

1981

Sweetwater Properties et al v. Town of Alta, Utah : Petition for Rehearing

Utah Supreme Court

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FILED

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Clk, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

SWEETWATER PROPERTIES, SBC)	
INVESTMENT COMPANY and)	
BLACKJACK TRUST,)	<u>PETITION FOR REHEARING</u>
)	
Plaintiffs-Respondents,)	
)	Case No. 17064
vs.)	
)	
TOWN OF ALTA, UTAH, a)	
municipal corporation,)	
)	
Defendant-Appellant.)	

Plaintiffs and respondents respectfully petition the Court, pursuant to Rule 76(e), Utah Rules of Civil Procedure, to grant a rehearing of this matter, following the Court's Opinion, by Honorable Boyd Bunnell, District Judge, filed January 14, 1981, upon the grounds the Opinion is in error in each of the following particulars:

1. The opinion holds, under the provisions of the State's Municipal Code regarding annexation by municipalities, that municipalities may annex territory without a petition from, or against the wishes of, the owner of the territory, in direct contradiction of the applicable statute, which provides:

§ 10-2-416. Petition by landowners for annexation. . . . Except as provided for in Section 10-2-420, no annexation may be initiated except by a petition filed pursuant to the requirements set forth herein.

2. The Opinion holds that other municipalities within the County and County Service Areas generally, and Salt Lake County Service Area No. 3 and Salt Lake City in the context of the present case, are not "affected entities" entitled to notice of and an opportunity to comment on or protest a proposed annexation, in direct contradiction to:

(a) Uncontroverted Findings of Fact Nos. 20 and 26;

(b) § 10-1-104(8), Utah Code Ann. (1953) (Supp. 1979) which provides:

"Affected entities" means a county, municipality or other entity within a county, whose territory service delivery or revenue will be directly and significantly affected by a proposed boundary change involving a municipality or other entity.

(c) § 10-2-414, Utah Code Ann. (1953) (Supp. 1979) requiring notice to and solicitation of comments from "affected entities" prior to initiation of an annexation proceeding by a municipality.

Contrary to the purpose of the Municipal Code to require that municipal annexation proposals be fully and fairly disclosed in advance to counties, other municipalities, affected service entities, and affected landowners (§ 10-2-414, Utah Code Ann. (1953) (Supp. 1979)) and, where appropriate, subjected to review by local Boundary Commissions (§ 10-2-408, Utah Code Ann. (1953) (Supp. 1979)) the Opinion holds, on the basis of the foregoing rulings:

a. That an annexation Policy Declaration need only be a pro forma listing of some, but not necessarily all, of the topics contained in § 10-2-414; and

b. That affected landowners have no interest protected by the policy declaration process.

4. The Opinion holds, on the basis of the Court's previous rulings rendered under the State's old annexation law, that a minimal "substantial compliance" standard is applicable to municipal annexation proceedings, and that annexation is a matter subject wholly to municipal discretion. The State's new annexation law, under which this case arose, enacted by the Legislature in awareness of the Court's previous minimal standards, sets out elaborate, specific procedural and substantive requirements with which the Legislature intends specific compliance in order to subject annexation proceedings to the disclosure, protest and review by Boundary Commissions procedure detailed at length

in the statute, to protect the interests of counties, other municipalities, local service entities and landowners.

5. The Opinion holds that the question of vested rights of plaintiffs in previously granted county approvals and permits need not be reached, insofar as the Town of Alta may choose to recognize such approvals and permits, notwithstanding the Court simultaneously approves the Alta Policy Declaration, which provides:

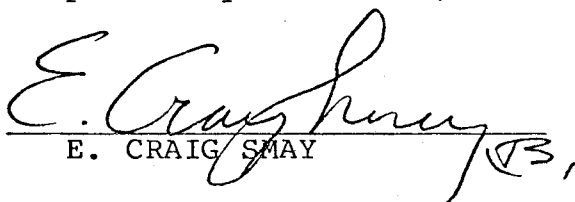
It is expressly acknowledged that no prior approval of any zoning, development, construction or improvement on the Sweetwater Property by any other government or public body or agency shall be binding upon the Town of Alta, nor shall acceptance of such approval be made a condition precedent to submittal (sic) of an annexation petition.

6. The Opinion, on the basis of the foregoing erroneous ruling regarding vested rights, declines to find an unconstitutional taking of property.

7. On the basis of the foregoing, the Opinion erroneously reverses the ruling of the District Court.

DATED this 2ND day of February, 1981.

Respectfully submitted,


E. CRAIG SMAY