

ENTRY NO. 01181302

01/11/2022 03:45:40 PM B: 2717 P: 0839

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RHONDA FRANCIS, SUMMIT COUNTY RECORDER
FEE 0.00 BY SUMMIT COUNTY ATTORNEY



MARGARET H. OLSON (6296)
Summit County Attorney
DAVID L. THOMAS (7106)
Chief Civil Deputy County Attorney
HELEN E. STRACHAN (9558)
Deputy County Attorney
RYAN P.C. STACK (11298)
Deputy County Attorney
60 N. Main Street, P.O. Box 128
Coalville, Utah 84017
molson@summitcounty.org
dthomas@summitcounty.org
hstrachan@summitcounty.org
rstack@summitcounty.org
Telephone: 435-336-3206

PARCELS: SS-86
SS-125
SS-125-C
PP-28-1
PP-28-2

Attorneys for Plaintiff and Petitioner

**IN THE FOURTH DISTRICT COURT
IN AND FOR WASATCH COUNTY, STATE OF UTAH**

<p>SUMMIT COUNTY, a political subdivision of the State of Utah,</p> <p style="text-align: center;">Plaintiff and Petitioner,</p> <p>v.</p> <p>TOWN OF HIDEOUT, a municipal corporation of the State of Utah,</p> <p style="text-align: center;">Defendant and Respondent.</p>	<p>NOTICE OF RECORDATION</p> <p>Case No. 200500107 Judge Jennifer A. Brown</p>
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NOTICE IS GIVEN that Summit County, a political subdivision of the State of Utah, hereby records as a public notice the following documents attached as exhibits hereto: this Court's December 3, 2021 Ruling and Order on Defendant Town of Hideout's Motion for Reconsideration (EXHIBIT A), and this Court's December 29, 2021 Ruling and Order regarding Summit County's Motion for Summary Judgment on its fifth claim for relief (EXHIBIT B).

These Exhibits are to be recorded upon the following Summit County Parcels: Parcel SS-86, SS-125, SS-125-C, PP-28-1, and PP-28-2. Legal Descriptions for said parcels are as follows:

SS-86

SE1/4 SEC 1 T2S R4E SLBM (LESS ANY PORTION LYING WITHIN WASATCH COUNTY) (LESS ANY PORTION LYING IN EAST RICHARDSON FLAT ROAD) (LESS 8.46 AC M/L OLD RAILROAD LINE NOW RAIL TRAIL 527-47 SS-86-UP-X) (LESS 2.21 AC 2687-1467 SS-86-QCDF25-X) BAL 136.63 AC M/L HQC172 VWD451 YWD65 M38-575 M107-87 M110-183 M142-305 M185-18 M190-321 (SEE QCD VARIOUS PARTIES TO STICHTING MAYFLOWER RECREATIONAL FONDS 55/175 & STICHTING MAYFLOWER MOUNTAIN FONDS120/175 INT M220-236 TO 481) (THE ANNEX TO HIDEOUT WAS FOUND TO BE VOID IN COURT AS PER SUMMIT COUNTY ATTORNEY; THE TAX CARD IS BEING RETURNED TO HOW THE STICHTING MAYFLOWER PROPERTIES WERE BEFORE THE SAID ANNEX)

SS-125

THAT PART OF LOT 7 SEC 6T2SR5E SLBM WITHIN SUMMIT COUNTY CONT 10.0 AC (LOT 7 BEING APPROX SW1/4 SW1/4) VWD451 YWD65 M38-575 M107-87 M110-183 M142-305 M185-18,M190-321 M220-236 TO 481 (2688-1074) 2688-1083

SS-125-C

THAT PORTION OF LOTS 1 & 2 SEC 7 T2S R5E SLBM LYING WITHIN SUMMIT COUNTY CONT 32.29 ACRES. M38-575 M107-87 M110-183 M142-305 M185-18 M190-321 M220-236 TO 481 (2688-1074) 2688-1083

PP-28-1

SW 1/4 SW 1/4 NE 1/4 SEC 12T2SR4E SLBM,CONT 10.0 AC M70-644 357-600-01 (2688-1074) 2688-1083
CANCELED-NOW: COMBINED WITH PP-28-2 FOR 2022 TAX YEAR (11/29/2021)

PP-28-2

THAT PORTION OF THE NE 1/4 SEC 12,T2S R4E SLBM LYING WITHIN SUMMIT COUNTY, CONT APPROX 161.15 ACRES M107-87 M110-183 M142-305 M185-18 M190-321 M220-236-421 (2688-1074) 2688-1083

RESPECTFULLY SUBMITTED this 11th day of January, 2022

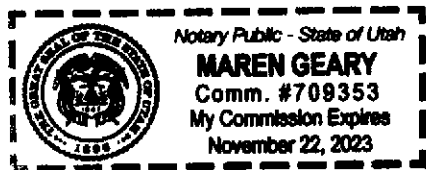
SUMMIT COUNTY ATTORNEY

By: 

Ryan P.G. Stack, Deputy County Attorney

Subscribed and Sworn on this 11 day of January, 2022, in Summit County, Utah
before Maren Geary, Notary Public, 60 North Main Street, Coalville, Utah 84017, Commission
Expires November 22, 2023.

SEAL:



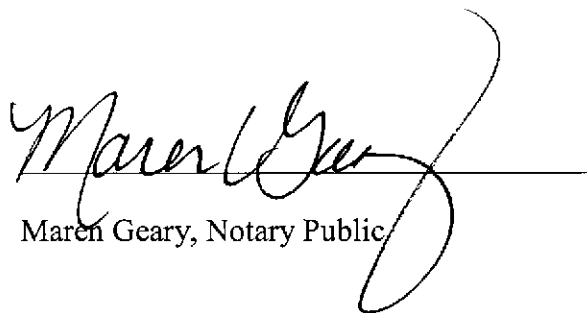

Maren Geary, Notary Public

EXHIBIT A

entitled by issuance of the Certificate of Annexation from the Lieutenant Governor's office, and an interpretation of the statute and its effective date as compared to the effective date of the annexation by Hideout.

1. Standing.

Hideout argues that McKittrick v Gibson, 2021 UT 48, issued after this Court's original decision, indicates Summit County lacks standing because Summit County must have specific statutory standing to bring its challenges in this litigation. The Court determines, however, that there are multiple statutes under which Summit County has standing.

Utah Code § 17-27a-802 authorizes Summit County to defend and preserve its own land use authority. Hideout argues HB 359S1 stripped Summit County of its ability to object to the annexation, but if true this creates a conflict with § 17-27a-802 and the Court finds that Summit County would be allowed to, at the very least, challenge this conflict.

Utah Code §§ 10-9a-103(2) and 17-27a-103(2) would also provide standing. The Court recognizes there is some dispute as to Summit County's ownership of certain parcels that are adjoining, but standing is not conferred based upon a party's success, it is determined at the outset before the parties' respective claims are adjudicated. This is where standing under the Declaratory Judgment Act comes into play, because 1) there is a justiciable controversy, 2) the parties' interests are adverse, 3) the party seeking relief must have a legally protectable interest in the controversy (as based upon

Summit County's claim to ownership of adjoining property), and 4) the issues between the parties must be ripe for judicial determination. Summit County meets each of these prongs.

The Court further finds that Utah Code § 52-4-303 confers on Summit County standing to enforce the Open and Public Meeting Act, and nothing in that Act precludes County Attorneys from enforcing the Act in an adjoining County. The limitation argued by Hideout would likely chill the intent for enforcement as set forth out in the OPMA. A reading such as Hideout's would mean that a County Attorney must somehow sue its own County Council if it believes OPMA is being violated, and the Court does not believe this is the Act's intent.

2. The Conclusive Presumption.

Hideout further argues it is entitled to a conclusive presumption by virtue of the issuance of the Certificate of Annexation by the Lt. Governor's Office. The question thus arises: does this presumption exist if the Lt. Governor acts on incorrect information, or does the certificate have inherent ability to overrule the effective date of HB 359S1? The Court declines to modify its prior ruling on this issue. That prior ruling and the reasoning stated therefor accordingly stand.

The Court further declines to modify its prior ruling that Hideout did not complete all necessary steps for the annexation ordinance to be enacted prior to the expiration of HB 359S1. Though the Court acknowledges the

argument as to the actual expiration date of HB 359S1 (October 19, 2020 or Oct 20, 2020), resolving this argument does not change the analysis where the annexation ordinance was enacted on Oct 26, 2020 - after either of those dates, and the Certificate of Annexation is dated October 28, 2020.

Utah Code § 10-2-425(4)(b) provides that an annexation is completed and takes effect on the date of the Lt. Governor's issuance of a certificate of annexation. Hideout presumably understood this statute, which explains its request of the Lt Governor's office that the Certificate of Annexation be dated Oct 19, 2020. However, it wasn't. The Certificate of Annexation was not issued until after HB 359S1 was no longer valid. The Court has also reviewed the case of Davis Cty. Solid Waste Mgmt. v. City of Bountiful, 52 P.3d 1174, and disagrees with Hideout's interpretation of the holding. That holding does not change this Court's analysis or prior ruling.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Hideout's Motion for Reconsideration is DENIED.

****END OF ORDER - entered when indicated by the Court's seal at the top of first page****

Approved as to form this ____ day of November, 2021

Robert E. Mansfield, counsel for defendant Town of Hideout

EXHIBIT B

The Order of the Court is stated below:

Dated: December 29, 2021
10:41:33 AM

At the direction of:
/s/ JENNIFER A. BROWN
District Court Judge
by
/s/ TAMARA ANDERSON
District Court Clerk

Robert E. Mansfield (6272)
Megan E. Garrett (11650)
MITCHELL BARLOW & MANSFIELD, P.C.
Nine Exchange Place, Suite 600
Salt Lake City, Utah 84111
Telephone: (801) 998-8888
Facsimile: (801) 998-8077
Email: RMansfield@mbmlawyers.com
MGarrett@mbmlawyers.com

STATE OF UTAH
COUNTY OF Wasatch
I hereby certify that the document to
which this certificate is attached is a
full, true and correct copy of the
original filed in the Utah State Courts.
WITNESS my hand and seal
this 29th day of December
2021



DISTRICT JUVENILE COURT
Jamie Anderson CLERK

Attorneys for Defendant Town of Hideout



IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR WASATCH COUNTY, STATE OF UTAH

SUMMIT COUNTY, a political subdivision of the State of Utah,	RULING AND ORDER
Plaintiff,	
vs.	Case No. 200500107
TOWN OF HIDEOUT, a municipal corporation of the State of Utah,	Judge Jennifer A. Brown
Defendant.	

Summit County's April 17, 2021 Motion for Summary Judgment and the Town of Hideout's May 5, 2021 Motion for Summary Judgment came before the Court for oral argument on June 7, 2021. Margaret Olson and Jami Brackin argued on behalf of Summit County. Robert Mansfield argued on behalf of the Town of Hideout ("Hideout"). The Court, having considered the written and oral arguments of counsel, and for good cause appearing hereby finds and orders

as follows:

A. Summit County's Motion for Summary Judgment on Cause of Action 5

With respect to Summit County's April 19, 2020 Motion for Summary Judgment addressing only the fifth cause of action in the Complaint, the Court hereby finds that there are no disputed issues of material fact with respect to this cause of action. The relevant facts being:

1. On August 20, 2020 the Utah State Legislature, through HB 6007, amended Utah Code § 10-2-418 by repealing amendments made by HB 359S1, which had been enacted in the 2020 General Legislative Session. HB 6007 deleted and removed the right of a municipality to annex non-contiguous unincorporated area of land in another county without a petition and without that county's consent.
2. HB 6007 had an effective date of October 20, 2020.
3. Hideout was aware of the HB 6007 effective date at the time it restarted its annexation effort on September 10, 2020.
4. Hideout adopted Ordinance No. 2020-10, an annexation ordinance, on October 16, 2020.
5. On October 16, 2020, Hideout prematurely submitted to the Lieutenant Governor's Office a Notice of an Impending Boundary Action, which included a materially false Certification.
6. Hideout enacted Ordinance No. 2020-10, as defined by Utah Code Ann. §10-3-712, on October 26, 2020 after its publication and posting.
7. Hideout received a Certificate of Annexation from the Lieutenant Governor's

Office on October 28, 2020.

Based upon the above material and disputed facts, Summit County is entitled to judgment as a matter of law and this Court grants Summit County's Motion. In so doing, the Court finds Summit County's position to be the most correct; reading the Municipal Code "to give meaning to all parts, and avoid rendering portions of the statute superfluous." *State v.*

Watkin, 2013 UT 28, ¶23, 309 P.3d 209, 213. "To do so, courts read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters." *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682, 689.

Under Utah Code §10-4-425(1)(a), in order for the annexation ordinance to be effective, it must be enacted, and not simply adopted. Pursuant to Utah Code § 10-3-711 and § 10-3-712, enactment requires publication or posting of the ordinance after adoption, which was not accomplished until after the effective date of HB 6007. After the effective date of HB 6007, Hideout no longer had the delegated statutory authority to annex a non-contiguous unincorporated area in another county without a petition.

Accordingly, Hideout's authority to annex in this manner had expired before Ordinance No. 2020-10 had been enacted, making Ordinance No. 2020-10 invalid from its inception.

Hideout's argument that the certification by the Lieutenant Governor creates a conclusive presumption of the validity of the annexation is without merit. To create the conclusive presumption, the required Certification which was submitted to the Lieutenant Governor by Hideout in order to obtain the Certificate of Annexation must be accurate. It was not. The language of HB359S1 creating a conclusive presumption required that the annexation meet the

requirements of Utah Code §10-4-418(3) and upon the effective date under Utah Code §10-2-425. The October 16, 2020 Notice of an Impending Boundary Action and its Certification by Hideout, which was provided to the Lieutenant Governor, was submitted prior to Ordinance No. 2020-10 being enacted on October 26, 2020. Accordingly, the conclusive presumption was based upon inaccurate and materially false information provided to the Lieutenant Governor by Hideout and this Court finds that the Certificate of Annexation issued by the Lieutenant Governor is not entitled to a conclusive presumption as the provisions of Utah Code §10-2-425 were not met.

B. Hideout's May 5, 2020 Motion for Summary Judgment

Hideout also brought its own Motion for Summary Judgment seeking judgment on all causes of action based upon Summit County's lack of standing, failure to join indispensable parties, and untimely filing of the suit and that the annexation was conclusively presumed to be valid. Having considered the arguments raised by Hideout in its Motion, the Court finds that those arguments are not persuasive and do not warrant the entry of summary judgment in Hideout's favor.

Summit County has statutory standing under Utah Code §10-9a-103(2)(a) as they are an adjoining property owner of the land which was affected by virtue of the annexation. Summit County also has standing under Utah Code §52-4-303 which grants to County Attorneys the ability to enforce violations of Utah's Open and Public Meetings Act. Even if statutory standing did not exist, Summit County has standing under the public interest doctrine as this annexation and development is a matter of great public interest and societal impact. The very nature of the

annexation and its impact upon not just the parties involved in this litigation, but the residents of the two adjoining counties, is sufficient from this Court's perspective to convey standing to Summit County to pursue the causes of action set forth in its Complaint.

Hideout has also failed in demonstrating that there are any necessary parties that have not been joined in this litigation. The other parties involved in the underlying actions are adequately represented in this action, because Hideout is seeking to enforce its own annexation ordinance and underlying pre-annexation agreement, under which those parties' interests are directly aligned with Hideout's. It is the developer that by agreement in the pre-annexation agreement is paying Hideout's legal fees in this endeavor. Even if those parties were deemed to be necessary to this litigation, that does not warrant dismissal of the Complaint or Summary Judgment, because those parties could be joined.

This action was timely filed pursuant to Utah Code §10-9a-801(5). Ordinance No. 2020-10 was not enacted until October 26, 2020 and this action commenced on November 19, 2020 which is within the 30-day window allowed under that statute.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Summit County's April 19, 2020 Motion for Summary Judgment on the fifth cause of action is GRANTED. Ordinance No. 2020-10, in its entirety, together with the Certificate of Annexation, are declared to be void ab initio and of no legal force or effect.
2. Hideout's May 5, 2020 Motion for Summary Judgment is DENIED.

****END OF ORDER - Entered when indicated by the Court's seal at the top of first page****

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 8, 2021, I caused a true and correct copy of the foregoing **RULING AND ORDER** to be filed via the Court's electronic filing system, which automatically provided notice to the following counsel of record:

Margaret H. Olson
Ryan P.C. Stack
Summit County Attorney's Office
60 North Main Street, P.O. Box 128
Coalville, UT 84017
molson@summitcounty.org
rstack@summitcounty.org

/s/ Cassie Thompson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **NOTICE OF RECORDATION** before the Fourth District Court in and for Wasatch County, State of Utah, was served via email on the following on the 11th day of January, 2022:

Town of Hideout

Robert E. Mansfield (6272)

Megan E. Garrett (11650)

MITCHELL BARLOW & MANSFIELD, P.C.

The Boston Building

Nine Exchange Place, Suite 600

Salt Lake City, Utah 84111

Telephone: (801) 998-8888

Facsimile: (801) 998-8077

Email: RMansfield@mbmlawyers.com

MGarrett@mbmlawyers.com

Polly Samuels McLean (8922)

PEAK LAW

395 Crestview Drive

Park City, Utah 84098

Telephone: (435) 714-2328

Email: polly@peaklaw.net

Troy L. Booher (9419)

Beth E. Kennedy (13771)

Taylor P. Webb (16982)

ZIMMERMAN BOOHER

341 South Main Street, Fourth Floor

Salt Lake City, Utah 84111

Telephone: (801) 998-8888

Email: tbooher@zbappeals.com

bkennedy@zbappeals.com

twebb@zbappeals.com

/s/ Maren Geary