



PUBLIC NOTICE IS HEREBY GIVEN THAT THE PLANNING COMMISSION WILL
MEET FOR A BOUNDARY COMMISSION REGULAR MEETING IN THE

Grand County Commission Chambers 125 East Center Street, Moab, Utah
May 26, 2023 - 11:00 AM

Times in this agenda are approximate. Planning Commission meetings allow for both in-person or virtual attendance. Remote participation is through Zoom and meetings can be viewed live on YouTube. To call in to the meeting, dial: (669) 900 – 6833 Use Meeting ID: 849 3075 3400. To unmute press *6.

[Grand County Utah Government Live on YouTube](#)
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Zoom And Youtube Meeting Information

[Youtube Link](#)
[Zoom Link](#)

Call To Order

Citizens To Be Heard

We are receiving public comments by phone and online through Zoom. Dial: (669) 900 - 6833 Meeting ID: 849 3075 3400 Link: <https://us02web.zoom.us/j/84930753400?pwd=M24yQjRldElCeUxTUlFeXFoZHNQQT09> When joining the meeting, you will be placed in a waiting room and be added to the meeting by the moderator. Your comments will be recorded and on YouTube. (Unmute for public comment: *6)

Ex Parte Communications And Disclosures

Approval Of Meeting Minutes

General Business - Action Items - Discussion And Consideration Of Approval

Discussion Items

Public Hearings

1. **Public Hearing To Determine A Path Forward For The Shamrock Properties LLC
Annexation Petition Protests**

Stephen Stocks, Grand County Attorney

Adjourn

NOTICE OF SPECIAL ACCOMMODATION DURING PUBLIC MEETINGS. In compliance with the Americans with Disabilities Act, individuals with special needs requests wishing to attend Grand County Commission meetings/hearings and other Grand County Boards, Commissions, or Committees are encouraged to contact the County two (2) business days in advance of these events. Specific accommodations necessary to allow participation of disabled persons will be provided to the maximum extent possible. T.D.D. (Telecommunication Device for the Deaf) calls can be answered at: (435) 259-1346. Individuals with speech and/or hearing impairments may also call the Relay Utah by dialing 711. Spanish Relay Utah: 1 (888) 346-3162

It is hereby the policy of Grand County that elected and appointed representatives, staff and members of the Grand County Commission meetings/hearings and other Grand County Boards, Commissions, or Committees may participate in meetings through electronic means. Any form of telecommunication may be used, as long as it allows for real time interaction in the way of discussions, questions and answers, and voting.

At the Grand County Commission meetings/hearings and other Grand County Boards, Commissions, or Committees any citizen, property owner, or public official may be heard on any agenda subject. The number of persons heard and the time allowed for each individual maybe limited at the sole discretion of the Chair. On matters set for public hearings there is a three-minute time limit per person to allow maximum public participation. Upon being recognized by the Chair, please advance to the microphone, state your full name and address, whom you represent, and the subject matter. No person shall interrupt legislative proceedings.

Requests for inclusion on an agenda and supporting documentation must be received by 5:00 PM on the Wednesday prior to a regular Commission Meeting and forty-eight (48) hours prior to any Special Commission Meeting. **Information relative to these meetings/hearings may be obtained at the Grand County Commission's Office, 125 East Center Street, Moab, Utah; (435) 259-1346.**



AGENDA SUMMARY

Planning Commission Meeting

Date: May 26, 2023

Title: Public Hearing to determine a path forward for the Shamrock Properties LLC annexation petition protests

If this submission is from the general public you will need a commission sponsor, feel free to contact the Commission Administrators Office with any questions commadmin@grandcountyutah.net (435) 259-1342 or contact the Commissioners directly at commission@grandcountyutah.net

Fiscal Impact: see staff report

Presenter(s): Stephen Stocks, Grand County Attorney

Prepared by: Elissa Martin, Planning and Zoning

Legal Review: Yes

Department: Planning and Zoning

Approved and within budget? Planning Commission

Budget Number: Unknown

Recommended Motion:

Background:

Attachments:

1. Staff Report Shamrock Properties XX LLC Annexation Petition - FINAL, 5.9.23



STAFF REPORT

DATE: April 28, 2023

TO: Grand County Boundary Commission

SUBJECT: Shamrock Properties, LLC Annexation Petition

RESPECTFULLY SUBMITTED: Stephen J. Stocks, Grand County Attorney

SUMMARY: Shamrock Properties XX LLC filed an annexation petition (the “**Petition**”) seeking to annex 3.006 acres that it owns into the City of Moab (“**Moab**”). Two adjacent property owners (the “**Property Owners**”) submitted letters objecting to the Petition (the “**Letters**”) with the Grand County Boundary Commission (the “**Commission**”). The Moab City Council elected not to deny the Petition under Section § 10-2-407(5)(a)(i) of the Utah Code. Normally, when protests are filed in response to an annexation petition, the Commission would review the protests and the petition, possibly conduct a feasibility study if needed, and issue a decision under Sections §§ 10-2-407(5)(a)(ii) and 10-2-416 of the Utah Code. Based on a review of the relevant Utah Code, it appears that the Property Owners lack standing to protest the Petition. Regardless, the Commission must meet and determine how to proceed.

BACKGROUND: A developer filed an annexation petition to Grand County and Moab. The Petition satisfied the requirements of the Utah Code. Within the protest period, the Property Owners submitted Letters objecting to the Petition. Both Letters make various claims including that area proposed to be annexed abuts their property, which they assert is rural real property. The Attorneys for Grand County and the City of Moab have reviewed both Letters and jointly found that the Property Owners lack standing to protest the Petition.

STAFF RECOMMENDATION: Review the Items to Consider below and issue a determination that: (1) the Property Owners lack standing to protest the Petition; and (2) what action the Commission should take in reviewing the Property Owners’ letters including conducting a feasibility study, rendering a decision, or taking any other action regarding the Letters or the Petition.

ITEMS TO CONSIDER: The items listed below were used to come to the aforementioned recommendation:

PROPERTY OWNERS LACK STANDING: Outside a county of the first class, Subsection (1) of Utah Code Section § 10-2-407 states that a “protest to an annexation

petition...***may only be filed*** by: (a) the legislative body or governing board of an affected entity; (b) an owner of ***rural real property***; or [c] an owner of private real property located in a mining protection area” (emphasis added). Of these, criterion “a” and “c” do not apply because the Property Owners do not qualify as a “legislative body or governing board of an affected entity” as that term is defined in Section § 10-2-401(a),¹ nor do they own private property in a mining protection area.

The Property Owners also lack standing under criterion “b” because they do not own “rural real property” as that term is defined in the annexation code. More specifically, Section § 10-2-401(1)(j) of the Utah Code states that “rural real property” shares the definition found in Section § 17B-2a-1107, which defines the term as an area that is: “(a) zoned ***primarily*** for manufacturing, commercial, or agricultural purposes; and (b) that does not include residential units with a density greater than one unit per acre” (emphasis added).

To protest the Petition, the Property Owners would need to satisfy each of the above criteria. The Property Owners, however, do not satisfy the first criterion because their properties are zoned as “rural residential.” This classification means that their properties are zoned “primarily” for residential purposes rather than for manufacturing, commercial, or agricultural purposes. Section 2.1 of Article 2 of the Grand County Land Use Code further underscores the “residential” nature of the rural residential zone by classifying it as one of the County’s “Residential Zoning Districts” as opposed to its various “Nonresidential Zoning Districts.” Thus, the Property Owners’ properties do not qualify as “rural real property” for the purposes of protesting the Petition because their properties are not zoned “primarily” for manufacturing, commercial, or agricultural purposes.

THE COMMISSION SHOULD REVIEW THE PROTESTS AND MAKE A DETERMINATION:

The County Attorney and City Attorney agree that the Utah Code on annexation is lacking. While it provides the basis for annexation, protests, and the creation of the boundary committee, it does not address critical procedural functions. For example, it does not explain how a deficient protest is handled. The statute lacks express language granting authority to either a municipal or county attorney to determine whether a protest is invalid under the statute, and that the Commission should not act. To complicate matters further, the Utah Supreme Court has, with great detail, explained the importance of the boundary committee’s role in resolving disputes.

In *Kearns-Tribune Corp. v. Salt Lake County Comm’n*, 2001 UT 55, 28 P.3d 686, the Utah Supreme Court reviewed, in detail, the Commission’s role in reviewing an objection to a petition for annexation. The Court noted that “regardless of with whom the protest is filed, an existing boundary commission must review the annexation petition and protest, or one must be formed to do so.” *Id.* at 24 (emphasis added). The court reasoned the boundary commission is to “hear and decide, according to the provisions of this part, each protest filed under Section 10-2-407, with respect to any area within that county.” *Id.* at 25. “The boundary commission ‘appl[ies] the rules promulgated by the legislature regarding

¹ “Affected entity” means: (1) counties, subject to certain limitations; (2) a local district whose boundary includes any part of an area proposed for annexation; (3) a school district whose boundary includes any part of an area proposed for annexation, if the boundary is proposed to be adjusted as a result of the annexation; and (4) a municipality whose boundaries are within ½ mile of the area proposed for annexation.

annexation to factual circumstances before it.’ *Id.* at 25. The Commission’s existence is ‘essentially one of resolving disputes between competing parties, the petitioner and the protesting party.’ *Id.* at 27. Thus, the legislature created a ‘quasi-judicial body’ to review the facts and the law.

Here, the Commission must meet and decide how to handle the petition and objections. This should likely include reviewing if the protestants have standing.

Respectfully submitted,



Stephen J. Stocks
Grand County Attorney

CONCURRENCE OPINION OF THE MOAB CITY ATTORNEY: The Moab City Attorney, Nathan Bracken, has reviewed this staff report and concurs with its findings and recommendations.

In addition to the County Attorney’s opinion above, the Moab City Attorney would state further:

While the Commission is the most appropriate body to determine that the Property Owners lack standing, it cannot take any other action regarding the Letters or the Petition. The Commission’s authority to hear and act on an annexation protest is found in Section § 10-2-412(1) of the Utah Code, which states that the “boundary commission for each county shall hear and decide...each protest ***filed under Section 10-2-407***, with respect to an area that is located within that county” (emphasis added). In other words, the Commission’s authority to hear and decide a protest is conditioned upon the protest satisfying the requirements of Section § 10-2-407.

Section § 10-2-407 is clear that “only” those persons and entities who satisfy its requirements as found in Subsection 1 can protest an annexation petition. Section § 10-2-407(8)(a) further states that “only a person or entity that is described in Subjection (1) has standing to challenge an annexation in district court.” Notably, the Utah Legislature enacted these limitations in 2022 when it passed H.B. 303 to “modify provisions related to when a person may challenge an annexation....”²

As noted above, the Property Owners do not satisfy the standing requirements of Section § 10-2-407 and therefore cannot protest the Petition. As a result, the Letters do not qualify as protests that trigger the Boundary Commission’s jurisdiction under Section § 10-2-412(1). A contrary interpretation would be inconsistent with the manifest intent of the Legislature and repugnant to the express language and context of Section § 10-2-407.

² See H.B. 303 (Local Land Use Amendments), available at:
<https://le.utah.gov/~2022/bills/static/HB0303.html>.

(Section § 68-3-11 of the Utah Code requires that “[w]ords and phrases are to be constructed according to the context and the approved usage of the language....”).

That is to say that action by the Commission on the Letters and the Petition would defeat the purpose of H.B. 303, which the Legislature enacted to prohibit persons and entities who do not comply with Section § 10-2-407 from protesting annexation petitions. Such action would also be contrary to Section 10-2-412(1) which limits the Commission’s jurisdiction to review only those protests properly “filed under Section 10-2-407.”

As noted above, the Property Owners do not satisfy the standing requirements of Section § 10-2-407 and therefore cannot protest the Petition. For the above reasons, if the Commission conducts a feasibility study, renders a decision, or takes any other action on Letters or the Petition, Moab would not be bound by such actions because the Commission lacks jurisdiction under Section § 10-2-412(1).

Respectfully submitted,

Nathan S. Bracken
Moab City Attorney