

**MINUTES  
BOX ELDER COUNTY COMMISSION  
JULY 14, 2009**

The Board of County Commissioners of Box Elder County, Utah met in a Regular County Commission Meeting at the County Courthouse, 01 South Main Street in Brigham City, Utah on **JULY 14, 2009**. The meeting was called to order by Chairman VanDyke at 7:00 a.m. with the following members present, constituting a quorum:

Rich VanDyke	Chairman
Jay E. Hardy	Commissioner
Brian K. Shaffer	Commissioner
LuAnn Adams	Recorder/Clerk

**EXECUTIVE SESSION**

**Strategy session to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms.**

**MOTION:** At 7:03 a.m. a motion was made by **Commissioner Shaffer** to move into an executive session to discuss the purchase, exchange or lease of real property. The motion was seconded by **Commissioner Hardy** and unanimously carried.

**MOTION:** At 8:20 a.m. a motion was made by **Commissioner Shaffer** to reconvene into regular Commission Meeting. **Commissioner Hardy** seconded the motion, and regular commission meeting was reconvened.

Chairman VanDyke explained that there was a discussion on the purchase, exchange or lease of real property.

**RECESS**

The Commissioners took a recess at 8:20 a.m. and reconvened at 9:00 a.m.

The Board of County Commissioners of Box Elder County, Utah met in an Administrative/Operational Session at the County Courthouse, 01 South Main Street in Brigham City, Utah at 8:00 a.m. on **JULY 14, 2009**. The following members were present:

Rich VanDyke	Chairman
Jay E. Hardy	Commissioner
Brian K. Shaffer	Commissioner
LuAnn Adams	Recorder/Clerk

The following items were discussed:

1. Agenda Review/Supporting Documents
2. Commissioners' Correspondence
3. Staff Reports
4. Correspondence
5. Assignment Review

The work session adjourned at 8:59 a.m.

### **RECESS**

The prayer was offered by Chairman VanDyke.

### **APPROVAL OF MINUTES**

**THE MINUTES OF THE REGULAR MEETING OF JULY 07, 2009 WERE APPROVED AS WRITTEN ON A MOTION BY COMMISSIONER SHAFFER, SECONDED BY COMMISSIONER HARDY AND UNANIMOUSLY CARRIED.**

### ***AGENDA: ATTACHMENT NO. 1***

### **BY-MAIL PRECINCTS – LUANN ADAMS**

County Recorder/Clerk LuAnn Adams said this year is a municipal election year and state code says by-mail precincts are set up by the County Commissioners. She said by-mail precincts are usually precincts with under 500 voters. Normally, in a regular election year, the by-mail precincts are Plymouth, Portage, Howell and Snowville but Deweyville and Fielding have requested to be by-mail precincts for this municipal election. She said the law states that two weeks before an election day early voting has to be available and their city offices are not set up to do this. If by-mail ballots are sent out, it takes care of the early voting requirement.

LuAnn Adams said 14 municipalities have asked the Recorder/Clerk's Office to help with their elections. She is requesting the Commission approve Deweyville, Fielding, Howell, Portage, Plymouth and Snowville, as by-mail precincts for the elections of 2009.

MOTION: A motion was made by **Commissioner Shaffer** to approve Deweyville, Fielding, Howell, Portage, Plymouth and Snowville, as by-mail precincts. The motion was seconded by **Commissioner Hardy** and unanimously carried.

**MICHELE GREEN SUBDIVISION/RURAL ROAD AGREEMENT – TAMARA WRIGHT**

County Planner Tamara Wright presented the Commissioners with the plat map and rural road agreement for the Michele Green subdivision. The subdivision is 5.5 acres and located at approximately 1700 North 54000 West in the Park Valley area. The Planning Commission recommends approval.

MOTION: A motion was made by **Commissioner Hardy** to accept the Michele Green subdivision and rural road agreement and authorize the chair to sign. The motion was seconded by Commissioner Shaffer and unanimously carried.

**DOVE CREEK CONCERNS – CARA DAILEY, MAXINE HANKS, TAMARA WRIGHT**

This item was cancelled.

**WARRANT REGISTER – COMMISSIONERS**

The Warrant Register was signed and the following claims were approved for payment: Claims 64638 through 64760, 20009014 in the amount of \$586,691.01.

**PERSONNEL ACTIONS – COMMISSIONERS**

SHERIFF DEPT:                   Jeremy McKenzie, compensation change, effective 06/08/2009

**EXECUTIVE SESSION**

**Strategy session to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms.**

MOTION: At 9:17 a.m. a motion was made by **Commissioner Hardy** to move into an executive session to discuss the purchase, exchange or lease of real property. The motion was seconded by **Commissioner Shaffer** and unanimously carried.

MOTION: At 9:53 a.m. a motion was made by Commissioner Shaffer to reconvene into regular Commission Meeting. Commissioner Hardy seconded the motion, and regular commission meeting was reconvened.

Chairman VanDyke explained that there was a discussion on the purchase, exchange or lease of real property.

**OTHER BUSINESS**

**Real Estate – Commissioners**

MOTION: A motion was made by Commissioner Hardy to make an offer for the real estate property as discussed in the executive session and allow Monte Munns, Attorney Stephen Hadfield and Commissioner Hardy to be involved in the negotiations. The motion was seconded by Commissioner Shaffer and unanimously carried.

**PUBLIC HEARING/FENCE ORDINANCE – COMMISSIONERS**

Chairman VanDyke declared the public hearing regarding a fence ordinance open at 10:00 a.m.

*(See Attachment No. 2 – Attendance List.)*

Commissioner Shaffer thanked Representative Menlove for being here. He said she has been very influential in our county and doing something that has never been done before. Having zones in our county has enabled us to have a different ordinance regarding zones pertaining to fences. He feels this is something that is very much needed with the diverse attributes of our county—Western Box Elder County and the Wasatch Front area.

Commissioner Shaffer reviewed the zones and the ordinance.

*(See Attachment No. 3 – Ordinance No. 315)*

Commissioner Hardy said the fencing ordinance has been an ongoing thing. There have been a lot of compromises on everyone's part to make it happen. He appreciates the fact everyone has had to compromise. With listening to the concerns over the last several years and in contemplating the issue, it is his opinion that the Commissioners have tried to address the needs of the county the best way they could.

Chairman VanDyke asked for comments from those in attendance.

Arthur Douglas said he chaired the fencing committee in 1995. He said this has gone on for a long time. He has a few questions with concern of enforcement by the Sheriff's Office. He hopes it does not put a lot of burden on our law enforcement and takes them away from other things they should be doing. He asked the question of where are the stray pens. He asked on the zones coming east are we

maintaining the open range law. He said when we revert back to the state statute: his neighbor will have to share 50% of the cost of his fence and also the maintenance. He would like some clarification on the law. Mr. Douglas would like the Commissioners to look at the zoning line. He would like them to use the Howell Town incorporation lines.

Tim Munns, Hansel Valley, said it has never been a fence-in or fence-out issue. Mr. Munns has been voicing his opinion since this started. He said in 1901 by voting precincts it was a fence-out area and we lived with that for 94 years. It wasn't an issue of fence-in or fence-out. When you had cattle, you took care of the fences. He feels we need a definition of problems. He said most people's cattle have not been out much in the last 20-30 years. His frustration over the years has been that the minority of vocal people are going to prevail. Out of the 300 livestock producers in the county, there have been 5-6 that have caused the grief and caused the problems. There are 2-3 people that have wanted the whole ordinance changed. He is worried about the criminal element. A good moral person who for some reason his cow gets out one night and the cow gets hit, it is a liability issue. He said Attorney Hadfield said it will be a case-by-case issue if a cow is hit. With the proposed boundary jumping over and hitting the county road, he borders three miles on both sides, so is it a fence-in or fence-out issue? How do you determine which side it came from? He said perception has been bigger than reality. Ten years ago at the first meeting Mr. Munns said if it isn't broke, don't fix it. He said there will be an enforcement problem along the zone line.

Richard Hupp said he farms in Northern Box Elder County. He is for changing the law. He said up his way, it is mostly farming. He does not want any fences. For the last 20 years, he has been trying to get rid of the fences. They are a hazard and a place for noxious weeds. He feels there needs to be a change, and the livestock guys need to take care of their animals and not expect someone else to pay for fencing in their cows.

Dave Eliason, Snowville, and First Vice President of the Cattleman Association, commended Representative Menlove. He said livestock owners should take care of their cattle, and he thinks they do. Most of the ranchers all border public land and the owners do a lot of fencing. He said there are a lot of individuals who own 40-80 acre parcels. It will make it so the guys won't have to fence. The liability issue is a problem for the rancher. He feels we should go ahead and split the zones up, and there are always going to be problems. It has worked really well for the last 100 years. Box Elder County was one of the first places where there was a fence law. He hopes the Commissioners will make Box Elder County a two-zone county.

Paul Stein, farms T14N R06W. He said at the previous meeting in the fall when the zoning board met, he passed a recommendation on to the Commissioners for the fencing law. It relates to the state law. He asked where is the liability if the cattle get out and get out on I-84. Is the landowner on I-84 going to be responsible for the critter that would create an accident on the highway?

Fred Manning said there are those who are taking advantage. He said everyone has been working on it. There is not an end-all law, but he feels the Commissioners are going in the right direction for what we need. It is a minority group, but it has to be addressed and taken care of. This minority group is not willing to work with the ranchers. He said it needs to be so we can take care of the

farming. He hates to see the work spent and everything discounted. He likes the zones. He said there will be problems. There has to be a few changes before it is all done. Ranchers usually work it out among themselves. He said there are good minds to make things work. He hates to see it disregarded.

Richard Nicholas, Tremonton, thinks it is the right consideration to divide the county to some degree. He feels the Howell Mountain range is a more geographical barrier. It is a natural on the east side of the mountain range. He got a report from the Sheriff, and of all the phone calls relative to cattle issues there were very few over the last 12 months and they were in Whites Valley, Thatcher and the Penrose area east where there is more population. Things from the dividing line are different than in the western part of the county. Most of the phone calls are for chickens, ducks, llamas, etc. There were very few issues that apply to cattle. He thinks it is wise to make a separation. Some of the landowners that farm and do not have livestock want the livestock owners to take care of livestock. He does not understand if a person who doesn't have livestock and there is a fence put in, how it is not going to benefit the guy with no livestock. He said the benefit is it keeps the livestock off of your crops. He doesn't understand—both the landowners are participating, everybody benefits.

David Deakin doesn't think we have any way to make everyone happy on this issue. He has heard people make the comment that it is a farming and a ranching issue. It is a responsibility issue. If people would accept responsibility for what they are doing, this issue would not have to be dealt with in this manner.

Boyd Munns, Garland and farms in Hansel Valley, Blue Creek and Garland. He appreciates the Commissioners taking the time today. A good fence makes a good neighbor regardless of where you are. He would like the Commissioners to reconsider the zone line. He feels it does not define where the livestock issue is. The Commissioners should look at the natural terrains and drainages and where the problems are. He said you are not going to get it done in one generation. He hopes the Commissioners don't create an unenforceable situation and not have the funds to try and enforce it. He asked them to please look at the lines. Don't create something we cannot handle.

Tom Davis has land seven miles northwest of Brigham City. He said in the eastern area they are having trouble drawing lines. He said no matter where we draw lines, he does not believe in fence-in or fence-out. It is a duel of neighbors working together. He said there are some parts of the state where each neighbor participates in fencing. The liability is dangerous. It is the state's responsibility to fence the interstate. In the early days county roads were put through and the county fenced the area along the county roads. It is difficult. Your animals are going to get out; it could be a problem with hunters or kids keeping gates open. He said if that is the case, does the county have the responsibility of maintaining the fences? Do we have a liability with the county of maintaining the fences that were put in years ago. He does not feel the lines mean a lot. He feels we should work together and have cooperation of fencing between both landowners.

Robert John served on the fencing committee that wrote Ordinance #275. He believes it is enforceable if you go back and do a history of the law. He explained some of the history of the fence law. He hopes the Commissioners will reconsider.

Representative Menlove complimented everyone in the room for the time and hours they have devoted to agriculture. She said agriculture is critical to our lifestyle and something everyone needs. We are moving into an era when agriculture continues to be threatened and we try to establish laws that benefit everyone and try to do no harm. We are balancing a variety of interests. She appreciates the County Commissioners. The fencing law has been discussed for a long time in Box Elder County. The Commission is trying to create a line that in a way will benefit everyone. It is not perfect. If we all are good neighbors and take responsibility of animals and crops and land then we can have harmony and we won't have to have these types of laws. It has been an issue that has been hotly contested and she complimented everyone for staying devoted to agriculture.

Paul Pali, farms in Elwood, Tremonton and Honeyville. He does not have any differences with the ranchers. There are a handful that can't control their animals. He would like to see the Sheriff's Department have enforcement with teeth in it to come out and apprehend these people. He asked what is the difference between a guy stealing feed or a tool box. We have a handful that don't care, and they are above the law. They cut fences and turn their herds loose and don't care about the neighbors. All they are about is they are going to feed their animals. It can be done. The main thing he wants is law enforcement. As far as fences, he hates fences because of the noxious weeds. He spends a fortune keeping his fences clean of weeds. We have got goat grass and it is getting to be a real issue and there is nothing to control it. He asked the Commissioners to please help. He said you are our last resort. The authority is with a big gun to hold these people intact. Let the law enforcement take care of it.

Chairman VanDyke said this is a fine group and the Commissioners respect and honor the comments that have been made. It has been a long battle and some have been involved for multiple years. He said this issue continues to make progress.

MOTION: A motion was made by **Commissioner Shaffer** to close the public hearing. The motion was seconded by **Commissioner Hardy** and unanimously carried. The public hearing was closed at 10:55 a.m.

Attorney Hadfield said in order for an adjoining landowner to qualify on building a fence, he must have livestock.

Attorney Hadfield said when a cow gets out on the road, it will be looked at on a case-by-case basis. It will depend on the circumstance or situation. Liability is a determination of who is more negligible.

Attorney Hadfield said open range is not defined within the state code, but open range puts drivers on notice that there may be cattle on the road.

Sgt. Jim Summerill stated the Sheriff's Department has three stray pens at their office.

Commissioner Hardy thanked Representative Menlove for her efforts so Box Elder County could have two different zones for a fence ordinance. Before the law was passed, there was no way we could have two different zones in our county. Chairman VanDyke also thanked representative Menlove.

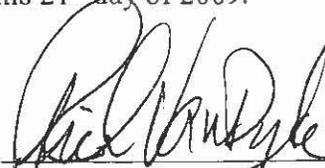
MOTION: A motion was made by Commissioner Shaffer to adopt Ordinance No. #315, an ordinance establishing fencing requirements and defining what constitutes a lawful fence. The motion was seconded by Commissioner Hardy and unanimously carried.

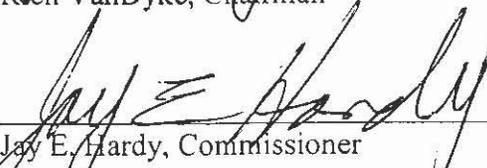
Commissioner Hardy said if there are some people that think the line drawn would have any benefit by moving it, they should let the County Commissioners know.

**ADJOURNMENT**

A motion was made by Commissioner Hardy to adjourn. Commissioner Shaffer seconded the motion, and the meeting adjourned at 11:13 a.m.

**ADOPTED AND APPROVED** in regular session this 21<sup>st</sup> day of 2009.

  
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Rich VanDyke, Chairman

  
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Jay E. Hardy, Commissioner

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Brian K. Shaffer, Commissioner



ATTEST:

  
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LuAnn Adams, Recorder/Clerk

The following items were discussed in Administrative /Operational Session after Commission Meeting had adjourned:

**SB139 – Peggy Madsen**

The Administrative/Operational Session adjourned at 11:55a.m.

BOX ELDER COUNTY RECORDER/CLERK  
Box Elder County Courthouse  
01 South Main Street  
Brigham City, Utah 84302

**NOTICE and AGENDA**

*Public Notice* is hereby given that the Box Elder County Board of County Commissioners will hold an **Executive Session** commencing at **7:00 a.m.** an **Administrative/Operational Session** commencing at **8:00 a.m.** and a regular **Commission Meeting** commencing at **9:00 a.m.** **TUESDAY, JULY 14, 2009** in the **COMMISSION CHAMBERS** of the Box Elder County Courthouse, 01 South Main Street, Brigham City, Utah.

\*7:00 a.m. – Executive Session

1. Strategy session to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms

**Recess**

Administrative/Operational Session

\*8:00 a.m.

1. Agenda Review/Supporting Documents
2. Commissioners' Correspondence
3. Staff Reports – Agenda Related
4. Correspondence
5. Assignment Review

\*8:20 a.m.

\*9:00 – 9:05      Call to Order: Chairman VanDyke  
Invocation: Chairman VanDyke  
Approval of Minutes of July 7, 2009

\*9:05 – 9:10      Follow-Up Business

\*9:10 – 9:15      By-Mail Precincts – LuAnn Adams

\*9:15 – 9:20      Michele Green Subdivision/Rural Road Agreement – Tamara Wright

\*9:20 – 9:35      Dove Creek Concerns – Cara Dailey, Maxine Hanks, Tamara Wright

\*9:35 – 9:40 Warrant Register & Personnel Actions – Commissioners

\*9:40 – 9:45 Assignment Review – Commissioners

**Recess**

\*10:00 – 10:05 Public Hearing/Fence Ordinance – Commissioners

**Other Business**

**Adjournment**

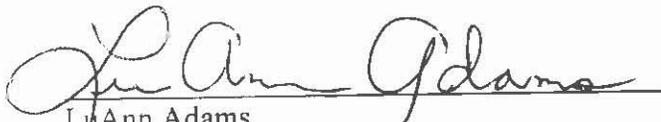
Work Session

1. SB139 – Peggy Madsen

These assigned times may vary depending on length of discussion, cancellation of scheduled agenda items or agenda alteration. Therefore, the times are estimates of the agenda items to be discussed. If you have any interest in any topic, you need to be in attendance at 9:00 a.m.

Prepared and posted this 9<sup>th</sup> day of July 2009.

Mailed to the Box Elder News Journal, the Leader, and the Standard Examiner this 9<sup>th</sup> day of July 2009.



LuAnn Adams  
Recorder/Clerk

**NOTE: Please turn off or silence cell phones and pagers during public meetings**

**This facility is wheel chair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made three (3) working days prior to this meeting. Please contact the Commission Secretary's office at 734-3347 or FAX 734-2038 for information or assistance.**

PUBLIC HEARING  
BOX ELDER COUNTY

Date: 7-14-2009

FENCE ORDINANCE

<u>NAME (Please Print)</u>	<u>ORGANIZATION</u>	<u>ADDRESS/TELEPHONE</u>
Tom A Davis		
Richard Kincaid		
Chris King		
J. Todd Stuard		
Paul Sain		
Steve L. Soren		
Dave Archer	the leader	257-5182
Robert J. Jr		25715 N. 8800 W. <sup>Partridge Ut.</sup> 824331866-9148
Arthur Douglas		
Boyd Munn		
David Elser	UTah Cattleman	554 N 425 E Tremont, UT
Tim T Manns	Self-lander	Hansel Valley
Bob Munn		
Alex Kunkles		
Ronda Menlove	House of Representatives	5650 W. 16800 N. Garland
David Deskis	Green Mountain Grail, LC	7956 N. Drive Tremont, UT 257
James Summerell	Box Elder SO	
Di Lewis	Standard-Examiner	801 625 <del>4233</del> 4233
Rebecca Hansen	B.E. News Journal	435-225-4802
Richard Hupp		435-257-5072
Paul (Sam) Stone		435 257-7402
Earl Roberts	Service District	435-257-7312

ORDINANCE NO. 315

**AN ORDINANCE OF BOX ELDER COUNTY ESTABLISHING FENCING REQUIREMENTS AND DEFINING WHAT CONSTITUTES A LAWFUL FENCE**

WHEREAS, Box Elder County has previously adopted Ordinance No. 275 concerning the fencing of livestock and the definition of what constitutes a lawful fence within the unincorporated areas of Box Elder County; and

WHEREAS, various requests have been made for the review and amendment of said ordinance in order to address problems and concerns relating to issues such as trespass of livestock, enforcement, differing needs of different regions of the county, and potential liability of landowners and livestock owners; and

WHEREAS, §4-25-7 of the Utah Code authorizes the Box Elder County Commission by ordinance to declare and enforce a general policy within Box Elder County for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property; and

WHEREAS, the matter has been referred to the Box Elder County Planning Commission for its review and recommendation, and the Box Elder County Planning Commission, after having considered the matter and having received input from the public, has made its recommendation to the Box Elder County Commission; and

WHEREAS, public hearings have been held and input has been received from the public; and

WHEREAS, the Utah State Legislature has recently amended §4-25-7 of the Utah Code to authorize a county legislative body to divide a county into different divisions and prescribe different fencing regulations for each division; and

WHEREAS, the Box Elder County Commission, after having reviewed the recommendations of the Box Elder County Planning Commission, the input received from the public and the various issues relating to the fencing of livestock within the county, has determined that the requirements and regulations imposed by existing Ordinance 275 should be changed as set forth below; and

WHEREAS, the Box Elder County Commission has found and determined that the geographic nature, prevailing agricultural uses and size of Box Elder County necessitate different fencing regulations and requirements in different parts of the county; and

WHEREAS, the Box Elder County Commission has held a public hearing and received public input on the fencing requirements set forth below; and

WHEREAS, after having heard and received public input on the fencing requirements set forth below, the Box Elder County Commission has found and determined that it would be in the best interests and promote the general health, education and welfare of the residents of Box Elder County to replace the existing fencing requirements established by Ordinance No. 275 with the fencing requirements set forth below;

NOW THEREFORE, the Box Elder County Commission, acting as the legislative body of Box Elder County, does hereby ordain as follows:

**Section 1: Adoption of Fencing Ordinance.** The following ordinance relating to the fencing of livestock within the unincorporated areas of Box Elder County is hereby adopted:

- A. **Establishment of Fencing Divisions.** For purposes of this ordinance, the unincorporated area of Box Elder County is hereby divided into two separate divisions designated as "Zone 1 (Western Zone)" and "Zone 2 (Eastern Zone)", as designated by the map attached hereto as Exhibit "A". The dividing line between Zone 1 and Zone 2 is generally described as follows:

A line beginning at a point on the shoreline of the Great Salt Lake on the Township Line between Range 7 West and Range 6 West, proceeding north along the Township Line between Range 7 West and Range 6 West to the Big Valley Road, continuing north along the Big Valley Road to the Golden Spike Loop Road, and continuing north along the Golden Spike Loop Road to the Golden Spike National Monument, and continuing north along 22000 West to Sunset Pass Road, and continuing north along Sunset

Pass Road to 18400 North, and continuing west along 18400 North to 23600 West (aka Hansel Valley Road), and continuing north along 23600 West to Interstate Highway 84, Exit 16, continuing west along Interstate Highway 84 to the Township Line between Range 7 West and Range 6 West, and proceeding north along the Township Line between Range 7 West and Range 6 West to the Idaho border.

B. Regulations relating to Zone 1 (Western Zone). The following fencing regulations shall apply to the owners and/or tenants of all real property located within Zone 1 (Western Zone):

1. Responsibility of Owner and/or Tenant of Real Property. In the event the owners and/or tenants of any real property located within Zone 1 (Western Zone) desire to keep domestic livestock from grazing, moving or being present upon any real property located within Zone 1 (Western Zone), such owners and/or tenants shall be responsible to install and maintain upon such property a lawful fence as defined herein.

2. Definition of a Lawful Fence.

a. A lawful fence is hereby declared to be a fence made of boards, poles, slabs, or wire as more particularly described below:

1) When the fence is made of boards, poles or slabs, said fence shall be at least forty-two (42) inches high, and the boards, poles, or slabs shall be parallel between the fence posts, shall not be more than twelve (12) inches apart, the same to be supported by good solid posts not more than sixteen and one half (16 ½) feet apart.

2) When the fence is made of wire, said fence shall consist of not less than three (3) strands, with the top wire being not less than forty-two (42) inches above the ground. Said wires are to be parallel and the distance between the top wire and the ground to be equally divided, and all wires shall be well stretched. The posts supporting said wires are to be good and solid. If the posts are placed over eighteen (18) feet apart but not more than twenty-seven (27) feet apart, there must be at least one (1) jumper evenly distributed between said posts. If the posts are placed

more than thirty-three (33) feet apart, there must be at least two (2) jumpers evenly distributed between said posts and they must be well fastened to all wires. The posts must not be at a greater distance than thirty-three (33) feet apart.

- 3) An electric or electrified fence is defined the same as a non-electrified fence made of wire, except that in addition to the above requirements, an electrified fence will have single or multiple wires attached to a fence post by insulators so that the insulated wires may carry an electric charge.
- b. Notwithstanding any of the foregoing to the contrary, a fence that was in place prior to the adoption of this Ordinance (hereinafter the "pre-existing fence"), and which under the terms of this Ordinance would otherwise be non-conforming hereto, may continue in existence so long as said pre-existing fence remains in good repair and serviceable condition. In the event that the pre-existing fence becomes inadequate or insufficient to meet the requirements of this Ordinance so as to restrict the movement of domestic livestock as contemplated herein, that pre-existing fence shall be replaced or repaired in such a manner so as to conform to the requirements of this Ordinance.
  - c. The definitions of fencing in this Ordinance are to be interpreted for agricultural use only. Residential fencing shall conform to those applicable provisions of the Box Elder County Land Use Management and Development Code and Utah State law.

C. Regulations relating to Zone 2 (Eastern Zone).

1. Responsibility of Owner and/or Person in Control of Domestic Livestock. The owner and/or person in control of any domestic livestock that trespasses upon any real property of another located within Zone 2 (Eastern Zone) is liable in a civil action to the owner and/or tenant of such real property for any damage inflicted by the trespass.

2. Removal of Trespassing Domestic Livestock. An authorized representative of Box Elder County may intervene to remove any trespassing domestic livestock upon any real property located within Zone 2 (Eastern Zone). In the event of such removal, Box Elder County is entitled to recover from the owner or person in control of the trespassing domestic livestock fair compensation for the costs of such removal and keeping. If the removed domestic livestock is not claimed within ten (10) days after written notification has been sent to the owner or person in control, Box Elder County may sell said domestic livestock to cover the costs incurred in removing and keeping said domestic livestock.
3. Exception to Civil Liability. Notwithstanding any of the foregoing, the owner or person in control of any domestic livestock that trespasses upon any real property of another located within Zone 2 (Eastern Zone), is not liable in a civil action to the owner and/or tenant of such real property for damages inflicted by the trespass if:
  - a. the trespassing domestic livestock enters the real property located in Zone 2 (Eastern Zone) from an historic livestock trail as defined by §57-13b-102 of the Utah Code; and
  - b. the real property located in Zone 2 (Eastern Zone) that was trespassed is not enclosed by an adequate fence at the time the trespass occurs.
4. Allowing Livestock to Trespass Prohibited. The owner or person in control of any livestock who, without obtaining consent, knowingly or intentionally permits or allows such livestock to trespass or go upon any real property of another located within Zone 2 (Eastern Zone), is guilty of a class C misdemeanor. As used herein, the term "livestock" shall mean cattle, sheep, goats, swine, horses, mules, poultry or any other domestic animal or domestic furbearer raised or kept for profit.

**Section 2: Repeal of Existing Ordinance No. 275.** Box Elder County Ordinance No. 275 shall be and is hereby repealed as of the date that this ordinance becomes effective.

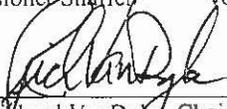
**Section 3: Effective Date.** This ordinance shall become effective fifteen (15) days after its adoption and publication as required by law.

PASSED, ADOPTED A SYNOPSIS ORDERED PUBLISHED this 14<sup>th</sup> day  
of July, 2009.

Commissioner VanDyke voting aye  
Commissioner Hardy voting aye  
Commissioner Shaffer voting aye

ATTEST:

  
LuAnn Adams  
Box Elder County Recorder/Clerk

  
Richard VanDyke, Chairman  
Box Elder County Commission



# Exhibit A

