

**"ANYTHING TWO PEOPLE KNOW IS NOT A SECRET."**

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## Saddle Ridge annexation lawsuits withdrawn

**Dr. Jean Cotton will direct her efforts and resources on changes to the "201 Agreement," for the benefit of more county residents**

by **Dave Featherly**

A settlement has been reached between Cheyenne developers Bill Edwards and John Volk (Saddle Ridge LLC) and Jean Cotton, D.V.M., and the lawsuits filed on the latest incarnation of Saddle Ridge subdivision have been withdrawn. Terms of the settlement are confidential.

While the two parties have agreed to the settlement, the motion to dismiss has been presented to Laramie County District Court Judge Peter Arnold and awaits his signature.

Dr. Cotton told the Cheyenne Herald that she thought her efforts, energy and time could better be directed to serving on a recently formed Laramie County Task Force to review and revise what has become known as the "201 Agreement."

Through her efforts (with these latest lawsuits) to protect her neighbors on the west side of Whitney Road (between US Hwy 30 and Pershing Blvd.) against the cost of forced annexation should their septic system need to be repaired or replaced in the future, nine are able to enter into a Covenant with the developer in which, according to the document, "Developer desires to mitigate the consequences of such an annexation."

Typically, when a developer makes "off-site improvements through undeveloped areas or immediately adjacent to undeveloped areas which undeveloped areas will benefit from the facilities installed," the developer can be reimbursed for the property owners proportionate share of the cost of such facilities (with interest at seven percent) should they ever annex to the City.

These Covenants, which came about as a direct result of the litigation initiated by Dr. Cotton, "irrevocably waive(s) any claim ... to recover the Reimbursable Costs ... that would otherwise be recovered ... under City Code Section 1.16.070 if and when Residential Landowner becomes a subsequent user of any water or sewer mains, utility trunk lines ...".

An exception to that irrevocable waiver is if the property owner "develops" the land. Development "shall mean a substantial and material change in the use of the Residential Property, such as apartments and /or four-plexes, subdivision into multiple lots or tracts for occupancy by or sale to non-family members, or commercial businesses (but excluding all home-based businesses or occupations). 'Development' does not include remodeling or additions to existing structures or adding additional structures for family members."

Another provision of the Covenants is: "In addition to the sewer line and related sewer stubs presently planned for the northerly portion of Whitney Road, Developer shall extend the sewer line and related sewer stubs down the southern portion of Whitney Road."

This provision applies to all properties on the west side of Whitney Road between US Hwy 30 and Pershing except the northernmost one, which is a parcel of land the developers likely have a separate agreement with concessions to that property owner whose willingness to be annexed provided the developers their only adjacency from City land to the parcel to be known as Saddle Ridge.

Section 3. of each Covenant provides this kicker:

**"This Covenant shall be null and void, unless Saddle Ridge is annexed to the City of Cheyenne and re-zoned in substantial conformity with Annexation Case Nos. A-05-18 and A-05-29 (Cheyenne/Laramie County Development Office), and any judicial challenge has been fully and finally resolved in favor of the annexation and re-zoning."**

So, had Dr. Cotton proceeded and won, her neighbors on Whitney Road would have lost. Because, someday, some way, the parcel of land (now two parcels or more) east of Whitney Rd. would have been legally annexed. Without this settlement agreement, her neighbors would

not have been provided this partial hold harmless protection that they will now enjoy. Had she proceeded to trial and lost, the developers offer would also have been null and void. She and her attorney, Gay Woodhouse, remain confident that Dr. Cotton's actions would have prevailed, if not at Laramie County District Court, then at the Supreme Court.

Jean Cotton has experience at the Wyoming Supreme Court. And her experience is to win - in spite of losing at the District Court level.

At a time when the City of Cheyenne, with the legal concurrence of both the city attorney and outside counsel Perry Dray, thought any annexation the city chose to approve was legal on its face and District Court Judge Ed Grant gave them comfort in the error of their ways by ruling that the city could define the word "adjacent" - case law and legal precedent be damned - Dr. Cotton filed her first challenge to an approved annexation.

That case was known as the first Saddle Ridge case and ultimately led to a Wyoming Supreme Court decision that defined in a way that all, with the possible exception of the City of Cheyenne governing body, city attorney and Mr. Dray, could understand, what is required for a county parcel of land to be eligible to even be considered for annexation into the city.

Because of the Cotton lawsuit and two others (Cox v. City and Southwest Drive residents v. City) more people in town now know the definitions of "adjacent" and "contiguous." Many more.

The Cheyenne Herald brought to the attention of its readers that the annexation of what was to be known as the Village West subdivision (now to be known as the Wal-Mart food distribution center, et al), was illegal because it was separated from the city limits. In that case, the separation was one and a half miles and in the Cotton v. City of Cheyenne lawsuit, Saddle Ridge was about a quarter mile from the nearest city land at the time.

In an unfortunate twist of reality, the Cotton family victory will be known in legal annals as:

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE,  
Appellant (Intervenor/Plaintiff),

v.  
THE CITY OF CHEYENNE, A WYOMING MUNICIPAL CORPORATION; EAST WHITNEY LIMITED PARTNERSHIP, a Wyoming Limited Partnership; and WEST WHITNEY LIMITED PARTNERSHIP, a Wyoming Limited Partnership,  
Appellees (Defendants),

JEAN COTTON; KATHRYNE COTTON and Ruth Cotton, individually and as owners of COTTON HOLDINGS, LLC, a Wyoming Limited Liability Company,  
Appellants (Plaintiffs)

2004 WY 16, 85 P.3d 999

The Laramie County Commissioners did not initiate this litigation, Dr. Cotton and her family did. For established annexation case law to carry the name of the Commissioners, who were drug kicking and screaming into the fray, is an injustice to the Cotton plaintiffs.

In an interview with Dr. Cotton, she told the Herald that she wanted those county residents who live within the 201 "sewerable boundaries" to be assured that she has not, and will not, abandon them - that their cause is not hopeless and she will apply herself to that fight.

She wanted it known that she is "not going anywhere." She has no plans to move from her rural Laramie County home, even though it will now be in a county peninsula and soon could be part of a county pocket within the city. By withdrawing her lawsuits, she hopes to enlist the "good will and assistance" of the city council and mayor "to find a more cost effective and less contentious way for them to grow." She particularly wants to commend elected officials Pete Laybourn, Judy Case, Jeff Ketcham and Diane Humphrey for their courage in forming and serving on the Task Force which will review the provisions of the 201 Agreement. Also, Jack Knudson.

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