1971

In the Matter of the Disconnection of Territory From Layton City, A Municipal Corporation of the State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME CO
OF THE STATE O

IN THE MATTER OF THE
DISCONNECTION OF
TERRITORY FROM
CITY, A MUNICIPAL
CORPORATION OF THE
OF UTAH

BRIEF O

Appeal from

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE DISCONNECTION OF TERRITORY FROM LAYTON CITY, A MUNICIPAL CORPORATION OF THE STATE OF UTAH

Case No. 12456

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action for disconnection of territory from Layton City under Title 10, Chapter 4, Utah Code Annotated 1953.

DISPOSITION IN THE LOWER COURT

The lower court ordered disconnection of the territory.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the decree granting disconnection and an order directing the entry of a decree denying disconnection.

STATEMENT OF FACTS

Reference in this brief to petitioner refers to Rober D. Sawyer, since he was the principal agent and manage for the partnership owner of the tract in question.

On July 19, 1961, petitioner appeared before th Layton City Planning Commission with a preliminar drawing of "Rolling Oaks" subdivision, a proposed sub division of land located east of the main part of Layto City (R. 53). Discussion ensued regarding lot sizes, f nancing, water easements, sewers, drainage, type o homes to be built, the property's location in the Hill Ai Force Base flight path with attendant requirement fo less dense housing, road grading, tie-in with existin roads, setback requirements, and dedication of walkways Mr. Sawyer was assured that the Layton City Plannin Commission shared his views about maintaining the zon ing for high quality housing in the area. He was told th commission did not oppose his request for approval o the proposed subdivision. He stated he wished to develo as fast as possible, although completion of developmen was programmed for five to eight years. An appointmen was set for a planning commission representative t meet Mr. Sawyer eight days later and assist him with a details, particularly with his roads in relation to the Lay ton City master road plan. Mr. Sawyer was apprised o requirements for the filing of a final preliminary plat.

Layton City then heard nothing at all from Mr. Saw yer for *seven years.*

In March 1968 petitioner filed this action in the district court to disconnect eighty acres from Layton City and transfer it into East Layton Town. Upon the hearing of the action, the district court entered an order disconnecting the eighty-acre tract in question.

Reference to other material facts is made in the points of the argument herein, and no useful purpose would be served by duplicate reference here.

ARGUMENT

POINT I.

THE STATUTE, BROAD IN ITS TERMS, MUST TAKE CONTENT FROM PAST DECISIONS OF THIS COURT AND FROM COURTS OF OTHER JURISDICTIONS.

Our tradition is that our government is one of laws and not of men. For the most part, our legislative enactments are in accord with this principle and give adequate standards for the measurement of conduct or performance. But the statute which is pertinent here is an exception. It says, in part:

> If the court finds . . . that *justice and equity* require that such territory or any part thereof should be disconnected from such city or town, it shall appoint three disinterested persons as commissioners . . . (Sec. 10-4-2, U.C.A. 1953, emphasis added)

What are "justice" and "equity"? These abstractions should always be applied in whatever business comes before the courts. Normally there is involved a

cause of action based on familiar legal principles, or a statute which supplies definite criteria. Both are lacking here. What is just and equitable to a district judge sitting in one court on a given day may be very different from the ideas of a different judge in a different court on the same day. Without ascertainable standards, we get the judgment of men and not control by laws.

If that statute, therefore, is not to be arbitrarily applied it must be given form and content by the past decisions of this court. Only by reading into it the standards established in past decisions, including those from other jurisdictions, can we reach some conclusions as to when territory should be severed from a city and when it should not be.

The earliest Utah decision is *Young v. Salt Lake City,* 24 U. 321, 67 P. 1066 (1902). Disconnection was allowed. It appeared that:

(1) The land was not platted

(2) The land was not situated so as to render it desirable that it be platted to be used for residential or business purposes

(3) It was situated five miles from the business section of the city

(4) The land was unfit for municipal or residential purposes

(5) The land had not and could not receive fire or police protection or other municipal benefits of any kind.

Next came *In re Fullmer,* 33 U. 43, 92 P. 768 (1907). Here, the land was agricultural, and received "no direct or appreciable benefit". The Town of Mapleton asserted unconstitutional delegation of legislative function, which was rejected on the authority of *Young,* and disconnection was allowed.

The next case is *Christensen v. Town of Clearfield,* 66 U. 455, 243 P. 376 (1926), in which the 681-acre tract in question was wholly agricultural land, located one to two miles from the four or five buildings making up the center of town. It was unplatted and so situated as to render it undesirable for platting. It received no fire protection, no benefit from police protection, and had its own water supply. The disconnection was affirmed on the authority of *Fullmer.*

The following year this court decided *In re Town of Smithfield,* 70 U. 564, 262 P. 105 (1927). The detached tracts were agricultural lands receiving no direct or appreciable benefit. Decision was affirmed on the authority of *Fullmer and Christensen.*

A significant decision is *In re Chief Consolidated Mining Co.,* 71 U. 430, 266 P.1044 (1928), which involved lands in Mammoth City, Juab County. The majority of the lands here detached by the lower court were not agricultural but were mining areas. This court reversed the district court as to the mining areas and affirmed as to the level areas with brush growth on them. The court found that Mammoth City had shown no population growth in eight years and pointed to the fact that there

was no evidence to indicate any increase in population. It observed that there was no reason to anticipate that the area allowed to remain detached "will be required for an extension of the residential portion of the city."

A tract of 52.5 acres was disconnected from the Town of Moab by the district court in *Application of Peterson,* 92 U. 212, 66 P.2d 1195 (1937). On appeal this court affirmed, holding that the evidence supported the findings and decree. The detached territory was used exclusivly for agricultural purposes, having been used for no other purpose than to raise hay and other farm products. The city's sewer system could not serve the land, and a private water supply was available to it. The town's business section was about a mile away. The town had made no substantial growth in population for many years, and "there is no prospect for any immediate increase in the future."

In *Howard v. Town of North Salt Lake,* 7 U.2d 278, 323 P.2d 261 (1958), this court dealt with the question whether a town which annexed an area seven times its original area could compel all of the new area to remain in the town solely for tax revenue. The disconnection was affirmed on appeal. The severed property was basically industrial and constituted 61% of the town's total valuation before the severance. The town was incapable of supplying water to the property owners, particularly to the oil refinery. The town had no fire fighting facilities and had no garbage pickup within the disconnected area. The district court found that the disconnected territory

did not receive and within the foreseeable future would not receive any substantial benefit from the town.

Kennecott Copper Corp. v. City of Bingham Canyon, 18 U.2d 60, 415 P.2d 209 (1966) is the most recent case on disconnection decided by this court. In this case the severed property mothered the city instead of vice versa. The severed property was 90% of the city, which had experienced a population drop from 3,200 people in 1930 to 74 people in 1966. The severance was affirmed.

Upon analysis, the foregoing cases fall into two categories:

(1) Those in which the disconnected land was agricultural and unplatted, and there was no prospect it would be needed for the growth of the town, and

(2) Those in which the property was commercial or industrial and the town was unable to serve it adequately.

The case at bar falls into neither category, but instead presents a novel question to this court. That question is:

Where a 160-acre tract of prime residential land lies one-half in one municipality and one-half in the adjoining municipality and the land has been platted and part of the plat recorded and the city from which 80 acres is proposed to be severed has a population of 13,621 and a growth rate of 57% since the prior ten-year census, and at such time as the need for services exists the city can supply all needed services and is willing to do so, and the town

into which it is proposed to be transferred cannot supply municipal services, should such 80-acre tract be disconnected?

It seems clear that the answer should be, No.

Courts in other jurisdictions have dealt with this same problem. In citing the cases that follow, counsel does not represent that they are decided under statutes like the Utah statute. In most cases, the statute is either different substantively or procedurally, but the general principles enunciated have application to the case before the court.

The Nebraska statute also employs the criteria of "justice and equity," and decisions from that state are helpful in construing our statute. In *Shelton Grain & Supply Co. v. Village of Shelton* (Neb. 1965) 134 N.W. 2d 815, the court was concerned with an 11.635 acre tract of land on the village's east boundary, with U.S. Highway 30 on the north and the Union Pacific Railroad right-of-way on the south. There were grain storage bins on the parcel; the only ingress to the tract was on two roads which entered through the county on the east end of the tract. The applicable Nebraska statute, Sec. 17-414, R.R.S. 1943, provided for review and trial de novo in the Supreme Court. The plaintiff contended that the tract was used exclusively for agricultural purposes and that it received few or no benefits from the village. No water or sewer from the village came to any part of the tract; there was no village street to the tract. The tract

owner argued that it received no snow removal, police, or fire protection, and it was geographically separated from the village by the highway and the railroad right-of-way. The village put in evidence that it received police protection and snow removal and had never requested water or sewer. The village offered fire protection to it also.

The court found that the village was the focal center of the farming area, and that plaintiff's business operations were benefitted by the centralization of the community interests. The court held that the operation of the grain storage bins was a commercial enterprise, and therefore the lands were not exclusively used for agricultural purposes. The growth of the village, though not great, was in the direction of the acreage. The court found that there was a sufficient community of interest between the tract and the village to sustain the lower court in retaining the tract within the corporate limits of the village.

In *Creery v. Town of Okoboji* (Iowa 1934) 253 N.W. 810, the defendant resort town had a permanent population of 178 but a summer population of from 1500 to 2500. The town was laid out and platted along a lake shore, about four and one-half miles long and between one-fourth and one mile wide. The business section of the town was in the south end; owners of about half of the territory in the north end sought to have it severed. Many of the largest and best homes were within that north end tract. In denying severance, the court said: "In most of the cases awarding a severance, it appears that the land sought to be excluded was used almost wholly

if not entirely for agricultural purposes; that the lands therein were not platted; that there were no residence properties therein; and that the territory sought to be severed was not needed for the future growth of the city or town." (citations omitted.)

Another pertinent case is *Brooks v. City of South Sioux Falls* (S.D. 1955) 73 N.W. 2d 339, in which the petitioners sought exclusion from the defendant city of an entire section of land except for a sixty-acre triangular tract. The land was agricultural and had not been laid out into blocks or lots; there were no streets or alleys in the area. The city had no municipal water or sewer system, although a water system had been planned. It had a volunteer fire department and a police department. Its street department had modern road machinery and equipment. The area in question had received the benefits of the foregoing services. Between 1945 and 1950, the city's increase was 137%. The trend of construction was in the direction of the excluded area. Residential development in the area had reached the point where a number of homes had been built along the street bordering the area on the east side. None of the recent construction had been on the tract in question.

Defendant city, South Sioux Falls, and the City of Sioux Falls are continguous municipalities with the latter being north of the former. Their streets appeared to be continuations of each other. Much of the area in the tract in question was level and usable for residential purposes.

The court held:

> The undisputed evidence in this record impels the conclusion that much of the excluded area east of the river is reasonably needed by the city for residential territory and will likely be used for that purpose in the near future. It seems to us that the exclusion of this part of the area does an injustice to the remaining portion of the city. That the eastern part of the excluded area, whether it is in or out of the city, will be occupied by residences in the near future seems inevitable. It would be an injustice to the inhabitants of the city and close proximity thereto to have such development take place with this area freed of municipal building regulations and other restrictions designed to promote the public welfare, safety and comfort. These views require a reversal of the judgment entered and make unnecessary the consderation of the other propositions urged by appellant.

Another pertinent decision is *Iowa Power and Light Co. v. Incorporated Town of Pleasant Hill* (Iowa 1962) 112 N.W. 2d 304. Here the municipalities of Pleasant Hill and Des Moines adjoined each other, and plaintiff sought to have its plant disconnected from the defendant and included within the boundaries of Des Moines. Plaintiff's reason for asking severance and annexation to Des Moines was so as to effect a more equitable distribution of its tax money among its customers, and plaintiff had carried on extensive negotiations with the city council of Des Moines to that end. Had it been able to get into Des Moines and out of Pleasant Hill, there was a good possibility that a franchise tax would be reduced or waived.

The court found that plaintiff had failed to show that defendant was incapable of providing the municipal services normally needed in the territory sought to be severed. The court said:

> The evidence shows the defendant is capable, rather than incapable, of extending into the territory to be severed substantial municipal services and benefits that the territory would not enjoy if severed. The statute does not authorize us to sever the territory for the purpose of being annexed by Des Moines or consider the services or benefits. . . .

The Iowa Supreme Court reversed the trial court and remanded the case with directions to dismiss plaintiff's petition, with the result that the territory remained in the defendant town.

Under a Pennsylvania statute a petition was filed for detachment of an area of some 350 acres of Indiana township and for its annexation to Shaler Township. *In re Alteration of Lines of Indiana and Shaler Townships* (Pa. 1953) 95 A.2d 506. The court appointed commissioners who held a hearing and filed a report recommending that the petition be granted and a new boundary line established as prayed for.

In its opinion the court said:

> Where, however, the avowed purpose to be accomplished is to detach from the one political subdivision a substantial portion of its territory and to annex it to the other, the reason for the change being based on some such consideration as relative school facilities, questions of taxation and assessed valuation of property, social conveniences, or

> the like, the proceeding becomes obviously one of annexation and the alteration in the boundary line merely incidental to the accomplishment of the larger object.

The court in concluding pointed out that the statute under which the petition was filed was one for changing boundaries between townships, but could not be used to effect a de-annexation from one township and an annexation by the other, and it affirmed the trial court in holding that the attempted severance and annexation were of no effect.

Again, the reasons for allowing disconnection of territory not only in Utah but elsewhere are that the land is agricultural and unplatted and does not receive and does not need municipal benefits, or the land is improved and developed and is not being or cannot be served by the city. None of these conditions exist here.

In its ruling from the bench, made a part of the findings of fact in this case, the district court relied heavily on the preference of the owner, stating that he should be allowed to develop in whichever municipality he chose. This ruling as a matter of law is erroneous. There is not a single precedent either in Utah law or any case from any other state known to the city's counsel or submitted to the court by petitioner's counsel which supports hat decision.

POINT II.

THE LAND IN QUESTION IS NOT SUBJECT TO DISCONNECTION UNDER ANY OF THE TESTS PREVIOUSLY USED BY THIS COURT.

As is pointed out above, the decisions of this court have affirmed disconnection only where land is either built up, improved and needing services and the city is unable to supply them; or is agricultural, receiving no benefits but burdened by taxes, unplatted, and not likely to be needing municipal services in the future. The land in question will not qualify under a single one of these criteria.

It is not agricultural land. Petitioner's counsel said in his opening statement, "It is just farm land" (T. 10:17), and petitioner testified it had only been used to raise "a little wheat and oats and things like that" before he started building homes on it (T.36:3). He also said, when skillfully led by counsel, that the eighty acres in question was "still agricultural land" (T.36:13). One cannot help asking, Is he serious? Those statements, some thirty or so words, are not very convincing when matched against the entire remainder of the record of 209 pages and some tens of thousands of words, the net upshot of which is that the land in question is prime residential (or commercial [T.20:15]) development land, already platted and ready to be built on.

Some examples will illustrate this. The petition itself asks severance so that the land can be developed

(R-2), not farmed or let go to weeds. Petitioner had his engineer plan an outfall sewer line to serve the residences which will be built on the subject land (T. 27:16; T.93:1-7), and that line is in the ground. The underground electrical power and telephone lines are all installed (T.27:5). Petitioner testified he is a developer (T.17:16-30), and he purchased the property for residential or commercial development (T.20:9-18). There are 480 lots planned to go into the subdivision, *not counting the townhouse area* (Exhibit F). All of the land has been platted since 1966 or 1967 (T.55:27), and a plat of 11 lots has been recorded (T.18:17). The area was a most attractive one for building at the time he acquired it (T.18:27) and had been so at least since 1960 (T.18:24); R-53 [attached minutes]). He said the principal purpose of the land was residential (T.35:29 to T.36:1), and that "it is a natural area here, it is a very beautiful area and can be developed into a very nice residential area" (T. 44:17). His investment in the land is something over $400,000 (T.45:24), and he's in it to sell units at a profit and then get out (T.51:12 to T.52:11). That doesn't sound much like agricultural land.

Nor is this land unplatted. Something has already been mentioned about this above, but a better idea of just how platted it is can be gathered from an examination of Exhibit F. Additionally, there is the petitioner's testimony at T.18:9-20, T.27:3, and T.25:25. Although no plat of the tract within Layton City has been recorded, the whole 160 acres has been divided into 480 lots and a townhouse area. Topographical maps have been made,

the streets have been laid out with their elevations, the major utilities except water are in, and the engineering has been done for construction of roads, and installation of the other off-site improvements. Everything necessary to subdivide the land and develop it has been done except for recording the final plats, in small sections, as the work progresses (T.24:10, 27). This land will not qualify as unplatted land.

Does the land fail to receive benefits commensurate with the taxes? Petitioner fluffed off the amount of the taxes by saying he was sure they were under $500 (T. 36:30). And he admitted on cross-examination that the land in question really had no need for any benefits up to now (T.60:13).

The fallacy in plaintiff's entire position in the district court becomes evident at this point. He states he ought to be allowed to take his ground out of Layton City because it's agricultural land and not receiving any benefits. In the next breath he says he's got to get the land disconnected because it's prime residential land, and he's got to have benefits immediately. He says further that he wants to develop it in only one municipality, and he wants to get on with it and he's being delayed. He admits that the ground has heretofore had no need for subdivision services. Even so, he says, he's now ready to develop in a big way and wants to move with dispatch, and Layton City has not been very quick to jump in and help him. Moreover, he claims, Layton City cannot help him. Let's see how much opportunity he gave Layton City to help him and whether or not the city is in a position to do so,

POINT III.

THE PETITIONER NEVER REQUESTED ASSISTANCE NOR COOPERATION FROM LAYTON CITY, AND PLANNED FROM THE OUTSET TO PROCEED WITHOUT CONSULTING THE CITY.

In 1961, when his father-in-law owned the ground, petitioner may have had an open mind about whether and how Layton City might help get water and sewer to the ground. But after he and his associates acquired the land in 1965, he made no genuine approach to Layton City about supplying services to it. What he ostensibly did in this regard was window-dressing.

Regarding his first contact with the city in 1961, he testified that he met with Layton City officials and told them what he had in mind for the ground. They in turn showed him the maps of roads and utility services in the area and told him what the city's plans were for future development (T.18:24 to T.19:8). This comports with the minutes of the Layton City Planning Commission meeting of July 19, 1961 (R. 53). There is really no dispute to that point.

But petitioner says he went back in 1968 and talked with the city engineer, who was acting for the city, and that official turned a deaf ear to him (T.30:4-30; T.33:17 to T.35:10). Yet on cross-examination, he admitted he had never had his engineer take his plans and drawings to Layton City, had never submitted anything in writing to Layton City, and had never asked Layton City to supply

any services to his ground (T.58, 59; T. 103:17; T.106: 10). He and his engineer knew that part of his land was in Layton City (T.66:8; T.103:14), and that the sewer system was designed to handle not only the tract in question but a lot of additional ground which is part of Layton City (T.63:24; T.93:3; T.103:21; T.104:1).

But even more significant are these facts:

1. Petitioner filed his petition for disconnection on March 25, 1968, but his plat for annexation to East Layton Town was prepared *at least a month earlier, in February 1968* (Exhibit B).

2. Petitioner made his decision to try to disconnect the eighty acres in question immediately after he hired his engineer to design some alternative sewer systems, *at the very latest in the latter part of 1965.* His engineer gave a very candid answer on this point, notwithstanding counsel's artful objection to stall for time (T.104:4-26):

> Q. So that is when he mentioned this disconnection of part of this territory, before he even started talking to you about sewer.
>
> MR. GIAQUE: I object to that.
>
> THE COURT: He may ask.
>
> A. He mentioned that at one time and I can't answer whether it was at the beginning or later on. I think it was probably a little later.
>
> Q. I see. Do you know about how much later it would have been?

A. Probably about the time we told him how much the costs would be when we finished the study.

Q. Two or three months after he first consulted you?

A. Probably yes, around two or three months.

Q. So this would be sometime in the late part of 1965?

A. Yes.

Q. And, at that time he was considering disconnection of this parcel from the city?

A. I don't know whether he was definitely or not.

Q. Well, he mentioned it to you at that time?

A. He said this was a possibility, as I remember it.

3. Petitioner's engineer never recommended to him that he see Layton City about cooperation on the development (T.106:10), and the development plan which that engineer submitted to his municipal client, East Layton Town, showed one alternative for the town's outfall sewer line as running through petitioner's land, with no involvement from Layton City (Exhibit H). *This was in 1965.* And that's the plan which was adopted by East Layton Town.

4. The engineering specifications and drawings were proceeded with and the contract was let in 1966 and 1967 (T.32:29).

So, any claim of a good faith contact with the Layton City Engineer for help on this project is certainly not truthful. Petitioner's testimony in this respect is just not believable. He brought no maps or plats with him to the meeting. His brief contact with the Layton City Engineer was so superficial that the engineer thought he was a real estate man (T.180:19 to T.181:13). The only purpose petitioner could have had for that 1968 contact was to set up Layton City for a claim of disinterest so as to facilitate disconnection. It is a contrived claim.

In this same category is petitioner's claim of the insuperable difficulties attendant on developing the same project in two municipalities. He went on at length about this, and so did his engineer. All of it is speculation and opinion; none of it is based on experience or fact. There is not one solid piece of competent evidence in the record that supports this hobgoblin, and there is a great deal of evidence to the contrary.

For example: Petitioner's statements of development problems in two municipalities (T.22:7; T.40:18 to T. 42:16) is contradicted by his statement that he'd never had the problem (T.42:17), that he assumed Layton City would charge higher sewer connection fees but no one had told him that was so (T.57:9), and that cooperative agreements between municipalities would remove his objections (T.61:18 to T.62:3). He admitted he had no evidence that the building standards for the two municipalities were different (T.59:6-13). Again, his engineer's testimony that sewer lift stations don't work well and are expensive (T.86:21 to T.88:5) is offset by his testimony

that two of the three systems he designed for petitioner were lift station systems T.85:15), and he has designed them for other clients and they work well (T.108:16). His testimony that engineers can't coordinate their work, and that standards are different (T.95:27 to T.98:1) is contradicted by his admission that the loop water system he had described earlier would be stronger if Layton City water came in from the north (T.108:26 to T.109:7), and that roads can be adjusted so as to alleviate boundary problems (T.110:18).

Layton City witnesses identified, and there were admitted into evidence, Exhibit 3 which is a fire protection agreement between Layton City and East Layton Town and is similar to one between these municipalities covering the prior four years (T.144:17), Exhibit 2 which is a copy of minutes of the meeting in which a road maintenance agreement between the two municipalities was approved, and Exhibit 4 which is a resolution authorizing expenditure of Layton City funds for services to the tract in question.

The East Layton Town president testified that the fire agreement worked satisfactorily (T.174:1 and see T.40:14), that the Fairfield Street maintenance agreement had a problem about paving but that Layton City hadn't been notified of it yet, and that one purpose of the proposed interconnection of the two municipal water systems was to alleviate the expense burden on East Layton Town for water which it could not use (T.174:25). He knew of no reason why the sewer and water systems couldn't be interconnected unless it was the expense fac-

tor for Layton City residents, for the out-of-town charge. He testified of no other problem in developing petitioner's land in two municipalities, and no one is in a better position to know than he is.

The Layton City Engineer, Byron McGregor, testified that many municipalities operate under cooperative agreements to handle developed property on their common boundaries (T.188:13), and that the cost of putting the facilities in the ground on the tract in question is the same no matter whose water is in the pipe (T.197:18). He further testified that an out-of-town charge for Layton City residents is no probelm, since the City can afford to absorb the charge if it doesn't have to invest in a sewer line.

Upon analysis then, it is clear that petitioner never intended or tried to develop his ground through Layton City, but assumed that he would disconnect it. His claim that Layton City was not interested in his ground and that it is impossible to develop in two municipalities simply won't wash.

POINT IV.

LAYTON CITY IS BOTH WILLING AND CAPABLE OF PROVIDING NEEDED MUNICIPAL SERVICES TO THE EIGHTY-ACRE TRACT.

Layton City, with a population of 13,621, is the second largest city in Davis County. It has a growth rate of 57% since the 1960 census. (T.171:7). The tract in question is located about three miles from the business

area of Layton City (T.29:16-19) and about one and one-half miles from the nearest large residential subdivision in Layton (T.29:30). Layton City has two separate water systems, one located east of the tract in question, at a higher elevation, and one to the north and west of the tract. The first system has a million-gallon storage reservoir which serves the higher elevations of the city (T.182, 183), and an additional million-gallon capacity is being built into that system. There is an eight-inch water line running east from the intersection of Church Street and Syracuse Road (marked in red on Exhibit E) which can serve the tract in question, and is only 400 ft. from it. (T.184:3-10). The line has plenty of pressure, pumping would be unnecessary (T.184:14). Additionally, the city has Hill Field water reservoir which stores a million gallons, two wells which deliver 3,400 gallons per minute, and a storage reservoir on East Gentile Street with a million and a half gallon storage capacity. It has a fourth storage reservoir of three-quarters of a million gallons capacity on the Mountain Road, and a fifth storage tank of one quarter million gallons on the mountain slope east of the tract in question (T.185).

So, the city has water storage of five and one-half million gallons located on three sides of the property, and an eight-inch water line within 400 ft. of the property. That line, incidnetally, has never been out of service (T.183:14), although petitioner recalled that it had (T.33:26). East Layton Town, on the other hand, has a ten-inch water line whose closest point to the land in question is about 900-1,000 ft. (Exhibit E by scale). It is

clear, then, that Layton City is closer to the property with water and is fully able to serve it. It is also willing to serve it (Exhibit 4). The reason it has not moved to do so is simply that it has never been asked (T.185:13-20; T. 191:29 to T.192:1-17).

The same is true of the sewer (T.193:24). Layton City has never been requested to cooperate with petitioner in bringing the sewer to the tract. The nearest Layton City sewer is about 900 ft. from the tract (Exhibit E, scale). This line would be ***necessary*** for a gravity sewer line to serve the northwest portion of the tract in question, since it is on the other side of a ridge (T.194:19) and could not be served by the petitioner-East Layton Town outfall line to the south without the use of a lift station (T.67:29 to T.68:23). If disconnection is denied, it is quite likely that a cooperative use agreement will be entered into between Layton City and East Layton Town for us of the outfall line to serve the residences in Layton City (T.188:13; T.200:13). These municipalities have cooperated on other projects to their mutual advantage. But even if such did not come to pass, a sewage lift station would serve the tract in question on the south slope (T.187:8-23).

If the tract were built up and improved by petitioner, all municipal services and facilities would be available from Layton City to the residents of the tract, including water, sewer, police protection, fire protection, library, ambulance service, garbage pickup, street lighting, street maintenance, storm sewer drainage, parks, recreational facilities including swimming pool, tennis courts, and baseball and football leagues (T.148, 149). Layton City

has, in its long-range planning, expended money in preparation for the facilities which would be installed in and used to serve the tract in question (T.186:12-27; T.188: 2-12). This tract is necessary to the future growth and development of Layton City (T.171:23).

By contrast, East Layton Town into which the tract proposed to be severed would go, has 743 people (T.177: 24). Its business district is a cafe and service station on Highway 89 (T.177:25; T.133:27) located about one and one-half to two miles from the tract in question (T.134:3). The town has no fire department; its fire protection comes from Layton City under contract. It has no police department; any police protection it gets is through Davis County, headquartered at Farmington. It contracts its garbage pickup through a private contractor. Davis County does its street repair under contract. It has no parks, no recreation facilities. It has no library (T.53, 54; T.124 to T.126).

Most interesting is the eagerness of the East Layton Town officers to get this ground out of Layton City and into their unprepared but lately ambitious town. And why not? The total increase would add over 2,000 souls (three times what they now have), of which half would be on the tract in question in this suit. A fine prize! The town's officers denied they were banking on the ground's being brought in so as to make their town solvent, but their testimony is suspect in light of their statements about tax base. First, Mr. Mohler (T.122:20):

> A. Well, of course, it is growth for us and the fact that the south portion was developed, the

sewer and water lines were put in with the intent to develop the entire area. Of course, it is the tax base ground and the growth which is the desirable thing to us.

and again at T.123:8:

Q. And, East Layton Town wants this development within its city?

A. Absolutely, yes. We put a lot of effort in with Mr. Sawyer since 1965, of course. We certainly do want it.

Then Mr. Follett (T.179:5-13):

A. I assume he will apply for annexation and I won't be a bit surprised if he were annexed. I couldn't say for sure because each member of the board has his own vote.

Q. You would want that though, wouldn't you?

A. Yes, I would.

Q. It wouldn't be economically feasible for East Layton Town to supply water and sewer to this other parcel unless it had the revenue from that other parcel, isn't that correct?

A. Yes, that is correct.

Layton City, though one and one-half years younger than East Layton Town, did not grow to eighteen times the size of the town by being indifferent to developers and subdividers, and ignoring their needs. It has established procedures for working with them, and those procedures have served well both the developers and the city (T.157:24; T.160:5; T.169:23 to T-170:15; T.189:21; T.190:1; T.199:17-28; and T.191:9). But it is difficult for a city

to help a developer if he ignores the city. In this connection, there was much smoke from petitioner's counsel in the cross-examination of the city's witnesses, calculated to create the impression that petitioner had contacted Layton City numerous times. Not so. Those questions and answers relate to compromise conferences, held *after the petition was filed,* after petitioner had made his plans and completely bypassed the city. Petitioner himself admitted this, and it was confirmed by his engineer and by all the Layton City witnesses. As is more fully developed in Point III above, petitioner brought no plans to the city, filed nothing with the city, and spent only ten or fifteen minutes with its engineer. Layton City didn't ignore him; he ignored Layton City.

Which brings us to an overall perspective of the entire situation.

SUMMARY

Petitioner owns a 160-acre tract of choice residential development land, divided in half by the common boundary line between Layton City and East Layton Town. Layton City, with a population of 13,621, a building and engineering department experienced in working with developers, a complete water system with adequate pressure, a sewer system recently expanded in the direction of the tract, and a full range of municipal services and facilities, is capable and willing to serve the tract which lies within its boundaries. But East Layton Town wants the Layton City part of the tract transferred into East Layton Town because it has spent money to take water and sewer

to its side of the tract, and the financial commitment on the bonds is considerable. The town's officers made the decision to install the water and sewer lines to serve the petitioner's land one year after its citizens had turned down a bond issue in an election, and they made that decision on the recommendation of their newly hired consulting engineer, who by coincidence turned out to be the engineer for the developer, too. Getting the eighty acres from Layton City, with its 240 plus residential units and its thousand or so people would do a lot for the town's tax base.

But if the tract were taken from Layton City and put into East Layton Town, where would the residents get fire proection? From Layton City. And police protection? From Davis County. And street repair? From Davis County. And all the other municipal services? From somewhere other than East Layton Town. Those people will play golf in the Layton City park. Their children will swim in the Layton City pool. Their young people will play tennis on the Layton City courts. They all will find interesting books in the Layton City library. The parents will travel to and from stores on roads built and maintained by Layton City. The young people will attend schools with those from the other Layton City subdivisions, such as Aspen East with its 150 homes. Most by far of the commercial, recreational, educational and social ties of these people will be with Layton City, its people, its stores and institutions. Those people who will live on the land in question belong in Layton City.

CONCLUSION

The findings and decree of the trial court are not supported by the evidence. The evidence, and fair inferences therefrom, preponderate the other way. Additionally, the court applied an erroneous concept of the law to the facts which may be fairly found. The tract should remain in and be served by Layton City. The decree of the district court should be reversed.

Respectfully submitted,

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