



GRAND COUNTY COUNCIL SPECIAL MEETING

Grand County Council Chambers
125 East Center Street, Moab, Utah

AGENDA

Tuesday, February 26, 2019

3:30 p.m.

- Call to Order**
- Presentations** (none)
- Discussion Items:** (none)
- Public Hearing** (none)
- Future Considerations**
- Closed Session(s):** Pending or Reasonably Imminent Litigation
- Action Items – Discussion and Consideration of:**
 - A. Direct the County Attorney to file a Motion for Reconsideration and Injunction of Section II (The Makeup of the Appointment Committee) of the Moab District Court Ruling and Order dated February 1, 2019 in Case No.180700045, and take all additional necessary actions to preserve the County's right to appeal Section II of the Ruling and Order
- Adjourn**

NOTICE OF SPECIAL ACCOMMODATION DURING PUBLIC MEETINGS. In compliance with the Americans with Disabilities Act, individuals with special needs requests wishing to attend County Council meetings are encouraged to contact the County two (2) business days in advance of these events. Specific accommodations necessary to allow participation of disabled persons will be provided to the maximum extent possible. T.D.D. (Telecommunication Device for the Deaf) calls can be answered at: (435) 259-1346. Individuals with speech and/or hearing impairments may also call the Relay Utah by dialing 711. Spanish Relay Utah: 1 (888) 346-3162

It is hereby the policy of Grand County that elected and appointed representatives, staff and members of Grand County Council may participate in meetings through electronic means. Any form of telecommunication may be used, as long as it allows for real time interaction in the way of discussions, questions and answers, and voting.

At the Grand County Council meetings/hearings any citizen, property owner, or public official may be heard on any agenda subject. The number of persons heard and the time allowed for each individual may be limited at the sole discretion of the Chair. On matters set for public hearings there is a three-minute time limit per person to allow maximum public participation. Upon being recognized by the Chair, please advance to the microphone, state your full name and address, whom you represent, and the subject matter. No person shall interrupt legislative proceedings.

Requests for inclusion on an agenda and supporting documentation must be received by 5:00 PM on the Wednesday prior to a regular Council Meeting and forty-eight (48) hours prior to any Special Council Meeting. Information relative to these meetings/hearings may be obtained at the Grand County Council's Office, 125 East Center Street, Moab, Utah; (435) 259-1346.

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Rule 59. New trial; altering or amending a judgment.

(a) Grounds. Except as limited by Rule [61](#), a new trial may be granted to any party on any issue for any of the following reasons:

- (a)(1) irregularity in the proceedings of the court, jury or opposing party, or any order of the court, or abuse of discretion by which a party was prevented from having a fair trial;
- (a)(2) misconduct of the jury, which may be proved by the affidavit or declaration of any juror;
- (a)(3) accident or surprise that ordinary prudence could not have guarded against;
- (a)(4) newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the trial;
- (a)(5) excessive or inadequate damages that appear to have been given under the influence of passion or prejudice;
- (a)(6) insufficiency of the evidence to justify the verdict or other decision; or
- (a)(7) that the verdict or decision is contrary to law or based on an error in law.

(b) Time for motion. A motion for a new trial must be filed no later than 28 days after entry of the judgment. When the motion for a new trial is filed under paragraph (a)(1), (2), (3), or (4), it must be supported by affidavits or declarations. If a motion for a new trial is supported by affidavits or declarations, they must be served with the motion.

(c) Further action after non-jury trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct entry of a new judgment.

(d) New trial on initiative of court or for reasons not in the motion. No later than 28 days after entry of the judgment the court, on its own, may order a new trial for any reason that would justify a new trial on motion of a party. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. The order granting a new trial must state the reasons for the new trial.

(e) Motion to alter or amend a judgment. A motion to alter or amend the judgment must be filed no later than 28 days after entry of the judgment.

Effective date May 1, 2016

1 THE COURT: Uh-huh.

2 MR. AHLSTROM: There's a process that's triggered by
3 the one provision that says that there must be a meeting within
4 ten days. The one that we suggest, whether it's today or you
5 take it under advisement, that you toll or stay the beginning
6 of that ten-day period until issuance of your ruling. And then
7 everything else flows from that in terms of the time periods.
8 But that would be the only thing we think would need to be
9 addressed as far as the timing element. But if you make the
10 determination today that you're comfortable on the legal
11 issues, we don't think we're going to have anything new or
12 different to tell you from an evidentiary standpoint at another
13 time. It's interpretation of the statute.

14 THE COURT: Okay. What's the plaintiff's position on
15 that? Same?

16 MR. PEAY: Yes.

17 THE COURT: Okay. Having reviewed it all, my thoughts
18 are that it's something that, rather than deciding it as a
19 preliminary injunction issue, it's something that could be
20 decided finally.

21 MR. AHLSTROM: Ms. Hayman does raise one issue that's
22 a good thought. There's two parts to their requested relief.
23 One is their main request, which is they're the petitioners and
24 that citizen-initiated petition should control over the Grand
25 County initiated process. But then they have an alternative

1 argument that says if you don't rule that way, rule that we get
2 to pick the one appointment council member that's part of the
3 study committee.

4 So that alternative argument, there are some factual
5 disputes on the alternative argument. We--they make some
6 allegations. I don't want to get ahead of the argument here.
7 But they make some allegations, at least their complaint in the
8 moving papers, that is a backup plan, so to speak. They filed
9 an alternative petition that would allow them to appoint a
10 third council member or appointment councilmember who then
11 appoints the seven study committee members at that point. We
12 haven't seen evidence of that--

13 MR. PEAY: If I may interrupt you? We're going to
14 withdraw that argument for today's hearing purposes.

15 MR. AHLSTROM: Okay. So as long as we're not into
16 that, we're not mired into that, because we would need a ruling
17 and guidance from you.

18 One thing that I learned today that we didn't know
19 about, the council has already, on the 20th, by the council on
20 the 20th, following their--doing what they thought was
21 following their duty under the statute to do so.

22 THE COURT: Sure.

23 MR. AHLSTROM: So that would need to be addressed
24 potentially, I think, one way or the other, depending on how
25 you rule, whether that appointment councilmember was a correct

1 one--as I understand it from Ms. McGann, we deferred to the
2 petitioner that our (inaudible) was withdrawn. We defer to that
3 petitioner group and allowed them to appoint a third member at
4 the 20th hearing. Is that correct?

5 MS. MCGANN: The petition?

6 MR. AHLSTROM: The Jackson petition group?

7 MS. MCGANN: No.

8 MR. AHLSTROM: A different group?

9 MS. MCGANN: Different group.

10 MR. AHLSTROM: Marion Feld?

11 MS. MCGANN: Yeah.

12 MR. AHLSTROM: So there was a different petition
13 group, the Marion Feld Group, that we appointed. We, being
14 counsel, appointed as the third appointed councilmember.

15 MS. MCGANN: (Inaudible).

16 MR. AHLSTROM: You're right. So the council appointed
17 their one. The senator representative appointed a second one.
18 The petition group, the Marion Feld petition group, appointed
19 the third. Those three-member individuals are all here in the
20 courtroom today, as I understand it. So you need to rule
21 potentially on that as well, whether that was correct to have
22 done what we did, if they're going to withdraw their petition.
23 Our argument was going to be that we didn't think that they had
24 met the burden on that issue and that there was a different
25 group that potentially had, i.e. the one that was appointed. So

1 that issue is the only thorny factual issue potentially to
2 address.

3 THE COURT: Okay.

4 MR. PEAY: Your Honor, we have no argument on that
5 today. We are going to focus strictly on the 301, 302, 303, 103
6 arguments about who--about whether or not petitioners should
7 be, are allowed--acted correctly and are the proper people to
8 put together the study committee.

9 THE COURT: And I guess that is the issue. Because
10 you have raised the issue but not necessarily for purposes of
11 today's hearing.

12 MR. PEAY: Although, we don't think you should rule
13 this way, but if you were to rule in their favor that the
14 citizen petition group was cracked and that the county petition
15 processes is preempted so to speak, it does say that their five
16 sponsors because the appointment council in the statute.

17 THE COURT: Right.

18 MR. PEAY: So that would necessarily mean that the
19 three that were appointed at the appointment of counsel would
20 not be the proper.

21 THE COURT: Right.

22 MR. PEAY: (Inaudible).

23 THE COURT: It necessarily flows for their position--

24 MR. PEAY: Yes.

25 THE COURT: --that those five would take over. It

1 doesn't necessarily flow that direction if I were to rule in
2 Grand County's favor.

3 MR. PEAY: Correct.

4 THE COURT: There's still an outstanding issue of--

5 MR. PEAY: There's still an outstanding issue on that
6 third.

7 THE COURT: --who should be on that committee, right?

8 MR. PEAY: That third.

9 THE COURT: Okay.

10 MR. PEAY: You have it exactly right.

11 THE COURT: Okay.

12 MR. PEAY: So I'm sorry to muddle that a little bit,
13 but those are important issues that I need to clarify at the
14 outset.

15 THE COURT: Very good. I appreciate it.

16 MR. PEAY: Okay. Thanks.

17 THE COURT: Go ahead. Let's get started.

18 MR. PEAY: All right. Thank you, Your Honor. We're
19 having some technical problems here. So I'm not sure this is
20 going to work the way I hoped it had. Your Honor, as we
21 established a moment ago, the issues before you today are
22 direct statutory interpretations. Specifically, which part of
23 Chapter 57 alpha, 57a, governs in this section, in this
24 instance. The facts are pretty much undisputed. What I had
25 planned to do today, Your Honor, is to kind of go over a