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THE CHEYENNE HERALD

the local advocacy journal

In depth. Independent. Stories of Local Interest.

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Wyoming legislators, Wake Up!



There are reasons annexed parcels must overlap.

by *Dave Featherly*

"No man's life, liberty, or property is safe while the legislature is in session."

Mark Twain

Over 500 bills were filed by members of the Fifty-eighth Legislature.

It is inconceivable that a tiny state, with minimal activity in the high tech industries of the twenty-first century, needs 500 new laws enacted during the general sessions and another 300 during the budget sessions.

Wyoming's legislative body is excessive in number. That translates to innumerable bills being presented for actions which are not in the best interests of the majority of Wyoming residents. Special interest groups dictate.

We have residents in Cheyenne and Laramie County who have had to sue the City in order to protect their rights. Their costs of litigation are borne by them. The City's costs of litigation are also borne by them - the same residents.

Neither this legislature nor previous ones have made any attempt to right that wrong.

In the instances where residents have prevailed on major issues of property rights, it has cost them tens of thousands of dollars.

The City's response to losing at the Supreme Court level is to approach a compliant legislature to change the laws which they knowingly violated.

Then, legislators journey to Cheyenne from the remotest areas of the state, only to be confronted with far more legislative matters than they can grasp in a 40 day session.

If the outcome of this annexation bill concerns you, you must call your Representative TODAY! Call all House members and tell them to vote "NO!" on this unwise legislation!

It's not that there aren't some bright and dedicated members of our legislature. There are.

But, reviewing a fraction of the total bills to prepare stories on some with the most interest, it becomes crystal clear that no single - repeat, no one legislator can adequately read and understand the 500 bills they are expected to cast votes on.

Then, some of the bills upon which a legislator may have focused attention can be defeated in committee and never come before them. Time poorly spent.

The March 3, 2004, Wyoming Supreme Court decision on Cotton v. City of Cheyenne clearly spelled out the issue of annexation.

The City of Cheyenne knowingly and repeatedly approved annexation of land which was not even **ELIGIBLE** to be considered for annexation, let alone to be annexed. Promises were obviously made to developers ... "if you buy the land, we will annex it."

And, they would have gotten away with the illegal if the Cheyenne Herald had not been established. On a tip that the annexation of land a mile and a half west of the nearest city boundary was probably illegal, I began to research the matter. It was an easy review.

Courts in states across this land all had ruled similarly. Without ambiguity or confusion, they had ruled time and again that the annexed parcel must overlap the municipal border. Land separated by any distance - any distance - could not legally be annexed to the municipality. Courts considered the issue of "point to point" or "corner to corner" touching. No court that I, Gay Woodhouse, John Walker or Peter Froelicher (all attorneys) could find had

ever ruled that touching to that degree satisfied the definition of adjacent or contiguous. I personally found decisions that said 20 feet of overlap was insufficient and that 800 feet met the requirement. But, nowhere could be found a ruling that said corner to corner touching was sufficient.

John Walker, of Hickey, Mackey, Evans and Walker law firm in Cheyenne, in his brief to the Supreme Court in the case which brought down the three illegal annexations of the City of Cheyenne, challenged - he challenged - the City of Cheyenne to "provide this honorable Court with a citation to any Wyoming annexation statute that expressly authorizes the leap frog annexation of land such as the Saddle Ridge property."

His challenge went unanswered because the City could not provide such citation. Not in Wyoming nor anywhere in the nation.

With a show of hands, please, how many Wyoming legislators in town for this session have read the Supreme Court decision on annexation?

Just what I thought.

You need to read it and understand the points the Court very effectively articulated. And, don't be misled by the title. This case was not brought by the Laramie County Commissioners. They came to the table long after Dr. Jean Cotton and her two daughters, Ruth and Katy, brought the suit against the City. In fact, the County and their attorney, Peter Froelicher, fought me when I tried to enlist their cooperation in heading this dispute off before it cost residents tens of thousands of dollars to contest the illegal annexations. And, they never initiated any annexation lawsuit - they only joined litigation initiated by private residents. Shame on them.

And shame on legislators if they vote on the changes demanded by the City of Cheyenne without reading the Supreme Court decision of March 3, 2004.

What the City of Cheyenne is demanding - and make no mistake about it, it is only the City, not the residents, who are making the demand - is for Wyoming legislators to make law unlike any in existence anywhere else in the United States.

On virtually every other issue confronting the legislators, arguments are made that "every other state (most other states, etc.) has such a law." Thus, we should get into line and enact one ourselves.

But on the annexation issue, legislators are being asked to ignore what every other jurisdiction has determined after legal challenges of every kind for more years than Wyoming has faced the issue.

John Walker's challenge not only went unanswered, but what the City's legal counsel presented to the High Court was scoffed at by them. *By the way, outside counsel on the illegal annexations has cost residents of Cheyenne \$300,000.* Citations presented in the City's legal brief were not on-point and the Court said so.

More quotations from the decision can be found on page 11. Near the end, the Court's ruling read:

We agree not only with the result in the cases finding adjacent and contiguous to be synonymous in the annexation context, but with their reasoning as well. The public policy behind geographically limited municipal annexation was well stated in Hawks, 261 S.E.2d at 97: "Contiguity ... is one of oneness, community, locality, vicinity; a collective body, not several bodies; a collective body of inhabitants -- that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interest because residents of the same place, not different places. So, as to territorial extent, the idea of a city is one of unity, not of plurality, of compactness or contiguity, not separation or segregation." (Found on page 12 of the decision.)

This legislator has the power, but not the competence, to substitute itself for our Supreme Court. (More on page 11.)

Editors note: Some of the articles on the pages of this Herald were written before Legislative action was completed. There are instances where the action affected the stories but the changes could not always be made to reflect those actions. Deadlines can be troublesome. Everything cannot be written on the final weekend before printing. Our positions are taken without regard to how the vote may end up in the Wyoming Senate or House. That should be obvious from the contents, timelines, etc., of certain stories herein.

Annexation (continued from page 1)

Those who best understand the wheres and whyfores of the annexation laws have submitted an amendment to what is cruising through the Wyoming Senate.

Basically, the change would deal with the subject of annexed land overlapping city land.

That, after all, was the only "confusing" aspect of the Supreme Court ruling to the city officials and their legal counsel.

"Substantial touching" was too vague for them. They pretended to not understand that land a mile and a half distant from the city would not meet substantial touching no matter what the specific definition might be.

Instead of seeking clarification of that term, Cheyenne elected officials approached passive legislators, seeking changes which would allow annexation of any parcel of land within one mile of the existing municipal boundary.

Substantial touching was contrary to their designs. Cheyenne wanted to be able to annex cheaper land, separated from the city by county land - generally agricultural land.

The truth of the matter is, and legislators from locales distant from Cheyenne are unaware of the true controversy here, that developers are not seeking land to develop. They are seeking cheap land.

There is considerable land adjacent or contiguous to the city limits. But, it can't be bought for a thousand an acre. And developers can't profitably build on 12,000 sq. ft. lots - they want density to rival Cabrini Green in Chicago.

Naive, trusting and uninformed outstate legislators are critical to this City's scheme. They are also critical to the residents of Cheyenne and Laramie County.

If this legislation is passed based on what lobbyists in support of the radical overhaul of annexation statutes claim, the state of Wyoming will soon become the laughingstock of the nation.

For legislators who don't know a tort from a tart to inject themselves into a legal dispute which was exceptionally well resolved by the Wyoming Supreme Court is a dangerous action. Seldom are bills introduced in the legislator so blatantly in contravention to what the State High Court has recently considered and decided.

Gay Woodhouse, former Wyoming Attorney General and current resident's property rights advocate, presented an amendment which would have satisfied those who do understand the nature and purpose of municipal growth. That provision would have required annexed land to overlap city land by 300 feet or 1/8 of the expanse, whichever is less.

That would satisfy the City's craving for a definition of "substantial touching." That would also call their bluff.

The City of Cheyenne lobbyists would then be forced to admit that these changes aren't about Wyoming having a law consistent with the rest of the country. It is about quenching their insatiable thirst for population growth - reason, fairness and sense be damned.

A system which employs an executive, a legislative and a judicial branch of government leaves itself open to the less qualified controlling the more. Not that it's healthy - it's just possible.

Over twenty years ago, the Wyoming Attorney General wrote: *"Most courts hold contiguity is more than mere technical touching and requires reasonably substantial physical contact between the territory and the municipality."*

If this Wyoming Legislature decides that mere touching satisfies the oft-litigated definition of contiguous, they will have to dismiss conclusions of the top legal officers of the State of Wyoming.

Municipalities are best served by expanding from the center outward. To create a checkerboard pattern of annexation is not in the best interests of anyone.

Hawkes went on: "The element of contiguity helps to preserve the economic and political viability of municipal government. The costly package of services provided by municipal government can be economically maintained only within the compact boundaries fostered by the contiguity requirement." And, "Conversely, the requirement of contiguity discourages prohibitively expensive extension of municipal services to noncontiguous areas where municipal services cannot be economically supplied."

Never could have anyone have imagined that the word "contiguous" would be morphed into what this legislature is asked to approve.

If the current bill becomes law, it will mean that one cannot travel from one part of a Wyoming city to another without going into the county, then back into that city.

If the legislature voids current statute, 56 Am Jur 2d will require language be changed. A city is "one of unity, not of plurality; of compactness or contiguity, not separation or segregation," will have to be changed to read, "except in Wyoming." Arkansas, Idaho, Illinois, Indiana, Louisiana, Maryland, Michigan, Ohio and Wisconsin will be deemed wrong - Wyoming right. Wyoming can take its mythical state animal, the jackalope, and be laughed at.

If legislators accept that Wyoming has few annexation problems because of the great expanse of land and minuscule population growth, they will leave the law as is.

The quest to be able to annex parcels which are in contact with city land by only a corner to corner touching is fueled by the threat of litigation from developers who were misled by city officials. It is likely that intelligent developers would not have invested millions of dollars for land separated from the City of Cheyenne **unless** they were promised the land would be annexed.

The City may try to convince legislators that they've already made concessions to reach the point they're at now. But, the truth is that the only thing(s) that mattered to the City of Cheyenne was getting an annexation statute which would allow them to annex the Saddle Ridge property, the Southern Comfort property, and the former Village West property which LEADS now owns. That would allow them to save face and avoid litigation from another direction. The damage such a law would do in the long term is of absolutely no concern to these guys. Land grabs of the Base and the southside were stymied. The Wyoming House must thwart this transparent land grab.

Open containers. Wine, okay. Beer, not.

Elitism alive and well in Wyoming.

Tony Ross may retire the traveling trophy as the **MOST OUT OF HIS ELEMENT** Wyoming state legislator.

shut if the alcoholic beverage is wine, Ross is co-sponsor on contradictory bills.

Grandstanding when it comes to prohibition of open containers of "alcoholic beverages" in motor vehicles, as defined in SF0008, thenoperating with eyes wide

HB0118 is a convoluted effort to enable the high rollers who drink wine with their meals in restaurants to take the unconsumed bottle with them - in their car. Why not in the trunk? It's whose ox.

**Call for all Sportsmen, women and youth
Sportsmen for Fish and Wildlife of Wyoming
Laramie County Chapter**



**Next 2005 Meeting
February 7, 2005 ... 7 pm**

Uncle Charlie's, 6001 Yellowstone Rd., 2nd Floor
Wyoming Game and Fish Representative
will address group and participate in discussions

Contact Lou Gehrig (634-9742) or Skip Eshelman (634-1026)
for details or further information.

**Dennis Rafferty's
Oroweat
Bakery Outlet**
308 Southwest Dr. • 635-8400
Open Monday - Saturday
South across from Tyrrell-Doyle Chevrolet - west at PTA Self-Storage

Do you know? You should!

Do you know how to extinguish a small fire if it breaks out in your home? Would you know how to provide first aid to you family members or neighbors until first responders can get to your homes? Would you like to know about what kinds of hazards that your neighborhood is at risk for, such as tornados, floods, hazardous materials spills? Do you have a clue as to how to turn off the utilities in your home if the need should arise? Do you know what to put in a family disaster kit or want to learn how to develop a family disaster plan? Are you interested in helping out in your neighborhood in times of natural or human caused disasters?

The chance for you to learn all of these things and more is available by enrolling in the Community Emergency Response Team (CERT) training classes to be held Tuesday and Thursday evenings at Laramie County Community College starting on February 15th. The classes will be taught by several instructors representing Cheyenne Fire and Rescue, City/County Health Department, Wyoming Department of Health, Laramie County Emergency Management Agency, Laramie County Fire District #2, Wyoming Air National Guard Fire Department and other agencies.

We encourage you, your homeowners association, a group of neighbors, co-workers, service or social clubs, husbands and wives, businesses, and/or group of friends to sign up for this training. The training is designed for citizens with little or no training in the areas of Disaster Preparedness, Fire Safety, Disaster Medical Operations I & II, Light Search & Rescue, CERT Organization (ICS), Disaster Psychology, Terrorism and CERT, and a simulated disaster exercise. This course provides basic training in disaster survival and basic rescue skills. The course is offered FREE!

The CERT Concept was developed by the Los Angeles Fire Department after a devastating earthquake in which many "neighbors" showed up on-scene wanting to help their neighbors, but had no training in the skills that they needed to assist. FEMA (Federal Emergency Management Agency) developed CERT into a nationwide effort as a part of the Citizen Corps Program.

Classes are held Tuesday and Thursday evenings, February 15th through March 10th, from 6:45 pm to 9:30 pm. There is no charge.

Call 633-4332 for more information and 778-1236 or 778-1237 to enroll