

Polly Samuels McLean (8922)

PEAK LAW, PLLC
395 Crestview Drive
Park City, Utah 84090
Tel.: (435) 714-2382
polly@peaklaw.net

Attorney for Plaintiff

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH**

COALVILLE FOR RESPONSIBLE
GROWTH, a Utah limited liability
company,

Plaintiff,

vs.

COALVILLE CITY, a Utah Municipal
Corporation, COALVILLE CITY
COUNCIL, a Utah Municipal legislative
body and NACHELE SARGENT, solely in
her official capacity as Coalville City
Recorder,

Defendants.

COMPLAINT AND

PETITION FOR REVIEW

Case No. _____

Judge _____

**Discovery Tier: Tier 2
(No monetary damages)**

Plaintiff COALVILLE FOR RESPONSIBLE GROWTH, a Utah limited liability company (“**CFRG**”) by and through its attorney, PEAK LAW, PLLC against Defendants COALVILLE CITY, a Utah Municipal Corporation, COALVILLE CITY COUNCIL, a Utah Municipal legislative body and NACHELE SARGENT, solely in her official capacity as Coalville City Recorder (collectively “**Coalville**”) as follows:

JURISDICTION AND VENUE

1. Jurisdiction is proper pursuant to Utah Code Ann, § § 10-9a-209, -801 and Utah Code Ann. § § 78A-5-102, 78B-6-401 and 402.
2. Venue is proper pursuant to Utah Code Ann. § 78B-3-307.

PARTIES

3. Plaintiff Coalville for Responsible Growth is Utah limited liability company.
4. Members of Coalville for Responsible Growth resides in Coalville City, Summit County, Utah.
5. Defendant Coalville City (“**Coalville City**”) is a Utah municipality located in Summit County Utah.
6. Defendant Coalville City Council (“**Council**”) is a legislative municipal body.
7. Defendant Nachele Sargent (“**City Recorder**”) is the Coalville City Recorder who is the charged with posting notices for Public Meetings and Public Hearings.

FACTUAL ALLEGATIONS

8. On December 9, 2019, the Coalville City Council adopted a Land Use Ordinance for Wohali Development Application to take action on master plan development preliminary plat application and property zone amendment, specifically Ordinance No. 2019-7.
9. Land Use Ordinance 2019-7 is a Land Use Regulation.
10. Land Use Regulation Ordinance and Rezone 2019-7 was adopted at a public meeting.
11. The December 9, 2019 public meeting was noticed by posting at one location at the Coalville City Hall on December 8, 2019 and by posting on the Utah Public Notice Website on December 8, 2019.
12. The December 9, 2019 public meeting was not posted on the Coalville City’s Official Website.

13. The December 9, 2019 public meeting was not posted by the municipality in at least three public locations within the municipality.
14. Plaintiff are adversely affected by the decision. At a November 18, 2019 public hearing on the Land Use Regulation which was properly noticed, over 300 people attended. At the December 9, 2019 public meeting, only about half as many people attended. Furthermore, the Land Use Ordinance will destroy the rural and historic character of Coalville.
15. Public comment was made at the December 9, 2019 public meeting alerting Coalville that the noticing was deficient.
16. Public comment was submitted to Coalville City before the 6pm December 9, 2019 public meeting that the noticing was deficient pursuant to § 10-9a-205.
17. The Ordinance presented to Council was not provided to the public until after the meeting.
18. Ordinance 2019-7 states that, “A copy of proposed findings are attached hereto.” No findings are attached to the Ordinance 2019-7 nor were they discussed or presented at the December 9, 2019 public meeting.
19. Ordinance 2019-7 states that, “The Application and Amendment are hereby approved but are conditioned on and subject to the approval of findings of fact consistent with the vote of the Council drafted by the City Attorney.”
20. No conditions of approval related to the Master Planned Development were included in Ordinance 2019-7.
21. No findings with evidence that supports conclusions to approve the master planned development application were made in Ordinance 2019-7.
22. The proposed development subject to Ordinance 2019-7 borders on an agricultural area or contain agricultural or irrigation rights of way or easements.
23. No farm impact analysis was included in Ordinance 2019-7.

24. No phasing plan is included in Ordinance 2019-7. The phasing plan referred to in Ordinance 2019-8 is very broad and only refers to the first phase.
25. No amended zoning map nor text related to the zones being amended were included in the Staff report or Ordinance 2019-8.
26. On December 16, 2019, the Council adopted Ordinance 2019-8 at a public meeting without holding a public hearing.
27. Ordinance 2019-8 adopts findings of fact, conclusions of law and conditions of approval to reflect the action of the Council on December 9, 2019 regarding a Master Plan Development Preliminary Plat Application and Property Zone Amendment .
28. The special meeting on December 16, 2019 was noticed as a public meeting and notice was posted more than 24 hours before on the Coalville City Official Website and the Utah Public Notice Website.
29. Ordinance 2019-8 is a land use regulation.
30. Both Ordinances 2019-7 and 2019-8 are legislative decisions enacted by ordinance that governs the use or development of land and purport to amend a property zone.
31. No recommendation was obtained from the Planning Commission regarding Ordinance 2019-8. Ordinance 2019-8 was not noticed as a public hearing.
32. No amended zoning map nor text related to the zones being amended were included in the Staff report or Ordinance 2019-8.
33. The audio recording of the December 9, 2019 meeting has not been made available to the public for listening as required by Utah Code Ann. 52-4-203.

FIRST CLAIM FOR RELIEF

The Notice for the December 9, 2019 Public Meeting on the adoption or modification of a Land Use Regulation was did not meet State Code Requirements and therefore the adoption of the Land Use Regulation at the public meeting is void.

34. Plaintiff realleges and incorporate each and every preceding paragraph as though fully set forth herein.

35. Coalville was required by Utah Code Ann. § 10-9a-205(1)(a) to give notice of each public meeting on the Land Use Regulation.

36. Coalville was required by Utah Code Ann. § 10-9a-205(3) to give notice of each public meeting on the Land Use Regulation at least 24 hours before the meeting and shall post the notice in at least three public locations within the municipality or on the municipality's official website.

37. Utah Code Ann. § 10-9a-201(1) mandates that Coalville City provide notice as required in State Code. *Hatch v. Boulder Town Council*, 2001 UT App 55 confirms, "failure to strictly follow the statutory requirements in enacting the ordinance renders it invalid." (citations omitted).

38. Utah Code Ann. § 10-9a-209 allows for notice to be challenged pursuant to Utah Code Ann. § 10-9a-801 within 30 days after the meeting or action.

39. Coalville failed to comply with Utah Code Ann. § 10-9a-205 and Utah Code Ann. § 10-9a-801.

40. The adoption of the Land Use Regulation at the public meeting is void

SECOND CLAIM FOR RELIEF

Council adopted the Ordinance based on Findings which were not presented at the Public Meeting, thereby making the Ordinance void.

41. Plaintiff realleges and incorporates each and every preceding paragraph as though fully set forth herein.

42. Utah Code Ann. § 10-3-704 requires that any ordinance passed by the governing body adhere to a particular form. Ordinance 2019-7 lacked a crucial portion to wit the proposed findings upon which the Ordinance was based.

THIRD CLAIM FOR RELIEF

Ordinance 2019-7 does not meet Coalville City Code and therefore the Ordinance is illegal and void.

43. Plaintiff realleges and incorporates each and every preceding paragraph as though fully set forth herein.

44. Coalville City Code (CCC) requires Council action on a Master Planned Development (MPD) to be in the form of written findings and conditions of approval (CCC 8-6-040).

45. According to Coalville City Code, Council must make findings with evidence that supports fourteen (14) conclusions in order to approve a MPD (CCC 8-6-080).

46. Coalville City Code (CCC) Title 10, Chapter 29 requires MPDs that border on an agricultural area or contain agricultural or irrigation rights of way or easements to have an impact analysis to determine the development's impact on farming.

47. CCC 8-2-040 requires all MPDs to include a phasing plan with specific requirements.

FOURTH CLAIM FOR RELIEF

No Amended Zoning Map was included in Ordinance 2019-7 or Ordinance 2019-8 and the rezone in both Ordinances are therefore unconstitutionally vague and illegal.

48. Plaintiff reallege and incorporate each and every preceding paragraph as though fully set forth herein.

49. Ordinance 2019-7 purports to include a property zone amendment for the Wohali Development property. No map or zoning designations are stated in Ordinance 2019-7.

50. Ordinance 2019-8 purports to include a property zone amendment for the Wohali Development property. No map or zoning designations are stated in Ordinance 2019-8.

51. Utah Code Ann. 10-9a-103 defines zoning map as “a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.”

52. Utah Code Ann. 10-9a-503 refers to zoning map amendments and allows a legislative body to amend the number, shape, boundaries, area, or general uses of any zoning district. However, here no number, shape, boundaries, area of the zone which is purported to be subject to the property zone amendment or rezone is defined.

FIFTH CLAIM FOR RELIEF

The Notice for the December 16, 2019 on the adoption or modification of a Land Use Regulation was did not meet State Code Requirements and therefore the adoption of the Land Use Regulation at the public meeting is void.

53. Plaintiff reallege and incorporate each and every preceding paragraph as though fully set forth herein.

54. Utah Code Ann. 10-9a-205 requires specific noticing for the first public hearing to consider any adoption or modification of a land use regulation.

PRAYER FOR RELIEF

Wherefore, Petitioner prays for judgment against Coalville City, a Utah Municipal Corporation, Coalville City Council, a Utah Municipal legislative body and Nachele Sargent, solely in her official capacity as Coalville City Recorder on each of the foregoing claims for relief and all available additional relief as follows:

- A. On its First Claim for Relief, for judgment declaring and ordering that:
- (i) Council's adoption of Ordinance 2019-7 was void;
 - (ii) Council's adoption of Ordinance 2019-7 was illegal; or
 - (iii) in the alternative, the matter is remanded to the Council with instructions to re-notice the public meeting and conduct a new de novo hearing on the Ordinance.
- B. On its Second Claim for Relief, for judgment declaring and ordering that:
- (i) Council's adoption of Ordinance 2019-7 was void;
 - (ii) Council's adoption of Ordinance 2019-7 was illegal; or
 - (iii) in the alternative, the matter is remanded de novo to the Council with instructions to consider findings in compliance with State Code.
- C. On its Third Claim for Relief, for judgment declaring and ordering that:
- (i) Council's adoption of Ordinance 2019-7 was void;
 - (ii) Council's adoption of Ordinance 2019-7 was illegal; or
 - (iii) in the alternative, the matter is remanded de novo to the Council with instructions to consider findings in compliance with Coalville City Code.
- D. On its Fourth Claim for Relief, for judgment declaring and ordering that:
- (i) Council's adoption of Ordinance 2019-7 was void;
 - (ii) Council's adoption of Ordinance 2019-7 was illegal; or
 - (iii) in the alternative, the matter is remanded de novo to the Council with instructions to adopt a map with any rezone or zone amendment.
- E. On its Fifth Claim for Relief, for judgment declaring and ordering that:
- (i) Council's adoption of Ordinance 2019-7 was void;
 - (ii) Council's adoption of Ordinance 2019-7 was illegal; or
 - (iii) in the alternative, the matter is remanded to the Council with instructions to re-notice the public meeting and conduct a new de novo hearing on the Ordinance.

F. The attorneys' fees, costs, and related expenses that Plaintiff have incurred related to this action, and any and all further relief the Court deems equitable, just, and appropriate under the circumstances.

DATED this 8th day of January, 2020.

PEAK LAW, PLLC

/s/ Polly Samuels McLean

Polly Samuels McLean

Attorney for Plaintiff