



**To: Jan**

**From: Matt**

**Date: 9/8/20**

**CC: Town of Hideout Mayor & Council, Summit & Wasatch County**

**RE: Town of Hideout – Park City Follow-Up to Annexation Matters Raised at 9/4/20 Work Session**

Dear Jan:

I am sending this memo prior to your meeting today out of respect for your Council's time and difficult decision on these complex matters. I also want to avoid allowing the tone of the chat comments to compound—we are also subject to the anger and distrust reflected which we find equally regrettable and disrespectful. But documenting Park City's concerns with the on-going unwillingness to directly engage our elected officials in open and meetings is vital. My Mayor and Council are deeply concerned about land use matters related to Richardson Flat—for good reasons that are described below—but your chosen meeting form and procedures are heightening destructive comments and alliances.

Furthermore, our channels of communication are rapidly diminishing to the courts and social media platforms. Giving only 24 hours' notice of a meeting on the bookends of a holiday weekend with no staff report or meaningful agenda may check procedural boxes, but is no way to govern by leveraging a repealed law. It also appears that decisions are being made behind the scenes and the only individual allowed to the table (closed or open) is a developer who is telling you what you want to hear.

One last time, I urge you to choose a different path for your community. Specifically, publically announce a stand-down on Tuesday and let's get to work on addressing joint town, city, and county concerns. Without a stand-down, we will have no alternative but to seek redress in the courts. Before doing that, I'm sharing our concerns from the events on Friday.



- 1. Judge Brown's Ruling**- Your new town attorney left out some critical aspects of the ruling—most importantly, Judge Brown refused to moot or otherwise dismiss Summit County's lawsuit despite the repeal of your annexation resolution. Your attorneys argued for this. While the judge said some claims were likely moot, she also said she is reviewing all claims, particularly the audio of the closed sessions, and will rule on additional matters at a later time. She was clear that some causes of action would survive and that the litigation will not only drag on, it will likely increase with additional filings. Judge Brown did not invite or encourage you to proceed. She simply ruled that it was not within her authority to determine the legislature's intent. She lamented further litigation if the town proceeds. She is correct—absent a clear statement abandoning annexation of land subject to the Flagstaff DA, Park City will join the litigation as soon as today.
- 2. The Legislation's Repeal**- What little discussion there was in committee or on the floor validated Utah Association of Counties and Utah League of Cities and Towns joint allegations that process was not followed, the significance of the changes was patently misrepresented, and the new law was improperly passed. That alone demonstrates that any attempt to use this law for annexation is delegitimized and should be abandoned. If both legislative bodies acknowledge in a matter of minutes that they shouldn't have passed the law, how on earth can any city or town feel authorized to proceed? Leadership's political decision not to attach an immediate effective date (which is almost never utilized) in the face of aggressive pressure from your developer's lobbyist in the House should not be misconstrued as inviting Hideout to proceed. Any evidence of singular intent to allow Hideout to proceed will be used against you in a court of law regarding illegal "special legislation." We invite you to a joint meeting as soon as possible with Senator Winterton and Representative Quinn so that we all hear the same thing. Outside counsel Mansfield correctly indicated the Legislature may be willing reconsider the legislation in the regular session. We welcome that debate and deliberation. We remain steadfast in sharing UAC and ULCT concerns regarding your developer's proposed elimination of bedrock principles that currently



reflect best practices and sound public policy for annexation. If the legislation is debated during the general session, Park City will participate proactively to determine if mutual interests can be embodied in new legislation properly vetted through the existing protocols, which includes a working group led by Rep. Musselman, the Land Use Task Force, subcommittees, and both Chambers.

- 3. Park City's DA is not the same as HOA CCRs-** Please read at least the recitals of the 1999 Annexation Ordinance. To induce our community and legislative body to expand our boundaries and provide services to previously unincorporated areas after over four years of public hearings and a rejected resolution, the property owner voluntarily and legally agreed by contract to mitigate his development's impacts by restricting uses on Richardson flats. Some of the restrictions are affirmative, including an unconditional consent to annex to Park City, parking for construction and hotel employees, public transit/park and ride lot, and environmental mitigation. And some of them are restrictive, including the limitation to golf or recreation/open space. The developer's proposal with Richardson Flat as the center piece was the singular reason the project moved forward. Similar agreements for land in Wasatch County were also made. While Summit County and Wasatch County both raised concerns through our public process, and the property owner simultaneously pursued applications in both jurisdictions, the owner ultimately proceeded in Park City. Neither county objected nor protested in accordance with state law at the time. The Flagstaff DA has withstood challenges in both federal and state court. The City was awarded attorney fees in an action by Mayflower Stichting. Additionally, the DA was used by the Fourth District Court in ownership disputes and partition valuations by property owners.

Despite the deliberate public process and compromise, your developer is telling you that the agreement is illegal and that they'll work something out—sometime, somehow—with Park City. No such agreement is on the table. At our meeting this summer, Mr. Brockbank and Mr. Romney indicated too much money was at stake to honor our DA. I want to be clear, Park City will require



an application to amend the DA or strict adherence with its express terms before Wells Fargo or Redus can process any further application within the DA. Any challenge to the agreement will meet the same affirmative defense raised in prior cases and may include breach of contract claims, including against Hideout if warranted.

Do not be fooled: the Agreement is the basis of over a billion dollars of development. The property rights at issue have already been granted or self-limited by the owner. The bank and developer are attempting to double dip, using foreclosure gymnastics and tricks to evade EPA liability, evade Summit County zoning, evade prior owner contracts, and evade long standing state annexation principles.

Please do not put your head in the sand and avoid the reality that you are deliberately enabling and engaged in the same course of conduct on the developer's dime with an indemnification agreement which is enjoined. I certainly hope you've consider the perceived and actual conflict of interest such financial dependence creates at what is allegedly the outset of his application process.

- 4. Why the reaction is so strong**- The owner of Richardson Flat already received enormous consideration and up-zoning in Park City in a public, transparent process. The recitals of the ordinances approving the 1999 and 2007 DAs concisely reflect the years that Summit County, Park City, UPCM/Deer Valley and stakeholders' transparently worked on those agreements. Ultimately, agreements were reached and neither entity protested or objected to the DA terms and accompanying annexations. And it was not an easy decision.

Many of the very same commenters from your virtual meetings threatened to repeal the first Flagstaff annexation attempt by voter referendum. They hired former SLC Mayor Rock Anderson and formed CARG (Citizens Allied for Responsible Growth) to lead the effort. The Park City Council and land owner responded and made a better deal for the community. Continuing this type of



annexation means the Town of Hideout, its elected officials and staff, are openly colluding with a private developer to unwind the publicly negotiated development agreement of another city or town.

- 5. Why the annexation is fundamentally flawed**- A picture tells a thousand words, and the attached map demonstrates how egregiously your plan deviates from current state law and planning requirements.<sup>i</sup> Just because something is technically legal for a few more days doesn't make it wise or moral. Complex annexation should be the culmination of years of planning and regional discussions, not the "start" of a planning process as one of your council members referenced Friday.

You are creating a record that clearly shows you do not yet have a plan that is consistent with the requirements of the annexation statute cited in the footnote below. There is no plan for extension of municipal services. Instead, your benchmark is achieving services for your residents at no additional cost to the town. That is improper. Do not pass the buck just as your predecessors passed it to you. Forcing the developer to come up with a patch-work of supplemental service providers or will serve letters from suspect private providers is not planning.

What is next when whatever Brockbank and Romney have promised you in closed and open meetings fail? Will the town have to bail them out? Will the new cherry stemmed island of Hideout part 2 (the proposed annexed area) seek to incorporate itself? Will they turn to MIDA? Will the developer seek to pass costs onto new, uninformed owners by special improvement districts, connection fees, or will it be real estate transfer reinvestment fees? Will MIDA or the state change MIDA's tax structure if MIDA increase reliance upon public subsidies continues its massive upward trend. Or will MIDA force changes to the developer's proposal with completely different housing, affordable or density changes needed to sustain its larger development?



The first plan almost never gets built as promised. Flagstaff didn't. Developers come and go. We urge you to make your plan outside the influence of a single developer, false promises, and in public.

6. **All Local Governments and Residents Lose When Developers Divide and Conquer**- We've seen this playbook at the Film Studio. A compromise driven by an owner who played Summit County, Park City and the state legislature against one another. What was pitched as a "private property rights" fight by a little a player was really about state subsidies for film projects, a bad water deal with a private provider, and a false promise of strategic business plan which is now at risk of failing. You have an obligation not to mislead your future residents like you were misled by your original master developer.
  
7. **We hear you**- Park City and our partners remain willing to immediately initiate regional discussions but your path is forcing us to aggressively defend ourselves. This will add to our divide and increase community hostility. Let's avoid that outcome. We respectfully request that you publically announce a stand-down to work together on addressing regional concerns. If legislation is still determined necessary, we welcome a full and transparent deliberation during the 2021 general session. Until then, however, any annexation that includes lands subject to our DA without our consent will be met with all necessary legal action to defend the interests of Park City.

In summary, respectfully, I am appealing to your honest sensibilities, individual integrity, and responsibility as professional staff and public officials to slow down and take an alternate path. Unlike others, I do not seek to diminish the legitimate challenges that the Town of Hideout and its officials face, nor do I diminish Hideout's understandable desire for commercial tax base. However, the chosen path of:

- Clandestine, private, and closed meetings used to avoid the public;
- Intentionally scheduling meetings at the last minute, eliminating public involvement and transparency;



- Continued pursuit of an overwhelmingly repealed and errantly adopted legislation that we now know by way of the GRAMA information was worked on by Mayor Rubin as far back as February;
- A blind trust in the promises and platitudes from a savvy developer seeking to undermine hard fought development restrictions of your closest neighboring jurisdiction; and,
- Continued unresponsiveness to meet with Park City's Mayor and elected officials despite repeated requests by Mayor Beerman.

Taken together, this pattern is alarming, and I urge you to consider the real ramifications that will follow for years to come if this is not stopped.

Thanks,

Matt

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<sup>1</sup> 10-2-401.5. Annexation policy plan.[excerpts]

- (i) the character of the community;
  - (ii) the need for municipal services in developed and undeveloped unincorporated areas;
  - (iii) the municipality's plans for extension of municipal services;
  - (iv) how the services will be financed;
  - (v) an estimate of the tax consequences to residents both currently within the municipal boundaries and in the expansion area; and
  - (vi) the interests of all affected entities; .\*\*\*
- (4) In developing, considering, and adopting an annexation policy plan, the planning commission and municipal legislative body shall:
- (a) attempt to avoid gaps between or overlaps with the expansion areas of other municipalities;
  - (b) consider population growth projections for the municipality and adjoining areas for the next 20 years;
  - (c) consider current and projected costs of infrastructure, urban services, and public facilities necessary:
    - (i) to facilitate full development of the area within the municipality; and
    - (ii) to expand the infrastructure, services, and facilities into the area being considered for inclusion in the expansion area;