

2005

## Linda Martin v. Jamie Fries : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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**LINDA MARTIN**

**Appellant/Petitioner (Defendant),**

**vs.**

**JAMIE FRIES**

**Appellee/Respondent (Plaintiff).**

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Court of Appeals Case No.  
20050026-CA

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**BRIEF OF APPELLEE**

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

- I. Whether the district court was correct in holding that one *cannot* obtain property from the County through either adverse possession or the related doctrine of boundary by acquiescence.
- II. Whether the district court was correct in holding that a strip of land owned by the public *could not* be vacated or abandoned through disuse alone?
- III. Whether the district court was correct in ruling that Jamie Fries was entitled to ownership in the alleyway, where Jamie Fries' predecessor in interest owned the real property from which the entire alley came, where Ms. Fries predecessor in interest had dedicated the alley for public use, where Ms. Fries predecessor in interest platted the alley as part of the Highland Subdivision, and where Ms. Fries' lot is in the Highland Subdivision while Ms. Myers' lot is not.
- IV. Whether the district court was correct in ruling that there were no genuine issues of material fact.

## **DETERMINATIVE STATUTORY PROVISIONS**

*Utah Code Ann.* § 10-9-807 (2000) [now § 10-9a-607(1)]:

- (1) Plats, when made, acknowledged, and recorded according to the procedures specified in this part, operate as a dedication of all streets and other public places, and vest the fee of those parcels of land in the municipality for the public for the uses named or intended in those plats
- (2) The dedication established by this section does not impose liability upon the municipality for streets and other public places that are dedicated in the manner but unimproved.

*Utah Code Ann. § 72-5-105 (1998):*

All public highways once established shall continue to be highways until abandoned or vacated by order of the highway authorities having jurisdiction over any highway, or by other competent authority.

*Utah Code Ann. § 78-12-13 (1953):*

No person shall be allowed to acquire any right or title in or to any lands held by any town, city or county, or the corporate authorities thereof, designated for public use as streets, lanes, avenues, alleys, parks or public squares, or for any other public purpose, by adverse possession for any length of time whatsoever, unless it shall affirmatively appear that such town or city or county or the corporate authorities thereof have sold, or otherwise disposed of, and conveyed such real estate to a purchaser for a valuable consideration, *and that for more than seven years subsequent to such conveyance* the purchaser, his grantees or successors in interest, have been in the exclusive, continuous and adverse possession of such real estate; in which case an adverse title may be acquired.

### **STATEMENT OF THE CASE**

#### **A. Nature of the Case**

The disputed tract of land in this case is the portion of an alley that runs between the parties' property (hereinafter, the "alley" or "alleyway"). Prior to 1916, Ms. Fries' predecessor in interest owned the land (now known as the "Highland Subdivision") that included the alley. In 1916, Ms. Fries' predecessor in interest dedicated the alley to the public, and divided the Highland Subdivision into individual lots. In the year 2000, Salt Lake County vacated the alley. A dispute between the parties arose over who owned the alley. Ms. Myers asserted ownership on the grounds that she had been possessing the alley and had therefore adversely possessed the alley from the County. Ms. Fries asserted ownership on the grounds that the alley was part of the Highland subdivision (which Ms.



Fries lot was in and Ms. Myers lot was not), and because Ms. Fries predecessor in interest owned the property and was the one that had dedicated the alley to the public.

**B. Course of Proceedings and Disposition in the District Court**

On April 7, 2004, Ms. Fries filed her Complaint, seeking an order quieting title in her name to the alley. On September 13, 2004, Ms. Fries moved for Summary Judgment. On December 6, 2004, the district court heard Ms. Fries Motion for Summary Judgment. At the hearing, the district court accepted all of Ms. Myers' facts as true, but held that they made no difference. Specifically, the district court held that the only way the alley could cease to be the property of the County was by formal vacation, and that there could be no adverse possession or boundary by acquiescence against the County regardless of whether the entire alley had been fenced off for fifty years or even more. The district court ruled that Ms. Fries was the rightful owner. On January 4, 2005, Judge Anthony B. Quinn of the Third Judicial District Court entered summary judgment in favor of Ms. Fries. Ms. Myers filed her notice of appeal on January 5, 2005.

**C. Statement of Relevant Facts**

1. Ms. Fries owns real property located in Magna, Utah (3036 South 9050), identified as lots 9, 10, and 11, section 257, of Salt Lake County's Plat Map, Office Book G of Plats, Page 67. (R. at 4.; a copy of said plat is attached as Exhibit A and enlarged copy of portion of plat as Exhibit B.)

2. Ms. Myers owns real property to the west of Ms. Fries (9100 West, Magna, Utah), identified as lot 004, section 257, of Salt Lake County's Plat Map, Office Book G of Plats, Page 67. (R. at 4, 58; Exhibit A and B.)

3. Between the parties' property lays a twelve foot wide alley that runs north and south from 3000 South to 3100 South at 9075 West. (R. at 5, 6, 9, 11; Exhibit A and B).

4. Prior to 1916, Ms. Fries' predecessor in interest owned land (now known as the "Highland Subdivision") that included the alley. In 1916, Ms. Fries' predecessor in interest dedicated the alley to the public, and divided the Highland Subdivision into individual lots. (R. at 89; a copy, reduced in size, of portions of the Highland Subdivision Dedication are attached as Exhibit C).

5. The entire alley remained in the Highland subdivision. (R. at 5, 89, 95; Exhibit A, and B.)

6. Ms. Fries' lot is in the Highland subdivision while Ms. Myers' lot is not. (R. at 5, 89, 95; Exhibit A, and B.)

7. On September 18, 2000, Salt Lake County vacated the alley by ordinance no. 1467. (R. at 11-16; A copy of the Ordinance is attached as Exhibit D.)

8. The Salt Lake County tax assessor added the alley to the lot owners on the east side of the alley (i.e., those lots within the Highland Subdivision, including Ms. Fries lot), and did not add the portion to the lot owners on the west side of the alley (i.e., those lots not within the Highland Subdivision, including Ms. Myers' lot). (R. at 90, 102, 106.)

9. Despite Salt Lake County's ordinance, and Salt Lake County Tax assessment, Appellant Ms. Myers refused to vacate the alley. Instead, she claimed she had been possessing the alley and was therefore the rightful owner by adverse possession. ( R. at 24-30.)

10. On April 7, 2004, Ms. Fries filed a Complaint, seeking an order quieting title in her name to the alley. As part of her Complaint, Ms. Fries asserted ownership on the grounds that her predecessor in interest owned the property and was the one that had dedicated the alley to the public, and because the alley was platted as part of the Highland subdivision (which Ms. Fries lot was in and Ms. Myers lot was not). (R. at 1-2.)

11. On September 13, 2004, Ms. Fries moved for Summary Judgment (R. at 31) claiming that Ms. Myers could not adversely possess property from the County prior to 2000, and that not enough time had passed to allow Ms. Myers to adversely possess the property against Ms. Fries. (R. at 31, 91-92.)

12. On December 6, 2004, the district court heard Ms. Fries Motion for Summary Judgment. For purposes of summary judgment, the district court accepted all of Ms. Myers' facts as true including her claim that the entire alley had been fenced off and was part of the defendant's properties for a long period of time, at least since the 1950s. (R. at 248, Transcr. Hrg. 33:25, 34:10-13.)

13. The district court held that Ms. Myers' facts made no difference because the law was clear that the County could only vacate the property by formal vacation, and that Ms. Myers could not obtain ownership by adversely possessing property against the County. Since Ms. Fries predecessor in interest had owned the entire alley, and had platted all of it as part of the Highland subdivision, Ms. Fries was the rightful owner. (R. at 248, Transcr. Hrg. 32:23-25, 33:1-13.)

14. On January 4, 2005, Judge Anthony B. Quinn entered an order granting Ms. Fries' Motion for Summary Judgment and quieting title to the alley to Ms. Fries. (R. at 216-17.)

15. On January 5, 2005, Ms. Myers filed her Notice of Appeal. (R. at 219-21.)

### **SUMMARY OF ARGUMENTS**

The district court was correct in ruling, on summary judgment, that Ms. Myers could not have acquired the alley through adverse possession or boundary by acquiescence. The law is clear that one cannot adversely possess property from the state. Ms. Myers' argument that she and her predecessors have been in open, notorious, and adverse possession of the alley are therefore irrelevant.

The alley could not cease to be property of the County except by formal vacation. Ms. Myers argument that the County abandoned the property over fifty years ago is also without merit because the County did not formerly vacate the property until September 18, 2000.

Ms. Fries is entitled to ownership of the entire alley that abutted her property because her predecessor in interest owned the alley, and the alley was dedicated as part of Ms. Fries' subdivision. By operation of law, the alley reverted back to the original owner's successor in interest. Ms. Myer's argument that the alley should be split  $\frac{1}{2}$  is without merit because § 72-5-105(2)(a), which Ms. Myers relies upon, was not in effect until 2002 (two years after the county's vacation). Furthermore, § 72-5-105(2)(b) provides for exclusive ownership when an owner of record is known. In this case, the undisputed evidence showed that Ms. Fries' predecessor in interest owned the alley.

Property vacated by the County should therefore be awarded to the original owner's successors in interest. Ms. Myers predecessor in interest did not own the alley, and her lot was not platted as part of the Highland Subdivision that included the alley. Thus, Ms. Myers had no claim of ownership in the vacated alley.

The district court was correct in holding that there were no genuine issues of material fact. Facts about the County abandoning the alley are irrelevant because the County cannot cease its ownership right except by formal vacation. Facts about acquiring the alley through adverse possession are similarly irrelevant because one cannot adversely possess property from the County. Thus, the district court's order granting summary judgment was correct and should be affirmed.

### **ARGUMENT**

#### **I. THE DISTRICT COURT WAS CORRECT IN RULING THAT MS. MYERS COULD NOT HAVE ACQUIRED OWNERSHIP THROUGH ADVERSE POSSESSION OR BOUNDARY BY ACQUIESCENCE**

##### **A. One cannot adversely possess property from the County.**

The Appellant's claim that the County abandoned the property is wholly without merit. The unambiguous language of the Utah Code provides:

*No person shall be allowed to acquire any right or title in or to any lands held by any town, city or county, or the corporate authorities thereof, designated for public use as streets, lanes, avenues, alleys, parks or public squares, or for any other public purpose, by adverse possession for any length of time whatsoever, unless it shall affirmatively appear that such town or city or county or the corporate authorities thereof have sold, or otherwise disposed of, and conveyed such real estate to a purchaser for a valuable consideration, and that for more than seven years subsequent to such conveyance the purchaser, his grantees or successors in interest, have been in the exclusive, continuous and adverse possession of such real estate; in which case an adverse title may be acquired. Utah Code Ann. § 78-12-13 (1953).*

In this case, there is no evidence given by the Appellant that the County *sold, or otherwise disposed of, and conveyed such real estate to a purchaser for a valuable consideration.*

In *Nyman v. Anchor Development*, 73 P.3d 357, 360 (Utah 2003), the appellant requested quiet title to a strip of land (vacated by the state) because his garage (for which he paid taxes) had been on the strip of land for *twenty-four years*. However, the Supreme Court of Utah rejected his argument because *one may not adverse the sovereign*. See also *Cassity v. Castagno*, 347 P. 2d 834 (Utah 1959); *Lund v. Wilcox*, 34 Utah 205, 97 P. 33 (Utah 1908). Because one cannot obtain property from the state through fences, or occupancy, the *Nyman* Court rejected the appellant's claim to ownership and affirmed the trial court's summary judgment.

Similarly, in this case, Ms. Myers is trying to claim ownership of the property through the establishment of fences or other boundary devices. Since one may not adverse the sovereign, Ms. Myers has no claim to ownership through adverse possession.

**B. One cannot acquire ownership against the County through boundary by acquiescence.**

Ms. Myers has also asserted ownership through boundary by acquiescence. (See Brief of Appellant 10, fn. 2.) Much like the related doctrine of adverse possession, one cannot obtain property from the County through boundary by acquiescence. The Supreme Court of Utah held that *parties separated by a strip of land (i.e., a street or alley) once owned by the county could not claim boundary by acquiescence on any*

*portion of that vacated strip of land because the parties had no contiguity. Condas v.*

*Willesen*, 674 P.2d 115 (Utah 1983). In *Condas*,

The appellants and respondents own land in Salt Lake County, which until 1980 was separated by a 33-foot strip of land. The 33-foot strip had been dedicated as a street (St. Johns Street) in 1908 by respondents' predecessors in interest. *The street was never actually built*, and Salt Lake County passed an ordinance vacating its ownership of the property in 1980. From approximately 1929 until 1979, a fence was located along the eastern edge of St. Johns Street. Appellants and their predecessors in interest occupied the land west of the fence, including St. Johns Street itself, and respondents and their predecessors in interest occupied the land east of the fence. *Id.* at 674. (Emphasis added).

Essentially, the *Condas* appellants were claiming that since they had a fence, occupied, and used the strip of land for *fifty years*, they should be entitled to the property.

The Supreme Court rejected their argument:

The appellants contend that they have acquired equitable title to the disputed strip of property under the doctrine of boundary by acquiescence. From at least 1929 until 1979, they or their predecessors in interest occupied and used the property in question. The undisputed facts show that St. Johns Street separated the property owned by the appellants from that owned by respondents throughout the period which appellants claim to have established a boundary by acquiescence. During that period of time, Salt Lake County was the fee simple owner of the dedicated property. U.C.A., 1953, § 57-5-4. *It is therefore obvious that one of the essential requirements of the doctrine of boundary by acquiescence—that the parties be 'adjoining' landowners—has not been met in this case. 'Without contiguity there can be no boundary by acquiescence. Smith v. DeNiro*, 25 Utah 2d 295, 296, 480 P. 2d 480,481 (1971) (footnote omitted). *Appellants' contentions therefore fail, and the [summary] judgment of the district court was correct. Id.* Emphasis added.

The rationale preventing adverse possession and boundary by acquiescence both stem from the same doctrine, namely the “‘ancient doctrine’ of nullum tempus occurrit regi, or ‘time does not run against the king.’ *Devins v. Borough of Bogota*, 592 A. 2d 199, 201-02 (N.J. 1991) (explaining the doctrine’s rationale that ‘the king was too busy

protecting the interests of his people to keep track of his lands and to bring suits to protect them in a timely fashion’).” *Nyman v. Anchor Development*, 73 P.3d 357, 360 (Utah 2003).

## **II. THE ALLEY COULD CEASE TO BE PROPERTY OF THE COUNTY ONLY BY FORMAL VACATION**

The County (or any other sovereign entity) abandons property only by formal vacation. See e.g., *Ercanbrack v. Judd*, 524 P.2d 595 (Utah 1974); *Henderson v. Osguthorpe*, 756 P.2d 1268 (Utah 1982); *Condas v. Willesen*, 674 P.2d 115 (Utah 1983); *Hall v. North Ogden City*, 109 Utah 304, 166 P.2d 221 (Utah 1946); *Nyman v. Anchor Development*, 73 P.3d 357, 360 (Utah 2003); *Cassity v. Castagno*, 347 P. 2d 834 (Utah 1959); *Lund v. Wilcox*, 34 Utah 205, 97 P. 33 (Utah 1908); *Devins v. Borough of Bogota*, 592 A. 2d 199, 201-02 (N.J. 1991).

The foregoing cases dealt with public property that had substantial periods of non-use by the public (some of them had no use at all), but they all came out the same way; namely, property is not abandoned by the state through non-use—only by written order or declaration.

*Ercanbrack*, laid out the rule that a public roadway could not be abandoned or vacated by even decades of disuse, but only by written declaration. *Id.* at 597. Appellant argues that *Ercanbrack* only applies to property established by “use” from the government, and not by “dedication.” However, *Ercanbrack* placed no special distinction on such grounds, and is a distinction made *only* by Appellant Ms. Myers.



*Henderson* eliminates the guess work of whether Ms. Myers' distinction of "use" versus "dedication" is significant. In *Henderson*, the property was "***dedicated***" as a Salt Lake County roadway, but the property "*has never been developed as road and remains essentially in its natural state, covered by trees and shrubs.*" *Id.* at 1268 (*Emphasis added*). Despite the fact that the *Henderson* road had been dedicated for public use and *never* developed, the court still applied the *Ercanbrack* rule: "the legislature expressed its clear intention not to provide for automatic forfeiture of publicly owned roadways through nonuse alone." *Henderson* at 1269. In other words, Ms. Myers' distinction of "use" versus "dedication" is irrelevant. Moreover, the facts *in this case* are similar to *Henderson*. The alley in this case was dedicated for public use and had a substantial period of non-use. As such, this court should follow the same rule as *Henderson*.

In another example, adjoining property owners had fenced off a street shown on a township plat for *more than seventy years* before the city decided to open the street. The Court held that the right to use the street had not been lost, even after seventy-five years of non-use, and that the street could be opened. *Hall v. North Ogden City*, 109 Utah 304, 166 P.2d 221 (Utah 1946).

Appellant Ms. Myers relies heavily on *Falula Farms v. Ludlow*, 866 P.2d 569 (Utah 1993), but draws incorrect conclusions about its holdings. Ms. Myers incorrectly asserts that if the alley is a defeasible fee, Ms. Fries is not entitled to the alley. *Falula Farms* does not make this holding. The holding in *Falula Farms* was that the state could not choose itself who to give vacated property, but can only vacate and revoke its original acceptance so that the property reverts back to the original property owners. The reason

*Falula Farms* emphasized the defeasible fee was because Falula Farms argued that if the county did have a fee simple, it could deed the property to whomever it chose. However, the court held that the quit claim deed could only serve to revoke its acceptance thereof, and that the alley would then revert back to the original owners of the land. *Id.* at 572. In *Falula Farms*, the roadway was not given up through *any inaction* of the county, but was only vacated as a result of a pro-active action: *a written quit claim deed* from the county. *Id.* at 573. The court stated that if the road was no longer used by the public, it created a condition whereby “it *may* be abandoned,” but does not actually trigger the abandonment itself. *Id.* at 572. The triggering mechanism in *Falula Farms* was the quit claim deed from the county. In essence, the holding of *Falula Farms* does not diminish the *Ercanbrack* requirement of a written formal declaration of vacation.

Since the *quit claim deed* in *Falula Farms* could only divest the county of its interest, the *Falula Farms* court had to decide who the property should revert to. The Court held that the property should revert to the lot purchasers, not the developer.

The reason vacated roadways go to the lot purchasers (and not the developer) is because it is presumed the sale of the lot automatically includes the reversionary interest of any public roadway. See, e.g., *Weldon v. Heron*, 78 N.M. 427, 428, 432 P.2d 392, 393 (1967).

In this case, Salt Lake County’s September 18, 2000 *written* ordinance vacating the alley caused the alley to revert back to the original owner’s successors in interest just as the *written* quit claim did the roadway in *Falula Farms*. Without a written declaration, the alley would have not been vacated.

### III. WHEN THE ALLEY WAS VACATED ON SEPTEMBER 18, 2000, THE PORTION OF THE ALLEY THAT ABUTTED MS. FRIES' PROPERTY AUTOMATICALLY REVERTED BACK TO HER

Ms. Fries is entitled to ownership of the entire alley that abutted her property because her predecessor in interest owned the alley, and the alley was dedicated as part of Ms. Fries' subdivision. The county ordinance vacating the alley stated, "All right, title and interest in and to the portion of said alley being vacated is to *revert* by operation of law to the abutting property owner or owners." See Exhibit D.

Black's Law Dictionary defines "revert" as follows:

**Revert.** To turn back, to return to. With respect to property, to go back to and lodge in former owner, who parted with it by creating estate in another which has expired, or to his heirs. As used in a deed, connotes an undisposed of residue and imports that property is to return to a person who formerly owned it, but who parted with the possession or title by creating an estate in another person which has terminated by his act or by operation of law. *Black's Law Dictionary* 916 (Abridged 6th ed., West 1991).

In *Condas v. Willesen*, 674 P.2d 115 (Utah 1983), the Appellee was the successor in interest to the roadway; as such, the Appellant did not even argue for a ½ split. Once the court rejected Appellants argument of ownership by boundary by acquiescence, the court affirmed summary judgment that had quieted title of the entire roadway to the Appellee.

Other states follow the rule that the entire roadway goes to one party so long as there is a record of the initial holder of title. *State v. Mobile River Telephone Company*, 898 So.2d 763 (Ala. Ct. App. 2004). Ms. Myers tries to distinguish this case on the grounds that Ms. Fries did not personally own all of the alley when the alley was originally platted. This does not distinguish the case because neither did the property

owners in *Mobile River*. The *Mobile River* appellant's predecessor in interest owned the land that included the entire roadway. As a successor in interest to the original owner, the *Mobile River* appellant was entitled to the entire alleyway, and not just half. *Id.* at 773-74.

*Mobile River* further stated, "It is a fundamental concept in American Jurisprudence that a grantee or successor in title cannot obtain more by conveyance than the grantor or their predecessor in title possessed." *Id.* at 768. The court went on to explain that it would be "inequitable fiction" to split a vacated highway in half when the plaintiff could indisputably show that plaintiff's predecessor in interest was one who originally owned and platted the highway for public use. *Id.* at 773.

In another illustrative case, *Neil v. Independent Realty Co.*, 317 Mo. 1235, 1244, 298 S.W. 363, 366 (1927), the plaintiffs' predecessor purchased four contiguous lots on the northern side of a subdivision, while defendants' predecessor had purchased four lots on the southern side. Later, plaintiffs' predecessor re-subdivided the northern half of the original subdivision and laid out a 25 foot wide street as the southernmost edge of the subdivision. In other words, the street had been taken from the northern lots. The City later vacated the street, and the defendants claimed ownership of half of the roadway, or 12.5 feet. The trial court granted the entire 25 feet to the plaintiffs, and the Supreme Court of Missouri affirmed the judgment of the trial court.

In this case, the undisputed facts show that Ms. Fries' predecessor in interest originally platted the alley.

Appellant Ms. Myers argues that the roadway should be split  $\frac{1}{2}$  between the parties and relies upon Utah Code Ann. § 72-5-105(2) (2002) for her proposition:

(a) For purposes of assessment, upon the recordation of an order executed by the proper authority with the county recorder's office, title to the vacated or abandoned highway, street, or road shall vest to the adjoining record owners, with  $\frac{1}{2}$  of the width of the highway, street, or road assessed to each of the adjoining owners.

(b) Provided, however, that should a description of an owner of record extend into the vacated or abandoned highway, street, or road that portion of the vacated or abandoned highway, street, or road shall vest in the record owner, with the remainder of the highway, street, or road vested as otherwise provided in this Subsection (2).

There are two problems with Appellant's argument. First, subsection (2) was not codified until 2002. Since the alley was vacated in 2000, subsection (2) does not even apply. The alley reverted to the abutting land owners in 2000, not 2002.

Second, even if subsection (2)(a) did apply, subsection (2)(b) explicitly provides an exception to the  $\frac{1}{2}$  split when the record holder of the original roadway is known. In this case, it is undisputed that Mr. Papinokolas was the original record holder. It is undisputed that Ms. Fries is a successor in interest to Mr. Papinokolas. It is undisputed that the alley was platted as part of the Highland Subdivision, where Ms. Mries lot is located and Ms. Myers lot is not. As such, when the County vacated the alley in 2000, Ms. Fries became the rightful owner of the portion of the alley that abuts her property.

**IV. BECAUSE THE COUNTY COULD NOT CEASE ITS OWNERSHIP EXCEPT BY FORMAL VACATION, AND BECAUSE ONE CANNOT ADVERSELY POSSESS AGAINST THE SOVEREIGN, THERE WERE NO GENUINE ISSUES OF MATERIAL FACT**

The Defendant could not begin to adversely possess the property before September 18, 2000 (the date the county vacated the alley). Whether fence lines had been in place for at least 40 years was immaterial. Facts about the county abandoning the alley were also irrelevant because the county cannot cease its ownership right except by formal vacation.

Ms. Myers initially made some argument about whether Ms. Fries' undisputed publicly known facts had been authenticated. Once all the publicly known facts were authenticated, Ms. Myers dropped this argument. Ms. Myers seems to have resurfaced this argument in her Appellate Brief. This argument remains without merit because the facts are publicly known and have been authenticated. (R. at 89, 93-115.)

Accordingly, because there were no genuine issues of any material facts, the district court was correct in granting summary judgment.

**CONCLUSION**

The Plaintiff is entitled to summary judgment. One cannot adversely possess property from the County, and the County does not cease ownership of property except by formal vacation. There are no *genuine* issues of material fact. Any facts that might be material have been authenticated and are public record. Ms. Myers' facts about exclusive possession are immaterial because one cannot adversely possess property from the County, and not enough time had passed to allow Ms. Myers to adversely possess against

Ms. Fries. Thus, the district court was correct in granting Appellee summary judgment as a matter of law, and this Court should affirm the district court's order granting summary judgment.

Dated this 18<sup>th</sup> day of May, 2006.

DAY SHELL & LILJENQUIST, L.C.

A handwritten signature in black ink, appearing to read "J. L. Kitchen", written over a horizontal line.

JEFFREY L. KITCHEN  
Attorney for Appellee/Respondent,  
Jamie Fries

### CERTIFICATE OF SERVICE

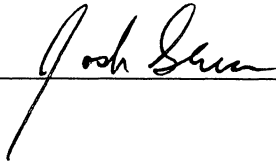
I hereby certify that on this 19<sup>th</sup> day of May, 2006, I delivered a true and correct copy of the foregoing

▪ **BRIEF OF APPELLEE**

to the following:

Mark R. Gaylord, Esq.  
Matthew L. Moncur  
BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
Attorney for Appellant/Defendant Linda Martin  
One Utah Center, Suite 600  
201 South Main Street  
Salt Lake City, Utah 84111-2221

- ☒ Via U.S. Mail (first class, postage prepaid)
- ☐ Via Overnight Delivery
- ☐ Via Facsimile
- ☐ Via Hand Delivery

  
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Filed with:

Utah Court of Appeals  
450 S. State St.  
Salt Lake City, Utah 84111

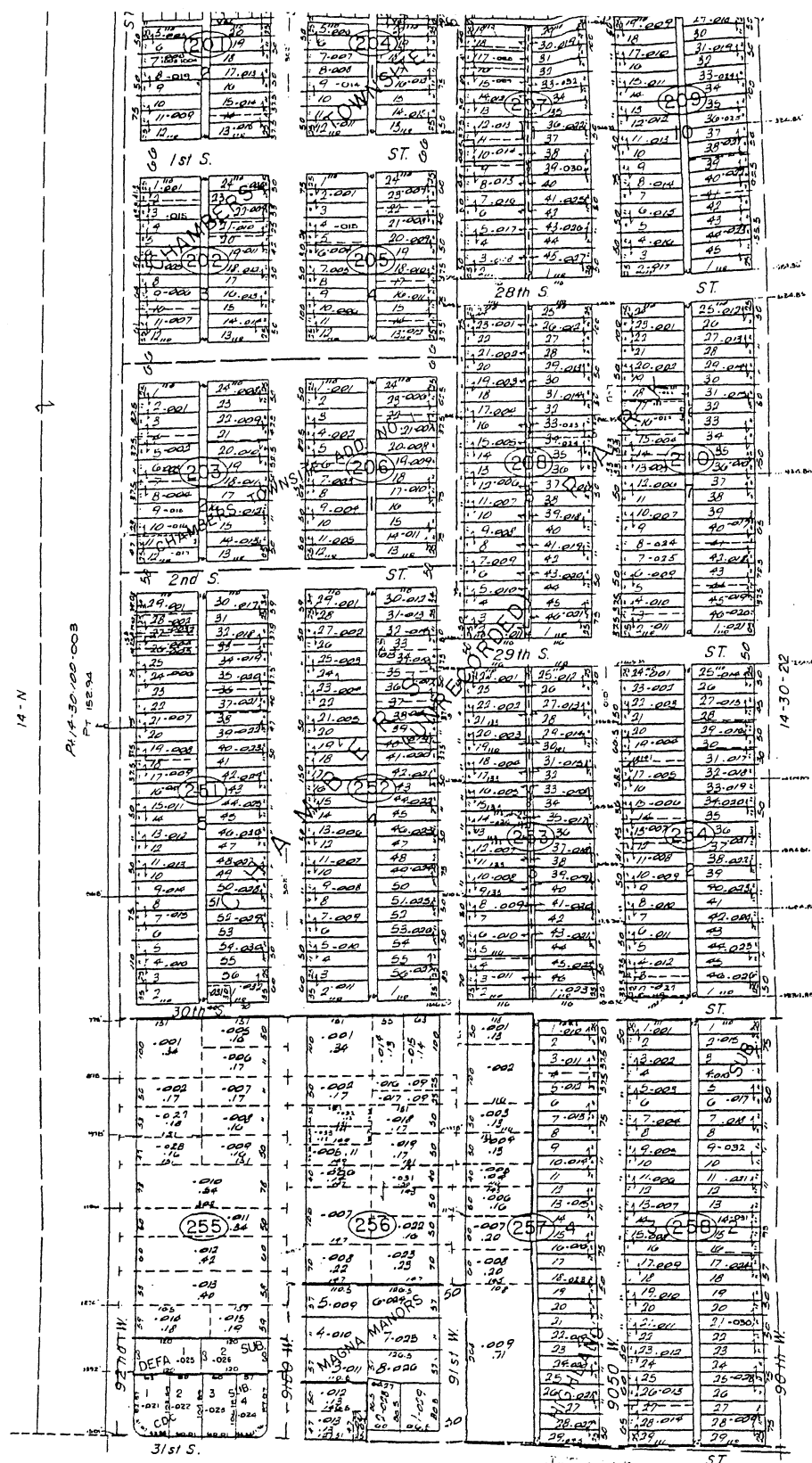
CC:  
Jamie Fries  
3036 S. 9050 W.  
Magna, UT 84044



Tab A

SALT LAKE COUNTY, Utah, Official Copy, Copyright © 1996  
PREPARED BY SALT LAKE COUNTY RECORDER  
This map is not intended to represent actual physical property lines. It is intended to illustrate and provide boundaries. A survey of the property must be necessary.

SCALE: 1" = 100'  
14-30-21



14-30-41  
SALT LAKE CO. CLERK OF THE COUNTY OF SALT LAKE ) SS.  
I, THE UNDERSIGNED, DEPUTY COUNTY CLERK AND  
CLERK OF THE SALT LAKE COUNTY COUNCIL, DO HEREBY  
CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE  
AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN  
MY OFFICE AS SUCH CLERK.  
WITNESS MY HAND AND SEAL OF SAID COUNTY  
THIS 14th DAY OF November, 2004  
BY: Sherrie Swensen DEPUTY  
COUNCIL CLERK

Tab B

[illegible]

Tab C

BEING SITUATED IN THE SW<sup>4</sup> OF THE NE<sup>4</sup> OF SEC. 30 T.1S., R.2W., S.L.B.&M.

SURVEYOR'S

All lots are as shown on this map

NAMES AND DIMENSIONS OF PARCEL  
First East Lane, 50 ft. wide, is 725° ft. lo  
All alleys are as shown on this map

OWNER'S

In witness whereof we have here  
A.D. 1916.

In the presence of:

## ACKNOWLEDGME

State of Utah  
County of Salt Lake:

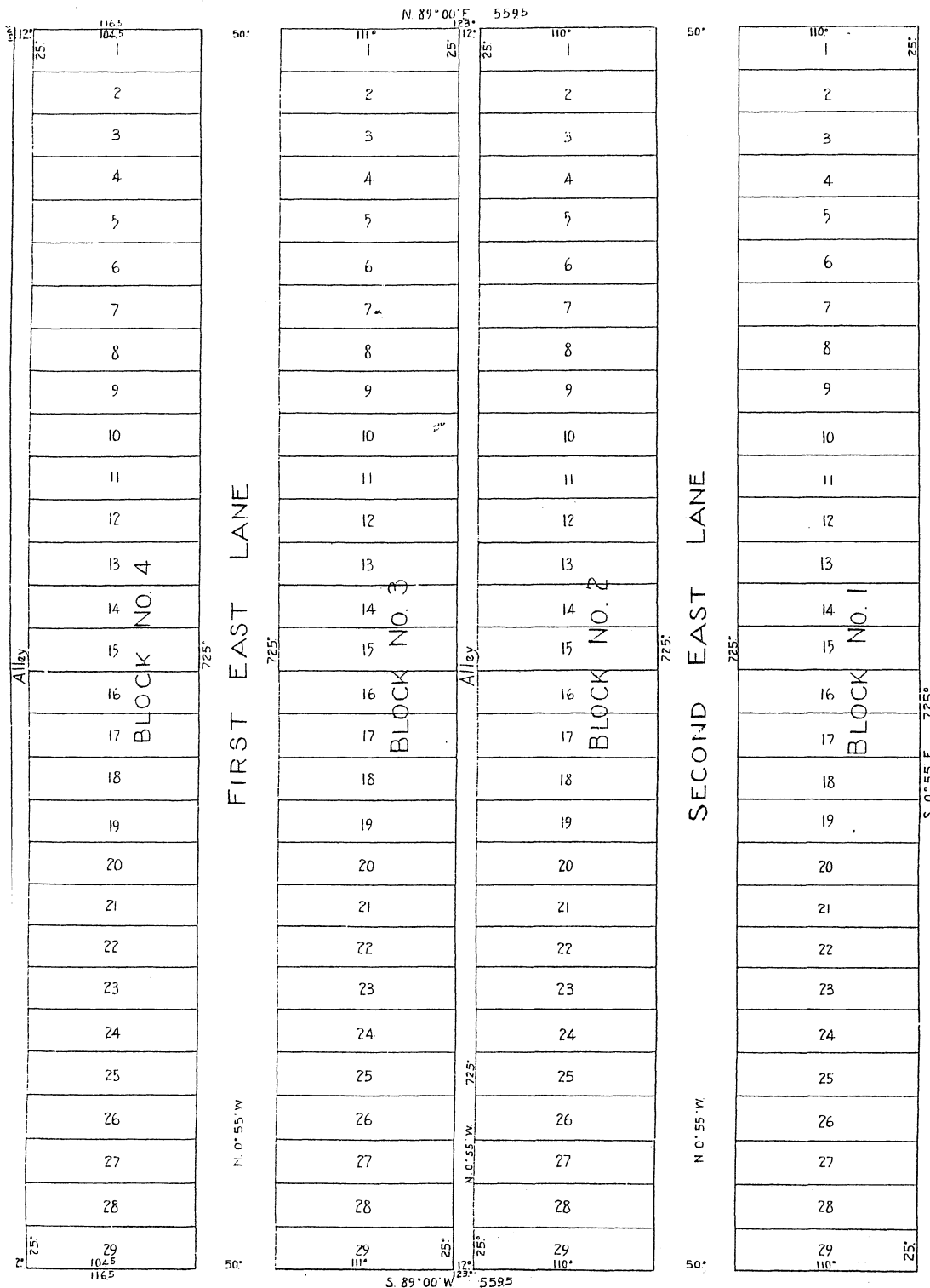
On this ~~second~~ day of ~~January~~, AD 19 ~~19~~  
signed, a notary public in and for s: ~~Manuel~~  
Manuel Papanikolas and Georgia B: ~~B~~  
instrument, who duly acknowledge to,  
untarily and for the uses and purpos

My commission expires 12-2-21

COUNTY SUR

Hereby certify that I have examined  
on this map and found the same

Approved by the Board of Co  
A.D. 1916



Deputy.

D-13

195-22

## SURVEYOR'S CERTIFICATE

I hereby certify that the tract of land shown on this map and owned by Manuel Panikolas and Georgia Panikolas, his wife, is described as follows: Beginning at a point 17°59'E. 2070.0 ft. from the 1/4 Sec Cor. between Secs 19 and 30, T.1 S., R.2 W., L.B. & M., (Ferron survey), and running thence N.89°00'E. 559.5 ft., thence S.0°55'E. 725.0 ft., thence S.89°00'W. 559.5 ft., and thence N.0°55'W. 725.0 ft. to the place of beginning, containing 9.31 Acs; that I have by the authority of the said owners thereof, subdivided the same into blocks, lots, lanes and alleys to be known as Highland Subdivision of Magna; that same has been correctly surveyed and established on the ground by the placing of 5x16 concrete monuments at the block corners and that the steel tape used in making the survey was correct.

All lots are as shown on this map, drawn to a scale of 50 ft. to 1 inch.

NAMES AND DIMENSIONS OF PARCELS OF LAND DESIGNATED FOR PUBLIC USE  
First East Lane, 50 ft. wide, is 725° ft. long. Second East Lane, 50 ft. wide, is 725° ft. long. Alleys are as shown on this map.

*Harry A. Ragon*  
Surveyor

## OWNER'S DEDICATION

Know all men by these presents that Manuel Panikolas and Georgia Panikolas, wife, owners of the above described tract of land, having caused the same to be subdivided into blocks, lots, lanes, and alleys to be hereafter known as Highland Subdivision of Magna, hereby dedicate for the perpetual use of the public all parcels of land designated in Surveyor's Certificate and shown on this map as intended for public uses.

In witness whereof we have hereunto set our hands and seals this 22 day of May, A.D. 1916.  
the presence of:

*Manuel Panikolas*

*Georgia Panikolas*

G 67

## ACKNOWLEDGMENT BEFORE NOTARY PUBLIC

State of Utah  
County of Salt Lake:

On this 22 day of May, A.D. 1916, personally appeared before me the undersigned, a notary public in and for said county of Salt Lake and said state of Utah, Manuel Panikolas and Georgia Panikolas, his wife, the signers of the foregoing instrument, who duly acknowledge to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

My commission expires May 22 1917

*[Signature]*  
Notary Public.

## COUNTY SURVEYOR'S CERTIFICATE

I hereby certify that I have examined and checked the dimensions given on this map and found the same correct.

*R. E. L. Collier*  
County Surveyor

Approved by the Board of County Commissioners this 26 day of May 1916.

*R. K. Hanna*

STATE OF UTAH )

ss

NOV 09 2004

COUNTY OF SALT LAKE )

I, the undersigned, Recorder of Salt Lake County, Utah, do hereby certify that the foregoing is a true and full copy of an original subdivision plat on file in my office. WITNESS, my hand and seal of said Recorder

GARY W. OTT

SALT LAKE COUNTY RECORDER

Rv

*Ted Mika*

Tab D



7721877

ORDINANCE NO. 1467

DATE SEPT. 18<sup>th</sup>, 2000

AN ORDINANCE VACATING AN ALLEY BETWEEN 3000 SOUTH AND 3100 SOUTH AT 9075 WEST IN SALT LAKE COUNTY, UTAH.

The Board of County Commissioners of Salt Lake County ordains as follows:

SECTION I. (1) A 12 foot wide by 725 foot long alley, located approximately between 3000 South and 3100 South at 9075 West, and which is more fully described in *Exhibit A* attached hereto and incorporated by reference herein, is hereby vacated.

(2) This ordinance is based upon a finding by the Board of County Commissioners following a hearing on June 7, 2000, that due and proper notice of the hearing to vacate said alley was duly given according to law and that no objection was made to said proposed vacation. The Board further finds that the County has no present or future need for the alley vacated herein, and that vacation of the alley relieves the County from present or future obligations to maintain such alley. Therefore, no appraisal nor compensation to the County is required.

(3) All right, title and interest in and to the portion of said alley being vacated is to revert by operation of law to the abutting property owner or owners. This ordinance shall have no force or effect to impair any easement or right-of-way for public utilities, holders of existing public franchises, water drainage easements, or other such easements, as presently exist under, over, or upon the vacated portion of said alley, or as are or may be shown on the official plats and records of the County.

(4) The Salt Lake County Recorder is hereby directed to record this ordinance and make the necessary changes on the official plats and records of the County to reflect said ordinance.

7721877  
09/20/2000 08:46 AM NO FEE  
Book - 8388 Pg - 6505-6507  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
SL CO COMMISSION CLERK  
BY: KCC, DEPUTY - MA 3 P.

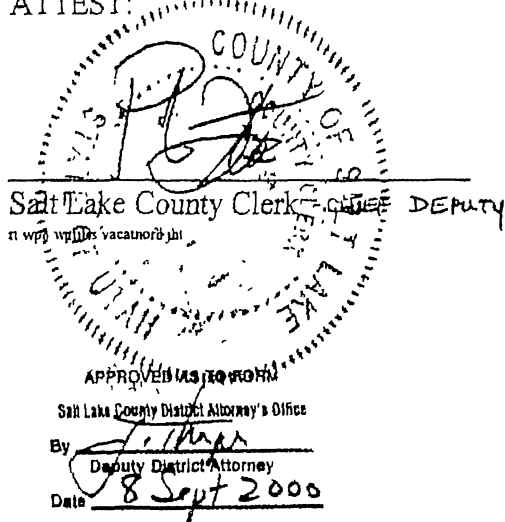
BK8388 PG6505

SECTION II. This ordinance shall become effective 15 days after the date of its enactment and upon one publication in a newspaper in and having general circulation in Salt Lake County.

APPROVED and PASSED this 18<sup>th</sup> day of SEPTEMBER, 2000.

BOARD OF COUNTY COMMISSIONERS  
OF SALT LAKE COUNTY

ATTEST:



By Mary Callaghan  
MARY CALLAGHAN  
ACTING CHAIR, BOARD OF COUNTY COMMISSIONERS

Commissioner Callaghan voting "AYE"  
Commissioner Overson voting "AYE"  
Commissioner Shurtleff voting ABSENT

EXHIBIT "A"

Said parcel of land situated in the Southwest quarter, of the Northeast Quarter of Section 30, Township 1 S, Range 2 W, Salt Lake Base & Meridian, described as follows:

Beginning at the Northwest Corner of HIGHLAND SUBDIVISION OF MAGNA as recorded as entry #360562 in Book G of plats Page 67 and running thence N 89°00'E 12.0 feet to the Northwest Corner of Lot 1, Block 4 of said Subdivision; thence S 0°55'E 725.0 along the East Line of the Alley to the Southwest Corner of Lot 29, Block 4 of said Subdivision; thence S 89d 00'W 12.0 feet to the Southwest Corner of said Subdivision; thence N 0°55'W 725 feet to the point of beginning.

Area equals 8700 sq. ft. or 0.1997 acres.

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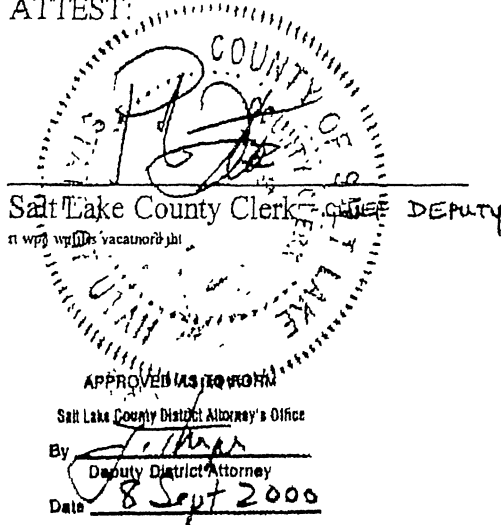
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