

MEMORANDUM

DATE: JUNE 30, 2015
TO: BOARD OF TRUSTEES AND TOWN OF MILLIKEN STAFF
FROM: R. BRUCE FICKEL
RE: THE FIELDS' DETACHMENT ISSUES

Factual Background from Planning

The land was James T McDowell Jr.'s who subdivided the land for the Mill Iron subdivision. The plat shows this sliver of land outside of the subdivided area. The original plat for Second Annexation in 1997, Ordinance No. 367 with an effective date of December 20, 1997, shows the land being subdivided off of corners with "no monument found" and being annexed into the Town of Milliken. Most likely this is when the error occurred. The final plat for Mill Iron 5 Ranch Estates dated 3/18/99 and recorded 4/15/1999 shows the subdivision with the sliver of land (~6.78 acres) outside of the subdivision boundaries. The sliver was not platted for development as part of the Mill Iron subdivision. The Mill Iron Subdivision had a road, Mill Iron Road that ended in a cul-de-sac with access through to the "sliver" parcel.

After looking at the plat and later documentation, it appears there was a gentlemen's agreement between Mr. McDowell Jr. and Robert Fields to provide access to Fields' land which included the sliver of land-and the two of them never got around to getting the paperwork "in order" before the death of Mr. McDowell Jr. Afterwards, the families worked together and James T. McDowell III, as personal representative of James McDowell Jr.'s estate, transferred the sliver of land to the Fields on February 22, 2007 for \$878.00, which Dave Fields said at the Planning & Zoning Commission meeting on April 15, 2015 paid for the land to be surveyed and recorded.

Previously, Robert Fields told staff that he tried to clean up the mistake by transferring the land from the McDowell's. Robert said he was paying a nominal amount of tax to the Town and didn't really care that part of the land was annexed into Milliken at that time. He thought that someday the Fields would annex and de-annexing at that time was more hassle than it was worth. However, it became an issue when Dave Fields wanted to build his house on the ~6.78 acre parcel that was in the Town. For the Fields it made sense to detach the sliver out of the Town and consolidate the Fields two farm-related properties in Weld County. Dave Fields told staff and later in the Planning & Zoning Commission meeting on April 15, 2015 that he wanted to

build his house on a hill, keep all of the farm property together, and that the Fields were not interested in annexing into the Town at this time.

The application for disconnection and Town's staff report provides the history and findings of fact. It appears that the fence was considered the property line and a mistake was made with the Second Annexation, which is why Town staff supported the detachment.

Legal Analysis

This memo was prepared at the direction of the Town of Milliken's Board of Trustees to respond to the Fields' concerns relative to, initially, the annexation of their property and, secondarily, the detachment of their property from the Town.

The legal authority of any municipality to annex or detach property to or from a municipality is specifically prescribed in the State's statutes. Thus, compliance with State statutes is compulsory. The initial problem with respect to the subject property appears to have been the result of a historic fence which was not located on the legal property line. Upon the annexation, and later subdivision of the Mill Iron Property, 6.78 acres of land previously farmed by Fields were included in the Mill Iron Subdivision. The annexation map of the Mill Iron Property did not show this boundary issue. Mr. Fields was very concerned about not having received notice by certified mail of the hearing before the Milliken Planning Commission with respect to the annexation of the Mill Iron Property. However, the Fields family was present with their attorney at the time the annexation was considered by the Board of Trustees. As you are aware, the Planning Commission has no legal authority over annexations by the Town and acts only in an advisory capacity. Thus, the Fields' legal position was not jeopardized as a result of the lack of receiving advance written notice of the hearing by the Planning Commission. In spite of this apparent lack of notice to the Fields, they were present at the time of the annexation hearing before the Board of Trustees. With respect to this hearing before the Board of Trustees, Section 31-12-109(1) C.R.S. states, "Any person may appear at such hearing and present evidence upon any matter to be determined by the governing body." The Fields had every opportunity to present their legal and factual positions at that hearing.

Moreover, because the Fields' property, the 6.78 acres mentioned above, was annexed into the Town as a result of the Mill Iron Annexation, the Fields had additional legal rights that they could have asserted. Section 31-12-116(2)(a)(I) C.R.S. gave the Fields the opportunity to challenge the annexation within the sixty days after the effective date of the annexation ordinance.

Several facts of significance were also presented by Mr. Fields. First, they bought the 6.78 acre parcel they had been farming from the owner of the Mill Iron Property. Even though the amount that Fields paid for the acreage was relatively small, this purchase did show, without question, that they were aware this property had been annexed into the Town, and for all intents and purposes it continued to be part of the Town of Milliken. In addition, subsequent to the annexation, the Fields' acknowledged that they knew that their property taxes showed that a mill levy of the Town was being applied to and assessed for this acreage. It appears that because the Fields were, subsequent to its annexation, using the sliver of property as farm land until they wanted to build a home they really had not significant reason for detaching this property from Milliken.

Mr. Fields also addressed concerns that the detachment from the Town of Milliken was an expensive process. Here again, the Town is required to follow the State's statutes. The Fields' detachment was processed by the Town as expeditiously as could have been done while still conforming with the State statutes. The fees the Fields paid for the detachment were those established by the Town's ordinances, which in this case, would have been a \$750 fee and a \$2,000 deposit. The Fields have been treated the same as the Town's other applicants who have submitted annexation related petitions.

In summary, the Fields had an opportunity at the time the Mill Iron Property was annexed to address the 6.78 acre ownership issue, but failed to do so. Subsequent thereto, the Fields had the opportunity to file suit to challenge the annexation of their acreage and failed to do so. Subsequent to the annexation the Fields purchased the acreage with knowledge that the acreage had been annexed into the Town. Subsequent to their purchase of the acreage, they admitted that they knew that this sliver had been annexed to Milliken and paid the mill levy assessed on this property to the Town of Milliken for seventeen years.

Finally, the Fields now complain that the detachment fee charged by the Town and their legal fees should be mitigated by the Town. Legally, the Town has no obligation to modify its detachment fee, nor to pay Fields' legal fees especially since it does not do so for other parties involved in annexation related issues. However, the manner in which the Board of Trustees elects to expend the taxpayers' funds is, in this case, at the discretion of the Board.

Respectfully submitted,

R. Bruce Fickel

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