

Gay Woodhouse
Lori L. Brand
Gay Woodhouse Law Office, P.C.
211 West 19th Street, Third Floor
Cheyenne, Wyoming 82001
307/432-9399

STATE OF WYOMING)
) ss.
DISTRICT
COUNTY OF LARAMIE)
JEAN COTTON, individually, and as Managing)
Member of Avenues Pet Clinic, LLC and)
Cotton Holdings, L.L.C.,)
COTTON HOLDINGS, L.L.C.,)
A Wyoming Flexible Limited Liability Company,)
AVENUES PET CLINIC, LLC,)
A Wyoming Limited Liability Company,)
)
 Plaintiffs/Appellants,)
)
 vs.)
)
CITY OF CHEYENNE, A Wyoming)
Municipal Corporation; SADDLE RIDGE, LLC,)
A Wyoming Limited Liability Company,)
EAST WHITNEY LIMITED PARTNERSHIP, a)
Wyoming Limited Partnership)
)
 Defendants/Appellees.)

IN THE DISTRICT COURT
FIRST JUDICIAL

Docket No. CV 167-602

**APPEAL PURSUANT TO W.S. § 15-1-409 AND
COMPLAINT FOR DECLARATORY JUDGMENT**

COME NOW the Plaintiffs/Appellants in the above-entitled action, by and through their counsel, Gay Woodhouse and Lori L. Brand of Gay Woodhouse Law Office, P.C. and in support of this action, allege and state as follows:

PARTIES, JURISDICTION AND VENUE

1. This action is brought pursuant to the appeal procedures of W.S. § 15-1-409 and the Wyoming Declaratory Judgments Act, Wyo. Stat. § 1-37-101 *et seq.*

2. This action involves land located in Laramie County, Wyoming described in Ordinance No. 3693 as: A Tract of Land situated in a portion of the West Half of Section 25, Township 14 North, Range 66 West of the 6th P.M., Laramie County, Wyoming and; A Tract of Land situated in a portion of the West Half of Section 25 and a Portion of the East Half of the Southeast Quarter of Section 26, Township 14 North, Range 66 West of the 6th P.M., Laramie County, Wyoming (Located east of and Adjacent to Whitney Road, Between US-30 and E. Pershing Blvd.). Attached as Exhibit 1 and incorporated herein by this reference is a map showing the location of the annexed area.

3. Plaintiffs are an aggrieved City of Cheyenne (“City”) landowner and a Laramie County resident who own rural land in Laramie County, Wyoming. Plaintiff Avenues Pet Clinic, LLC, is a Wyoming Limited Liability Company in good standing and is an interested and aggrieved person as a City landowner who pays City taxes and receives City services, which City services as a result of the annexation will be constrained or made more costly due to the projected forecast that the City population will increase by an estimated 2000 persons through development of the annexed property. The City's prepared annexation report states that the cost of infrastructure improvements required within the existing boundaries of the City to accommodate the proposed annexation will be \$0 because the land is vacant.

4. Plaintiff Cotton Holdings, L.L.C., is a Wyoming Flexible Limited Liability Company in good standing and is an interested and aggrieved person as a landowner who owns rural land directly opposite and within ½ mile of the land described in ¶ 2 annexed by City Ordinance No. 3693. The annexation of the land above described

enables the City to extend its control far beyond the current city limits and makes Cotton Holdings, L.L.C. contiguous and adjacent to the annexed property.

5. The annexation, rezoning and development of the property described in Ordinance No. 3693 to urban densities as proposed in the plat maps submitted by Defendants will significantly increase the density of the property directly adjacent to Plaintiff Cotton Holdings, L.L.C. The landowners of the adjacent properties will be subject to increased traffic and congestion as a direct result of the annexation, and development of the now vacant property.

6. The activities undertaken on the land owned by Plaintiff Cotton Holdings, L.L.C. are not permitted under City zoning ordinances. The Plaintiff currently raises and has in the past raised livestock on its property, including peacocks, horses, 4-H pigs, sheep, chickens, and ducks.

7. The annexation of the land described in City Ordinance No. 3693 facilitates the annexation of Plaintiff's property and makes future annexation of Plaintiff's property more likely and probable.

8. Plaintiffs are aggrieved because the City of Cheyenne has failed to properly follow the applicable statutes W.S. § 15-1-401 *et seq* and to provide the requisite notice pursuant to W.S. § 15-1-405.

9. Defendant City of Cheyenne ("City"), is a Municipal Corporation located in Laramie County, Wyoming that took government action and issued Ordinance No. 3693 annexing the land at issue in this case.

10. The City of Cheyenne, through its Mayor, has exercised jurisdiction vested in him by ordinance for matters within one-half (1/2) mile of the corporate limits of the City.

11. The property annexed is completely surrounded by County property, except for the Saddle Ridge land separately annexed pursuant to City Ordinance No. 3676, which was published on November 19, 2005. See Map Exhibit 1. The territory sequentially annexed by City Ordinance No. 3693 is a portion of the area known as Saddle Ridge which was annexed in 2002 and declared void by the Wyoming Supreme Court in 2004. *Board of Laramie County Commissioners v. City of Cheyenne*, 85 P.3d 999 (Wyo. 2004).

12. The initial annexation pursuant to City Ordinance No. 3676 is the subject of a perfected appeal and declaratory judgment action pending in the First Judicial District Docket No. 167-202 filed January 13, 2006.

13. Upon information and belief, Defendant Saddle Ridge, LLC, is a Wyoming Limited Liability Company Corporation in good standing located in the City of Cheyenne, Laramie County, Wyoming, whose Members William Edwards and John Volk signed the Petition for Annexation and who is the developer of the proposed Saddle Ridge Subdivision.

14. Upon information and belief, Defendant East Whitney Limited Partnership is a Wyoming Limited Partnership in good standing located in the City of Cheyenne, Laramie County, Wyoming, whose member Bradley R. Graham signed the Petition for Annexation.

15. The property which is the subject of this action is located in Laramie County; the action by the City in annexing the land described in City Ordinance No. 3693 to the City took place in Laramie County, and the Plaintiffs own real property which is located in Laramie County; therefore, venue is proper in this Court.

16. The purpose of this lawsuit is to challenge the validity of City Ordinance No. 3693 which purportedly annexed the land described therein to the City of Cheyenne. City Ordinance No. 3693 was enacted on February 27, 2006, and became effective by publication on March 4, 2006 and was recorded with the Laramie County Clerk on March 9, 2006 at Book 1936 Page 666. City Ordinance No. 3693 is attached hereto as Exhibit 2 and by this reference made a part hereof.

FIRST CLAIM FOR RELIEF
Violation of W.S. § 15-1-403

17. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

18. W.S. § 15-1-403(a) provides that the proceedings for annexation of *eligible* territory may be initiated by a written petition filed with the clerk of the city or town to which annexation of the territory is proposed, after compliance with certain conditions and procedures.

19. W.S. § 15-1-403(a)(ii) requires that the petition contain: A) A legal description of the area to be annexed; B) A request that the territory be annexed; C) A statement that each signer is an owner of land and a description of his land within the area proposed to be annexed; and D) A map of the area.

20. W.S. § 15-1-402(a)(iv) provides that before any territory is *eligible for annexation*, the governing body of the city shall find that the area to be annexed is contiguous with or adjacent to the annexing city. Thus, prior to the submission of the petition to be eligible for annexation, the territory must also be contiguous or adjacent to the annexing city.

21. The annexation petition application forms prepared by the City of Cheyenne provide that the landowner must affirmatively state "the percentage of the perimeter of the area proposed for annexation contiguous to the City."

22. The written petition signed by the Defendant East Whitney Limited Partnership on September 27, 2005 and by the Defendant Saddle Ridge, LLC on September 28, 2005 and filed with the City of Cheyenne on October 12, 2005 states that the percentage of the perimeter of the area proposed for annexation contiguous to the City is 22%.

23. On October 12, 2005, 0% of the perimeter of the area proposed for annexation was contiguous to the City of Cheyenne.

24. The Annexation Application and Petition signed by Defendants East Whitney Limited Partnership and Saddle Ridge, LLC and filed with the City Clerk on October 12, 2005 contains a false statement.

25. The City Clerk erred on October 14, 2005 by determining that the filed Petition substantially complied with the statute because the public land records, annexation records and official City maps available to the City Clerk proved that no portion of the area proposed to be annexed was contiguous to the City of Cheyenne. See Board of Laramie County Commissioners v. City of Cheyenne, 85 P.3d 999 (Wyo. 2004).

26. The Defendants' failure to comply with the provisions of Wyo. Stat. § 15-1-403 renders City Ordinance No. 3693 void *ab initio*.

SECOND CLAIM FOR RELIEF
Violation of W.S. § 15-1-402(a)(i)

27. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

28. Wyo. Stat. § 15-1-402(a) provides that before a property is "eligible" for annexation it must meet certain requirements. These requirements are conjunctive, thus necessitating that each subsection be met before the territory lawfully may be annexed. The annexation of the land described in Ordinance No. 3693 is invalid because it does not comply with the statutory requirements established in W.S. § 15-1-402(a)(i).

29. The annexation by the City at issue is unlawful and invalid because it violates the statutory requirement of Wyo. Stat. § 15-1-402(a)(i) that "the annexation of the area shall be for the protection of the health, safety, and welfare of the persons *residing in the area and* in the city or town." The territory annexed consists wholly of vacant land. There are no persons residing in the annexed area, thus the annexation cannot satisfy this statutory provision as a matter of law.

30. No proper findings supported by specific evidence in the record were made by the City that the annexation would protect the health, safety, and welfare of the area residents and the residents of the City of Cheyenne. This property is located a significant distance from the nearest existing supporting infrastructure for city services. No proper findings supported by record evidence were made that this annexation affirmatively protects the health, safety, and welfare of any party.

31. The failure to comply with the provisions of Wyo. Stat. § 15-1-402(a)(i) renders City Ordinance No. 3693 void *ab initio*.

THIRD CLAIM FOR RELIEF
Violation of W.S. § 15-1-402(a)(ii)

32. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

33. Wyo. Stat. § 15-1-402(a) provides that before a property is "eligible" for annexation it must meet certain requirements. These requirements are conjunctive, thus necessitating that each subsection be met before the territory lawfully may be annexed. The annexation of the land described in Ordinance No. 3693 is invalid because it does not comply with the statutory requirements established in W.S. § 15-1-402(a)(ii).

34. The annexation of the land described in Ordinance No. 3693 by the City is unlawful and invalid because it violates the statutory requirement of Wyo. Stat. § 15-1-402(a)(ii), which requires that the territory annexed shall constitute a natural, geographical, economical and social part of the annexing city or town as required by W.S. § 15-1-402(a)(ii). The land lies outside the city limits in a predominantly rural setting, surrounded by county land; it is not a natural outgrowth of the city, instead it will create a densely populated isolated pocket in an otherwise rural county setting. There are no amenities for potential residents including recreational facilities, parks or other city services.

35. No proper findings supported by specific evidence in the record were made by the City that the urban development of the territory constituted a natural, geographical, economical and social part of the City of Cheyenne.

36. The failure to comply with the provisions of Wyo. Stat. § 15-1-402(a)(ii) renders City Ordinance No. 3693 void *ab initio*.

FOURTH CLAIM FOR RELIEF
Violation of W.S. § 15-1-402(a)(iii)

37. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

38. Wyo. Stat. § 15-1-402(a) provides that before a property is "eligible" for annexation it must meet certain requirements. These requirements are conjunctive, thus necessitating that each subsection be met before the territory lawfully may be annexed. The annexation of the land described in Ordinance No. 3693 is invalid because it does not comply with the statutory requirements established in W.S. § 15-1-402(a)(iii).

39. The annexation of the land described in City Ordinance No. 3693 by the City is unlawful and invalid because it violates the statutory requirement of Wyo. Stat. § 15-1-402(a)(iii), that the area annexed shall be a logical and feasible addition to the annexing city or town, *and* the extension of basic and other services customarily available to residents of the city or town shall, within reason, be available to the area proposed to be annexed. It is not logical and feasible to annex land far from core City limits. It is not logical and feasible to create a city pocket so far removed from true City boundaries. The extension of basic and other services including parks, recreational facilities, city water and sewer facilities are not available to potential residents of the newly annexed area. It is not "within reason" as that term is used within the statute, to expend millions of dollars in funds to bring City services to what will become a City "island" surrounded by County property, when those funds will be borne by the City

and/or its inhabitants and future inhabitants. The annexation further creates substantial county pockets between the subject area and the City boundary.

40. No proper findings were made by the City based upon evidence introduced in the record that the land described in Ordinance No. 3693 shall be a logical and feasible addition to the annexing city or town, *and* the extension of basic and other services customarily available to residents of the city or town shall, within reason, be available to the area proposed to be annexed.

41. The failure to comply with the provisions of Wyo. Stat. § 15-1-402(a)(iii) renders City Ordinance No. 3676 void *ab initio*.

FIFTH CLAIM FOR RELIEF
Violation of W.S. § 15-1-402(a)(iv)

42. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

43. Wyo. Stat. § 15-1-402(a) provides that before a property is "eligible" for annexation it must meet certain requirements. These requirements are conjunctive, thus necessitating that each subsection be met before the territory lawfully may be annexed. The annexation of the land described in Ordinance No. 3693 is invalid because it does not comply with the statutory requirements established in W.S. § 15-1-402(a)(iv).

44. W.S. § 15-402(a)(iv) requires that the area sought to be annexed is contiguous with or adjacent to the annexing city or town if owned by private parties.

45. The Wyoming Supreme Court has determined that the statute was legislatively intended to require that the boundaries of the municipality and the land proposed for annexation must touch to some substantial degree, although there need not

necessarily be a lengthy shared border. *Board of County Commissioners of Laramie County et al v. City of Cheyenne et al.*, 85 P.3d 999, 2004 WY 16 ¶ 31 (Wyo. 2004).

46. The area sought to be annexed by City Ordinance No. 3693 as described therein is not contiguous or adjacent to the City of Cheyenne.

47. The only contiguity to the City of Cheyenne asserted for the land described in City Ordinance No. 3693 was to the adjoining Saddle Ridge LLC owned land previously annexed pursuant to City Ordinance No. 3676. See Map attached hereto as Exhibit 1.

48. Pursuant to W.S. § 15-1-409, an appeal of City Ordinance No. 3676 was filed and perfected by Avenues Pet Clinic, LLC on January 13, 2006 and is currently pending in the First Judicial District.

49. Avenues Pet Clinic, LLC is not a utility.

50. A status conference in the case has been set for April 14, 2006 before the Honorable Peter G. Arnold and no final decision of the matter has been entered by the Court.

51. W.S. § 15-1-408 provides for the effective dates for annexation ordinances:

The annexation of any territory is effective upon publication of the ordinance, unless another date is specified in the ordinance. The effective date of the annexation ordinance shall not be less than twenty (20) business days after the public hearing required by W.S. 15-1-405(a). For purposes of real and personal property taxation, the annexation is not effective until January 1 next following the effective date of the ordinance. ***If an appeal is filed and perfected by a person other than a utility, the effective date is January 1 next following the court's final decision of the matter.*** If an appeal of the franchise decision is filed and perfected by a utility, the annexation is effective upon the publication of the ordinance unless another date is specified in the ordinance, but the appealing utility shall be permitted to continue its present service in the annexed area until

the court's final decision of the matter. W.S. § 15-1-408 (emphasis added).

52. By operation of W.S. § 15-1-408, the effective date of City Ordinance No. 3676 annexing the territory described therein to the City of Cheyenne can be **no earlier** than January 1, 2007.

53. Because there is no part of the territory purportedly annexed by City Ordinance No. 3693 now contiguous or adjacent to the City of Cheyenne, other than that described in City Ordinance No. 3676, which annexation is not effective by operation of law, the City has violated W.S. § 15-1-402(a)(iv) by purporting to sequentially annex the noncontiguous territory described in City Ordinance No. 3693. See *Board of County Commissioners of Laramie County et al v. City of Cheyenne et al.*, 85 P.3d 999, 2004 WY 16 ¶ 31 (Wyo. 2004).

54. The failure to comply with the provisions of Wyo. Stat. § 15-1-402(a)(iv) renders City Ordinance No. 3693 void *ab initio*.

SIXTH CLAIM FOR RELIEF
Violation of W.S. § 15-1-402(c)

55. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

56. W.S. § 15-1-402(c)(i) provides that an annexing municipality shall prepare a proposed annexation report as specified and the report ***shall, at a minimum, contain*** a map of the area proposed to be annexed showing identifiable landmarks and boundaries ***and*** the area which will, as a result of the annexation then be brought within one-half

(1/2) mile of the new corporate limits of the city, if it has exercised the jurisdiction granted under W.S. § 15-3-202(b)(ii).

57. The City of Cheyenne through its Mayor has exercised jurisdiction vested in him by ordinance for matters within one-half (1/2) mile of the corporate limits of the City.

58. The proposed annexation report prepared by the City did not contain the map of the annexed area and the area to be brought within one-half (1/2) mile of the corporate limits of the City as mandated pursuant to W.S. § 15-1-402(c)(i).

59. W.S. § 15-1-402(c)(ii) provides that an annexing municipality shall prepare a proposed annexation report as specified and the report *shall, at a minimum, contain* " the total estimated cost of infrastructure improvements required of *all* landowners by the annexing municipality related to the annexation."

60. The annexation report prepared by the City of Cheyenne for the property to be annexed by City Ordinance No. 3693 did not contain "the total estimated cost of infrastructure improvements required of all landowners by the annexing municipality related to the annexation" because the annexation report simply states that the costs are \$0 because the land is vacant.

61. The City of Cheyenne requires a Clearance document to be signed by the Board of Public Utilities prior to submission of the Petition Application.

62. The Clearance document signed by Herman Noe, of the Board of Public Utilities on October 4, 2005 states that "water and sewer utilities must be installed and extended as per City/BOPU rules, regulations, ordinances, and policies".

63. The annexation report prepared by the City of Cheyenne for the property to be annexed by the previous City Ordinance No. 3676 of adjoining land stated that the infrastructure costs for that property would be \$1,682,000.

64. The City of Cheyenne has not complied with W.S. § 15-1-402(c)(ii) because its mandatory annexation report is missing the information required by statute.

65. W.S. § 15-1-402(c)(ii) provides that an annexing municipality shall prepare a proposed annexation report as specified and the report *shall, at a minimum, contain* "a list of basic and other services customarily available to residents of the city or town *and* a timetable when those services will reasonably be available to the area proposed to be annexed."

66. W.S. § 15-1-410(a) provides that the territory and inhabitants of any annexed area are subject to all the laws, ordinances, rules and regulations of the city or town to which they are annexed and are entitled to all the rights, privileges and franchises or other services afforded the inhabitants thereof. The services *shall be provided in accordance with the timetable provided pursuant to W.S. § 15-1-402(c)(iii)*.

67. The timetable providing when City services will reasonably be available to the area proposed to be annexed was not included in the annexation report created by the City of Cheyenne for City Ordinance No. 3693.

68. The annexation of the land described in Ordinance No. 3693 is invalid because the City has not complied with the statutory requirements established in W.S. § 15-1-402(c).

69. The City's failure to comply with the mandatory provisions of Wyo. Stat. § 15-1-402(c) renders City Ordinance No. 3693 void *ab initio*.

SEVENTH CLAIM FOR RELIEF
Violation of W.S. § 15-1-405

70. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

71. W.S. § 15-1-405(b) provides that the City clerk shall give notice of the public hearing required by W.S. § 15-1-405(a) by publishing a notice at least twice in a newspaper of general circulation in the territory sought to be annexed. The notice *shall contain* a location map which includes identifiable landmarks and boundaries of the area sought to be annexed *and* the area which will, as a result of the annexation then be brought within one-half (1/2) mile of the new corporate limits of the city, if it has exercised the authority granted under W.S. § 15-3-202(b)(ii).

72. The City of Cheyenne through its Mayor has exercised jurisdiction vested in him by ordinance for matters within one-half (1/2) mile of the corporate limits of the City.

73. The notice published in the newspaper in regard to the public hearing required by W.S. § 15-1-405(a) for City Ordinance No. 3693 did not contain a location map.

74. The annexation of the land described in Ordinance No. 3693 is invalid because the City has not complied with the statutory requirements established in W.S. § 15-1-405(b).

75. The City's failure to comply with the mandatory provisions of Wyo. Stat. § 15-1-405(b) renders City Ordinance No. 3693 void *ab initio*.

EIGHTH CLAIM FOR RELIEF
Violation of City Code § 1.16.030

76. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

77. City Code § 1.16.030(A) provides that prior to the submission of any petition for annexation to the governing body, an application for approval...will be submitted to the planning commission for its recommendation.

78. No application for approval was submitted to the planning commission prior to the submission of the Petition in this matter signed by Bradley Graham for East Whitney Limited Partnership and John Volk and William Edwards for Saddle Ridge, LLC on October 12, 2005.

79. City Code § 1.16.030(B) provides that the petition for annexation to be submitted for consideration by the governing body will be filed with the city engineer's office not less than six (6) days before the day when the application will be submitted for consideration to the governing body and the petition will include, in addition to the annexation petition, the following documentation:

- 2) Proposed annexation ordinance;
- 3) A preliminary soils investigation to the area to be annexed which will contain as a minimum the following information:
 - a. Identification, review and evaluation of all existing soils information and existing soils problems in the area,
 - b. Soils boring logs located on maximum four hundred (400) foot center to center intervals or less as recommended by the professional engineer,
 - c. Soils report which will include:

- i. A map showing the location of all test borings,
- ii. Description and classification of materials encountered,
- iii. Elevation of groundwater table (if encountered),
- iv. Bearing capacities of existing soils and expansion classification,
- v. Recommendations, if any of professional engineer.

80. No petition as required by City Code 1.16.030(B) was filed with the City Engineer's Office by the petitioners seeking annexation, ultimately purportedly annexed by Ordinance No. 3693.

81. The annexation of the land described in Ordinance No. 3693 is invalid because the Petitioners have not complied with City law in regard to the submission of their petition which was a condition precedent to any submission and consideration of the petition to the governing body of the City of Cheyenne.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs/Appellants and landowners pray that:

- a. The Court will interpret the Wyoming annexation statutes W.S. §§ 15-1-401 *et seq.*;
- b. The Court will interpret City Code §§ 1.16.010 *et seq.*;
- c. The Court will enter an Order pursuant to Wyo. Stat. §15-1-409 and/or Wyo. Stat. §§ 1-37-101 *et seq.* declaring City Ordinance No. 3693 invalid and void *ab initio* for the City's and Petitioners' failure to comply with the mandates of the Wyoming annexation statutes, Wyo. Stat. § 15-1-401 *et seq* and applicable City Code.

d. The Court will permanently enjoin the City from any attempt to re-annex the land described in ordinance No. 3693 until the mandatory provisions of Wyoming Statute and City Code are properly met.

e. This Court award Plaintiffs' all such costs and fees that are allowable by law, and;

f. For such other and further relief as this Court may deem just and equitable under the circumstances.

DATED this _____ day of March, 2006.

Respectfully submitted,

GAY WOODHOUSE LAW OFFICE P.C.

Gay Woodhouse
Lori L. Brand
211 West 19th Street, 3rd Floor
Cheyenne, WY 82001
307/432-9399

Attorneys for Plaintiffs/Appellants