, 267 Mont. at 344, 883 P.2d at 1243; *Doe*, 952 F.3d at 1189. Within that framework, it is the exclusive province of the factfinder to resolve questions of fact subject to reasonable dispute. Sections 25-7-103 and 26-1-202, MCA; *Weinberg*, 231 Mont. at 27, 752 P.2d at 730. Except where the evidence is "conclusive," the finder of fact is generally the exclusive "judge of the effect and value of evidence," including "a witness's credibility." Sections 26-1-203 and -302, MCA. Consequently, "at the summary judgment stage, the court [may] not make findings of fact, weigh the evidence, choose one disputed fact over another, or assess the credibility of witnesses." *Andersen v. Schenk*, 2009 MT 399, ¶ 2, 353 Mont. 424, 220 P.3d 675. The limited role of the court regarding factual matters is to examine the Rule 56 factual record "to determine whether there is a genuine issue as to any material fact relating to the legal issues raised." *Andersen*, ¶ 2. Here, the court exceeded its limited Rule 56 role by making a dispositive finding of fact based on an evidentiary credibility determination regarding an acknowledged genuine issue of material fact. We hold that the District Court thus erroneously granted Developers judgment as a matter of law that the Town Council "took action to approve" the parties' mediated MOU at its April 2021 closed meeting.

CONCLUSION

¶36 We hold that the District Court correctly concluded as a matter of law that the parties' mediated MOU:

(1) unambiguously included no express or manifestly implicit requirement for a Developers-provided geotechnical investigation, and was not void or voidable based on a mutual mistake of fact or a qualifying unilateral mistake of fact by the Town Attorney;

(2) did *not* include any express or implied agreement or intent that the referenced requirement for "new paving cross-section drawings for Sky Park Subdivision" would include, or be accompanied by, a supporting geotechnical analysis conducted by a qualified engineer at Developers' expense; and

(3) satisfied all essential requirements for valid contract formation but was only conditionally binding and enforceable upon satisfaction of a mutually agreed parol condition precedent to formation—Town Council approval of the MOU terms.

We hold further, however, that the District Court erroneously granted Developers judgment as a matter of law that the Town Council "took action to approve" the parties' mediated MOU at its April 2021 closed meeting. A genuine issue of material fact remains for factfinder determination as to whether a majority of a quorum of the Town Council voted to approve the MOU-specified terms of settlement, and thus satisfied the agreed condition precedent to contract formation and enforceability of the MOU. We therefore affirm in part, reverse in part, and remand for proper resolution of this outstanding issue of material fact and entry of a corresponding judgment.

¶37 Affirmed in part, reversed in part, and remanded for further proceedings.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ JIM RICE