

MAYOR
ROGER BOURKE

TOWN COUNCIL
CAROLYN ANCTIL
JOHN BYRNE
SHERIDAN DAVIS
ELISE MORGAN



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Exhibit A

The following written public comments were received are to be included in the September 11th, 2024 Town council meeting minutes.

<u>Pages</u>	<u>Document</u>	<u>Date Received</u>
2-15	Mark Haik Public Comments	September 9 th , 2024

Public Comments for the September 11, 2024 Town of Alta Council Meeting

MC Haik <mchaik@lsi-utah.com>

Tue 9/10/2024 1:49 PM

To: John Byrne <JByrne@townofalta.com>; Roger Bourke <RBourke@townofalta.com>; emorgan@gmail.com <emorgan@gmail.com>; Carolyn Ancil <CAncil@townofalta.com>; Dan Schilling <DSchilling@townofalta.com>
Cc: Molly Austin <MAustin@townofalta.com>; Chris Cawley <ccawley@townofalta.com>

 1 attachments (526 KB)

Haik_April_5_2019_AlbianBasinOverlayZone.pdf;

Mayor Bourke & Town of Alta Council:

Please find attached comments I submitted in 2019 regards land & water in 2019, germane today.

Recent meetings disclose that the TOA is going to let a contract for professional services to study options to upgrade various public utilities in the TOA.

Prior to further expenditure of public funds I would urge the Council to review all the appropriated approved municipal water sources and the service area map on file at the Utah Division of Water Rights.

I can provide certified copies following items if the TOA is not in possession to facilitate competent review:

[1] Copy of amendment to 1976 water contract (from SL City & TOA).

[2] Copy of 3rd Dist Court proceeding in Cahoon Maxfield case, transcripts & audio.

[3] Copy of Cahoon Maxfield/SLCPU change application hearings transcripts & audio.

[4] Transcript of Sullivan deposition of Kapalowski in Shrontz case.

[5] Transcripts of both Briefer & Guldner depositions in the Melville case regards status of water in TOA.

In addition to the above I would urge the council to have the staff assemble for public review by TOA Council, former Mayor's Pollard & Sondak, TOA Administrator's or TOA Consultants; communications with jurisdictional partners SLCPU and UDWR regards recent changes in the germane change applications in the Albion Basin.

I would also urge a review of the SLCPU Requests for Extension of Time for all the municipal water Change Applications in the TOA.

Regards a path to start a competent public discussion regards municipal water I think elected officials should have some public response to following two questions:

[1] Given that the first sentence of the Shrontz Settlement Agreement says that the 1975 water contract shall be specifically performed, what are the consequences for the remaining municipal water contracts and change applications?

[2] Which current change applications on file at the UDWR govern the diversion of water for snowmaking irrigation in the TOA?

Submitted for Public Comments for the September 11, 2024 Town of Alta Council Meeting.

M.C. Haik

Intermountain Land Services LLC

POB 17124

Holladay, Utah

84117-0124



Since I have purchased my 4 lots in the Albion Basin Subdivision I have consistently attended both TOAPC & TOA Council meetings on a very regular basis. I have as well used the GRAMA act to request both TOA Council & TOAPC minutes and a large variety of other documents from the TOA and their jurisdictional partners to understand the requirements to build a home.

Contemporaneous with the Albion Basin annexation into the TOA the TOA negotiated an amendment to the 1976 water contract which allowed the TOA to serve municipal water pursuant to the 1976 contract to the newly annexed Albion Basin. I came across this agreement while reading minutes in the Salt Lake City Recorder's Office and subsequently made a request to TOA and Ms. Black-Clerk produced a copy of the agreement executed by Mayor Leavitt & notarized by Ms. Black. A review of the TOA minutes disclose the TOA Council voting to approve the agreement & authorized Mayor Leavitt to execute the agreement, a legislative act. Why this circumstance has never been mentioned in the staff analysis of the 1976 contract is unclear and or produced in one or more civil suits is unclear. It was never produced to me despite numerous request for information regards water in the TOA.

I have also recovered the Court Record in the Cahoon Maxfield v. SLC case as well as the corresponding hearing records from the Utah Division of Water Rights which case resulted in Mssrs. Kapalowski/Veasey-Parsons Behle Latimer, representing both the TOA & Service Area #3 (Snowbird) before the State Engineer, to put in place the requisite change applications to legally divert municipal water & use municipal water in the TOA. Mssrs. Kapalowski/Veasey-Parsons Behle Latimer were not representing Salt Lake City, they represented the municipality of Town of Alta (57-10013). This is the same 3rd Dist Ct case & UDWR hearings which resulted in the Salt Lake City change application to serve municipal water to the Albion Basin Subdivision (57-10015). This case resulted from the fact that Salt Lake City Public Utilities had failed to file the necessary change applications for all of their so called surplus water contracts, seven of which are in LCC and the remainder divided among BCC, Millcreek, Parleys & Emmigration. The records from Cahoon Maxfield 3rd Dist case & the change application hearing record at the UDWR covers all of these contracts. Mr. Guldner was present and introduced by Mr. Veasey at the UDWR hearings. The result of the settlement of the Cahoon Maxfield case & the resulting Change Applications before the UDWR is that SLCPU hired the former Head of Appropriations-UDWR, Mr. Green to apprise SLCPU regards the amount of water required to serve the SLCPU surplus contracts in the change applications. Mr. Green was instructed by SLCPU that all the contracts were going to be served. Mr. Green determined the amount of water should be 400.02 gallons per day, the required amount for indoor culinary use, this amount was used for all the contracts, in all five canyons. The change application filed for the TOA was for 500 acre feet for municipal water service in the TOA and snowmaking & the Albion Basin Subdivision's change application was for municipal water service for 30 single family lots, each with 400.02 gallons

per day. An anomaly of the Cahoon Maxfield case is that there were no change applications filed for the surplus contracts for Albion Alps Subdivision or the properties in the Cecret Lake vicinity each of which have surplus contracts similar to the others. This circumstance was brought to the attention of the State Engineer in 2015 with a complaint to the UDWR Enforcement Officer and resulted in former Mayor Pollard & then SLCPU employee Ms. Breifer being tasked with identifying the parties diverting the water, the source of the water being diverted, the amount used and the location of the infrastructure. Failure to disclose water diversions and uses to the State Engineer is illegal. After an initial letter seeking information from property owners and SLCPU meetings with the area 57 UDWR Engineer this investigation came to a standstill and remains unresolved. The status of the investigation has not been reported on by the TOA staff nor elected officials. This circumstance should be resolved since it has been 4 years since it was brought to light. The TOA & TOAPC must know what the municipal assets are, and the quantities, to enable sound future planning and the existing uncertainties render the present efforts moot. All diversions of culinary water, public or private, large or small, municipal or community carry with them a surrounding source protection zone. It is absolutely imperative that the municipal authorities know the location of the diversions, the location the water is diverted to, the amount diverted, and the purpose for which it is placed into use. The municipal authorities in the TOA & TOAPC have failed to follow through with their jurisdictional partners to apprise themselves and take appropriate steps to remedy the deficiencies. Prior to remaking the Land Use & Zoning Regulations the TOA & TOAPC must be able to quantify their municipal water assets and apprise the community regards the extent of their assets to responsibly plan for the future.

In the course of my research regards requirements to build on my property I reviewed the communications from Mr. Guldner which contained some requirements to build and directed my attention to an address list of various jurisdiction partners but failed to cited all the local TOA ordinances to be compiled with to file an appropriate application. I retained a lawyer expert in land use zoning & building ordinances to apprise me of what was required for a building application in the TOA. After an exhaustive review by counsel of the TOA ordinances & records at the TOA offices he produced a list of TOA ordinances and requirements to make an application to build a home in the Albion Basin Subdivision. I pursued the requirements outlined by counsel and submitted an application to build two houses. The applications were submitted and the TOA building official responded by letter that the TOA would issue the building permits if I successfully obtained a permit for a new septic system from Salt Lake Valley Health Dept. The fact that I have submitted two applications which fulfilled all TOA requirements to build should have been reported at both TOAPC & TOA Council, to my knowledge staff has not reported on these applications to either body publicly. The result of my counsel's exhaustive review was that it disclosed Ms. Black-TOA Clerk had the ordinances in disparate files with no coherent numbering system in place such that they could be presented to those making inquiries regards requisite build requirements. Ms. Black then advocated for the TOA Council to

inventory, catalogue & renumber the TOA Ordinances and the TOA hired an outside contractor to accomplish this task which resulted in the present numbering system.

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M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

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[6] The staff routinely contends that the amount is 265000 gpd which is less than 500 acre feet cited by Mr. Kapalowski as amount the TOA is legally entitled to divert.

The foregoing are a few examples of the same contract having meaning and no meaning at the same time, despite very simple plain language. There are additional anomalies in various surplus contracts I will not recite. The result is one contract appears to have multiple values and multiple meanings. I am not going to characterize the circumstances, actions or inactions, or conflicting statements of various elected officials, jurisdictional partners, staff of TOA & jurisdictional partners, counsel for TOA & jurisdictional partners which have over time led to the situation the TOA finds itself today; except to say that none of the foregoing cited parties can stand in public and cite where water can be diverted, used and in what amounts in the TOA. The fact is the analysis provided by the TOA long term staff does not even remotely pass the sniff test and legal counsel with a fiduciary obligation to the municipality has not been heard from. The TOA Council and TOAPC must seek substantive analysis & representations from the Counsel that represented the municipality of the Town of Alta in the change application (57-10013) for the municipal water supply, that party is Mssrs. Kapalowski/Veasey-Parsons Behle Latimer. Mr. Kapalowski was a member of both the old TOAPC which was merely appointed advisors to the Mayor of the TOA and a member of the TOAPC subsequent TOAPC conforming the TOAPC to the LUDMA act which their prior counsel Thompson had failed to do. Mr. Kapalowski silently recused himself from any deliberations regards the proposed Shrontz subdivision, he did not disclose his recusal to the TOAPC Chair or other members, the Mayor of Alta who appointed him or the staff. The only account of his recusal come in a sworn deposition

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by Mr. Sullivan in the Shrontz case. Why Mr. Kapalowski-Town of Alta Special Counsel for Water had to silently recuse himself from TOAPC deliberations should be disclosed at a minimum to his employers the TOA Council, but more appropriately to the public as well. Prior to any additional land use legislation or amendments the municipality of the Town of Alta must be able to quantify and disclose publicly how much water may be used where and by whom to the property owners, business owners, inhabitants & visitors to appropriately plan for the health welfare & safety and future viability of the community.

The properties in the proposed Albion Basin Protection Overlay Zone currently have four basic circumstances:

[1] Albion Basin Subdivision-Has surplus contract and change application for requisite culinary water amounts and water system fully approved & on file at SLVHD and UDWR. 57-10015.

[2] Albion Alps-Has surplus water contract but no change application, water diversion & use is not disclosed to UDWR.

[3] Cecret Lake-Has surplus water contract, but no change application, water diversion & use is not disclosed to UDWR, but is included in the original bounds of 1976 contract yet denied water by TOA.

[4] All of the property is within the municipality of the Town of Alta covered by the change application 57-10013 which provides for municipal use in the Town of Alta.

Until such time as the municipal authorities & their jurisdictional partners can disclose to the community the germane state of affairs the various authorities are not appropriately situated or informed to make land use or new zoning policies. The Town of Alta is definitely in need of both land use and zoning changes to maintain the community for the future but the process over the last decades has lacked transparency and frequently lacked participation by those most affected due to lack of rapport between the governed & the government as evidenced by lack of participation in the public process, recently much discussed by former TOA Councilman Moxley and others.

I would advocate the following course for the TOA Council's future deliberations regarding land use and planning and zoning:

[1] Remand the current proposed changes to the TOAPC and request that the TOAPC review in detail my applications to build to gain a substantive understanding of what the law presently requires and make a further review of their proposed land use changes once apprised.

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[2] Request written opinion from Mssrs. Kapalowski/Veasey-Parsons Behle Latimer or their successors regards the present status of all surplus water contracts, and all the change applications filed in the TOA by their jurisdictional partner SLCPU of record at the UDWR.

[3] Request written report from SCLPU regards the present status of all surplus water contracts and all the change applications in the TOA filed by their jurisdictional partner and of record at the UDWR to present to the public.

[4] Read the transcripts and listen to the audio from the hearings before the UDWR for the change applications for 57-10013 which clearly state in the first person the intentions for the use of water in the TOA by applicant SLCPU's counsel Mr. Novak & former Director SLCPU Hooten, in addition to TOA Counsel Mssrs. Kapalowski/Veasey-Parsons Behle Latimer.

[5] Review all of the original color TOA Zoning maps which I recovered from Salt Lake County Planning & Zoning and have digitally and have previously proffered to both the Mayor of Alta and the TOAPC Chair, which in my lengthy experience in attendance at public meetings in Alta have never been shown publicly.

[6] Conduct interviews with the long time owners of Albion Basin properties regards their recollections of what transpired during the annexation, including Page, Knowlton, Charlier, Gates, Jones, Miles, White, Gibbs, Nebbeker, Wetzel, Fisher, Melville, Pruitt; both to gain insight of their experience and cultivate a rapport so that they & their successors will substantively participate the public process from which they have become estranged.

[7] Appoint Mark C. Haik to the TOAPC.

Mark C. Haik

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[5] Review all of the original color TOA Zoning maps which I recovered from Salt Lake County Planning & Zoning and have digitally and have previously proffered to both the Mayor of Alta and the TOAPC Chair, which in my lengthy experience in attendance at public meetings in Alta have never been shown publicly.

[6] Conduct interviews with the long time owners of Albion Basin properties regards their recollections of what transpired during the annexation, including Page, Knowlton, Charlier, Gates, Jones, Miles, White, Gibbs, Nebbeker, Wetzel, Fisher, Melville, Pruitt; both to gain insight of their experience and cultivate a rapport so that they & their successors will substantively participate the public process from which they have become estranged.

[7] Appoint Mark C. Haik to the TOAPC.

Mark C. Haik