

Christopher G. McAnany (#7933)
Dufford Waldeck, LLP
744 Horizon Court, Suite 300
Grand Junction, CO 81506
(970) 241-5500
(970) 248-5862 (desk)
mcanany@dwmk.com; dwmk@dwmk.com
Attorneys for Defendant

**IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR
SAN JUAN COUNTY, THE STATE OF UTAH**

KIM ERIC ACTON and IDA ELIZABETH
ACTON,

Plaintiffs,

v.

TOWN OF BLUFF, a municipal corporation
of the State of Utah,

Defendant.

ANSWER OF THE TOWN OF BLUFF

Civil No. 230700025

Judge Don M. Torgerson

Defendant Town of Bluff (Bluff or the Town), through counsel, answers the Petition for Disconnection of Municipal Boundaries as follows.

I. ANSWER

1. With respect to paragraph one, Bluff admits that Plaintiffs allege they are owners of the described parcel that is within the Bluff; Bluff is without sufficient information as to the remainder of the allegations and therefore denies same.

2. Paragraph two is admitted.

3. With respect to paragraph three, it is admitted that the Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 7,370 acres of land that are in issue in the case; the remaining allegations are denied.

4. Paragraphs four through six are admitted, though Bluff denies that Plaintiffs are entitled to any relief.

5. Paragraph seven is admitted.

6. With respect to paragraph eight, it is admitted that Plaintiffs signed the Petition; the remaining allegations are denied.

7. Paragraph nine is admitted.

8. Paragraph 10 is admitted, except that Bluff denies the sufficiency of the stated reasons for disconnection.

9. Paragraphs 11 through 15 are admitted.

10. Paragraphs 16 through 26 are denied.

11. With respect to paragraphs 27 through 28, it is admitted that the Plaintiffs' property contributes negligible property tax revenue to Bluff as currently developed; the remaining allegations are denied.

12. Paragraph 29 is denied. The Town has adopted a General Plan along with zoning, subdivision, and related land use ordinances. Plaintiffs have failed to invoke any of these.

13. Paragraphs 30 and 31 are denied.

14. With respect to paragraph 32, it is admitted that a part of the Disconnection Properties is contiguous with unincorporated lands; the remaining allegations are denied.

15. Paragraph 33 is denied; no such evidence is contained in the record of proceedings before the Town.

16. Paragraphs 34 through 38 are denied.

17. With respect to paragraph 39, the Town states that it is the owner of water rights that provide domestic water within the Town; the remaining allegations are denied.

18. With respect to paragraph 40, it is admitted that the Town does not currently provide sanitary sewer service; the remaining allegations are denied.

19. Paragraphs 41 through 43 are denied.

20. Paragraph 44 is denied. The Petition in this action appears to be nothing more than an attempt at “forum shopping” to secure favorable zoning concessions from another governmental entity.

21. Paragraph 45 is denied; Bluff maintains land use ordinances that would permit development within the Disconnection Area. Plaintiffs failed or refused to engage in any land use processes with the Town of Bluff.

22. Paragraphs 46 through 48 are denied.

23. Paragraph 49 is admitted.

24. With respect to paragraphs 50 and 51, it is admitted that the former Judy F. Lyman disconnection petition was denied by Bluff, that the petition encompassed lands that are the subject of the current action, and that granting of the Lyman petition would have created an unlawful unincorporated “island.” The remaining allegations are denied.

25. Paragraph 52 is legal argument, which is denied.

26. Paragraph 53 is admitted based on the information known to Bluff.

27. With respect to paragraphs 54 and 55, it is admitted that Plaintiffs sought to include the St. Christopher’s Mission properties within the disconnection petition without giving notice to or conferring with that landowner. The remaining allegations are denied.

28. With respect to paragraphs 56 and 57, the percentages of acreage represented by the Petition and the total acreage of Bluff are admitted; the remaining allegations are denied.

29. Paragraphs 58 through 65 are denied, except that it is admitted that the bulk of the disconnection properties are situated on the Bluff Bench.

30. Paragraph 66 is denied; the Town of Bluff maintains land use ordinances and is prepared to engage in dialogue with landowners contemplating development.

31. Paragraph 67 is denied; future development of the disconnection properties would likely result in local government fragmentation, as there is no other municipal government adjacent to the Town of Bluff.

32. With respect to paragraph 68, the allegations that the Town is “greedy” and attempting to “micro-manage” the Plaintiffs’ property are denied. It is admitted that approving disconnection would transfer local government authority over the subject parcels, in part, to San Juan County; all other allegations are denied.

33. With respect to paragraph 69, it is admitted that Bluff has adopted zoning, subdivision, and related land use ordinances; the remaining statement is denied.

34. Paragraph 70 is denied.

35. Paragraphs 71 and 72 are admitted, except that other Town ordinances may apply to the development of lands in either or both of the cited zoning districts.

36. Paragraph 73 is denied; the Town of Bluff, like most communities, maintains ordinances allowing for map amendments, text amendments, and other land use tools that authorize development of varying levels of intensity.

37. Paragraphs 74 through 78 are denied.

38. With respect to paragraph 79, it is admitted that a zoning text or map amendment is a legislative act; all other allegations are denied.

39. Paragraphs 80 through 82 are simply insults directed at the Bluff community, and not allegations of fact. To the extent an answer is required, the allegations are denied.

40. With respect to paragraph 83, it is admitted that the Acton Plaintiffs have not sought any development approval from the Town, nor have they disclosed any future development intentions.

41. Paragraphs 84 through 86 are denied.

42. With respect to paragraph 87, it is admitted that Bluff has not engaged in any conduct causing injury to the Acton Plaintiffs.

43. Paragraph 88 is denied.

44. With respect to paragraphs 89 and 90, it is admitted that Bluff representatives have had preliminary contact with a solar developer to discuss the development of a proposed “solar farm” on lands owned by SITLA, and it is admitted that Bluff expressed a willingness to review solar farm uses that may be proposed.

45. Paragraph 91 is denied.

46. With respect to paragraph 92, it is admitted that the Town of Bluff requested in writing that SITLA withdraw its support for the disconnection petition; the remaining allegations are denied.

47. With respect to paragraph 93, it is admitted that the Town of Bluff requested that San Juan County enact a resolution supporting the boundaries of the Town, which was not enacted; the remaining allegations are denied.

48. With respect to paragraphs 94 through 102, it is admitted that Bluff holds and maintains Class C Roads and that it receives funds from the State of Utah for Class C road maintenance. The remaining allegations are denied.

49. With respect to paragraph 103, it is admitted that in Bluff wastewater is handled via individual septic disposal systems, and culinary water is provided by Bluff Water Works. The remaining allegations are denied.

50. Paragraph 104 is incomprehensible; to the extent an answer is required, the allegation is denied.

51. Paragraphs 105 and 106 are denied.

52. Paragraph 107 is admitted, except that Bluff denies the “word salad” insult.

53. With respect to paragraph 108, it is admitted that disconnection of the subject lands could interfere with Bluff’s efforts to protect the aquifer providing drinking water to Bluff residents and adjacent people; the remaining allegations are denied.

54. With respect to paragraph 109, it is admitted that the specified governmental agencies may have some role in protecting water quality and quantity; all other allegations are denied.

55. Paragraph 110 is denied.

56. Paragraph 111 is not an allegation of fact; the subject ordinances of the Town of Bluff speak for themselves. To the extent that a response is required, the allegation is denied.

57. With respect to paragraph 112, it is admitted that certain agricultural uses have the potential to harm water quality, and that those uses are a use by right. The remaining allegations are denied.

58. With respect to paragraph 113, it is admitted that telecommunications services are provided by parties other than the Town of Bluff; the remaining allegations are denied.

59. Paragraph 114 is admitted insofar as it states that law enforcement services are currently provided by San Juan County via an intergovernmental agreement, and that San Juan

County would presumably provide services to the Disconnection Area after disconnection; the remaining allegations are denied.

60. With respect to paragraphs 115 and 116, it is admitted that fire and EMS services are provided by the Bluff Volunteer Fire Department, which provides services to all of Bluff and adjacent areas; the remaining allegations are denied.

61. With respect to paragraph 117, it is admitted that the Town of Bluff contributes money to the Bluff Fire Volunteer Fire Department; the remaining allegations are denied.

62. Paragraph 118 is denied.

63. With respect to paragraph 119 through 124, it is admitted that the Disconnection Properties contribute minimal taxes to Bluff in their present state of development; the remaining allegations are denied.

64. With respect to paragraphs 120 through 124, it is admitted that the Plaintiffs face minimal real property tax burdens for the subject property; the remaining allegations are denied.

65. With respect to paragraph 125 through 126, it is admitted that the Town of Bluff has consulted with SITLA and its lessees with respect to development on SITLA lands; the remaining allegations are denied.

66. With respect to paragraph 127, it is admitted that the St. Christopher's Mission is within the Disconnection Properties, that it was not consulted prior to filing the petition, and that the omission of the Mission from the Disconnection Properties would create an unlawful "peninsula." The remaining allegations are denied.

67. With respect to paragraph 128 it is admitted that St. Christopher's Mission representatives oppose the disconnection petition; the remaining allegations are denied.

68. Paragraphs 129 through 133 are denied.

69. With respect to paragraph 134, Bluff admits that portions of the SITLA lands that are within the Disconnection Properties are proposed for transfer to the United States pursuant to legislation now pending in Congress; the remaining allegations are denied.

70. Paragraph 135 is a misrepresentation of the language of the resolution, which speaks for itself. The remaining allegations are denied.

71. Paragraphs 136 through 147 and the prayer for relief are denied.

72. All allegations not expressly admitted are denied.

II. AFFIRMATIVE DEFENSE

1. Plaintiffs fail to state a claim upon which relief may be granted.

2. The claims may be barred by the equitable doctrines of laches, estoppel, waiver, or unclean hands.

3. Town of Bluff Resolution No. 2023-73 is a legislative act that was adopted by the Town after a public hearing. The Resolution represents careful consideration of the petition that was supported by substantial evidence and a fair resolution of policy considerations. The decision was not arbitrary, capricious, or unlawful.

4. The zoning-related claims are barred by the doctrines of failure to exhaust administrative remedies. The Plaintiffs have failed to avail themselves of any of the various land use tools that may be available or appropriate to accommodate the future development of their lands, including text amendment, map amendment, or other land use processes available pursuant to the ordinance of the Town of Bluff or applicable law. In the absence of exhaustion of administrative remedies, this court lacks subject matter jurisdiction, and any injury to Plaintiffs is purely speculative.

5. Plaintiffs have not suffered injury to any legally protected interest, and therefore lack standing to bring any claims against the Town of Bluff.

6. The claims are barred by one or more statutes of limitation, including U.C.A. § 78B-2-305, § 78B-2-307, and/or § 10-2a-203.

7. The claims are barred, in whole or in part, by U.C.A. § 10-9a-102 et seq, including § 10-9a-801 pertaining to review of land use decisions.

8. The claims may be barred, in whole or in part, by applicable provisions of the Utah Governmental Immunity Act, U.C.A. § 63G-7-101, et seq.

9. On information and belief, the instant Petition and the subject statute violates the doctrine of separation of powers by improperly intruding upon a purely local legislative decision vested in the discretion of a local government.

10. The subject properties were lawfully included in the incorporation of the Town of Bluff, which was enacted by lawful process and not subject to contest or appeal as otherwise provided by law. U.C.A. § 10-2a-201.5, et seq. As such the Plaintiffs are estopped from seeking disconnection.

11. The Petition fails to satisfy one or more provisions of the disconnection statute, U.C.A. § 10-2-501, et seq.

12. Justice and equity do not require that the lands in issue be disconnected from the Town of Bluff. The Town is lawfully incorporated, has lawfully adopted ordinances, and it has exercised municipal powers in a manner that is rational and consistent with established law and governmental norms. Plaintiffs can point to no conduct or behavior on the part of the Town that is unfair or unreasonable, and the instant Petition is the product of unwarranted malice and invective propagated by their counsel, rather than any genuine grievance.


13. The instant Petition, in which the State of Utah joins with private property owners to, inter alia, secure favorable private zoning entitlements, amounts to the lending of public credit in aid of private pecuniary interests, in violation of the Utah Constitution, Article 6 § 29.

14. The Town of Bluff reserves such other and further defenses as may be revealed upon further investigation of this matter.

WHEREFORE, the Town of Bluff requests that the Plaintiffs take nothing on their claims, that the case be dismissed with prejudice, and that the court award such other and further relief, including reasonable attorney fees and court costs, as may be appropriate under the law.

DATED: November 8, 2023.

DUFFORD, WALDECK, LLP

BY: 
Christopher G. McAnany, #7933
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2023, I served a true and correct copy of the foregoing *Answer of the Town of Bluff* upon the person(s) listed below via Utah State Bar E-filing Portal as follows:

Bruce R. Baird, #176
BRUCE R. BAIRD, PLLC
2150 South 1300 East, Suite 500
Salt Lake Town, Utah 84106
Attorney for Kim E. Acton and Ida E. Acton

Landon A. Allred, #12428
YORK HOWELL
10610 South Jordan Gateway, Suite 200
South Jordan, Utah 84095
Attorneys for the State of Utah School and Institutional Trust Administration (SILTA)

/s/Alissa Bertagni
Alissa Bertagni, Paralegal