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**IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
WASATCH COUNTY, STATE OF UTAH**

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HOMES AT DEER MOUNTAIN  
HOMEOWNERS ASSOCIATION, INC.;  
JOHN C. KEEGAN, MICHAEL EIBLING,  
CANYON TRAILS HOMEOWNERS  
ASSOCIATION; STAR HARBOUR  
ESTATES HOMEOWNERS  
ASSOCIATION, INC., ROBERT AND  
PAMELA FORD, ALAN AND BEVERLY  
ROBINSON, LODGE AT STILLWATER  
OWNERS ASSOCIATION, INC.

Plaintiffs,

vs.

WASATCH COUNTY, a body corporate  
and politic, WASATCH COUNTY FIRE  
PROTECTION SPECIAL SERVICE  
DISTRICT, a county improvement district,

Defendants.

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**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

Case No. 130500003

Judge Pullan

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Plaintiffs Homes at Deer Mountain Homeowners Association, Inc., John C. Keegan, Michael Eibling, Canyon Trails Homeowners Association, Star Harbour Estates Homeowners Association, Inc., Robert and Pamela Ford, Alan and Beverly Robinson, and Lodge at Stillwater Owners Association, Inc. (collectively "Plaintiffs") by and through counsel, and as their Complaint for Declaratory Judgment and Injunctive Relief pursuant to Utah Code Ann. 11-42-106 et seq., Utah Code Ann. 78B-6-401 et seq. and Rules 57 and 65A of the *Utah Rules of Civil Procedure*, allege against Defendants Wasatch County, Wasatch County Fire Protection Special Service District ("Wasatch County" or "Defendants"), allege through this Complaint as follows:

**THE PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Homes at Deer Mountain Homeowners Association, Inc. ("Deer Mountain HOA") is a Utah non-profit corporation located in Wasatch County. Deer Mountain HOA represents owners of real property located in Wasatch County.

2. Plaintiff John C. Keegan is an individual and the owner of real property located in Wasatch County, Utah.

3. Plaintiff Michael Eibling is an individual and the owner of real property located in Wasatch County, Utah.

4. Plaintiff Canyon Trails Homeowners Association, is a Utah non-profit corporation located in Wasatch County.

5. Plaintiff Star Harbour Estates Homeowners Association, Inc. ("Star Harbour HOA") is a Utah non-profit corporation located in Wasatch County. Star Harbour HOA represents owners of real property located in Wasatch County.

6. Plaintiffs Robert and Pamela Ford are individuals and the owners of real property located in Wasatch County, Utah.

7. Plaintiffs Alan and Beverly Robinson are individuals and the owners of real property located in Wasatch County, Utah.

8. Plaintiff Lodge at Stillwater Owners Association, Inc. (Lodge at Stillwater HOA) is a Utah non-profit corporation located in Wasatch County. Lodge at Stillwater HOA represents owners of real property located in Wasatch County.

9. Defendant Wasatch County is a municipal corporation located in Wasatch County, Utah.

10. Defendant Wasatch County Fire Protection Special Service District ("Fire District") is a special service district created by Wasatch County.

11. This is an action based upon facts, circumstances and conduct that took place primarily in Wasatch County, Utah.

12. Jurisdiction is proper in this court pursuant to Utah Code Ann. §78A-5-102 and Utah Code Ann. §11-42-106(2)(a).

13. Venue is proper in this court pursuant to Utah Code Ann. §78B-3-303(1) and Utah Code Ann. §11-42-106(2)(a).

#### **GENERAL ALLEGATIONS**

14. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

15. In 2011, Wasatch County attempted to impose a special service district

assessment area to purportedly pay for fire protection and costs associated with staffing and maintenance of the Jordanelle Fire Station.

16. Wasatch County attempted to levy this fire assessment under Utah Code Ann. § 17B-1-101, et seq.

17. The special service district, which was proposed for properties surrounding Jordanelle Reservoir, was defeated by property owners in late 2011.

18. In 2012, the Utah State Legislature adopted amendments to Title 17 of the Utah Code, which restricted the creation of special service districts to pay for fire and police services.

**Attempt to Create New Assessment Area**

19. In an effort to end-run the statutory restriction enacted in early 2012, Defendants are now attempting to create and levy a new assessment on property owners surrounding Jordanelle Reservoir under Title 11 of the Utah Code.

20. On or about October 2, 2012, the Wasatch County Council ("County Council"), acting as the governing board of the Fire District, adopted a Notice of Intention to Designate Assessment Area ("Notice of Intent"), under the Area Assessment Act ("Act"). See, Utah Code Ann. § 11-42-101, et seq. A copy of the Notice of Intent is attached as Exhibit 1.

21. The Notice of Intent declared the intention of Wasatch County to create the Wasatch Fire Assessment Area ("Assessment Area"), under the Act.

22. The creation of the Assessment Area is purportedly to finance the operation and maintenance costs associated with providing services to properties located within the Assessment Area.

23. Specifically, the Notice of Intent states that the intended purpose of the Assessment Area is to levy assessments on property owners within the Assessment Area to pay approximately \$671,602 in annual costs associated with staffing the Jordanelle Fire Station with

full time firemen.

24. The Notice of Intent states that the Assessment Area will levy annual assessments in the amount of \$671,602, with annual adjustments, for a period of at least five years.

25. The Notice of Intent indicates that properties within the Assessment Area will be assessed at the rate of \$.56 per \$1,000 of assessed market value.

26. The Notice of Intent states:

Any person who is the owner of record of property to be included within the Assessment Area shall have the right to file in writing a protest against the designation of the Assessment Area or to make any other objections thereto. Protests shall describe or otherwise identify the property owned of record by the person or persons making the protest. Protests shall be filed in writing with the County Auditor/Clerk of Wasatch County, Utah, either in person during regular business hours Monday through Friday, or by mail on or before the date of the hearing at 5:00 p.m. on November 8, 2012....

27. The Notice of Intent also states:

Thereafter, at 7:00 p.m. on November 8, 2012, the County Council will meet in public meeting at the County Council Chambers in Heber City, Utah, to consider all protests so filed and hear all objections relating to the proposed Assessment Area and the proposed [operating and maintenance] Assessments. After such consideration and determination, the Council shall adopt a resolution either abandoning the Assessment Area or designating the Assessment Area either as described in this Notice of Intention to Designate Assessment Area or with deletions and changes made as authorized by the Act; but the County Council shall abandon the designation of the Assessment Area if the necessary number of protests as provided herein have been filed on or before the time specified in this Notice of Intention to Designate Assessment Area for the filing of protests after eliminating from such filed protests: (a) protests relating to property that has been deleted from the Assessment Area, and (b) protests that have been withdrawn in

writing prior to the conclusion of the hearing.

28. The Notice of Intent states that:

The necessary number of protests shall mean the following: Protests representing at least one-half of the total market value of all properties to be assessed where an assessment is proposed to be made according to assessed market value.

29. At various times, Defendants have represented that the total market value of the property located in the Assessment Area was approximately \$1.2 Billion. The numbers that have been disclosed have been vague and different at different times, creating a moving target.

30. Defendants did not disclose in writing the total market value, in dollars, of the property in the Assessment Area in the Notice of Intent.

31. To date, Defendants have not confirmed in writing the market value, in dollars, of the properties submitting protests to the Assessment Area.

32. Upon information and belief, Defendants have deliberately withheld and refused to share the actual total market value, in dollars, of the properties in the Assessment Area and the market value of the properties submitting protests, in order to prevent home owners from knowing the actual amount of protest required or actually submitted.

33. The Notice of Intent also states:

State law requires that protests must be in writing and submitted in person or by mail, with receipt by the County within the time specified in this public notice. Furthermore, such protest shall describe or otherwise identify the property owned by the person filing the protest. Accordingly, the County will not accept or consider emails of protests. Emails are not permitted by state law and it would be extraordinarily challenging to verify the authenticity of emails. Protests need to be filed in writing by the owner of the property which is within the proposed assessment area, and then delivered in person or via mail service (not by proxy) to the County Auditor/Clerk of Wasatch County, Utah with

receipt by the County at the place and within the time frame described in this public notice.

34. The Notice of Intent does not contain any requirement that any protest be signed by the property owner.

35. The Act does not require protests to be signed by the property owner submitting the protest.

36. The Notice of Intent forbids protest by facsimile, proxy or email. These restrictions are not found in the Act. In fact, Defendants allowed property owners to submit email protests in connection with the protest of the proposed fire district in 2011.

37. Section 11-42-205 of the Act sets forth certain procedural requirements that must be followed “[b]efore a local entity may designate an assessment area in which more than 75% of the property proposed to be assessed consists of unimproved property...”

38. Upon information and belief, more than 75% of the property in the Assessment Area is unimproved.

39. Accordingly, Defendants failed to follow the requirements set forth in Section 11-42-205.

#### **Boundaries of the Assessment Area are Invalid**

40. The Act defines “Assessment Area” as an area....”within a local entity’s jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and

maintenance, or economic promotion activities that benefit property within the area.” See, Utah Code Ann. § 11-42-102(2).

41. The Act defines “Benefitted Property” as “property within an assessment area that directly or indirectly benefits from improvements, operation and maintenance, or economic promotion activities.” See, Utah Code Ann. § 11-42-102(9).

42. The Act provides that “a governing body of a local entity intending to levy an assessment on property to pay some or all of the cost of providing improvements benefitting the property, performing operation and maintenance benefitting the property, or conducting economic promotion activities benefitting the property shall adopt a resolution or ordinance designating an assessment area.” See, Utah Code Ann. § 11-42-201(1)(a).

43. The Act provides that, “Each local entity that levies an assessment under this chapter shall levy the assessment on each block, lot, tract, or parcel that borders, is adjacent to, or benefits from an improvement: (i) to the extent that the improvement directly or indirectly benefits the property; and (ii) to whatever depth on the parcel of property that the governing body determines, including the full depth. “See, Utah Code Ann. § 11-42-409(1)(a).

44. The Act provides that, “Assessments shall be fair and equitable according to the benefit to the benefitted property from the improvement.” See, Utah Code Ann. § 11-42-409(5)(a).

45. The Notice of Intent indicates that the Assessment Area is being created to finance the operation and maintenance costs associated with staffing the Jordanelle Fire Station with full time firemen.



46. The boundaries of the Assessment Area appear to mirror the Wasatch County boundaries on the North, East and West sides.

47. However, the boundary on the South end of the Assessment Area arbitrarily cuts off just past the Jordanelle Dam and does not appear to include any property owners in Heber City.

48. The residents of Heber City receive substantial direct and indirect benefits from the Jordanelle Fire Station and properties within Heber City should have been included in the Assessment Area.

#### **Defendants Fail to Give Proper Notice**

49. The Act provides that “before adopting a designation resolution or designation ordinance....the governing body of the local entity shall: (a) give notice as provided in Section 11-42-202.” Utah Code Ann. 11-42-201(2).

50. In turn, Section 11-42-202 of the Act requires that notice shall be posted in a paper of general circulation within the local area’s boundaries.

51. Defendants published notice in the Wasatch Wave, a small community paper published and circulated exclusively in Heber City, Utah. The Wasatch Wave is not a paper of general circulation. In fact, the Wasatch Wave is not delivered to most, if not all, of the properties located in the Assessment Area.

52. The Act also requires that notice “be mailed, postage prepaid, within 10 days after the first publication or posting of the notice...to each owner of property to be assessed within the

proposed assessment area at the property owner's mailing address." Utah Code Ann. 11-42-202 (3)(b).

53. Although notice was mailed to some owners within the Assessment Area, many owners did not receive the notice required by statute.

54. In addition, many owners did not receive notice of the Assessment Area because the Defendants used an outdated list of properties in the Assessment Area to provide notice ("Assessment Roll"), which failed to give notice to owners that purchased their properties after the effective date of the Assessment Roll.

55. In the public hearing, held on November 8, 2012, a representative of the Defendants conceded that certain property owners would not have received the Notice of Intent.

56. The failure to provide notice to each property owner in the proposed Assessment Area is a violation of the Act and the due process rights of property owners in the Assessment Area because they were not provided an opportunity to protest creation of the Assessment Area.

#### **Procedural Irregularities During the Protest Period**

57. The Notice of Intent was adopted on October 3, 2012 and provides:

Protests shall be filed in writing with the County Auditor/Clerk of Wasatch County, Utah, either in person during regular business hours Monday through Friday, or by mail on or before the date of the hearing at 5:00 p.m. on November 8, 2012....

See, Notice of Intent.

58. Defendants required that protests be filed in person or by mail on November 8, 2012. They prohibited submission by email, facsimile or by proxy, even though the Act does not contain these restrictions.

59. The Notice of Intent did not attach a sample protest form that would be accepted by Defendants.

60. Gary Oliverson, an owner of property within the Assessment Area, created a protest form with a signature line and submitted the form to County Council Chair, Mike Kohler. Councilman Kohler refused to approve the form, but said that he would run it by Wasatch County's attorneys.

61. Mr. Oliverson explained that there was a very short time frame and again asked that the form be approved. In response, Councilman Kohler said, "Follow the information in the publication."

62. Because neither the Act nor the Notice of Intent contained any requirement that the protest be signed by the person submitting the protest, Mr. Oliverson created a protest form that did not include a signature line ("Protest Form"). A copy of this form is attached as Exhibit 2.

63. Consistent with the Notice of Intent and the Act, the Protest Form set forth the name of the property owner and identified the property to be assessed.

64. Shortly after the Notice of Intent was sent, Mr. Oliverson specifically asked Defendants to verify whether the Protest Form would be accepted by them. Defendants refused to take a position regarding whether the Protest Form was acceptable or unacceptable.

65. A number of protests were submitted in response to the Notice of Intent throughout the month of October 2012. Many of these protests used the Protest Form.

66. On or about November 1, 2012, one week before the deadline for submission of protests, Defendants' consultant, Laura Lewis, stated in a public hearing that protests that were submitted without a signature of the owner of the property would be rejected and not counted. This was the first indication that Defendants were requiring protests to be signed.

67. This new requirement, which is not contained in the Notice of Intent or the Act, resulted in confusion on the part of home owners and slowed the momentum of submission of protests.

68. On November 2, 2012, counsel for Deer Mountain HOA sent a letter to the Wasatch County Council. A copy of the letter from S. DuBois to the Wasatch County Council is attached as Exhibit 3.

69. In this letter, Deer Mountain HOA demanded that: 1) Defendants retract the requirement that protests be signed or in the alternative that the November 8, 2012 hearing be postponed pending proper notice to property owners regarding the signature requirement; 2) that all documentary evidence of all protests be preserved; 3) Defendants make copies of protests available prior to the November 8, 2012, hearing; 4) Defendants provide notice of any protests deemed invalid by Defendants; 5) that counting of the protests also be completed by an independent third party; and 6) that the November 8, 2012 be postponed due to a number of issues, including inadequate notice to property owners.

70. On November 7, 2012, counsel for Wasatch County sent a letter to counsel for the Deer Mountain HOA. A copy of the letter from R. Larsen to S. DuBois is attached as Exhibit 4.

71. In this letter, Wasatch County stated that Defendants would not retract the new requirement that protests be signed.

72. The letter also stated that “the District has and will continue to make reasonable efforts to contact property owners who have submitted protests without signature to verify the legitimacy of the protest.” The letter also states that “[the District] will make every reasonable effort to contact property owners listed on the unsigned protests to verify legitimacy of those protests before November 14, 2012.”

73. On November 8, 2012, Defendants held a public hearing under the Act.

74. During the hearing, Defendants were asked a litany questions by the public, including whether certain property owners had not received the Notice of Intent due to the use of an outdated Assessment Roll.

75. Defendants’ representative acknowledged that there were property owners that did not receive the Notice of Intent because they purchased their properties after the Assessment Roll was created.

76. During the November 8, 2012 hearing, Defendants did not provide any information regarding the number of protests submitted or whether the Assessment Area had passed or failed.

77. Instead, Defendants refused to disclose the results of the protests and instead continued to contact individuals that submitted unsigned protests to “verify” their protests.

78. Upon information and belief, Defendants used the unsigned protests as a pretext for improperly contacting homeowners to manipulate them into withdrawing protests.

79. For example, Defendants' representative told one property owner that "If the protest passes the fire station **will close** and the volunteer station 9 miles away in Heber will respond to all calls in the Jordanelle area." (Emphasis added). A copy of the email exchange between D. Craddock and an individual with the email address "[admin@wasatchcountyfiredistrict.com](mailto:admin@wasatchcountyfiredistrict.com)" is attached as Exhibit 5.

80. The representation that the Jordanelle station would be shut down if the Assessment Area was not approved was false and manipulative. The Defendant's own Notice of Intent states, "If the Assessment is not designated: The Fire District will not have sufficient funds to continue employing nine (9) full-time firemen and therefore the Jordanelle **Station will return to a volunteer-based station.**" (Emphasis added). See, Notice of Intent.

81. Upon information and belief, Defendants improperly conveyed similar misinformation and used intimidation, both verbally and in writing, to convince property owners to withdraw their protests both before and after November 8, 2012.

82. Despite the representations that all protests would be delivered to Defendants' outside consultant, Laura Lewis, immediately following the November 8, 2012 meeting, Defendants retained sole possession of the protests through late November or early December.

83. On November 20, 2012, counsel for Deer Mountain HOA sent a letter to counsel for Defendants. A copy of the letter from S. DuBois to R. Larsen is attached as Exhibit 6.

84. This letter renewed the objection to the new signature requirement and demanded that all protests, signed and unsigned be immediately turned over to the outside consultant, Laura Lewis.

85. In addition, the letter sought an explanation why the protests had not been turned over to Laura Lewis and what actions had been taken by Defendants regarding the protests after the November 8, 2012 hearing.

86. The Letter also requested that Defendants disclose the identity of any property owner that withdrew their protest after being contacted by the Defendants.

87. On November 22, 2012, counsel for Defendants sent an email to counsel for Deer Mountain HOA stating summarily that the district was "taking all prudent steps" and was "following state law." A copy of the email from R. Larsen to S. DuBois is attached as Exhibit 7.

88. Counsel for Defendants also stated, "In order to make that count accurate, it is taking longer than the District anticipated. However, until the count is completed, there can be no further action on the creation of the SAA."

**Defendants Finally Disclose Results and Declare that the Assessment Area Was not Defeated.**

89. On or about December 5, 2012, Defendants' retained consultant, Laura Lewis, submitted a report regarding whether a sufficient number of protests had been submitted to defeat the creation of the Assessment Area ("Lewis Report"). A copy of the Lewis Report is attached as Exhibit 8.

90. The Lewis Report states that, “[t]he Wasatch County Fire District has asked [Lewis] to tally the protests received by the County and provide a report of the results. As such, [Lewis] respectfully submits the following.”

91. The Lewis Report states that “[e]ach protest was given a value equal to the amount of assessment proposed against the property being protested.”

92. The Lewis Report states, “[b]oth protests and letters wishing to withdraw protests, which were received after the deadline (close of the public hearing on November 8, 2012) were tallied, but were not included in the official count.”

93. However, protests were, in fact, excluded after the deadline, if the property owner purportedly told Defendants that they did not submit a protest.

94. The Lewis Report states, “[p]rotests were not counted for properties referenced which are not in the assessment area.”

95. The Lewis Report states that “[a]fter counting the protests received from Wasatch County, [Lewis] confirms that the total amount of protests in the official count is less than 50% and the County may move forward with the creation the assessment area, if it so chooses.

96. The Lewis report states that the percentage of protests received was 50.78% of the properties protested the Assessment Area.

97. However, the Lewis Report states that .38% of the protests were not counted because they were withdrawn before the November 8, 2012 deadline.

98. The Lewis Report also states that .82% of the protests were not counted because the owners purportedly stated that they did not submit a protest.



99. The Lewis Report concludes that 49.58% of the properties in the Assessment Area submitted protests.

100. Thus, the Assessment Area passed by a mere .42% or a monetary value of approximately \$2.5 Million.

101. Again, the Lewis Report failed to disclose the market value of all property in the Assessment Area and the market value of the protests, in dollar terms.

#### **Defendants Failed to Count Valid Protests**

102. As noted above, Defendants hired Ms. Lewis to conduct a formal count of the protests.

103. Defendants, through Ms. Lewis, failed to count valid protests submitted for properties located in the Assessment Area in a dollar amount exceeding \$2.8 Million.

104. For example, a property owner named Arie Bogerd submitted a protest for all properties owned by him. Although the Defendants counted protests for some of Mr. Bogerd's properties, they improperly excluded protests for at least five different properties located in the Assessment Area. The total market value for the five excluded properties is over \$2.5 Million.

105. If the protests for these five excluded properties had been counted by Defendants, the Assessment Area would have failed.

106. In addition, three parcels owned by the Cummings family were not counted. These properties have a market value exceeding \$320,000.

107. In addition, several parcels owned by TL and MM, LLC were also not counted.

108. On information and belief, many additional protests submitted for properties, especially for property owners with more than one discrete property, were not counted.

**Defendants Improperly Excluded Protests Deemed to be “Late” while Withdrawing Protests after the Deadline.**

109. In addition, several protests were not counted because they were purportedly received on November 9, 2012 (or soon thereafter) – after the November 8, 2012 deadline arbitrarily set by Defendants. Copies of these protests are attached as Exhibit 9.

110. As noted above, the Notice of Intent provides:

Protests shall be filed in writing with the County Auditor/Clerk of Wasatch County, Utah, either in person during regular business hours Monday through Friday, or by mail on or before the date of the hearing at 5:00 p.m. on November 8, 2012....

111. The Notice of Intent does not require protests submitted by mail to be received by November 8, 2012 – only that they be filed by mail on or before November 8, 2012.

112. If a protest was mailed on November 8, 2012, it was timely under the plain language of the Notice of Intent.

113. Several of the protests invalidated by Wasatch County because they were received by mail after November 8, 2012, were dated and mailed on or before November 8, 2012. For example, two of the protests are dated November 5, 2012, two are dated October 24, 2012, and another is dated November 1, 2012. These property owners should not be penalized if the postal service took longer than normal to deliver their protests.

114. Most of the protests deemed to be late, were marked as received by Wasatch County on November 9, 2012, at roughly the same time in the afternoon. It is likely that these protests were mailed on November 8, 2012, and should have been counted as valid protests.

115. The total market value of the properties associated with these protests is \$12,735,393.00.

116. Moreover, it is evident that Defendants continued to invalidate and effectively withdraw protests after the November 8, 2012 “deadline.”

117. Even if some protests were physically received on November 9, 2012, for whatever reason, in fairness they should be counted. The harsh imposition of a deadline for protests elevates form over substance.

**Defendants Adopt a Secret Resolution or Ordinance Approving the Assessment Ordinance**

118. The Act provides “After holding a public hearing under Section 11-42-204 and considering protests filed under Section 11-42-203, and subject to Subsection (3), the governing body shall adopt a resolution or ordinance: (a) abandoning the proposal to designate an assessment area; or (b) designating an assessment area as described in the notice under Subsection 11-42-202 or with the changes made as authorized under Subsection 11-42-204(4). “

119. Upon information and belief, Defendants adopted an ordinance approving the Assessment Area either on or shortly after the date of the December 5, 2012 Lewis Report.

120. There was no public notice of a meeting to discuss this ordinance and there is no mechanism to determine whether a secret ordinance has been passed.

121. Upon information and belief the ordinance has not been reduced to writing and no public notice has been given that the ordinance was adopted by Defendants.

122. At this point in time, neither Plaintiffs nor any other member of the public (other than those involved in the secret meeting where the ordinance was apparently verbally adopted) have any notice of the actual scope or wording of the ordinance.

123. Section 11-42-106(2)(b) of the Act states that a civil action to contest the creation of an assessment area “may not be commenced against....the local entity more than 30 days after the effective date of the assessment resolution or ordinance...”

124. Insofar as Defendants have not yet reduced the ordinance to writing, and Plaintiffs are not in position to know the “effective date” of the ordinance.

125. Although the effective date should not be until such time as Defendants reduce the ordinance to writing and give formal notice of its adoption to the public, Plaintiffs bring this action now, out of an abundance of caution.

**Defendants Provide Notice of Their Intent to Proceed with Assessments.**

126. On or about December 5, 2012, Defendants adopted a “Notice of Meetings of Board of Equalization and Review” (“Equalization Notice”). A copy of the Equalization Notice is attached as Exhibit 10.

127. The Equalization Notice states that:

....the proposed assessment list for the Wasatch Fire Assessment Area (“Assessment Area”) has now been completed and is available for examination....The County Council has appointed a Board of Equalization and Review Board (the “Board”) to hear and consider objections to the proposed assessments to be levied within

the Assessment Area... As required by law, three persons consisting of members of the County Council have been duly appointed to serve on the Board. The Board will meet...on January 16, 2013...January 17, 2013...and on January 18, 2013...to hear and consider any objections to and make any corrections of any proposed assessments that the board may deem unequitable or unjust.”

128. On information and belief, if not enjoined, Wasatch County will improperly levy assessments within the Assessment Area after the Board of Equalization (i.e. the County Council) meets in January 2013.

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief – Assessment Area Failed )**

129. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

130. There presently exists an actual and continuing controversy between the Plaintiffs and the Defendants concerning whether sufficient protests were submitted by owners of property to defeat creation of the Assessment Area.

131. The Act provides that an Assessment Area shall not be created if the owners of more than 50% of the property within the proposed area submit protests.

132. According to the Lewis Report, 50.78% of the properties protested the Assessment Area, but 1.2% of the protests were then excluded from the total.

133. The Lewis Report concludes that 49.58% of the properties in the Assessment Area submitted protests. Thus, the Assessment Area passed by a mere .42% or a dollar value of approximately \$2.5 Million.

134. The Lewis Report failed to count valid protests exceeding \$15 Million.

135. Upon information and belief, the actual number is much greater.

136. Accordingly, Plaintiffs are entitled to a declaration and order that sufficient protests were submitted to defeat the Assessment Area.

137. As such, the ordinance should be declared null and void and should be set aside.

### **SECOND CAUSE OF ACTION**

#### **(Declaratory Relief - Result Void - Failure to Comply with Statute and Procedural Defects)**

138. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

139. There presently exists an actual and continuing controversy between the Plaintiffs and Defendants concerning whether the procedural defects associated with the attempt to create the Assessment Area render the outcome void and whether the ordinance creating the Assessment Area should be set aside.

140. Defendants failed to both publish the Notice of Intent in publication of general circulation.

141. Defendants failed to mail the Notice of Intent to each owner of property in the Assessment Area.

142. Defendants also used an outdated Assessment Roll and individuals that purchased property after the Assessment Roll was created did not receive the Notice of Intent.

143. The failure by Defendants to provide notice and the opportunity to protest, as required by the Act, render the outcome null and void.

144. Although neither the Notice of Intent nor the Act require that protests be signed by the owner submitting the protest, Defendants improperly imposed this requirement after protests had been submitted and just one week before the purported deadline for submission of protests.

145. Defendants then improperly contacted owners that had submitted unsigned protests in order to “verify” the protest. In reality, Defendants used these contacts to attempt to use misinformation to manipulate property owners into withdrawing their protests, both before and after the deadline for withdrawal.

146. Defendants improperly restricted the ability of property owners to submit their protests by facsimile, email and by proxy. These methods were previously allowed by Wasatch County in the prior attempt to levy a fire assessment in 2011.

147. Defendants failed to follow their own procedures for collection and counting of protests. By example, Defendants failed to provide the protests to Laura Lewis on November 8, 2012. Instead, Defendants maintained exclusive possession of the protests through early December, while they took steps to ensure that the Assessment Area would not be defeated.

148. Defendants also failed to confirm that less than 75% of the property within the Assessment Area was undeveloped and they failed to follow the requirements of Section 11-42-205 of the Act.

149. The many procedural defects and failure to comply with the Act prior to, during and following the protest period undermined the integrity of the process to an extent that the results must be declared void and set aside.

**THIRD CAUSE OF ACTION**  
**(Declaratory Relief - Violation of Due Process)**

150. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

151. There presently exists an actual and continuing controversy between the Plaintiffs and the Defendants concerning whether the Assessment Ordinance and the intent to levy an assessment on the properties within the Assessment Area deprived Plaintiffs of their property interest in their properties without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Utah Constitution.

152. Defendants failed to provide notice required by the Act to inform Plaintiffs of the Notice of Intent to create the Assessment Area.

153. As a result, Plaintiffs were denied an opportunity to protest the creation of the Assessment Area.

154. The Notice of Intent required protests to the Assessment Area to be submitted to prior to November 8, 2012.

155. Completely unaware of the Notice of Intent, and deadline for the submission of protests, many property owners in the Assessment Area were unable to comply with the requirement to submit a protest prior to November 8, 2012.

156. Accordingly, by failing to provide notice to property owners, Defendants have deprived these owners of their right and opportunity to protest the creation of the Assessment Area.



157. If property owners had received notice, they would have acted to protect their interests and would have protested the creation of the Assessment Area.

158. Defendants also failed and refused to accept valid protests to the creation of the Assessment Area, thus depriving the property owners of their right to protest the creation of the Assessment Area.

159. Plaintiffs have thus been deprived of their constitutionally protected property interests without due process of law.

160. Accordingly, Plaintiffs are entitled to a declaratory judgment from this Court that failure to give notice of the Notice of Intent, the right to protest the same, and the procedural defects and failure to comply with the Act deprived Plaintiffs of their property interests without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of Utah Constitution, and are therefore set aside, null and void.

#### **FOURTH CLAIM FOR RELIEF** **(Accounting)**

161. The Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

162. Defendants failed to count protests that were submitted for certain properties that are in the assessment area.

163. Defendants failed to count properly the protests that were filed by mail according to the Notice of Intent, but were marked by Defendants as received after the deadline.

164. Defendants have failed and refused to disclose the total market value of the properties within the Assessment Area and the market value of the properties that submitted protests objecting to the creation of the Assessment Area in dollar amounts. Rather, Ms. Lewis' report merely sets forth percentages without any supporting dollar amounts.

165. Defendants failed to provide copies of all protests received and all protests that were excluded by them or Ms. Lewis, for whatever reason.

166. Without the information above, Plaintiffs have been deprived of critical information relating to whether more than fifty percent of the properties in the Assessment Area submitted protests.

167. There have been substantial irregularities in notice, receipt and counting of protests submitted by property owners in the Assessment Area.

168. Defendants are entitled to a full disclosure and accounting of all relevant information relating to whether sufficient protests were submitted to defeat the Assessment Area.

**FIFTH CLAIM FOR RELIEF**  
**(Declaratory Judgment – Special Service District Assessments for Fire Prohibited)**

169. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

170. There presently exists an actual and continuing controversy between the Plaintiffs and the Defendants concerning whether Defendants may rely upon Title 11 of the Utah Code to levy an assessment for fire protection

171. In 2011, Wasatch County attempted to impose a special service district assessment are to purportedly pay for fire protection and costs associated with staffing and maintenance of the Jordanelle Fire Station, pursuant to Utah Code Ann. § 17B-1-101, et seq.

172. The special service district, which was proposed for properties surrounding Jordanelle Reservoir, was defeated by property owners in late 2011.

173. In 2012, the Utah State Legislature adopted amendments to Title 17 of the Utah Code, which resulted in prohibition on creation of special service districts to pay for fire and police services.

174. Defendants' attempt to levy a new assessment on property owners surrounding Jordanelle Reservoir under Title 11 of the Code is improper and barred by statute.

175. Accordingly, the ordinance purporting to create the Assessment Area is void, and should be set aside by the Court.

**SIXTH CLAIM FOR RELIEF**  
**(Declaratory Relief – Assessment Area Boundaries Void)**

176. Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

177. There presently exists an actual and continuing controversy between the Plaintiffs and the Defendants concerning whether the boundaries of the Assessment Area are arbitrary and capricious, and therefore void.

178. The Act defines “Assessment Area” as an area....within a local entity’s jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the area.” See, Utah Code Ann. § 11-42-102(2).

179. The Act defines “Benefitted Property” as “property within an assessment area that directly or indirectly benefits from improvements, operation and maintenance, or economic promotion activities.” See, Utah Code Ann. § 11-42-102(9).

180. The Act provides that “a governing body of a local entity intending to levy an assessment on property to pay some or all of the cost of providing improvements benefitting the property, performing operation and maintenance benefitting the property, or conducting economic promotion activities benefitting the property shall adopt a resolution or ordinance designating an assessment area.” See, Utah Code Ann. § 11-42-201(1)(a).

181. The Act provides that, “Each local entity that levies an assessment under this chapter shall levy the assessment on each block, lot, tract, or parcel that borders, is adjacent to, or benefits from an improvement: (i) to the extent that the improvement directly or indirectly benefits the property; and (ii) to whatever depth on the parcel of property that the governing body determines, including the full depth. See, Utah Code Ann. § 11-42-409(1)(a).

182. The Act provides that, “Assessments shall be fair and equitable according to the benefit to the benefitted property from the improvement.” See, Utah Code Ann. § 11-42-409(5)(a).

183. The Notice of Intent indicates that the Assessment Area is being created to finance the operation and maintenance costs associated with staffing the Jordanelle Fire Station with full time firemen.

184. The boundaries of the Assessment Area appear to mirror the Wasatch County boundaries on the North, East and West sides.

185. However, the boundary on the South end of the Assessment Area arbitrarily cuts off just past the Jordanelle Dam and does not appear to include any property owners in Heber City.

186. The residents of Heber City receive substantial direct and indirect benefits from the Jordanelle Fire Station and properties within Heber City should have been included in the Assessment Area.

187. Accordingly, the boundaries of the Assessment Area should be deemed arbitrary and capricious and should be declared void and set aside.

**SEVENTH CLAIM FOR RELIEF**  
**(Injunctive Relief)**

188. The Plaintiffs incorporate by this reference each of the preceding paragraphs of this Complaint, as if fully set forth herein.

189. Section 11-42-106(1) of the Act provides that, "A person who contests an assessment or any proceeding to designate an assessment area or levy an assessment may commence a civil action against the local entity to set aside a proceeding or enjoin the levy or collection of an assessment."

190. In addition, Utah Rule of Civil Procedure 65A authorizes this Court to issue a Preliminary Injunction in conformance with the provisions of the Rule.

191. As set forth above, Defendants intend to issue assessments, based upon their improper claim that the Assessment Area was not defeated.

192. Plaintiffs will suffer irreparable harm and injury unless the court issues a permanent injunction enjoining Defendants from proceeding with assessments on the properties located in the Assessment Area.

193. Unless an injunction is issued, the threatened injury to the Plaintiffs outweighs whatever damage, if any, the proposed order and injunction may cause Defendants.

194. The issuance of an injunction will not be adverse to the public interest. Indeed, Plaintiffs have raised important constitutional questions in this Complaint and the public interest would be served by reviewing and considering those constitutional questions on the merits.

195. There is a substantial likelihood that the Plaintiffs will prevail on the merits of the underlying claims.

196. Alternatively, and at a minimum, this case presents serious issues on the merits which should be the subject of further litigation.

197. Plaintiffs are entitled to injunctive relief in the form of a court order restraining Defendants from proceeding with their efforts to assess the real property in the Assessment Area.

#### **PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing, Plaintiffs pray for judgment in their favor, and against Defendants as follows:

---

1. Declaration that sufficient protests were submitted to defeat the Assessment Area. Accordingly, the ordinance approving the Assessment Area is null and void and the Assessment Area is declared to be defeated pursuant to the Act.

2. Declaration that due to the failure to give notice, in addition to the other procedural irregularities, the ordinance approving the Assessment Area is void.

3. Declaration that Defendants violated the due process rights of property owners that did not receive the Notice of Intent, and therefore the ordinance approving the Assessment Area is void.

4. Declaration that any action to levy any assessment on properties in the Assessment Area, pursuant to the Act, be stayed pending a complete accounting of all protests that were submitted and / or purportedly withdrawn.

5. Declaration that the attempt to levy assessments through the Assessment Area is not allowed by statute, and is therefore void.

6. Declaration that the boundaries of the Assessment Area are improper under the Act, are arbitrary and capricious and are void.

7. For preliminary and permanent injunctive relief enjoining Defendants from attempting to assess any property owners in the Assessment Area.

8. Costs incurred by the Plaintiffs in this action, including expert witness fees;

9. Attorneys' fees pursuant to any applicable statute or authority;

10. Pre-judgment and post-judgment interest at the highest legal rate; and

11. Such other and further legal and equitable relief as this Court deems necessary,

just and proper.

DATED this 4<sup>TH</sup> day of January, 2013.

**WRONA LAW FIRM, P.C.**

A handwritten signature in black ink, appearing to read "Scott A. DuBois", is written over a horizontal line.

Scott A. DuBois

Timothy R. Pack

Jarom B. Bangerter

Attorneys for Plaintiffs



## Cover Sheet for Civil Actions

**Interpretation.** If you do not speak or understand English, contact the court at least 3 days before the hearing or mediation, and an interpreter will be provided.

**Interpretación.** Si usted no habla o entiende el Inglés contacte al tribunal por lo menos 3 días antes de la audiencia o mediación y le proveerán un intérprete.

**Plaintiff/Petitioner (First)**

Homes at Deer Mountain Homeowners Association Inc. et al.

Name  
c/o Wrona Law Firm, 1745 Sidewinder Drive

Address  
Park City, UT 84060

City, State, Zip  
435-776-7567      dubois@wronalawfirm.com

Phone      Email  
First Plaintiff/Petitioner's Attorney\*  
Scott A. DuBois

Name  
7510

Bar Number

**Plaintiff/Petitioner (Second)**

Name

Address

City, State, Zip

Phone      Email

Second Plaintiff/Petitioner's Attorney\*

Name

Bar Number

**Defendant/Respondent (First)**

Wasatch County, Wasatch County Fire Protection Special Services District

Name

Address

City, State, Zip

Phone      Email

First Defendant/Respondent's Attorney\*

Name

Bar Number

**Defendant/Respondent (Second)**

Name

Address

City, State, Zip

Phone      Email

Second Defendant/Respondent's Attorney\*

Name

Bar Number

\*Attorney mailing and email addresses provided by Utah State Bar.

Total Claim for Damages \$ \_\_\_\_\_ Jury Demand ☐ Yes ☒ No \$250 ☐ Jury Demand

**Schedule of Fees: §78a-2-301** (Choose ☒ all that apply. See Page 2 for fees for claims other than claims for damages.)

**PLEASE CHOOSE ONE BEFORE PROCEEDING:**

- ☒ No monetary damages are requested/ Damages Unspecified (URCP 26: Tier 2)
- ☐ Damages requested are \$50,000 or less (URCP 26: Tier 1)
- ☐ Damages requested are more than \$50,000 and less than \$300,000 (URCP 26: Tier 2)
- ☐ Damages requested are \$300,000 or more (URCP 26: Tier 3)
- ☐ This case is exempt from URCP 26. (E)

**— MOTION TO RENEW JUDGMENT —**

\$37.50 ☐ Damages \$2000 or less

\$92.50 ☐ Damages \$2001 - \$9,999

\$180 ☐ Damages \$10,000 & over

**— COMPLAINT OR INTERPLEADER —**

\$75 ☐ Damages \$2000 or less

\$185 ☐ Damages \$2001 - \$9999

\$360 ☐ Damages \$10,000 & over

\$360 ☒ Damages Unspecified

**— COUNTERCLAIM, CROSS CLAIM, THIRD PARTY CLAIM, OR INTERVENTION —**

\$55 ☐ Damages \$2000 or less

\$150 ☐ Damages \$2001 - \$9999

\$155 ☐ Damages \$10,000 & over

**Choose ☒ Only One Category**

- | Fee                              | Case Type  |
|----------------------------------|--|
| <b>----- APPEALS -----</b>       |  |
| \$360                            | <input type="checkbox"/> Administrative Agency Review  |
| Sch                              | <input type="checkbox"/> Tax Court (Appeal of Tax Commission Decision)<br><small>Court: Refer to Clerk of Court upon filing.</small> |
| \$225                            | <input type="checkbox"/> Civil (78A-2-301(1)(h)) (E)   |
| \$225                            | <input type="checkbox"/> Small Claims Trial de Novo (E)  |
| <b>----- GENERAL CIVIL -----</b> |  |
| \$360                            | <input type="checkbox"/> Attorney Discipline (T2)  |
| Sch                              | <input type="checkbox"/> Civil Rights  |
| \$0                              | <input type="checkbox"/> Civil Stalking (E)  |
| \$360                            | <input type="checkbox"/> Condemnation/Eminent Domain   |
| Sch                              | <input type="checkbox"/> Contract  |
| Sch                              | <input type="checkbox"/> Debt Collection   |
| Sch                              | <input type="checkbox"/> Eviction/Forcible Entry and Detainer (E)  |
| \$360                            | <input type="checkbox"/> Extraordinary Relief/Writs  |
| \$360                            | <input type="checkbox"/> Forfeiture of Property (E)  |
| Sch                              | <input type="checkbox"/> Interpleader  |
| Sch                              | <input type="checkbox"/> Lien/Mortgage Foreclosure   |
| Sch                              | <input type="checkbox"/> Malpractice   |
| Sch                              | <input type="checkbox"/> Miscellaneous Civil   |
| Sch                              | <input type="checkbox"/> Personal Injury   |
| \$360                            | <input type="checkbox"/> Post Conviction Relief: Capital (E)   |
| \$360                            | <input type="checkbox"/> Post Conviction Relief: Non-capital (E)   |
| Sch                              | <input type="checkbox"/> Property Damage   |
| Sch                              | <input checked="" type="checkbox"/> Property Rights  |
| Sch                              | <input type="checkbox"/> Sexual Harassment   |
| Sch                              | <input type="checkbox"/> Water Rights  |
| Sch                              | <input type="checkbox"/> Wrongful Death  |
| \$360                            | <input type="checkbox"/> Wrongful Lien   |
| Sch                              | <input type="checkbox"/> Wrongful Termination  |
| <b>----- DOMESTIC -----</b>      |  |
| \$0                              | <input type="checkbox"/> Cohabitant Abuse (E)  |
| \$310                            | <input type="checkbox"/> Marriage Adjudication (Common Law) (T2)   |
| \$310                            | <input type="checkbox"/> Custody/Visitation/ Support (T2)  |
| \$310                            | <input type="checkbox"/> Divorce/Annulment (T2)  |
|                                  | <input type="checkbox"/> Check if child support, custody or parent-time will be part of decree                                       |
|                                  | <input type="checkbox"/> Check if Temporary Separation filed   |
| \$8                              | <input type="checkbox"/> Vital Statistics \$26-2-25 per form   |
| \$115                            | <input type="checkbox"/> Counterclaim: Divorce/Sep Maint.  |
| \$115                            | <input type="checkbox"/> Counterclaim: Custody/Visitation/ Support   |
| \$155                            | <input type="checkbox"/> Counterclaim: Paternity/Grandparent Visitation  |

- | Fee                                | Case Type  |
|------------------------------------|--|
| \$100                              | <input type="checkbox"/> Domestic Modification (T2)  |
| \$100                              | <input type="checkbox"/> Counter-petition: Domestic Modification                           |
| \$360                              | <input type="checkbox"/> Grandparent Visitation (T2)                                       |
| \$360                              | <input type="checkbox"/> Paternity/Parentage (T2)  |
| \$310                              | <input type="checkbox"/> Separate Maintenance (T2)   |
| \$35                               | <input type="checkbox"/> Temporary Separation (E)  |
| \$35                               | <input type="checkbox"/> Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) (E) |
| \$35                               | <input type="checkbox"/> Uniform Interstate Family Support Act (UIFSA) (E)                 |
| <b>----- JUDGMENTS -----</b>       |  |
| \$35                               | <input type="checkbox"/> Foreign Judgment (Abstract of) (E)                                |
| \$50                               | <input type="checkbox"/> Abstract of Judgment/Order of Utah Court/Agency (E)               |
| \$30                               | <input type="checkbox"/> Abstract of Judgment/Order of Utah State Tax Commission (E)       |
| \$35                               | <input type="checkbox"/> Judgment by Confession (E)  |
| <b>----- PROBATE -----</b>         |  |
| \$360                              | <input type="checkbox"/> Adoption/Foreign Adoption (T2)                                    |
| \$8                                | <input type="checkbox"/> Vital Statistics \$26-2-25 per form                               |
| \$360                              | <input type="checkbox"/> Conservatorship (T2)  |
| \$360                              | <input type="checkbox"/> Estate Personal Rep - Formal (T2)                                 |
| \$360                              | <input type="checkbox"/> Estate Personal Rep - Informal (T2)                               |
| \$35                               | <input type="checkbox"/> Foreign Probate/Child Custody Doc. (E)                            |
| \$360                              | <input type="checkbox"/> Gestational Agreement (T2)  |
| \$360                              | <input type="checkbox"/> Guardianship (T2)   |
| \$0                                | <input type="checkbox"/> Involuntary Commitment (T2)                                       |
| \$360                              | <input type="checkbox"/> Minor's Settlement (T2)   |
| \$360                              | <input type="checkbox"/> Name Change (T2)  |
| \$360                              | <input type="checkbox"/> Supervised Administration (T2)                                    |
| \$360                              | <input type="checkbox"/> Trusts (T2)   |
| \$360                              | <input type="checkbox"/> Unspecified (Other) Probate (T2)                                  |
| <b>----- SPECIAL MATTERS -----</b> |  |
| \$35                               | <input type="checkbox"/> Arbitration Award (E)   |
| \$0                                | <input type="checkbox"/> Determination Competency-Criminal (E)                             |
| \$135                              | <input type="checkbox"/> Expungement (E)   |
| \$0                                | <input type="checkbox"/> Hospital Lien (E)   |
| \$35                               | <input type="checkbox"/> Judicial Approval of Document: Not Part of Pending Case (E)       |
| \$35                               | <input type="checkbox"/> Notice of Deposition in Out-of-State Case/Foreign Subpoena (E)    |
| \$35                               | <input type="checkbox"/> Open Sealed Record (E)  |

(E) Exempt from URCP Rule 26

(T2) Case type defaults to Tier 2 (no monetary damages)

# Exhibit 1

## **Wasatch County Fire District Assessment Area Information**



Wasatch County Fire District has proposed the designation of an assessment area in the Jordanelle area in order to continue providing a fully-manned station, which provides a higher level of fire service to that area.

### **Purpose of the Proposed Assessment Area**

Wasatch County Fire District uses property tax revenues to provide volunteer fire service throughout the County. These tax revenues pay for all administrative staff, volunteer firefighters and a portion of the full time firefighters housed at the Jordanelle Fire Station (10420 North Jordanelle Blvd). In order to fund the balance of the cost of the full time firemen housed at Jordanelle, the County Fire District proposes to designate an assessment area and levy an assessment on property located within the assessment area to pay for the increased level of service.

Individuals owning property within the assessment area will be given the opportunity to support or protest the designation of the proposed assessment area and the assessment to be levied. This letter has been sent to outline the procedures and some of the consequences associated with the outcome of the proposed assessment area.

Official notice of the assessment area and other details related to the public process are also enclosed with this letter. Please note state law requires that protests must be in writing and submitted in person or by mail, with receipt by the County within the time specified in this public notice. Furthermore, such protest shall describe or otherwise identify the property owned by the person filing the protest. Accordingly, the County will not accept or consider emails of protests. Emails are not permitted by state law and it would be extraordinarily challenging to verify the authenticity of emails. Protests need to be filed in writing by the owner of the property which is within the proposed assessment area, and then delivered in person or via mail service (not by proxy) to the County Auditor/Clerk of Wasatch County, Utah with receipt by the County at the place and within the time frame described in the enclosed public notice.

### **If the Assessment Area is designated:**

- The Jordanelle Station will remain manned with full time staff. 75% of this staff cost will be included in the assessment. The remaining 25% will be shouldered by the Fire District for the general services provided which benefit the entire County.
- The assessment will be levied on property located in the assessment area and benefitted by the improved services. The assessment will be for a 5 year period. After 5 years, the assessment will be released, unless renewed through a similar process.
- The assessment will be calculated and administered annually.

### **If the Assessment is not designated:**

- The Fire District will not have sufficient funds to continue employing nine (9) full-time firemen and therefore the Jordanelle Station will return to a volunteer-based station.
- The Fire District will negotiate with Park City Fire to meet the contractual obligations regarding fire coverage levels for the parcels annexed in 1998, or will renegotiate the annexation agreement.
- Jordanelle area property owners may experience a change in property insurance rates or in the ability of some carriers to continue providing coverage (check with your carrier).

Dated October 15, 2012

## NOTICE OF INTENTION TO DESIGNATE ASSESSMENT AREA

PUBLIC NOTICE IS HEREBY GIVEN that on October 3, 2012, the County Council (the "County Council") of Wasatch County, Utah (the "County"), acting as the governing board of the Wasatch County Fire Protection Special Service District, Wasatch County, Utah (the "District") adopted a resolution declaring its intention to designate an assessment area to be known as the Wasatch Fire Assessment Area (the "Assessment Area"). It is the proposal of the County Council to provide services herein described to property within the proposed Assessment Area, to finance the operation and maintenance costs ("O&M Costs") with respect to said services, and to levy assessments as provided in Title 11, Chapter 42, Utah Code Annotated 1953, as amended, (the "Act") on the properties lying within the Assessment Area for the benefit of which such assessments are to be expended to pay for such O&M Costs.

### DESCRIPTION OF ASSESSMENT AREA

THE PROPOSED WASATCH FIRE ASSESSMENT AREA IS LOCATED ENTIRELY IN WASATCH COUNTY, STATE OF UTAH, AND IS COMPRISED OF PORTIONS OF TOWNSHIP 2 SOUTH, RANGE 4, 5, AND 6 EAST AND TOWNSHIP 3 SOUTH, RANGE 5 AND 6 EAST.

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 34, T2S, R4E, SLB&M; THENCE EASTERLY ALONG THE SOUTH LINE OF SECTIONS 34, 35 AND 36, T2S, R4E, AND SECTION 31, T2S, R5E, TO THE POINT OF INTERSECTION WITH THE CENTERLINE OF THE TIMPANOGAS CANAL; THENCE SOUTHERLY ALONG THE CENTERLINE OF THE TIMPANOGAS CANAL TO THE POINT OF INTERSECTION WITH THE CENTERLINE OF STATE ROAD 32; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF STATE ROAD 32 TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF SECTION 7, T3S, R5E; THENCE EASTERLY ALONG THE SOUTH LINE OF SECTIONS 7,8,9,10, 11, AND 12, T3S, R5E, TO THE SOUTHEAST CORNER OF SECTION 12 T3S, R5E; THENCE NORTHERLY ALONG THE EAST LINE OF SECTION 12 TO THE CLOSING CORNER COMMON TO SECTIONS 12 AND 1, T3S, R5E; THENCE NORTHERLY ALONG A PORTION OF THE EAST LINE OF SECTION 1 T3S, R5E, TO THE SOUTHWEST CORNER OF SECTION 6 T3S, R6E; THENCE EASTERLY ALONG THE SOUTH LINE OF SECTIONS 6 AND 5, T3S, R6E, TO THE SOUTHEAST CORNER OF SECTION 5; THENCE NORTHERLY ALONG THE EAST LINE OF SECTION 5, T3S, R6E, TO THE POINT OF INTERSECTION WITH THE WASATCH / SUMMIT COUNTY LINE; THENCE NORTHWESTERLY AND THEN SOUTHWESTERLY ALONG THE COUNTY LINE TO A POINT IN SECTION 22, T2S, R4E, WHERE THE COUNTY LINE INTERSECTS THE PARK CITY MUNICIPAL BOUNDARY AS IT EXISTED ON JUNE 6, 2012; THENCE LEAVING THE WASATCH COUNTY LINE AND TRAVELING SOUTHERLY ALONG THE EASTERLY BOUNDARY OF THE PARK CITY MUNICIPAL BOUNDARY, TO A POINT IN SECTION 27, T2S, R4E, WHERE THE PARK CITY BOUNDARY, AGAIN, INTERSECTS THE WASATCH COUNTY LINE; THENCE SOUTHWESTERLY ALONG THE COUNTY LINE TO THE POINT OF INTERSECTION WITH THE WEST LINE OF SECTION 34, T2S, R4E; THENCE SOUTHERLY ALONG THE WEST LINE OF SECTION 34, T2S, R4E, TO THE POINT OF BEGINNING.

A map of the proposed Assessment Area is attached hereto as Attachment A.

## PROPOSED O&M COSTS

The District intends to levy an operation and maintenance assessment ("O&M Assessments"), as provided in the Act, on those properties within the Assessment Area to be benefited by certain O&M Costs including, the fire protection service costs for a portion of the full time firefighters housed at the Jordanelle Fire Station ("Services") incurred by the District within the Assessment Area. The initial estimated aggregate annual O&M Assessments is \$671,602 for the first year. Each subsequent annual O&M Assessments shall be determined as follows: most recent actual O&M costs, less any surplus or plus any deficits for the prior year, plus a cost of living adjustment, plus any extraordinary O&M costs to be incurred for the coming year. The District will adjust each annual O&M Assessments annually to reflect the current O&M Costs anticipated to be incurred by the District using the determination method described above, and will adopt a new assessment ordinance levying each annual O&M Assessment.

### O&M ASSESSMENTS AND METHOD

<u>Purpose of O&amp;M Assessment</u>	<u>Estimated First Year Assessment</u>	<u>Method of Assessment</u>
to pay operation and maintenance expenses described above	\$.56 per \$1,000 of assessed market value	Per Assessed Market Value determined by Wasatch County

The O&M Assessments will be paid in annual installments by property owners over a five-year period beginning on the day on which the County Council adopts the Assessment Ordinance levying the O&M Assessments. The first O&M Assessments payment shall be due and payable as provided in the Assessment Ordinance to be adopted by the County Council to levy said O&M Assessments and subsequent O&M Assessments payments with respect to subsequent assessment ordinances shall be due and payable on each anniversary date thereafter for so long as the County Council determines to adopt an assessment ordinance to levy the O&M Assessments; but in no event longer than five (5) years, provided, however, that the County Council may levy an O&M Assessments after said five-year period, if, after the five-year period expires, the County Council complies with the requirements of the Act. The County Council shall charge interest at a rate of ten percent (10%) per annum on unpaid O&M Assessments from the date the O&M Assessments comes due. Other payment provisions and enforcement remedies shall be in accordance with the Act.

The proposed O&M Assessments will be equal and uniform based on benefits received. The County Engineer has prepared a "Certificate of Project Engineer" that, among other things, identifies the costs of the proposed O&M Costs. Said Certificate is on file in the office of the County Engineer who will make such information available to all interested parties.

A map of the proposed Assessment Area and other related information are on file in the office of the County Engineer who will make such information available to all interested persons.

## TIME FOR FILING PROTESTS

Any person who is the owner of record of property to be included within the Assessment Area shall have the right to file in writing a protest against the designation of the Assessment Area or to make any other objections relating thereto. Protests shall describe or otherwise identify the property owned of record by the person or persons making the protest. Protests shall be filed in writing with the County Auditor/Clerk of Wasatch County, Utah, either in person during regular business hours Monday through Friday, or by mail on or before the date of the hearing at 5:00 p.m. on November 8, 2012, at the offices of the County Auditor/Clerk located at 25 North Main, Heber City, Utah 84032. Thereafter, at 7:00 p.m. on November 8, 2012, the County Council will meet in public meeting at the County Council Chambers in Heber City, Utah, to consider all protests so filed and hear all objections relating to the proposed Assessment Area and the proposed O&M Assessments. After such consideration and determination, the Council shall adopt a resolution either abandoning the Assessment Area or designating the Assessment Area either as described in this Notice of Intention to Designate Assessment Area or with deletions and changes made as authorized by the Act; but the County Council shall abandon the designation of the Assessment Area if the necessary number of protests as provided herein have been filed on or before the time specified in this Notice of Intention to Designate Assessment Area for the filing of protests after eliminating from such filed protests: (a) protests relating to property that has been deleted from the Assessment Area, and (b) protests that have been withdrawn in writing prior to the conclusion of the hearing. The necessary number of protests shall mean the following: Protests representing at least one-half of the total market value of all properties to be assessed where an assessment is proposed to be made according to assessed market value. For any additional information please contact the Wasatch Fire District at (435) 940-9636. State law requires that protests must be in writing and submitted in person or by mail, with receipt by the County within the time specified in this public notice. Furthermore, such protest shall describe or otherwise identify the property owned by the person filing the protest. Accordingly, the County will not accept or consider emails of protests. Emails are not permitted by state law and it would be extraordinarily challenging to verify the authenticity of emails. Protests need to be filed in writing by the owner of the property which is within the proposed assessment area, and then delivered in person or via mail service (not by proxy) to the County Auditor/Clerk of Wasatch County, Utah with receipt by the County at the place and within the time frame described in this public notice.

ADOPTED BY THE COUNTY COUNCIL OF WASATCH COUNTY, UTAH

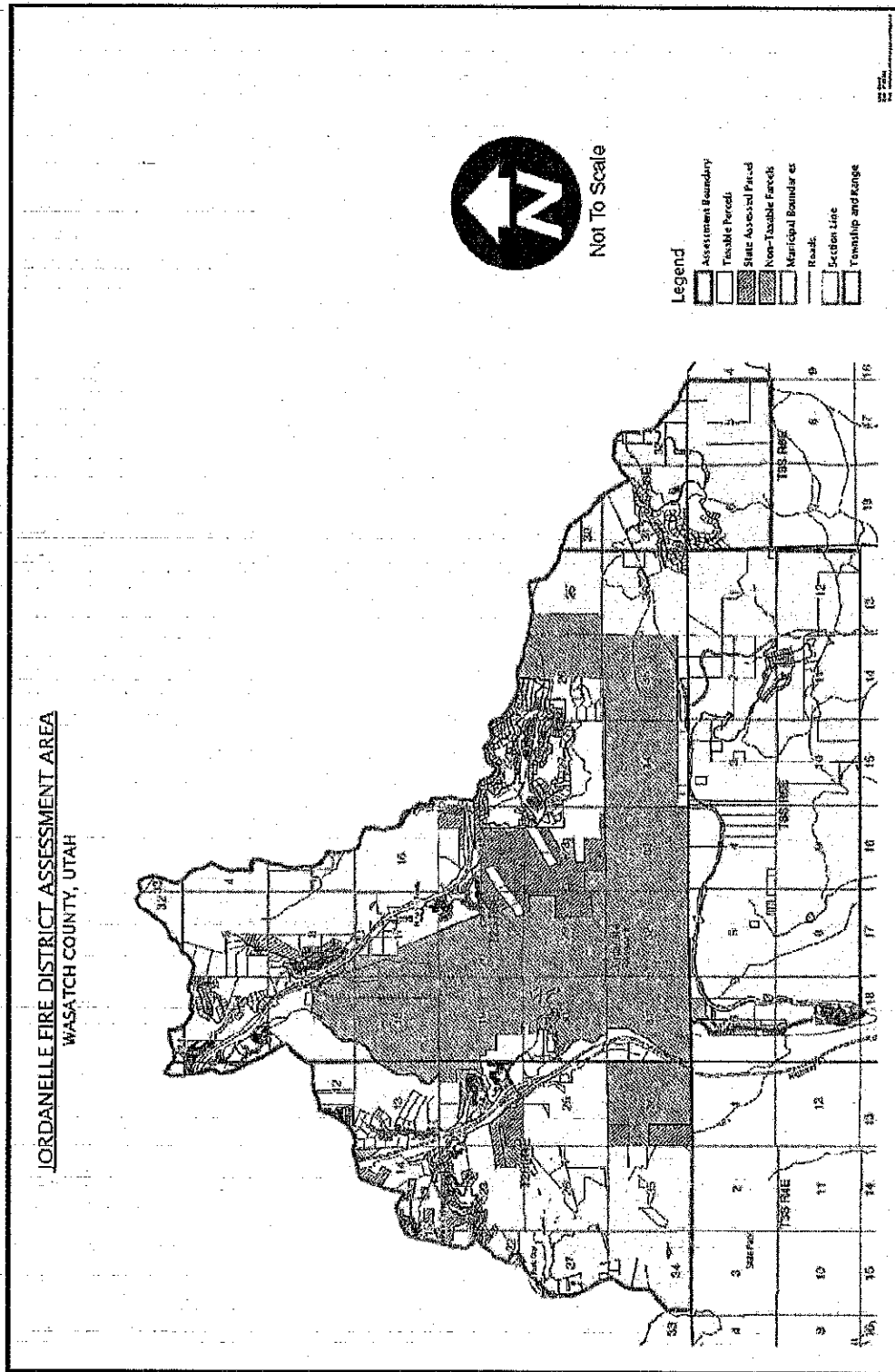
By: /s/ Brent Titcomb

County Auditor/Clerk



# ATTACHMENT A

## MAP OF PROPOSED ASSESSMENT AREA



# **Exhibit 2**

## **PROTEST OF ASSESSMENT AREA FOR THE PROPOSED JORDANELLE FIRE DISTRICT**

(Please Print Clearly)

Date: \_\_\_\_\_

Name/Owner of Property(s) \_\_\_\_\_

Address or location Identification of Property(s) to be assessed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above listed owner of property identified in the proposed assessment area hereby objects and protests the creation of an assessment area to fund the Wasatch County Fire District. Said objection and protests are identified below as specified in 11-42-203. Protests of Assessment Areas.

- 1- The above listed owner of property identified in the proposed assessment area, **objects and protests the designation of an assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 2- The above listed owner of property identified in the proposed assessment area, **objects and protests the designation of the boundaries of the assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 3- The above listed owner of property identified in the proposed assessment area, **objects and protests the inclusion of the above listed property in the proposed assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 4- The above listed owner of property identified in the proposed assessment area, **objects and protests any proposed improvements to the assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 5- The above listed owner of property identified in the proposed assessment area, **objects and protests any other aspect of the proposed designation of an assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012

# Exhibit 3

November 2, 2012

Wasatch County Council  
Acting as the Wasatch County Fire Board  
25 North Main St.  
Heber City, UT 84032

Dear County Council Members:

This firm has been retained by The Homes at Deer Mountain Homeowners Association, Inc. in connection with the recent actions taken by the Wasatch County Council to create a special service area, pursuant to Utah Code § 11-42-101, et seq. (the "Assessment Area"). I am writing to express several grave concerns regarding the hearing scheduled to take place on November 8, 2012 regarding the Assessment Area.

First, I am writing to demand that the County Council, acting as the Wasatch County Fire Board (the "Board"), reverse its position, taken for the first time on November 1, 2012, requiring that protests to the Assessment Area be signed by the property owner.

I have been informed that the Board's consultant, Laura Lewis, stated in a public hearing on November 1, 2012 that protests to the Assessment Area would not be counted unless they were signed by the property owner. This statement was then apparently seconded and/or adopted by members of the Board. This new purported requirement is a violation of the governing Utah statute. Title 11 does not require protests to be signed. Rather, it only requires a property owner to "describe or otherwise identify the property owned by the person filing the protest." See Utah Code § 11-42-203(2).

Similarly, requiring that a protest be signed contradicts the notice sent to property owners by the Board. This notice does not state that a protest must be signed by the property owner. It states that "State law requires that protests must be in writing and submitted in person or by mail" and that "such protest shall describe or otherwise identify the property owned by the person filing the protest." There is nothing in the statute or the notice that requires a protest to be signed by the property owner to be valid.

In addition, the new purported requirement is not consistent with prior statements made by Ms. Lewis and the Board. During an October 3, 2012 meeting, the Board was asked by Gary Oliverson whether the Board believed that signatures were required. Both the Board and its consultant merely stated that property owners should follow directions set forth in the notice. Of course, no notice provided by the Board states that a signature is required. Accordingly, this is an entirely new requirement and an impermissible attempt to change the ground rules just one week before the end of the protest period.

As of today no further communication has been delivered notifying property owners in the proposed Assessment Area of the new requirement. In particular, no notice has been given to property owners that have submitted protests without signatures, in reliance upon the plain language of the statute and the notices sent by the Board. Accordingly, no property owner, aside from the handful of individuals at the hearing last night, will receive proper notice of the Board's position that a protest must be signed to be counted. In our view the Board's position is contrary to statutory requirements, disenfranchises those that have sent in "unsigned" protests and deprives them of due process. In addition, enforcement of the new requirement may lead to the improper imposition of an assessment that would have been defeated had these valid protests not been improperly voided.

In short, given the Board's position, we have a real concern that valid protests will improperly be disregarded, without any notice to the property owner that submitted the protest. Accordingly, we demand that the Board reverse its decision requiring that protests be signed by the property owners.

In the alternative, we demand that the Board postpone the hearing on November 8, 2012, and provide proper notice regarding the new requirement. This is particularly important for those property owners that have complied with Utah statute and the Board's prior notices in submitting their protests, but did not sign their protest.

We also demand that the documentary evidence of all protests be preserved. The protests that have been submitted, whether counted or not by the Board, are governmental records and they must be preserved and not destroyed. Please confirm that no protest has been or will be discarded or destroyed.

We also demand that the Board provide copies of all protests prior to the hearing and provide a clear indication of which protests will be counted and which protests will be disregarded. If the Board has already voided some protests because they were not signed, please provide copies of those protests.

Of course, if the Board intends to invalidate protests for any reason other than the absence of a signature, please provide notice of that intent and the purported reasons for voiding these protests.

Given the Board's apparent willingness to disregard statutory requirements and its indication that valid protests will not be counted (and potentially discarded), we also demand that all protests be counted, at the appropriate time, by an independent and neutral party, such as a former Utah state court judge. I would be happy to provide suggestions.

There are several additional reasons that the hearing on November 8, 2012 should be stricken. First, there is no valid project engineer, as required by statute. Second, it appears that the Board is using an out of date assessment roll to notify property owners. As a result, new owners who purchased property between the times that the consultant pulled the assessment roll

from the county computer to the time the notices were sent out have not received notice of this pending assessment area. In order to protect the statutory and due process rights of these new purchasers, the November 8, 2012 hearing should be postponed and all new property owners should be given adequate notice and time to protest.

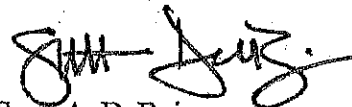
In addition, the November 8, 2012 hearing should be postponed until the Wasatch County Council complies with the statutory requirement that it create a Board of Equalization prior to the establishment of the Assessment Area. The consultant discussed the Board of Equalization on November 1, 2012, but neglected to inform the Board that the Board of Equalization must be established prior to the creation of the Assessment Area. This has not occurred.

Please provide a written response to the above requests before the close of business on November 5, 2012. In particular, if the Board will not reverse its position regarding its new requirement that protests must be signed by the property owner to be counted, please confirm that the vote on November 8, 2012 will be postponed and that new notices will be sent out clearly setting forth this new requirement.

If the Board intends to proceed with the hearing on November 8, 2012, and to disregard protests that are not signed, please let us know immediately so that we can seek assistance from the Court.

Lastly, I request that this letter be made a part of the official record, in connection with protests to the proposed Assessment Area.

Sincerely,



Scott A. DuBois

cc: Scott Sweat

# **Exhibit 4**



# Ballard Spahr LLP

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One Utah Center, Suite 800  
201 South Main Street  
Salt Lake City, UT 84111-2221  
TEL 801.531.3000  
FAX 801.531.3001  
www.ballardspahr.com

Randall M. Larsen  
Direct: 801.531.3079  
Fax: 801.531.3001  
larsen@ballardspahr.com

Scott A. DuBois  
Wrona Law Firm  
1745 Sidewinder Drive  
Park City, Utah 84060

November 7, 2012

Re: The Homes at Deer Mountain Homeowners Association, Inc. Letter

Dear Mr. DuBois:

On behalf of the Wasatch County Fire Protection Special Service District (the "District"), we are responding to the letter sent on behalf of The Homes at Deer Mountain Homeowners Association, Inc. (the "Letter") regarding the hearing of the County Council to be held on November 8, 2012.

The Utah Code requires that protests by property owners within a proposed assessment area be in writing and filed with the District. In order to verify that protests are being filed by the property owner as described in Utah Code Ann. §11-42-203, the District has determined it to be prudent and reasonable to require signatures on said written protests by the property owner (including any written withdrawals of the same pursuant to Utah Code Ann. §11-42-203(3)).

All protests filed with the County Clerk (even those in improper form) have been maintained by the District. Furthermore, as you requested, enclosed herewith is a list of all of the individuals named in unsigned protests received by the District within the Deer Mountain HOA area as of November 5, 2012. The District has and will continue to make reasonable efforts to contact property owners who have submitted protests without signature to verify the legitimacy of the potential protest. If the governing body of the District determines that these unsigned protests—together with the signed protests properly filed with the County—would constitute sufficient protests under the Utah Code<sup>1</sup> (or a lesser amount at the County's discretion),

it will make every reasonable effort to contact property owners listed on the unsigned protests to verify legitimacy of those protests before November 14, 2012.

The Letter contends that certain new property owners within the proposed assessment area have not been notified of the proposed assessment area. The District would note that it used the most recently available list of property owners and the District's consultant included all updates that it was made aware of. Furthermore, the notice of the public hearing has been published in the public newspaper once a week for four consecutive weeks. Of course any property owner of record may submit a valid protest that will be counted by the District.

Your letter alleges other issues that I believe we addressed in our phone call, but please feel free to call me to discuss further. As of this time, the County Council intends to proceed with its hearing on November 8, 2012.

Sincerely,



Randall M. Larsen

Enclosure

cc: Janet Carson  
Kelly Pfof  
Craig Chambers  
Steve Farrell

EXHIBIT A

**List of Unsigned Protests from the Deer Mountain HOA Area  
as of 11-6-2012**

Name on the Unsigned Protest	Address or Location Identification Listed
Matthew and Sherrie Rolston	12416 Deer Mountain Blvd. Kamas UT 84063
Chris and Annett Blankenship	12400 Ross Creek Dr, Deer Mountain, UT 84036
Julie Mohan/Chris Lehman	13353 Slalom Run Way
James A Hunt/Peggy A. Hunt	12282 Ross Creek Dr, Deer Mountain, Utah 84036
Sean Cochrane	13104 Slalom Run Way
Dan and Lisa Hendrickson	Parcel # 00-0020-0360
Barry Raymond and Leanne Raymo	12384 Ross Creek Drive, Deer Mountain, UT 84036
Richard and Marie Nixon	12255 Ross Creek Dr. Deer Mountain, Utah 84036
Maree Cook and Michael Atton	12267 N Deer Mnt, Blvd, Deer Mtn Ut 84036
Steve and Rossana Sauls	Lot 21, 13346 N Slalom Run Drive Plat 4
Steve and Rossana Sauls	Lot 20, 13402 N Slalom Run Drive Plat 4
Steve and Rossana Sauls	Lot 19, 13442 N Slalom Run Drive Plat 4
Steve and Rossana Sauls	Lot 25, 12102 N Sage Hollow Circle Plat 3
Steve and Rossana Sauls	Lot 12, 12357 Deer Mountain Blvd Plat 2
Calvin and Mary Grace McMurray	13304 Slalom Run Way Kamas UT 84036
Curtis and Loa Williams	417 Big Dutch Dr. Deer Mountain UT 84036
Chris and Michelle Williams	437 Big Dutch Dr. Deer Mountain UT 84036
Sherry L. and Gary E. Lace	12521 Ross Creek Dr, Deer Mountain, UT 84036
Ronald L. Hunt	12415 Bone Hollow Road Deer Mountain, UT 84036 Lot 60/Plat 3
Laurie L. Buys	12317 N Deer Mountain, Deer Mountain UT 84036
W Joy and Jane Joy	12276 Deer Mountain Boulevard Kamas 84036
Michael Bargebrugge	Estate Lot #14 in Deer Mountain Subdivision, Address: 13391 Slalom Run Dr. Deer Mtn, UT
Lawrence and Barbara Sider	13066 N. Slalom Run Dr. Deer Mountain, UT 84036
Sandra W. Smith and Kenneth R. Fife	12090 Sage Hollow Circle Deer Mountain, UT 84036
Barry Silver / Ellen Silver	340 Big Dutch Drive Deer Mtn, UT 84036
Marcus and Tanaya Wood	12250 N Ross Creek Dr. Deer Mtn, UT 84036
Ted and Trish Browne	12377 N Ross Creek Dr Kamas, Utah 00-0020-1348
Ted Browne	140 E Keetley Close St Kamas, Utah 00-0020-1353
Gary Oliverson and Lyle Rushton	12285 Bone Hollow Road Deer Mountain 00-0020-0196
John and Lillian Keegan	12411 N Ross Creek Dr. Deer Mountain UT 84036, Lot 117 Plat 2 (County records indicate this property isn't owned by the Keegans)
William Brant and Tina Bily	12305 W Ross Creek Dr, Deer Mountain, UT 84036
Rainier Ramirez	12421 Deer Mountain Blvd, Deer Mountain UT 84036 00-0020-0022 / ODM-2019-0-008-025
Ronald, Thomas, Richard, McAlpin	12437 Ross Creek Dr. Deer Mountain, UT
Edmond and Vickie Crosby	12328 Deer Mountain Boulevard Deer Mountain, UT 84036
Gregory and Jennifer Budde	12413 N Deer Mountain Blvd., Heber City, UT 84032
Eric and Ritu R. Duenwald	12623 Mud Springs Circle, Deer Mountain, UTAH 84036
Cheryl Giordano	12434 Deer Mountain Blvd. Deer Mountain, UT 84036 Lot 57 Plat 3
Sangita and Dhiren Shah	Plot 53 Plat 3 12312 Deer Mt. Blvd
William and Rita Thompson	Plat 2 Lot 51 -- 12469 Ross Creek Drive, Kamas, UT 84036
Raymond and Jennifer Webber	192 E Keetley Close Kamas, UT 84036
David and Tmara Wickland	Plat 4 Lot 3 12699 Slalom Run Way Deer Mountain

# **Exhibit 5**



Janet Carson <admin@wasatchcountyfiredistrict.com>

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## Protest Letter

2 messages

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**Scott and Susi** <scottandsusi@comcast.net>  
To: admin@wasatchcountyfiredistrict.com

Tue, Nov 13, 2012 at 11:52 AM

To whom it may concern:

It has come to my attention that a protest letter regarding the proposed changes to the fire district levy was falsely submitted in my name. My name is Damon Scott Craddock. I understand the letter was submitted and signed by Damon "Craddock".

I have many questions and concerns about the levy, mainly because the information regarding it has been so confusing that I feel the fire district is purposely trying to hide something. For example, the map that was included with one of the letters explaining the plan was indecipherable.

I am extremely grateful to the fire department for their work in the recent fire. I don't want to lose the fire station and am willing to pay more to keep it there but I want a clear understanding of who will be paying and how much.

Sincerely,

Damon Scott Craddock

---

**Admin** <admin@wasatchcountyfiredistrict.com>  
To: Scott and Susi <scottandsusi@comcast.net>

Tue, Nov 13, 2012 at 2:30 PM

Thank you for responding. We will have our attorney look into this forgery. We have found several that are suspicious from Fox Bay. If the assessment passes your unit would be charged \$88.51 per year until Wasatch County can levy to provide full time countywide. If the protest passes the fire station will close and the volunteer station 9 nine miles away in Heber will respond to all calls in the Jordanelle area.

Sent from my iPad  
[Quoted text hidden]

# **Exhibit 6**



Scott A. DuBois  
Direct (435) 776-7567  
Fax (435) 649-5959

November 20, 2012

**SENT VIA ELECTRONIC  
AND U.S. MAIL**

Randall M. Larsen – [larsen@ballardspahr.com](mailto:larsen@ballardspahr.com)  
Ballard Spahr LLP  
201 South Main, Suite 800  
Salt Lake City, Utah 84111-2221

Dear Randy,

As you know, this firm has been retained by The Homes at Deer Mountain Homeowners Association, Inc. in connection with the recent actions taken by the Wasatch County Council to create a special service area, pursuant to Utah Code § 11-42-101, et seq. (the "Assessment Area"). I am writing to express several continuing concerns regarding the process of determining whether the Assessment Area will be rejected by home owners.

First, I want to make a continuing formal objection to the Wasatch County Fire Board's (the "Board"), new position, taken for the first time on November 1, 2012, requiring that protests to the Assessment Area be signed by the property owner. As I previously noted, this new purported requirement is a violation of the governing Utah statute, contradicts the notice sent to property owners by the Board and is inconsistent with prior statements made by Laura Lewis and the Board. Accordingly, we request that all protests, whether signed or not, be immediately turned over to Ms. Lewis with a direction that all protests be counted.

Second, I am writing to request information regarding the process of counting the protests that have been submitted. To date, it appears that there are some irregularities in the process and that it has not occurred as promised. For example, while it was our understanding that the protests would be turned over to Laura Lewis for counting after the November 8, 2012 hearing, we understand that the Board has not delivered the protests to Ms. Lewis to date.

Given the vested interest that the Board has in ensuring that the Assessment Area is not defeated, we are concerned that the Board continues to have sole custody of the protests that have been submitted. Please provide a detailed description of what actions have been taken by the Board regarding the protests since November 8, 2012 and the actions the Board intends to take going forward. It is important that this process be adequately explained and be as transparent as possible.

In order to ensure the integrity of the process, we request that the Board provide a list of all property owners that have submitted protests and provide an indication of whether each



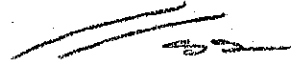
protest was signed or not signed. And, again, we request confirmation that no protest that has been submitted to Board has been altered, discarded or destroyed. To the extent that the Board has contacted any property owner to confirm their protest and the property owner subsequently has withdrawn their protest (after discussion with the Board or its representative), please so indicate.

If the Board has already voided some protests because they were not signed, please provide copies of those protests. Again, if the Board intends to invalidate protests for any reason other than the absence of a signature, please provide notice of that intent and the purported reasons for voiding these protests.

Please provide a written response to the above requests before the close of business on November 23, 2012. If the Board intends to proceed with removing protests that were submitted and to disregard protests that are not signed, please let us know immediately so that we can seek assistance from the Court.

Lastly, I request that this letter be made a part of the official record, in connection with protests to the proposed Assessment Area.

Sincerely,



Scott A. DuBois

cc: Scott Sweat

# **Exhibit 7**

## Scott A. DuBois

---

**From:** Larsen, Randall M. (SLC) <Larsen@ballardspahr.com>  
**Sent:** Thursday, November 22, 2012 12:12 AM  
**To:** Kim Cassett  
**Cc:** Scott A. DuBois; Craig N. Chambers; ssweat@co.wasatch.ut.us  
**Subject:** Re: Homes at Deer Mountain

The District is taking all prudent steps to make an accurate count of all protests received. It is carefully following state law and once that count can be verified and tallied, it will be transparently released to all interested parties. In order to make that count accurate, it is taking longer than the District anticipated. However, until the count is completed, there can be no further action on the creation of the SAA.

Sent by phone, please excuse any typos, etc.

Randy Larsen

On Nov 20, 2012, at 10:09 AM, "Kim Cassett" <[cassett@wronalawfirm.com](mailto:cassett@wronalawfirm.com)<<mailto:cassett@wronalawfirm.com>>> wrote:

Mr. Larsen,

Please find attached correspondence from Scott A. DuBois for your review.

<image001.jpg>Wrona Law Firm | Experience Our Passion For Excellence | <http://www.wronalawfirm.com/> Kim Cassett  
| [cassett@wronalawfirm.com](mailto:cassett@wronalawfirm.com) Wrona Law Firm, P.C., 1745 Sidewinder Drive, Park City, Utah 84060  
p: (435) 649-2525 | f: (435) 649-5959  
<Letter, 12-11-20 Larson re assessment area objections.pdf>

# **Exhibit 8**



## WASATCH COUNTY FIRE DISTRICT ASSESSMENT AREA PROTEST TALLY

Dated December 5, 2012

The Wasatch County Fire District has asked Lewis Young Robertson Burningham, Inc. (LYRB) to tally the protests received by the County and provide a report of the results. As such, LYRB respectfully submits the following.

**Methodology.** Each protest was given a value equal to the amount of assessment proposed against the property being protested. The total budget (and thus the total number of votes possible) is \$671,601.72. If more than 50% of the votes are against the creation of the assessment area, the assessment area cannot be created.

Protests were counted for the address, parcel, or lot described on the protest. Several protests listed an incorrect lot or unit number (i.e. unit I202 when the actual unit owned by the individual listed on the protest is J202). In this case, every effort was made to count the protest in good faith.

If the name on the protest did not match the owner of record, the protest was still counted and a note was made to indicate additional due diligence may be required in verifying the named individual's right to protest the property listed.

Both signed and unsigned protests were counted, but they were tallied separately to improve transparency.

Both protests and letters wishing to withdraw protests, which were received after the deadline (close of the public hearing on November 8, 2012) were tallied, but were not included in the official count.

Protests were not counted for properties referenced which are not in the assessment area.

When multiple protests were received for the same property, the protest was counted only once for the property in question.

Protests were counted even when signatures or owner names were misspelled or otherwise deemed unusual (i.e. "Mt. Fed" as the signature for Mountain America Federal Credit Union or signatures from the same owner not matching from one protest to another), unless there was a written statement indicating the person listed on the protest confirmed the protest was not from them, in which case the protest was excluded from the count.

**Due Diligence.** As of the date of this report, LYRB is aware of eight (8) protests that have been excluded from the official count because written statements were received indicating the protests were not signed or submitted by the property owners referenced on those protests. As such, LYRB reserves the right to re-examine the protests counted and conduct further due diligence to ensure the legitimacy of the protests.

**Results.** After counting the protests received from Wasatch County, LYRB confirms that the total amount of protests in the official count is less than 50% and the County may move forward with the creation of



the assessment area, if it so chooses. As described above, we note that in the interest of time and costs, we did not perform any due diligence on irregularities in protests received. We understand that many protests are under review by the Summit County Sheriff's Office and we advise that the Fire District consider the calculations below only as indicative of being at less than 50% of protests, inclusive of any existing irregularities. We recommend that the Fire District reserve the right to complete a final count with appropriate due diligence on each protest as needs may warrant.

	48.79%	Signed Protests
Plus	1.99%	Unsigned Protests
Minus	0.38%	Protests Withdrawn before the Deadline
Minus	0.82%	Protests with a Written Statement indicating the Protest was not from the Person Named on the Protest
Equals	49.58%	Total Protests Counted

# **Exhibit 9**

# DAVID E. SALZMAN

1220 EASY HIGHWAY 248 HIDEOUT, UT 84036  
MAIL: P.O. BOX 770-465 PARK CITY, UT 84036  
EMAIL: DESALZMAN@GMAIL.COM

Brent Titcomb  
Wasatch County Auditor/Clerk  
25 North Main St.  
Heber City, UT 84032

11-09-12P03:47 RCVD

Dear Brent,

My family is a proud property owner in Wasatch County. Our current home at 1220 East Highway 248 in Hideout has been owned by us since December 19, 2006. Moreover, we have been coming to the Park City area multiple times per year since 1981. We love the state of Utah, its raw beauty and wonderful people. Though we are part-timers in Utah we pay 100% taxes plus do as much as we can to add to the area's safety, appeal and quality of life.

We nonetheless oppose the proposed O&M Assessment because at this time of widespread economic distress when some important services are being reduced or eliminated in many areas we feel it is too difficult to assume the burden of additional financial responsibility. To be sure, there are no more dedicated civil servants than firefighters. Yet, as the Wasatch County material describes, the "Plan B" approach of contracting with Park City Fire plus involving volunteer firefighters based at the Jordanelle Station seems to be a sensible and satisfactory alternative approach that still preserves the option to expand coverage in the future.

In an ideal world it would be wonderful to take on another expenditure, however, this is just not the time to increase such spending. There is much our growing region could use, including expanded police coverage, but for now we should continue to be good neighbors working together and with existing government service providers to protect our precious land.

Respectfully,



David E. Salzman & Family

Property Identification Numbers:

00-0020-8181/OHI-0034-0-021-025

00-0020-8185/OHI-0038-0-021-025

00-0020-8184/OHI-0037-0-021-025

00-0020-8182/OHI-0035-0-021-025

\$ 1,455.95  
\$ 2.32  
\$ 131.80  
\$ 59.07

ADA LLC  
ADA LLC



\$ 2,148.79

**PROTEST OF ASSESSMENT AREA FOR THE PROPOSED JORDANELLE FIRE DISTRICT**

(Please Print Clearly)

Date: 11/5/2012 11-09-12P03:46 RC

Name/Owner of Property ROBERT J. McWormick

Address or location Identification of Property to be assessed: \_\_\_\_\_

2998 DEER CREST ESTATES DR. PARK CITY, UT 84060

Signature Robert McWormick

The above listed owner of property identified in the proposed assessment area hereby objects and protests the creation of an assessment area to fund the Wasatch County Fire District. Said objection and protests are identified below as specified in 11-42-203. Protests of Assessment Areas.

- 1- The above listed owner of property identified in the proposed assessment area, objects and protests the designation of an assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 2- The above listed owner of property identified in the proposed assessment area, objects and protests the designation of the boundaries of the assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 3- The above listed owner of property identified in the proposed assessment area, objects and protests the inclusion of the above listed property in the proposed assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 4- The above listed owner of property identified in the proposed assessment area, objects and protests any proposed improvements to the assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 5- The above listed owner of property identified in the proposed assessment area, objects and protests any other aspect of the proposed designation of an assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012

\$ 243.39

11-09-12P03:46 RCVD

**PROTEST OF ASSESSMENT AREA FOR THE PROPOSED JORDANELLE FIRE DISTRICT**


(Please Print Clearly)

Date: 10-24-12

Name/Owner of Property MICHAEL & MAURIE DEMERIAN

Address or location Identification of Property to be assessed: \_\_\_\_\_

1261 W. HAILSTONE DR. HEBER CITY, UT 84032

Signature 

The above listed owner of property identified in the proposed assessment area hereby objects and protests the creation of an assessment area to fund the Wasatch County Fire District. Said objection and protests are identified below as specified in 11-42-203. Protests of Assessment Areas.

- 1- The above listed owner of property identified in the proposed assessment area, **objects and protests the designation of an assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
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- 4- The above listed owner of property identified in the proposed assessment area, **objects and protests any proposed improvements to the assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 5- The above listed owner of property identified in the proposed assessment area, **objects and protests any other aspect of the proposed designation of an assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012

**PROTEST OF ASSESSMENT AREA FOR THE PROPOSED JORDANELLE FIRE DISTRICT**

(Please Print Clearly)

Date: 10-24-12Name/Owner of Property ARMAND PETRONELLA

Address or location Identification of Property to be assessed: \_\_\_\_\_

9988 N. VISTA DR. HOBBS CITY, UT 84032Signature Armand Petronella

The above listed owner of property identified in the proposed assessment area hereby objects and protests the creation of an assessment area to fund the Wasatch County Fire District. Said objection and protests are identified below as specified in 11-42-203. Protests of Assessment Areas.

- 1- The above listed owner of property identified in the proposed assessment area, **objects and protests the designation of an assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012
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- 5- The above listed owner of property identified in the proposed assessment area, **objects and protests any other aspect of the proposed designation of an assessment area** as specified in the resolution adopted by the Wasatch County Council October 3, 2012

2009.09

**PROTEST OF ASSESSMENT AREA FOR THE PROPOSED JORDANELLE FIRE DISTRICT**

(Please Print Clearly)

Date: 11-5-12

11-09-12 P03:46 RCVD

Name/Owner of Property W. Kent Taylor

Address or location Identification of Property to be assessed: 3137 W. Deer  
Crest Estates, Heber City, UT 84032

Signature W Kent Taylor

The above listed owner of property identified in the proposed assessment area hereby objects and protests the creation of an assessment area to fund the Wasatch County Fire District. Said objection and protests are identified below as specified in 11-42-203. Protests of Assessment Areas.

1- The above listed owner of property identified in the proposed assessment area, objects and protests the designation of an assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012

2- The above listed owner of property identified in protests the designation of the boundaries of adopted by the Wasatch County Council October 3, 2012

3- The above listed owner of property identified in protests the inclusion of the above listed property in the resolution adopted by the Wasatch County Council October 3, 2012

4- The above listed owner of property identified in protests any proposed improvements to the area adopted by the Wasatch County Council October 3, 2012

5- The above listed owner of property identified in the proposed assessment area, objects and protests any other aspect of the proposed designation of an assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012

Received  
after due  
date

7166.73

**PROTEST OF ASSESSMENT AREA FOR THE PROPOSED JORDANELLE FIRE DISTRICT**

(Please Print Clearly)

Date: November 1, 2012

Name/Owner of Property: PEDRO BORDA BARRERO

Address or location Identification of Property to be assessed: 2300 DEER VALLEY EAST #325,  
PARK CITY, UT 84060

DEER CREST ROOSEVELT GAP CONDO, SUITES - ST. REGIS.

Signature \_\_\_\_\_

The above listed owner of property identified in the proposed assessment area hereby objects and protests the creation of an assessment area to fund the Wasatch County Fire District. Said objection and protests are identified below as specified in 11-42-203. Protests of Assessment Areas.

- 1- The above listed owner of property identified in the proposed assessment area, objects and protests the designation of an assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 2- The above listed owner of property identified in the proposed assessment area, objects and protests the designation of the boundaries of the assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 3- The above listed owner of property identified in the proposed assessment area, objects and protests the inclusion of the above listed property in the proposed assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 4- The above listed owner of property identified in the proposed assessment area, objects and protests any proposed improvements to the assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012
- 5- The above listed owner of property identified in the proposed assessment area, objects and protests any other aspect of the proposed designation of an assessment area as specified in the resolution adopted by the Wasatch County Council October 3, 2012

# Exhibit 10

## NOTICE OF MEETINGS OF BOARD OF EQUALIZATION AND REVIEW

NOTICE IS HEREBY GIVEN that the proposed assessment list for the Wasatch Fire Assessment Area (Assessment Area") has now been completed and is available for examination at the Wasatch County Auditor/Clerk's office located at 25 North Main, Heber City, Utah. The County Council has appointed a Board of Equalization and Review (the "Board") to hear and consider objections to the proposed assessments to be levied within the Assessment Area relating to (a) the direct or indirect benefit accruing to the property proposed to be assessed and/or (b) the amount of the proposed assessment.

### O&M ASSESSMENTS AND METHOD

<u>Purpose of O&amp;M Assessment</u>	<u>Estimated First Year Assessment</u>	<u>Method of Assessment</u>
to pay operation and maintenance expenses described below	\$.56 per \$1,000 of assessed market value	Per Assessed Market Value determined by Wasatch County

The proposed assessments to be levied for the operation and maintenance costs (the "O&M Costs") of the District, including, the fire protection service costs for a portion of the full time firefighters housed at the Jordanelle Fire Station ("Services") within the Assessment Area. The annual total O&M Costs are estimated to be \$671,601.72

As required by law, three persons consisting of members of the County Council have been duly appointed to serve on the Board. The Board will meet at the Wasatch County offices located at 25 North Main, Heber City, Utah, on January 16, 2013, between the hours of 7:00 p.m. to 8:00 p.m.; on January 17, 2013, between the hours of 6:00 p.m. and 7:00 p.m.; and on January 18, 2013, between the hours of 5:00 p.m. and 6:00 p.m. to hear and consider any objections to and make any corrections of any proposed assessments that the Board may deem unequitable or unjust.

On each of the dates specified above, the proposed assessment list and plats and amounts of the proposed assessment against each parcel of property shall be open to public inspection (i) continuously from 8:00 a.m. to 5:00 p.m. at the County offices, located at 25 North Main, Heber City, Utah or (ii) at any time on the Wasatch County Fire website at <http://wasatchcountyfire.com/public-information>.

By resolution of the County Council of Wasatch County, Utah, this December 5, 2012.

/s/ Brent Titcomb  
Auditor/Clerk