MARGARET H. OLSON (Bar No. 6296)
Summit County Attorney
DAVID L. THOMAS (Bar No. 7106)
Chief Civil Deputy
JAMI R. BRACKIN (Bar No. 8753)
Deputy County Attorney
RYAN P.C. STACK (Bar No. 11298)
Deputy County Attorney
60 N. Main Street, P.O. Box 128
Coalville, Utah 84017
Telephone: 435-336-3206
Fax: 435-336-3287
molson@summitcounty.org
dthomas@summitcounty.org
jbrackin@summitcounty.org
rstack@summitcounty.org

Attorneys for Plaintiff and Petitioner

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

SUMMIT COUNTY, a political subdivision of the State of Utah, Plaintiff and Petitioner, v. TOWN OF HIDEOUT, a municipal corporation of the State of Utah, Defendant and Respondent.	**SUMMIT COUNTY'S MEMORANDUM IN OPPOSITION TO HIDEOUT'S MOTION TO STAY PROCEEDINGS** **Tier II** Civil No. 200500107 Judge Jennifer A. Brown **[REQUEST FOR EXPEDITED HEARING]**

Summit County by and through its attorneys, Margaret H. Olson, David L. Thomas, Jami R. Brackin, and Ryan P.C. Stack of the Summit County Attorney's Office, hereby submits its

opposition to Defendant Town of Hideout's Motion to Stay Proceedings, filed with this Court on March 16, 2021.

CONCISE STATEMENT OF PREFERRED DISPOSITION AND GROUNDS

Summit County respectfully requests that this Court deny Town of Hideout's Motion to Stay Proceedings. Defendant Town of Hideout requests a stay, arguing that the pending special election may result in the pending Annexation's termination. That may be so, but as explained below there is no election outcome that would moot all of Summit County's claims. Defendant Town of Hideout's request should also be denied because the real impact of any stay is to prevent the voters from learning about Town of Hideout's efforts to thwart state law.

CONCISE STATEMENT OF FACTS

1. The Town of Hideout ("Hideout") adopted Ordinance No. 2020-10, which upon its effective date: (a) purports to annex certain lands located in unincorporated Summit County (the "Silver Meadows Master Planned Community") into Hideout, (b) approves the zoning for the Silver Meadows Master Planned Community, and (c) approves an Annexation and Master Development Agreement for the Silver Meadows Master Planned Community.
2. Summit County (the "County") filed its lawsuit styled Summit County v. Town of Hideout, Civil No. 200500107, in Fourth District Court, contesting the validity of Ordinance No. 2020-10, on November 19, 2020 ("Hideout II").
3. In December 2020, citizens of Hideout filed a referendum petition seeking to nullify Ordinance No. 2020-10. The referendum was certified and an election is scheduled to be held on June 22, 2021.

4. The County filed a previous lawsuit against Hideout, which is still pending, and is styled Summit County v. Town of Hideout, Civil No. 200500072, on July 31, 2020, in Fourth District Court ("Hideout I"). This Court issued a preliminary injunction in Hideout I on September 3, 2020.
5. The County has also filed a lawsuit, which is still pending, and is styled Summit County v. Nathan A. Brockbank, Joshua J. Romney, RB 248, LLC, NB 248, LLC, N. Brockbank Investments, LLC, JJR Ventures, LTD, Wells Fargo Bank, NA, Redus Park City, LLC, United Park City Mines Company, and Justin Lampropoulos, Civil No. 200500346, in Third District Court, on August 26, 2020 ("Brockbank Lawsuit"). The Third District Court issued its preliminary injunction in the Brockbank Lawsuit on September 15, 2020.
6. In all of these lawsuits the County alleges an ongoing Enterprise between Hideout and its development partners to defeat the County's land use and zoning regulations.
7. The County issued subpoenas duces tecum for production of documents in the Hideout I case to Hideout's development partners Bruce Baird, Josh Romney, Nate Brockbank, Wade Budge, and Doug Olgilvy, on September 30, 2020. Months later, these individuals still refuse to produce any documents.
8. The County made a GRAMA Request to Hideout on January 7, 2021 for certified Hideout generated documents in the Hideout II case. The County specifically requested certified documents because Hideout objected to uncertified copies of its own generated documents, downloaded from its website, during the Hideout I preliminary injunction hearing. On January 28, 2021, Hideout responded by producing no certified documents. Instead, the County was directed to the Hideout website, UtahLegals.com, or to Hideout's initial disclosures, none of which was responsive to the County's request. Further, many

of the assertions in Hideout's response were inconsistent with Hideout's future Responses to the County's First Request for Admissions (defined below).[1]

9. The County filed its First Request for Admissions in the Hideout II case on February 1, 2021. Hideout responded on March 1, 2020 with general objections and denials of each request for admission, which included long and meandering explanations. With respect to request for admission numbers 4 and 6, Hideout's answers were offhanded and vague admissions.

10. The County filed its Notice of Rule 30(b)(6) Deposition of Town of Hideout (the "Rule 30(b)(6) Deposition") in the Hideout II case on February 8, 2021. Hideout waited until March 16, 2021 to issue its general objections, and in doing so indicated that "Hideout will not sit for or attend the deposition until its Motion to Stay Proceedings and Statement of Discovery Issues are resolved." The deposition is scheduled for March 26, 2021.

STANDARD OF REVIEW

With respect to discovery disputes, the Utah Supreme Court provided guidance to district courts in State By and Through Road Commission v. Petty, 17 Utah 2d 382, 386, 412 P.2d 914, 917 (Utah 1966) (footnotes omitted):

[1] For example, the County requested that Hideout admit that the Town of Hideout amended its Annexation Notice on October 11, 2020 (Request for Admission No. 5). Hideout denied the admission. Yet in its response to the GRAMA Request, Hideout stated that all public notices, including all amendments, for the annexation public hearing set forth in Resolution No. 2020-09, "can be found on the town website." Another example is where the County requested, pursuant to GRAMA, a copy of any public notices of the annexation public hearing that Hideout mailed to its residents. Hideout's response to such "was provided with disclosures served on Summit County (including to you) on 1/22/21." No such public notices were in Hideout's initial disclosures. The County asked Hideout to admit that there were no public notices mailed to their residents (Request for Admission No. 4). Hideout responded by denying and then admitting to this request. The County requested through GRAMA a copy of "all publications of a short summary of Ordinance No. 2020-10 in any newspaper (including the name of the newspaper and date of publication)." Hideout responded by stating that such "can be found at UtahLegals.com and was provided with disclosures served on Summit County (including to you) on 1/22/21." There are no such records on UtahLegals.com, nor in Hideout's initial disclosures. The County then asked Hideout to admit that there was no notice of a summary of Ordinance No. 2020-10 in any newspaper (Request for Admission No. 6). Hideout at first denied the admission, but then admitted it was true. These are the types of discovery games Hideout is playing and continues to play.

> In addressing the problem posed by these contentions there are some general principles to be kept in mind. A primary purpose of the new Rules of Civil Procedure was to simplify procedures and to 'secure the just, speedy, and inexpensive determination of every action. One of the means of accomplishing this is to permit discovery of information which will aid in eliminating noncontroversial matters, and in identifying, narrowing and clarifying the issues on which contest may prove to be necessary. Insofar as discovery will serve this purpose it should be liberally permitted. This is, of course, not without limitation. It must be applied with common sense and within reasonable bounds consistent with the objective just stated, because if carried too far the discovery procedure may result in defeating the very purpose it was designed to accomplish.
>
> The idea of making a lawsuit a game of tricks by keeping information secret to surprise the opposition at a critical moment is more suited to the fictionalized drama of stories and plays than to actual trials in a court of justice. Yet the evil to be apprehended in permitting the use of discovery to be carried to an opposite extreme must also be guarded against. One party may sit idly by while the other prepares its case with zeal and diligence and then attempt to take advantage of this industry by simply asking for information, the acquisition of which may have involved a great deal of time, effort and expense. The possibility of unfairness is plainly evident.

The Utah Court of Appeals has recently echoed this sentiment. Macris & Associates, Inc. v. Neways, Inc., 2006 UT App 33, ¶10, 131 P.3d 263, 266 (internal citations omitted) ("Discovery which will aid ... in identifying, narrowing and clarifying the issues on which contest may prove to be necessary should be liberally permitted); Glacier Land Co., LLC v. Claudia Klawe & Associates, LLC, 2006 UT App 516, ¶35, 154 P.3d 852, 866 (internal citations omitted) ("One of the primary goals of the discovery process is to remove elements of surprise or trickery so the parties and the court can determine the facts and resolve the issues as directly, fairly, and expeditiously as possible"). Consequently, "the [district] court is granted broad latitude in handling discovery matters and we will not find abuse of discretion absent an erroneous conclusion of law or where there is no evidentiary basis for the [district] court's rulings." Erickson v. Erickson, 2018 UT App 184, ¶9, 437 P.3d 370, 374 (internal citations omitted).

ARGUMENT

The County is entitled to discovery in its Hideout I and Hideout II cases. As noted in the Concise Statement of Facts, Hideout and its development partners have done their level best to avoid discovery and stonewall the County. Hideout's motion is simply another delay tactic while it attempts to run out the clock on discovery and prevent its own citizens from becoming informed voters.

Hideout's argument to stay the proceedings until after the referendum vote on June 22, 2021, would seem reasonable were it not for additional facts which Hideout neglected to present.

First, as noted, Hideout has engaged in a continuous effort to thwart discovery: discovery that the County believes will show that Hideout and its partners have acted in bad faith, and engaged in deception, secrecy, and improper activities. When Hideout citizens go to the polls to vote in the referendum, they should know what actions their Town Council took to secure the adoption of Ordinance No. 2020-10 (something Hideout clearly wants to prevent, coloring such knowledge as something that would "impede" the election (Defendant's Motion p.5)). Hideout does not want further discovery because it fears what the truth will show to this Court and to Hideout's citizens. In short, it seeks to skew the vote in its favor by keeping secret the Enterprise and its machinations.

Second, the referendum vote has little effect on the continuing nature of the three lawsuits. Even if Hideout citizens vote in favor of Ordinance No. 2020-10, the County's claims survive, for it is the County's contention that Ordinance No. 2020-10 is invalid *per se* and the referendum cannot cure such an invalidity. Hideout attempts to use the certification of annexation as a shield to argue that the County's claims are moot in the Hideout I case. See *Hideout's Motion to Dismiss Second Amended Complaint and Dissolve Preliminary Injunction*,

dated February 3, 2021, Argument and Authority, Point I. It matters not whether the Hideout electorate approves a land use ordinance which did not go through a proper process. Hideout's designed circumvention of state law cannot be miraculously cured by a vote. Nor could a vote change the fact that the law upon which the annexation was adopted had been repealed prior to the effective date of Ordinance No. 2020-10. Nor can it change the fact that the annexation noticing was flawed. Nor can it change the violations of the Utah Open and Public Meetings Act ("OPMA"). Nor can it alter the fact that Hideout cannot provide adequate municipal services to the annexed area. In sum, a referendum vote affirming Ordinance No. 2020-10 would resolve none of these issues or claims.

Third, while a referendum vote against Ordinance No. 2020-10 would rescind the annexation, it would not resolve the OPMA violations and the County's request for attorney fees.

Finally, Hideout fails to articulate how it is harmed by allowing the case to proceed. Rather, Hideout's real focus is on freezing the litigation to prevent the emergence of new or additional information to educate its voters and potentially influence the election. Hideout mischaracterizes this as "avoid[ing] confusion and inconsistent results." Defendant's Motion p.5. Equally revealing is that Hideout did not file a similar motion in the Hideout I litigation, which is currently scheduled for oral argument on another motion to dismiss from Hideout. Make no mistake, the entire purpose of Hideout's self-serving request is to stonewall the discovery process and ensure the truth remains hidden from its citizens. Additionally, the Brockbank Lawsuit remains active in the Third District Court, outside this Court's jurisdiction. Accordingly, any stay in the instant case benefits only Hideout and saves no resources for the County.

CONCLUSION

This Court should not allow Hideout to continue its tactics of delay and hide its Enterprise from voter consideration. The Rule 30(b)(6) Deposition has been scheduled for five weeks. With Hideout now threatening to skip this Deposition, the County respectfully requests the Court set this matter for an expedited hearing. Hideout's eleventh hour motion stinks of bad faith and is not just wildly prejudicial to the County, but to the very citizens of Hideout and any notion of fairness.

RESPECTFULLY SUBMITTED this 18th day of March, 2021.

SUMMIT COUNTY ATTORNEY'S OFFICE

By:_/s/_____
Margaret H. Olson

By: /s/_____
David L. Thomas

By: /s/_____
Jami R. Brackin

By: /s/_____
Ryan P.C. Stack
Attorneys for Plaintiff Summit County

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **SUMMIT COUNTY'S MEMORANDUM IN OPPOSITION TO HIDEOUT'S MOTION TO STAY PROCEEDINGS** before the Fourth District Court in and for Wasatch County, State of Utah, was served upon those listed below via Utah State Bar electronic filing system and/or via U.S. first class mail or email on the on the 18th day of March, 2021.

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

/s/ Maren Geary