

MEMORANDUM

To: Salida Mayor and Council
From: City Attorney Nina P. Williams
Date: August 20, 2024
Re: Suesse Annexation Ordinance

Attached within your packet is a Pre-Annexation Agreement, recorded onto the subject Property on March 24, 2016 with the Chaffee County Clerk and Recorder, at Reception No. 425861.

Applicant Ned Suesse purchased the Property *after* this document was recorded. This means that he purchased the Property with constructive notice of all documents recorded onto the Property with the Chaffee County Clerk and Recorder's Office. This Pre-Annexation Agreement and all other applicable deeds and documents recorded with the County Clerk would also come up in a title report that one is typically provided prior to purchasing real property.

It is not a valid excuse or acceptable affirmative defense if an individual does not look at recorded documents before purchasing a property. This is why I said Mr. Suesse had "constructive notice" of the Pre-Annexation Agreement burdening and obligating his Property. The law considers an owner of a property to have notice and knowledge of a document - whether the person has "actual notice" or not - when such document is properly recorded onto such real property. This is non-negotiable and well-established real estate law, in Colorado and throughout the country, for centuries.

Specifically, the Pre-Annexation Agreement is crystal clear regarding the Owner's legal obligation to file a petition for annexation of the Property within 60 days of becoming eligible for annexation (*see*, Section 4). This Agreement legally obligates both parties: (1) the City of Salida; and (2) the owner and all future owners of the subject Property. You might remember that the City recently required Salida School District property to annex into the City due to a recorded Pre-Annexation Agreement. It is also important to note that the City agreed to provide the Property with municipal sewer service at in-City rates, and has done so since the execution of the document (*see*, Section 1).

This is ultimately why Ned Suesse submitted an annexation petition (application) with the City of Salida. Again, he was legally obligated to do so under the recorded Pre-Annexation Agreement. It has been far more than 60 days since the Property has become eligible for annexation. That trigger occurred around five (5) years ago, in 2019. City staff has been speaking with Mr. Suesse and extending professional courtesies for many years. I personally have been working with City planners, as well as Mr. Suesse's attorney, for over one year.

What happens if you decline to approve the Annexation Ordinance? The same result would eventually be accomplished, but with significant additional cost to both the City taxpayers and Mr. Suesse. The City would be compelled to bring this Agreement to court, and ask a judge

to enforce. Since the express terms of the Agreement are clear, and the validity of the recordation upon the subject Property (and therefore the constructive notice of the current owner) cannot be questioned, there is no doubt that any court would conclude that this property must be annexed into the City. You have the ability tonight to follow the legal requirements of the Pre-Annexation Agreement and approve the Annexation Ordinance, without the need for expensive litigation.

Specifically, Section 9 of the Pre-Annexation Agreement, entitled Failure or Refusal to Annex, states:

“In the event the Owner fails to annex their Property to the City as required by this Agreement, the City may, at its sole options and without otherwise limiting its legal rights, bring an action at law or equity, including an action for specific performance, to enforce the terms of this Agreement or treat this Agreement as a petition for annexation and annex the Property without consent after thirty (30) days’ written notice to the Owner. The rights and remedies under this paragraph shall be cumulative. To the extent permitted by law, the Owner hereby appoints the City Clerk as their attorney-in-fact to execute and deliver all documents necessary to annex Owner’s Property to the City, should the Owner fail or refuse to annex as required under this Agreement. If the City proceeds to annex the Owner’s Property as permitted under this paragraph, it may advance all fees and costs related to the annexation, and shall be entitled to recover the same as a personal obligation of the Owner. Such fees and costs shall constitute a lien against the Owner’s Property, which may be foreclosed as provided by law.”

Finally, you may hear questions about an Annexation Agreement. Although typically a recommended course of action, it is not technically necessary or statutorily required to effectuate an annexation. Approval of the Annexation Ordinance is what is necessary to accomplish same. The City still hopes to bring an Annexation Agreement for your consideration approval at a subsequent Council meeting, should Mr. Suesse be amenable to the terms. If that does not happen, the conditions within the Annexation Ordinance would be exclusively what applies and what is enforceable. The Annexation Ordinance gets recorded onto the Property after the effective date of such Ordinance.