

1995

James L. Szatkowski and Vernal W. Thompson v. Bountiful City : Brief of Appellee

Utah Court of Appeals

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UTAH SUPREME COURT

BRIEF

950242 CA

IN THE UTAH COURT OF APPEALS

JAMES L. SZATKOWSKI
and VERNAL W. THOMPSON,

Plaintiffs-Appellants,

vs.

BOUNTIFUL CITY,

Defendant-Appellee.

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Priority No. 15

Case No. 950242-CA

BRIEF OF APPELLEE/CROSS-APPELLANT

Appeal from the Judgment of the
Second District Court of
Davis County, State of Utah
The Honorable Jon M. Memmott
District Court Judge

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FILED

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COURT OF APPEALS

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Factual findings of the trial court are given deference by the appellate court, and are reviewed under a clearly erroneous standard. Findings of fact are clearly erroneous if they are so lacking in support as to be against the clear weight of the evidence. Doelle v. Bradley, 784 P.2d 1176 (Utah 1989). However, the trial court's determination that the factual evidence before it substantially complies with a particular statute is a discretionary ruling involving the application of facts to law. Trial courts are granted discretion in making such a determination, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law. State v Pena.

Accordingly, using the same numbering of issues as given by the Plaintiffs, the following standards for appellate review are submitted:

1. The finding of the trial court that the assessment roll does in fact contain names of owners of real property is a factual finding reviewed on a clearly erroneous standard. The trial court's determination that the evidence before it substantially complies with the assessment roll requirement is a discretionary ruling involving the application of facts to law, which is accorded "some degree of deference" and reviewed "with far less rigor" than conclusions of law. State v Pena.

2 & 3. The finding of the trial court that there was "*no factual evidence*" that the Defendant City abused its discretion in determining that the map requirement of §10-2-416 was met is a factual finding reviewed on a clearly erroneous standard. The trial court's determination that the evidence before it substantially complied with the map requirement is a discretionary ruling involving the application of facts to law, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law. State v Pena.

4. The trial court's ruling that the evidence before it concerning the petition and signature of Michael Gonce substantially complies with the petition signature requirement is a discretionary ruling involving the application of facts to law, which is accorded "some degree of deference" and reviewed "with far less rigor" than conclusions of law. State v Pena.

5. The trial court's ruling that the evidence before it concerning trustee signatures substantially complies with the statutory petition signing requirement is a discretionary ruling involving the application of facts to law, which is accorded "some degree of deference" and reviewed "with far less rigor" than conclusions of law. State v Pena.

6. The court's decision to permit the withdrawal, reinstatement and adding of signatures to annexation petitions is a conclusion of law which is given no deference by the appellate court and reviewed for correctness. However, the trial court's ruling that the Defendant City's actions concerning the withdrawal, reinstatement and adding of signatures substantially complies with the statutory petition signing requirement is a discretionary ruling involving the application of facts to law, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law. State v Pena.

7. Trial courts are granted a broad discretion in admitting or excluding evidence. State v. Pena. The review of the trial court's rulings admitting evidence is on the basis of deciding whether the decisions were an abuse of discretion and beyond the bounds of reasonableness. State v. Teuscher, 883 P.2d 922 (Utah App. 1994).

8. The trial court's finding that the Colonial View Condominium Association is not an owner of real property separate from the individual unit owners is a finding of fact reviewed under a clearly erroneous

standard. State v. Pena. Findings of fact are clearly erroneous if they are so lacking in support as to be against the clear weight of the evidence. Doelle v. Bradley, supra.

9. The court's ruling that remaindermen after life estates are not be counted as owners of real property under §10-2-416 is a conclusion of law which is given no deference by the appellate court and reviewed for correctness. State v. Pena.

10. The court's ruling that a dead man is not an owner of real property under §10-2-416 is a conclusion of law which is given no deference and reviewed for correctness. State v. Pena.

STATEMENT OF ISSUES PRESENTED ON CROSS-APPEAL

On Cross-Appeal the Defendant City raises the following issues, all of which were preserved for appeal by the Defendant City's Motion for Rulings of Law (R. 30-48) and the Defendant's Objection to Rulings of Law (R. 263-264, 388):

1. Did the trial court err in interpreting §10-2-414 to require a count of owners and petition signers (for the purpose of determining a majority) at the mid-point of the annexation process when the policy declaration was adopted?

2. Did the trial court err in interpreting the term "owners of real property" in §10-2-416 to be modified by the phrase "as shown by the last assessment rolls"?

3. Did the trial court err in interpreting the term "owners of real property" in §10-2-416 to include governmental entities?

All of these issues involve conclusions of law by the trial court which are given no deference by the appellate court and reviewed for correctness. State v. Pena, supra.

DETERMINATIVE PROVISIONS AND STATUTES

The following provisions are determinative or of central importance to this appeal:

Constitutional Provisions: The First Amendment to the U.S. Constitution relative to the right of petition is included, along with the Fourteenth Amendment, in Appendix A of the Defendant City's Addendum. Article I, Section 1 of the Utah Constitution is also included.

Statutory Provisions: Sections 10-2-414, 10-2-415 and 10-2-416, Utah Code Annotated, are in Appendix A of the addendum of the Plaintiffs.

Sections 10-1-103, 10-8-8, 20A-4-105, 57-8-27, 59-2-303, 75-7-406, and 78-2-2(3)(j), Utah Code Annotated, are in Appendix A of the addendum of this brief.

STATEMENT OF THE CASE

(a) The Nature of the Case.

This is an appeal of a final order by the Second District Court of Davis County, Utah, which upheld an annexation of incorporated land by the Defendant Bountiful City. The Plaintiffs are residents of the annexed area.

(b) The Course of Proceedings.

In response to an annexation drive, the Defendant City formally accepted the petitions on October 7, 1992, (R. 347), adopted a policy declaration on December 2nd, (Ex. P-56. R. 342), and passed an annexation resolution on December 9th (Ex. P-54, R. 330). Plaintiffs filed an action to challenge the annexation in the Second District Court in Davis County on November 29, 1993 (R. 1-12). A bench trial before the Honorable Judge Jon M. Memmott was held November 7 and 9, 1994.

(c) Disposition in the Court Below.

It was stipulated by the parties that a majority of owners signed as of October 7, 1992, when the annexation petitions were formally accepted by the Defendant City (R. 124, 347). After making a number of decisions in the course of the trial concerning the manner in which to determine owners, and what signatures ought to be counted, the trial court found that 132 out of 263 owners of real property validly signed the annexation petitions as of December 2, 1992, (Ex. D-3, R. 329, 341-356) and 145 out of 263 on December 9, 1992 (Ex. D-3, R. 330, 341-356). Substantial compliance with all annexation statutes was found and the annexation was upheld (R. 341-356, 357-358).

(d) Statement of the Facts.

Certain residents of an unincorporated area of Davis County organized a petition to become annexed to the City of Bountiful (R. 468). The annexation petitions (Ex. D-3) and a map of the proposed area of annexation (Ex. D-37) were filed in the office of the City Recorder in early October 1992 (R. 614). After receipt of these items, the Bountiful City Council on October 7, 1992, pursuant to §10-2-416, voted to accept the annexation petition for the purpose of adopting a policy declaration (Ex. P-58, P-62, R. 347). On December 2, 1992, pursuant to §10-2-414, the Defendant City adopted a policy declaration (Ex. P-56, R. 342). Then on December 9, 1992, pursuant to §10-2-415, the Bountiful City Council adopted the annexation resolution (Ex. P-54, P-63, R. 330).

Prior to its voting on October 7th (Ex. P-58), December 2nd (Ex. P-62) and December 9th (Ex. P-63), the Defendant City made a count of signatures to determine whether a majority of the owners of real property within the annexation area had signed the petition. Not knowing what rulings the District Court would later make concerning ownership and

signature validity, neither the Defendant City at the times of those counts, nor the Plaintiffs in their Complaint (R. 3-5), counted the same way that Judge Memmott did at trial (R. 341-356). But the Defendant City did determine on each of the three occasions that a majority of owners signed the petition (R. 341-356).

It was stipulated by the parties and incorporated by order of the Court (R. 124, 318, 347) that there were sufficient petition signatures on October 7th. Prior to the policy declaration vote on December 2nd, fifteen petitioners gave written notice (Ex. D-4) to the Defendant City that they wished to withdraw their signatures from the petitions, five of whom also gave written notice to the Defendant City that they wished to reinstate their withdrawn signatures (Ex. D-5). All of these requests were honored (Ex. P-62).

After the policy declaration vote, and before the annexation resolution vote on December 9th, thirteen more petition signatures were turned in (Ex. D-3, R. 341-356, 669-670). These were added to the annexation petition totals (Ex. P-63). On December 9, 1992, the Defendant City adopted an Annexation Resolution (Ex. P-54), a copy of which is in Appendix B of the Addendum.

Nearly a year later, Plaintiffs filed suit to challenge the validity of the annexation (R. 1-12). A bench trial was held November 7 and 9, 1994. Following presentation of the evidence and the arguments of counsel, the trial court made its decision, which is reflected in part in the Findings of Fact and Conclusions of Law (R. 341-356, Appendix C of the Addendum), and a Judgment affirming the annexation (R. 357-358). The Defendant City agrees with the Findings of Fact by the trial court, and incorporates them herein by this reference.

SUMMARY OF ARGUMENTS ON APPEAL

1. THE PLAINTIFFS CHALLENGE AND MARSHAL EVIDENCE ON ONLY ONE OF THE FINDINGS OF FACT OF THE TRIAL COURT. ALL OTHER FINDINGS OF FACT ARE THEREFORE ACCEPTED AS VALID.

Following the trial of this case, the trial court issued Findings of Fact (Appendix B of Addendum). In their appeal, Plaintiffs attack only one of those findings, which is found in their Point VIII. All unchallenged Findings of Facts stand undisturbed and are accepted as valid.

In the event this Court finds that the Plaintiffs have in some manner indirectly challenged any other Findings of Fact, then the Plaintiffs have utterly failed to carry their burden of marshaling the evidence. The consequence of an appellant's failure to marshal evidence is that the Findings of Fact are accepted as valid.

2. THIS CASE IS FUNDAMENTALLY ONE CONCERNING THE HISTORICAL RIGHT OF THE PEOPLE TO PETITION GOVERNMENT.

The right of the American people to petition their government is protected by the Bill of Rights. The First Amendment of the Constitution of the United States provides: "Congress shall make no law...abridging...the right of the people... to petition the Government for a redress of grievances." In addition, Article I, Section 1 of the Utah Constitution states: "All men have the inherent and inalienable right to...petition for redress of grievances."

3. STATE LAW HAS DELEGATED TO THE CITIES THE RESPONSIBILITY OF DETERMINING SUBSTANTIAL COMPLIANCE WITH ANNEXATION LAWS, AND THE CITY DID FIND SUBSTANTIAL COMPLIANCE.

The Utah Legislature has given cities the authority and power to review annexation procedures for substantial compliance:

10-2-415. (1) The members of the governing body of the municipality may adopt a resolution or ordinance of annexation by two-thirds vote if:

(a) the annexation proposed in the policy declaration, *in the judgment of the municipality*, meets the standards set forth in this chapter..... [Emphasis added.]

This legislative grant of authority to the cities was recognized by the Utah Supreme Court in Sweetwater Properties v. Town of Alta, 622 P.2d 1178 (Utah 1981). The Defendant City did in fact find substantial compliance with annexation statutes and so stated in its annexation resolution (Appendix C of Addendum). The trial court found no abuse of discretion in the City's finding.

4. THE ROLE OF THE COURT IS TO REVIEW WHETHER THE CITY HAD STATUTORY ANNEXATION AUTHORITY, AND WHETHER THERE WAS SUBSTANTIAL COMPLIANCE WITH THAT AUTHORITY. LIBERALITY SHOULD BE EXTENDED IN MAKING THIS REVIEW.

The role of the courts in annexation cases was considered by the Utah Supreme Court in Sandy City v. City of South Jordan, supra:

The basic function and duty of the courts is to determine whether a city has statutory authority.... Once we determine that a city has been in substantial compliance with these requirements, we will not alter the operation of the statute under which the annexation occurred.

The Utah Supreme Court has established that courts should be very cautious in reversing annexation decisions by cities:

The courts are and should be reluctant to intrude into the prerogative of the legislative branch of government, and *will interfere with such action only if it...is in excess of the authority* of the legislature. Bradshaw v. Beaver City, 27 Utah 2d 135 (1972). [Emphasis added.]

Liberality should be extended in considering both the actions of cities in annexation matters, and in giving full consideration to the intent of the petition signers under the following statutes:

10-1-103 of the Utah Municipal Code. The powers herein delegated to any municipality shall be *liberally construed to permit the municipality to exercise the powers granted by this act* except in cases clearly contrary to the law. [Emphasis added.]

20A-4-105. (6)(a) In counting the ballots, *the counters shall give full consideration to the intent of the voter.* (b) The counters may not invalidate a ballot because of mechanical and technical defects or failure....to follow strictly the rules for balloting.... [Emphasis added.]

This same principle of voting liberality should also be extended to the counting of annexation petition signatures.

5. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE ASSESSMENT ROLL REQUIREMENT OF §10-2-416.

The assessment roll/jurisdiction argument in Point I of the Plaintiffs' brief is an issue not preserved for appeal, constitutes a repudiation of a binding stipulation of the parties, and is a challenge to findings of fact that fails the marshaling evidence requirement.

Two fundamental premises underlie the claim of the Plaintiffs that the assessment roll has no names of owners on it. One is that owners should be determined by the assessment roll. The second is that the County Assessor's office must itself enter the owners names onto the assessment roll. Both of these premises are faulty.

First, it is mistaken because the phrase "as shown by the last assessment roll" in §10-2-416 does not modify the requirement of "a majority of the owners of real property." Second, if the County Assessor ascertains the names of the owners by having the County Recorder tell him, that action is in fulfillment of the law and not contrary to it.

6. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE MAP REQUIREMENT OF §10-2-416.

Points II and III of the Plaintiffs constitute a challenge to a finding of fact. The trial court entered a finding that there was "*no factual evidence*" of abuse of discretion in the Defendant City's determination of compliance with the map requirement, and Plaintiffs directly challenge

this without meeting the requirement of marshaling evidence.

The evidence before the trial court showed that the requirement of an official map turned into the City Recorder was fulfilled, and that the requirement that petition signatures be turned into the City Recorder was fulfilled. The wording of the statute itself in no way supports the Plaintiffs' contentions.

7. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENT OF §10-2-416 IN COUNTING THE SIGNATURE OF MICHAEL GONCE.

It is indisputable that Michael Gonce favored annexation and that he signed a petition to that effect, though it was different in form from other petitions. The issue, then, is whether his known preference ought to be disregarded (and in fact counted as an anti-annexation signature) because of technicality as to form. State law requires no specific petition form. Had the Legislature wanted a definite form it could have required one. The liberality in giving "full consideration to the intent of the voter" under §20A-4-105 ought to be applied here.

8. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENT OF §10-2-416 IN COUNTING TRUSTEE SIGNATURES ON TRUST PROPERTIES.

The trial court found that some properties were owned by trusts and that the trustees signed the annexation petitions. §75-7-406 of the Utah Code upholds the reliance of the Defendant City on these trustee signatures:

75-7-406. With respect to a third person dealing with a trustee...[t]he third person is not bound to inquire whether the trustee has power to act or is properly exercising the power....

Even if it is considered that trustee reciting of their trustee capacity is a "rule for balloting" (i.e., petitioning), at most the omission is only a

"mechanical and technical defect or failure." The liberality of public policy expressed in §20A-4-105(6) should "give full consideration to the intent of the voter."

9. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENT OF §10-2-416 IN ALLOWING SIGNATURES TO BE WITHDRAWN, REINSTATED AND ADDED TO THE ANNEXATION PETITIONS.

The Defendant City and the trial court permitted people to withdraw their signatures from the annexation petitions, to reinstate them if withdrawn, and to add them, if done prior to the final annexation resolution vote. This is supported by Utah case law:

Why should these petitioners not be granted their request if it is presented to those in authority before the latter make annexation a fait accompli by ignoring the request of those, who, apparently with studied conviction, honestly seek to erase their participation before action is taken?

* * *

There should be some way in this case, under the statute, reasonably and fairly and quickly to apprise almost all of the people as to the issue and consequences involved, with reasonable opportunity for all or some of the people to *express their approval or disapproval* within a reasonable time, in accordance with statutory formulae. That would seem to comport with the traditional American idea as reflected in the historical town meeting concept. Jensen v. Bountiful, 20 Utah 2d 159, 435 P.2d 284 (1967). [Emphasis added.]

The earlier litigation concerned...whether or not persons could *add or subtract* their names from the petitions. [Footnote citation to Jensen; emphasis added.]

10. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING EVIDENCE.

The State v. Pena criteria in favor of granting greater discretion to the trial court apply to the evidentiary decisions challenged by the Plaintiffs. The trial court was faced with a host of issues, most of which have never been addressed either by the legislative statutes or by the courts. No statutory or case law rules *adequately* addressing the relevance of all these annexation facts has ever been spelled out,

and the situation presented by these facts is sufficiently new that appellate courts have so far not anticipated and articulated what factors should be outcome determinative.

Faced with this situation, Judge Memmott established a workable legal framework for dealing with annexations. Following Jensen, requiring that the names of owners be "as shown on the last assessment rolls," he established a prima facie list, and, as stated in his pre-trial Rulings of Law and in the Conclusions of Law, established certain necessary legal modifications.

Throughout the trial Judge Memmott consistently stayed within this framework. Evidence concerning legal modifications such as the five deceased owners of record, the condominium association, and life estates was admitted. On the other hand, evidence unrelated to the identified legal issues and expanding beyond the statutory "as shown" requirement was not admitted.

11. THE TRIAL COURT PROPERLY EXCLUDED THE COLONIAL VIEW HOMEOWNERS ASSOCIATION AS AN "OWNER OF REAL PROPERTY" UNDER §10-2-416.

The original condominium declaration and its amended declaration, which are recorded in the office of the Davis County Recorder, were admitted as Exhibits D-27 and D-28. They each stated:

Neither the percentage of undivided interest in the Common Areas and Facilities nor the right of exclusive use of a Limited Common area and Facility shall be separated from the Unit to which it attains; and even though not specifically mentioned in the instrument of transfer, such parcel of undivided interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

In addition, Exhibit A to these declarations proved that the individual unit owners account for 100% of the ownership of the common areas.

Since the individual unit owners own their own unit and their percentage of the common areas together, nothing is owned by the Homeowners Association. The trial court's decision that the homeowners association is not a separate owner flowed directly from the sound evidence before it.

The trial court's decision based on the evidence is well founded, and not clearly erroneous. No witness or evidence contradicted the trial court's decision. The clear weight of the evidence was in support of the trial court's decision.

12. THE TRIAL COURT PROPERLY EXCLUDED REMAINDERMEN ON LIFE ESTATES AS "OWNERS OF REAL PROPERTY" UNDER §10-2-416.

Remaindermen after life estates may not possess the property involved, and may not exercise any right of present ownership over it. They are not taxed as property owners, and under the trial court's ruling ownership is determined from the tax assessment roll. Their interests lie strictly in the future. They should not be counted now as owners when they in fact have no present rights of ownership.

13. THE TRIAL COURT PROPERLY EXCLUDED A DEAD MAN AS AN "OWNER OF REAL PROPERTY" UNDER §10-2-416.

It goes without saying that dead men do not sign petitions, so counting them as owners guarantees they will always be non-petitioners. Good public policy requires that such matters as these be determined by the living. In the case of Kenneth Murray, it was proven that he died, that he had held ownership of the property jointly with his wife, and she survived him. Therefore, Judge Memmott appropriately counted her as the owner contemplated under §10-2-416.

SUMMARY OF ARGUMENTS ON CROSS-APPEAL

1. THE TRIAL COURT ERRED IN INTERPRETING §10-2-414 TO REQUIRE A COUNT OF OWNERS AND PETITIONERS (FOR THE

PURPOSE OF DETERMINING A MAJORITY) AT THE MID-POINT OF THE ANNEXATION PROCESS WHEN THE POLICY DECLARATION WAS ADOPTED.

Statutory and case law have combined to establish two points, *and no others*, at which cities must ascertain that a majority of the owners of real property within the proposed area of annexation have signed, and still sign, the annexation petitions. These two points are at the beginning of the process, when the City Council votes on whether to accept the annexation petition, and at the end, when the City Council votes on the annexation resolution. The first point, at the beginning of the process, is established by §10-2-416 of the Utah Code. The second point, at the end of the process, is established by the Utah Supreme Court in Jensen v. Bountiful City.

2. THE TRIAL COURT ERRED IN INTERPRETING THE TERM "OWNERS OF REAL PROPERTY" IN SECTION 10-2-416 TO BE MODIFIED BY THE PHRASE "AS SHOWN IN THE LAST ASSESSMENT ROLLS."

A critically important term is "owners of real property" in §10-2-416. Based upon Jensen v. Bountiful City, the trial court ruled that owners are determined by the last assessment roll. This holding ought to be overruled because it was never intended by the Utah Legislature that the phrase "as shown by the last assessment rolls" should modify "a majority of the owners of real property."

Beginning with the Utah Code of 1898, the law required that a majority of real property owners petition for annexation. There was no mention of "as shown on the last assessment rolls." In 1957 the Utah Legislature amended the section to insert the phrase: "and the owners of not less than one-third in value of the real property, as shown by the last assessment rolls." There was never an intent in the

1957 legislation to impose the assessment roll requirement onto the majority of real property owners. It was intended to apply only to the valuation requirement.

3. THE TRIAL COURT ERRED IN INTERPRETING THE TERM "OWNERS OF REAL PROPERTY" IN §10-2-416 TO INCLUDE GOVERNMENTAL ENTITIES.

Governments should not be counted as "owners of real property" under §10-2-416 because their participation in the annexation process is set forth under §10-2-402. That statute sets up a boundary commission to consider annexation protests by affected entities. An "affected entity" is defined at Section 10-1-104(8) to mean "a county, municipality or other entity possessing taxation powers...."

The statutory means by which governmental entities may participate in the annexation process is not as "owners of real property" involved in petitioning, but rather as "affected entities" which may appeal to the Boundary Commission.

ARGUMENTS ON APPEAL

1. THE PLAINTIFFS CHALLENGE AND MARSHALL EVIDENCE ON ONLY ONE OF THE FINDINGS OF FACT OF THE TRIAL COURT. ALL OTHER FINDINGS OF FACT ARE THEREFORE ACCEPTED AS VALID.

At the conclusion of the case the trial court entered Findings of Fact (R. 310-330, 341-356), which are set forth in full, together with the Conclusions of Law, in Appendix B of the Addendum. In their appeal brief the Plaintiffs fail to mention, reference or discuss any of these Findings of Fact except in Point VIII. At no other point do they explicitly challenge any of them. Accordingly, these unchallenged facts stand undisturbed and are accepted as valid. This court has previously held:

These factual findings have not been challenged and therefore remain undisturbed. Judge Bench's dissent in Luckau v. Board of Review of the Industrial Commission,

840 P.2d 811, (Ct. App. 1992).

In the event this Court finds that the Plaintiffs have in some manner challenged the Findings of Fact, then the Plaintiffs have utterly failed to carry their burden of marshaling the evidence. The general importance of marshaling evidence was stated in Robb v. Anderton, 863 P.2d 1322 (Utah App. 1993):

The marshaling requirement provides the appellate court the basis from which to conduct a meaningful and expedient review of facts challenged on appeal.

The specific requirements of marshaling have been set out in numerous recent cases, including the following:

It [Plaintiff] failed, however, to explicitly challenge the district court's findings of fact. Even if we could read the State's brief as challenging the trial court's findings, the State has failed to meet its burden on appeal to "marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous.' [Citations omitted.] State v. 1.37 Acres of Real Property, 253 Utah Adv. Rep. 30 (Utah 1994).

The consequences of an appellant's failure to marshal evidence has also been thoroughly established in recent years:

Clayton Plastic Surgery has failed to marshal the evidence in support of the trial court's findings. Instead, Clayton Plastic Surgery has merely selected facts and excerpts of testimony from the trial that support its position and then reargued those facts to this court. This tactic ignores the burden that Clayton Plastic Surgery must carry to properly challenge the trial court's findings of fact. Because Clayton Plastic Surgery has failed to marshal the evidence, *we accept the trial court's findings of fact as accurate and review the trial court's conclusions based on those findings.* Commercial Union Assocs. v. Clayton, 863 P.2d 29 (Utah App. 1993). [Emphasis added.]

2. THIS CASE IS FUNDAMENTALLY ONE CONCERNING THE HISTORICAL RIGHT OF THE PEOPLE TO PETITION GOVERNMENT.

The right of the American people to petition their government

is protected by the Bill of Rights. The First Amendment of the Constitution of the United States provides: "Congress shall make no law...abridging...the right of the people... to petition the Government for a redress of grievances." This provision is made applicable to the States by the Fourteenth Amendment. In addition, Article I, Section 1 of the Utah Constitution states: "All men have the inherent and inalienable right to...petition for redress of grievances."

The trial court recognized that this case is within the context of the American tradition of the citizen-initiated petition. "The petition process," he said, "is one of the most important processes that we have in which the average citizen can get involved to petition the government from outside and ask the government to act." (R. 286, 344-345)

3. STATE LAW HAS DELEGATED TO THE CITIES THE RESPONSIBILITY OF DETERMINING SUBSTANTIAL COMPLIANCE WITH ANNEXATION LAWS, AND THE DEFENDANT CITY DID FIND SUBSTANTIAL COMPLIANCE.

The Utah Legislature has given to cities the authority and power to review annexation procedures for substantial compliance:

10-2-415. (1) The members of the governing body of the municipality may adopt a resolution or ordinance of annexation by two-thirds vote if:

(a) the annexation proposed in the policy declaration, *in the judgment of the municipality*, meets the standards set forth in this chapter.... [Emphasis added.]

This legislative grant of authority to cities was recognized by the Utah Supreme Court in Sweetwater Properties v. Town of Alta, supra, at page 1183:

Section 10-2-415 provides that if (1) the policy declaration meets the standards set forth in the annexation statute, *in the judgment of the municipality*, and (2) there is no protest filed by an affected entity, the city may, by two-thirds vote of the governing body, adopt an ordinance

of annexation.... [Emphasis added.]

This was the standard adopted by the trial court (R. 290, 345):

Conclusions of Law

3. The determination of whether the annexation petition has met all of the statutory standards is vested in the City, and the review by the Court is to determine whether the City has abused that discretion. (also page 6 of Ruling)

The Defendant City did in fact find substantial compliance with the annexation laws. This was reflected in its annexation resolution (Ex. P-54), which recites fulfillment of the statutory requirements. (See Appendix C of the Addendum). The trial court found no abuse of discretion in this determination as the annexation was upheld (R. 341-356, 357-358).

4. THE ROLE OF THE COURT IS TO REVIEW WHETHER THE CITY HAD STATUTORY ANNEXATION AUTHORITY, AND WHETHER THERE WAS SUBSTANTIAL COMPLIANCE WITH THAT AUTHORITY. LIBERALITY SHOULD BE EXTENDED IN MAKING THIS REVIEW.

The role of the courts in annexation cases was considered by the Utah Supreme Court in Sandy City v. City of South Jordan, supra:

The basic function and duty of the courts is to determine whether a city has statutory authority.... Once we determine that a city has been in substantial compliance with these requirements, we will not alter the operation of the statute under which the annexation occurred.

This was also the holding of the trial court (R. 288-291, 345):

Conclusions of Law

2. The proper inquiry of the Court is to determine whether the Defendant Bountiful City had statutory authority to annex the area in question, and whether there was substantial compliance with statutory requirements.

The Utah Supreme Court has long held that if a city can demonstrate "substantial compliance" with annexation laws, its actions will be upheld:

If the defendants [the Town of Cedar Hills and the Utah Boundary Commission] could show either actual or

substantial compliance with Utah's annexation statute, the annexation would have to be upheld. Doty v. Town of Cedar Hills, 656 P.2d 993 (Utah 1982).

The Utah Supreme Court has established that courts should be very cautious in reversing annexation decisions by cities:

The courts are and should be reluctant to intrude into the prerogative of the legislative branch of government, and *will interfere with such action only if it...is in excess of the authority* of the legislature. Bradshaw v. Beaver City, supra. [Emphasis added.]

Liberality should be extended by the Courts in considering the actions of cities in annexation matters. This liberality is statutorily mandated:

10-1-103 of the Utah Municipal Code. The powers herein delegated to any municipality shall be *liberally construed to permit the municipality to exercise the powers granted* by this act except in cases clearly contrary to the law. [Emphasis added.]

The liberality was reflected by the trial court as follows (R. 290-291, 345):

Conclusions of Law

4. Annexation laws are to be interpreted liberally to effectuate their purpose and further public policy.

5. The annexation resolution of the Bountiful City Council is entitled to a presumption of validity, and the burden of proof is upon the Plaintiffs in this case.

A public policy of liberality in recognizing and giving validity to the intention of voters is also statutorily mandated:

20A-4-105. (6)(a) In counting the ballots, *the counters shall give full consideration to the intent of the voter*. (b) The counters may not invalidate a ballot because of mechanical and technical defects or failure....to follow strictly the rules for balloting.... [Emphasis added.]

Petitioning and balloting are quite different matters procedurally. Annexation petitioning is very informal and unregulated, while election voting is very highly formalized and regulated. Yet even in the very formal

arena of the Election Code, there is this liberality. This same public policy of liberality should also be extended to the counting of annexation petition signatures.

Throughout this case Plaintiffs have sought by claimed technical errors to frustrate the known intentions of the annexation petition signers. As a matter of public policy, courts ought to find ways to fulfill known intent, not ways to frustrate it. It was never intended that hyper-technical rules should apply to the citizen-initiated annexation petition process. No such rules are set out in the State Code, and ought not to be imposed now.

5. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE ASSESSMENT ROLL REQUIREMENT OF §10-2-416.

The argument in Point I of the Plaintiffs' brief is an issue not preserved for appeal, and ought to be rejected for that reason. The Plaintiffs never advanced this argument at any time at trial, whether in the form of a motion, an objection or otherwise. A review of the record cited by the Plaintiffs at R. 581-584 will show only that the assessment roll was discussed. The trial court was never given the opportunity to consider the jurisdiction argument now being advanced. The failure to preserve the matter is a waiver of it. State v. Brown, 856 P.2d 358 (Utah App. 1993). This issue is raised for the first time on appeal and ought not to be considered further. Ong. Int'l (U.S.A.), Inc., v. 11th Ave. Corp., 850 P.2d 447 (Utah 1993).

In their Point I, Plaintiffs contend that "where no names appeared on the assessor's rolls and the City, accordingly, was without jurisdiction to determine that it was in substantial compliance with law." This position cannot be sustained for a number of reasons.

First, the Plaintiffs should not be permitted to make this argument

at all. Stipulations are conclusive and binding on the parties unless relief is granted therefrom. Maxwell v. Maxwell, 796 P.2d 403 (Utah App. 1990). It was stipulated by the parties, and therefore ordered by the trial court, that "a majority of the owners of real property signed the annexation petitions at the time the Bountiful City Council voted to accept them on October 7, 1992." (R. 124, 347.) After making such a stipulation, Plaintiffs should not now be permitted to repudiate it by arguing inconsistently that there is no jurisdiction because there are no names upon which to judge substantial compliance. By stipulation, there were names on the assessment roll on October 7th. How can there be no names on December 2nd or December 9th without repudiating the stipulation?

Second, the Plaintiffs, argument challenges Findings of Fact without marshaling the evidence. The starting point of the trial court on the assessment roll question is the following (R. 291, 345):

Conclusions of Law

7. The term "owners of real property" as used in Section 10-2-416 means those owners of real property as shown on the last assessment roll prior to December 2, 1992, subject to the ruling of law stated by this Court.

The Plaintiffs did not contest this legal conclusion at trial and do not do so in their appeal. The trial court went on to issue the following (R. 394, 341-356):

Findings of Fact

1. All of the properties within the annexation area involved in this case are listed by tax serial number on Exhibit A, which is attached hereto and incorporated herein by this reference. Some owners owned more than one parcel, and those duplicates are listed on the last page of Exhibit A. Owners were counted once, regardless of how many parcels they owned.

2. There were 263 *owners of real property* within the annexation area, *the names of whom are listed* on Exhibit A. [Emphasis added.]

In their brief the Plaintiffs do not explicitly challenge these two

Findings in any way. They neither quote nor reference them. Accordingly, they must stand as valid. And even if it is found that Plaintiffs do implicitly challenge these Findings, they fail to marshal the evidence, and the Findings must still stand as valid.

The contention of the Plaintiffs in their Point I is a direct challenge to these Findings of Fact. The trial court held that "owners of real property" means those owners shown on the last assessment roll, then finds as a fact that there are "owners of real property...the names of whom are listed on Exhibit A." The Plaintiffs, however, say on appeal that there are no names on the assessment roll. This is a direct challenge to the trial court's Findings of Fact. Point I ought to be summarily rejected for failure to marshal the evidence, as set forth in detail in Argument No. 2, above.

Considering Plaintiff's Point I further, two fundamental premises underlie the claim. One is that owners should be determined by the assessment roll. The second is that the County Assessor's office must itself enter the owners names onto the assessment roll.

It is the position of the Defendant City that the phrase "as shown by the last assessment roll" in §10-2-416 does not modify the requirement of "a majority of the owners of real property." Rather, it only modifies the requirement of "at least one-third in value of the real property." This point is presented at length hereafter in Argument No. 2 in the Cross-Appeal section of this brief, which is incorporated by this reference. This Court need not decide this particular claim of the Plaintiffs if it sustains the argument of the Defendant City on this point.

Even if the Court does not sustain that point, the second premise of the Plaintiffs' position is faulty on its face. The underlying factual source of complaint is that in the computer program of Davis County,

only the Recorder's office enters land ownership information, only the Assessor's office enters valuation information, and only the Treasurer's office enters tax information. In other words, Plaintiffs say that because the Assessor did not enter ownership names in his portion of the computer program, the assessment roll bears no names. This is unnecessarily restrictive.

The State statute in question is as follows:

59-2-303. [In effect in 1992.] (1) Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock m, on January 1 in the tax year, unless a subsequent conveyance of ownership of the real property was recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice.

If the County Assessor ascertains the names of the owners of property in the county by having the County Recorder tell him, that action is in fulfillment of the law and not contrary to it. If only the County Recorder's office enters the names on the computer program, that action violates no law. After all, it is the County Recorder who has the legal duty to record conveyances of land. It would be absurd for the County Assessor to independently examine the Recorder's books to determine ownership, and to then enter it into the computer himself when the County Recorder just down the hall has already done so. The facts are that there was an assessment roll (Ex. P-107), and that owners were identified by name (R. 341-356), and there accordingly was jurisdiction to proceed with determining substantial compliance with the annexation statutes.

The claims of the Plaintiffs on this issue are without merit.

6. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL

COMPLIANCE WITH THE MAP REQUIREMENT OF §10-2-416.

The Plaintiffs complain in their Points II and III about the annexation map. Their contentions are that there was no substantial compliance because (1) the map made by the City Engineer's office was not prepared before the annexation drive began (requiring all petitions and signatures to be invalidated), and (2) because some individual petitions did not have a map or legal description (requiring 34 signatures to be invalidated).

The trial court entered the following (R. 295-296, 320-321, 342, 613-617):

Findings of Fact

6. The City has determined that the requirement of a map prepared by the City Engineer being submitted to the City Recorder together with the petition signatures, as set forth in 10-2-416, has been met. *There is no factual evidence that this decision by the City constitutes an abuse of discretion.* [Emphasis added.]

In their brief the Plaintiffs do not challenge this Finding in any way. They neither quote nor reference it. Accordingly, this Finding must stand as valid. And even if it is found that Plaintiffs do challenge this Finding, they do not in any way marshal the evidence, and the Finding must still stand as valid.

Yet points II and III of the Plaintiffs constitute a direct challenge to the trial court's Finding of Fact. When the trial court says that "there is no factual evidence" of an abuse of discretion in the City's determination of compliance with the map requirement of §10-2-416, the Plaintiffs must take this finding head-on by marshaling the evidence and then trying to discredit it. This they have failed to do. Accordingly, their Points II and III ought to be summarily rejected, as set forth in detail in Argument No. 2, above.

The statute which sets forth the map requirement is as follows:

10-2-416. Whenever a majority of the owners...shall desire to annex...they shall cause an accurate plat or map of such territory to be made under the supervision of the municipal engineer or a competent surveyor, and a copy of such map, certified by the engineer or surveyor as they case may be, shall be filed in the office of the recorder of the municipality, together with a written petition signed by the petitioners.

No Utah case law has been found that gives any assistance in the interpretation upon the particular map issue raised by the Plaintiffs. The case offered by the Plaintiffs, Johnson v. Sandy City Corporation, 28 Utah 2d 22, 497 P.2d 644 (1972), is not applicable to this question at all. It deals with another statute (§10-2-415) and with a completely separate requirement - i.e., that the map be recorded with the County Recorder after the annexation has been approved by the City Council.

In applying the facts before it to the law, the trial court made this discretionary ruling (R. 295-296, 320-321, 347-348, 613-617):

Conclusions of Law

23. The City has determined that the requirement that a map prepared by the City Engineer be submitted to the City Recorder together with the petition signatures, as set forth in 10-2-214, has been met. There is no abuse of discretion in this decision. The Court does not find in the statute that there is a requirement that a map be attached to each individual annexation petition page that is actually signed. Therefore, the Court rejects the challenges to the validity of all signatures without a map individually attached to the signature page, including challenges to the following signatures....

The trial court is granted discretion in making this determination, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law. State v. Pena.

There are three uncontroverted facts in regard to this issue. One is that the petitions were turned into the office of the City Recorder (Ex. D-3, R. 616). A second is that an accurate map of the territory to be annexed, made by a licensed surveyor, was filed with the office of

the City Recorder (Ex. D-37, R. 614, 616). And a third is that these were both done prior to the Bountiful City Council voting to accept the petition on October 7, 1992 (R. 614-616).

Plaintiffs contend that the City Engineer's map must be prepared before the petitioning begins. Nowhere in the Utah Code does it state such a requirement. Plaintiffs also contend that any map attached to the petitions can only be the "official" one, and that it would be violation of law if an "unofficial" map depicting the same area were used. Again, nowhere in the Utah Code does it state such a requirement. And the Plaintiffs contend further that if there is no map attached the signatures on that particular petition are invalid. Nowhere in the Utah Code does it state such a thing. Had the Utah Legislature wished to make these requirements, it could easily have written them expressly into the law.

The Plaintiffs are attempting to raise hyper-technical barriers to frustrate known intent. Those who signed the petitions and were owners within the proposed annexation area were counted as having signed, as they obviously wanted to be. They were signing for themselves, not others. There was no evidence about any confusion by anyone over the map. Their intent should not be discarded. The Election Code liberality in balloting of giving "full consideration to the intent of the voter" should be applied to petitioning as well.

Petitioning is a very informal process. The "official" map prepared by the City Engineer's office and submitted to the City Council for its acceptance on October 7th was unambiguous, and remained so thereafter. The signatures on the petitions were likewise unambiguous and only those related to the map were considered. There is no evidence whatever that anyone signing the petitions or the City Council was

confused about this matter. On this issue, there is without a doubt substantial compliance with the law.

In this application of facts to the law, the trial court is granted "some degree of deference." Its discretion was properly exercised in this instance and should be affirmed.

7. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENT OF §10-2-416 IN COUNTING THE SIGNATURE OF MICHAEL GONCE.

The trial court counted property owner Michael Gonce as a valid annexation petition signer (Ex. D-3, R. 298-299, 343, 348-349). The Plaintiffs complain in their Point IV that signature should not be counted because it was not in the same petition form as the other people who signed, and because it did not have a map attached to it. The map issue has been previously addressed.

The trial court issued the following (Ex. D-3, R. 298-299, 343):

Findings of Fact

10. The signature of Michael Gonce (01-139-0014) as an annexation petitioner is on a form different from the other petitioners, but the format used does clearly state that he wishes that the annexation take place.

In their brief the Plaintiffs do not challenge this Finding in any way. They neither quote nor reference it. Accordingly, this Finding must stand as valid. And even if it is found that Plaintiffs do challenge this Finding, they do not in any way marshal the evidence, and the Findings must still stand as valid.

The statute which sets forth the petition signature requirement is as follows:

10-2-416. [A] majority of the owners of real property...shall...file...a written petition signed by the petitioners.

There is no case law interpreting this statute as to the format of

the petition required.

In applying the facts before it to the law, the trial court made the following discretionary ruling (R. 298-299, 348-349):

Conclusions of Law

26. The signature of Michael Gonce (01-139-0014) as an annexation petitioner is in substantial compliance with the law, and is to be counted as a valid signature.

The trial court is granted discretion in making this determination, which is accorded "some degree of deference" by the appellate court and reviewed "with far less vigor" than conclusions of law. State v. Pena.

As far as the form of his signature is concerned, one thing can be indisputably concluded: Michael Gonce favored annexation (Ex. D-3, R. 298-299, 343). The issue, then, is whether his known preference ought to be disregarded (and in fact counted as an anti-annexation signature) because of technicality as to form. The liberality in giving "full consideration to the intent of the voter" should be extended here. There is no specific petition form required by State law. There is no law that states that the form used by Mr. Gonce is illegal. Had the Legislature wished to require a definite petition format or wording, it could have done so.

In this application of facts to law, the trial court is granted "some degree of deference." Its discretion was properly exercised in this instance and should be affirmed.

8. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENT OF §10-2-416 IN COUNTING TRUSTEE SIGNATURES ON TRUST PROPERTIES.

A number of properties within the annexation area are owned by family trusts (R. 341-356). The trustees who signed as owners of

these properties did so without referencing their trustee capacity (Ex. D-3, R. 343). Though the intentions of the trustees are known, the Plaintiffs complain in their Point V that their signatures are invalid.

The trial court issued the following (Ex. D-3, R. 296-298, 343):

Findings of Fact

8. The following properties were owned by trusts, and were signed by trustees without referencing their trustee capacity: [Names omitted.]

Under this Finding, two important facts are established. First, some properties are owned by trusts. Second, the trustees of those named trusts signed the annexation petitions. In their brief the Plaintiffs do not challenge this Finding in any way. They neither quote nor reference it. Accordingly, this Finding must stand as valid. And even if it is found that Plaintiffs do challenge this Finding, they do marshal the evidence, and the Finding must still stand as valid.

The statute which sets out the petition signature requirement reads as follows:

10-2-416. [A] majority of owners of real property...shall...file...a written petition signed by the petitioners.

There is no case law interpreting this statute as to the form of the signatures required.

In applying the facts before it to the law, the trial court made the following discretionary ruling (Ex. D-3, R. 296-298, 341-356):

Conclusions of Law

24. Trustees of trusts which own properties within the annexation area need not expressly sign the annexation petitions in their trustee capacities. There has been substantial compliance when the trustees signed the petition in their own names. Therefore, the Court rejects the challenges to the validity of signatures by trustees that do not state their trustee capacity, including the following signatures: [Names omitted.]

The trial court is granted discretion in making this determination, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law. State v. Pena.

Section 75-7-406 of the Utah Code upholds the reliance of the Defendant City and the trial court on these trustee signatures in the following language:

75-7-406. With respect to a third person dealing with a trustee...[the third person is not bound to inquire whether the trustee has power to act...and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise.

The signing of an annexation petition is not of the same class as a conveyance of real property by deed. No public purpose is served by such a requirement as is advocated by the Plaintiffs.

This is similar to the situation of an undisclosed agent. In Garland v. Fleischmann, 831 P.2d 107 (Utah 1992), it was held:

It is well established in the law that a principal is liable for the acts of his agent within the scope of the agent's authority, irrespective of whether the principal is disclosed or undisclosed. The fact that an agent acts in his own name without disclosing his principal does not preclude liability on the part of the principal when he is discovered to be such by a third party who has dealt with the agent.

Even if it is considered that trustee reciting of their trustee capacity is a "rule for balloting" (i.e., petitioning), at most the omission is only a "mechanical and technical defect or failure." The liberality of public policy expressed in §20A-4-105(6) requires that the counters "give full consideration to the intent of the voter." In annexations, the signature counters should give full consideration to the petitioner's known intent, and not throw it out. There is no less of a public policy involved in petitioning than in balloting.

Plaintiffs' argument would require citizen petition organizers to inquire whether an owner is a trustee, and to see a copy of the trust agreement to determine whether the person has authority to sign. Such formalism would unduly complicate what is designed to be an informal process. It would superimpose a requirement of "absolute compliance" where the law requires only "substantial compliance."

In this application of facts to law, the trial court is granted "some degree of deference." Its discretion was properly exercised in this instance and should be affirmed.

9. THE TRIAL COURT PROPERLY FOUND SUBSTANTIAL COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENTS OF §10-2-416 IN ALLOWING SIGNATURES TO BE WITHDRAWN, REINSTATED AND ADDED TO THE ANNEXATION PETITIONS.

After the acceptance of the annexation petition on October 7, 1992, and before the policy declaration vote on December 2, 1992, fifteen people withdrew their signatures from the annexation petitions (Ex. D-4), and five of those same people signed documents reinstating them (Ex. D-5). Between December 3rd and December 9th, when the annexation resolution was adopted, another thirteen people added their names to the annexation petitions (R. 341-356). All of these withdrawals, reinstatements and petitions were allowed by the City. In their Point VI, Plaintiffs complain that annexation petition signatures should only be permitted to be withdrawn, never reinstated or added.

The trial court entered the following (Ex D-3, R. 305, 341-356):

Findings of Fact

19. Thirteen signatures were added to the petitions between December 3 and 9, as indicated on Exhibit A.

Conclusions of Law

17. As a matter of stipulation of the parties and as finding of fact and conclusion of law, a majority of the owners of real property signed the annexation petitions at the time the

Bountiful City Council voted to accept them on October 7, 1992.

In their brief the Plaintiffs do not challenge these Findings in any way. They neither quote nor reference them. Accordingly, these Findings must stand as valid. And even if it is found that Plaintiffs do challenge these Findings, they do not in any way marshal the evidence, and the Findings must still stand as valid.

The statute which sets forth the petition signature requirements is as follows:

10-2-416. [A] majority of the owners of real property...shall...file...a written petition signed by the petitioners.

There is Utah case law interpreting this statute as to the withdrawing, reinstating and adding of signatures to the annexation petitions. Jensen v. Bountiful City, supra, held (though its phrasing is now "politically incorrect") as follows:

Like a woman's prerogative to change her mind, we think the petitioners' request for withdrawal of their signatures before the petition for annexation was acted upon is even something more convincing than the accepted and revered feminine license. They say they were confused and under the influence of a petition-circulator's zealous potion. *Why should these petitioners not be granted their request if it is presented to those in authority before the latter make annexation a fait accompli by ignoring the request of those, who, apparently with studied conviction, honestly seek to erase their participation before action is taken?* [Emphasis added.]

There should be some way in this case, under the statute, reasonably and fairly and quickly to apprise almost all of the people as to the issue and consequences involved, with *reasonable opportunity for all or some of the people to express their approval or disapproval* within a reasonable time, in accordance with statutory formulae. That would seem to comport with the traditional American idea as reflected in the historical town meeting concept. [Emphasis added.]

In Doenges v. Salt Lake City, 614 P.2d 1237 (Utah 1980), the Utah Supreme Court interpreted the Jensen decision to apply to both

addition and withdrawal of signatures:

The earlier litigation concerned...whether or not persons could *add or subtract* their names from the petitions. [Footnote citation to Jensen; emphasis added.]

In considering the statute and the case law in this case, the trial court made the following (R. 293, 346):

Conclusions of Law

14. Signatures on the annexation petition may be both added and withdrawn prior to the annexation resolution vote of the City Council.

The trial court's decision to permit the withdrawal, reinstatement and adding of signatures to annexation petitions is a conclusion of law which is given no deference by the appellate court and reviewed for correctness. However, the trial court's determination that the Defendant City's actions concerning the withdrawal, reinstatement and adding of signatures substantially complies with the statutory petition signing requirement is a discretionary ruling involving the application of facts to law. The trial court is granted discretion in making this determination, which is accorded "some degree of deference" by the appellate court and reviewed "with far less rigor" than conclusions of law. State v Pena.

Plaintiffs quote two sources in support of their contention, namely, the treatise of McQuillin on Municipal Corporations and the Utah case of Jensen v. Bountiful City, 20 Utah 2d 159, 435 P.2d 284 (1967). For the proposition quoted, McQuillin cites but one case, a 1955 Ohio case. It does not quote the law in Utah as held in Jensen and in Doenges. As has been seen in the preceding cases, both of these cases state that signatures *can* be added as well as withdrawn.

The annexation petition statutes of Utah are silent on the question of adding and withdrawing signatures. How, then, can it be found that in

permitting both additions and withdrawals, that the Defendant City has exceeded any statutory authority? Furthermore, case law is clearly indicative that both are not only permitted but required.

The position of the Plaintiffs is counter to logic and public policy. It is, of course, fundamentally unfair for one side operate under one set of rules, and for the other side to operate under different rules. Also, it would be contrary to public policy to hold that as the annexation process continues and property owners within the proposed annexation area become more informed, their ability to act is increasingly restricted by such an arbitrary rule.

In this application of facts to law, the trial court's discretion was properly exercised and should be affirmed.

10. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING EVIDENCE.

In Point VII of their brief Plaintiffs complain of the trial court's admission of evidence. The heading of their point is couched in terms of substantial compliance, but that legal standard does not apply here. In general a trial court is granted broad discretion in its decision to admit or exclude evidence. State v. Pena. The appellate court will presume that the discretion of the trial court was properly exercised unless the record clearly shows to the contrary. State v. Morgan, 913 P.2d 1207 (Utah App. 1991). Abuse of discretion is acting beyond the bounds of reasonability. State v. Larsen, 865 P.2d 1355 (Utah 1993).

In approaching the issue of the admissibility of evidence, it is helpful to refer to the important opinion of State v. Pena. That case held that two of the criteria weighing in favor of greater trial court discretion were (1) "when the facts to which the legal rule is to be

applied are so complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out," and (2) "when the situation to which the legal principle is to be applied is sufficiently new to the courts that appellate judges are unable to anticipate and articulate what factors should be outcome determinative."

These criteria certainly apply to the evidentiary questions raised by Plaintiffs. The trial court was faced with a host of unprecedented annexation issues, most of which have never been addressed either by the legislature or by the courts. No statutory or case law rules *adequately* addressing the relevance of all these annexation issues have ever been spelled out, and the situation presented by these facts is sufficiently new that appellate courts have so far not anticipated and articulated what factors should be outcome determinative.

Faced with this situation, Judge Memmott created a workable legal framework for dealing with annexations (R. 294) by establishing a list of owners' names against which a City could compare the annexation petition signatures. Following the Jensen case requiring that the names of owners be "as shown on the last assessment rolls," he established a prima facie list and, as stated in the pre-trial Rulings of Law and in the final Conclusions of Law, established certain necessary legal modifications to deal with ambiguities. Those included the following (R. 294, 345-347):

Conclusions of Law

7. The term "owners of real property" as used in Section 10-2-416 means those owners of real property *as shown on the last tax assessment roll prior to December 2, 1992, subject to the rulings of law stated by this Court.* [Emphasis added.]

9. The homeowners association of a condominium development may or may not constitute an owner of real property under Section 10-2-416 depending upon the particular facts of that condominium.

10. Governmental entities which own properties within the proposed annexation area are owners of real property under Section 10-2-416. They are either owners as a legal entity or corporate entity or some other type of entity, but they are still owners of real property.

11. Future interest holders under a deed of trust reserving a life estate for the grantors are not owners of real property under Section 10-2-416.

12. An individual who is dead is not an owner of real property under Section 10-2-416. In the case of real property where the title is held in joint tenancy with the right of survivorship, the surviving joint tenant is the sole owner. In the case of joint tenancy, without this right of survivorship, or other joint ownership arrangement, the estate of the decedent would hold the ownership after the death of an owner.

13. When a property is owned by a partnership, the validity of the signature of a partner may or may not constitute a signature of an owner of real property under Section 10-2-416 depending upon the particular facts of that partnership.

16. When a home is owned by a trust, the trust is the owner of real property under the annexation laws, which constitutes one owner of real property under Section 10-2-416.

Working within this framework, Judge Memmott addressed evidentiary issues involving the establishing of names on the assessment roll for annexation purposes. He admitted evidence that was relevant to the conclusions of law quoted above and did not admit evidence that was unrelated. Accordingly, evidence concerning the five deceased owners of record, which related to Conclusion #12, was admitted. Evidence concerning the Colonial View Condominium Homeowners Association was admitted because it related to Conclusion #9. Evidence about the McCracken property, where life tenants were concerned, was admitted because it related to Conclusion #11.

On the other hand, evidence concerning the Thompson and Lavulo properties was not admitted for two reasons. One is that they were not relevant under any of the legal rulings set out by the trial court. Another is that the rejected Thompson and Lavulo items sought to exceed the statutory "as shown on the last assessment roll" requirement

by adding yet more names. If there is not a limitation to the names "as shown" then there is no limit at all, and the assessment roll requirement inevitably is replaced wholesale by the county recorder's records.

With respect to the question raised about the "Thomas Tolman & Family Organization," the following finding of the trial court is relevant (Ex. P-107, R. 303-304, 344):

Findings of Fact

15. The Thomas Tolman & Family Organization (05-034-0058) is one owner of property.

The trial court affirmatively found as a fact that this is one owner of real property, not two. If Plaintiffs wish to challenge this finding, they must expressly do so and marshal the evidence. They have failed to do this, and their challenge must therefore be rejected. There was no evidence presented at trial to contradict this finding. The form of the signature is addressed in the argument herein concerning trustee signatures.

The trial court did not abuse its discretion in its evidentiary decisions, and ought to be affirmed.

11. THE TRIAL COURT PROPERLY EXCLUDED THE COLONIAL VIEW HOMEOWNERS ASSOCIATION AS AN "OWNER OF REAL PROPERTY" UNDER §10-2-416.

Within the annexation area is a condominium development (Colonial View), which consists of individually owned units and common areas (Ex. P-107, D-27, D-28, R. 353, 636-651). The common areas are 100% owned by the individual unit owners on a percentage basis corresponding to their unit ownership (Ex. D-27). The trial court did not count the Homeowners Association as a separate owner under §10-2-416 (R. 343, 353). Plaintiffs complain in their Point VIII that there was inadequate evidence upon which to base this factual finding.

The trial court issued the following (R. 299-300, 343):

Findings of Fact

11. The Colonial View Condominium Association (01-139-0020) is not an owner of real property separate from the individual unit owners. The Condominium Declaration states that the undivided interest in the common areas is not to be separated from each unit. All of the unit owners have already been counted as owners.

Plaintiffs claim there was inadequate evidence to support the court's finding. Nothing could be further from the truth. The original condominium declaration amended declaration, which are recorded in the office of the Davis County Recorder, and admitted as Exhibits D-27 and D-28. Those documents each stated:

4. Common and Limited Common Areas and Facilities. The Common areas and Facilities contained in the Project are described and identified in Article I of this Declaration. *Neither the percentage of undivided interest in the Common Areas and Facilities nor the right of exclusive use of a Limited Common area and Facility shall be separated from the Unit to which it attains*; and even though not specifically mentioned in the instrument of transfer, such parcel of undivided interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate. [Emphasis added.]

In addition, Exhibit A to these declarations proved that the individual unit owners account for 100% of the ownership of common areas (Appendix D of Addendum). Since the individual unit owners own their own unit and their share of the common areas (together totalling 100%), nothing is owned by the Homeowners Association. The individual condominium unit owners were already each counted as "owners of real property" (R. 352-355). The trial court's decision that the homeowner's association was not an owner of real property because it owns nothing flowed directly from the sound evidence before it.

Furthermore, the Utah Code has a provision which is relevant:

57-8-27. (1) *Each unit and its percentage of undivided*

interest in the common areas and facilities shall be deemed to be a parcel of land and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes.... Neither the building or building, the property, nor any of the common areas and facilities may be considered a parcel. [Emphasis added.]

This statute is a directive to *not* count the homeowners association. The trial court's decision was based on the evidence, is well founded, and not clearly erroneous. In fact, there was no evidence to the contrary.

12. THE TRIAL COURT PROPERLY EXCLUDED REMAINDERMEN AFTER LIFE ESTATES AS "OWNERS OF REAL PROPERTY" UNDER §10-2-416.

Within the annexation area involved in this case are two parcels of land held under deeds reserving a life estate in favor of the grantor(s) (Ex. P-107, R. 343, 347). In the trial court it was held that the life tenants are owners of real property under §10-2-416 but that the future interest holders (i.e., remaindermen) are not (R. 346). The Plaintiffs complain in their Point IX that the remaindermen as well as life tenants should be counted as owners within the statute.

The trial court entered the following (R. 294, 301, 346, 347, 349):

Conclusions of Law

11. Future interest holders under a deed of trust reserving a life estate for the grantors are not owners of real property under Section 10-2-416.

21. The Albert Ouzounian property (01-022-0012) involves a life estate reserved to Albert Ouzounian, and counts as one property owner.

28. The McCracken property (05-033-0008) is held as a life estate in the names of Joseph and Mary McCracken, which counts as two owners.

General life estate law provides guidance on this matter. It states at 51 Am Jur 2d Life Tenants and Remaindermen Section 2:

As a general rule, the tenant and the remainderman are not at the same time entitled to the same right or remedy. A remainderman has no right of possession until the particular [i.e, life] estate is terminated. He has no right of action, which depends upon the right of possession, until he is entitled to

the possession, either to recover the possession or to obtain compensation for injuries to the possession. *Hence, he cannot, before the termination of the life or other particular estate, maintain an action for ejectment, of trespass, of conversion, or for partition....* [Emphasis added.]

This rule against future interest holders as having a present possessory interest was adopted by the Utah Supreme Court in the partition case of Funk v. Young, 592 P.2d 619 (Utah 1978):

Nor can one of the vested remaindermen compel such a sale since there is no possessory interest in the vested remainderman.

Furthermore, the Utah Supreme Court in Sheppick v. Sheppick, 44 Utah 131, 138 P. 1169 (1914), held that under § 59-2-201 property taxes should be assessed to the life tenants and not the remaindermen during the continuance of the life estate. Under the trial court's ruling, are we not here talking about the tax assessment roll?

The case In Re Smithfield City, 262 P.2d (Utah 1927) concerned who to count as owners in a municipal disconnection petition. It was held:

[W]e think that the weight of authority and the better reasoning defines the word "ownership," as used in statutes similar to the one here involved, as proprietorship or dominion over the property, rather than mere legal title without either proprietorship or dominion.

The remaindermen may not possess the property, and may not exercise any right of present ownership or dominion. They are not taxed as property owners. Their interests lie strictly in the future. They should not be counted now as owners when they in fact have no present rights of ownership. The trial court's conclusion of law should be affirmed.

13. THE TRIAL COURT PROPERLY EXCLUDED A DEAD MAN AS AN "OWNER OF REAL PROPERTY" UNDER §10-2-416.

Within the annexation area, five men showing on the assessment roll were deceased (Ex. P-107, R. 303, 344). The trial court did not permit

dead people to be counted as owners (R. 346). The Plaintiffs complain in their Point X that one dead man, Kenneth Murray, ought to be counted as an owner because he was alive at the beginning of the annexation process (though dead prior to the adoption of the policy declaration of December 2nd) and did not sign an annexation petition.

The trial court entered the following (R. 303-304, 344, 346):

Findings of Fact

14. The following properties had deceased owners showing on the assessment roll, and the surviving widows who owned in joint tenancy are the sole owner of each property: Larsen (05-034-0012), Hansen (05-034-0032), Brooks (05-034-0045), Zobell (05-034-0056), and Murray (05-035-0014). [Emphasis added.]

Conclusions of Law

12. An individual who is dead is not an owner of real property under Section 10-2-416. In the case of real property where the title is held in joint tenancy with the right of survivorship, the surviving joint tenant is the sole owner.

This Point X of the Plaintiffs is the ultimate hurdle which Plaintiffs seek to impose upon the annexation process. It goes without saying, though it will be stated anyway, that dead men don't sign petitions, so counting them as owners guarantees they will always be non-petitioners.

It was long ago decided by the courts that the Medieval practices of dead hand rule of land by long-deceased people was wrong. Good public policy requires that such matters as these be determined by the living, and that is what the trial court required.

In Re Smithfield City, supra, is again applicable:

[W]e think that the weight of authority and the better reasoning defines the word "ownership," as used in statutes similar to the one here involved, as proprietorship or dominion over the property, rather than mere legal title without either proprietorship or dominion.

Dead men exercise no dominion over property. In the particular case of Kenneth Murray, it was proven that he died (R. 612-613), that he

had held ownership of the property jointly with his wife, Billie (R. 344, 665), and she survived him (R. 612-613). Therefore, the trial court appropriately counted her as the owner contemplated under §10-2-416.

ARGUMENTS ON CROSS-APPEAL

1. THE TRIAL COURT ERRED IN INTERPRETING §10-2-414 TO REQUIRE A COUNT OF OWNERS AND PETITION SIGNERS (FOR THE PURPOSE OF DETERMINING A MAJORITY) AT THE MID-POINT OF THE ANNEXATION PROCESS WHEN THE POLICY DECLARATION WAS ADOPTED.

The trial court entered the following (R. 291-292, 345):

Conclusion of Law

2. There must be a majority of owners as annexation petitioners when the City Council votes to accept the annexation petition and when the City Council votes to adopt the annexation resolution. *In addition, at the time of the adoption of the policy declaration, there must be a majority of owners as annexation petitioners if the Council is proceeding on the basis of the petition.* However, if the City Council is proceeding on the basis of its own initiative or that of the planning commission, then a majority as owners as petitioners is not necessary. [Emphasis added.]

This Conclusion of Law has no factual underpinnings and is strictly a statutory interpretation. This court should give it no deference and review it for correctness. State v. Pena.

This ruling is fundamentally flawed. Statutory and case law have combined to establish two points, *and no others*, at which cities must ascertain that a majority of the owners of real property within the proposed area of annexation have signed, and still sign, the annexation petitions. These two points are at the beginning of the process, when the City Council votes on whether to accept the annexation petition, and at the end, when the City Council votes on the annexation resolution.

The first point, at the beginning of the process, is established by the Utah Code:

10-2-416. Whenever a majority of the owners of real

property...shall desire to annex...to such municipality...they shall...file...a written petition signed by the petitioners. The members of the governing body may, by resolution...accept the petition for annexation....

The second point, at the end of the process, is established by the Utah Supreme Court in Jensen v. Bountiful City, supra. In that case it was held that there must still be a majority of the owners on the annexation petition at the time the City Council votes on the annexation ordinance or resolution.

At no other point in the process, under either statutory or case law, is there a requirement to determine yet another time that a majority of the property owners are still signed on the annexation petition. The trial court, however, has by the Conclusion of Law quoted above ruled that there must be a majority confirmation at the time of the adoption of the policy declaration. This requires a third count to determine a majority.

The trial court based its decision on a reading of the following statutory italicized language (R. 109-116):

10-2-414. Before annexing...a municipality shall...in response to *an initiated petition by real property owners as provided by law*...adopt a policy declaration....

This interpretation is fallacious. The phrase "as provided by law" merely refers to the fact that the petition must be signed by a majority of owners when it is submitted to the city for acceptance under §10-2-416. In no way does it say that a re-count of owners and petitioners must be made at the time of the policy declaration adoption. No case law supports this conclusion by the trial court.

Furthermore, it makes no sense, when the law requires a majority at the beginning and at the end of the process, and when it permits the addition and withdrawal of signatures in the interim, that a majority

requirement should also be interposed at various points in the middle of the process. The public interest is fully protected by the majority requirement at the beginning and the end. Any mid-stream requirement is only an unnecessary burden on the annexation petitioners and on the City receiving the petitions.

This Court should bear in mind that virtually all of the trial at the district court was concerned with the count on December 2, 1992, when the annexation policy declaration was adopted. If the Court adopts the position of the Defendant City on this issue, the vast majority of the case at the trial court is rendered moot. Since it was stipulated by the parties that there were sufficient signatures at the time the annexation petition was received on October 7th, the only remaining issue would be the count on December 9th when the annexation resolution was passed.

That issue must be resolved in favor of sustaining the annexation. On the question of the December 9th signature count, the trial court entered the following (Ex. P-107, D-3, R. 341-356):

Conclusions of Law

17. As a matter of stipulation of the parties and as a finding of fact and conclusion of law, a majority of the owners of real property signed the annexation petitions at the time the Bountiful City Council voted to accept them on October 7, 1992.

Findings of Fact

19. Thirteen signatures were added to the petitions between December 3 and 9, 1992, as indicated on Exhibit A.

In addition, the evidence was accepted that fifteen people had withdrawn their signatures between October 7th and December 2nd (Ex. D-4), ten of whom reinstated their signatures (ex. D-5). The net result of subtracting ten, adding five, and adding thirteen, is a net increase of eight petition signatures between October 7th and December 9th.

Accordingly, there was indisputably a majority of petitioners at the time of the acceptance of the petitions on October 7th. Based on the facts found by the court, then, on December 9th when the annexation resolution was adopted, there was a majority plus eight (R. 341-356).

If the court sustains this point and eliminates the necessity of the December 2nd count, the judgment of the trial court in upholding the annexation on December 9th should be affirmed.

2. THE TRIAL COURT ERRED IN INTERPRETING THE TERM "OWNERS OF REAL PROPERTY" IN SECTION 10-2-416 TO BE MODIFIED BY THE PHRASE "AS SHOWN IN THE LAST ASSESSMENT ROLL."

A critically important term is "owners of real property" as it appears in the following annexation provision:

10-2-416. Whenever a majority of the owners of real property and the owners of at least one-third in value of the real property, as shown by the last assessment rolls,...shall desire to annex...to such municipality, they shall...[file a map]...together with a written petition signed by the petitioners.

The question is, who or what qualifies as an "owner of real property"? The trial court entered the following (R. 345):

Conclusion of Law

7. The term "owners of real property" as used in Section 10-2-416 means those owners of real property as shown on the last tax assessment roll prior to December 2, 1992, subject to the rulings of law stated by this Court.

This Conclusion of Law has no factual underpinnings and is strictly a statutory interpretation. This court should give it no deference and review it for correctness. State v. Pena.

It is readily conceded that the trial court's position finds support in Jensen v. Bountiful City, supra. However, that holding has been substantially reversed by subsequent case law on statutory construction, and to any extent that it has not been reversed, it ought to be overruled

now because it was never intended by the Utah Legislature that the phrase "as shown by the last assessment rolls" should modify "a majority of the owners of real property." Beginning with the Utah Code of 1898, the law required that a majority of real property owners petition for annexation. There was no mention of "as shown on the last assessment rolls."

Section 287. Whenever a majority of the owners of real property of any territory lying contiguous to the corporate limits of any city shall desire to annex such territory to any city, they shall cause an accurate plat or map.... [1898 Utah Code]

This same legal language continued on through the decades, though in 1953 the section number was changed to 10-3-1. Then in 1957 the Utah Legislature amended the section (Chapter 14, Section 1 of 1957 Session Laws) to insert the phrase: "and the owners of not less than one-third in value of the real property, as shown by the last assessment rolls." This new phrase is self-containing, with a new valuation requirement added to the statute, and a qualifier of how to determine value. That qualifier was clearly not intended to apply to the pre-existing term of "majority of owners of real property."

This principle of statutory interpretation was the precise holding of the post-Jensen case of Bountiful v. Swift, 535 P.2d 1236 (Utah 1975). Although it is a non-annexation case, its ruling is of great importance here:

The defendants in their challenge that Bountiful City did not proceed according to legislative requirements rely on Sec. 10-8-8, U.C.A. 1953, which provides as follows:

They may lay out, establish, open, alter, widen, narrow, extend, grade, pave or otherwise improve streets, alleys, avenues, boulevards, sidewalks, parks, airports,...public grounds,...and may vacate the same or parts thereof, by ordinance.

It is the theory of the defendants that every power given to cities as outlined in 10-8-8 supra must be accomplished by the enactment of an ordinance.... [A] logical interpretation of this statute does not indicate that a city must enact an ordinance for every power given by 10-8-8 supra....

Further after enumerating the powers of the city the statute goes on to say

...**and** may vacate the same or parts thereof, by ordinance. [Emphasis is by the Court.]

"And" means "in addition to," implying that in addition to the enumerated powers supra, the city "may vacate...by ordinance."

By applying this same line of reasoning to §10-2-416, it is clear that "as shown by the last assessment rolls" only modifies "at least one-third in value of the real property."

There is additional logic behind this interpretation. The statutory job of the assessor is to assign value to real property. So in determining whether there is one-third value, it makes sense to look to the assessment rolls. However, the county recorder's office, which has the legal duty to maintain land ownership records, is the place to look to determine real property ownership.

The assessment roll decision of Jensen ought to be overturned now on the basis of public policy. Right from the start there was a very big problem with the decision, which was mentioned by Justice Ellett in his concurring opinion:

Believing as I do that the ordinance of annexation was not properly passed, I do not think it is necessary to decide the other issues, *particularly the question of whether a nonowner of property can sign a petition for annexation merely because a year or so prior thereto he happened to have his name upon the assessment roll.* [Emphasis added.]

Taking the Jensen holding to its logical conclusion, if a landowner owns property adjacent to a city on January 1st, then in May sells to

a buyer, the seller-nonowner can sign a petition in November to have this single property annexed to the city, and the buyer-owner would not have any voice whatsoever in the process. Yet common sense and sound public policy suggest that the buyer-owner should be able to sign, and seller-nonowner should not. The mistake made in Jensen ought not to be perpetuated longer for any reason.

3. THE TRIAL COURT ERRED IN INTERPRETING THE TERM "OWNERS OF REAL PROPERTY" IN §10-2-416 TO INCLUDE GOVERNMENTAL ENTITIES.

Within the area of the annexation are parcels of real estate owned by governmental entities, Davis County and the South Davis Water Improvement District. With respect to these, the trial court issued the following Conclusion (R. 346):

Conclusions of Law

10. Governmental entities which own properties within the proposed annexation area are owners of real property under Section 10-2-416....

This Conclusion of Law has no factual underpinnings and is strictly a statutory interpretation. This court should give it no deference and review it for correctness. State v. Pena.

These governmental entities should not be counted as "owners of real property" because their avenue of participation in the annexation process is already fixed by law. §10-2-402 of the Utah Code sets up a boundary commission to consider situations where affected entities may participate in annexations. An "affected entity" is defined at Section 10-1-104(8) to mean "a county, municipality or other entity possessing taxation powers...." By definition, Davis County is an affected entity. By the holding of Pike Countryside Annexation v. Vernal City, 711 P.2d 240 (Utah 1985), a water and sewer improvement district is also an affected

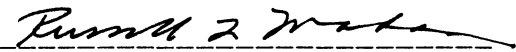
entity.

The Utah Code, therefore, has set up the means by which governmental entities may participate in the annexation process. It is not by counting them as "owners of real property," but rather by counting them as "affected entities" which may appeal to the Boundary Commission. They should not be counted as both.

CONCLUSION

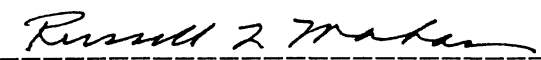
The judgment in favor of the Defendant Bountiful City should be affirmed, though modified as to the issues raised on Cross-Appeal.

Dated this 21st day of April, 1995.


_____
Russell L. Mahan
Attorney for the Defendant City

MAILING CERTIFICATE

I certify that on April 21, 1995, I mailed three copies of this Brief of the Appellee/Cross-Appellant, with first class postage prepaid thereon, to Paul W. Mortensen at P.O. Box 741, Farmington, Utah 84025.


_____

ADDENDUM

APPENDIX A

Constitutional & Statutory Provisions

> CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT I

[Religious and political freedom.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. [Citizenship - Due process of law - Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF UTAH

ARTICLE I
DECLARATION OF RIGHTS

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

STATUTORY TITLES IN UTAH

TITLE 10
CITIES AND TOWNS

10-1-103. Construction.

The powers herein delegated to any municipality shall be liberally construed to permit the municipality to exercise the powers granted by this act except in cases clearly contrary to the intent of the law.

10-8-8. Streets, parks, airports, parking facilities, public

grounds and pedestrian malls.

They may lay out, establish, open, alter, widen, narrow, extend, grade, pave or otherwise improve streets, alleys, avenues, boulevards, sidewalks, parks, airports, parking lots or other facilities for the parking of vehicles off streets, public grounds, and pedestrian malls and may vacate the same or parts thereof, by ordinance.

TITLE 20A ELECTION CODE

20A-4-105. Standards and requirements for evaluating voter's ballot choices.

(6) (a) In counting the ballots, the counters shall give full consideration to the intent of the voter.

(b) The counters may not invalidate a ballot because of mechanical and technical defects in voting or failure on the part of the voter to follow strictly the rules for balloting required by Chapter 3.

TITLE 57 REAL ESTATE

CHAPTER 8 CONDOMINIUM OWNERSHIP ACT

57-8-27. Separate taxation.

(1) Each unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including but not limited to, ad valorem levies and special assessments. Neither the building or buildings, the property, nor any of the common areas and facilities may be considered a parcel.

In the event any of the interests in real property made subject to this chapter by the declaration are leasehold interests, if the lease creating these interests is of record in the office of the county recorder, if the balance of the term remaining under the lease is at least 40 years at the time the leasehold interest is made subject to this chapter, if units are situated or are to be situated on or within the real property covered by the lease, and if the lease provides that the lessee shall pay all taxes and assessments imposed by governmental authority, then until ten years prior to the date that the leasehold is to expire or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be levied against the owner of the lessee's interest. If the owner of the reversion under the lease has executed the declaration and record of survey map,

until ten years prior to the date that the leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be separately levied against the unit owners having an interest in the lease, with each unit owner for taxation purposes being considered the owner of a parcel consisting of his undivided condominium interest in the fee of the real property affected by the lease.

TITLE 59
REVENUE AND TAXATION

CHAPTER 2
PROPERTY TAX ACT

59-2-303. General duties of county assessor.

(1) Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock midnight of January 1 in the tax year, unless a subsequent conveyance of ownership of the real property was recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice. In that case, any tax notice may be mailed, and the tax assessed, to the new owner. No mistake in the name or address of the owner or supposed owner of property renders the assessment invalid.

(2) A county assessor shall become fully acquainted with all property in his county, as provided in Section 59-2-301.

TITLE 75
UNIFORM PROBATE CODE

CHAPTER 7
TRUST ADMINISTRATION

75-7-406. Third persons protected in dealing with trustee.

With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust power and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

TITLE 78
JUDICIAL CODE

CHAPTER 2
SUPREME COURT

78-2-2. Supreme Court jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction;

CHAPTER 2a
COURT OF APPEALS

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(k) cases transferred to the Court of Appeals from the Supreme Court.

UTAH CODE, 1898

Section 287. Whenever a majority of owner of real property of any territory lying contiguous to the corporate limits of any city shall desire to annex such territory to any city, they shall cause an accurate plat or map....

APPENDIX B

Annexation Resolution

ANNEXATION RESOLUTION

92- 23

E 1009843 B 1568 P 535
AROL DEAN PAGE, DAVIS CNTY RECORDER
1992 DEC 28 12:08 PM FEE .00 DEP 0.00
REC'D FOR BOUNTIFUL CITY

RESOLUTION DECLARING THE ANNEXATION OF TERRITORY TO THE MUNICIPALITY OF BOUNTIFUL

WHEREAS, a majority of the owners of real property and the owners of not less than one-third in value of the real property as shown on the last assessment rolls in territory lying contiguous to this municipality have petitioned this municipality for annexation; and

WHEREAS, the petition was accompanied by an accurate plat or map of the territory to be annexed, prepared under the supervision of the City Engineer or a competent surveyor and certified by the engineer or surveyor; and

WHEREAS, the petition and plat or map have been filed in the office of the municipal recorder; and

WHEREAS, the City Council adopted an Ordinance accepting the petition for annexation for the purpose of preparing a Policy Declaration; and

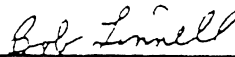
WHEREAS, the City Council held a public hearing with notice provided to residents of the affected territory, and a copy of the proposed Policy Declaration, together with notice of such hearing, was mailed to the local boundary commission and affected entities; and

WHEREAS, the City Council adopted a Policy Declaration in support and in favor of annexation, and it appearing that no protest has been filed by written application by an affected entity within five days following said public hearing;

IT IS THEREFORE RESOLVED by the City Council of Bountiful, Utah, that the territory described below is hereby declared annexed to the municipality of Bountiful, Utah:

See Exhibit "A" attached hereto

Adopted by a vote of at least two-thirds of the governing body this 9th day of December, 1992.



MAYOR

Attest:


CITY RECORDER

APPENDIX C

Findings of Fact & Conclusions of Law

Russell L. Mahan (#2059)
Attorney for the Defendant
790 South 100 East
Bountiful, Utah 84010
Telephone (801) 298-6143

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

DEC 12 4 07 PM '94

CLERK OF DISTRICT COURT

BY DE UT. CLERK 

IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, UTAH

JAMES SZATKOWSKI and
VERNAL W. THOMPSON,

. Civil No. 93-0700339-CV

Plaintiffs,
vs.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

BOUNTIFUL CITY,

:
Judge Jon M. Memmott

Defendant.

The trial of this case was held on Monday, November 7, and Wednesday, November 9, 1994, with the Honorable Judge Jon M Memmott presiding, at the Davis County Courthouse in Farmington, Utah. Plaintiffs James Szatkowski and Vernal W Thompson were present personally, and were represented by their attorney, Paul W Mortensen. The Defendant was represented by Russell L. Mahan. After hearing the testimony of witnesses, receiving exhibits, and hearing the oral argument of counsel, the Court entered the following Findings of Fact and Conclusions of Law

FINDINGS OF FACT

1. All of the properties within the annexation area involved in this case are listed by tax serial number on Exhibit A, which is attached hereto and incorporated herein by this reference.

Some owners owned more than one parcel, and those duplicates are listed on the last page of Exhibit

A. Owners were counted once, regardless of how many parcels they owned.

2. There were 263 owners of real property within the annexation area, the names of whom are listed on Exhibit A.

2. Of those 263 owners, 132 signed the annexation petition as of December 2, 1992, when the Policy Declaration was adopted. Those who signed are indicated on Exhibit A by being italicized. This constitutes a majority of the owners of real property in the annexation area.

3. Of those 263 owners, 131 did not sign the annexation petition as of December 2, 1992. Those who did not sign are indicated on Exhibit A by the regular, non-italicized type.

4. A majority of the owners representing at least one-third of the value as shown on the last assessment roll did sign the annexation petition.

5. There are two properties (01-022-0051 and 05-033-0010) owned in the name of the Fred and Carma Harrison Trust. There is no evidence that these are different trusts, and the court finds that these two properties are owned by one trust.

6. The City has determined that the requirement of a map prepared by the City Engineer being submitted to the City Recorder together with the petition signatures, as set forth in 10-2-416, has been met. There is no factual evidence that this decision by the City constitutes an abuse of discretion.

7. The following property owners signed the annexation petition without a map being attached to their signatures pages: Rhea (01-022-0052) ; Collins (01-022-0053), Bridge (01-139-

0004), Thompson (05-003-0053), Olson (05-003-0055), Ensign (05-003-0056), Lavulo (05-033-0016), Merrill (05-033-0020), Siddoway (05-033-0021), Hart (05-034-0001), Conder (05-034-0004), Clark (05-034-0006), Chabries (05-034-0013), Pulsipher (05-034-0014), Lewis (05-034-0015), Broschinsky (05-034-0017), Gregersen (05-034-0024), McCraley (05-034-0026), and Robinson (05-035-0111).

8. The following properties were owned by trusts, and were signed by trustees without referencing their trustee capacity: Watson (01-028-0003), Averett (05-033-0032), Harker (05-033-0051), Clark (05-034-0006), Pulsipher (05-034-0014), Schmidt (05-034-0049), Goodrich (05-034-0059), and Luke (05-035-0020).

9. The signature of Merrill Lee Sorenson (01-139-0009) appearing on the annexation petition was signed by his wife.

10. The signature of Michael Gonce (01-139-0014) as an annexation petitioner is on a form different from the other petitioners, but the format used does clearly state that he wishes that the annexation take place.

11. The Colonial View Condominium Association (01-139-0020) is not an owner of real property separate from the individual unit owners. The Condominium Declaration states that the undivided interest in the common areas is not to be separated from each unit. All of the unit owners have already been counted as owners.

12. The McCracken property (05-033-0008) is held as life estate in the names of Joseph and Mary McCracken.

13. The Lavulo property (05-033-0016) has one owner, Groberg Lavulo.
14. The following properties had deceased owners showing on the assessment roll, and the surviving widows who owned in joint tenancy are the sole owner of each property: Larsen (05-034-0012), Hansen (05-034-0032), Brooks (05-034-0045), Zobel (05-034-0056), and Murray (05-035-0014).
15. The Thomas Tolman & Family Organization (05-034-0058) is one owner of property.
16. There were a majority of property owners signing the annexation petition on each of October 7, 1992, December 2, 1992, and December 9, 1992.
17. The Bountiful City Council vote on each of those occasions was by a two-thirds vote.
18. The Annexation Resolution adopted by the Bountiful City Council is a valid annexation resolution.
19. Thirteen signatures were added to the petitions between December 3 and 9, 1992, as indicated on Exhibit A.
20. The annexation signature count on December 9, 1992, was 145 signatures in favor and 118 not signing.

CONCLUSIONS OF LAW

1. The right of petition is one of the most important processes that we have, in which the average citizen can get involved to petition the government from the outside and ask the government

to act.

2. The proper inquiry of the Court is to determine whether the Defendant Bountiful City had statutory authority to annex the area in question, and whether there was substantial compliance with statutory requirements.

3. The determination of whether the annexation petition has met all of the statutory standards is vested in the City, and the review by the Court is to determine whether the City has abused that discretion.

4. Annexation laws are to be interpreted liberally to effectuate their purpose and further public policy.

5. The annexation resolution of the Bountiful City Council is entitled to a presumption of validity, and the burden of proof is upon the Plaintiffs in this case.

6. The appropriate standard for reviewing the City's procedures is "substantial compliance." However, specific legal requirements such as having a majority of signatures, etc., are not measured by substantial compliance but must be met.

7. The term "owners of real property" as used in Section 10-2-416 means those owners of real property as shown on the last tax assessment roll prior to December 2, 1992, subject to the rulings of law stated by this Court.

8. There must be a majority of owners as annexation petitioners when the City Council votes to accept the annexation petition and when the City Council votes to adopt the annexation resolution. In addition, at the time of the adoption of the policy declaration, there must be a majority of owners

as annexation petitioners if the Council is proceeding on the basis of the petition. However, if the City Council is proceeding on the basis of its own initiative or that of the planning commission, then a majority as owners as petitioners is not necessary.

9. The homeowners association of a condominium development may or may not constitute an owner of real property under Section 10-2-416 depending upon the particular facts of that condominium.

10. Governmental entities which own properties within the proposed annexation area are owners of real property under Section 10-2-416. They are either owners as a legal entity or corporate entity or some other type of entity, but they are still owners of real property.

11. Future interest holders under a deed of trust reserving a life estate for the grantors are not owners of real property under Section 10-2-416.

12. An individual who is dead is not an owner of real property under Section 10-2-416. In the case of real property where the title is held in joint tenancy with the right of survivorship, the surviving joint tenant is the sole owner. In the case of joint tenancy, without this right of survivorship, or other joint ownership arrangement, the estate of the decedent would hold the ownership after the death of an owner.

13. When a property is owned by a partnership, the validity of the signature of a partner may or may not constitute a signature of an owner of real property under Section 10-2-416 depending upon the particular facts of that partnership.

14. Signatures on the annexation petition may be both added and withdrawn prior to the

annexation resolution vote of the City Council.

15. Withdrawals of signatures which are not turned into the City are of no legal consequence.

16. When a home is owned by a trust, the trust is the owner of real property under the annexation laws, which constitutes one owner of real property under Section 10-2-416.

17. As a matter of stipulation of the parties and as a finding of fact and conclusion of law, a majority of the owners of real property signed the annexation petitions at the time the Bountiful City Council voted to accept them on October 7, 1992.

18. The Complaint of the Plaintiffs is considered as brought under the statutory remedy provided by Section 10-2-423, and not pursuant to Rule 65B of the Rules of Civil Procedure.

19. A majority of the owners representing at least one-third of the value as shown on the last assessment roll did sign the annexation petition. The Plaintiffs have made no challenge on this point.

20. There are 263 property owners within the annexation area, and 132 validly signed the annexation petition as of December 2, 1992. This constitutes a majority by one.

21. The Albert Ouzounian property (01-022-0012) involves a life estate reserved to Albert Ouzounian, and counts as one property owner.

22. There are two properties (01-022-0051 and 05-033-0010) owned in the name of the Fred and Carma Harrison Trust. This counts as one owner of two properties.

23. The City has determined that the requirement that a map prepared by the City Engineer

be submitted to the City Recorder together with the petition signatures, as set forth in 10-2-214, has been met. There is no abuse of discretion in this decision. The Court does not find in the statute that there is a requirement that a map be attached to each individual annexation petition page that is actually signed. Therefore, the Court rejects the challenges to the validity of all signatures without a map individually attached to the signature page, including challenges to the following signatures: Rhea (01-022-0052) , Collins (01-022-0053), Bridge (01-139-0004), Thompson (05-003-0053), Olson (05-003-0055), Ensign (05-003-0056), Lavulo (05-033-0016), Merrill (05-033-0020), Siddoway (05-033-0021), Hart (05-034-0001), Conder (05-034-0004), Clark (05-034-0006), Chabries (05-034-0013), Pulsipher (05-034-0014), Lewis (05-034-0015), Broschinsky (05-034-0017), Gregersen (05-034-0024), McCraley (05-034-0026), and Robinson (05-035-0111).

24. Trustees of trusts which own properties within the annexation area need not expressly sign the annexation petitions in their trustee capacities. There has been substantial compliance when the trustees signed the petition in their own names. Therefore, the Court rejects the challenges to the validity of signatures by trustees that do not state their trustee capacity, including the following signatures: Watson (01-028-0003), Averett (05-033-0032), Harker (05-033-0051), Clark (05-034-0006), Pulsipher (05-034-0014), Schmidt (05-034-0049), Goodrich (05-034-0059), and Luke (05-035-0020).

25. The signature of Merrill Lee Sorenson (01-139-0009) by his wife is not a valid petition signature. However, Beth Sorensen's signature is valid.

26. The signature of Michael Gonce (01-139-0014) as an annexation petitioner is in

substantial compliance with the law, and is to be counted as a valid signature.

27. The Colonial View Condominium Association (01-139-0020) under its Condominium Declaration is not an owner of real property separate from the individual unit owners, and is not to be counted as an owner of real property.

28. The McCracken property (05-033-0008) is held as a life estate in the names of Joseph and Mary McCracken, which counts as two owners.

29. The Lavulo property (05-033-0016) is counted as having one owner, Groberg Lavulo..

30. The following properties had deceased owners showing on the assessment roll, and the surviving widows who owned in joint tenancy are counted as the sole owner of each property: Larsen (05-034-0012), Hansen (05-034-0032), Brooks (05-034-0045), Zobel (05-034-0056), and Murray (05-035-0014).

31. The Thomas Tolman & Family Organization (05-034-0058) is counted as one owner of the property.

32. There was a majority of property owners signing the annexation petition on October 7, 1992, December 2, 1992, and December 9, 1992.

33. The Bountiful City Council vote on annexation matters on each of those occasions was by a two-thirds vote.

34. The Annexation Resolution adopted by the Bountiful City Council is a valid annexation resolution.

35. Thirteen signatures were added to the petitions between December 3 and 9, 1992. They

are set out in Exhibit A.

36. The signature count on December 9, 1992, was 145 signatures in favor and 118 not signing.

37. The Defendant Bountiful City is in substantial compliance with the requirements of the annexation laws of the State of Utah concerning this particular annexation, and the annexation petitions contained valid signatures from a majority of property owners at all times required by law.

Dated this 9th day of ^{December}~~November~~, 1994.

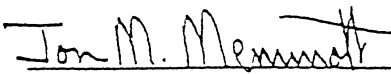

_____
Jon M. Memmott, District Judge

EXHIBIT A

OWNERS OF REAL PROPERTY

Italicized = signed annexation petition as of December 2, 1992.

<u>Serial #</u>	<u>Owner</u>	<u>Address</u>	<u>Signatures Added Dec 3-9</u>
01-022-0002	<i>Schofield, James C.</i>	472 W. 3100 South	
01-022-0003	<i>Wirthlin, Lee W.</i>	432 W. 3100 South	
01-022-0004	<i>Kirkman, James/Cayle</i>	376 W. 3100 South	
01-022-0005	<i>D M L Partnership</i>	366 W. 3100 South	- 1
01-022-0006	<i>Graham, Irvin L./Laura M.</i>	346 W. 3100 South	
01-022-0007	<i>Koecher, Walter E./Herta</i>	334 W. 3100 South	
01-022-0008	<i>Gines, Keith/Jolene</i>	238 W. 3100 South	
01-022-0010	<i>Ouzounian, Arthur/Sylvia</i>	182 W. 3100 South	
01-022-0011	<i>Ensign, Brent N./Danell A.</i>	172 W. 3100 South	
01-022-0012	<i>Ouzounian, Albert</i>	154 W. 3100 South	
01-022-0013	<i>The A.M.P. Trust</i>	132 W. 3100 South	- 1
01-022-0040	<i>Schulties, Gordon Jr./Debbie</i>	3059 S. Orchard Dr.	
01-022-0041	<i>Mock, Eldon J./Donna</i>	456 W. 3100 South	
01-022-0042	<i>Wilson, Larry I./Denise</i>	446 W. 3100 South	
01-022-0043	<i>Mortensen, Fern W.</i>	3032 S. 400 West	
01-022-0044	<i>Wilkins, Russell M., Tr.</i>	3046 S. 400 West	
01-022-0045	<i>Wall, Leonard J./Carol E.</i>	3066 S. 400 West	
01-022-0046	<i>Pitt, Charles H./Margaret</i>	3082 S. 400 West	
01-022-0049	<i>Madsen, Glendon W./Betty</i>	3072 S. 300 West	
01-022-0050	<i>Rigby, Boyd G./Carol Fay</i>	312 W. 3100 South	
01-022-0051	<i>Harrison, Fred W./Carma, Tr.</i>	3043 S. 300 West	
01-022-0052	<i>Rhea, Francis A./Helen</i>	3057 S. 300 West	
01-022-0053	<i>Collins, Carl V./Autumn R.</i>	3069 S. 300 West	
01-022-0054	<i>Collins, Carol</i>	268 W. 3100 South	
01-022-0078	<i>Such-Neibar, Teresa/Rex Neibar</i>	232 W. 3100 South	
01-022-0085	<i>Davis County</i>	—	
01-022-0090	<i>Schwendiman, Terry D./Veva</i>	3044 S. 300 West	
01-028-0001	<i>Crawley, Frederick S./Lois</i>	3088 S. 100 West	
01-028-0002	<i>McRae, Karl M./Carol B., Tr.</i>	3067 S. 100 West	
01-028-0003	<i>Watson, Harold/Ora Cox S. Tr.</i>	3083 S. 100 West	
01-028-0038	<i>Knight, Kenneth K.</i>	3038 S. 100 West	
01-028-0039	<i>Moses, Devon/Sharon</i>	3048 S. 100 West	
01-028-0040	<i>Stout, Cleamont/Constance</i>	3052 S. Davis Blvd.	
01-028-0041	<i>Phister, Warren K./Diane B.</i>	3062 S. Davis Blvd.	
01-028-0042	<i>Wagstaff, Mark R./Jeanne</i>	3082 S. Davis Blvd.	
01-139-0001	<i>Watson, David Lee/Jennifer</i>	3045 S. Orchard Dr. A	+ 2
01-039-0002	<i>Schvaneveldt, Marie</i>	3045 S. Orchard Dr. B	
01-139-0003	<i>Wigren, Paul R./Heidi J.</i>	3045 S. Orchard Dr. C	
01-039-0004	<i>Bridge, Sherry</i>	3045 S. Orchard Dr. D	

Signatures

<u>Serial #</u>	<u>Owner</u>	<u>Address</u>	<u>Added</u> <u>Dec 3-9</u>
01-139-0005	Hansen, Lanny J./Linda F.	3047 S. Orchard Dr. A	
01-139-0006	Roberts, Grant L./Lisa S.	3047 S. Orchard Dr. B	
01-139-0007	Smith, Jewell N.	3047 S. Orchard Dr. C	
01-139-0008	Kuenn, Earl E., Tr.	3047 S. Orchard Dr. D	
01-139-0009	Sorensen, Merrill Lee/Beth	3049 S. Orchard Dr. A	
01-139-0010	Henrie, Barbara T.	3049 S. Orchard Dr. B	
01-139-0011	Huopara, Michael B.	3049 S. Orchard Dr. C	
01-139-0012	Southon, Eric J./Na'anua Y.	3049 S. Orchard Dr. D	
01-139-0013	Paulicn, Lana J.	3051 S. Orchard Dr. A	
01-139-0014	Gonce, Michael E.	3051 S. Orchard Dr. B	
01-139-0015	Hyatt, Gregory N./Tonya O.	3051 S. Orchard Dr. C	
01-139-0016	Moll, Ernest B./Myrna D.	3051 S. Orchard Dr. D	
01-139-0017	Turner, Scott D./Freya C.	3051 S. Orchard Dr. E	
01-139-0020	Colonial View Condo Assoc.	3051 S. Orchard Dr.	(Not counted as an owner)
05-003-0013	Anderson, Don N./Kathleen	2743 S. Orchard Dr.	
05-003-0014	Vanleeuwen, Robert/Phyllis	2793 S. Orchard Dr.	
05-003-0015	Lewis, Edward	3011 S. Orchard Dr.	
05-003-0050	Howard, Bertha	2711 S. Orchard Dr.	- 1
05-003-0051	Barton, J. Golden/Norene	2762 S. 300 West	
05-003-0052	Kocernans, Larry D /Carolyn	2723 S. Orchard Dr.	
05-003-0053	Thompson, Elmer & Donald,	2782 S. 300 West	- 1
05-003-0055	Olsen, Dale/Frankie	2812 S. 300 West	
05-003-0056	Ensign, Paul Stuart/Tamra	2838 S. 300 West	
05-033-0003	Lewis, Chris A./Anne M.	2917 S. 300 West	
05-033-0004	Halstead, Walter C./Mavia	2959 S 300 West	
05-033-0006	Skare, Elaine A./James C.	2981/2979 S. 300 West	
05-033-0007	Gines, Paul K./Lynette	3009 S 300 West	
05-033-0008	McCracken, Joseph/Mary	3027 S 300 West	
05-033-0009	Kunkel, Matthew A./Diane	262 W 3000 South	
05-033-0011	Heap, David L./A. Chairae	238 W 3000 South	
05-033-0012	Warrick, Devon W./Gwen L.	247 W. 3000 South	
05-033-0013	Kawar, Faisal T./Betty M., Tr	218 W. 3000 South	
05-033-0014	Borg, Seth J./Juanita I.	219 W. 3000 South	
05-033-0015	Sim, Fred A./Betty Jean, Tr	202 W. 3000 South	
05-033-0016	Lavulo, Groberg	203 W. 3000 South	
05-033-0017	Norton, Lawrence A./Anita	176 W. 3000 South	
05-033-0019	Ripley, Gerald R./Mary L.	156 W. 3000 South	
05-033-0020	Merrill, Gary Lynn/Evelyn	157 W. 3000 South	
05-033-0021	Siddoway, Philip M./Christie	138 W. 3000 South	
05-033-0022	Golson, Chad "B"/Jaelynn	133 W. 3000 South	
05-033-0023	Selin, Lynn H./Mary Rae	2974 S. 100 West	
05-033-0024	Naegle, Lorraine P.	117 W. 3000 South	
05-033-0026	Navalco of Utah	261 W. 2900 South	
05-033-0028	Peck, Dixie Lee	243 W. 2900 South	
05-033-0030	Buttler, Heinz F./Carol R.	217 W. 2900 South	

Serial #

Owner

Address

Signatures
Added
Dec 3-9

05-033-0032   *Averett, Thelma H., Tr.*   197 W. 2900 South
05-033-0034   *Hachmeister, Nancy L.*   179 W. 2900 South
05-033-0036   *Harrison, Robert B./Judy M.*   151 W. 2900 South
05-033-0038   *Solze, Donald*   137 W. 2900 South
05-033-0040   *Bailey, David Lyle*   111 W. 2900 South

- 1

05-033-0042   *Winstead, Terry*   2917 S. 100 West
05-033-0046   *Hill, Trudy Williams*   71 W. 2900 South
05-033-0047   *Quilter, H. Melvin/Clara T.*   2967 S. 100 West
05-033-0048   *Oster, Allan L./Mar Jean C.*   2993 S. 100 West
05-033-0049   *Newbold, James A./Frances*   3027 S. 100 West
05-033-0050   *So. Davis Water Imo. Dist.*   407 West 3100 South
05-033-0051   *Harker, Jack A./MaryKay Tr*   3013 S. 100 West
05-033-0053   *Mitchell, Brent T./Cheryl*   2941 S. 100 West

05-033-0054   *Schilling, Noel/Mary*   169 W. 2900 South
05-033-0055   *Illu, Hector R./Joy*   81 W. 2900 South
05-034-0001   *Hart, John L./Doris L.*   3026 S. 300 West
05-034-0002   *Anderson, Larry A./Patrice*   3016 S. 300 West
05-034-0003   *Patrick, Joseph F./Ethyl C.*   3002 S. 300 West
05-034-0004   *Conder, Kay Lynn*   2984 S. 300 West
05-034-0005   *Potter, Gilbert J./Elda M.*   2964 S. 300 West
05-034-0006   *Clark, Carl J./Elizabeth Tr.*   2946 S. 300 West
05-034-0007   *McCaleb, Robert F./Haruko*   2920/2924 S. 300 West
05-034-0008   *Strader, S. Kent/Susan E.*   321 W. 2900 South
05-034-0009   *Floisand,Johannes/Orland B.*   337 W. 2900 South
05-034-0010   *Massie, Rod/Jan*   351 W. 2900 South

05-034-0011   *Nelson, Michael J./Laini A.*   2913 S. Vista Circle Dr.
05-034-0012   *Larsen, Bernice S.*   2933 S. Vista Circle Dr.
05-034-0013   *Chabries, Melvin E./Maxine*   2951 S. Vista Circle Dr.
05-034-0014   *Pulsipher, Wanda B. Tr.*   2967 S. Vista Circle Dr.
05-034-0015   *Lewis, Dan R./Nedra Y.*   2979 S. Vista Circle Dr.
05-034-0016   *Birdzell, Michael/Deanna*   2987 S. Vista Circle Dr.
05-034-0017   *Broschinsky, Clyde/Hazel F.*   2993 S. Vista Circle Dr.
05-034-0018   *Fotou, Martin K./Marilyn S.*   2997 S. Vista Circle Dr.

05-034-0019   *Olson, Loyal F.*   2998 S. Vista Circle Dr.
05-034-0020   *Szatkowski, James L., Tr*   2996 S. Vista Circle Dr.
05-034-0021   *Maughan, Dennis C./Julie N.*   2994 S. Vista Circle Dr.
05-034-0022   *Hoddenbach, William A.*   2982 S. Vista Circle Dr.
05-034-0023   *Jackson, Ellis L./Ceraldine*   2972 S. Vista Circle Dr.
05-034-0024   *Gregersen, Marvin L./Leslie*   2956 S. Vista Circle Dr.
05-034-0025   *Call, Ben E./Merle C., Tr*   2944 S. Vista Circle Dr.
05-034-0026   *McCraley,Michael D./Karen*   2922 S. Vista Cir.

05-034-0027   *Bowman, Reed/Ingrid P.*   2943 S. 400 West
05-034-0028   *Mortensen, Guy A./Kelly A.*   2957 S. 400 West
05-034-0029   *Lewis, Ellis W.*   2971 S. 400 West

+ 1

Signatures
Added

Serial #   Owner   Address   Dec 3-9

05-0340030   Clark, Iris J.   2987 S. 400 West
05-0340031   Henrie, M. Lyman/Susan K.   3003 S. 400 West
05-0340032   Hansen, Rudy   3017 S. 400 West
05-0340033   Garrett, Darryl T./Faith R.   3033 S. 400 West
05-0340034   Doi, Ichiro/Ta Keko   3047 S. 400 West
05-0340035   Miller, Dale C./Shirley A.   3067 S. 400 West
05-0340036   Martin, Jonn M./Diane   3083 S. 400 West
05-0340038   Blair, Ralph L./Jane E.   3018 S. 400 West

05-0340039   Wright, Larry D.   2983 S. Orchard Dr.
05-0340040   Jorgenson, Anna   2969 S. Orchard Dr.
05-0340041   Elliedge, Terry Lynn   3002 S. 400 West
05-0340042   Sutherland, Elton K./Sandra   2992 S. 400 West
05-0340043   Kowalchik, Peter J./Carolyn   2982 S. 400 West
05-0340044   Marble, J. Oleen/Cynthia M.   2968 S. 400 West
05-0340045   Brooks, Luene   2952 S. 400 West
05-0340046   Thomason, Vernal W./Edith   2944 S. 400 West
05-0340047   Burningham, Mirus Twitchell   2932 S. 400 West
05-0340048   Haslam, Clyde E./Elizabeth   2918 S. 400 West
05-0340049   Schmidt, Lloyd/Dorothy Tr.   2904 S. 400 West
05-0340050   Exon, Robert D.   2856 S. 400 West
05-0340051   Blood, E. Scott/Susan F.   2837 S. 400 West
05-0340052   Deseret Fed. Sav. & Loan   2863 S. 400 West

05-0340053   Quick, Smith B./Betty B.   376 W. 2900 South
05-0340054   Cox, Stephen R./Jeanett   354 W. 2900 South
05-0340055   Newman, H.Robert/Mary M.   342 W. 2900 South

05-0340056   Zobell, Jean J.   2854 S. 300 West
05-0340057   Ferguson, Warren S./Carolyn   316 W. 2900 South
05-0340058   Thomas, Tolman/Fam. Org.   2937 S. Orchard Dr.
05-0340059   Goodrich, Edith M, Tr.   2943 S. Orchard Dr.
05-0340060   Featherstone, Catherine Tr.   2957 S. Orchard Dr.
05-0350014   Murray, Billie   3006 S. Davis Blvd.   + 1

05-0350015   Johnson, William L./Nada S.   2992 S. 50 West
05-0350018   Dixon, Joseph T., III   2966 S. 50 West
05-0350019   Poulson, Joann H.   2946 S. 50 West   -- 1
05-0350020   Luke, Dorothy, Tr.   2932 S. 50 West
05-0350021   Sorensen, Gerald/Donna Tr.   2916 S. 50 West
05-0350111   Robinson, Jonn/Joan   2984 S. 50 West

Total Owners -- 263

December 2, 1992   Dec 3-9 Additions   December 9, 1992

Total Petition Signatures   132   + 13   Total Petition Signatures   145
Total not signing   131   (no withdrawals)   Total not signing   118

Properties with Owners Already Counted Above

01-022-0014	The A.M.P. Trust
01-022-0055	DML Partnership
01-139-0018	Turner, Scott & Freya
01-139-0019	Turner, Scott & Freya
05-003-0054	Davis County
05-033-0005	Halstead, Walter & Mavia
05-033-0010	Harrison, Fred & Carma Trust
05-033-0018	Norton, Lawrence & Anita
05-033-0056	Mitchell, Brent & Cheryl
05-034-0037	Mortensen, Fern
05-035-0016	South Davis Water Improvement District

APPENDIX D

Exhibit A to Condominium Declaration of Colonial View Condominiums

EXHIBIT A

22

ENABLING DECLARATION OF COLONIAL VILL CONDOMINIUM PROJECT

The project will have four (4) buildings. Buildings 3045, 3047, and 3049 will contain four (4) single family dwellings. Building No. 3051 will have four (4) single family dwellings and three (3) commercial office units.

					Percent Ownership in Common Areas and Facilities. (Also determinative of voting rights and used as a general basis for pro rata share of owners' expenses).
Units 3045	Approx. No. of Sq. Ft.	No. of Rooms			
		Total	Kid	Bath	
(A)	1289	8	3	1-3/4	6.7
(B)	832	7	2	1-1/2	4.3
(C)	976	7	2	1-1/2	5.1
(D)	1045	6	2	1	5.4
Units 3047					
(A)	1289	8	3	1-3/4	6.7
(B)	832	7	2	1-1/2	4.3
(C)	976	7	2	1-1/2	5.1
(D)	1045	6	2	1	5.4
Units 3049					
(A)	1289	8	3	1-3/4	6.7
(B)	832	7	2	1-1/2	4.3
(C)	976	7	2	1-1/2	5.1
(D)	1045	6	2	1	5.4
Units 3051					
(A)	837	5	2	1	4.4
(B)	938	5	2	1	4.9
(C)	1036	5	2	1	5.4
(D)	1131	7	2	2	5.9
Offices					
(1)	1142	2		1	6.0
(2)	662	2		1	3.5
(3)	1033	2		1	5.4
TOTALS		19,205			100.00%

EXHIBIT A

1090

TO

ENABLING DECLARATION OF COLONIAL VIEW CONDOMINIUM PROJECT

The project will have four (4) buildings. Buildings 3045, 3047, and 3049 will contain four (4) single family dwellings. Building No. 3051 will have four (4) single family dwellings and three (3) commercial office units.

<u>Units</u>	<u>Approx. No. of Sq. Ft.</u>	<u>No. of Rooms</u>			<u>Percent Ownership in Common Areas and Facilities. (Also determina- tive of voting rights and used as a general basis for pro rata share of owners' expenses).</u>
		<u>Total</u>	<u>Bed</u>	<u>Bath</u>	
<u>Units 3045</u>					
(A)	1289	8	3	1-3/4	6.7
(B)	832	7	2	1-1/2	4.3
(C)	976	7	2	1-1/2	5.1
(D)	1045	6	2	1	5.4
<u>Units 3047</u>					
(A)	1289	8	3	1-3/4	6.7
(B)	832	7	2	1-1/2	4.3
(C)	976	7	2	1-1/2	5.1
(D)	1045	6	2	1	5.4
<u>Units 3049</u>					
(A)	1289	8	3	1-3/4	6.7
(B)	832	7	2	1-1/2	4.3
(C)	976	7	2	1-1/2	5.1
(D)	1045	6	2	1	5.4
<u>Units 3051</u>					
(A)	837	5	2	1	4.4
(B)	938	5	2	1	4.9
(C)	1036	5	2	1	5.4
(D)	1131	7	2	2	5.9
<u>Offices</u>					
(1)	1142	2		1	6.0
(2)	662	2		1	3.5
(3)	1033	2		1	5.4
TOTALS	19,205				100.00%