

Object to Inclusion in the Albion Basin Protection Overlay Zone.

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Hand Delivered April 5, 2019

Mayor Harris Sondak  
Post Office Box 8016  
Alta, Utah 84092-8016

Dear Mayor Sondak;

For the reasons outlined in the attached comments I object to my property Lots 25, 26, 29 & 30 Albion Basin Subdivision being included in the proposed Albion Basin Protection Zone and the attendant proposed land use ordinance changes.



M.C. Haik

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

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 3<sup>rd</sup> 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 3<sup>rd</sup> 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

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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 Secret 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

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

Subsequent to my analysis of the TOA building requirements I retained a an engineer who has successfully obtained septic permits for clients all over Salt Lake County and specifically in all of the east side canyons and was a former Salt Lake Valley Health Board member. My properties passed all the required soils & other tests required by Salt Lake Valley Health. I also recovered records from Salt Lake County Planning & Zoning to review other successful septic permits in the canyons. I found that once the germane tests had been successfully completed the last thing that occurred was SLCPU provided a letter which states that water is available. I made a GRAMA request to Salt Lake County Planning and Zoning and found that hundreds of these letters were routinely issued by SLCPU to build new homes, for extensive remodels and repairs, or for replacement of failed septic systems in the last quarter century. Salt Lake County routinely required parties upgrading, remodeling, building new and making extensive repairs to their properties to upgrade the old septic system to a fully contained system; in each case a letter from SLCPU was issued stating water was available regardless of the terms of any surplus water contracts. These approval letters included leaseholds on federal property which in order to renew their lease had to upgrade the old septic system to fully contained. The number of properties was extensive and Salt Lake County Planning & Zoning provided the data in an Excel Spreadsheet. Subsequent to my engineer providing successful test results and responding to all the SLVHD questions the only thing that remained was a one page letter from SLCPU, which letter SLCPU Director-Niermeyer refused to provide. An otherwise routine administrative act, a letter which hundreds of others received upon successful completion of septic system tests was denied to me. Director Niermeyer did send a letter to the TOA & copied to SLVHD which stated that there was a water contract but the amount was insufficient. The letter made no mention of the change application (57-10015) filed by SLCPU at the UDWR decades prior, purportedly based on said contract, which application was approved for 400 gallons per day by the UDWR-Engineer for the Albion Basin Subdivision and is the basis for providing water to others in the Albion Basin Subdivision. This resulted in an appeal of this decision which has been winding it's way through the judicial system and remains pending today. I would also point out that Director-Niermeyer has conflicting sworn statements regarding the same contract. In one sworn statement Director-Niermeyer maintains that the contract has no force & effect & is not capable of being performed and in a second sworn statement several years later the same contract has force & effect but an insufficient quantity of water. Essentially a quantum contract, which exists in two completely different states at the same time, enforceable between the parties & unenforceable between the parties. I would note that this circumstance is evident in other surplus contracts in the TOA.

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The 1976 contract has specific terms and conditions which interpretations vary depending on to whom and when the analysis is given:

[1] regards quantity-265000 gpd if 1975 contract terminated. First sentence of Shrontz Settlement Agreement say 1975 contract shall be performed, leaving a balance under 1976 contract of 115000 gpd.

[2] 1976 contract says water may be provided in the 1976 TOA boundaries, which if true includes the properties in Cecret Lake.

[3] TOA staff omitted/failed to disclose that TOA & SLCPU had agreed to amend geographic limitation, but neither party disclosed to anyone and only came to light as a result of my review of Salt Lake City minute records.

[4] 1976 contract says no irrigation yet numerous parties including former Mayor Pollard admit that they used water to irrigate.

[5] Mr. Kapalowski specifically represented to the Board of Water Resources that the TOA could legally divert 500 acre feet, pursuant to an approved change application, based on the 1976 contract this value is larger then 265,000/115,000 gpd.

[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