



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

Grand County Commission Chambers 125 East Center Street, Moab, Utah
May 25, 2023 - 12:30 PM

Times in this agenda are approximate. 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](#)
[Join the Zoom Meeting](#)

Zoom And Youtube Meeting Information

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

Call To Order

Opening Statement
Tory Hill, Chair

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)

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

Ex Parte Communications And Disclosures

Approval Of Meeting Minutes

Approve Minutes From February 9, 2023
Tory Hill, Chair

General Business - Action Items - Discussion And Consideration Of Approval

1. Discussion And Possible Action On Making A Determination If The Protestants Have Standing In The Shamrock Properties LLC Annexation.

Tory Hill, Chair

Discussion Items

Public Hearings

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 GrandCounty Commission's Office,125 East Center Street, Moab, Utah; (435)259-1346.**

GRAND COUNTY BOUNDARY COMMISSION REGULAR MEETING

MINUTES

Thursday February 9th 2023

The Grand County Boundary Commission meeting was attended electronically on Zoom with staff present in commission chambers. In attendance were Boundary Commission members Tory Hill (Castle Valley Rep.), Evan Clapper (Grand County Rep.), Jenny Haraden (Citizen Rep.), Charles Kulander (Citizen Rep.), Cory Shurtleff (Planning and Zoning), and Planning and Zoning Director John J. Guenther had assistant Elissa Martin sit in for himself. Absent was Joette Langianese (Moab City Rep.), John Cortez (Grand County Rep.), and Karen Clark (Citizen Rep.)

Call to Order

- Tory Hill called the meeting to order at 4:11pm

Commission was updated on appointment terms, conflict disclosures, and OPMA training.

Election of Chair

- Jenny Haraden moved to elect Tory Hill for a 2 year term as chair. Evan Clapper seconded. Motion unanimously approved.

Approval of Minutes

- The previous minutes dated February 3rd, 2022 were approved unanimously.
 - o Motion Evan Clapper, seconded by Jenny Haraden.

Future Considerations

There was some discussion about an application that is currently in the process of certification that may or may not have a qualifying objection to annexation. If so, it may come back to the Boundary Commission before moving back to the City for public hearing.

Discussion about next meeting date.

Motion by Evan Clapper to have meeting next meeting February 8, 2024 at 4:00pm, seconded by Jenny Haraden, approved unanimously.

Adjourn

Motion by Evan Clapper to adjourn, seconded by Jenny Haraden, approved unanimously. Tory adjourned the meeting at 4:24pm.

—

Tory Hill, Chair
Grand County Boundary Commission

ATTEST _____
Evan Clapper, Commission County Rep



AGENDA SUMMARY

Planning Commission Meeting

Date: May 25, 2023

Title: Discussion and possible action on making a determination if the protestants have standing in The Shamrock Properties LLC annexation.

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:

Presenter(s): Tory Hill, Chair

Prepared by: Elissa Martin, Planning and Zoning

Legal Review: Yes

Department: Planning and Zoning

Approved and within budget? Planning Commission

Budget Number:

Recommended Motion:

Background:

Attachments:

1. Staff Report Shamrock Properties XX LLC Annexation Petition - FINAL, 5.9.23 (1)
2. Tangreen Annexation Protest
3. Cenicerros Annexation Protest



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

March 2, 2023

Kay & Judy Tangreen, Trustees

Judy & Kay L Tangreen Revocable Trust 8-21-18

1544 S Hwy 191

Moab, UT 84532

RECEIVED

MAR 07 2023

GRAND COUNTY

Re: Protest of proposed annexation from Grand County into Moab City of parcels 02-0007-0008 & 02-0018-0003, owned by Shamrock Properties, LLC

To Whom It May Concern:

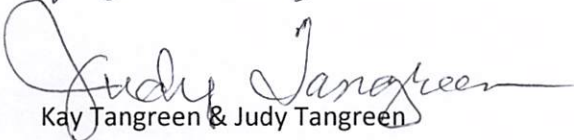
We strongly object to the annexation of the above mentioned parcels. We own property immediately adjacent to the above mention parcels, 02-0018-0015 (1544 S Hwy 191).

We also objected to the same property zoning change in 2020/2021 and yet it was approved anyway. The zoning of our one acre parcel is Rural Residential and only allows one house per acre. When the County Commission approved the rezone at their first meeting in 2021, they effectively eliminated the buffer between Highway Commercial our Rural Residential parcel.

The rezone and subsequent proposed annexation are threatening to destroy our lifestyle by building a high rise apartment complex next to us. It is our feeling that they want to avoid more stringent County zoning and land use requirements by being in the City, which will allow the type of building she wants. We have been told that this building will be 4 stories tall and that in order to get approval from the Moab Valley Fire Department, the owner of Shamrock Properties, LLC, Mary Weinstein, has offered to purchase a new hook and ladder truck that will accommodate a 4 story structure. There is not a single building in Grand County that is 4 stories tall and by allowing something of that height, away from the city center, you will open the door to any parcel in the County to do the same, forever changing the character of our rural community.

We have lived here since 1979. Both of us were born and raised in Moab, 80+ years. This annexation should not be approved.

Respectfully,



Kay Tangreen & Judy Tangreen

Matt & Lisa Cenicerros
1572 S. Hwy 191
Moab, UT 84532

To whom it may concern-

We protest the annexation of parcels 02-0007-0008 & 02-0018-0003 into Moab City.

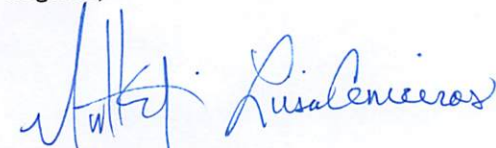
We are affected parties with a valid standing to protest as we own property directly adjacent to the proposed area, we own parcel 02-0018-0014.

The reasons for our protest are:

- 1- The proposed annexation creates an island or peninsula, which in Moab City's own planning documentation states should not be done
- 2- The proposed annexation is relatively small, yet allows the developer the ability for maximum density. Moab City planning documentation states that annexations should be done in a sufficiently large portion. This proposal would continue the "cherry stemmed" Moab City annexation boundary. This has, and will continue to, create confusion for not only citizens but by first responders on who is the correct responding agency.
- 3- The proposed annexation is approximately 2+ miles from the obvious Moab City Center. Travelling to the City from this location by walking, cycling, etc.. is extremely hazardous- as the Highway corridor has no sidewalks, street lighting, egress lanes, or any infrastructure to safely handle a sudden influx of pedestrian or cycle traffic. Also, the current highway entrance for vehicular travel is hazardous due to the limited view and high traffic speed.
- 4- The proposed annexation appears to not have supplied an annexation impact report, Goal 13 of Moab City General plan. It might exist, but if so, it has not been made readily available
- 5- The proposed annexation, as well as the entire USU annexation hasn't had a complete study done on the impact of adding 1000's of households (USU & proposed annexation) to our sewage system- or getting the sewage to the system.
- 6- The proposed annexation abuts several rural properties, ours included, that expect and appreciate a zoning buffer from the highest density zoning (C-4) from the lowest (RR). If approved the development plan will place two (2) 4 story apartment complexes at least 15 feet from my property line- that does not flow with the surrounding area. Also, those buildings would be unable to be served by our current fire fleet, as they would be the tallest structures in Moab.
- 7- The proposed annexation will cause trespassing onto our property by new residents- this will cause us to have to build barriers and add security systems to ensure our property is protected.
- 8- The proposed annexation is overall short-sighted and not considerate of the overall impact it will have on the area as a whole.

If Moab City truly wants to annex these parcels with the safety of the public in mind. Then they should follow their own General Plan guidelines, goals and recommendations and just annex the entire proposed annexation area. See page 64 of Moab City General Plan. It would make development, emergency response, gov't operations, etc... much clearer for everyone to understand.

Regards,



Matt & Lisa Cenicerros

RECEIVED

MAR 13 2023

GRAND COUNTY