

1981

In the Matter of the Disconnection of Territory and Restriction of the Corporate Limits of the City of Draper, Utah : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *State v. Draper*, No. 17048 (Utah Supreme Court, 1981).
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IN THE SUPREME COURT OF THE STATE OF UTAH

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| IN THE MATTER OF THE DISCONNECTION) | |
| OF TERRITORY AND RESTRICTION OF THE) | |
| CORPORATE LIMITS OF THE CITY OF : Case No. 17048 | |
| DRAPER, UTAH) | |
| : | |

BRIEF OF RESPONDENT

Appeal from Judgment of the Third Judicial District in and for Salt Lake County, State of Utah, HONORABLE BRYANT H. CROFT, District Judge

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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Disconnection :
of Territory and Restriction of : Case No. 17048
the Corporate Limits of the City :
of Draper, Utah :

NATURE OF THE CASE

The action below was a petition for the disconnection of certain territory from the City of Draper, Utah.

DISPOSITION IN THE LOWER COURT

The Third Judicial District Judge, the Honorable Bryant H. Croft, tried the case and granted a Decree disconnecting the territory.

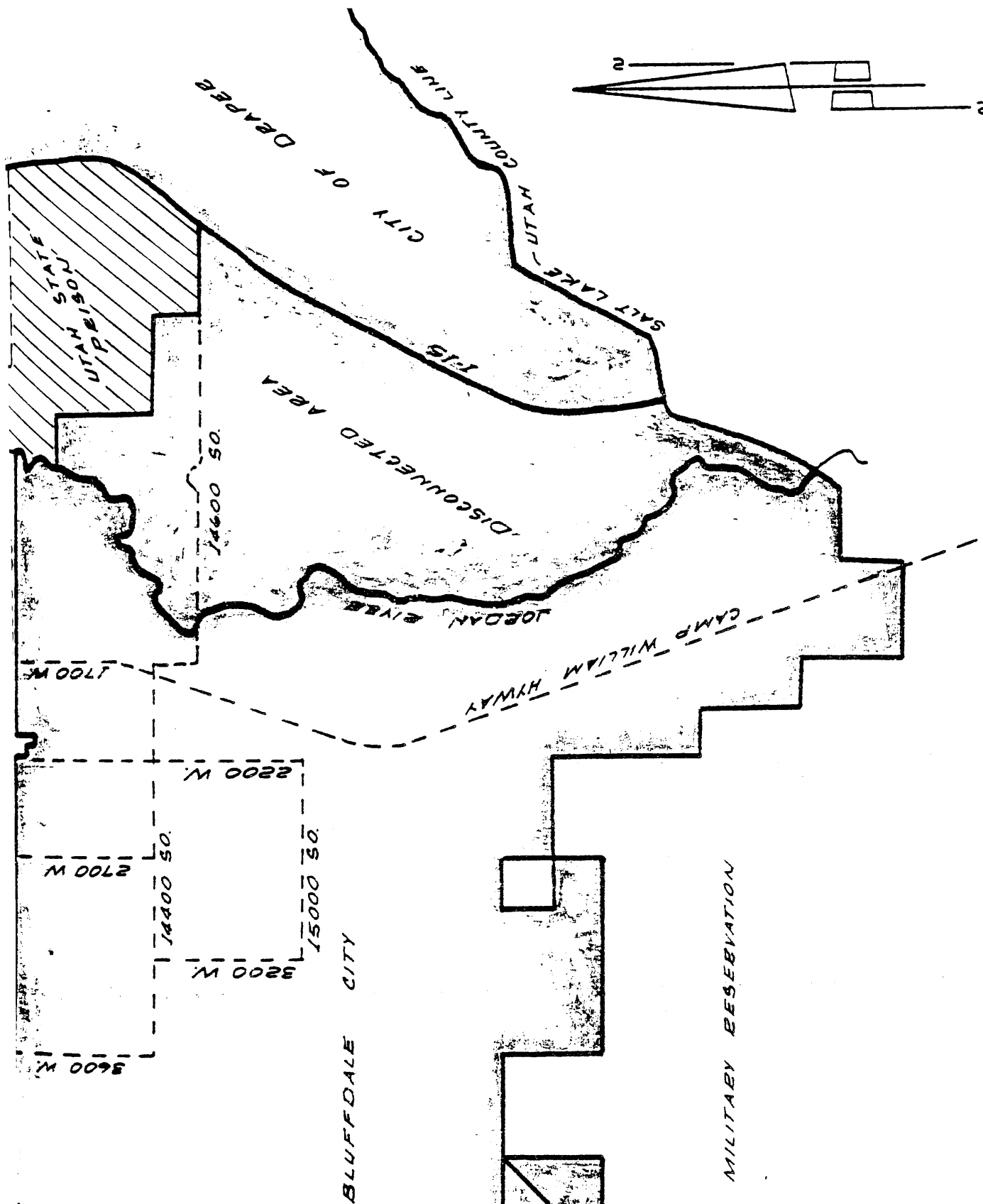
RELIEF SOUGHT ON APPEAL

The Appellees seek to have the judgment of the trial court affirmed.

STATEMENT OF THE FACTS

In 1977, a petition to incorporate the City of Draper was filed with the Salt Lake County Recorder. The petition sought not only to incorporate the area formerly known as the community of Draper situated on the east side of I-15, but also the territory which, generally speaking, is that area of land lying between the west side of I-15, the east side of the Jordan River, north of the Salt Lake County line, and south of 13800 South and 14600 South Streets. The territory is approximately two miles south of the

community of Draper and separated by I-15, a barrier of approximately 500 to 1,000 feet. The following facsimilie of plaintiff's Exhibit ~~490~~ more precisely shows the area:



The area consists of portions of eleven (11) sections of land totaling approximately 2033 acres. The area is mostly agricultural and uninhabited land. (R. 3 - 6, 334, 44). No municipal water or sewer systems exist in Draper or in the area. (R. 353 - 54, 57). Draper has temporarily patched street chuckholes, but has not paved any road or constructed any structural improvements in the area. (R. 72, 340). Approximately 26 families reside in the area, most of them along 14600 South. (R. 61). Historically, the residents of the disconnected area prior to Draper's incorporation petition were considered part of the unincorporated community of Bluffdale. (R. 421, 24, 425 - 30). The residents went to church in Bluffdale, belonged to social organizations in Bluffdale, purchased goods and services from communities lying west of the Jordan River, and sent their children to schools in communities lying west of the Jordan River. (R. 449 - 50, 401 - 05). In contrast, none of the aforementioned social interaction occurred between the disconnected residents and the City of Draper.

The petition to incorporate the City of Draper was not signed by any person residing in the territory to be disconnected. When the people living in the disconnected area learned they might become part of Draper, they requested and attended two meetings with the leaders of the Draper incorporation petition drive. After the second meeting, a letter of intent was issued, wherein a tacit agreement was reached recognizing that if the petition for incorporation of the City of Draper was successful, the people living in

1 Calculated from Plaintiff's maps admitted in evidence.

the area would be allowed by Draper to petition for disconnection. (R. 11,522). Certain of the Draper petition drive leaders later became the mayor and Draper City council members. (R. 11,522). Relying in part upon the letter of intent, some of the residents living in the disconnected area voted for the incorporation of the City of Draper. (R. 187)

The City of Draper was incorporated in 1978, and almost immediately thereafter, the residents living in the area, on July 12, 1978, filed a petition to disconnect from the Draper City limits. (R. 2). The petition was accompanied by a map or plat of the territory sought to be disconnected; designated two persons as being empowered to act for the petitioners in the proceedings, and was signed by some 66 persons. (R. 2-18). The petition stated, "That while more reasons may appear upon discovery or trial, the following are set forth as reasons why the territory in question should be disconnected from the City of Draper."

A. The said territory which lies generally between the I-15 freeway and the Jordan River has been historically identified with the settlement and area now known as Bluffdale.

B. Salt Lake County Commission, by way of a petition duly filed and recorded, has scheduled an election regarding the issue of incorporating Bluffdale, and the petitioners herein desire to be identified with Bluffdale rather than

Draper, whether or not the election results in incorporation of Bluffdale.

C. The said territory is safe for a few points of crossing, physically separated from Draper by the freeway.

D. Draper is not capable of presently providing adequate fire and police services to said territory.

E. Government services offered by Draper to the territory are substantially less adequate than were experienced prior to incorporation.

F. Prior to the incorporation of Draper, the then-constituted representatives of those in favor of the incorporation of Draper, some of whom are now city councilmen and mayor, agreed to allow the territory above-referenced to be disconnected, which agreement, while questionable in enforceability, constitutes a moral commitment and is a tacit affirmation of the generally-recognized appropriateness of the disconnection of said territory from Draper.

Prior to, during, and after the trial, the parties entered into a series of stipulations, including, inter alia, the following:

a. That the signatures on the petition to disconnect were true and authentic; (R.9, 10)

b. That an affidavit of Kay Llewellyn would be admitted into evidence to prove the number and names of registered voters in the area sought to be disconnected; (R. 97) and

c. That names of the persons and entities who were property owners at the time the petitioners filed their petition for disconnection. (R.116).

Pursuant to stipulation, the petitioners presented the affidavit of Kay Llewellyn, showing the registered voters in the area sought to be disconnected. Other affidavits, maps, budgets and letters, totaling 46 exhibits were received by the Court. In addition, the petitioners presented the testimony of 28 witnesses, including, but not limited to, testimony of persons residing in the disconnected area, engineers, law enforcement and fire protection officials, and a municipal planning expert.

After the evidence was presented, petitioners' counsel, pursuant to Rule 15(b), moved to amend the pleadings, stating additional reasons as to why justice and equity dictated that the area be disconnected. The additional reasons were:

a. That the area sought to be disconnected contained large tracts of agricultural land;

b. That the area sought to be disconnected is three to six miles from the center of Draper;

c. That the area sought to be disconnected does not receive any municipal structural improvements;

d. That there is not an interdependent relationship between the area sought to be disconnected and the City of Draper with regard to municipal services;

e. That the area sought to be disconnected is largely uninhabited. (R.662-63).

The trial court in a memorandum decision found that the petitioners met the requirements of Utah Code Annotated §10-2-501, in that (1) the petition was signed by some 66 persons, which were a majority of the real property owners in the territory sought to be disconnected; (2) that the territory was within a line in the borders of Draper; (3) the petition was accompanied by a map or plat of the territory sought to be disconnected; (4) that the petition designated not more than five persons as being empowered to act for the petitioners; and (5) the reasons set forth in the petition were true to a legal sufficiency. The Court also found that a majority of the registered voters of the territory concerned signed the petition. In addition, the Court found that the requirements of justice and equity, Utah Code Annotated §10-2-503 had been met. (R.118-33).

Subsequent to the Court's memorandum decision, the parties stipulated that the decision should be considered in lieu of and substituted for formal findings and conclusions, with the following exceptions:

A. Line 1 of page 2 of the memorandum decision should state "there is sought to be disconnected in the southwest corner of the City of Draper" rather than "the northwest corner of the City of Draper";

B. Line 5 of page 2 of the memorandum decision should read "south of 13800 South Street", instead of "south of 13400 South Street"; and

C. Line 10 of page 10 of the memorandum decision should refer to 146th South Street, rather than 134th South Street. (R.134).

Subsequent thereto, the parties stipulated that Riverton City Mayor Lowell D. White, South Jordan City Mayor Ted Lee, and University of Utah Community Development Director Peter VanAlstyne could serve as the three commissioners pursuant to Utah Code Annotated §10-2-502, to determine the liabilities of Draper and the territory to be disconnected, which had occurred during the time in which the territory was a part of the municipality, and to determine the issue of property rights of Draper and the property to be disconnected. Subsequently, The Commission was appointed and subsequently responded with a report concluding that no liabilities existed on the part of the disconnecting community nor on the part of Draper City, and that there were no other liabilities or apparent problems existing with respect to the mutual property rights. (R. 148 - 49).

On March 27, 1980, the Court granted the petitioners a decree of disconnection. (R. 15).

ARGUMENT

POINT I

THE RELATED ISSUES OF WHETHER THE APPELLEES MET THEIR EVIDENCIARY BURDEN OF PROOF, AND WHETHER JUSTICE AND EQUITY REQUIRE DISCONNECTION OF THE TERRITORY, ARE ISSUES PRIMARILY LEFT TO THE TRIAL COURT TO DETERMINE, WHOSE FINDINGS WILL NOT BE DISTURBED UNLESS CLEARLY ERRONEOUS.

A. Whether appellees met the burden of proof, is an issue left to the trial court. Where a party has the burden of proof and the trial court is then persuaded, the trial court's determination will not be upset unless the evidence is such that all reasonable minds would necessarily so find. Debry & Hilton Travel Services v. Capitol International Airways, 555P.2d 874 (Utah 1976).

The determination of the facts upon which decree of disconnection is based, is an issue primarily for the trial court to determine. Kennecott Corp. v. City of Bingham Canyon, 18 U. 2d 60, 415 P.2d 209 (1966). Under the traditional rules of review that judgment must not be disturbed unless it is made to appear that it was clearly and patently erroneous. Id. at 63; Continental Bank & Trust v. Farmington City, 599 P.2d 1242 (Utah 1979); Application of Peterson, 92 U. 212, 66 P.2d 1195, (1937). In reviewing the trial court's determination, where the evidence is in conflict, the Utah Supreme Court assumes the trial court believed those aspects of evidence that supported his findings. Fillmore City v. Reeve, 571 P.2d 1316 (Utah 1977). The findings

and conclusions of the trial court are presumed valid. On appeal, the burden is upon the appellant to convince the Court that the trial court committed error, and not that the appellant should have won his case. Latimer v. Katz, 29 U.2d 280, 508 P.2d 542 (1973); Brigham v. Moon Lake Electric Association, 24 U.2d 292, 470 P.2d 393 (1970).

When the appellant's position is that the trial court erred in refusing to make certain findings . . . it is obliged to show there is credible and uncontradicted evidence which proves those contested facts with such certainty that all reasonable minds must so find.

First Western Fidelity v. Gibbons & Reed Co., 27 U.2d 1, 492 P.2d 132, 33 (1971). The Utah Supreme Court is required to view the evidence and inferences drawn therefrom in the light most favorable to the sustaining of the decision, e.g. Roger v. Hansen, 580 P.2d 233 (Utah 1978); Oberhansly v. Earle, 572 P.2d 1384 (Utah 1977); Howarth v. Ostergaard, 30 U.2d 183 515 P.2d 442 (1973); Citizens Casualty Co. of New York v. Hockett, 117 U.2d 304, 410 P.2d 767 (1966). The Supreme Court will defer to the findings of fact, rather than substitute its judgment therefor, unless it can be determined as a matter of law that no one could reasonably find as did the fact finder. Carnesecca v. Carnesecca, 572 P.2d 708 (1977). Findings of the trial court will not be upset merely because the Supreme Court may have viewed the matter differently. Del Porto v. Nicolo, 27 U.2d 286, 495 P.2d 811 (1972). Foster v. Blake Heights

Corporation, 530 P.2d 815 (Utah 1974). This discretion is left

with the trial court because of its advantageous position to weigh the evidence and credibility of the witnesses presented. See Culley v. Culley, 17 U.2d 62, 404 P.2d 657 (1965).

The appellant generally asserts that the appellees failed to meet their burden of proof, but failed to give any specific examples except that of voter registration. The bald assertion that petitioners did not meet their burden of proof does not meet the burden imposed on the appellant to show that the contrary conclusion of the trial court are so in error that reasonable minds could not differ. Rather, the appellant attempts to camouflage the issue by alleging on one hand that the standard of proof is by a preponderance of the evidence, then implying that the petitioners had a higher burden of proof because on the basis of Bradshaw v. Beaver City, 27 U.2d 135, 493 P.2d 643 (1972); that inasmuch as the establishment of boundaries is a legislative act, the court should be loathe to find that the petitioners met their burden of proof. Appellant's argument should be rejected for several reasons. First, the case of Bradshaw v. Beaver City did not deal with the issue as to the standard of proof required in Disconnection cases; rather, the case involved an action by certain residents to enjoin a city council from annexing a tract of land. The complaint did not allege any illegal acts by Beaver City, and merely made general contentions without containing any specific

facts. The present case does not involve a lawsuit to prevent a city council from acting. Rather, it is an action to curb the unequitable actions of the original petitioners who incorporated Draper City.

Second, the idea that the disconnection process is a legislative act which the courts should shy away from has been presented to the Utaht Supreme Court in several other cases and has been rejected. In Young v. Salt Lake City, 24 U.321 67 P. 1066 (1902), the appellant argued that the court was, in effect, legislating. The court rejected the argument and responded as follows:

This duty of determining the facts and conditions as they exist may also be conferred upon the courts. Under the provisions of the statute, whenever a petition is filed with the court stating the requisite facts, a summons is issued and served upon the city, issue is then joined as in other cases . . . The determination of these issues and the facts and findings of the Commission, is a judicial act, and does not pertain either to the legislative or executive departments of the state.

Young, at 330.

The court gives the law effect after it has judicially determined the existence of the requirements fixed by the statute.

Young, at 331.

The same argument was also attempted again in In Re Fullmer, 33 U.43, 92 P.768 (1907). The court again rejected the argument, stating

It may be conceded that there is much force to the argument of counsel of the town of Mapleton that the creation, the fixing of boundaries, the disconnection or division the municipal corporation, are all matters that are vested in the legislative department, and therefore cannot be delegated to the courts.

While this is true as a general proposition, the legislature may nevertheless pass laws by which it may determine and fix the causes if found to exist by some court or commission to which the matter is referred by the legislature, for which towns and cities may be incorporated or disincorporated or certain territory be annexed or disconnected therefrom.

Fullmer, at 46.

The argument was again rejected in In Re West Jordan, 326 P.2d 105 (Utah 1958). The court stated

While the changing of the territorial limits of a minicipal corporation is primarily legislative and not a judicial function, the disconnection of land . . . involves ascertainment of facts to determine the condition upon the lawsuit takes effect, and this is a judicial function.

West Jordan, at 106

Third, the detachment of a territory from a municipality does not fall within the sphere of local self-government, but is a subject which requires establishment of a uniform procedure throughout the state and is left exclusively within the control of the legislative body. Village of Beechwood v. Board of Elections of Cuyahoga, 148 N.E.2d 921 (Ohio 1958). The detachment of territory from municipal corporation is a matter of statewide legislative concern, and not one of local or municipal concern. State v. Leah, 189 Neb. 92, 199 N.W.2d 113, (1972).

In summary, the determination of whether petitioners met their burden of proof is for the trial court to decide. It is not enough to merely allege that the petitioners submitted

insufficient evidence. The appellants have the obligation to point out specifically what facts necessary to disconnection were not established by any competent evidence at trial. The appellants have wholly failed to meet this obligation. When the trial court determined that the petitiners had met their burden of proof, it was not infringing upon any legislative prerogative granted to Draper City. Rather, the court made a determination as to whether sufficient facts existed to grant disconnection from the City of Draper pursuant to the acts passed by the Utah Legislature.

B. The issue of whether justice and equity require disconnection is an issue primarily left to the trial court which will not be disturbed by the reviewing court unless clearly erroneous.

In determining what constitutes justice and equity, relating to city disconnection proceedings, the Utah Supreme Court in Kennecott Copper Corp. v. City of Bingham Canyon, 18 U.2d 60, 415 P.2d 209 (1966), stated

The facts in each case under well-recognized principals of law, must to a very large extent, determine that question. The determination of the facts upon which resolution of the issue is predicated, primarily rests with the trial court. Under traditional rules of review, that judgment must not be disturbed inasmuch as it is not made to appear that it was clearly and patently erroneous.

Id. at 62 - 63.

The issue as to what constitutes the justice and equity referred to in the statute is largely based upon the facts as

found by the court. If the record supports the findings of the court, the judgment of the court should not be disturbed unless it is made to appear that it was completely erroneous. Continental Bank & Trust v. Farmington City, 599 P.2d 1242, 47 (Utah 1979); In the Matter of the Disconnection of Territory from Layton City, 27 U.2d 241, 415 P.2d 208, 14 (1972).

It is not enough, as Draper City does in their brief, to suggest that the evidence submitted at trial should lead the court to certain conclusions. Appellants have the obligation to show specifically, based upon the record, that the findings were clearly erroneous. It is not enough to point out that there was conflicting evidence. They must establish before this court that reasonable minds could not differ as to whether justice and equity require disconnection from the territory.

POINT II

THE MEMORANDUM DECISION OF THE TRIAL COURT AND THE FINDINGS CONTAINED THEREIN, ARE SUPPORTED BY THE EVIDENCE

A. Because the parties waived the entry of findings of fact and conclusions of law, the only question before this court is whether there is competent evidence to support the decision of the trial court.

A party who waives the making and entry of findings of fact and conclusions of law cannot take advantage of the failure of the court in that

regard and [the Utah Supreme Court] on appeal will not review the facts, but assume that the trial judge found them to be such as to sustain his ruling if there is competent evidence to support it. Farrel v. Turner, 482 P.2d 117, 19, 25 U.2d 351 (1971) See also Mower v. McCarthy, 245 P.2d 225 (Utah 1952).

Thus, the only question before this court is whether there is competent evidence to support the decision of the trial court. The appellees respectfully submit that there is ample competent evidence to support the trial court's decision.

B. The Trial Court's finding that the statutory requirements of Utah Code Annotated Section 10-2-501 were met is supported by the evidence.

Utah Code Annotated, Section 10-2-501 requires that the petition to disconnect territory: (1) be signed by a majority of the real property owners; (2) be accompanied by a map or plat of the territory sought to be disconnected; and (3) designate not more than five persons who are empowered to act for the petitioners in the proceedings. The petition must also set forth reasons why the territory should be disconnected from the municipality.

The record conclusively shows that the territory sought to be disconnected lies within the borders of Draper City and that the petition was accompanied by the required map and that the petition designated fewer than five persons to act in their behalf. (R.2-18, Exhibits 28 P, 31 P).

The record also conclusively shows that the petition was signed by a majority of the property owners. At the trial, ownership plats of the area in question on file in the County Records Office were received into evidence. (R.3 - 5). Petitioners' witnesses testified as to their calculations as to the number of property owners lying within the area to be disconnected. (R.65 - 525 Exhibit 31-p). At the request of the Court, counsel submitted a stipulation setting forth the names of the property owners in the area seeking to be disconnected. (R.113). In addition, the parties stipulated that the individual signatures on the petitions submitted were authentic. (R.10). Based on the aforementioned evidence, the Court reasonably found that a majority of the real property owners in the area sought to be disconnected did sign the petition to disconnect. (R. 121-24). In contrast, no evidence was offered by the respondents to rebutt any evidence that a majority of the property owners did not, in fact, sign the petition.

The remaining statutory requirement of Section 10-2-501 is that the petition must set forth reasons why the territory should be disconnected from the municipality. Utah Code Annotated Section 10-2-501(1) (2APocket Supp. 1953). The petition submitted listed five reasons as to why the territory should be disconnected from the City of Draper. They can be summarized as follows:

- A. The area is historically identified with another community; (R.9,119).
- B. The petitioners desired to be identified with another city; (R.9,119).
- C. The area is physically separated from Draper; (R.9,119).
- D. Draper is not capable of providing adequate fire and police service; (R.9,119).
- E. The services offered by Draper are less adequate than were experienced prior to incorporation; (R.10,119). and
- F. Prior to the incorporation of Draper, the constituted representatives of those in favor of the incorporation of Draper, some of whom are now City Councilmen and Mayor, agreed to allow the territory to be disconnected, which was a moral commitment and is a tacit affirmation of the generally-recognized appropriateness of the disconnection of the territory from Draper. (R.10,119).

The petition also stated that more reasons may appear upon Discovery of trial. (R.9,119).

Each of the foregoing reasons, in and of themselves, are valid reasons for allowing the area to be disconnected from the City of Draper.

Reasons A, B & C are relevant to the issue of whether there is an interdependent geographical relationship between Draper and the disconnected territory. The Utah Supreme Court in Kennecott Copper Corp. v. City of Bingham Canyon, 18 U.2d 60 415 P.2d, 209 (1966) recognized and upheld the lower court's determination that territory should be disconnected from a municipality when there is not an interdependent relationship between the property in question and the City of such nature as to warrant a denial of the petition for Disconnection. 18 U.2d at 62.

The Utah Supreme Court has also considered the fact of geographical interdependence in the following disconnection cases: In the Matter of the Disconnection of Territory from Layton City, 27 U.2d 241, 415 P.2d 709 (1972) In Re Chief Consolidated Mining Company, 71 U. 430, 266 P. 1044 (1928); Christensen v. Town of Clearfield 66 U. 455 243, P. 376 (1926); Young v. Salt Lake City, 24 U. 32, 67 P. 1066 (1902); Continental Bank & Trust Co. v. Farmington City, 599 P.2d 1242 (Utah 1979); and Application of Petersen 92 U.212 66 P.2d 1195 (1937). In the preceding cases, the Court found that the land to be disconnected was on city boundary and/or on the edge of the boundary of the town to be disconnected and/or separated from a municipal business center and/or was agricultural in

nature. The record before this Court shows the same characteristics. Several exhibits were introduced before the Court showing that the territory lies generally between the I-15 freeway and the Jordan River, the southwest boundary of the City of Draper. (R. 101, Plaintiff's Exhibits 2, 28, 31, 32, 33, 34, 36).

It was established by expert testimony and exhibits introduced at trial that the area is, except for a few points of crossing, physically separated from Draper by the freeway. (R. 469, 472, 473, 476, 472).

The appellant argues the fact that the area is historically identified with another community is not a valid reason to allow disconnection. The appellant is not correct. The Utah Supreme Court consistently held that each case is to be judged on its particular facts. For example, in the case of In Re Chief Consolidated Mining Company, 71 U. 430, 266 P. 1044 (1928). The Utah Supreme Court required territory not to be disconnected partially because the territory had been historically identified with the respective city. 14 U. at 434, 36. Further, UTAH CODE ANN. §10-2-503 (2A Pocket Supp. 1953), a statute delineating the criteria for disconnection does not limit the factors that the court can consider.

Nebraska has a disconnection statute similar to Utah's, which requires the court to find that justice and equity require such territory or any part thereof to be disconnected. R.R.S. § 17-414 (1943). The Nebraska Court in constructing the language "justice and equity", have stated that

[t]he Court may properly consider. . . the existence or non-existence of a unity or community of interest with such city . . . The disconnection of lands from the city are available on the basis of justice and equity and requires the consideration of all the facts and circumstances tending to show fairness or unfairness of disconnection as it relates to this particular case.

Shelton Grain Supply Co. v. Village of Shelton
178 Neb 695, 134 NW.2d 815, 16, 17, (1965).

In summary, the fact that the area is not historically identified with Draper is a valid reason for granting the disconnection.

The record is conclusive that the area is not identified historically, socially or economically with the area of Draper. Several residents testified that they sent their children to Church in Bluffdale; they sent their children to the schools in Riverton; that their friends and associates were in Bluffdale and that their economical and cultural ties were identified with the City of Bluffdale and not the City of Draper. (R.421, 24, 428 - 30, 404, 438, 449, 450, 501-05, 511-12).

The disconnected area is also part of the Salt Lake County Bluffdale/Herriman Planning District and Bluffdale Cemetery District (R.344, 515).

Reasons D and E identified on the petition are also valid reasons for allowing disconnection in that they go to the issue of balancing the consideration of whether the benefits that would result from the petition are outweighed by the advantages of disconnection. See Kennecott Copper Corporation v. Bingham Canyon. 18 U.2d 60, 415 P.2d 209 (1966). In several disconnection cases this court has considered the level of services furnished to be a factor in whether a petition for disconnection should be granted. See Kennecott Copper Corporation v. Bingham Canyon, 18 U.2d 60, 415 P.2d 209 (1966); Howard v. Town of North Salt Lake, 7 U.2d 278, 323 P.2d 261 (1958). In the matter of the disconnection of territory from Layton City, 27 U.2d 241 415 P.2d 209 (1972); Christensen v. Town of Clearfield 66 U 455 243 P.3 76 (1926). In Re Smithfield City 262 P.105 70 U 564 (1927).

The evidence submitted at the trial supports the trial court's findings that the services furnished by Draper have been very minimal. (R.126). The evidence shows: (1) that road repair services furnished by the county to the area prior to incorporation were superior to that of Draper; (R.416, 426 - 27, 431, 436, 499); (2) that the area primarily relied on the sheriff's office for law enforcement; (R.425, 436, 497);

(3) that when fires occurred, the Draper City Fire Department was the last to respond; (R.413, 436); (4) that there is no water system in Draper City in any area including the Draper Business District, let alone the disconnected area located several miles south of the District. There was also substantial evidence that it was unlikely that water would ever be furnished to the area in the foreseeable future if it remained in Draper, that water could be furnished to the area if it were disconnected. (R.72, 351 - 56, 426).

There was also evidence that there is no municipal sewer system or sidewalk system located in the area. (R.72, 357).

C. The trial court's finding that the petition was signed by a majority of registered voters as required by Utah Code Annotated Section 10-2-501 is supported by the evidence.

Appellant, in its brief, states that the petitioners wholly failed to have any evidence whatsoever on the subject of a majority of registered voters having signed the petition. The appellant is wrong. Immediately prior to the commencement of trial, the parties submitted a stipulation to the court detailing how certain threshold issues would be proven. (R.97). The parties agreed that "the original affidavit of Kay Llewelyn, copy attached, may be admitted into evidence, proved the number

and names of registered voters in the area sought to be disconnected." (R.97). Pursuant to the stipulation, the affidavit of Kay Llewelyn listing the numbers and names of the registered voters, was admitted into evidence. (Plaintiff's Exhibit 15 R.326).

Once the parties stipulate as to how an issue is to be proven, they may not then object to it later on an appeal. People v. Newman 227 P.2d 470 (Cal. App. 19). See generally Christensen v. Town of Clearfield 66 U. 455 243 P.2d 76 (1926) (stipulation used to establish and uphold findings of fact).

Further, as outlined earlier in this brief, plaintiffs are entitled to all reasonable inferences from the evidence submitted. The court could reasonably infer from in the affidavit listing all the names of the registered voters in the area, and in the stipulation that the signatures were authentic, that the persons who signed the petition constitute a majority of the registered voters. In McKune v. City of Phoenix 83 Ar. 98,317 P.2d 537 (1957), the court stated that where current property assessment roles were admitted into evidence, such evidence would be presumed to show that the person listed on the rolls were property owenrs, until contrary evidence was shown. By analogy, this court should come to the same conclusions.

Further, the appellee's manner of proving the petition was signed by a majority of the registered voters is similar to the evidenciary process contained in UTAH CODE ANN. §10-2-41 (1953) relating to annexations. In that section, the legislature requires that a petition be signed by a majority of the real property owners. The evidence of property ownership must be shown by the then-current assessment role. In the present case, the petitioners used a similar evidenciary process and the court reached a correct conclusion, that is, that the petition was signed by a majority of the registered voters.

D. The trial court's finding that justice and equity require disconnection of the territory is supported by the evidence.

In considering whether justice and equity warrant the order of severance from the city, it is appropriate to examine the following questions: The extent of any special benefits the property in question will lose by the disconnection and conversly what will be the effect upon the city and including whether it will be necessary for use and relation to its present and future need.

The facts in each case, under well-recognized principals of law, must to a very large extent determine that question. Kennecott Copper Corporation v. City of Bingham Canyon, 18 U.2d 60, 61, 62 - 63, 415 P.2d 209 (1966).

Specifically, the Utah Supreme Court in past disconnection cases has considered the following factors:

1. Whether the territory is needed for the City's present and future developed needs. Kennecott Copper Corp. v. Bingham Canyon 18 U.2d 560, 415 P.2d 209 (1966).
2. The population density. Id at 62.
3. The existence or non-existence of a municipal water system. Howard v. Town of North Salt Lake, 7 U.2d 278 323 P.2d 261 (1958).
4. The existence or non-existence of sidewalks and curbs and gutters. Id. at 283.
5. Whether there is a close relationship between the individual concerns with the area involved and the town. Id. at 284.
6. Whether there is a municipal sewer service. In the Matter of the Disconnection of Territory from Layton City. 27 U.2d 241, 243 415 P.2d 209 (1972).
7. Whether or not there are any city structural improvements or buildings. Id. at 243 - 49.
8. Whether or not there is an economic interdependence existing between the city and the territory to be disconnected. In Re Chief Consolidated Mining Company 71 U. 430, 436 (266) P. 1044 (1928).

9. The extent of police and fire protection services.
Howard v. Town of North Salt Lake, 7U.2d 278, 323 P.2d 261; Young v. Salt Lake City, 24U.321, 67 P. 1066 (1902)
10. Whether the land is largely agricultural in nature.
Christensen v. Town of Clearfield, 66 U.455 243 P.376 (1926). Young v. Salt Lake City, 24U.321, 67P. 1066 (1902)
11. Whether the area is one to two miles in distance away from the building district of the town. Christensen v. the Town of Clearfield, 66 U 455, 56 243 P.376 (1926)

In its memorandum decision, the trial court considered the aforementioned factors. (R.126 - 28). The evidence establishes the necessary facts for disconnection. The record shows that the area is largely agricultural in nature. (R.324, 344); that Draper City does not have a municipal sewer system, nor is it likely that it will ever acquire one. (R.357 - 38, 340). The evidence shows that there is no municipal water system within the City of Draper and that no negotiations have occurred for the purchase of a water system. (R.351 - 355). The record shows that there have been no municipal improvements within the City of Draper. (R.72, 340). The record shows that there is no economic interest between the area to be disconnected and the City of Draper. (R.434,524) The record shows that the area is located miles from

the business district and community of the City of Draper. (Established by maps submitted as evidence Plaintiff's Exhibits 25, 27, 28, 29, 31, 32, 34). The record shows that Draper has not undertaken to construct any roads, that it has patched some road, and that some of the road patches were performed by residents in the area. (R.72, 340). The record establishes that Draper has minimal police and fire protection. (R. 330, 332, 413) The record shows that there is no community identity with the area to be disconnected and the City of Draper. (R.421 - 24, 428 - 30, 404, 438, 449, 450, 501 - 05, 511 - 12). In summary, the evidence overwhelmingly supports the trial court's findings that petitioner met the requirements of showing whether justice and equity require disconnection.

E. The evidence supports the trial court's findings that the requirements of Utah Code Annotated Section 10-2-503 have been met.

The trial court properly considered the criteria for disconnection contained in Utah Code Annotated Section 10-2-503. Specifically, the court considered whether or not this disconnection would leave the municipality with a residual area within its boundaries for which the cost requirements or other burdens of municipal services would materially increase over previous

years for which it would become economically or practically unreasonable to administer as a municipality. The court also considered, among other factors, the effect that disconnection would have on existing or projected streets or public ways, water mains, water services, sewer mains, sewer services, law enforcement, zoning and other municipal service; and whether or not the disconnection would result in islands or unreasonably-or-varied-shaped peninsula land masses. (R. 127).

Previously, this brief discussed the effects disconnection would have on Draper City streets, water mains, sewer mains, and law enforcement. The effects would be negligible. (R. - 480, 481, 483).

With regard to Draper's projected water system, the system consists entirely of preliminary drawings. (R. 72, 74, and 310). The costs of the system would be excessive and erratic. (R. 354 and 643). The plans have not been presented to the City Council for official action. (R. 644). Further, the City Engineer admitted that before a water system could be constructed in the area, the private water system currently furnishing water to the business district of Draper would have to be purchased and the lines substantially improved. (R. 640 - 641). The evidence shows that no proposal for purchasing a water system has been made and that the private water system owned and operated by the Draper Irrigation Company could not supply residents in the disconnected area without substantial improvements. (R. 354)

638).

In determining the effects the disconnection would have on Draper's planning and zoning ordinances, the trial court judge had the benefit of Draper's zoning ordinance, the testimony of the Draper Planner, and the testimony of appellee's Planning Expert. The evidence established the following:

That in order for Draper to develop the disconnected area, it would take a step out development plan, that is, a whole set of development services and improvements would have to be furnished and constructed to the disconnected area outside of Draper's current development area. This approach would substantially increase developmental costs. (R. 471, 474, 477, 478 and 482). The evidence showed that a better approach would be to develop out from the city center of Draper in logical contiguous phases. The evidence showed that without the disconnected area, there is still substantial land within Draper to provide for all types of foreseeable future development. (R. 608, 612, 613, 614). The evidence also showed that the developmental plans presented at the trial court had not been presented to the City. (R. 604, 606 and 607).

The court also considered whether or not the disconnection would result in islands or unreasonably large or varied shaped land masses within or projecting within the boundaries of Draper City. The requirement of a lack of islands and penninsulas is similar to other state's require-

ments that the disconnection not unreasonably interfere with the symmetry of the city. See e.g. Harbouck v. City of Nampa, 55 P.2d 141 (Idaho 1936). In determining the issue, the trial court had the benefit of several maps, including topographical maps. The evidence supports the trial court's conclusion that neither islands nor penninsulas would be created by the disconnection. The area to be disconnected consists of approximately 2,033 acres. The area, because of the size, cannot be considered an island. In the past, this court has upheld disconnections involving much smaller land masses. See In the Matter of the Disconnection of Territory from Layton City, 22 U.2d 241, 415 P.2d 209 (1972); Howard v. Town of North Salt Lake, 7 U.2d 278 323 P.2d 261 (1958).

Further, whether there is an island is to be considered only as one factor in determining the more important issue of whether the disconnection would leave the municipality with a residual area within its boundaries for which the cost requirements or other burdens of municipal services would materially increase or for which it would become economically or practically unreasonable. UTAH CODE ANN. §10-2-503 (1953).

Finally, Draper should be estopped from raising the island issue on appeal. Courts have held that cities are

estopped from preventing the disconnection of territory on the grounds that it would result in an isolation of property if the city causes a delay in the filing to create alleged isolation. In Re City of Palos Heights, 30 Ill. App. 2d 136, 174 N.E.2d 574 (1961). In the present case, the petitioners to incorporate Draper, for the purpose of assuring that the incorporation election would be successful, promised the appellees that if they did not oppose the petition for incorporation, they could petition to disconnect the territory without Draper opposition. (Exhibit 40P). Residents living in the disconnected area relied upon the representation and assisted the incorporators by voting for the incorporation of Draper. (R. 441, 512). By agreeing not to contest the disconnection, the City of Draper effectively determined the boundaries of the disconnected area. It would be incredible for this court to allow the City to lull the people into the belief that they could disconnect the territory and then subsequently find that the area could not be disconnected because it was an island. Further, even if the area were held to be an island, it would not be an island for very long. The evidence shows that the area would soon be annexed into the community of Bluffdale, pursuant to overwhelming wishes and desires of the residents of the disconnected area. (R. 346, 47, see also Exhibit 31P.).

In summary, the issue as to whether an island or a peninsula is only one factor to be considered in the larger issue as to whether the burdens of furnishing municipal costs and services would be unduly increased because of the disconnection. The evidence shows there is no island.

The evidence submitted at the trial substantially supports the trial court's findings that each of the requirements proposed by the Utah Disconnection Statute, together with the concepts of justice and equity, were met in the present case. If this court were to overrule the lower court's decision, it would have to do so against compelling evidence supporting the lower court's findings. It would also have the effect of allowing persons who desire to incorporate a city extend their boundaries well beyond the cultural sphere of the community, beyond natural boundaries, and beyond areas that, because of their agricultural makeup, require municipal services. If there was ever a case where justice and equity dictated that area ought to be disconnected from a municipality, this is the case.

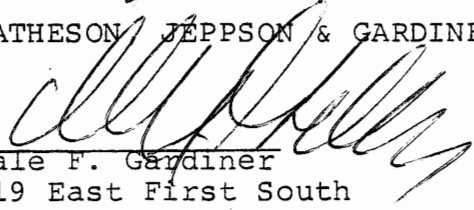
CONCLUSION

Appellant has not met its burden to show that the findings of the trial court were clearly erroneous. Moreover, the record shows that not only was the evidence supportive of the trial

court's findings, but also that it would be unjust and inequitable to deny the petition for disconnection. The trial court's decisions should be affirmed in all respects.

Respectfully submitted this 2nd day of March, 1981.

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CERTIFICATE OF DELIVERY

I hereby certify that on the 2nd day of March, 1981, I delivered two
(2) true and correct copies of the foregoing BRIEF OF APPELLEES to

Mr. Hollis S. Hunt
Attorney at Law
345 South State Street #200
Salt Lake City, UT 84111

A handwritten signature in dark ink, appearing to read "H. S. Hunt", is written over a horizontal line.