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Moab Citizens Alliance and its members, John Weisheit, Bret Blosser, and Mark Sundeen, Plaintiffs/Appellants, v. Grand County, the Grand County Council, and Intervenor State of Utah, School and Institutional Trust Lands Administration, Defendants/Appellees : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MOAB CITIZENS ALLIANCE and its
members, JOHN WEISHEIT, BRET
BLOSSER, and MARK SUNDEEN

Plaintiffs/Appellants,

v.

GRAND COUNTY, the GRAND
COUNTY COUNCIL, and INTERVENOR
STATE OF UTAH, SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION,

Defendants/Appellees.

BRIEF OF APPELLANTS
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DOCKET NO. 20040175-CA

Appellate Court Case No. 20040175-CA

Appeal from Judgment Entered by the Seventh Judicial District Court, Grand County,
the Honorable Lyle R. Anderson

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“The owners of real property under Subsection 3(a) shall be determined according to the last assessment roll for county taxes completed prior to the filing of the petition.”

STATEMENT OF THE CASE

Nature of the Case

This case concerns Defendants Grand County (the “County”), Grand County Council (the “Council”), and Intervenor, State of Utah School and Institutional Trust Lands Administration’s (“SITLA”) (collectively referred to as “Defendants”) annexation of certain of SITLA’s real property (the “Property” or “SITLA’s Property”) into the Spanish Valley Water and Sewer District (“Water District”). (R. 3-8.) On April 20, 2001, SITLA filed a petition for annexation into the Water District. (R. 5, 14-15.) SITLA sought mandatory annexation under Utah Code Ann. § 17A-2-332 (1999). (R. 5, 14.)

At that time, Utah Code Ann. § 17A-2-333 (1999) set forth certain procedures for providing notice to the public of its intent to annex pursuant to section 17A-2-332. (R. 4-5.) However, Section 17A-2-333(3)(a) contained an exception for such notice provisions if the petition was signed by “all the owners of real property within the area proposed to be annexed.” Utah Code Ann. § 17A-2-333(3)(a) (1999), attached hereto as Addendum C. For the purposes of this statute, owners of real property are determined by the last completed assessment roll for county taxes. Utah Code Ann. § 17A-2-333(3)(b) (1999). (Addendum C.) SITLA’s petition did not meet these requirements, because SITLA is not a taxpayer, and, accordingly, was not listed on the last assessment roll for County taxes.

(R. 172-174.) For that reason it failed to qualify for use of the annexation procedure selected by Defendants.

Prior to the annexation, Plaintiffs¹, by way of letters (attached as Addendum E, informed Defendants that the annexation would violate the law because SITLA does not pay taxes, does not appear on the assessment roll for county taxes, and therefore is not an “owner of real property” under the applicable statute such that it is entitled to seek mandatory annexation. (R. 171, 232-240.). Defendants disregarded Plaintiffs’ protests and attempted to annex the property into the Water District on February 4, 2002. (R. 68-69.)

The annexation was not immediate and was expressly made contingent on the occurrence of a condition subsequent— that being a future water right approval by the Utah State Engineer— at which time the property would be annexed into the Water District without further Council action. (*Id.*) On February 14, 2003, the Utah State Engineer approved certain change applications submitted by the Improvement District and the Grand County Water Conservancy District. (R. 71-78, 248-255.) The State Engineer’s approval was subject to a 30-day court appeal period, after which the approval became final. (*Id.*) Plaintiffs timely filed this action on April 14, 2003, within thirty days

¹ Moab Citizens Alliance (“MCA”) is an association made up of citizens, real property owners, and taxpayers of the City of Moab and Grand County, who reside within the boundaries of the Water District. The members of MCA, including Plaintiffs John Weisheit, Bret Blosser, and Mark Sundeen (all of whom also own property within the boundaries of the Water District), encourage citizen participation in local government and work to ensure that local government comply with their procedural and substantive mandates. (R. 4.)

of the date the annexation became final, alleging the Defendants processed and approved the annexation in violation of the law. (R. 11, 171, 178.)

On July 7, 2003, Plaintiffs filed a Motion for Judgment on the Pleadings, or in the Alternative, for Summary Judgment. (R. 163-263.) On September 10, 2003, Intervenor SITLA filed a cross motion for summary judgment and on September 17, 2003, the County and Council joined in the cross motion. (R. 281-283, 284-294, 295-296.) On December 17, 2003, the Trial Court heard oral argument pertaining to Plaintiffs' and Defendants' motions for summary judgment. (R. 361-364.) On December 22, 2003 the Trial Court issued in "Ruling on Cross Motions for Summary Judgment" wherein it denied Plaintiffs' motion for summary judgment and granted Defendants' cross motion for summary judgment. (R. 351-360.) On January 21, 2004, the Trial Court entered the Judgment and Order of Dismissal from which Plaintiffs now appeal. (R. 361-364.)

This case requires this Court to determine whether the Trial Court correctly denied Plaintiffs' motion for summary judgment and entered summary judgment in favor of Defendants. Specifically, this case requires this Court to determine: (1) when the 30-day period within which to file an appeal with the District Court referenced in Utah Code Ann. § 17A-2-304(4)(b) (1999) begins to run where the finality of an annexation effort contemplates the occurrence of a future condition subsequent that is contingent upon a decision of an independent third-party; (2) whether, under Utah Code Ann. § 17A-2-304(4)(a), Plaintiffs filed viable written protests; (3) if SITLA is an owner of real property for the purposes of a mandatory annexation as contemplated by Utah Code Ann. § 17A-2-333(3)(b); (4) whether or not the Council possessed the requisite authority to

adopt a conditional annexation under the statutory scheme presented by Utah Code Ann. § 17A-2-333(2)(a), (3)(a)(ii)(A); and (5) if Plaintiffs are entitled to their costs and attorneys fees. Based upon the resolution of these issues, this Court is called upon to determine whether Plaintiffs were entitled to summary judgment.

Course of Proceeding and Disposition Below

On or about April 14, 2003, Plaintiffs filed this action against the County and Council seeking a declaration that their actions in attempting to annex SITLA's Property into the Water District were illegal and to declare that the annexation was null and void ad initio. (R. 3-12.) On or about May 27, 2003, SITLA filed a Motion for Leave to Intervene which the Trial Court granted on August 21, 2003. (R. 97-99, 100-106, 279-280.)

On or about July 7, 2003, Plaintiffs filed a Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment. (R.163-165.) On or about September 10, 2003, SITLA filed its Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, and in Support of State's Cross Motion for Summary Judgment. (R. 284-294.) On our about September 17, 2003, the County and Council filed their Response to Plaintiffs' and SITLA's motions wherein it adopted and joined in SITLA's cross motion for summary judgment. (R. 295-296.) On our about September 29, 2003 Plaintiffs filed their memorandum in opposition to Defendants' cross motion for summary judgment and reply memorandum in support of their motion for judgment on the pleadings or, in the alternative, summary judgment. (R. 297-344.) Defendants did not file a reply in support of their cross motion for summary judgment. (R. 345-347.)

On December 17, 2003, the Trial Court heard oral argument on Plaintiffs and Defendants respective motions for summary judgment. (R. 361-364.) On December 22, 2003, the Trial Court entered a minute entry granting Defendants' cross motion for summary judgment. (R. 351-360.) This entry was reflected in the Trial Court's Judgment and Order of Dismissal, dated January 21, 2004. (R. 361-364.) Plaintiffs timely filed their Notice of Appeal on February 18, 2004. (365-367.)

STATEMENT OF FACTS

1. In their Motion for Summary Judgment and supporting memorandum ("Motion"), Plaintiffs argued that they were entitled to summary judgment because the undisputed facts demonstrated that: (1) SITLA's annexation petition was improperly processed and approved because SITLA was not an "owner of real property" as defined by the statute; and (2) the petition was illegally processed and approved because it was not signed by the board of trustees as required by Utah Code Ann. § 17A-2-332 (1999). (*Id.*) Plaintiffs also argued they were entitled to attorneys' fees and costs pursuant to the private attorney general doctrine. (*Id.*)

2. In their Motion, Plaintiffs presented the following undisputed facts to the Trial Court:

- a. Plaintiff Moab Citizens Alliance ("MCA") is an association made up of citizens, real property owners, and taxpayers of the City of Moab and Grand County, who reside within the boundaries of the Spanish Valley Water and Sewer Improvement District. The members of the MCA, including Plaintiffs John Weisheit, Bret Blosser, and Mark Sundeen (all of whom also own

- property within the boundaries of the Water District), encourage citizen participation in local government, and work to ensure that local governments comply with their procedural and substantive mandates;
- b. Defendant Grand County is a political subdivision of the State of Utah and Defendant Grand County Council is a legislative body of Grand County. Defendants are required to comply with the applicable provisions of the Utah Code in annexing property into the Water District;
- c. This action concerns the legality of Defendants' annexation of certain property into the Water District;
- d. On April 20, 2001, the Utah School and Institutional Trust Lands Administration ("SITLA") delivered a letter to the Grand County Council requesting that certain of its real property (the "Property") be annexed into the Water District with an attached description of the real property proposed for annexation ("Petition for Annexation");
- e. SITLA submitted its request to annex under the authority of Utah Code Ann. § 17A-2-332 (1999);
- f. At that time, Utah Code Ann. § 17A-2-332 provided, in relevant part:
- Any county legislative body, upon its own motion, may by resolution declare that the public health, convenience, and necessity requires the annexation of an area into an improvement district. Upon presentation to any county legislative body of a petition setting forth the area and boundaries thereof proposed to be annexed to an improvement district, signed by 25% or more of the owners of real property included within such proposed area, . . . then, signed by the board of trustees of such district, it shall be the duty of such county legislative body to adopt a resolution as aforesaid. (emphasis added);

g. The Petition for Annexation was not signed by the Board of Trustees of the Water District;

h. At the time of submittal, Utah Code Ann. § 17A-2-333 (1999) set forth mandatory procedures for providing notice to the public of its intent to annex pursuant to Section 17A-2-332. Section 17A-2-333 contained an exception to such notice provisions for petitions signed by “all the owners of real property within the area proposed to be annexed.” Utah Code Ann. § 17A-2-333(3)(a) (1999). It provided, in relevant part:

If all the owners of real property within the area proposed to be annexed have signed a petition filed under Section 17A-2-332:

- (i) the notice requirement . . . and the requirement [relating to publication, taxpayer’s protests, evidence of ownership, and public hearing] do not apply; and
- (ii) the county legislative body shall:
 - (A) by resolution, immediately declare the area to be annexed to the improvement district; and
 - (B) deliver a certified copy of the resolution to the board of trustees of the improvement district;

i. For the purposes of application of this provision, Utah Code Ann. § 17A-2-333(3)(b) (1999) specifically instructed that “owners of real property . . . shall be determined according to the last assessment roll for county taxes completed prior to the filing of the petition;”

j. SITLA is a state agency, which does not pay taxes and was not on the last assessment roll for Grand County taxes completed prior to April 2001. SITLA was therefore not an “owner of real property” for the purposes of the application of Utah Code Ann. §§ 17A-2-332 and 17A-2-333 (1999);

- k. Plaintiffs, by and through their legal counsel, protested SITLA's request to annex into the Improvement District by letters dated September 26, October 15, and November 5, 2001, and by verbally protesting the annexation in meetings before the Grand County Council (Addendum E.);
- l. On November 5, 2001, pursuant to Utah Code Ann. §§ 17A-2-332 and 17A-2-322, the Grand County Council passed Resolution No. 2555, which conditionally annexed the Property at issue into the Improvement District "subject to the receipt of a State Engineer's report showing adequate water is available to serve the area;"
- m. On February 4, 2002, pursuant to Utah Code Ann. §§ 17A-2-332 and 17A-2-322, the Grand County Council passed Resolution No. 2567, an amendment to Resolution No. 2555, which conditionally granted SITLA's request to annex "subject to the State Engineer's completion of water rights transfer," at which time the Property at issue would be "annexed into the Improvement district without further Council action;"
- n. On February 14, 2003, the Utah State Engineer approved certain change applications submitted by the Improvement District and the Grand County Water Conservancy District. The State Engineer's approval was subject to a 30-day court appeal period, after which the approval became final;
- o. Plaintiffs timely filed this action on April 14, 2003, within thirty days of the date the annexation became final, alleging the Defendants processed and approved the annexation in violation of the law;

p. This Court has jurisdiction to review the actions complained of herein pursuant to Utah Code Ann. §§ 17A-2-333, 17A-2-304 and 78-3-4 (1999).

(R. 168-171.)

3. In its memorandum in opposition to Plaintiffs' Motion and cross motion for summary judgment ("Cross Motion"), Defendants did not dispute the material facts as Plaintiffs set forth in their Motion but contested Plaintiffs' alleged arguments of law in Plaintiffs' statement of facts. (R. 286-287.) In the Cross Motion, Defendants argued they were entitled to summary judgment because Plaintiffs' claims were barred by the 30-day statute of limitations set by Utah Code Ann. § 17A-2-304(4)(b) (1999). (R. 287-289.)

4. On September 29, 2003, Plaintiffs submitted their memorandum opposing Defendants' Cross Motion and their reply brief, arguing they were entitled to summary judgment, in relevant part, because: (1) the constitutional standards of judicial review dictated the conclusion that the 30-day filing period could not begin to run until the annexation was final and the cause of action had accrued; (2) SITLA was not an "owner of real property"; and (3) the County did not have the authority to conditionally annex SITLA's Property. (R. 297-309.)

5. In its December 22, 2003 ruling, the Trial Court held, in relevant part, that: (1) "[a]lthough Moab Citizens Alliance did protest the annexation before it was approved, none of the individual plaintiffs filed a written protest" and the individual Plaintiffs' membership in MCA did not suffice because there was no evidence that any of the individual Plaintiffs authorized MCA to speak for them in a representative capacity; (2) Plaintiffs were required to file the present action 30 days after the resolution was

adopted by the Council and failed to do so; (3) it was proper for the Council to consult a secondary source other than the assessment rolls in determining whether SITLA was an owner of the Property, because the assessment rolls did not disclose SITLA as an owner of real property; therefore Defendants' were real property owners; and (4) the Council had the authority to adopt a conditional annexation. (R. 351-360.)

6. On January 21, 2004, the Trial Court entered the "Judgment and Order of Dismissal," denying Plaintiffs' Motion and granting Defendants' Cross Motion, dismissed the action with prejudice and found that each party was to bear its own attorneys' fees. (R. 361-364.)

7. On February 18, 2004, Plaintiffs timely filed their Notice of Appeal contesting the Trial Court's denial of Plaintiffs' Motion and grant of Defendants' Cross Motion. (R. 365-384.)

SUMMARY OF THE ARGUMENT

The Trial Court erred in denying Plaintiffs' Motion for four reasons. First, the Trial Court incorrectly held that the 30-day period referenced in Utah Code Ann. § 17A-2-304(4)(b) began to run after the date the resolution was adopted. (R. 353.). Under the standards of judicial review, the date the resolution was adopted, February 4, 2002, was not the final action required for the annexation to be complete, thereby creating a justiciable controversy. It was not until the State Engineer issued its ruling on February 14, 2003 that there was a justiciable controversy for the Trial Court to resolve. If Plaintiffs had filed its action prior to the State Engineer's approval, the Trial Court would have been working with hypothetical facts, as opposed to an accrued state of facts. In

fact, if the State Engineer had rejected the application there would, *ipso facto*, have been no annexation to challenge.

The Trial Court's ruling therefore runs contrary to the plain language of the statute. Utah Code Ann. section 17A-2-304 clearly states, "after an improvement district is established" a property owner may petition the court for review. Utah Code Ann. § 17A-2-304(4)(b) (1999), attached hereto as Addendum A. Obviously, the claim is not ripe until such time as all conditions to the annexation were satisfied. The Trial Court incorrectly denied Plaintiffs' Motion and granted Defendants' Cross Motion. This Court should reverse and remand the Trial Court's ruling with instructions to grant Plaintiffs' Motion.

Second, the Trial Court erred in finding that Plaintiffs did not file written protests as required by Utah Code Ann. § 17A-2-304(4)(a) and that Plaintiffs' membership in MCA did not suffice since there was no evidence that the individual Plaintiffs authorized MCA to speak for them in a representative capacity. (R. 353.) The Trial Court raised this issue *sua sponte* at the hearing and failed to give either side the opportunity to address the Trial Court's concerns through further briefing. (R.396, 459.) Rather, the Trial Court based its ruling on SITLA's allegations at the hearing that the letters it received were not a "specified form of protest" and failed to consider the undisputed allegations in the Complaint regarding the status of the Plaintiffs, the respective answers of Defendants, and the letters submitted by Plaintiffs' legal counsel on their behalf. (R. 353, 432.) (attached hereto as Addendum E.) As set forth in the Complaint and at the hearing, the individual Plaintiffs authorized their attorneys to submit three letters

contesting the proposed annexation. (R. 7, 55-58, 395-396.) The Trial Court's ruling is against the clear weight of the evidence and should be overturned. This Court should reverse and remand the Trial Court's ruling with instructions to grant Plaintiffs' Motion.

Third, the Trial Court misinterpreted the plain language on the face of Utah Code Ann. § 17A-2-333(3)(a) in finding that SITLA was an owner of real property. (R. 355-357.) Utah Code Ann. § 17A-2-333(3)(a), attached hereto as Addendum C. The statute clearly provides that a petition for annexation may only be filed by taxpayers listed on the last assessment rolls. It is undisputed that SITLA is not a taxpayer and was therefore not listed on any of the assessment rolls. (*Id.*) (R. 6, 91, 109-110, 182-182, 286-287, 438.) The Trial Court therefore incorrectly denied Plaintiffs' Motion. This Court should therefore reverse and remand the Trial Court's ruling with instructions to grant Plaintiffs' Motion.

Fourth, the Trial Court erred in interpreting the plain language of Utah Code Ann. § 17A-2-333(2)(a), (3)(a)(ii)(A) in finding that the Council had the authority to adopt a conditional annexation. (R. 358.) The plain language of the statute demonstrates the Council only had two options—immediately declare the property annexed, or declare it shall not be annexed. Utah Code Ann. § 17A-2-333(2)(a), (3)(a)(ii)(A) (1999), attached hereto as Addendum C. Nowhere in this statute is a conditional annexation mentioned or allowed. The Trial Court therefore incorrectly interpreted the plain language of the statute and failed to consider the mandates of statutory construction in issuing its ruling. The Trial Court's ruling should therefore be reversed and remanded with instructions to grant summary judgment in favor of Plaintiffs.

The Trial Court could not have exercised jurisdiction within 30 days of the Council's resolution because the controversy between the parties was not ripe for judicial determination. (R. 69, 297-309.) The Resolution, by its very term, stayed the actual annexation of the property until the State Engineer approved the proposed water rights transfer. (*Id.*) Until the State Engineer affirmatively ruled on the proposed water rights transfer, the annexation had not occurred, and there was no justifiable controversy for the Trial Court to resolve. *See, e.g., Salt Lake County v. Bangerter*, 928 P.2d 384, 386 (Utah 1996) (finding there was no justiciable controversy and therefore the issues between the parties were not ripe for judicial determination because no taxpayer had actually received a reduction of property taxes under the statute); *Boyle*, 866 P.2d at 598 (noting statutory causes of action must meet requisite justiciable and jurisdictional requirements of any action, including ripeness.)

If Plaintiffs had filed its action prior to the State Engineer's ruling, the Trial Court would have been working with hypothetical facts, as opposed to an accrued state of facts. The Trial Court itself recognized that had Plaintiffs filed the action prior to the State Engineer's ruling, it "might have declined to decide the question until after receipt of the report" [apparently referring to the State Engineer's Memorandum Decision on the application] (R. 354.) The Utah Supreme Court has previously explained that hypothetical facts are not ripe for judicial determination and that in the absence of an accrued cause of action, the Trial Court may not even reach the issue of standing, but must dismiss the case for lack of ripeness. *Bangerter*, 928 P.2d at 385 (citation omitted) ("[A] justiciable controversy necessarily involves 'an accrued state of facts as opposed to

a hypothetical state of facts.’’). Therefore, this case was not ripe for review until the State Engineer affirmatively ruled on the proposed water rights transfer. *See, e.g., Signature Properties Int’l. Ltd. Partnership v. City of Edmond*, 310 F.3d 1258, 1264-67 (10th Cir. 2002), *cert. denied*, (June 9, 2003) (dismissing developers claims as unripe where there was no final action from the city determining what development would be permitted); *Grandmaster Sheng-Yen Lu v. King County*, 38 P.3d 1040, 1047-48 (Wash. Ct. App. 2002) (holding land use claims were not ripe for review where final configuration of mining activities was required prior to county approval).

Moreover, Utah Courts have consistently rejected statutory constructions that encourage a party to pursue a cause of action before it accrues. *See State v. Huntington-Cleveland*, 2002 UT 75, ¶18, 52 P.3d 1257, 1262 (Utah 2002); *Stokes v. Van Wagoner*, 1999 UT 94, ¶7, 987 P.2d 602, 603 (Utah 1999) (citation omitted) (“We have long recognized that ‘the general rule is that [a cause of action] accrues at the time it becomes remediable in the courts, that is when the claim is in such a condition that the courts can proceed and give judgment if the claim is established.’”); *Bank One Utah, N.A. v. West Jordan City*, 2002 UT App. 271, ¶8, 54 P.3d 135, 136 (Utah Ct. App. 2002) (citation omitted). (“Limitation periods begin to run when a cause of action has accrued, which ‘occurs upon the happening of the last event necessary to complete the cause of action.’”) An approval that is clearly made “subject to” an affirmative decision on independent subject matter by a separate governmental agency is certainly not an accrued cause of action.

strictly construed according to its plain language. The Trial Court failed to adhere to the plain statutory language and its decision should therefore be reversed.

A. The Plain Language of Section 333(3) Serves the Important Purpose of Limiting Annexation to Those Taxpayers Who Will Help Pay for Such Services

The statutory language of Section 333(3) serves an important purpose, which is to limit those people who may petition to annex into the District to those taxpayers whose tax base may help support the extension of such services. *Huntington-Cleveland Irr. Co.*, 2002 UT ¶13, 52 P.3d at 1261 (“In interpreting statutes, . . . paramount concern is to give effect to the legislative intent, manifested by the plain language of the statute.”). Such a limitation would prevent the existing situation, wherein SITLA, an entity who does not pay taxes, but owns a large tract of property, may petition for mandatory annexation without supporting the extension of services to its property through the payment of taxes.

Importantly, the legislature repealed Utah Code Ann. §§ 17A-2-304 and 17A-2-333 just after SITLA filed its Petition to Annex, and replaced it with a statute clarifying the limitation. Annexation into an improvement district is now governed by Utah Code Ann. § 17B-2-501 *et seq* (2001), which provides, in relevant part, “the process to annex an area to a local district may be initiated by: (A) a petition signed by the owners of *private real property*[.]” Utah Code Ann. § 17B-2-503 (2001) (emphasis added) (Addendum D.). The statute clarifies that “[p]rivate’ with respect to real property, means *not owned by . . . the state . . . or any other political subdivision of the state.*” Utah Code Ann. § 17B-2-101 (2001) (emphasis added) (Addendum D.).

Plaintiffs' counsel explained this very point to the Trial Court as evidenced by the following exchange:

MR. APPEL: And this statute would thus be inapplicable. They can't proceed this way. There are other ways to annex, of course, but they can't use this particular approach.

THE COURT: It seems if one assumes that the Legislature created this method of annexation so that—where everyone affected agreed, you wouldn't have to go through all the other processes, it seems a little strange that they would make property not on the tax rolls unavailable or exempt from this process, doesn't it?

MR. APPEL: Well, I don't think so because there's a cost of services. And frequently these districts utilize taxes to help pay for those cost of services or they need the ability to tax that land. I think that's the real reason why it's there, they do not want to foist a burden off on a special district decided simply by the county to serve an area. It could be a large area, it could be in theory an area three—two or three times as large as the very district itself, and if they don't have the ability to tax then they shouldn't do that.

....

THE COURT: So you think that the Legislature said, we do want to have a mandatory annexation provision, one that doesn't require any public notice and public hearing, just all the property owners agree, and the service district has to do it, but it would only be for people who are paying taxes. And the way we'll make

sure that that is the case is by requiring you look at the tax rolls to determine who those people are?

MR. APPEL: That's correct, your Honor.

(R. 404-406.)

Yet, in issuing its ruling, the Trial Court incorrectly ignored the plain language of the statute and policy behind the statute.

B. General Rules of Statutory Construction Mandate a Conclusion that SITLA is Not An Owner of Real Property for Purposes of Mandatory Annexation

The general rules of statutory construction also mandate the conclusion that SITLA is not an owner of real property. In interpreting statutes, the Court's main concern must be "to give effect to the legislative intent, manifested by the plain language of the statute." *Huntington-Cleveland Irr. Co.*, 2002 UT ¶13, 52 P.3d at 1261. The Court must not look beyond the plain language of the statute unless the statute is ambiguous. *Id* Moreover, the Court must "'presume that the legislature used each word advisedly and . . . give effect to the term according to its ordinary and accepted meaning' . . . and . . . 'seek to render all parts [of the statute] relevant and meaningful.'" *Id.* (citations omitted).

These rules of statutory construction required the Trial Court construe Section 333 (3) so as to give meaning to the statutory restriction limiting the definition of "owners of real property" to taxpayers shown on the county assessment rolls. The statute clearly states that such "owners . . . *under Subsection 3(a) shall* be determined according to the last assessment roll for county taxes." Utah Code Ann. § 17A-2-333(3)(b). (Addendum C.) There is no ambiguity in this instruction.

This Court should therefore reverse the Trial Court's grants of summary judgment in favor of Defendants on this issue and remand with instructions to enter summary judgment in favor of Plaintiffs.

IV. THE TRIAL COURT ERRED IN FINDING THAT THE COUNCIL POSSESSED THE REQUISITE STATUTORY AUTHORITY TO ADOPT A CONDITIONAL ANNEXATION UNDER UTAH CODE ANN. § 17A-2-333(2)(a) & § 17A-2-333(3)(a).

The Trial Court erred in interpreting the plain language of the statute. In issuing its ruling, the Trial Court reasoned that the “word ‘immediately’ in Section 17A-2-333(3)(a) simply emphasizes that a unanimous consent petition for annexation does not require any notice or public hearing.” (R. 358.) However, the plain language of sections 17A-2-333(2)(a) and (3)(a)(ii)(A) demonstrate the Council only had two options-- immediately declare the property annexed, or declare it shall not be annexed. Utah Code Ann. § 17A-2-333(2)(a), (3)(a)(ii)(A) (Addendum C.).

The annexation was void as an ultra vires act because the Council did not have the statutory authority—under any provision of the statute at issue—to conditionally annex the subject property. The statute expressly provides that, upon a petition for annexation, the legislative body “shall” either immediately declare the area to be annexed to the improvement district, or declare that the area shall not be annexed. Utah Code Ann. §§ 17A-2-333(2)(a), (3)(a)(ii)(A). (Addendum C.) The use of the term “shall” indicates the Council must take one of the two actions authorized therein, and may not “conditionally” annex an area subject to future action of another state agency. *Id.* The Council did not take one of the authorized actions. Instead, it passed a resolution

conditioning annexation upon approval of a water rights transfer by the State Engineer. (R.68-69.) Such action fell outside the authority statutorily granted to the Council, and is void as an ultra vires act.

In issuing its ruling, the Trial Court also incorrectly found that “[n]either side presented any authority” on the argument that the annexation could not be conditional. (R. 358.) As set forth in Plaintiffs’ reply brief, Plaintiffs cited two cases that demonstrate that courts should adhere to the mandate of statutory language. (R. 307.) Plaintiffs’ cited *Culbertson v. Bd. of County Commissioners*, 2001 UT 108, ¶¶41-43, 44 P.3d 642, 654 (Utah 2001), wherein the Utah Supreme Court held that the Trial Court erred in finding the county complied with statutory language. In *Culbertson*, the Utah Supreme Court held that where a statute directed highways must remain public “until abandoned or vacated,” the county could not change the status by enacting an ordinance directing that a highway be closed. *Id.* ¶ 42. The Supreme Court therefore found the Trial Court’s grant of summary judgment in favor of the county improper as the county failed to comply with the statute. *Id.*

Plaintiffs also cited *Springville Citizens for a Better Community v. City of Springville*, 1999 UT 25, ¶¶27-32, 979 P.2d 332, 337-38 (Utah 1999) wherein the court held that a municipality does not have discretion to derogate from the terms of an ordinance when the ordinance uses the term “shall” and renders the act mandatory. In so ruling, the Supreme Court reversed the Trial Court’s grant of summary judgment. *Id.* ¶33.

Finally, Plaintiffs also cited a case that dictates the standard of statutory construction. (R. 307.) *See Dept. of Envtl. Qual., Div. Of Drinking Water v. Golden Gardens Water Co.*, 2001 UT App. 173, ¶8, 27 P.3d 579, 581 (Utah App. 2001) (explaining that statutory construction mandates that a statute be construed according to its plain language and omissions in statutory language are to be noted and given effect).

The Trial Court incorrectly interpreted the plain language of Utah Code Ann. §§ 17A-2-333(2)(a), (3)(a) and failed to consider the cases submitted by Plaintiffs that relate to statutory construction. This Court should reverse the Trial Court's ruling and remand with instructions to grant summary judgment in favor of Plaintiffs on this issue.

V. PLAINTIFFS ARE ENTITLED TO THEIR ATTORNEYS FEES AND COSTS INCURRED IN BRINGING THIS ACTION

The Trial Court did not award Plaintiffs' attorneys' fees in light of its grant of summary judgment in favor of Defendants. (R. 361-362.) However, Plaintiffs request this Court award them their attorneys' fees and costs incurred in bringing this action. Plaintiffs are entitled to such fees and costs because they have brought and prosecuted this case as "private attorney generals." *See Stewart v. Utah Public Service Comm'n.*, 885 P.2d 759, 783 (Utah 1994); *Jensen v. Bowcut*, 892 P.2d 1053, 1058 (Utah Ct. App. 1995). An award of fees is proper under the private attorney general doctrine when a plaintiff successfully vindicates an important policy benefiting a larger population. *Stewart*, 885 P.2d at 783.

In this case, Plaintiffs, a handful of residents living within the District, have brought this action to have the annexation set aside as unlawful. Plaintiffs' only

motivation in bringing this action is to ensure the County and Council complies with its governing statutes in annexing property into the District. Ensuring that the County and Council follow the procedures required by law prior to annexing additional property into the Water District, particularly in this arid state, is an important policy benefiting a larger population. *See id.* Plaintiffs will receive no financial benefit from the decision.


Furthermore, it is significant that Plaintiffs informed the Council that the annexation was illegal before the Council took the actions it deemed necessary to complete the annexation, but the Council has steadfastly refused to abandon the annexation proceedings. Because of the Council's refusal, Plaintiffs have been forced to bring this action to ensure the Council complies with its own governing statutes. Awarding Plaintiffs their attorneys' fees under these circumstances is authorized by the private attorney general doctrine and would be just and equitable.

CONCLUSION

For the foregoing reasons, this Court should reverse the summary judgment entered in favor of Defendants, reverse the denial of Plaintiffs' Motion for Summary Judgment, and remand the case for judgment in favor of Plaintiffs with an award of attorneys' fees and costs for Plaintiffs.

Dated this 12th day of October, 2004.

RAY QUINNEY & NEBEKER


Jeffrey W. Appel
Cecilia M. Romero
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing BRIEF OF APPELLANTS
was mailed, via U.S. mail, on this 12th day of October, 2004 to the following:

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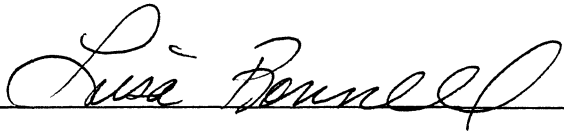


Exhibit A

purpose may not be proposed for 12 months from the date scheduled for the public hearing provided in Subsection 17A-2-304(3)(b).

History: L. 1949, ch. 24, § 2; 1951, ch. 32, § 1; C. 1943, Supp., 19-5a-25; L. 1953, ch. 29, § 1; C. 1953, 17-6-2; renumbered by L. 1990, ch. 186, § 76; 1993, ch. 227, § 196; 1994, ch. 112, § 1; 1994, ch. 146, § 21.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted “county legislative body” for “board of county commissioners” and for “board or boards of county commissioners” throughout.

The 1994 amendment by ch. 112, effective

May 2, 1994, rewrote this section to such an extent that a detailed comparison is impracticable.

The 1994 amendment by ch. 146, effective May 2, 1994, substituted “other county legislative bodies” for “other board or boards” near the end of the section.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

17A-2-304. Notice of hearing and intent — Protests — Resolution establishing district — Writ of review.

- (1) (a) After the resolution described in Section 17A-2-303 has been adopted by the county legislative body, the county legislative body shall give notice of:

- (i) its intent to establish the improvement district; and
- (ii) a public hearing to discuss the establishment of the improvement district.

- (b) That notice shall:

- (i) define the area to be included in the district;
- (ii) define the district’s boundaries;
- (iii) describe the nature and extent of the improvements proposed;
- (iv) estimate the cost of the proposed improvements;
- (v) estimate the amount of bonds proposed to be issued;
- (vi) designate whether these bonds are to be payable from taxes, from operating revenues of the district, or from both; and
- (vii) designate a time for the public hearing that is not more than 40 days after and not less than 21 days after the notice required by Subsection (3) is first published.

- (c) The estimates required in this subsection may not be construed as establishing a limit upon the costs of the improvements constructed or upon the amount of the bonds issued.

- (2) If the district is an electric service district, the notice shall contain a statement that the district complies with the requirements of Section 17A-2-302.

- (3) (a) The county legislative body shall publish the notice once a week for three successive weeks in a newspaper of general circulation in each county that contains some or all of the proposed district.

- (b) Any taxpayer within the district may, on or before the date of the public hearing, protest against the establishment of the district by filing a signed written protest with the county clerk of the county in which the district is located.

- (c) If, at or before the time fixed in the notice, a written protest is filed that is signed by more than 25% of the real property owners within the proposed district, according to the last assessment roll for county taxes completed prior to publishing the notice, the district may not be established.

- (d) Any person who has filed a protest and wishes to withdraw that protest, or who has filed a protest, withdrawn the protest, and wishes to

cancel the withdrawal, shall do so on or before the date set for the public hearing.

(e) The county legislative body may require:

(i) the county surveyor to check and report on the accuracy of the proposed boundaries of the district; and

(ii) the officials who prepared the assessment roll to segregate and certify to the governing authority the taxable value of the real property appearing on the roll that lies within the proposed boundaries of the district.

(f) A written protest filed by a corporation owning real property in the district is sufficient if it is signed by the president, vice president, or duly authorized agent of the corporation.

(g) (i) Where title to any real property in the district is held in the name of more than one person, all of the persons holding the title to that property must join in the signing of the written protest.

(ii) The deed records of the county shall be accepted as final and conclusive evidence of the ownership of the real property in the district.

(h) If any written protests are filed, and the county legislative body determines that the protests filed represent less than 25% of the property owners in the district, the resolution of the governing authority establishing the district shall contain a recital to that effect and that recital is binding and conclusive for all purposes.

(i) In the resolution establishing the district, the county legislative body shall eliminate from the proposed district any property originally included in the district that it determines will not be benefited by the proposed improvements.

(j) At the public hearing, or at any subsequent time to which the hearing may be adjourned, the county legislative body shall give full consideration to all protests that have been filed and shall hear all persons desiring to be heard.

(k) Following the hearing, the county legislative body shall adopt a resolution either creating the district or determining that it may not be created.

(l) Any resolution creating a district may contain any changes considered by the body to be equitable and necessary, including changes in the boundaries of the district, to assure that the district does not contain property that will not be benefited by the proposed improvements.

(4) After an improvement district is established, a property owner may petition the district court for a writ of review of the actions of the county legislative body in establishing the district if:

(a) the person filed a written protest as provided in Subsection (3);

(b) the petition is filed within 30 days after the date of the resolution establishing the improvement district; and

(c) (i) the petition alleges that the person's property will not be benefited by one or more of the services to be provided by the improvement district; or

(ii) the petition alleges that the procedures used to establish the improvement district violated the law.

(5) If a petition for a writ of review is not filed within the time limits established by this section, owners of property and qualified voters within the improvement district may not object to the establishment of the district.

(6) The provisions of this section may not be considered to be a limitation on the rights of the governing authority to submit a bond issue in whatever

amount and for whatever improvements that may be found desirable after the district has been organized.

History: L. 1949, ch. 24, § 3; 1951, ch. 32, § 1; C. 1943, Supp., 19-5a-26; L. 1953, ch. 29, § 1; 1985 (1st S.S.), ch. 9, § 3; 1988, ch. 3, § 50; 1988, ch. 225, § 1; C. 1953, 17-6-3; renumbered by L. 1990, ch. 186, § 77; 1993, ch. 227, § 197; 1994, ch. 146, § 22.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted

“county legislative body” for “county governing body” once in Subsection (1) and throughout Subsection (3).

The 1994 amendment, effective May 2, 1994, substituted “county legislative body” for “governing body” in Subsection (1)(a), for “board” in Subsections (3)(e) and (h), and for “governing authority” in Subsection (4).

NOTES TO DECISIONS

Cited in *Mariemont Corp. v. White City Water Improvement Dist.*, 958 P.2d 222 (Utah 1998).

17A-2-305. Board of trustees — Creation — Appointment and election of members — Qualifications — Terms.

(1) (a) Except as provided in Subsection (3) the governing body of each district created under this part, except a district that has boundaries that coincide with the boundaries of an incorporated municipality, shall consist of a board of trustees created as provided in this subsection.

(b) (i) Whenever a district is created that does not include property within the boundaries of an incorporated municipality, the county legislative body of the initiating county may, in the initial resolution creating the district, declare that the county legislative body of that county act as the trustees of the district.

(ii) When the county legislative body of the county is designated as the trustees of the district, they may:

(A) exercise all the powers, authority, and responsibility vested in the trustees under this chapter; and

(B) use any existing county offices, officers, or employees for the purposes of the district.

(iii) The county legislative body shall charge the district a reasonable amount for the services rendered to the district by the county officers, offices, and employees, other than the county legislative body, to the county treasurer for the general fund of the county.

(c) (i) At any time after creation of any district under the provisions of this subsection, the county legislative body of the initiating county may by resolution determine that the interests of the district would be best served by the appointment of a board of trustees.

(ii) The trustees shall be appointed by the county legislative body according to the procedures and requirements of Chapter 1, Part 3, Special District Board Selection Procedures.

(d) The county legislative body shall hold an election for trustees as provided in Chapter 1, Part 3, Special District Board Selection Procedures, when:

(i) a petition requesting an election for trustees is filed with the county legislative body at least 30 days before the date set for a bond election or 90 days before the date set for the November municipal elections; and

Exhibit B

benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of trustees" in Subsection (3).

17A-2-332. Methods of annexation — Resolution — Proposed area including part of another county.

Any county legislative body, upon its own motion, may by resolution declare that the public health, convenience, and necessity requires the annexation of an area into an improvement district. Upon presentation to any county legislative body of a petition setting forth the area and boundaries thereof proposed to be annexed to an improvement district, signed by the legislative body of any city or town included or partially included within such area, or by 25% or more of the owners of real property included within such proposed area, or when the district to which it is proposed annexation shall be made is already providing district services for such area, then, signed by the board of trustees of such district, it shall be the duty of such county legislative body to adopt a resolution as aforesaid. In the event the proposed area includes any part of another county or counties, the above resolution shall further state the name or names of such county or counties, and the areas within such other county or counties proposed to be annexed to an improvement district. A certified copy of such resolution shall then be presented to the county legislative body of such other county or counties. It shall be the duty of such other county legislative bodies within 60 days thereafter to approve or reject such resolution. After the approval of such resolution by such other county legislative bodies, the county legislative body of the county adopting the original resolution shall thereafter have complete jurisdiction over the proposed area and its annexation to an improvement district and shall proceed as hereinafter provided in all respects as though only a single county were involved.

History: L. 1957, ch. 29, § 2; C. 1953, 17-6-26; renumbered by L. 1990, ch. 186, § 105; 1993, ch. 227, § 201.

Amendment Notes. — The 1993 amend-

ment, effective May 3, 1993, substituted "county legislative body" for "board of county commissioners" throughout and made stylistic changes.

17A-2-333. Notice of intention to annex — Resolution — Writ of review.

(1) (a) After the county legislative body adopts a resolution under Section 17A-2-332, the county legislative body shall give notice of its intention to annex the area to the improvement district.

(b) The notice shall define the area to be included in the improvement district and the boundaries of the area.

(c) Before adopting a resolution under Subsection (2) determining whether the area is annexed, the county legislative body shall, except as provided in Subsection (3), comply with the provisions of Section 17A-2-304 as to notice, publication, taxpayer's protests, evidence of ownership, and public hearing.

(2) (a) After complying with Subsection (1), the county legislative body shall adopt a resolution either annexing the property into the district or determining that it shall not be annexed into the district.

(b) In adopting a resolution under Subsection (2)(a) annexing an area into an improvement district, the county legislative body may make such changes as it considers to be equitable and necessary, including changes in the boundaries of the annexing area, to assure that the district contains no

Exhibit C

benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of trustees" in Subsection (3).

17A-2-332. Methods of annexation — Resolution — Proposed area including part of another county.

Any county legislative body, upon its own motion, may by resolution declare that the public health, convenience, and necessity requires the annexation of an area into an improvement district. Upon presentation to any county legislative body of a petition setting forth the area and boundaries thereof proposed to be annexed to an improvement district, signed by the legislative body of any city or town included or partially included within such area, or by 25% or more of the owners of real property included within such proposed area, or when the district to which it is proposed annexation shall be made is already providing district services for such area, then, signed by the board of trustees of such district, it shall be the duty of such county legislative body to adopt a resolution as aforesaid. In the event the proposed area includes any part of another county or counties, the above resolution shall further state the name or names of such county or counties, and the areas within such other county or counties proposed to be annexed to an improvement district. A certified copy of such resolution shall then be presented to the county legislative body of such other county or counties. It shall be the duty of such other county legislative bodies within 60 days thereafter to approve or reject such resolution. After the approval of such resolution by such other county legislative bodies, the county legislative body of the county adopting the original resolution shall thereafter have complete jurisdiction over the proposed area and its annexation to an improvement district and shall proceed as hereinafter provided in all respects as though only a single county were involved.

History: L. 1957, ch. 29, § 2; C. 1953, 17-6-26; renumbered by L. 1990, ch. 186, § 105; 1993, ch. 227, § 201.

Amendment Notes. — The 1993 amend-

ment, effective May 3, 1993, substituted "county legislative body" for "board of county commissioners" throughout and made stylistic changes.

17A-2-333. Notice of intention to annex — Resolution — Writ of review.

(1) (a) After the county legislative body adopts a resolution under Section 17A-2-332, the county legislative body shall give notice of its intention to annex the area to the improvement district.

(b) The notice shall define the area to be included in the improvement district and the boundaries of the area.

(c) Before adopting a resolution under Subsection (2) determining whether the area is annexed, the county legislative body shall, except as provided in Subsection (3), comply with the provisions of Section 17A-2-304 as to notice, publication, taxpayer's protests, evidence of ownership, and public hearing.

(2) (a) After complying with Subsection (1), the county legislative body shall adopt a resolution either annexing the property into the district or determining that it shall not be annexed into the district.

(b) In adopting a resolution under Subsection (2)(a) annexing an area into an improvement district, the county legislative body may make such changes as it considers to be equitable and necessary, including changes in the boundaries of the annexing area, to assure that the district contains no

(c) Upon the county legislative body's adoption of a resolution annexing an area into an improvement district, the annexed area shall be an integral part of the district, and the taxable property in the annexed area shall be subject to taxation for the purposes of the improvement district, including the payment of bonds and other obligations of the district at the time authorized or outstanding.

(d) Writ of review from the determination of the county legislative body shall be controlled by the provisions of Section 17A-2-304.

(3) (a) If all the owners of real property within the area proposed to be annexed have signed a petition filed under Section 17A-2-332:

(i) the notice requirement of Subsection (1)(a) and the requirement under Subsection (1)(c) to comply with Section 17A-2-304 do not apply; and

(ii) the county legislative body shall:

(A) by resolution, immediately declare the area to be annexed to the improvement district; and

(B) deliver a certified copy of the resolution to the board of trustees of the improvement district.

(b) The owners of real property under Subsection (3)(a) shall be determined according to the last assessment roll for county taxes completed prior to the filing of the petition.

History: L. 1957, ch. 29, § 3; C. 1953, 17-6-27; renumbered by L. 1990, ch. 186, § 106; 1993, ch. 227, § 202; 1997, ch. 322, § 3.

Amendment Notes. — The 1993 amend-

ment, effective May 3, 1993, substituted "county legislative body" for "board of county commissioners" throughout.

The 1997 amendment, effective May 5, 1997, rewrote the section.

17A-2-334. Withdrawal from improvement district — Petition by majority of property owners — Procedure.

(1) Except as provided in Section 17A-2-340, withdrawal of territory from an improvement district shall be governed by Sections 17A-2-334, 17A-2-335, 17A-2-336, 17A-2-337, and 17A-2-338.

(2) A majority of the real property owners in a territory within the boundaries of an improvement district operating or created under authority of this part may request to withdraw the territory from the improvement district by filing a petition with the clerk of the district court of the county in which the territory lies:

(a) requesting that the territory be withdrawn from the improvement district;

(b) setting forth the reasons why the territory should be withdrawn from the improvement district;

(c) accompanied by a map or plat of the territory sought to be withdrawn; and

(d) designating no more than five persons empowered to act for the petitioners in the proceedings.

(3) Upon receipt of a petition under Subsection (2), the court shall cause a notice of the filing:

(a) to be served upon the board of trustees of the improvement district in the same manner as a summons in a civil action; and

(b) to be published for a period of ten days in a newspaper of general

Exhibit D

Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2
LOCAL DISTRICTS

CHAPTER 2 LOCAL DISTRICTS

Part 1

General Provisions.

17B-2-101. Definitions.

17B-2-102. Property owner provisions.

Part 2

Creation of Local Districts.

17B-2-201. Definitions.

17B-2-202. Local district may be created - Services that may be provided - Limitations - Name.

17B-2-203. Process to initiate the creation of a local district - Petition or resolution.

17B-2-204. Request for service required before filing of petition - Request requirements.

17B-2-205. Petition and request requirements - Withdrawal of signature.

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17B-2-207. Signature on request may be used on petition.

17B-2-208. Additional petition requirements and limitations.

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Part 4

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17B-2-514. Resolution approving an annexation - Notice of annexation - When annexation complete.

17B-2-515. Annexation of wholesale district through expansion of retail provider.

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17B-2-517. Annexed area subject to fees, charges, and taxes.

Part 6

Withdrawal.

17B-2-601. Withdrawal of area from local district - Definitions.

17B-2-602. Withdrawal or boundary adjustment with municipal approval.

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17B-2-708. Dissolution resolution - Limitations on dissolution - Distribution of remaining assets - Notice of
dissolution.

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Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2
DISTRICTS/PART 1 GENERAL PROVISIONS/17B-2-101. Definitions.

B-2-101. Definitions.

used in this chapter:

) "Local district" means a local government entity, created according to the provisions of Part 2, Creation of Districts, that is not a general purpose government entity but is a separate legal and corporate entity and a local subdivision of the state, authorized to provide limited services in a defined geographic area, as provided in Part 2, Creation of Local Districts.

) "Municipal" means of or relating to a municipality.

) "Municipality" means a city or town.

) "Political subdivision" means a county, city, town, local district under this chapter, independent special district under Title 17A, Chapter 2, Independent Special Districts, an entity created by interlocal cooperation agreement under Title 17A, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.

) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, an independent special district under Title 17A, Chapter 2, Independent Special Districts, a local district, or any other political subdivision of the state.

) "Unincorporated" means not included within a municipality.

History: C. 1953, 17B-2-101, enacted by L. 1998, ch. 368, § 18; 2001, ch. 90, § 32.

Amendment Notes. - The 2001 amendment, effective April 30, 2001, added Subsections (2) through (6) and made related changes.

Effective Dates. - Laws 1998, ch. 368, § 37 makes the act effective on March 23, 1998.

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LOCAL DISTRICTS/PART 1 GENERAL PROVISIONS/17B-2-102. Property owner provisions.

7B-2-102. Property owner provisions.

(1) For purposes of this chapter:

a) the owner of real property shall be the fee title owner according to the records of the county recorder on the date of filing of the request or petition; and

b) the value of private real property shall be determined according to the last assessment before the filing of the request or petition, as determined by:

i) the county under Title 59, Chapter 2, Part 3, County Assessment, for property subject to assessment by the county;

ii) the State Tax Commission under Title 59, Chapter 2, Part 2, Assessment of Property, for property subject to assessment by the State Tax Commission; or

iii) the county, for all other property.

(2) For purposes of each provision of this chapter that requires the owners of private real property covering a percentage of the total private land area within the proposed local district to sign a request, petition, or protest:

a) a parcel of real property may not be included in the calculation of the required percentage unless the request or petition is signed by:

i) except as provided in Subsection (2)(a)(ii), owners representing a majority ownership interest in that parcel; or

ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;

b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is valid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and

(ii) the person provides documentation accompanying the request or petition that reasonably substantiates the person's representative capacity; and

(c) subject to Subsection (2)(b), a duly appointed personal representative may sign a request or petition on behalf of a deceased owner.

History: C. 1953, 17B-2-102, enacted by L. 2001, ch. 90, § 33.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 DISTRICTS/PART 5 ANNEXATION/17B-2-501. Definitions.

B-2-501. Definitions.

For purposes of this part:

(1) "Applicable area" means:

(a) for a county, the unincorporated area of the county that is included within the area proposed for annexation; or

(b) for a municipality, the area of the municipality that is included within the area proposed for annexation.

(2) "Retail" means, with respect to a service provided by a municipality, local district, or independent special district, that the service is provided directly to the ultimate user.

(3) "Wholesale" means, with respect to a service provided by a local district or independent special district, that the service is not provided directly to the ultimate user but is provided to a retail provider.

History: C. 1953, 17B-2-501, enacted by L. 2001, ch. 90, § 36.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-502. Annexation of area outside local district.

17B-2-502. Annexation of area outside local district.

(1) An area outside the boundaries of a local district may be annexed to the local district, as provided in this part, in order to provide to the area a service that the local district provides.

(2) The area proposed to be annexed:

(a) may consist of one or more noncontiguous areas; and

(b) need not be adjacent to the boundaries of the proposed annexing local district.

History: C. 1953, 17B-2-502, enacted by L. 2001, ch. 90, § 37.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. - Modification of boundaries of districts, notice to State Tax Commission, § 17A-1-102.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-503. Initiation of annexation process - Petition and resolution.

17B-2-503. Initiation of annexation process - Petition and resolution.

) Except as provided in Sections 17B-2-515 and 17B-2-516, the process to annex an area to a local district may be initiated by:

) (i) for a district whose board of trustees is elected by electors based on the acre-feet of water allotted to the land owned by the elector and subject to Subsection (2), a petition signed by the owners of all of the acre-feet of water allotted to the land proposed for annexation; or

i) for all other districts:

A) a petition signed by the owners of private real property that:

) is located within the area proposed to be annexed;

I) covers at least 10% of the total private land area within the entire area proposed to be annexed and within each applicable area; and

II) is equal in assessed value to at least 10% of the assessed value of all private real property within the entire area proposed to be annexed and within each applicable area; or

3) a petition signed by registered voters residing within the entire area proposed to be annexed and within each applicable area equal in number to at least 10% of the number of votes cast within the entire area proposed to be annexed and within each applicable area, respectively, for the office of governor at the last regular general election preceding the filing of the petition;

c) a resolution adopted by the legislative body of each county whose unincorporated area includes and each municipality whose boundaries include any of the area proposed to be annexed; or

c) a resolution adopted by the board of trustees of the proposed annexing local district if, for at least 12 consecutive months immediately preceding adoption of the resolution, the local district has provided:

i) retail service to the area; or

ii) a wholesale service to a provider of the same service that has provided that service on a retail basis to the area.

2) If an association representing all acre-feet of water allotted to the land that is proposed to be annexed to a local district signs a petition under Subsection (1)(a)(i), pursuant to a proper exercise of authority as provided in the bylaws or other rules governing the association, the petition shall be considered to have been signed by the owners of all of the acre-feet of water allotted to the land proposed for annexation, even though less than all of the owners within the association consented to the association signing the petition.

.3) Each petition and resolution under Subsection (1) shall:

(a) describe the area proposed to be annexed; and

) be accompanied by a map of the boundaries of the area proposed to be annexed.

) The legislative body of each county and municipality that adopts a resolution under Subsection (1)(b) shall, within five days after adopting the resolution, mail or deliver a copy of the resolution to the board of trustees of the proposed annexing local district.

History: C. 1953, 17B-2-503, enacted by L. 2001, ch. 90, § 38.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-504. Petition requirements.

17B-2-504. Petition requirements.

) Each petition under Subsection 17B-2-503(1)(a) shall:

) indicate the typed or printed name and current residence address of each person signing the petition;

) separately group signatures by county and municipality, so that all signatures of the owners of real property located within or of registered voters residing within each county whose unincorporated area includes and each municipality whose boundaries include part of the area proposed for annexation are grouped separately;

) if it is a petition under Subsection 17B-2-503(1)(a)(i) or (ii)(A), indicate the address of the property as to which owner is signing the petition;

) designate up to three signers of the petition as sponsors, one of whom shall be designated the contact sponsor, the mailing address and telephone number of each;

) be filed with the board of trustees of the proposed annexing local district; and

) for a petition under Subsection 17B-2-503(a)(i), state the proposed method of supplying water to the area proposed to be annexed.

2) By submitting a written withdrawal or reinstatement with the board of trustees of the proposed annexing local district, a signer of a petition may withdraw, or once withdrawn, reinstate the signer's signature at any time:

a) before the public hearing under Section 17B-2-509 is held; or

b) if a hearing is not held because of Subsection 17B-2-513(1) or because no hearing is requested under Subsection 17B-2-513(2)(a)(ii)(B), until 20 days after the local district provides notice under Subsection 17B-2-513(2)(a)(i).

History: C. 1953, 17B-2-504, enacted by L. 2001, ch. 90, § 39.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 - DISTRICTS/PART 5 ANNEXATION/17B-2-505. Petition certification.

17B-2-505. Petition certification.

-) Within 30 days after the filing of a petition under Subsection 17B-2-503(1)(a)(i) or (ii), the board of trustees of proposed annexing local district shall:
 -) with the assistance of officers of the county in which the area proposed to be annexed is located from whom the requests assistance, determine whether the petition meets the requirements of Subsection 17B-2-503(1)(a)(i) or (ii) as the case may be, Subsection 17B-2-503(3), and Subsection 17B-2-504(1); and
 -) (i) if the board determines that the petition complies with the requirements, certify the petition and mail or deliver written notification of the certification to the contact sponsor; or
 -) (ii) if the board determines that the petition fails to comply with any of the requirements, reject the petition and mail or deliver written notification of the rejection and the reasons for the rejection to the contact sponsor.
-) (a) If the board rejects a petition under Subsection (1)(b)(ii), the petition may be amended to correct the deficiencies for which it was rejected and then refiled.
-) A valid signature on a petition that was rejected under Subsection (1)(b)(ii) may be used toward fulfilling the signature requirement of the petition as amended under Subsection (2)(a).
-) The board shall process an amended petition filed under Subsection (2)(a) in the same manner as an original petition under Subsection (1).

History: C. 1953, 17B-2-505, enacted by L. 2001, ch. 90, § 40.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 - DISTRICTS/PART 5 ANNEXATION/17B-2-506. Notice to county and municipality - Exception.

17B-2-506. Notice to county and municipality - Exception.

(1) Except as provided in Subsection (2), within ten days after certifying a petition under Subsection 17B-2-505(1) the board of trustees of the proposed annexing local district shall mail or deliver a written notice of the proposed annexation, with a copy of the certification and a copy of the petition, to the legislative body of each:

- (a) county in whose unincorporated area any part of the area proposed for annexation is located; and

municipality in which any part of the area proposed for annexation is located.

The board is not required to send a notice under Subsection (1) to:

a county or municipality that does not provide the service proposed to be provided by the local district; or

a county or municipality whose legislative body has adopted an ordinance or resolution waiving the notice requirement as to:

the proposed annexing local district; or

the service that the proposed annexing local district provides.

For purposes of this section, an area proposed to be annexed to a municipality in a petition under Section 10-2-401.5 shall be considered to be part of that municipality.

History: C. 1953, 17B-2-506, enacted by L. 2001, ch. 90, § 41.

Ordination clause. - Laws 2001, ch. 90, § 63 directs that upon passage of that act and H.B. 155 (ch. 206), the text of Section (3) of this section shall read as set out in § 63.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LIMITED DISTRICTS/PART 5 ANNEXATION/17B-2-507. Notice of intent to consider providing service - Public hearing requirements.

17B-2-507. Notice of intent to consider providing service - Public hearing requirements.

(a) If the legislative body of a county or municipality whose applicable area is proposed to be annexed to a district in a petition under Subsection 17B-2-503(1)(a) intends to consider having the county or municipality, or its legislative body, provide to the applicable area the service that the proposed annexing local district provides, the legislative body shall, within 30 days after receiving the notice under Subsection 17B-2-506(1), mail or deliver a written notice to the board of trustees of the proposed annexing local district indicating that intent.

(b) (i) A notice of intent under Subsection (1)(a) suspends the local district's annexation proceeding as to the applicable area of the county or municipality that submits the notice of intent until the county or municipality:

A) adopts a resolution under Subsection 17B-2-508(1) declining to provide the service proposed to be provided by the proposed annexing local district; or

B) is considered under Subsection 17B-2-508(2) or (3) to have declined to provide the service.

(ii) The suspension of an annexation proceeding under Subsection (1)(b)(i) as to an applicable area does not prevent the local district from continuing to pursue the annexation proceeding with respect to other applicable areas for which

-) If a legislative body does not mail or deliver a notice of intent within the time required under Subsection (1)(a), legislative body shall be considered to have declined to provide the service.
-) Each legislative body that mails or delivers a notice under Subsection (1)(a) shall hold a public hearing or a set of public hearings, sufficient in number and location to ensure that no substantial group of residents of the area served for annexation need travel an unreasonable distance to attend a public hearing.
-) Each public hearing under Subsection (2) shall be held:
 -) no later than 45 days after the legislative body sends notice under Subsection (1);
 -) except as provided in Subsections (6) and (7), within the applicable area; and
 -) for the purpose of allowing public input on:
 -) whether the service is needed in the area proposed for annexation;
 - i) whether the service should be provided by the county or municipality or the proposed annexing local district;
 - ii) all other matters relating to the issue of providing the service or the proposed annexation.
- b) A quorum of the legislative body of each county or municipal legislative body holding a public hearing under this section shall be present throughout each hearing held by that county or municipal legislative body.
- i) Each hearing under this section shall be held on a weekday evening other than a holiday beginning no earlier than 5:00 p.m.
- j) Two or more county or municipal legislative bodies may jointly hold a hearing or set of hearings required by this section if all the requirements of this section, other than the requirements of Subsection (3)(b), are met as to each hearing.
- 7) Notwithstanding Subsection (3)(b), a county or municipal legislative body may hold a public hearing or set of public hearings outside the applicable area if:
 - a) there is no reasonable place to hold a public hearing within the applicable area; and
 - b) the public hearing or set of public hearings is held as close to the applicable area as reasonably possible.
- 8) Before holding a public hearing or set of public hearings under this section, the legislative body of each county or municipality that receives a request for service shall provide notice of the hearing or set of hearings as provided in Section 17B-2-211.

History: C. 1953, 17B-2-507, enacted by L. 2001, ch. 90, § 42.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-508. Resolution indicating whether the requested service will be provided.

17B-2-508. Resolution indicating whether the requested service will be provided.

) Within 30 days after the last hearing required under Section 17B-2-507 is held, the legislative body of each county and municipality that sent a notice of intent under Subsection 17B-2-507(1) shall adopt a resolution indicating whether the county or municipality will provide to the area proposed for annexation within its boundaries the service requested to be provided by the proposed annexing local district.

) If the county or municipal legislative body fails to adopt a resolution within the time provided under Subsection 17B-2-507(1), the county or municipality shall be considered to have declined to provide the service.

) If a county or municipal legislative body adopts a resolution under Subsection (1) indicating that the county or municipality will provide the service but the county or municipality does not, within 120 days after the adoption of that resolution, take substantial measures to provide the service, the county or municipality shall be considered to have declined to provide the service.

) Each county or municipality whose legislative body adopts a resolution under Subsection (1) indicating that the county or municipality will provide the service shall diligently proceed to take all measures necessary to provide the service.

) If a county or municipal legislative body adopts a resolution under Subsection (1) indicating that the county or municipality will provide the service and the county or municipality takes substantial measures within the time provided in Subsection (3) to provide the service, the local district's annexation proceeding as to the applicable area of the county or municipality is terminated and that applicable area is considered deleted from the area proposed to be included in a petition under Subsection 17B-2-503(1)(a).

History: C. 1953, 17B-2-508, enacted by L. 2001, ch. 90, § 43.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-509. Public hearing on proposed annexation.

17B-2-509. Public hearing on proposed annexation.

1) Except as provided in Sections 17B-2-513 and 17B-2-515, the board of trustees of each local district that files a petition that was filed under Subsection 17B-2-503(1)(a)(ii)(A) or (B), receives a resolution adopted under Section 17B-2-503(1)(b), or adopts a resolution under Subsection 17B-2-503(1)(c) shall hold a public hearing on proposed annexation and provide notice of the hearing as provided in Section 17B-2-510.

2) Each public hearing under Subsection (1) shall be held:

a) within 45 days after:

) if no notice to a county or municipal legislative body is required under Section 17B-2-506, petition certification Section 17B-2-505; or

i) if notice is required under Section 17B-2-506, but no notice of intent is submitted by the deadline:

A) expiration of the deadline under Subsection 17B-2-507(1) to submit a notice of intent; or

3) termination of a suspension of the annexation proceeding under Subsection 17B-2-507(1)(b);

o) (i) for a local district located entirely within a single county:

A) within or as close as practicable to the area proposed to be annexed; or

3) at the local district office; or

i) for a local district located in more than one county:

A) (I) within the county in which the area proposed to be annexed is located; and

I) within or as close as practicable to the area proposed to be annexed; or

3) if the local district office is reasonably accessible to all residents within the area proposed to be annexed, at the district office;

c) on a weekday evening other than a holiday beginning no earlier than 6:00 p.m.; and

d) for the purpose of allowing:

i) the public to ask questions and obtain further information about the proposed annexation and issues raised by it;

ii) any interested person to address the board regarding the proposed annexation.

3) A quorum of the board of trustees of the proposed annexing local district shall be present throughout each hearing held under this section.

4) (a) After holding a public hearing under this section or, if no hearing is held because of application of section 17B-2-513(2)(a)(ii), after expiration of the time under Subsection 17B-2-513(2)(a)(ii)(B) for requesting a hearing, the board of trustees may by resolution deny the annexation and terminate the annexation procedure if:

i) for a proposed annexation initiated by a petition under Subsection 17B-2-503(1)(a)(i) or (ii), the board determines that:

(A) it is not feasible for the local district to provide service to the area proposed to be annexed; or

(B) annexing the area proposed to be annexed would be inequitable to the owners of real property or residents already within the local district; or

(ii) for a proposed annexation initiated by resolution under Subsection 17B-2-503(1)(b) or (c), the board determines to pursue annexation.

) In each resolution adopted under Subsection (4)(a), the board shall set forth its reasons for denying the annexation.

History: C. 1953, 17B-2-509, enacted by L. 2001, ch. 90, § 44.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-510. Notice of public hearing.

17B-2-510. Notice of public hearing.

) Before holding a public hearing required under Section 17B-2-509, the board of trustees of each proposed annexing local district shall:

1) mail notice of the public hearing and the proposed annexation to:

a) if the local district is funded predominantly by revenues from a property tax, each owner of private real property located within the area proposed to be annexed, as shown upon the county assessment roll last equalized as of the previous December 31; or

b) if the local district is not funded predominantly by revenues from a property tax, each registered voter residing within the area proposed to be annexed, as determined by the voter registration list maintained by the county clerk as of the date selected by the board of trustees that is at least 20 but not more than 60 days before the public hearing; and

c) post notice of the public hearing and the proposed annexation in at least four conspicuous places within the area proposed to be annexed, no less than ten and no more than 30 days before the public hearing.

2) Each notice required under Subsection (1) shall:

a) describe the area proposed to be annexed;

b) identify the proposed annexing local district;

c) state the date, time, and location of the public hearing;

d) provide a local district telephone number where additional information about the proposed annexation may be obtained; and

e) except for a proposed annexation under a petition that meets the requirements of Subsection 17B-2-513(1), require that property owners and registered voters within the area proposed to be annexed may protest the annexation by filing a written protest with the local district board of trustees within 30 days after the public hearing.

History: C. 1953, 17B-2-510, enacted by L. 2001, ch. 90, § 45.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 DISTRICTS/PART 5 ANNEXATION/17B-2-511. Modifications to area proposed for annexation - Limitations.

B-2-511. Modifications to area proposed for annexation - Limitations.

- (a) Subject to Subsections (2), (3), (4), and (5), a board of trustees may, within 30 days after the public hearing Section 17B-2-509, or, if no public hearing is held, within 30 days after the board provides notice under Section 17B-2-513(2)(a)(i), modify the area proposed for annexation to include land not previously included in that area to exclude land from that area if the modification enhances the feasibility of the proposed annexation.
- (b) A modification under Subsection (1)(a) may consist of the exclusion of all the land within an applicable area if:
- the entire area proposed to be annexed consists of more than that applicable area;
 - sufficient protests under Section 17B-2-512 are filed with respect to that applicable area that an election would be required under Subsection 17B-2-512(3) if that applicable area were the entire area proposed to be annexed;
 - the other requirements of Subsection (1)(a) are met.
- (c) A board of trustees may not add property under Subsection (1) to the area proposed for annexation without the consent of the owner of that property.
- (d) Except as provided in Subsection (1)(b), a modification under Subsection (1) may not avoid the requirement for an election under Subsection 17B-2-512(3) if, before the modification, the election was required because of protests under Section 17B-2-512.
- (e) If the annexation is proposed by a petition under Subsection 17B-2-503(1)(a)(ii)(A) or (B), a modification may be made unless the requirements of Subsection 17B-2-503(1)(a)(ii)(A) or (B) are met after the modification as to the area proposed to be annexed.
- (f) If the petition meets the requirements of Subsection 17B-2-513(1) before a modification under this section but does not meet those requirements after modification:
- the local district board shall give notice as provided in Section 17B-2-510 and hold a public hearing as provided in Section 17B-2-509 on the proposed annexation; and
 - the petition shall be considered in all respects as one that does not meet the requirements of Subsection 17B-2-513(1).

History: C. 1953, 17B-2-511, enacted by L. 2001, ch. 90, § 46.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-512. Protests - Election.

7B-2-512. Protests - Election.

- 1) (a) Except as provided in Section 17B-2-513 and except for an annexation under Section 17B-2-515, an owner of private real property located within or a registered voter residing within an area proposed to be annexed may protest annexation by filing a written protest with the board of trustees of the proposed annexing local district.
- b) A protest of a boundary adjustment is not governed by this section but is governed by Section 17B-2-516.
- 2) Each protest under Subsection (1)(a) shall be filed within 30 days after the date of the public hearing under Section 17B-2-509.
- 3) (a) Except as provided in Subsection (4), the local district shall hold an election on the proposed annexation if at least one of the following conditions is met:
 - i) the owners of private real property that:
 - A) is located within the area proposed to be annexed;
 - B) covers at least 10% of the total private land area within the entire area proposed to be annexed and within each applicable area; and
 - C) is equal in assessed value to at least 10% of the assessed value of all private real property within the entire area proposed to be annexed and within each applicable area; or
 - (ii) registered voters residing within the entire area proposed to be annexed and within each applicable area equal in number to at least 10% of the number of votes cast within the entire area proposed for annexation and within each applicable area, respectively, for the office of governor at the last regular general election before the filing of the protest.
- (b) Except as otherwise provided in this part, each election under Subsection (3)(a) shall be governed by Title 20A, Election Code.
- (c) If a majority of registered voters residing within the area proposed to be annexed and voting on the proposal are:
 - (i) in favor of annexation, the board of trustees shall, subject to Subsections 17B-2-514(1)(b), (2), and (3), complete annexation by adopting a resolution annexing the area; or
 - (ii) against annexation, the annexation process is terminated, the board may not adopt a resolution annexing the area, and the area proposed to be annexed may not for two years be the subject of an effort under this part to annex the same local district.
- (4) If sufficient protests are filed under this section to require an election, a board of trustees may, notwithstanding Subsection (3), adopt a resolution rejecting the annexation and terminating the annexation process without holding an election.

History: C. 1953, 17B-2-512, enacted by L. 2001, ch. 90, § 47.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-513. Hearing, notice, and protest provisions do not apply for certain petitions.

7B-2-513. Hearing, notice, and protest provisions do not apply for certain petitions.

1) Section 17B-2-512 does not apply, and, except as provided in Subsection (2)(a), Sections 17B-2-509 and 17B-2-511 do not apply:

i) if the process to annex an area to a local district was initiated by:

i) a petition under Subsection 17B-2-503(1)(a)(i);

ii) a petition under Subsection 17B-2-503(1)(a)(ii)(A) that was signed by the owners of private real property that:

A) is located within the area proposed to be annexed;

B) covers at least 75% of the total private land area within the entire area proposed to be annexed and within each applicable area; and

C) is equal in assessed value to at least 75% of the assessed value of all private real property within the entire area proposed to be annexed and within each applicable area; or

iii) a petition under Subsection 17B-2-503(1)(a)(ii)(B) that was signed by registered voters residing within the entire area proposed to be annexed and within each applicable area equal in number to at least 75% of the number of registered voters cast within the entire area proposed to be annexed and within each applicable area, respectively, for the office of mayor at the last regular general election before the filing of the petition;

b) to an annexation under Section 17B-2-515; or

c) to a boundary adjustment under Section 17B-2-516.

2) (a) If a petition that meets the requirements of Subsection (1)(a) is certified under Section 17B-2-505, the local district board:

i) shall provide notice of the proposed annexation as provided in Subsection (2)(b); and

ii) (A) may, in the board's discretion, hold a public hearing as provided in Section 17B-2-509 after giving notice of the public hearing as provided in Subsection (2)(b); and

(B) shall, after giving notice of the public hearing as provided in Subsection (2)(b), hold a public hearing as provided in Section 17B-2-509 if a written request to do so is submitted, within 20 days after the local district provides notice under Subsection (2)(a)(i), to the local district board by an owner of property that is located within or a registered voter residing within the area proposed to be annexed who did not sign the annexation petition.

) The notice required under Subsections (2)(a)(i) and (ii) shall:

) be given:

1) (I) for a notice under Subsection (2)(a)(i), within 30 days after petition certification; or

I) for a notice of a public hearing under Subsection (2)(a)(ii), at least ten but not more than 30 days before the hearing; and

3) by:

) posting written notice at the local district's principal office and in one or more other locations within or near to the area proposed to be annexed as are reasonable under the circumstances, considering the number of persons included in that area, the size of the area, the population of the area, and the contiguousness of the area; and

I) providing written notice to at least one newspaper of general circulation, if there is one, within the area proposed to be annexed or to a local media correspondent; and

i) contain a brief explanation of the proposed annexation and include the name of the local district, the service provided by the local district, a description or map of the area proposed to be annexed, a local district telephone number, and any additional information about the proposed annexation that may be obtained, and, for a notice under Subsection (2)(a)(ii), an explanation of the right of a property owner or registered voter to request a public hearing as provided in Subsection (2)(a)(ii)(B).

) A notice under Subsection (2)(a)(i) may be combined with the notice that is required for a public hearing under Subsection (2)(a)(ii)(A).

History: C. 1953, 17B-2-513, enacted by L. 2001, ch. 90, § 48.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-514. Resolution approving an annexation - Notice of annexation - When annexation complete.

17B-2-514. Resolution approving an annexation - Notice of annexation - When annexation complete.

1) (a) Subject to Subsection (1)(b), the local district board shall adopt a resolution annexing the area proposed to be annexed or rejecting the proposed annexation within 30 days after:

i) expiration of the protest period under Subsection 17B-2-512(2), if sufficient protests to require an election are filed;

(ii) for a petition that meets the requirements of Subsection 17B-2-513(1):

(A) a public hearing under Section 17B-2-509 is held, if the board chooses or is required to hold a public hearing

) expiration of the time for submitting a request for public hearing under Subsection 17B-2-513(2)(a)(ii)(B), if no request is submitted and the board chooses not to hold a public hearing.

) If the local district has entered into an agreement with the United States that requires the consent of the United States for an annexation of territory to the district, an annexation under this part may not occur until the written consent of the United States is obtained and filed with the board of trustees.

) Within ten days after adoption of an annexation resolution under Subsection (1), Subsection 17B-2-512(3)(c), Section 17B-2-515, or a boundary adjustment resolution under Subsection 17B-2-516(4), the board shall:

) file a written notice of annexation with the State Tax Commission, the lieutenant governor, and the assessor and clerk of the county in which the annexed area is located, accompanied by an accurate map or legal description of the boundaries of the area being annexed, adequate for purposes of the county assessor and recorder; and

) prepare and execute a certificate acknowledging that the notices required under Subsection (2)(a) have been given and maintain the certificate with the district records.

) The annexation shall be complete on the date indicated in the certificate required under Subsection (2)(b) as the date on which the board filed the notices required under Subsection (2)(a).

History: C. 1953, 17B-2-514, enacted by L. 2001, ch. 90, § 49.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-515. Annexation of wholesale district through expansion of retail provider.

17B-2-515. Annexation of wholesale district through expansion of retail provider.

1) (a) A local district that provides a wholesale service may adopt a resolution annexing an area outside the local district's boundaries if:

i) the area is annexed by or otherwise added to a municipality, an independent special district, or another local district that:

(A) acquires the wholesale service from the local district and provides it as a retail service;

(B) is, before the annexation or other addition, located at least partly within the local district; and

(C) after the annexation or other addition will provide to the annexed or added area the same retail service that the local district provides as a wholesale service to the municipality, independent special district, or other local district;

(ii) except as provided in Subsection (2), no part of the area is within the boundaries of an independent special district under Title 17A, Chapter 2, Independent Special Districts, or another local district that provides the same

) For purposes of this section:

) a local district providing transportation service shall be considered to be providing a wholesale service; and

) a municipality included within the boundaries of the local district providing transportation service shall be considered to be acquiring that wholesale service from the local district and providing it as a retail service and to be providing that retail service after the annexation or other addition to the annexed or added area, even though the municipality does not in fact provide that service.

) Notwithstanding Subsection (1)(a)(ii), an area outside the boundaries of a local district providing a wholesale service and located partly or entirely within the boundaries of an independent special district or another local district provides the same wholesale service may be annexed to the local district if:

) the conditions under Subsection (1)(a)(i) are present; and

) the proposed annexing local district and the independent special district or other local district follow the same procedure as is required for a boundary adjustment under Section 17B-2-516, including both district boards adopting a resolution approving the annexation of the area to the proposed annexing local district and the withdrawal of that area from the other district.

) Upon the adoption of an annexation resolution under this section, the board of the annexing local district shall comply with the requirements of Subsection 17B-2-514(2).

) Subsection 17B-2-514(3) applies to an annexation under this section.

History: C. 1953, 17B-2-515, enacted by L. 2001, ch. 90, § 50.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-516. Boundary adjustment - Notice and hearing - Protest - Resolution adjusting boundaries - Notice of the adjustment.

17B-2-516. Boundary adjustment - Notice and hearing - Protest - Resolution adjusting boundaries - Notice of adjustment.

1) As used in this section, "affected area" means the area located within the boundaries of one local district that is to be removed from that local district and be included within the boundaries of another local district because of the boundary adjustment.

2) The boards of trustees of two or more local districts having a common boundary and providing the same service on the same wholesale or retail basis may adjust their common boundary as provided in this section.

(3) (a) The board of trustees of each local district intending to adjust a boundary that is common with another local district shall:

j) adopt a resolution indicating the board's intent to adjust a common boundary;

i) hold a public hearing on the proposed boundary adjustment no less than 60 days after the adoption of the action under Subsection (3)(a)(i); and

ii) (A) (I) publish notice once a week for two successive weeks in a newspaper of general circulation within the district; or

(I) if there is no newspaper of general circulation within the local district, post notice in at least four conspicuous places within the local district; or

3) mail a notice to each owner of property located within the affected area and to each registered voter residing in the affected area.

c) The notice required under Subsection (3)(a)(iii) shall:

i) state that the board of trustees of the local district has adopted a resolution indicating the board's intent to adjust a boundary that the local district has in common with another local district that provides the same service as the local district;

ii) describe the affected area;

iii) state the date, time, and location of the public hearing required under Subsection (3)(a)(ii);

iv) provide a local district telephone number where additional information about the proposed boundary adjustment may be obtained;

v) explain the financial and service impacts of the boundary adjustment on property owners or residents within the affected area; and

vi) state in conspicuous and plain terms that the board of trustees may adjust the boundaries unless, at or before the public hearing under Subsection (3)(a)(ii), written protests to the adjustment are filed with the board by:

A) the owners of private real property that:

(I) is located within the affected area;

(II) covers at least 50% of the total private land area within the affected area; and

(III) is equal in assessed value to at least 50% of the assessed value of all private real property within the affected area; or

(B) registered voters residing within the affected area equal in number to at least 50% of the votes cast in the affected area for the office of governor at the last regular general election before the filing of the protests.

(c) The first publication of the notice required under Subsection (3)(a)(iii)(A) shall be within 14 days after the board's adoption of a resolution under Subsection (3)(a)(i).

(d) The boards of trustees of the local districts whose boundaries are being adjusted may jointly:

(i) publish, post, or mail the notice required under Subsection (3)(a)(iii); and

) hold the public hearing required under Subsection (3)(a)(ii).

) After the public hearing required under Subsection (3)(a)(ii), the board of trustees may adopt a resolution changing the common boundary unless, at or before the public hearing, written protests to the boundary adjustment have been filed with the board by:

) the owners of private real property that:

) is located within the affected area;

i) covers at least 50% of the total private land area within the affected area; and

ii) is equal in assessed value to at least 50% of the assessed value of all private real property within the affected area or

o) registered voters residing within the affected area equal in number to at least 50% of the votes cast in the affected area for the office of governor at the last regular general election before the filing of the protests.

5) A resolution adopted under Subsection (4) does not take effect until the board of each local district whose boundaries are being adjusted has adopted a resolution under Subsection (4).

5) Within ten days after the resolutions take effect under Subsection (5), the board of the local district whose boundaries are being adjusted to include the affected area shall comply with the requirements of Subsection 17B-2-514

7) Subsection 17B-2-514(3) applies to a boundary adjustment under this section to the same extent as if the boundary adjustment were an annexation.

History: C. 1953, 17B-2-516, enacted by L. 2001, ch. 90, § 51.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

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Source:

1 Primary Law/Utah Code Annotated 1953/TITLE 17B LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES/CHAPTER 2 LOCAL DISTRICTS/PART 5 ANNEXATION/17B-2-517. Annexed area subject to fees, charges, and taxes.

17B-2-517. Annexed area subject to fees, charges, and taxes.

When an annexation under Section 17B-2-514 or 17B-2-515 or a boundary adjustment under Section 17B-2-516 is complete, the annexed area or the area affected by the boundary adjustment shall be subject to user fees or charges imposed by and property, sales, and other taxes levied by or for the benefit of the local district.

History: C. 1953, 17B-2-517, enacted by L. 2001, ch. 90, § 52.

Effective Dates. - Laws 2001, ch. 90 became effective on April 30, 2001, pursuant to Utah Const., Art. VI, Sec. 25.

Exhibit E

ATTORNEYS

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September 26, 2001

SEP 28 2001

via facsimile and U.S. mail

Grand County Council
Grand County Courthouse
Moab, Utah 84532

Re: SITLA's Petition to Annex Approximately 1800 acres of Johnson's Mesa into
Spanish Valley Water & Sewer Improvement District.

Honorable Council Members:

We have been asked to write this letter on behalf of the Moab Citizens Alliance ("MCA") concerning the above referenced Petition to Annex ("Petition"). It is our understanding that the SVWSID does not currently own sufficient water sources to supply the additional 1800 acres. We further understand the SVWSID may well have insufficient water sources to supply the lands currently located within that District, if currently planned growth occurs. Given such a potential water deficit, my clients question how the County may legally arrive at the conclusion that this annexation is required by the "public health, convenience and necessity."

We also have concerns regarding the legality of petition process itself. One issue relates to whether or not SITLA is the proper party to request annexation. Another concerns the fact that the boundaries of the Petition have been ambiguously and arbitrarily drawn. Finally, my clients question whether the proper factual inquiry has occurred to determine if the annexation is required by the public health, convenience and necessity as to the project itself and the land located outside of the District, which is affected by such an annexation and its planned development. A similar but separate inquiry is required in this regard, over and above the water issues pertaining to the SVWSID. Absent evidence of thoughtful consideration of these issues, we believe any decision to annex the 1800 acres would likely constitute an arbitrary and capricious action that would not withstand judicial scrutiny. For these reasons, we urge you to table the Petition to Annex until each of these issues is resolved.

I. There is an insufficient showing that the annexation is required for "Public Health, Convenience and Necessity"

The Utah Code makes clear annexation proceedings may be instituted only after a

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declaration by the County Council that “the public health, convenience, and necessity requires the annexation of an area into an improvement district.” Utah Code Ann. § 17A-2-332. (emphasis added.) In this case, there has been an insufficient factual demonstration that the annexation is required to serve the public health, convenience and necessity. This inquiry has two parts. The first has to do with impacts to existing residents of SVWSID regarding whether each of these statutory factors is met. The second requires the same analysis as to the overall impact of this annexation on areas of Grand County affected by the proposed project. The Council must inquire into and satisfy itself that each of these factors has been met.

As to the water issue, the information provided to us by MCA indicates the SVWSID does not own sufficient water sources to service the properties proposed for development within the existing District, much less the SITLA property. It is our understanding the annexation will result in 360 new ERU’s based on the existing 5-acre zoning. If the County Council approves SITLA’s pending PUD application, it will require an as yet undetermined quantity of additional water from as yet unknown sources. In addition, full build out of the existing service area contemplates the need for 2,405-3,005 gpm beyond the currently available source capacity of 1420 gpm. We understand that this need maybe reduced by 925 gpm or more if the new well proves up, but there will still be a deficit. Thus, the public health, convenience and necessity actually demands the annexation petition be tabled until such time as the SVWSID is able to conclusively demonstrate it has sufficient water to service the properties proposed for annexation *in addition to* its existing and future obligations to its existing service area. Approval at this time appears arbitrary and capricious, as would allowing service of these lands by contract at the possible expense of landowners in the SVWSID. The MCA has agreed to provide you with the background information as to these statements and conclusions.

It is also worth noting the Petition was signed only by SITLA and the Moab Mesa Land Company (“MMLC”) (an entity that neither resides in nor owns property within the District). It is clear the Petition is submitted for the sole purpose of boosting SITLA’s property values and promoting the development potential of the lands proposed for annexation and not to promote any public health, convenience and necessity. The economic benefits to SITLA and MMLC may well come at the expense of existing and future residents for whom the District was created and must be operated. The Council owes a duty to these residents and the Council deserves an in-depth, properly prepared factual background upon which to base such an important decision. We are unaware of the development of any such specific factual analysis concerning how these impacts fit into the required showing of public health, convenience and necessity.

As to the second part of the inquiry, which lies beyond the water supply and source issues of the District, the same statutory inquiry must be applied to the other property owners located within the area proposed for annexation area, those owners whose property is located contiguous to or near the proposed area and to the general public affected by the proposed project. This may include a wide array of impacts under the aforementioned statutory factors. These impacts must be considered and the area of impact may be quite wide, potentially including much of the Moab

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and Spanish Valley area. I have seen no documentation of such a specific inquiry.

II. SITLA is Not a Proper Party to Institute Annexation Proceedings

Another factor weighing against approval is SITLA's status as a body that does not pay property taxes. The Utah Code provides the County may undertake annexation proceedings at the request of property owners under this factual situation when a petition to annex is signed by "25% or more of the owners of real property included within" a proposed area. Utah Code Ann. §§ 17A-2-332 and 333. The problem with the Petition at issue is that SITLA is not an "owner" of real property within the meaning of the annexation statute. Utah Code Ann. § 17A-2-333(b) provides that the owners of real property shall be determined according to the last assessment roll for county taxes. SITLA does not pay county taxes, is not on the assessment roll, and is therefore not a "property owner" under this section. Approval of the Petition would therefore exceed the powers granted by statute.

III. Boundaries are Unclear and have been Arbitrarily Drawn

Approval of the Petition would also be arbitrary and capricious because the boundaries of the area to be annexed have been left unclear and are arbitrarily drawn. It is our understanding SITLA has provided a very general map of its properties proposed for annexation, with the qualification that the Petition excludes all lands not owned by SITLA. Also, SITLA appears to be seeking annexation of an "owner," not an "area." This approach does not follow the law and creates two fundamental problems.

First, it leaves the boundaries of what specific properties are to be included to the imagination. Without a clear delineation of the boundaries and the specific properties that are to be annexed, the County may not functionally or legally review the Petition to determine if the public health, convenience and necessity is supported or if the annexation is required to support those factors. As such, the Petition also potentially affects other property owners without due process of law. Such an approach may also be deemed arbitrary and capricious. As currently constituted, we are informed the Petition fails to identify the properties that will be excluded from the service area, the owners thereof and, importantly, any properties that may end up landlocked or otherwise be harmed by the proposed annexation. Without such information, the County may not legally determine the annexation will serve the public interest in the annexed area.

Second, the blanket exclusion of properties not owned by SITLA creates logistical problems. For example, among other properties, the Petition would exclude all county roads from the service area and create a situation where water lines and fire hydrants may be located on roads outside of the service area. In that case, the SVWSID would be servicing properties located outside of its service area should it supply water to fire hydrants along county roads. This is but one example of the logistical problems created by the ambiguous and impermissibly

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vague Petition. Another question is who will be required to pay the costs of extension of services into the area - - the Petitioners or landowners in the District. It would be inequitable for the landowners to pay. All of these potential economic impacts must be reviewed before the County Council may legally consider an annexation.

IV. Liability and Risk Issues

Both the County and SVWSID should be aware of the potential exposure to liability created by this Petition. The SVWSID has a primary duty to service the customers- - current and future- - located within its boundaries. Should this Petition proceed through the annexation process, it and the County may be held liable for breach of its contractual obligations to its customers, as well as claims of discrimination in failing to provide its landowners with water, if annexation results in the SVWSID failing to fulfill its obligations to these landowners. Please be advised it is not the intent of this letter to threaten litigation, but the risk of litigation concerning the Petition process and its approval should also be carefully considered.

This is a very major decision with ramifications that are far-reaching, but essentially unexplored. To adopt a resolution declaring that the public health, convenience and necessity requires annexation of this area is seriously premature. Some of the tasks that should be performed include a detailed water audit of SVWSID's obligations regarding water service, as well as the current state of water sources, storage, water rights vis a vis the current and future needs and requirements of the existing District. Also, the impacts of this annexation have far-reaching consequences for other utilities, environmental factors and infrastructure needs from roads to air and water quality to the fundamental quality of life in the Spanish Valley. We recommend the Petition be tabled until such time as all of these issues are resolved.

Very truly yours,

APPEL & WARLAUMONT



Jeffrey W. Appel

JWA/lm

cc: Moab Citizen's Alliance

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October 15, 2001

OCT 17 2001

Kimberly Schappert, Chair
c/o Judy Bane
Grand County Council
125 East Center Street
Moab, Utah 84532

Via Facsimile (435-259-2574) and U.S. Mail

Re: Proposed Annexation of Johnson's Up-on-Top Mesa into Spanish Valley Water & Sewer Conservancy District

Dear Ms. Schappert:

This letter is in response to the School and Institutional Trust Lands Administration's ("SITLA") letter dated October 11, 2001, which I received today. SITLA raised some points in that letter to which we must respond on behalf of the Moab Citizens' Alliance. In view of the shortness of time, we briefly note the points below and would appreciate it if you would disburse this letter to the other Council Members so they may digest its contents prior to tonight's meeting.

I. SITLA's Petition is Not Filed on Behalf of All of the Property Owners

We believe SITLA's claims that it has filed a petition on behalf of *all* of the property owners in the area is factually inaccurate. Other property owners in the area include, at the very least, the County, which owns the roads upon which the water will presumably be delivered. The County therefore has an interest in the Petition as a property owner, in addition to its interest as the enabling body. We understand undisclosed third parties may be likewise affected. It was the Petitioner's task to fully investigate and disclose these issues with specificity. The fact that the map fails to disclose the location of the other property owners renders that submission inadequate. Due process of law requirements are not satisfied by guesswork.

The status of the County as a property owner within the area proposed for annexation defeats SITLA's claim that annexation is "mandatory." As SITLA noted, the notice and hearing requirements of the annexation statute do not apply *only* if "all the owners of real property within the area proposed to be annexed have signed a petition filed under Section 17A-2-332." Utah Code Ann. § 17A-2-333(3) (2000). Where a petition is signed by less than all of the property owners, as is the case here, the County must provide notice and hearing and an opportunity to protest, as required by Utah Code Ann. § 17A-2-304 (2000). Because SITLA is clearly not the only property owner within the area proposed for annexation, we believe the County must comply with Utah Code Ann. § 17A-2-304 (2000).

PPPEL & WARLAUMONT, L.C.

Kimberly Schappert, Chair

October 15, 2001

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II. County Must Consider the Public Health, Convenience and Necessity

SITLA's claim that the County has no authority to consider the "public health, convenience and necessity" in regards to annexations initiated by property owners is simply not supported by the language of the statute. While that language is used initially to refer to County-initiated petitions, it directs the County to "adopt a resolution as aforesaid" when petitioned by 25% or more of property owners. Utah Code Ann. § 17A-2-332 (2000). If the County had no authority to consider public health, convenience and necessity issues when presented with citizen-sponsored petitions, the statute would not direct that it adopt such a resolution in that manner. That statement may only be fairly read to relate back to the mandate that the public health, convenience and necessity must require the annexation. Moreover, common sense dictates an interpretation that preserves the County's statutory authority to safeguard the public health, convenience and necessity of its citizens.

III. There Remains Insufficient Water at This Time

SITLA's letter confirms that the GW&SSA does not have existing and/or available water sources to support all projected buildout in the Spanish Valley plus this proposed annexation. First, despite SITLA's statement that all concerns regarding water availability are resolved, there presently exists no recognized water right for the diversion of water from the Chapman well; it was simply a pump test. The issues regarding interference and impairment under Utah Code Ann. § 73-3-3 have yet to be dealt with by the State Engineer. Second, SITLA questions the need to develop water resources at this time to support all projected buildout in the Spanish Valley and urges the County to adopt a course of developing water sources in step with development. In essence, SITLA asks the County to take a backwards approach of annexing first and looking for available water to serve the people within its chartered area second. It is conceivable that this type of approach could lead to a severe shortage of water in the existing service area of the Spanish Valley. The importance of avoiding such a situation may be why the County is directed to determine, *prior* to annexation, whether the "public health, convenience and necessity requires" annexation. The County should delay annexation until it has conducted adequate studies to ensure there is sufficient water to service full buildout, as well as the properties proposed for annexation and reviewed the results of the State Engineer's required application process.

IV. County is not on the Assessment Rolls

As a final note, while SITLA has stressed its ownership of the subject property "is reflected on county tax records," it may simply be ducking the issue. The Statute clearly provides "[t]he owners of real property under Subsection (3)(a) [the section SITLA has relied upon which authorizes initiation of annexation proceedings by *all* of the real property owners]

PEL & WARLAUMONT, L.C.

Kimberly Schappert, Chair

October 15, 2001

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shall be determined according to the *last assessment roll* for county taxes completed prior to the filing of the petition.” The fact that the statute uses the term of art “last assessment roll for county taxes”, rather than the general “county tax records”, is not to be understated. Arguably, the purpose was to allow only taxpaying entities that could pay for services or other costs under a mill levy to compel annexation under Subsection (3)(a). SITLA’s status in the “last assessment roll for county taxes” should be fully investigated before this annexation is considered.

For the reasons set forth above together with those set forth in our prior letter, we urge the County to table the Petition for Annexation.

Sincerely,

APPEL & WARLAUMONT



Jeffrey W. Appel

cc: Clients

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November 5, 2001

NOV 7 2001

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Kimberly Schappert, Chair
c/o Judy Bane
Grand County Council
125 East Center Street
Moab, Utah 84532

Via Facsimile (435-259-2574) and U.S. Mail

Re: Pending Annexation Request of SITLA/Moab Mesa Land Company L.L.C.

Honorable Commissioners:

This letter is being sent on behalf of my clients, the members of the Moab Citizen's Alliance. I would once again appreciate it if it could be delivered to the Commissioners as soon as possible. I understand the request for annexation filed by the above entities is on the agenda for your meeting on November 5, 2001. Residents of the area have indicated to me one option being considered is the tabling of the request until the Utah State Engineer determines the amount of water that will actually be available from the Chapman Well absent interference and impairment of existing rights in the Spanish Valley. As you are aware, the mere fact that a foreshortened test pumping effort indicated the existence of potential source capacity in that Well does not answer the fundamental and critical water rights questions presented. These questions include but are not limited to how many acre feet, if any, will be allowed to be withdrawn from that Well absent interference and impairment of existing rights, as well as the negative aspect of the very recent priority date that will be attached to the water rights if they are moved into that Well. Lastly, there is an issue of what water rights are actually available for transfer into the well.

Waiting for the answers to these questions is prudent indeed and any other approach would be simply illogical. Conditionally approving the annexation while you wait for those results would not be prudent. Bodies such as the County Council should not approve development in such a fashion, as it creates far more issues and questions than it resolves. No purpose is served by approving something you may need to disapprove later and no purpose is served by creating potentially vested rights in a development until such a fundamental question has been fully resolved.

Without reiterating the points made in my two previous letters, there is a simple and practical reason why this annexation should be denied outright now. In an article in the *Times Independent*, Mr. Liss stated the annexation was not necessary because his group possessed other

PEL & WARLAUMONT, L.C.

Kimberly Schappert, Chair
Grand County Council
November 5, 2001
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alternatives for water service. This precise position was reiterated to me by John Andrews, Esq., legal counsel for SITLA. They have both stated that if the land is not annexed, they would be happy to go forward with a private water system or secure out of area service from the water district. They confirmed that the annexation request was based upon a request by the Planning Commission rather than something they felt was necessary. Under this set of facts, the requisite finding that the public necessity, health and convenience requires this annexation is simply not available. On that basis, any decision to annex, whether conditional or not, appears arbitrary and capricious and in violation of law.

I understand Scott Barrett, Esq. has provided you with his legal opinion regarding the issues raised in some of the letters you have received. In the interest of potentially resolving some of the issues we have raised, I would appreciate receiving a copy of that document at your earliest convenience. If I were to understand the basis for the conclusion that the Council may proceed with this annexation, then it might alleviate some of the concerns of my clients. If you are unwilling to provide this document to me, I would appreciate a telephone call or letter explaining why.

Thank you for your time and consideration of this matter.

Sincerely,

APPEL & WARLAUMONT



Jeffrey W. Appel

cc: Clients