

1989

Sandy City, a municipal corporation v. Salt Lake County, a political subdivisopn of the State of Utah, Salt Lake County Planning Comission, McDonalds Corp., and John Does 1-5 : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Sandy City v. Salt Lake County*, No. 890211 (Utah Court of Appeals, 1989).
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890211

IN THE SUPREME COURT OF THE STATE OF UTAH

[illegible]

Category No. 14b

Clerk, Supreme Court, Utah.

IN THE SUPREME COURT OF THE STATE OF UTAH

| | | |
|-------------------------------|---|------------------|
| SANDY CITY, a municipal | : | |
| corporation, | : | |
| | : | |
| Plaintiff and Appellant, | : | |
| | : | |
| -vs- | : | |
| | : | Case No. 890211 |
| SALT LAKE COUNTY, a political | : | |
| subdivision of the State of | : | |
| Utah, SALT LAKE COUNTY | : | Category No. 14b |
| PLANNING COMMISSION, | : | |
| MCDONALDS CORP., and | : | |
| JOHN DOES 1-5, | : | |
| | : | |
| Defendants and Appellees. | : | |

APPEAL FROM THE SUMMARY JUDGMENT DECISION OF
THE HONORABLE J. DENNIS FREDERICK OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

BRIEF OF APPELLEES SALT LAKE COUNTY
AND THE SALT LAKE COUNTY PLANNING COMMISSION

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JURISDICTION OF THE COURT

The Utah Supreme Court has jurisdiction over this appeal pursuant to Utah Code Annotated §78-2-2(3)(j).

ISSUES PRESENTED FOR REVIEW

1. Whether the District Court correctly held as a matter of law that the McDonald's Corporation ("McDonald's") development is not urban development under U.C.A. 10-2-418 because a proper construction of that statute requires that land, fixtures, equipment, furnishings and other personal property be excluded from cost projections.

2. Whether the District Court correctly ruled as a matter of law that Salt Lake County complied with its zoning ordinance in approving the McDonald's development.

3. Whether the District Court correctly held that Sandy City ("Sandy") is barred under the doctrine of collateral estoppel from relitigating issues relating to U.C.A. 10-2-418, which issues were decided adversely to Sandy in a related case.

4. Whether the District Court correctly decided that Sandy did not express a willingness to annex the McDonald's property prior to approval by Salt Lake County of McDonald's conditional use permit.

5. Whether the District Court correctly held that Sandy was barred from bringing this action against McDonald's under the doctrine of laches.

6. Whether the District Court correctly granted McDonald's motion to strike the affidavit of Gary Free.

All issues are matters of law subject to review by this Court for correctness. Madsen v. Borthick, 769 P.2d 245 (Utah 1988).

STATEMENT OF DETERMINATIVE STATUTORY PROVISIONS

The determinative statutory provisions for this appeal are:

1. Utah Code Annotated 10-2-418 (1979), which reads as follows:

Urban development shall not be approved or permitted within one-half mile of a municipality in the unincorporated territory which the municipality has proposed for municipal expansion in its policy declaration, if a municipality is willing to annex the territory proposed for such development under the standards and requirements set forth in this chapter; provided, however, that a property owner desiring to develop or improve property within the said one-half mile area may notify the municipality in writing of said desire and identify with particularity all legal and factual barriers preventing an annexation to the municipality. At the end of 12 consecutive months from the filing with the municipality of said notice and after a good faith and diligent effort by said property owner to annex, said property owner may develop as otherwise permitted by law. Urban development beyond one-half mile of a municipality may be restricted or an impact statement required when agreed to in an interlocal agreement, under the provisions of the Interlocal Co-operation Act.

2. Utah Code Annotated 10-1-104(11) (1979), which reads as follows:

(11) "Urban development" means a housing subdivision involving more than 15 residential units with an average of less than one acre per residential unit or a commercial or industrial development for which cost projections exceed \$750,000 for any or all phases.

SUMMARY OF ARGUMENTS

In two District Court cases brought by Sandy, Salt Lake County has had to defend the approval of the same McDonald's restaurant located in an unincorporated area of the county. In this, the second case, Sandy attempted to raise the same issues concerning urban development under U.C.A. 10-2-418 which were decided against Sandy in the earlier case. The District Court correctly held that Sandy was barred under the doctrine of collateral estoppel from relitigating those issues.

The District Court also correctly decided the substantive issues concerning the meaning of U.C.A. 10-2-418 (hereinafter also cited as "§418"). That statute is not applicable to this case as the development costs for the McDonald's restaurant were less than \$750,000.00. Land costs and fixture, equipment and furnishing costs are not development costs which are reviewed by a county as part of its development approval process and do not relate to the impact of development on an area and therefore should not be included as development costs for purposes of §418. When those costs are excluded from the

development costs, the evidence is undisputed that the cost of the McDonald's restaurant is under \$750,000.00.

The evidence is also clear that the approval by Salt Lake County of the McDonald's restaurant was in compliance with Salt Lake County ordinances. Although the Little Cottonwood District Master Plan is outdated in some respects because of extensive development in the southern part of Salt Lake County, including approval by Sandy City of an extensive mall immediately across the street from the McDonald's restaurant, it is still legally in effect.

The District Court correctly held that the complaint against McDonald's was barred under the doctrine of laches, that §418 is not applicable because Sandy did not express a willingness to annex the McDonald's property, and that the affidavit of Gary Free was not admissible in this case. In order to avoid duplication, Salt Lake County adopts McDonald's brief on these three issues.

STATEMENT OF THE CASE

I. NATURE OF CASE AND DISPOSITION IN THE LOWER COURT.

On June 14, 1988, Sandy filed a complaint in Third District Court against McDonald's, Salt Lake County, and the Salt Lake County Planning Commission ("Planning Commission"). It sought an extraordinary writ and declaratory and injunctive relief to void a decision by the Board of County Commissioners of Salt Lake County ("Board of County Commissioners") on

December 9, 1988, upholding Planning Commission approval of a conditional use permit for a McDonald's restaurant on 1.3 acres of land located at approximately 1300 East and 10550 South within an unincorporated area of Salt Lake County.

The complaint also sought to have McDonald's remove all buildings constructed on the property or to comply with annexation codes and to bring the property into compliance with the Sandy City Development Code. R.15.

Motions for summary judgment were filed by McDonald's and Salt Lake County in August of 1988 and by Sandy City in January of 1989. R.118, R.223 and R.350. McDonald's also filed a motion to dismiss and a motion to strike an affidavit of Gary Free filed by Sandy. R.350. On April 10, 1989, the District Court, Judge J. Dennis Frederick presiding, heard and granted McDonald's and Salt Lake County's motions for summary judgment. Sandy's motion for summary judgment was denied. McDonald's motion to dismiss and motion to strike were also granted. R.573. On May 3, 1988, Judge Frederick entered an Order granting summary judgment and dismissing Sandy's complaint. R.581. (Addendum A.)

II. STATEMENT OF FACTS.

A. BACKGROUND AND CHEVRON DEVELOPMENT.

1. In April of 1988, McDonald's predecessors in interest, Priest, Yeates, Kjar and Smoot ("Sellers"), applied to Salt Lake County to have approximately 4.18 acres of property ("original property"), located on the northwest corner

of the intersection of 1300 East and 10600 South in unincorporated Salt Lake County, zoned from Residential R-1-8 (8,000 square foot single family lots) to Residential R-M/ZC¹ and Commercial C-2. R.209.

2. The original property is located within the area covered by the Little Cottonwood Master Plan, which is part of the Salt Lake County Master Plan. R.222.

3. After receiving a favorable recommendation from the Planning Commission, the Board of County Commissioners approved the application on August 5, 1987. R.166.

4. On August 16, 1987, Chevron, U.S.A. applied for a conditional use permit to build a Chevron station on .7 acres of the original property. The Planning Commission heard the application on September 23, 1987 and granted the application on October 13, 1987. R.166.

5. Sandy filed a complaint in the Third District Court against Salt Lake County, the Salt Lake County Planning Commission, sellers Postero-Blecker (agent for Chevron) and Chevron, U.S.A. on November 6, 1987. The action involved not only the Chevron parcel but also the entire original property, including the 1.3 acre McDonald's parcel. R.165.

6. The position asserted by Sandy in the Chevron action included the claim that development of the original

¹ The ZC designation attached certain conditions limiting the height of buildings and the nature of uses that could be developed on the original property. R.179.

property, including the McDonald's parcel, constituted urban development within the meaning of U.C.A. 10-2-418 and that the owners had not attempted to annex the property to Sandy. R.170-173.

7. On March 15, 1988, the District Court in the Chevron action granted summary judgment for defendants, ruling against Sandy on all claims. R.198, Memorandum Decision. (Addendum B.) Sandy appealed the decision of the District Court and the matter is now pending in the Utah Court of Appeals.

B. McDONALD'S DEVELOPMENT.

8. On or about July 5, 1987, McDonald's entered into negotiations with the Sellers to purchase approximately 1.3 acres of the original property. R.119. The real estate contract between McDonald's and the Sellers was executed on October 12, 1987. R.101.

9. On September 30, 1987, McDonald's filed an application with Salt Lake County for a conditional use permit to build a McDonald's restaurant on the 1.3 acres. The projected cost of the restaurant on the application is \$300,000.00. R.103-104.

10. After hearing the matter, the Planning Commission approved the McDonald's application on October 24, 1987 (R.97) and approved findings on November 27, 1987. R.220.

11. Sandy opposed the McDonald's development although it had approved development of a large commercial mall

which now exists within Sandy boundaries directly to the east of the McDonald's parcel. R. 187.

12. On November 4, 1987, Sandy appealed to the Board of County Commissioners the Planning Commission decision approving the McDonald's application. The Board of County Commissioners heard the appeal and upheld the decision of the Planning Commission on December 9, 1987. R.83-84. Findings supporting the decision of the Board of County Commissioners were issued by the Board on January 13, 1988. R.268.

13. McDonald's began construction of its restaurant on April 25, 1988. R.100-102. The actual cost of constructing the restaurant, exclusive of decorating, kitchen equipment, furnishings and land costs, was \$272,999.00. Site work was an additional \$87,486.00. R.358-365.

14. On June 13, 1988, over six months after the decision of the Board of County Commissioners approving the McDonald's restaurant, Sandy filed this action against McDonald's and Salt Lake County. R.1-17.

ARGUMENT

POINT I

SANDY'S CLAIMS CONCERNING URBAN DEVELOPMENT ARE BARRED UNDER THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL.

Under Utah law there are two branches of res judicata: claim preclusion and issue preclusion. Swainston v. Intermountain Health Care, 766 P.2d 1059 (Utah 1988); Penrod v. Nu Creation Cream, Inc., 669 P.2d 873 (Utah 1983). Issue preclusion, often referred to as collateral estoppel, prevents relitigation of issues that have been litigated and determined in a previous action although the claims in the two actions may be different. Penrod v. Nu Creation Cream, Inc., *supra*. The test for issue preclusion is as follows:

1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
2. Was there a final judgment on the merits?
3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
4. Was the issue in the first case competently, fully and fairly litigated? Swainston v. Intermountain Health Care, Inc., *supra*.

Sandy, in its brief, claims there are separate issues relating to "cost projections" for the McDonald's restaurant not relating to the Chevron case. This contention ignores the record in the Chevron case. The defendants in the Chevron complaint include Salt Lake County, the Salt Lake County

Planning Commission and McDonald's predecessors in interest. The allegations in the complaint relate to the entire 4.18 acres of the original property, including the McDonald's parcel. R.165. Sandy argued in its motion for summary judgment in the Chevron case that the costs of the McDonald's development should be included as costs in the development of the Chevron parcel. R.442, 443, 445, 456. Pursuant to a motion by Sandy, the entire record of the County proceedings in McDonald's application was included in the record of the Chevron case.

The court in the Chevron case in its memorandum decision held that "fixtures and personal property" should not be considered as costs for purposes of U.C.A. 10-2-418 and that the costs of the Chevron development and the McDonald's development together did not exceed \$750,000.00. R.199-200. Thus, in the Chevron case Sandy litigated the issue of what costs should be included for purposes of §418 and also litigated the issue of the costs of the McDonald's development. Sandy lost that case and cannot now relitigate the same issues concerning the same property.

POINT II

**THE DISTRICT COURT CORRECTLY HELD THAT
THE McDONALD'S DEVELOPMENT IS NOT URBAN
DEVELOPMENT UNDER U.C.A. 10-2-418.**

A. THIS IS NOT AN ANNEXATION CASE.

Sandy, in its brief, treats this case as if it were an annexation case with regard to whether the McDonald's

development is urban development under U.C.A. 10-2-418. Utah Code Ann. 10-2-418, as pertinent, reads as follows:

10-2-418. Urban development restrictions. Urban development shall not be approved or permitted within one-half mile of a municipality in the unincorporated territory which the municipality has proposed for municipal expansion in its policy declaration, if a municipality is willing to annex the territory proposed for such development under the standards and requirements set forth in this chapter;....

The term "urban development" is defined in Utah Code Ann. 10-1-104(11) which states:

(11) "Urban development" means a housing subdivision involving more than 15 residential units with an average of less than one acre per residential unit or a commercial or industrial development for which cost projections exceed \$750,000 for any or all phases.

No petition for annexation of the McDonald's property to Sandy City was filed by the property owners. Obviously, McDonald's chose not to annex its property to Sandy since Sandy opposed commercial development of this property.

Sandy argues that the legislature intended that "urbanized areas" should be within cities. Under the law this is true only in unincorporated areas where a high quality of urban services are needed.² U.C.A. 10-2-401(3). Obviously,

² Counties have been granted almost identical powers as cities to provide and separately fund urban type services. U.C.A. 17-5-1 through 17-5-88 (powers and authority of counties); U.C.A. 17-34-1 through 17-34-5 (municipal services to unincorporated areas); U.C.A. 10-8-1 through 10-8-89 (powers and authority of cities).

McDonald's did not need any Sandy services because it chose not to annex. Utah laws governing annexation also require that annexations be drawn along logical geographic boundaries. U.C.A. 10-2-414. If Sandy annexed this piece of property, it would carve out almost the only commercial development within a large unincorporated residential area of White City. R.339.

The point is that the legislative intent with regard to the meaning of U.C.A. 10-2-418 should not be interpreted to favor either cities or counties since Utah annexation law expresses a number of different policies and requirements that govern annexations. U.C.A. 10-2-401, 10-2-414. Rather, the legislative intent with regard to §418 should be interpreted based on the normal understanding of the meaning of the language in the act and the process by which counties review proposed development.

B. THE McDONALD'S RESTAURANT WAS NOT DEVELOPED IN "PHASES."

Sandy correctly observes in its brief that the words "any or all phases" in U.C.A. 10-2-104(11) should be interpreted according to its normally understood usage. The County agrees that this is the standard this Court applies in statutory interpretation. Durfey v. Bd. of Education of Wayne County School District, 604 P.2d 480 (Utah 1979); West Jordan v. Morrison, 656 P.2d 445 (Utah 1982). Sandy then gives the term a tortured interpretation, arguing that "any or all phases" means, in essence, the process a development goes through from the time it is conceived to the time it is open for business

and therefore should include all costs which are "essential" for that development. Using this approach, development costs should include planning costs, attorney's fees, real estate costs, franchise fees, corporate overhead, personal property and equipment, and any other costs which could be considered as a "phase" of the development.

This is not, however, the commonly understood meaning of the term "phase" when used in conjunction with the term "development." When a sign advertises a "phased development," the County submits that the developer is not notifying the public that it intends to buy the land, construct the buildings and then install the equipment and furnishings; rather, the developer is notifying the public that it intends to build the development in parts or stages. For example, the first 40 units (first phase) of a proposed 80-unit condominium development, or the initial wing (first phase) of an office complex developed in timed stages are "phased developments."

The McDonald's restaurant was not developed in separate "phases" as that term is used in §418. The entire restaurant development was constructed in one phase.

C. LAND COSTS SHOULD NOT BE INCLUDED IN PROJECTING COSTS UNDER U.C.A. 10-2-418.

The intent and wording of U.C.A. §10-1-104(11) do not support Sandy's position that land value at the time a proposed development is being reviewed by a county should be included in determining "cost projections" for the development. Since the statute uses the term "cost," and not "value," the dollar

amount applicable to the land would vary greatly depending on when the current developer purchased the land. If the land had been owned by the developer for a long period of time, the cost likely would be much less than the cost of the same piece of land purchased recently. Often the developer leases the land and there is no actual purchase cost or the proposed development may involve an expansion of an existing development not involving any additional land. Thus, if land cost is included for determining cost projections, the result would be arbitrary, depending on the date and the nature of the land transaction and the nature of the development.

If the legislature had intended land value to be part of the cost of development, it would have used the term "value" and not "cost." Also, the legislature used the term "cost projections," which implies a future cost and not one that may already have been incurred years before the time of the proposed development.

Most important, the cost of land has no relationship to the obvious purpose of §418, that of limiting the ability of the County to approve substantial physical improvements to land that could affect an area which a city may annex in the future. It is the development of the land, not the land itself, that affects planning decisions and impacts an area. The ordinary understanding of the term "development" relates to construction which changes the character of the land. City of Louisville v. District Court, Cty. of Boulder, 543 P.2d 67 (Colo. 1975).

If the cost of the land is excluded from Sandy's own appraisal, the appraisal would not establish that the cost of development would be over \$750,000.00, only that it would be in a range somewhere between \$650,000.00 and \$825,000.00. But even that range improperly included fixtures, equipment and furnishings in the calculation.

D. FIXTURES, EQUIPMENT AND FURNISHING COSTS SHOULD NOT BE INCLUDED AS COSTS UNDER SECTION 418.

In its efforts to push the cost of the McDonald's development over \$750,000.00, Sandy erroneously included restaurant fixtures, equipment and furnishings in its appraisal. In determining the kinds of costs the legislature intended to include for purposes of §418, the wording of the statute is again helpful. Section 418 states that urban development "shall not be approved or permitted" by counties under certain specified circumstances. Thus, the time at which the legislature intended a county to make a decision as to whether a proposed office or commercial development is urban development is when the developer applies for a permit to develop.³

It is not reasonable to believe that the legislature intended that the County speculate on what kind of internal fixtures, equipment and furnishings will end up in an office or

³ Some uses under the Salt Lake County zoning ordinance, such as the McDonald's application, require a conditional use permit prior to application by the developer for a building permit. Other uses only require a building permit.

commercial development. That may have been possible to some extent in the case of the McDonald's development, assuming it has a standardized operation; however, in most cases, such a determination would not be possible.

A good example of this is the approval process for a commercial office building. In many situations, when the County reviews an application for an office building, the owner does not have any or all of the specific tenants in mind. How the offices will be furnished and equipped is later decided by each tenant, after the building has been approved and constructed and the offices leased. Most of these items do not even require any kind of County approval. Often such furnishings and equipment later change as tenants change.⁴ Also, as in the case of raw land, internal fixtures, furnishings and equipment have no impact on land use for an area that a city may want to annex in the future.

When these items are eliminated from the development costs, the evidence is undisputed that the cost of the McDonald's development is well under \$750,000.00.

⁴ Under Sandy's position that equipment and furnishings should be included in costs of development, the change in equipment installed years after construction, such as the installation of a new computer, could trigger the applicability of §418, in which case the County would have some obligation to prevent the installation. In such a case, the County, or the developer, would not be able to project such costs at the time of the application.

POINT III

THE APPROVAL OF THE McDONALD'S APPLICATION COMPLIES WITH COUNTY ORDINANCES.

Sandy's claim that the County has no master plan for the area in which the McDonald's restaurant is located, and therefore could not approve the development under the County zoning ordinances, is not correct. The Little Cottonwood Master Plan was approved by the County in 1976 and includes the area in which the McDonald's restaurant development is located. R.222, p. 1. The plan addresses both long- and short-term development concerns for the area with the primary emphasis on development for a ten-year period through 1985. R.222, p. 2. The text of the plan contemplates that additional commercial development would be appropriate near major intersections such as 10600 South and 1300 East as the area developed. R.222, pp. 5, 41.

Much of the surrounding area has, in fact, developed since 1976. Sandy annexed the area immediately east of McDonald's across 1300 East and approved a major commercial mall. This action by Sandy was a significant change in the area contributing to the fact that the Little Cottonwood Master Plan is now outdated in some respects.⁵ This fact was taken

⁵ The plan consists of both text and a map. The map in particular is outdated. R.222, R.83, 84. (Comments of County Planning Director, Jerold Barnes.)

into consideration by the County Planning Commission in approving the McDonald's development.⁶ R.220.

The fact that the Little Cottonwood Master Plan is outdated in some respects certainly does not mean the County has no master plan. However, even if the County did not have a master plan for this area, it still had the right to approve the McDonald's development. This issue was decided by this Court in the case of Gayland v. Salt Lake County, 358 P.2d 633 (Utah 1961). In Gayland, the Court held as follows:

...These practical considerations sustain our conclusions that the Legislature acted advisedly in not expressly providing that no zoning could be done prior to the adoption of a master plan, and that such was not its intention.

Thus, even if the Little Cottonwood Master Plan is no longer totally viable, this did not legally prevent the County from approving development in the area included within the plan.

CONCLUSION

The approval by Salt Lake County of the McDonald's restaurant met all the requirements of the law and Sandy's belated attempt to stop development of the restaurant is without merit. Therefore, for the reasons stated herein, Salt

⁶ This Court has held that outdated master plans should be interpreted on the basis of the present factual situation. Naylor v. Salt Lake City Corporation, 410 P.2d 764 (Utah 1966).

Lake County asks that this Court affirm the decision of the District Court.

DATED this 8 day of May, 1990.

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CERTIFICATE OF SERVICE


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R989



ADDENDUM A

FILED DISTRICT COURT
Third Judicial District

May 23 1989

SALT LAKE COUNTY

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

| | | |
|--------------------------------------|---|------------------------------|
| SANDY CITY, A Municipal Corporation, |) | ORDER GRANTING MOTIONS TO |
| |) | DISMISS AND FOR SUMMARY |
| Plaintiff, |) | JUDGMENT OF SALT LAKE COUNTY |
| v. |) | AND McDONALD'S CORPORATION |
| |) | AND McDONALD'S CORPORATION'S |
| |) | MOTION TO STRIKE, AND |
| SALT LAKE COUNTY, A Political |) | DENYING SANDY CITY'S CROSS |
| Subdivision of the State of |) | MOTION FOR SUMMARY JUDGMENT |
| Utah, SALT LAKE COUNTY PLANNING |) | |
| COMMISSION, McDONALD'S |) | Civil No. C88-03898 |
| CORPORATION, and JOHN DOES 1-5, |) | |
| Defendants. |) | Judge J. Dennis Frederick |
| |) | |

The hearing on McDonald's Corporation's Motion to Dismiss or in the Alternative for Summary Judgment; McDonald's Corporation's Amended Motion to Dismiss or in the Alternative for Summary Judgment; Salt Lake County's Motion for Summary Judgment; Sandy City's Cross Motion for Summary Judgment; and McDonald's Corporation's Motion to Strike Affidavit and Appraisal of Gary Free came before this Court on Monday, April 10, 1989 at 10:30 a.m. Jodi Knobel Feuerhelm and Diane H. Banks appeared on behalf

of McDonald's Corporation ("McDonald's"); Christopher Fuller and Walter Miller appeared on behalf of Sandy City ("Sandy"); and Kent Lewis appeared on behalf of Salt Lake County ("County"). The Court having reviewed the pleadings, affidavits, documents and exhibits filed by all parties on these matters, having heard the arguments of counsel, and otherwise being fully advised, hereby ORDERS, ADJUDGES AND DECREES as follows:

1. McDonald's Motion to Dismiss is granted on the ground that Sandy's action is untimely as a matter of law under the doctrine of laches.

2. Alternatively, McDonald's and the County's motions for summary judgment are granted on all of the claims asserted in Sandy's Verified Complaint filed herein.

3. Sandy's claim under Section 10-2-418 of the Utah Code ("Section 418") fails as a matter of law based on the undisputed facts in the record, in that:

a. the cost or value of land is not included in calculating cost projections under Section 418 of the Utah Code;

b. the cost of furnishings, equipment and fixtures is not included in calculating cost projections under Section 418 of the Utah Code;

c. the projected and actual costs of the McDonald's restaurant at issue are less than \$750,000.00; and

d. Sandy City had not expressed a willingness to annex the property that is the subject of this

lawsuit at the time that the McDonald's permit application was approved.

4. As an alternative ground for granting McDonald's and the County's Motions for Summary Judgment, Sandy is collaterally estopped from relitigating the issues relating to its Section 418 claim, which were decided adversely to it in the litigation involving Chevron in Civil No. C87-07304.

5. McDonald's Motion to Strike the Affidavit and Appraisal of Gary Free is granted as to the portions of Gary Free's Affidavit and Appraisal relating to the cost of equipment and improvements to the real property. The Court finds that the Affidavit and Appraisal fail to comply with Rule 56(e) of the Utah Rules of Civil Procedure and Rule 703 of the Utah Rules of Evidence, in that the opinions contained therein are without foundation and are based on inadmissible hearsay. However, in ruling on the merits of the pending motions, the Court has considered and taken into account Mr. Free's Affidavit and Appraisal.

6. There are no disputes of fact with respect to Sandy's Title 57 Claim, Agency Claim, and Ordinance Claim (as those claims are identified in the Memorandum of Points and Authorities in Support of McDonald's Motion to Dismiss or in the

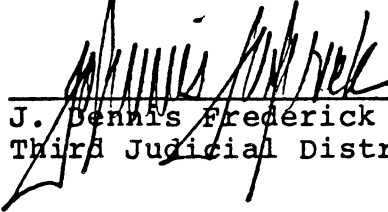
Alternative for Summary Judgment) and the County and McDonald's are entitled to judgment as a matter of law on those claims.

7. Sandy's Cross Motion for Summary Judgment against the County and McDonald's is denied.

8. Sandy's Verified Complaint is hereby dismissed with prejudice.

DATED this 3rd day of May 1989.

BY THE COURT:



J. Dennis Frederick
Third Judicial District Court

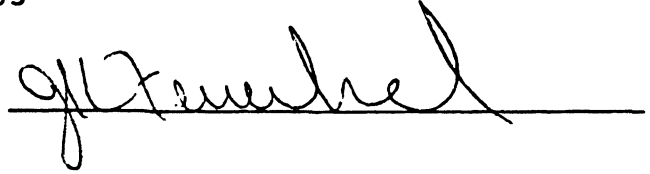
CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of April 1989,
I caused a true and correct copy of the foregoing
to be mailed, postage prepaid, to:

Walter R. Miller
Sandy City Attorney
440 East 8680 South
Sandy, Utah 84070

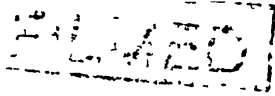
Kent Lewis
Salt Lake County Attorney
2001 South State Street, Suite S3600
Salt Lake City, Utah 84900-1200

Christopher C. Fuller
Durbano, Smith, Reeve & Fuller
4185 Harrison Boulevard, Suite 320
Ogden, Utah 84403

A handwritten signature in cursive script, appearing to read "C. Fuller", is written over a horizontal line.

JKF:041189C

ADDENDUM B



FILED IN CLERK'S OFFICE
Salt Lake County Utah

MAR 15 1988

H. Dixon Hindley, Clerk 3rd Dist. Court
By: [Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|---|---|---------------------|
| SANDY CITY, a municipal corporation of the State of Utah, | : | MEMORANDUM DECISION |
| | : | CIVIL NO. C-87-7304 |
| Plaintiff, | : | |
| vs. | : | |
| SALT LAKE COUNTY, a political subdivision of the State of Utah, et al., | : | |
| Defendants. | : | |

Plaintiff's and derendants' Motions for Summary Judgment came before this Court on the 5th day of February, 1988. All parties were represented by respective counsel. After argument, the Court took the matter under advisement. On the 25th day of February, 1988, Salt Lake County's Motion for Certification of Record came before this Court. The matter was taken under advisement, subject to plaintiff supplementing the record. After reviewing the file, Memoranda, record and arguments, the Court finds as follows.

1. Salt Lake County Commission acted properly in rezoning the property in question, and was not in violation of any county ordinance or county master plan, and did not act arbitrarily and capriciously. Furthermore, Sandy City appears to have waived its right to object to rezoning.

EXHIBIT "B"

2. Salt Lake County Planning Commission and Salt Lake County Commission properly issued a conditional use permit for development of the subject property. The project, based on the facts, is necessary and desirable, and not detrimental to the general welfare. Furthermore, the defendant Chevron Incorporated acted properly in processing its application through the only body with jurisdiction at the time, Salt Lake County. Sandy City did not have jurisdiction to accept the application.

3. Defendants' actions do not violate Utah Code Ann., Section 10-2-418.

(a) Defendants' development does not constitute "urban development" proposed within a restricted, unincorporated area.

(b) Sandy City has not clearly stated it would annex the subject property, but only that it will consider annexation. It was not until the present lawsuit was filed that it indicated that it would annex the subject property. Even if Chevron petitioned for annexation and Sandy City annexed, there is no assurance Sandy City would approve Chevron's application. Furthermore, Chevron is not required to petition Sandy City for annexation.

(c) The value of the fixtures and personal property should not be considered. The projected cost of the proposed service station project is under \$750,000.00. Furthermore, the application of Chevron should be considered a single development.

(d) Even if Chevron's application were not considered a single development, and were combined with McDonald's project, the project will still not exceed \$750,000.00.

(e) At this time Chevron has taken all the necessary procedures for approval of their application, and is ready to proceed with their project.

4. Based on the facts before the Court, it appears that Salt Lake County Commission has conducted a hearing that comported with all due process requirements. It appears to have acted within the scope of its authority, has conducted hearings, and arrived at a decision, and does not appear to have acted in excess of its authority, or in a manner so clearly outside reason that its action must be deemed capricious and arbitrary. Peatross v. Board of Commissioners of Salt Lake City, 555 P.2d 281 (1976).

5. Accordingly, it is the opinion of this Court that Sandy City's Motion to Strike should be denied, and Sandy City's Motion for Summary Judgment should be denied. Furthermore, all of the defendants' Motions for Summary Judgment and Salt Lake County's Motion for Certification should be granted. Counsel for defendant Chevron is to prepare an Order for the Court's

signature. Said Order should be approved as to form by all parties.

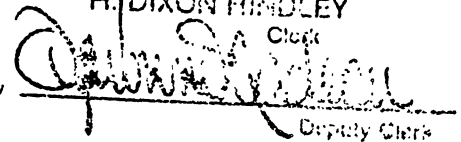
Dated this 15TH day of March, 1988.



RAYMOND S. UNO
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
Clerk

By


Deputy Clerk