

April 20, 2010

G. UNFINISHED BUSINESS:

2. Resolution: Parley's Pointe Subdivision/Annexation, Romney Lumber Company

POTENTIAL MOTIONS:

1. ["I move that the Council"] Adopt a resolution extending the time period for satisfying the conditions set forth in Ordinance No. 24 of 2006 relating to the Romney Lumber/Carson – Parley's Pointe Annexation and Subdivision Settlement Agreement.
2. ["I move that the Council"] Not adopt a resolution extending the time period for satisfying the conditions set forth in Ordinance No. 24 of 2006 relating to the Romney Lumber/Carson – Parley's Pointe Annexation and Subdivision Settlement Agreement.

FRANK B. GRAY
DIRECTOR

MARY DE LA MARE-SCHAEFER
DEPUTY DIRECTOR

ROBERT FARRINGTON, JR.
DEPUTY DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
OFFICE OF THE DIRECTOR

SCANNED TO:
SCANNED BY: Rachel
DATE: 4-2-10

RALPH BECKER



CITY COUNCIL TRANSMITTAL


David Everitt, Chief of Staff

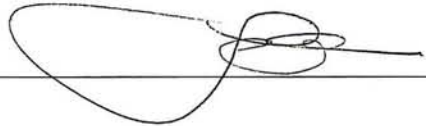
Date Received: 04/02/2010

Date Sent to City Council: 04/02/2010

TO: Salt Lake City Council
JT Martin, Chair

DATE: April 2, 2010

FROM: Frank Gray, Community & Economic
Development Department Director



RE: Ordinance No. 24 of 2006, Parley's Pointe Annexation – Request for time extension

STAFF CONTACTS: Lynn Pace, Deputy City Attorney, at 801-535-6613 or
lynn.pace@slcgov.com

Wayne Mills, Senior Planner, at 801-535-7282 or
wayne.mills@slcgov.com

RECOMMENDATION: That the City Council adopt a resolution extending the time to satisfy the conditions of Ordinance No. 24 of 2006

DOCUMENT TYPE: Resolution

BUDGET IMPACT: None

DISCUSSION:

Issue Origin: In October 2005, Romney Lumber Company and Robert and Honora Carson (petitioners) entered into a Settlement and Annexation Agreement (Settlement Agreement) with Salt Lake City. The Settlement Agreement was the result of lawsuit between the petitioners and Salt Lake City related to a request to annex property located in the vicinity of 2982 East Benchmark Drive (see map, Attachment 1). The Settlement Agreement listed a number of conditions that must be met in order to annex the subject property. A summary of the conditions is as follows (see Settlement and Annexation Agreement, Attachment 2):

451 SOUTH STATE STREET, ROOM 404

P.O. BOX 145486, SALT LAKE CITY, UTAH 84114-5486

TELEPHONE: 801-535-6230 FAX: 801-535-6005

WWW.SLCGOV.COM/CED



- The petitioners were required to submit an annexation petition to the City within 30 days of the execution of the Settlement Agreement.
- Salt Lake City was required to adopt an ordinance approving the annexation within 120 days of the annexation petition submittal.
- The petitioners must obtain approval from Salt Lake County for a 15 lot subdivision, called Parley's Pointe Phase I, substantially in the form shown as Exhibit 1 in the Settlement Agreement. The subdivision includes a gated/private street that allows pedestrian and bicycle access, dedication of public trails (including an extension of the Bonneville Shoreline Trail), conveyance of property for open space preservation, conveyance of a one-foot protection strip around the perimeter of the property, and the designation of common area open space parcels.
- Approval of a four lot subdivision, called Parley's Pointe Phase II, by either the County or City.
- Relocation of a City waterline.
- The City must provide water, sewer and storm drain services in accordance with plans approved by the City's Department of Public Utilities.
- The petitioners must construct the public and private portions of the Phase I roadway and utility lines or file a bond with the City for the improvements.

In May 2006 the City Council adopted Ordinance No. 24 of 2006 annexing the subject property (see Attachment 3). The annexation ordinance was conditioned upon compliance with the Settlement and Annexation Agreement and had a two year expiration date.

In May 2008 the petitioners requested an extension to the annexation ordinance time period in order to resolve engineering issues related to the subdivision. In response, the City Council passed Resolution 24 of 2008 extending the ordinance expiration date to May 10, 2010 (see Attachment 4). The resolution also provides up to two one year extensions if needed to complete all of the conditions of the ordinance.

The petitioners have been working with Salt Lake City and Salt Lake County to complete the requirements of the Settlement and Annexation Agreement; however, additional time is needed to comply with the conditions. The petitioners have submitted a letter requesting a five year extension of the ordinance (see Attachment 5). The letter states that the petitioners have received preliminary and final approval of the Parley's Pointe Phase I subdivision from the County, but due to the economic recession, are unable to fund the required street and utility improvements as required.

Analysis: Resolution 24 of 2008 provided a two year extension to the annexation ordinance with up to two one year extensions, in needed. The petitioners are requesting that the City Council grant one five year extension in lieu of the two one year extensions to allow enough time for the market to rebound. This would allow the petitioners enough time to obtain the necessary funding to make the street and utility improvements required in the Settlement Agreement.

In addition to the economic issues related to the costs of constructing the Parley's Point Phase I subdivision, the petitioners have been working with City and County staff on an appropriate

alignment for the Bonneville Shoreline Trail through the property. It is the opinion of City Staff that the requested five year extension is appropriate to allow enough time to coordinate a trail alignment that is beneficial to the public.

The City Attorney has drafted a resolution for the proposed five year extension for City Council consideration. The draft resolution is attached as Attachment 6. The Planning Director, Director of the Department of Public Utilities, and the City Engineer has reviewed the request for the time extension and has recommended approval (see Attachment 7).

Attachments:

1. Annexation Area Map
2. Settlement and Annexation Agreement
3. Ordinance No 24 of 2006
4. Resolution 24 of 2008
5. Request for Time Extension
6. Draft Resolution
7. City Department Directors Recommendation

1. ANNEXATION AREA MAP

Parley's Pointe Annexation



2. SETTLEMENT and ANNEXATION AGREEMENT

RECORDED

OCT 21 2005

CITY RECORDER

SETTLEMENT AND ANNEXATION AGREEMENT

THIS SETTLEMENT AND ANNEXATION AGREEMENT ("Agreement") is between Salt Lake City Corporation ("City"), a Utah municipality, whose principal business address is 451 South State Street, Salt Lake City, Utah 84111, the Romney Lumber Company, a Utah corporation with its principal place of business at 555 East 200 South, #250, Salt Lake City, Utah 84102, and Mr. Robert W. Carson and Mrs. Honora M. Carson, husband and wife, of 558 Eleanor Drive, Woodside, California 94062. The Romney Lumber Company and Mr. and Mrs. Carson are hereinafter jointly referred to as "Romney/Carson".

RECITALS

WHEREAS, Romney/Carson are the owners of approximately 324 acres of undeveloped real property located in the foothills adjacent to Salt Lake City ("the Subject Property");

WHEREAS, Romney/Carson, as Plaintiffs, filed an amended petition for judicial review and complaint in the United States District Court for the District of Utah, Central Division, concerning the Subject Property, styled "ROMNEY LUMBER CO., Inc., a Utah corporation, ROBERT W. CARSON, an individual; and HONORA M. CARSON, an individual, Plaintiffs, v. SALT LAKE CITY CORPORATION and William T. Wright", Defendants, Case No. 2:00 CV 695 PGC, alleging 14 claims for relief (the "Litigation");

WHEREAS, the Defendants Salt Lake City Corporation and William T. Wright subsequently filed an answer to the amended petition for judicial review and complaint denying liability and alleging six affirmative defenses;

WHEREAS, subsequently on or about October 31, 2002, the Court entered its Memorandum Decision and Order dismissing Mr. Wright from the lawsuit with prejudice and granting the Plaintiffs' Motion for Summary Judgment on their fourth claim for relief;

WHEREAS, on April 20, 2004, the City and Romney/Carson participated in mediation presided over by Federal Magistrate Judge David Nuffer; and

WHEREAS, the parties reached an agreement which they mutually agreed to memorialize in a written settlement agreement.

NOW THEREFORE, in consideration of the promises, and the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Petition for Annexation. Within 30 days following the execution of this Agreement, Romney/Carson shall file a renewed petition for annexation requesting the annexation of the Subject Property into the corporate limits of the City, subject to the terms and conditions set forth in this Agreement. The annexation petition shall comply with all the State and City Requirements for such petition except that no filing or processing fees shall be charged to Romney/Carson.

2. Annexation Ordinance. Within 120 days following the filing of the renewed annexation petition, the City shall adopt an ordinance approving the annexation of the Subject Property into the corporate limits of the City, subject to the terms and conditions set forth in this Agreement. The City ordinance annexing the Subject Property shall state that the annexation of the Subject Property shall become effective in accordance with the procedures, terms, and conditions in the Agreement without the need for any further approval from the City Council.

3. Costs. The parties acknowledge that Romney/Carson has paid \$10,000.00 in planning and processing fees. Consequently, the City shall annex the Subject Property without additional charges to Romney/Carson. Notwithstanding the foregoing, the City may charge its customary impact and utility connection fees to those who build on subdivision lots within the Subject Property.

4. Subdivision Approvals. As a condition of annexation, Romney/Carson shall file an application for and shall obtain final plat approval from Salt Lake County for a 15 lot subdivision generally described as the Parley's Pointe Subdivision Phase I ("Phase I") substantially in the form shown on Exhibit 1 attached hereto. The Phase I Plat shall contain a "Notice to Lot Purchasers" explaining that lot purchasers will be responsible for paying any lawfully required impact fees and utility connection fees. The notice shall also explain that City sewer and storm water services will not be available until the subdivision is annexed into the City. Romney/Carson shall also file an application for and shall obtain final plat approval from Salt Lake County for a 4-lot subdivision generally described as Parley's Pointe Subdivision Phase II ("Phase II") substantially in the form shown on Exhibit 2 attached hereto. If the County refuses to grant approval for the Phase I subdivision and the private roadway substantially in the form proposed on Exhibit 1, the Litigation shall continue.

5. Alternative Phase II Subdivision Approval and Annexation. In the event that the County denies approval of the Phase II subdivision as proposed, Romney/Carson may apply to the City for approval and annexation of the Phase II subdivision. In such event, the City shall approve and annex the Phase II subdivision substantially in the form as shown on Exhibit 2 without additional charges or changes not approved by Romney/Carson.

6. Roadways and Trails. The road accessing Phase I lots 2-15 of the Parley's Pointe Subdivision shall be a private road with a gated access. However, pedestrian and bicycle access and access to trail heads shall be provided for as shown on Exhibits 1, 2 and 5. A public 80-foot-diameter cul-de-sac will be constructed at the end of Benchmark Drive. A gated private road stemming from the cul-de-sac will provide access to Parley's Pointe Subdivision Phase I lots 2-15. Bicycle access shall be limited to trails located on and below the public and private portions of Benchmark Drive as shown on Exhibits 1 and 2. The access shall also be shown on the applicable recorded subdivision plat(s). Romney/Carson shall not be required to grant any other access through the Phase I or Phase II subdivisions to the open space parcels, described in Paragraph 9.

7. Waterline Easement - Relocation. The parties knowledge that in 1979 Romney/Carson and/or their predecessors granted the City a waterline easement ("Easement") for a 16 inch diameter water pipeline. However, as shown on Exhibit 3, portions of the City's subsequently constructed waterline lie outside of the Easement. Consequently, the parties agree that following the execution of this agreement:

A. A portion of the City's 16" waterline will be relocated by Romney/Carson from the back of lots 5 and 6 and the front of lot 9 into the proposed private roadway within Phase I, as shown on Exhibit 4.

B. Prior to construction, Romney/Carson shall consult with the City to review the proposed construction drawings and specifications to assure that the relocation construction will be in accordance with mutually agreed to design standards and shall obtain the written approval of the City as to the proposed waterline.

C. Upon completion of the consultation and review, and after Romney/Carson has obtained all necessary approvals or permits, and upon receipt of written request from Romney/Carson, the City shall pay to Romney/Carson fifty thousand dollars (\$50,000.00) as its fair share of the relocation costs. However, if the replacement waterline has not been constructed and connected within one year following the date of payment from the City, Romney/Carson shall repay to the City the \$50,000 paid.

D. During relocation construction, the existing waterline as presently located shall continue in service until Romney/Carson's contractor is ready to connect the waterline to the relocated portion. The connection to the relocated portion of the waterline, shall only occur between October 1 and April 30, and at a specific time and date reasonably and mutually acceptable to the parties.

E. After the City's waterline is relocated, Romney/Carson shall promptly convey to the City an easement, for the full width of the private roadway, for the new waterline, and the City shall reconvey back to Romney/Carson those portions of the existing Easement not used by the City for its new waterline.

8. Utilities. As part of Romney/Carson's subdivision application, the City has submitted a letter, attached hereto as Exhibit 6, addressed to the Salt Lake County Board of Health and County Council committing the City to provide water, sewer and storm drain services in accordance with plans approved by the City's Department of Public Utilities to the Phase I and Phase II subdivisions upon final approval of the subdivision plats and annexation into the City. Annexation of the Subject Property is conditioned upon: (a) receiving final County approval of the Phase I subdivision; and either (b) construction of the public and private portions of the Phase

I Roadway and corresponding utility lines, or (c) obtaining and filing a bond with the City, in an amount and form reasonably acceptable to the City, for the roadway and corresponding utility lines. The parties acknowledge that City sewer and storm water facilities will not be made available to service the Subject Property until all applicable conditions of this Agreement have been satisfied and the annexation of the Subject Property has become effective.

9. Romney/Carson Open Space Donation. The parties acknowledge that Romney/Carson has always intended to donate or convey a substantial portion of their property for committed use as undeveloped open space. As a condition of annexation, Romney/Carson confirms that they will donate or sell at a discount from fair market value for use as perpetual open space lots 14a, 14b and 15 of the Parley's Point Subdivision Phase I together with approximately 260 acres of land located adjacent to and running from the proposed Phase I and Phase II Subdivisions to the border of adjacent United States Forest Service property, including all of the remainder of the Subject Property beyond what is designated as building lots, common areas, roadway and related roadway improvements in the Phase I and Phase II subdivision plats shown on Exhibits 1 and 2. The properties to be donated and dedicated as perpetual open space are identified on Exhibits 1 and 2 as lots 14a, 14b, and 15 and as Perpetual Open Space Parcels A, B and C. The donation or conveyance of these open space properties shall occur within twelve (12) months after final approval of each subdivision plat, unless the time for doing so is mutually extended by the parties. The contemplated conveyances will be made subject to a restrictive covenant requiring the preservation of the properties as perpetual open space to either the City, Salt Lake County, or a non-profit organization formed for the charitable purpose of promoting the environment and conserving undeveloped open space and which has been

organized as a public charity pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 and the regulations promulgated thereunder. All parties further acknowledge that development of a substantial portion of the property to be donated or conveyed as described above may be problematic, that the City or Salt Lake County possesses the power to obtain such land by purchase or eminent domain in any event, and that the Agreement herein by Romney/Carson to make such a donation or bargain purchase for the purposes of preserving open space does not represent a concession or modification from their pre-existing intent and commitment to make such a conveyance for the benefit of the public. Under no condition may the conveyed open space be used for any type of residential, commercial or manufacturing uses by the City, County or other designated entity. The conveying document shall contain a reversionary clause providing that title to the property shall revert back to Romney/Carson, in accordance with their interest in the property prior to the conveyance for open space, if the land is ever used for a prohibited purpose.

10. Protection Against Further Foothills Development. In addition to the foregoing donation of open space, and as a condition of annexation and as a protection against further foothill development, Romney/Carson agrees to designate and donate to the City on the subdivision plats, a one-foot strip of property as shown on Exhibit 5.

11. Common Area Open Space Parcels. In addition to the Open Space Parcels described above, certain additional properties shall be designated as common area parcels to be owned by the Homeowners' Association and maintained as common area open space. Upon recordation of each of the subdivision plats, Romney/Carson shall grant to the City a conservation easement over the common area open space parcels, requiring that those common

area open space parcels be maintained as perpetual open space.

12. Dismissal of the Litigation. Within 30 days following the recording of the Phase I and Phase II subdivision plats and the City Council vote to annex the Subject Property, Romney/Carson shall file a Stipulation for Dismissal of the Litigation, with prejudice, in the form attached hereto as Exhibit 7. In the event that Salt Lake County does not grant final approval of the Phase I subdivision as set forth above in paragraph 4 within 4 months following the execution of this Agreement, (unless this deadline is mutually extended by a written amendment to this Agreement) the Litigation shall continue and the Romney/Carson property will not be annexed under the petition for annexation called for in paragraph 1 of this Agreement.

13. Joint Cooperation. Romney/Carson agrees to diligently pursue and use its best efforts to obtain the required approvals. The City agrees to cooperate and reasonably assist Romney/Carson in obtaining the required approvals. The City shall support Romney/Carson's Parley's Pointe Phase I and Phase II subdivision applications before Salt Lake County described in this Agreement and shall reasonably cooperate with Romney/Carson in securing the required County subdivision approvals.

14. Notice to Be Recorded. Contemporaneous with the execution of this Agreement, the parties shall also execute a Notice of Settlement and Annexation Agreement, in the form attached hereto as Exhibit 8. That notice shall be recorded against the Subject Property in the office of the Salt Lake County Recorder.

15. Agreement Not to Be Used as Evidence. In the event the settlement is not completed, this Settlement Agreement shall not be used as evidence in the Litigation or for any other purpose in the Litigation.

16. Remedies. In the event that the City fails to adopt an ordinance approving the annexation of the Subject Property as set forth herein, or if the County fails to approve the Phase I subdivision and roadway, the Litigation shall continue. Following the dismissal of the Litigation, the remedy for failure to perform as required in the terms of this Agreement shall be an action to enforce the terms of this Agreement including the right to specific performance. The parties agree that damages can only be awarded if a court of competent jurisdiction determines that remedy of specific performance is not feasible.

17. General Provisions. The following provisions are also integral parts of this Settlement Agreement:

A. Binding Agreement. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

B. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original. A facsimile transmittal bearing a photocopied signature shall be deemed an original.

C. Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

D. Time of Essence. Time is the essence of this Agreement and every provision hereof.

E. Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

F. Attorneys' Fees. If any action or proceeding is brought by any party to

enforce this Agreement, the prevailing party(s) shall be entitled to recover its related costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy proceeding.

G. Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above.

H. Additional Acts. The parties shall do such further acts and things and shall execute and deliver such additional documents and instruments as may be necessary or reasonably requested by a party or its counsel to obtain the subdivision approvals, annexations, donation of open space, and dismissal of the Litigation described in this Agreement.

I. Assignment. Any party may assign or delegate its rights and obligations hereunder with the prior written consent of the other party, which consent shall not be unreasonably withheld.

J. Authorization. Each individual executing this Agreement does thereby represent and warrant to the other signers that the individual has been duly authorized to execute and deliver this Agreement in the capacity and for the entity specified.

K. Mutual Participation in Document Preparation. Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, the rule of construction to the effect that certain ambiguities are to be

construed against the party drafting a document will not apply.

L. No Third-Party Beneficiary Interests. Nothing contained in this Agreement is intended to benefit any person or entity other than the parties to this Agreement; and no representation or warranty is intended for the benefit of, or to be relied upon by, any person or entity which is not a party to this Agreement.

M. Exhibits Incorporated by Reference. Each exhibit identified in this Agreement is incorporated hereby by reference.

N. Representation regarding ethical standards for City officers and employees and former City officers and employees. Romney/Carson represent that they have not; (1) provided an illegal gift of payoff to the City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, other than bonafide employees or bonafide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in City conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promise that they will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in City conflict of interest ordinance, Chapter 2.44, Salt Lake City Code. Romney/Carson discloses that at one time it hired a former City employee, Alan Johnson as a consultant. At the time of the consultation Mr. Johnson was not a City employee.

O. Effective date. This Agreement shall become binding and effective upon execution by all parties.

ROMNEY LUMBER CO.

By: _____
President
MELBOURNE ROMNEY III

Date: 10/24/05

Mr. Robert W. Carson

Date: _____

Mrs. Honora M. Carson

Date: _____

SALT LAKE CITY

By: _____
Mayor

Date: _____

ATTEST:

Salt Lake City Recorder

Date: _____

I:\LITIGATION\Romney Lumber Company, Inc\Settlement Agreement 2005-10-07 Final

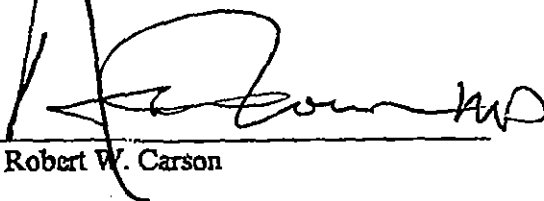
RECORDED
OCT 21 2005
CITY RECORDER

O. Effective date. This Agreement shall become binding and effective upon execution by all parties.

ROMNEY LUMBER CO.

By: _____
President

Date: _____


Mr. Robert W. Carson

Date: 10-21-05


Mrs. Honora M. Carson

Date: 10/21/05

SALT LAKE CITY

By: _____
Mayor

Date: _____

ATTEST: ,

Salt Lake City Recorder

Date: _____

\\LITIGATOR\Romney Lumber Company, Inc\Settlement Agreement 2005-10-07 Final

RECORDED
OCT 21 2005
CITY RECORDER

O. Effective date. This Agreement shall become binding and effective upon execution by all parties.

ROMNEY LUMBER CO.

By: _____
President

Date: _____

Mr. Robert W. Carson

Date: _____

Mrs. Honora M. Carson

Date: _____

SALT LAKE CITY

By: [Signature]
Mayor

Date: 10-21-05

ATTEST:



Beverly Jones
Salt Lake City Recorder (Deputy)

Date: _____

RECORDED

OCT 21 2005

CITY RECORDER

\\LITIGATT\Romney Lumber Company, Inc\Settlement Agreement 2005-10-07 Final

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 10-20-05
By [Signature]

C-05-731

Exhibits 1-5

NOTES

1. ALL PRIVATE ROADS IN THIS SUBDIVISION ARE TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

2. COMMON AREAS A, B, C, D, E & F ARE TO REMAIN OPEN SPACE IN PERPETUITY TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

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RECEIVED

CL 20' PUBLIC TRAIL EASEMENT.
FOR PEDESTRIAN TRAFFIC ONLY.
TRAIL EASEMENT TO BE DEICATED
WITH RECORDATION OF THE
SUBDIVISION PLAT.

P.O.B. OF
PROPERTY LEGAL

1752.57 : NORTH 1/4 CORNER SECTION 23,
TOWNSHIP 1 SOUTH, RANGE 1 EAST
SEAL LAKE, BASE & MENDOTA

BENCHMARK SUBDIVISION

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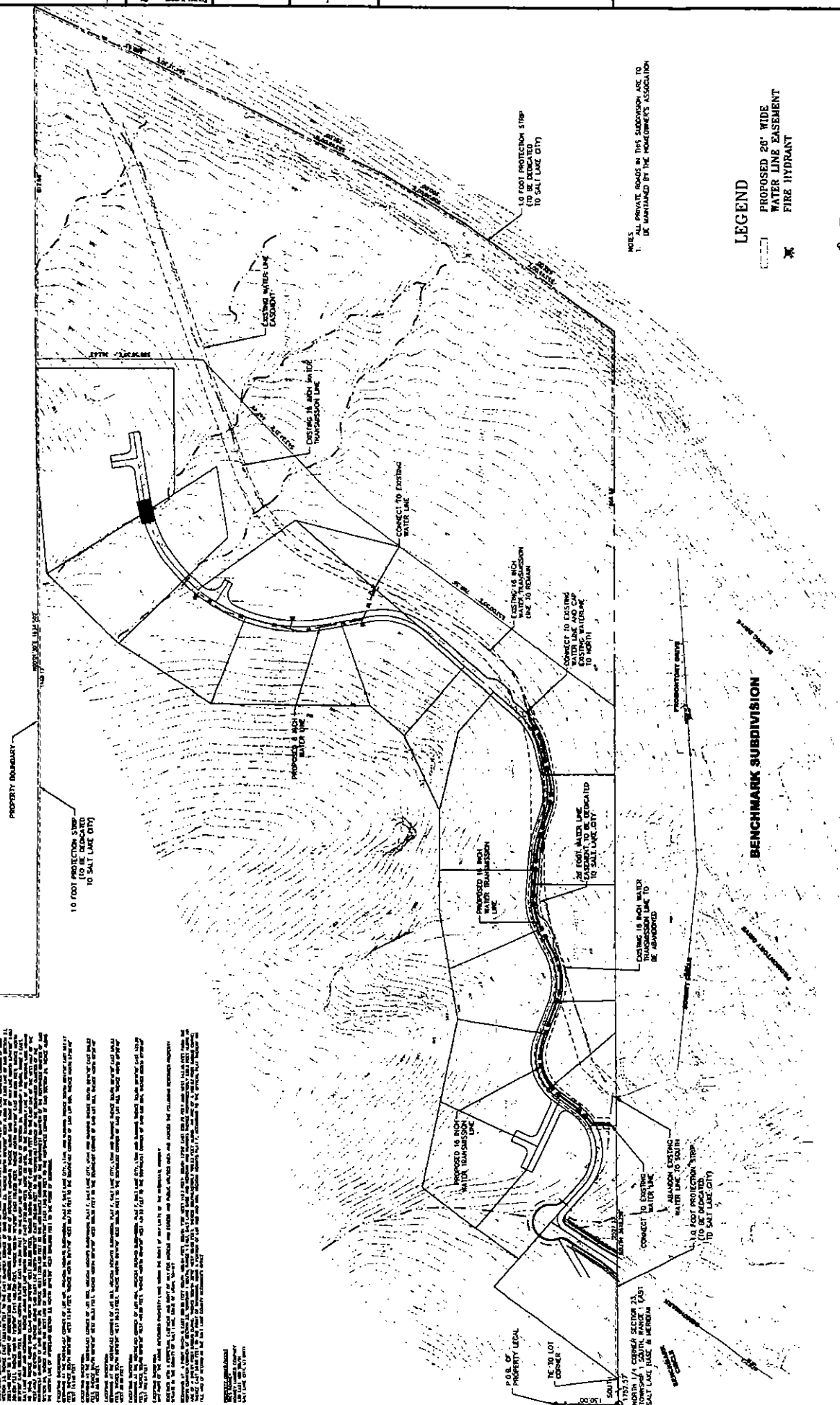
LEGEND



GRAPHIC SCALE



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3. ORDINANCE NO. 24 of 2006

SALT LAKE CITY ORDINANCE
No. 24 of 2006

(Annexing the Property Included within the Parley's Pointe
Annexation Petition, Amending the Applicable Master Plans,
and Rezoning the Area upon its Annexation into the City)

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF SALT LAKE CITY TO INCLUDE APPROXIMATELY 405.59 ACRES OF UNINCORPORATED TERRITORY INCLUDED WITHIN THE PARLEY'S POINTE ANNEXATION PETITION, LOCATED IN THE VICINITY OF 2982 EAST BENCHMARK DRIVE (EAST OF APPROXIMATELY 3000 EAST AND FROM APPROXIMATELY 2100 SOUTH TO 2600 SOUTH), PURSUANT TO PETITION NO. 400-05-41, AMENDING THE EAST BENCH COMMUNITY MASTER PLAN, THE ARCADIA HEIGHTS, BENCHMARK AND H-ROCK SMALL AREA MASTER PLAN, AND AMENDING THE SALT LAKE CITY ZONING MAP TO ZONE AND DESIGNATE THIS AREA AS FOOTHILL RESIDENTIAL (FR-2), FOOTHILL RESIDENTIAL (FR-3), OPEN SPACE (OS) AND NATURAL OPEN SPACE (NOS) UPON ITS ANNEXATION INTO THE CITY.

WHEREAS, Salt Lake City has received Petition No. 400-05-41 (the "Petition"), Parley's Pointe Annexation, filed by the Romney Lumber Company and Robert and Honora Carson requesting the annexation of approximately 405.59 acres of unincorporated territory in Salt Lake County, which would extend the existing corporate limits of Salt Lake City; and

WHEREAS, the Petition is signed by the owners of a majority of the real property and the owners of more than one-third in value of all real property within the territory to be annexed as shown by the last assessment roles of Salt Lake County; and

WHEREAS, the Petitioner has submitted to the City a plat for the territory proposed for the annexation; and

WHEREAS, the territory described in the Petition lies contiguous to the corporate limits of Salt Lake City and within an area projected for Salt Lake's municipal expansion, and otherwise satisfies the standards and the criteria applicable to annexations; and

WHEREAS, Salt Lake City and the Petitioner have executed a Settlement and Annexation Agreement, dated October 24, 2005, which addresses the annexation and future development of this property; and

WHEREAS, no objection or protest to such annexation has been filed with the Salt Lake County Boundary Commission; and

WHEREAS, after properly advertised and noticed public hearings before the Salt Lake City Planning Commission and the Salt Lake City Council, the City Council has determined that this annexation is in the best interest of the City;

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Annexation. The Salt Lake City limits are hereby enlarged and extended so as to include the properties identified within the Parley's Pointe Annexation Petition, containing approximately 405.59 acres of unincorporated territory in Salt Lake County, State of Utah. Said properties are more particularly described as set forth on Exhibit A attached hereto.

SECTION 2. Amendment of Applicable Master Plans. The East Bench Community Master Plan and the Arcadia Heights, Benchmark and H-Rock Small Area Master Plan, which were previously adopted by the City Council, shall be and hereby are amended to allow limited, very low density, single family residential development in the area consisting of not more than 15 new lots all but one of which shall be located on a private street extending off the current terminus of Benchmark Drive, and not more than 4 new lots located on a public cul-de-sac extending from the current terminus of Scenic Drive.

SECTION 3. Zoning. Portions of the property annexed, as more particularly described on Exhibit B(1), B(2) and B(3) attached hereto, shall be and hereby are designated and zoned as Natural Open Space (NOS). Portions of the property annexed, as more particularly described on Exhibit B(4), B(5), and B(6) attached hereto, shall be and hereby are designated and zoned Foothill Residential (FR-2). Portions of the property annexed, more particularly described on Exhibit C attached hereto, shall be and hereby are designated and zoned Open Space (OS).

Portions of the property annexed, more particularly described on Exhibit D attached hereto, shall be and hereby are designated and zoned Foothill Residential (FR-3). The Salt Lake City Zoning Map, as previously adopted by the Salt Lake City Council, shall be and hereby is amended consistent with this Ordinance.

SECTION 4. General Jurisdiction. All ordinances, jurisdictions, rules and obligations of, or pertaining to, Salt Lake City are hereby extended over, and made applicable and pertinent to the above annexed property; and the property shall hereafter be controlled and governed by the ordinances, rules, and regulations of Salt Lake City.

SECTION 5. Filings and Notices. Upon the effective date of this Ordinance, the City Recorder of Salt Lake City is hereby directed to file with the Salt Lake County Recorder, after approval by the City Engineer, a copy of the annexation plat duly certified and acknowledged together with a copy of this ordinance. The City Recorder is further directed to provide notice to the State Tax Commission under the provisions of Utah Code Annotated section 11-12-1, as amended.

SECTION 6. Compliance with Settlement and Annexation Agreement. The effectiveness of this Ordinance shall be and hereby is expressly conditioned upon fulfillment of all of the applicable procedures, terms and conditions set forth in the Settlement and Annexation Agreement, dated October 24, 2005, a copy of which is on file with the Salt Lake City Recorder, including, but not limited to, the following items:

- (a) Approval by Salt Lake County of the Phase I Subdivision, consisting of not more than 15 lots located off Benchmark Drive; and
- (b) Construction of the public and private portions of the Phase I roadway and corresponding utility lines, or obtaining and filing a bond with Salt Lake City, in an amount and form reasonably acceptable to the City, for the roadway and corresponding utility lines.

Upon satisfaction of all of the applicable procedures, terms, and conditions set forth in the Settlement and Annexation Agreement, this Ordinance shall become effective without the need for any further approval from the Salt Lake City Council.

SECTION 7. Effective Date. This Ordinance shall not become effective until the terms and conditions set forth herein, as well as those terms and conditions set forth in the Settlement and Annexation Agreement, have been satisfied, as certified by the Director of the Salt Lake City Community Development Department and the Director of the Salt Lake City Public Utilities Department. The City Recorder is instructed not to record or publish this Ordinance until the above-mentioned certifications have been received.

SECTION 8. TIME. If the conditions set forth above have not been satisfied within two years following the date of this Ordinance, this Ordinance shall become null and void. The City Council may, by resolution, for good cause shown, extend the time period for satisfying the conditions set forth herein.

Passed and adopted by the City Council of Salt Lake City, Utah this 2nd day of May, 2006.

Bill No. 24 of 2006.

Published: has conditions.

4. RESOLUTION 24 of 2008

Resolution 24 of 2008/extending time period for satisfying conditions in Ordinance 24 of 2006.

RESOLUTION NO. 24 OF 2008

A RESOLUTION EXTENDING THE TIME PERIOD
FOR SATISFYING THE CONDITIONS SET FORTH
IN ORDINANCE NO. 24 OF 2006

(Annexing approximately 406 acres of property located in the
vicinity of
2982 East Benchmark Drive)

WHEREAS, the City passed Ordinance No. 24 of 2006 on May 10, 2006; and

WHEREAS, that ordinance imposed certain conditions and required that those conditions be met within two years from the date of the ordinance; and

WHEREAS, the ordinance also provided that the City Council may extend the time period for satisfying the conditions set forth in the ordinance;

NOW, THEREFORE, be it resolved by the City Council of Salt Lake City, Utah:

SECTION 1. The deadline set forth in Ordinance No. 24 of 2006 shall be and hereby is extended, from May 10, 2008, to May 10, 2010, with up to two 1 year extensions if needed to complete all of the conditions required.

SECTION 2. This resolution shall become effective immediately.

Passed by the City Council of Salt Lake City, Utah, this 6th
day of May, 2008.

5.REQUEST for TIME EXTENSION

ROMNEY LUMBER COMPANY

660 South 200 East, Suite 300
SALT LAKE CITY, UTAH 84111

Telephone: (801) 328-3200
Facsimile: (801) 328-1123

Mr. J.T. Martin, Chair
Salt Lake City Council
451 South State Street, Room 304
Salt Lake City, Utah 84111

March 25, 2010

RE: Requesting an additional 5 years extension to the current time limit established by Ordinance No. 24 of 2006 and Resolution 24 of 2008 to meet the conditions established to annex property into Salt Lake City—Romney Lumber Company and Robert and Honora Carson, property owners.

PARLEY'S POINTE ANNEXATION ORDINANCE EXTENSION REQUEST

Petitioners/property owners: Romney Lumber Company (Melbourne "Tres" Romney, III and Antoine M. "Tony" Romney) and Robert and Honora Carson, property owners.

REQUEST: The property owners are requesting a five (5) year extension to the two (2) year time limit contained in the Annexation Ordinance passed by the City Council on May 10, 2006 and to the two year extension already granted by Resolution 24 of 2008 (The current extended time limit is to May 10, 2010).

BACKGROUND: The property owners have owned the approximately 324 acres of undeveloped foothill property since about 1966. Since the early 1990's, the owners have been seeking annexation and foothill residential subdivision approvals from Salt Lake City. These efforts resulted in an annexation denial from the City which occurred September 7, 1999, followed by a subsequent annexation approval, which was then challenged by the owners in Federal Court, and heard in October, 2002. The property owners then sought subdivision approvals from Salt Lake County. The Federal Court proceedings resulted in a partial summary judgment denying the annexation and a court ordered mediation to settle other issues, including damages and "takings" claims; which mediation occurred on April 20, 2004. The mediation effort produced a settlement agreement between the City and the owners, which was finalized and signed by both parties on October 21, 2005.

The settlement agreement provisions required that a new annexation petition be filed by the property owners, which occurred in January, 2006 and which were subsequently processed by the Salt Lake City staff and approval bodies. The result of these efforts produced the conditional annexation ordinance passed by the Salt Lake City Council in May 2006, which ordinance included a two-year period for the conditions contained in the ordinance to be met. The

principal triggering condition contained in the annexation ordinance is that the Phase I subdivision must be approved by Salt Lake County and recorded prior to the annexation becoming effective.

Since May of 2006, the property owners have been diligently seeking the required Phase I subdivision approval from Salt Lake County officials under Salt Lake County development regulations and processes. Unfortunately, this process has required more time than any of the parties to the settlement agreement originally anticipated. To date, the Parley's Pointe Phase I subdivision has received preliminary and final approval from the County Planning Commission and is currently in final plat review with County staff. Performance bonding and subdivision improvement contracts are also being finalized. The current agreement provides that approximately 260 acres of open space land be donated to Salt Lake County, to be accomplished through recording of the subdivision plat.

In 2008 the national economic recession occurred which created turmoil in the real estate development and banking industries, resulting in a significant plunge in real estate values along with a serious, crippling elimination of sources of land development loans and bonding. Even though the subject property is owned in fee simple, free and clear of any mortgage, the current financial situation prevents the owners from obtaining bank funding for the \$1.5 to \$2.0 million required for street and utility infrastructure improvement costs within the Phase I subdivision project area. The property owners are currently working with the Salt Lake County departments and with the Salt Lake City Public Utilities Department to secure final signatures on the subdivision plat and on the street and infrastructure improvement design drawings. When final versions of these documents have been executed, it is anticipated that they will be placed in escrow, along with the remaining agreements relating to the proposed subdivision, until recovery of the real estate market and renewed availability of financing will again make the development of the property feasible.

Based on the foregoing, the property owners respectfully request that an extension of five (5) years (through May 10, 2015) be granted to the completion period set forth in Ordinance No. 24 of 2006, as currently extended.

POSITIVE OUTCOMES: The following positive results are anticipated by extending the period as requested to allow completion of the conditions required by the Ordinance:

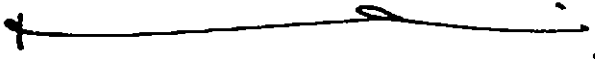
- Final resolution of the longstanding legal dispute will be reached without additional financial cost to Salt Lake City.
- Single family residential foothill lot development limited to 17 new lots on approximately 31.5 acres.
- Permanent termination of two existing street stubs into public street cul-de-sacs.
- Septic tanks will be avoided. Salt Lake County will require septic tanks if the City sewer service is not available as contemplated by the settlement agreement). The use of septic tanks would have potentially jeopardized Salt Lake City drinking water and possibly have been detrimental to existing residential lot owners down slope from the property.
- Public trail access will be maintained and expanded through the granting of

permanent easements.

- Approximately 260 acres of open foothill land will be dedicated for perpetual open space and preserved through public ownership and zoning.
- Increased protection against future foothill development provided by one foot holding strip and open space easements, anticipated to be granted by the subdivision plat recording.
- Salt Lake City's zoning regulations, which include special foothill design regulations, will apply to all building permits and to all dwellings within the subdivisions, and will help to reduce the offsite visibility of the project.
- The Salt Lake City Public Utilities Department must grant final approval of water and drainage for Phase I final plat.
- Continued good faith cooperation demonstrated by the parties to the settlement agreement in furtherance of the resolution of legal issues.

Thank you for your consideration and cooperation.

Respectfully.



Melbourne Romney III
for property owners Romney Lumber Company and
Robert and Honora Carson

Attachments:

- 11 by 17 inch annexation map.
- 8.5 by 11 inch air photo with annexation area delineated.

RESOLUTION NO. _____ OF 2010

A RESOLUTION EXTENDING THE TIME PERIOD
FOR SATISFYING THE CONDITIONS SET FORTH
IN ORDINANCE NO. 24 OF 2006

(Annexing approximately 406 acres of property located in the vicinity of
2982 East Benchmark Drive)

WHEREAS, the City passed Ordinance No. 24 of 2006 on May 10, 2006; and

WHEREAS, said ordinance imposed certain conditions and required that those
conditions be met within two years from the date of the ordinance; and

WHEREAS, said ordinance also provided that the City Council may extend the time
period for satisfying the conditions set forth therein; and

WHEREAS, The City passed Resolution No. 24 of 2008 on May 6, 2008 which
resolution extended the performance period set forth therein Ordinance 24 of 2006 by two
years; i.e. until May 10, 2010, and further also provided for "up to two 1 year additional
extensions, if needed, to complete all of the conditions required"; and

WHEREAS, the City believes that under the current economic circumstances, good
cause exists for granting additional time to meet the conditions;

NOW, THEREFORE, be it resolved by the City Council of Salt Lake City, Utah:

SECTION 1. The deadline set forth in Ordinance No. 24 of 2006, and as extended by
Resolution No. 24 of 2008, shall be and hereby is extended, from May 10, 2010, to May 10,
2015, if needed, to complete all of the conditions required.

SECTION 2. This resolution shall become effective immediately.

Passed by City Council of Salt Lake City, UTAH this _____ day of _____, 2010

SALT LAKE CITY COUNCIL

By: _____

CHAIRPERSON

ATTEST AND COUNTERSIGN:

CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM:

SALT LAKE CITY ATTORNEY



6. DRAFT RESOLUTION

RESOLUTION NO. _____ OF 2010

A RESOLUTION EXTENDING THE TIME PERIOD
FOR SATISFYING THE CONDITIONS SET FORTH
IN ORDINANCE NO. 24 OF 2006

(Annexing approximately 406 acres of property located in the vicinity of
2982 East Benchmark Drive)

WHEREAS, the City passed Ordinance No. 24 of 2006 on or about May 10, 2006; and

WHEREAS, said ordinance imposed certain conditions and required that those conditions
be met within two years from the date of the ordinance; and

WHEREAS, said ordinance also provided that the City Council may extend the time
period for satisfying the conditions set forth therein; and

WHEREAS, the City passed Resolution No. 24 of 2008 on or about May 6, 2008, which
resolution extended the performance period set forth therein Ordinance 24 of 2006 by two years;
i.e. until May 10, 2010, and further also provided for “up to two 1 year additional extensions, if
needed, to complete all of the conditions required”: and

WHEREAS, the City believes that under the current economic circumstances, good cause
exists for granting additional time to meet the conditions;

NOW, THEREFORE, be it resolved by the City Council of Salt Lake City, Utah:

SECTION 1. The deadline set forth in Ordinance No. 24 of 2006, and as extended by
Resolution No. 24 of 2008, shall be and hereby is extended, from May 10, 2010, to May 10,
2015, if needed, to complete all of the conditions required.

SECTION 2. This resolution shall become effective upon publication.

Passed by the City Council of Salt Lake City, Utah, this ____ day of _____, 2010.

SALT LAKE CITY COUNCIL

By: _____
CHAIRPERSON

ATTEST AND COUNTERSIGN:

CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM:

 3-31-10
SALT LAKE CITY ATTORNEY

**7. DEPARTMENT/DIVISION DIRECTORS'
RECOMMENDATIONS**

Mills, Wayne

From: Peterson, Max
Sent: Tuesday, March 30, 2010 5:08 PM
To: Mills, Wayne
Subject: RE: Parley's Pointe Annexation Ordinance Time Extension

Categories: Other

Wayne,

Engineering is okay with the request for a five year extension.

Max

From: Mills, Wayne
Sent: Tuesday, March 30, 2010 3:56 PM
To: Niermeyer, Jeff; Peterson, Max
Cc: Garcia, Peggy
Subject: Parley's Pointe Annexation Ordinance Time Extension
Importance: High

Hello Jeff and Max-

Representatives of the Parley's Pointe Annexation property have requested a five year extension to the ordinance annexing the Parley's Pointe property (see attached). The ordinance was adopted in May 2006 with a two year time limit. In May 2008 the City Council granted a two year extension. The ordinance will expire on May 10, 2010 unless the City Council grants an additional extension.

The petitioners are requesting a five year extension in order to allow more time to comply with the terms of the ordinance and Settlement and Annexation Agreement. I am currently working on a transmittal to the City Council requesting the extension of time. I'm sorry for the request for a quick turnaround, but please review the attached letter and respond with any comments or concerns that you may have with the requested extension as soon as possible. I need to forward my transmittal by the end of the week.

Please contact me if you have questions. Thank you for your consideration.

Wayne Mills
Senior Planner
Salt Lake City Planning Division
451 S. State Street, Room 406
PO Box 145480
Salt Lake City, UT 84114-5480
Phone: 801-535-7282
Fax: 801-535-6174

Mills, Wayne

From: Vetter, Rusty
Sent: Wednesday, March 31, 2010 3:02 PM
To: Mills, Wayne
Cc: Pace, Lynn; Garcia, Peggy
Subject: FW: Parley's Pointe Annexation Ordinance Time Extension
Attachments: Parley's Pointe Annexation_Request for Time Extension.pdf

Importance: High

Categories: Other

Wayne, I spoke to Jeff Niermeyer concerning this and he is prepared to go forward with the 5-year extension as proposed. Romney has provided a draft escrow agreement that I believe Lynn Pace is reviewing. From Public Utilities' perspective, Peggy Garcia is working with Doug Wheelwright to get everything finalized. I don't believe that all these documents need to be finalized before you transmit your paperwork to the Council.

From: Mills, Wayne
Sent: Tuesday, March 30, 2010 3:56 PM
To: Niermeyer, Jeff; Peterson, Max
Cc: Garcia, Peggy
Subject: Parley's Pointe Annexation Ordinance Time Extension
Importance: High

Hello Jeff and Max-

Representatives of the Parley's Pointe Annexation property have requested a five year extension to the ordinance annexing the Parley's Pointe property (see attached). The ordinance was adopted in May 2006 with a two year time limit. In May 2008 the City Council granted a two year extension. The ordinance will expire on May 10, 2010 unless the City Council grants an additional extension.

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Please contact me if you have questions. Thank you for your consideration.

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