

John N. Brems (3769)
Brems Law
10717 Watery Way
South Jordan, UT 84009
Telephone: (801) 580-2347

BEFORE THE BOUNDARY COMMISSION
FOR THE COUNTY OF TOOELE, STATE OF UTAH

In Re:

Petition filed by John
Bleazard, seeking to annex approximately
7,888.65 acres into the corporate boundaries
of Grantsville City.

City of Erda Protest

The City of Erda (“Erda”) submits this Protest (“Protest”) to the Annexation Petition filed by John Bleazard, seeking to annex approximately 7,888.65 acres into the corporate boundaries of Grantsville City (“Annexation”).

ARGUMENT AND AUTHORITIES

I. City of Erda has standing to file this protest.

Erda has standing to file this Protest. Erda is an “affected entity” within the meaning of the annexation statute, and therefore, has a valid interest in the results of the Annexation. Utah Code Ann. § 10-2-401(1) (a) provides that an “[a]ffected entity means ... a municipality whose

boundaries are within 1/2 mile of an area proposed for annexation.” On January 3, 2022, Erda became a municipality (see attached Certificate), and its boundaries is within ½ mile of the Annexation. Since Erda is an affected entity Utah Code allows Erda to file a Protest. Utah Code Ann. § 10-2-407 provides “[a] protest to an annexation petition under Section 10-2-403 may be filed by ... the legislative body ... of an affected entity.” On January 4, 2022, the Erda Council passed Ordinance No. 22-01 authorizing and directing the filing of this Protest. As a result, Erda has standing to file this Protest and hereby files this Protest.

II. The Annexation does not comply with statutory requirements.

The Annexation does not comply with statutory requirements. Utah Code Ann. §10-2-402 provides that a municipality may not annex an area that “leave or create an unincorporated island ... unless the county and municipality have otherwise agreed.” The Annexation leaves or creates multiple islands and there is no evidence that Tooele County and Grantsville have “otherwise agreed.” Furthermore, Utah Code Ann. §10-2-403(3) requires that the annexation petition contain the signature of “the owners of private real property that is located within the area proposed for annexation ... [that] ... covers 100% of rural real property within the area proposed for annexation.” Utah Code Ann. § 10-2-401(1)(j) defines “rural real property” by reference” to 17B-2a-1107 which provides “rural real property means an area zoned primarily for manufacturing, commercial, or agricultural purposes; and that does not include residential units with a density greater than one unit per acre.” The annexation area includes at least one parcels of rural real property but the annexation petition does not contain the owner signature of

such owner (does not include signatures of 100% of the rural real property owners). The Annexation fails to comply with the mandatory signature requirement and the prohibition of creating or leaving islands and should be rejected.

III. Annexation is contrary to the process to adjust boundaries between municipalities.

Annexation is contrary to the process to adjust boundaries between municipalities.

Inherent in all the annexation provisions of Utah Code is that annexation involves unincorporated areas. For example, Utah Code Ann. § 10-2-402 provides that “[a] contiguous, **unincorporated area** that is contiguous to a municipality may be annexed to the municipality as provided in this part (emphasis added).” “This part’ as referenced in Utah Code Ann. § 10-2-402 is the part of the statute dealing with annexations. Nowhere in Utah Code does it say or even contemplate annexation of an area that is incorporated. Rather Utah Code provides a process to adjust the boundaries between incorporated areas (municipalities). Utah Code Ann. §10-2-419 provides that “[t]he legislative bodies of two or more municipalities having common boundaries may adjust their common boundaries as provided in this section.” The Annexation encompasses the common boundaries between Grantsville and Erda. “This section” means section 419 and Grantsville (and Erda) has not satisfied the requirements of section 419. Therefore, annexation is not the appropriate process to adjust the common boundaries between Grantsville and Erda. Furthermore, extending the ability of a municipality to annex area within another municipality to

its logical extreme, without complying with the Section 419 would result in a “free for all” creating chaos and would fly in the face of reason, fairness, democratic government, and justice¹.

IV. Utah Law Specifically Prohibits the Annexation.

To the extent that Grantsville argues that Erda is not or was not a municipality Utah law specifically prohibits the Annexation. Utah Code Ann. § 10-2-402 set forth various limitation to annexations. Utah Code Ann. § 10-2-402 (8) provides as follows:

A municipality may not annex an unincorporated area if:

- (a) the area is proposed for incorporation in:
 - (i) a feasibility study conducted under Section 10-2a-205; or
 - (ii) a supplemental feasibility study conducted under Section 10-2a-206;
- (b) the lieutenant governor completes the first public hearing on the proposed incorporation under Subsection 10-2a-207(4); and
- (c) the time period for a specified landowner, as defined in Section 10-2a-203, to request that the lieutenant governor exclude the specified landowner's property from the proposed incorporation under Subsection 10-2a-207(5)(a) has expire.

On October 18, 2018, a request was submitted to the Lieutenant Governor for a

¹ The Utah Code specifically says that “the Utah Code shall be construed with a view to . . . promote justice.” See Utah Code § 68-3-2(3).

Feasibility Study with surveyed border limits to formally initiate the incorporation process. In February 2020 the Erda incorporation area was included in a Feasibility Study pursuant to section 205. On March 23, 2020, the Lieutenant Governor completed the first public hearing on the proposed incorporation. The time period for specified landowner to request exclusion has expired. Therefore, Grantsville is prohibited from annexation the area subject to the Annexation.

V Notice.

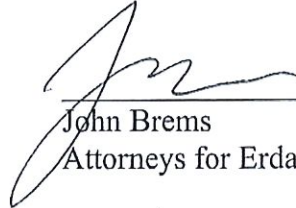
Pursuant to the requirement of Utah Code Ann. § 10-2-407 (2)(d) the name and address of a contact person who is to receive notices sent by the commission with respect to the Protest proceedings is John Brems 10717 Watery Way South Jordan UT 84009.

CONCLUSION

For the above reasons, Erda respectfully requests that the Boundary Commission dismiss the Annexation.

DATED THIS _____ day of January 2021.

Brems Law



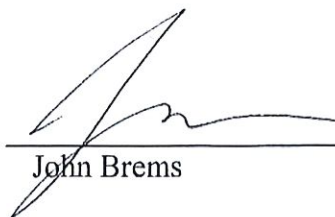
John Brems
Attorneys for Erda

CERTIFICATE OF SERVICE

I certify that on or about the 5 day of January, I served a copy of the foregoing Protest on the following, via first class mail, postage pre-paid:

Tooele County Boundary Commission
C/o Office of the Tooele County Clerk
47 South Main Street, Tooele, Utah 84074

Grantsville City Recorder
429 East Main Street
Grantsville, Utah 84029.



John Brems

CERTIFICATE OF MAILING

I hereby certify that I provided a copy of the foregoing Notice of Protest, by mailing and emailing a copy of the same, to the following on the 7th day of January, 2022.

Tooele County Boundary Commission
c/o Tooele County Clerk
47 South Main Street
Tooele, UT 84074



Braydee Baugh
Grantsville City Recorder