

BOX ELDER COUNTY PLANNING COMMISSION

5 January 1989

Minutes of the meeting of the Box Elder County Planning Commission held 5 January 1989 in the Commission Chambers of the County Courthouse. Members present were:

Mr. Richard Kimber, Chairman

Mr. DeVon Breitenbeker, Member

Mr. Steve Grover, Member

Mr. Don Christensen, Member

Surveyor, Mr. Denton Beecher, Ex-officio Member

Commissioner Robert Valentine and Clerk Allen Jensen were excused.

Others present: Mr. Darrell Nielsen, Mr. Lew Wangsgard, Mr. Clyde Westley, Mr. Earl Harlow, Willard Mayor Lonnie Thorpe, Mr. and Mrs. Francis Witt, Mrs. LaVee Hemsley, Mr. Darrell Stucki.

Chairman Kimber called the meeting to order at 7:00 p.m. Approval of the Minutes of 15 December 1988 were held for approval until the regular meeting to be held 19 January 1989.

KIMBER: At our last meeting we did agree to call this special meeting and review those items that were in question and get some clarification for Mr. Nielsen. Denny, if you would like to proceed on those particular items that we discussed; and we do have a letter from Jon with the changes in the two items.

BEECHER: How do you want to proceed with this? Do you want to take each item step by step and complete it out entirely? Is that your desire? Any questions that you may have, make a motion, do one thing or another with it; is that what your plan is tonight?

KIMBER: I believe we can do that. Members, what is your pleasure on that? I think we are to that point.

BEECHER: May I just state for the record that Commissioner Valentine is ill tonight. He called tonight about 5:00 and was going to try to come; but he said he was still just too weak, that he didn't feel that he should try to come out. Apparently he has had a severe virus of some kind that has kept him under. Allen Jensen is in the hospital with what might be, they think, pancreatitis. That's why those two are not here tonight.

Item No. 1. The issue on dust emissions from the premises and that he must meet the Air Quality requirements and so forth. It is basically a statement, and he has made several indications on times before that he would meet that.

Item No. 2. Approval of the Applicant's project in writing obtained from the Air Quality people. Now you received that some time ago, and you have received testimony to the fact that they have been amending it. You have before you a copy of a proposed permit that states at the top of the letter that it is proposed, dated December 15. But we had testimony at our last meeting on the 29th

that they were in a meeting that day; Willard City and the Air Quality people, so this can not be those amendments. It must be something that they were considering prior to that date. So you can look at it as a proposal, but you still have the permit. Item No. 2 says that he shall comply with all of the amendments that they may have. Is there anything more that you want to do with Item No. 2?

KIMBER: I see no reason to do anything further with that, with that condition built in there. If there are amendments or changes that come, they will apply.

BEECHER: Do you want a motion relative to items 1 and 2 before we leave those? They are kind of tied together.

KIMBER: May I ask one question, Mr. Nielsen? This is addressed to you, this letter from the Department of Health. Had you received that?

NIELSEN: I have never received that.

KIMBER: That's what I understood.

NIELSEN: I gave you what I had, and that was two minutes before the meeting was supposed to start. I have not seen any of this other.

KIMBER: And you have not seen anything from this other meeting?

NIELSEN: No.

KIMBER: Could I have a motion on Items 1 and 2?

BREITENBEKER: Well, I don't know exactly how to phrase the motion. In other words, or what you really are asking for is the fact that those two conditions have been met. Is that what we are talking about; or that we don't need any additional information for us to consider, or what? I guess I have a little question in my mind as to what this motion should consist of. I guess that's not very appropriate for somebody that's going to make a motion, but I am a little confused as to what we are asking for.

KIMBER: I guess the concern is: what conditions have been met, which ones haven't and what we need from Mr. Nielsen or from any other source that we need to comply with our request. Have the conditions been met for 1 and 2, satisfactorily, for this Commission? And I guess that's all we are saying, is that one condition in there --

BREITENBEKER: OK, I understand. That's basically what I thought, but I wanted to clarify it a little bit. I would so move that I do feel that the requests in Item No. 1 and 2; the information has been submitted to us, and the application has been submitted to us. Any forthcoming changes will still be applicable to this, and so I do feel like those conditions have been met. I so move that.

GROVER: I second it.

KIMBER: All those in favor? "AYE", Any opposed? Thank you.

BEECHER: Item No. 3. is the Written Reclamation Plan, and it shall be submitted to the County Planning Commission and approved in writing by a majority of the said Planning Commission. This is the issue that you asked to get hold of the Extension Office and determine if there was someone from Utah State University that might

be able to review this and give us an answer. I met with Ben Lindsay, the Extension Agent. On Wednesday, he was going over to Logan, and he said he would check and see; and when I asked him this morning, he had forgotten. He will get me some names or make some contacts of people we can get and meet with. He said he would get back with me during the day, but he did not. So that one is still pending, to review that portion of it. Now Mr. Neilsen did submit a copy of the projects which Mr. Harper, or Harper Reclamation Company, who he has done work for; if you have a desire to call any of those people and find out anything about him whatever you want to do. That supposedly was to have been with the earlier submission, but somehow it got misplaced. I don't know if I ever saw it or lost it or what. But that was not a part of Mr. Harper's submission. That was given to me by Mr. Nielsen yesterday. This is the list that he said should have been with Mr. Harper's proposal, telling of the companies or people or individuals that he has done work for to give you an idea of a little bit what type of work he has done. I think he had some phone numbers there if you wanted to call anyone, or wanted any of those checked out.

KIMBER: I would like to check a couple of those, and I would like to have Mr. Lindsay's report. I am still not totally comfortable with that one. Gentlemen, what?

BREITENBEKER: I basically feel the same way. In other words, if we are going to ask for an expert opinion as to whether they feel that this reseeding proposal is adequate for what we are talking about, I feel we should wait and get that. That's what we decided at our last work meeting; that that's what we needed, and really nothing has changed, that I can see, from that. That's my opinion, anyway.

KIMBER: I don't see that as being a big roadblock. I would like to see some more clarification as the type of plans, and so forth, that maybe ought to be a part of that reclamation.

BEECHER: Do you want that in a motion or just a statement of fact that you have done it?

KIMBER: At this point, a statement of fact. I don't see that as a big issue.

BEECHER: Item No. 4 is the Written Plan, etc., with all of its appurtenances. There was the issue of the 9.4 acre foot retention basin that was shown on the plan. The plan, I believe, consisted of four pages that was submitted to us showing what they purported to do and so forth. You had some questions on that retention and what their basic plan was. Mr. Brown raised the question that in the phases that are shown, it is very difficult to consider them as each phases as he moves into phase 2 and phase 3. Late tonight, I received copies of this plan that you have before you of the retention basin that is being proposed after the construction of phase 1 has been completed. They have expanded the retention basin on this particular plan to be about 19 acre feet. It would be a retention depth of about ten feet. Their discussions with me was that their plan is that it is an alleuvial fan. It will be very gravelly, and

the retention will be there for a short while and then percolate out. There is no low level outlet structure shown. They have also contacted the State Engineer's Office, and the State Engineer requires permits on a dam and anything over 20 acre feet. This is not a dam. It is a depression or hole. There is no earthen dam built, and so their proposal is that they say they do not need the State Engineer's approval on this type of a structure. Well, it is not a structure, this type of a hole. It is basically designed to retain any granular material or material that will be imported down when the channel is turned down through this area. And then the water is shown to go over the rip rapped area in the Southwest corner of the retention basin. Now there hasn't been a lot of time to evaluate and look at this in detail. We received it about a quarter to five tonight. I talked briefly with their engineer. If you want to have Mr. Wangsgard explain it to you more in detail, he is here tonight; if you wish to have him explain what they propose to do.

KIMBER: Yes, I think we ought to. Has a copy been given to the Flood District?

BEECHER: No, this I just received about a quarter to five tonight.

WANGSGARD: Well, in the first place, let me review with you the concept that we applied on the storm drainage. The canyon, Cook Canyon, comes out in this area, and the natural drainage comes down this way across phase 2. The concept was that we proposed, that we would start an excavation in phase 1 and move across toward phase 2. It was calculated that, with the water that comes out of this canyon, that you would need about 9.4 acre foot of retention. In other words, hold-over storage, to retain any flood waters that would come down. That's the minimum that you would need. By the time that we get through excavating for phase 1, the holes that will be there would be twice that big; which means instead of having what you need, you got twice what you need. And as this thing moves into phase 2 and on down, it's going to be 3, 4, and 5 times bigger than what will ever be needed. So what this really says, eventually, as this thing totally develops, is that there never will be any water that will get beyond this line, someday. There is hardly any concept that it would ever be able to cross that line because the storage would go up and up and up. So the water that comes out of that canyon, and all of the rocks and the gravel and the debris will all be deposited in this excavation. These folks will be in a position where they won't have to worry about any floods out of that canyon being a problem for them. We have provided an overflow here, as this thing starts to develop. Of course we anticipate that the water will continue to percolate away in this natural alleuvial material. It never will really come this way until after this thing is excavated and we start interferring with the flow. So up until that time, it will continually come across the ground as it is now and then deposit down here in the existing detention basin, and be

let out at a rate that the downstream conditions will handle. So this really builds some insurance and some security for the town down there. As to maybe looking at the cross section of this, this indicates where the present canal is. We are taking this Section AA, that's this line running up through here. As you can see, the pipe line is in this vicinity; and you go over, and then you go down ten feet over and then up on a 2 to 1. This is the line which all this material will be started to excavate as Mr. Nielsen moves down, will excavate down in to here and eventually down into the bottom, to start to generate the hole. Once the hole is built; then moving into phase 2, interrupting that flow and diverting everything over to here, you can see that we are going to have twice as much capacity as we need to retain the storm that is going to come. So that's the basic concept of it; and from a practical standpoint, I think it really solves some concerns that those folks have had over a hundred and something years.

KIMBER: Mr. Brown did an excellent job of making the presentation about the capacity of that. There were a couple of concerns raised at that time, and I think he alluded to some of them; that was the possibility of the necessity for some type of a drain from that. Another concern that was raised was: Will that seepage come down and interfere in any way with the canal?

WANGSGARD: I think the answer to that is a catagorical "no", "it will not interfere." For this very basic reason, this material is very pourous; and we know from practical experience, that percolates away at a very rapid rate. It absorbs a great percentage of that water. By retaining it in this basin I think you are getting into the same material. It is always possible that you could have a solid rock formation down there, but I think that it is highly unlikely that that's there. There has been enough excavation in the area, and the face of the bedrock has been kind of well defined along there. I think you could pretty well count on this all being alleuvial material here, that that will percolate away. There is so much mass from here on down that the chances of that ever sliding would, with retaining water in there in a pond for say maybe three or four days at the longest period of time, before that would percolate away. It's just very unlikely; because if this is 19 acre feet, and we calculate that the maximum on a ten year storm would be 9.4 acre feet of water coming out there, that means there would only be five acre feet of water, or five feet of water in this pond. And that would set there for maybe two or three days as it was perculating away. It would take that long for it to percolate into the alleuvial material. There is so much mass here that, in my judgement as a professional engineer, that is really not a concern. Let me just kind of point out what this will look like. At this point on the ground right there, on the line between the county and the city, the bottom of the pond will be 90 and the ground will be 50. This will be 60 feet high from here down to here. There is just a tremendous amount of material there. I just don't see any possibility that that would ever be a problem. This is the only place right there that you would ever have to worry about it,

and there is enough mass there for ten feet of water. With that type of material, you are just not going to pipe that away, it is so granular that it is just not going to pipe away. I designed the Mantua dam, and it has been there now for 25 years and hasn't moved, and I designed one up in the high Uintas above Kamas that's been there now for about 20, so I have had some experience. It was called the Mill Hollow Dam. Are you acquainted with that? Isn't that a pretty little site? In fact, when the Little Deer Creek failed, I had to go up there and dye that entire pond with fluorescein dye, and that thing was as green as that ribbon. That entire, I forget how many acre feet it is, about eight or nine hundred acre feet of water, and it was all just as green as grass. We had to go up there at night with fluorescent lighting to determine whether any of that water was coming through the dam. It was quite an experience; so, based on my background, I don't see that to be a concern at all. Of course, once we double that size, then that nine acre feet will only be two and a half feet deep. Then you double it again, and it's only going to be three quarters of a foot deep over the whole thing; so it gets to be less of a problem as time goes on, as the excavation gets larger. They are down deep where the visual aspects, -- you won't even be able to see it. The fact that you have got 60 or 70 feet of height there is going to help kind of hide that thing. I can understand the concerns of the people. I am the Mayor of South Ogden, and we have two gravel operations in the proximity of our City, Gibbons and Reed, and Parsons. They have been there for a lot of years, and they have not been a real nuisance to anybody. There are quite a few people in the proximity of those two sites where they process this material. Anything else that I can add?

KIMBER: Are there any more questions concerning this particular item?

WANGSGARD: As far as an outlet, let me make a comment on that. You wouldn't want to have an outlet. It is intended to be a REtention basin and not just a detention. You don't want to hold it over and let it out. You want it to stay there, percolate into the ground so it can be used in the wells down below over the summertime throughout the irrigation season, so I don't see that you would ever want to try to create any kind of detention basin here. My comment about not requiring a permit from the State to build this as an impoundment, because we are not building a dam: we are just excavating a hole in the ground. That is a whole different situation there. If it was a dam, then they would require on the forms that you would give to the State, they would want you to specify how high the dam is. Well, the dam is 0 feet. We just don't have a dam. We are not building one. So I have been through that a few times, too. I will stick around; and if something else comes up, I will be happy to answer your questions.

KIMBER: What's your pleasure on this item, gentlemen?

BREITENBEKER: Basically, this item really correlates also to No. 10, as well, doesn't it? As far as I can understand both tie in

directly one with another according to my notes. No. 10 is approval of detention basins, low level outlets; so it looks to me like they are both kind of intertwined one with another. I don't see any problem with it other than due to the fact that we just received this. I think we need some time to look at this. I think this might take care of our question that we had, but I would like to digest it just a little bit.

KIMBER: I would agree with you. Since we have just received it, even though basically, the requirements are met to the satisfaction of the Flood District, I think they ought to have an opportunity to review this as this expands what they previously had. From my perspective, it enhances it. We told them we would give them 30 days; I think they need the opportunity to see it. I think that was one of the items we needed. I guess at this point, maybe just a motion just to accept this into the record as of this time.

GROVER: I would so make the motion that we accept that into the record so that we give Willard City 30 days to look it over and see what they have got.

KIMBER: Do we have a second?

CHRISTENSEN: I'll second it.

KIMBER: Those in favor: "AYE"

BEECHER: Now, by the 30 days, do you mean that you would not be ready on the 19th?

GROVER: Not if you give them the 30 days, like you said you would give them.

BEECHER: That's what I mean, Willard City has not given us 30 days on the stuff that they have submitted to us.

GROVER: No, but that don't mean that we don't give them our 30 days. Let's stay with what we said we would do.

BEECHER: OK, that's just what I wanted to make clear, so that would be around this time next month that you would be ready -- well, it would be the February meeting.

BEECHER: Item No. 5 is the written permission from the Utah Department of Transportation and all of the rest that goes with that. We have the permit from the Department of Transportation. You had a question on the safety requirements with regard to runaway truck lanes and that type of thing. Mr. Nielsen also brought in tonight a copy from the Department of Transportation of their requirements of the material that they place in the traps and a plan of one that was built for the Department. It is called the Runaway Truck Lane and Brake Check Area. A little bit different from what we have, because it is a brake check area as well, so it is a basic plan that his engineers can complete that portion and show us some detail of those areas if you deem that necessary.

BREITENBEKER: Doesn't he have on that one plan that we have already got a sand trap?

BEECHER: Yes, he shows two of them and he says to be built to UDOT standards. You will remember we had a question raised on

what is UDOT Standards? He ought to have a detail on it. Now I am not saying you have to do that, that's what the question was raised. That's your pleasure as to how you want that carried out. This is a type of standard; this is a sieve analysis that they have for the material. A dry mineral aggregate shall be uniformly graded within the gradation limits as specified. It gives the gradation limits and what their spreading and compaction shall be; it's out of their standard special provisions for their designs for roads and bridges construction. What you asked for was to show the detail, the width, and the length, and the depth, and the material that goes into that so that it can be evaluated, rather than just the statement of UDOT Standards. We would make that a part of the plan.

BREITENBEKER: Mr. Chairman, I would so move that Condition No. 5 has been met with the permit being received, but we would still like the detail on the construction of the trap included in with it.

KIMBER: We have a motion, do we have a second?

GROVER: I'll second it.

KIMBER: All those in favor? "AYE" Any opposed?

BEECHER: Item No. 6 is the Access Road to the Premises shall be constructed with an asphalt surface, etc. This issue was the one that we heard testimony that the Air Quality was not going to require that the access road be entirely paved and cleaned to prevent any fugitive dust. That was one of the amendments that we heard testimony on, which is in that proposed one that you have a copy of.

KIMBER: As far as our requests, it appears to me it has been met. If those conditions are made more stringent or changed, I think we have provision in here to handle that, so I don't see a problem with that particular item. Do we have a motion on that?

GROVER: I would make a motion that we accept that item as we have it so far.

BREITENBEKER: I second it.

KIMBER: Those in Favor? "AYE" Any opposed?

BEECHER: Item No. 7 is the written comment from the Flood District. We have that letter from Mr. Braegger that he sees that if the permit was issued, that there would be no negative impact on the flooding the way they have it proposed, or words to that effect. If you want, I will go back to it and read it.

KIMBER: For my purpose you don't need to. This was -- Mr. Bunderson addressed that briefly also. I think that requirement has been met. Do we have a motion for Number 7?

CHRISTENSEN: I'll make the motion that we accept No. 7.

KIMBER: Do we have a second?

GROVER: I'll second it.

KIMBER: Those in favor? "AYE" Any opposed?

BEECHER: Item No. 8 is the Applicant shall produce and submit to the Planning Commission written permission from the Ogden River, etc., We have the permit to cross the canal. There was the question of the Hold Harmless part of it that they would not sign; and Jon, if you will remember, as to about the possibility of an insurance policy, liability

insurance policy, in lieu of the Hold Harmless Clause. He just dealt with 18 and 20.

KIMBER: On this particular issue, gentlemen, I think what you need to do is either say we eliminate that second sentence, or address the issue of liability insurance. As far as I am concerned, if you address the issue of insurance; it can still be a part of item No. 8, even though we have received the document relative to the crossing of the canal.

BREITENBEKER: Personally, I think, I don't know that we should just merely delete it and overlook it. That was one of the stipulations that we put in there that we needed to protect the County from any litigation that might be involved in the case of damage, so I would like to include in there that we have some type of liability insurance which would protect us in the event of some type of situation that might develop. I realize there are all types of limitations as far as the size, but I personally don't think that we should consider less than a million dollars because, if you had many parcels of property damage, it wouldn't take very long to get to that point. I am just saying that as a point of discussion, not a motion.

KIMBER: I think your point is well taken. I think Mr. Bunderson's discussion about the issue of sovereign immunity, that the likelihood of the County being held liable, is really quite remote. I would suspect that Mr. Nielsen is going to have liability insurance as he works any project. I guess my suggestion would be that if we want to put the requirement for the liability insurance in here that we just make a statement to the effect that he present evidence of insurance coverage, liability insurance coverage. It wouldn't have to address this specific thing, but for the whole project.

BREITENBEKER: I had forgotten about that thing that Mr. Bunderson brought up as far as the immunity.

KIMBER: Mr. Nielsen, would you have any objection to that kind of a statement being placed as a part of that?

NIELSEN: No.

BREITENBEKER: Let me ask you a question, Darrell; what normally do you carry? What type of limitations? I assume that you can't operate without liability insurance, so I am asking you what type of limitations you have?

NIELSEN: A million dollars liability insurance is two or three thousand dollars, so the more you get the higher it goes.

KIMBER: Are there any other questions, concerns, on that particular item?

BREITENBEKER: I would so move that we accept No. 8 with the understanding that we delete that clause in there to render the County harmless; but also to stipulate that for the protection of the entire project, Mr. Nielsen show us proof of insurance covering a million dollars liability.

GROVER: I would second that.

KIMBER: We have a motion and a second, all those in favor?

"AYE" Any opposed? Thank you,

BEECHER: Item No. 9 is the aspect of showing and producing detailed information as to how the adjacent real property will be protected from any damages. You will remember this is the one we were challenged on "adjacent" could mean property several hundred feet away. You were going to consider changing the word "adjacent" to "contiguous".

KIMBER: Didn't we make a motion on that one last time?

BEECHER: No, we didn't make a motion on that. That was a work meeting, and we could not do that.

KIMBER: So even though we have tentatively agreed to that change, nothing has been done.

BREITENBEKER: I would like to so move that we change that wording according to the directions of the County Attorney from the word "adjacent" to "contiguous".

GROVER: I second it.

KIMBER: Those in favor? "AYE" Any opposed.

BEECHER: Item No. 10. DeVon has already alluded that this has reference to the specs that we talked to before. Maybe on this retention basin, if you want a letter from the State Engineer saying they do not want it; or is that sufficient for what you need? Is what you presented tonight sufficient for your needs on that one? You have the letter on the lower basin on what he has approved there, what the State Engineer has approved on the lower basin, the expansion of that basin and things that he does not want touched or changed with respect to the existing structure. But he has not alluded to anything else. As Mr. Wangsgard said tonight, this retention basin does not constitute a dam.

KIMBER: I believe for all of our protection, we ought to have a letter incorporating this particular item. That is my personal opinion. Any discussion on that item, gentlemen?

GROVER: Does Mr. Wangsgard have any statement or anything? The way he was kind of talking, he done enough of those that he knew we didn't have to have that.

WANGSGARD: You don't have to make application for a dam. I think it would not be difficult to obtain from the State Engineer's office a letter of approval indicating that there is no dam involved and that therefore, it is not required as a matter of requirement of the State.

BREITENBEKER: I think it would be best for our records to have it as well.

GROVER: I would so make the motion that we ask Mr. Nielsen to get us that letter to go with this particular drawing that we have here that was just presented tonight to be made a part of our record.

CHRISTENSEN: I second it.

KIMBER: Do you want to make that approval of this contingent upon receipt of that letter? I think the other requirements have been met. I don't want to put words in your mouth, but it may save us a little time in the process.

GROVER: We make a motion that we accept the drawing that we have received and that he get us a letter of acceptance from the State Engineer. Then it can all be accepted.

KIMBER: Again, I don't want to put words in your mouth, but approval of No. 10 would be contingent upon the receipt of that letter.

BEECHER: Don't include the plans in No. 10. No. 10 has nothing to do with the plans. No. 10 says "Applicant shall obtain written approval from the Utah State Engineer of all proposed detention basins on the premises, and submit said approval to the Planning Commission." So you are dealing with just his approval of detention or retention basins.

GROVER: OK, then you can't give approval to that plan until he gets it built.

BEECHER: Approve it subject to receiving the letter from the State Engineer. Either he says that the retention does not comply with our standards and we have no control over it; we don't care about it, or that the retention basin, if it's built to the way that the plan is shown will meet our criteria and we approve it. Or the retention basin is not approved until he does this, this, and this. One of those things has got to happen from the State Engineer. Then we know that it is not a part of what they call their dam safety inspections.

KIMBER: We are protecting our rear end, is what we are doing.

BREITENBEKER: I think that we should approve No. 10 with the contingent that we receive the necessary document from the State Engineer's Office approving or disapproving, whatever they do, to this retention basin.

KIMBER: Do we have a second?

CHRISTENSEN: I second.

KIMBER: Any discussion? Where they put "all" in there, I think it is absolutely essential that we have that documentation now that this has been presented.

BREITENBEKER: If we don't, we have only got half the letters. That's the way I feel about it.

KIMBER: Any other discussion? We have a motion and a second. All those in favor? "AYE" Any opposed? Thank you.

BEECHER: Item No. 11 is the Applicant shall agree in writing with the Box Elder County/Willard City Flood District to turn over to said Flood District, etc., the Warranty Deed, and that. That we do not have yet. Where it says "in writing" that he will turn it over, we have had verbal discussions that the Flood District would accept the enlargement of the lower basin and the ground needed for that, that they did not want the easements for the channels and that they would not want anything on this upper one. That's been verbal to date. How far you want to carry that, I don't know.

BREITENBEKER: Basically, didn't we discuss once that the written document to turn it over basically cannot be completed until a time when the permit is actually going to be issued.

BEECHER: The description cannot be generated until after he is through constructing it so that they know where he has constructed

to and how it has turned out. All we are saying is that we want a written conveyance or statement that he will do it, rather than a verbal one.

KIMBER: I think Mr. Bunderson said that could be done, that documentation that there is an agreement that this will occur was all that was necessary.

NIELSEN: I have talked to the Flood Control Chairman, and they were going to try and pass that tonight so that we would have it in writing. It was going to be talked about though, but I will guarantee to furnish a warranty deed or quit claim deed, whichever they ask for, for that little area that we are going to excavate.

BEECHER: Why don't we have a motion to the fact that we have a letter from Mr. Nielsen stating that he will do that so that we have it that we can fall back on it and not have to go through the Minutes, signed by him, get that out of the way. Applicant shall agree in writing. He said he would sign it, and Willard Flood District would sign it and get it in to us. That we require Mr. Nielsen to provide us with a letter signed by himself and the Flood District that he will deed to them and they will accept the necessary land to encompass the lower basin expansion.

BREITENBEKER: It is so moved.

KIMBER: Do we have a second?

CHRISTENSEN: Second.

KIMBER: Any discussion? I think we need to understand that this does not necessarily approve No. 11, it just says this is what we got to have. All those in favor? "AYE" Any opposed?

BEECHER: Item No. 12 is the letters from the different agencies.

LONNIE THORPE: Back on No. 9, I don't think you ever approved it, you just approved the changing of the wording.

BREITENBEKER: That's true, we moved to change the words, but that's all we moved to do. That is probably true. I think I made the original motion. I would like to amend that original motion to also include the fact that we do approve Condition 9 with that wording change as previously stipulated.

KIMBER: Do we have a second?

CHRISTENSEN: I second it.

KIMBER: All those in favor? "AYE". Any opposed?

BEECHER: What's your pleasure with Item 12?

BREITENBEKER: All we really asked for was the receipt of the four letters, wasn't it? Which we have received.

KIMBER: I think as far as the applicant is concerned, he has met that requirement. How we weigh those in our final decision, that's up to this Commission that he has met that requirement, and we can accept a motion to that effect.

BREITENBEKER: I would so move that he has met those requirements of No. 12 by issuance of those four letters that we requested.

KIMBER: Do we have a second on that?

GROV' I second it.

KIMBER: All those in favor? "AYE" Any opposed?

BEECHER: Item No. 13 is the blasting clause. It just states "Under no condition shall any blasting ever occur upon the premises described in the application."

KIMBER: No action needs to be taken on that.

BEECHER: Item No. 14. Applicant shall arrange for the preparation of a qualified engineer's estimate in writing for all costs of construction of flood control structures, devices, etc., etc.

KIMBER: Did you have an opportunity to pursue that?

BEECHER: We have an estimate, but now there are some things that have changed in the way of the asphalted road, the other detention basin, if there is a cost involved here. I think it ought to be reworked and resubmitted. The road was only half way paved, now if you are going to pave all of it, we have got to amend that portion of it. What he is giving you there, Mr. Wangsgard, is the request from the Air Quality people in wanting to pave the road. They are requiring, we have been told, that they have got to pave all of the road, not just 1200 hundred feet of it.

GROVER: Why don't we put that in the same condition as what the Air Quality is saying. Because really that is just a proposal.

BEECHER: We don't know all of that detail. What he is going to have to do is come up with an estimate to do that as well as the alternate of the first phase of it. What I am saying is, the engineer's estimate needs to be amended so that we can evaluate the rest of it. With this work that we have done here is different than what he originally proposed in this phase 1, and is the estimate covering that portion of the work in this basin to finish it off preparatory to going to phase 2. Then we have the portion of the reclamation that we don't know exactly yet, that may be a little too loosey-goosey there, too.

NIELSEN: If I got two contractors to give us a bid on that, would that be acceptable? Two licensed contractors?

BEECHER: Get it completed, because of the changes that we have had to date. It's different now, the things that you are going to be doing than what was originally submitted.

NIELSEN: What I am saying, if I got two contractors to give me a bid on what they would do, would that be acceptable? As the figures? As you know, I can get the engineer to do this.

BEECHER: If you want to go ahead and put it out to bid, that's up to you. I am sure we will accept that figure. But I am sure that Mr. Wangsgard can amply figure the estimate that would be acceptable. We would just have to go through it and see that everything was accounted for, that the price figure is in today's market values, and so forth. The price has to be based upon what we would have to do, if we were to hire it done, not what Darrell Nielsen could do it for at your costs, but what we would have to do, and I think Mr. Wangsgard understands that.

NIELSEN: That's the reason that I asked if I got two contractors to give me a bid on it, that would be --

BEECHER: If you want to do it that way, that's fine, either that or the engineer's estimate.

KIMBER: And then he could formulate that into the --

BEECHER: Put it together, that's fine.

KIMBER: What action do you want to take on that item, gentlemen?

BREITENBEKER: I don't see how we can take any action until we get those revised figures, and then we can look at the figures.

KIMBER: I think Mr. Nielsen understands what he needs to get on that.

BEECHER: Item No. 15. The Applicant shall prepare and submit to the Planning Commission a proposed agreement wherein the applicant holds the County harmless, and so forth. That one, we have as Mr. Bunderson alluded to before, we have a blank agreement somewhere in this documentation that has never been signed or agreed upon. There was still some questions back and forth between Mr. Nielsen's attorney and Mr. Bunderson, our Attorney, as to whether or not the wordage was correct so that has not been completed to date.

KIMBER: Then we cannot take any action on that until we have that document signed. I think that's pretty straightforward on that.

NIELSEN: Can we furnish the insurance policy the same way and sign the agreement. We will gladly furnish an insurance policy, but I don't think we should have to stand any lawsuits.

BREITENBEKER: What we are asking, I guess, is that your attorney get together with the County's attorney and hammer it out. In other words, none of us are qualified to give you the legal terminology, there, but I think we have to have Mr. Thorne, I guess, and Mr. Bunderson come to an agreement on that. Whatever either one of those can live with, we certainly ought to be able to as a Commission is the way I feel about it. Is that the feeling of the rest of you?

KIMBER: Yes, and my interpretation of what Mr. Bunderson is saying was this would not be a major issue or a stumbling block, if I interpret his comments correctly.

BEECHER: Item No. 16. Applicant shall prepare and submit to the County documentation showing about the noise level, etc. Now to date, we have statements, as I remember correctly, that he will comply to the noise level, and he has submitted to us some tests that have been run on other sites showing how they do it. Is that satisfactory to you, or do you want more for that?

KIMBER: At this point, I don't know what more we can say. I think he has met the requirements as far as presenting it.

BEECHER: What I am wondering, is if there ought to be some kind of a written documentation stating that, signed by him, stating that he will comply with all noise regulations as set forth in the zoning ordinance and the EMSHAW's requirements, just so we have a copy of it in our files. Just a suggestion.

KIMBER: I don't see a problem with that. If the item is accepted, it essentially requires that -- I don't see a problem with a statement that effect. Again contingent upon the document, I see no problem proceeding with 16. Could we have a motion on No. 16?

BREITENBEKER: I would like to so move that the fact, from our previous discussion, that we feel that No. 16 has been met, that he will conform to the noise levels that are prescribed by EMSHAW and the zoning ordinances.

KIMBER: OK, we have a motion, do we have a second?

GROVER: I would second that.

KIMBER: All those in favor? "AYE. Any opposed?

BEECHER: Item No. 17 is the time of work, work hours.

BREITENBEKER: We have already stipulated that there will be no activity from 7:00 p.m. to 7:00 a.m. Is that the way we have it written?

BEECHER: Motion accepting 17 as written, then?

BREITENBEKER: I don't see anything there hasn't been - that needs a motion, does it? In other words, we have stated when we can operate, and that's what he's got to do to do it.

KIMBER: It's not a matter of -- no action is needed.

BEECHER: Item No. 18 is the one that Mr. Bunderson responded to.

KIMBER: Gentlemen, in your materials this evening, you have; No. 18, it has been rewritten, amended by Mr. Bunderson. Have you had an opportunity to look at that?

BREITENBEKER: Basically, the way he's got it written, what does this amendment really cover that wasn't covered in the original 18?

KIMBER: Rewording with some legal terminology and providing that the Commission review annually or more frequently. It spells it out a little more precisely. It gets it into the attorney's terms, rather than ours.

BEECHER: No one has copies of this because I just received it last night.

KIMBER: Let me read it to you: "The Planning Commission shall review the issuance of the permit to determine if the Applicant is in compliance with all terms and conditions thereof on each anniversary of the issuance of the permit. In addition, the Planning Commission may require review more frequently than annually as a term and condition of any plan or document contemplated herein. As a condition of continued operation under this permit, the Applicant shall make such corrections as are ordered by the Planning Commission." The only action on this is to accept the amended wording on this particular item. It's not an action other than changing the wording on our document.

BREITENBEKER: I would so move that we accept the amended condition on No. 18 as pursuant to Attorney Bunderson's recommendations.

KIMBER: Do we have a second?

GROVER: I would second it.

KIMBER: All those in favor? "AYE" Opposed?

BEECHER: Item No. 19 is pretty much straightforward, too. It has no change, just a statement of fact as to how the operations will continue.

BEECHER: Item No. 20 is the one that Mr. Bunderson has also rewritten. You remember this is the one he suggested you have in there, that not only does he submit the plans, but he has to do what he says.

KIMBER: Would you read that, my voice is going to leave me.

BEECHER: "Any reference is these conditions to the approval of the Planning Commission shall be defined to mean that the Box Elder County Planning Commission may require in its sole discretion, changes, additions or deletions as it may desire before any approval; and approval shall mean that a majority of the quorum present at the Planning Commission meeting affirmatively votes to approve the document, thing or item which is the subject of approval. Furthermore, any requirement in these conditions requiring the applicant to submit a plan or document of some sort for approval by the Planning Commission shall also mean that any conduct required of the applicant by such plan or document shall actually be performed by the applicant as required by the Planning Commission. The Commission shall, in its approval of any plan or document specifically state details concerning applicant's compliance so that applicant is reasonable aware of the actual compliance requirements imposed by the Planning Commission."

KIMBER: I know Jon did have some concern about the previous wording on that particular item and wanted to change it to enhance the document; and again, this would require a motion to accept the amended wording on No. 20.

GROVER: I would make a motion that we accept the amended condition on No. 20.

KIMBER: Do we have a second?

CHRISTENSEN: I second it.

KIMBER: Those in favor? "AYE" Those opposed?

KIMBER: Are there any questions that you have on any of the items at this point, Mr. Nielsen?

NIELSEN: The one item that I am concerned about, that 30 day deal to give Willard City a chance to look this thing over bothers me and I will tell you why. I met with Mark Anderson of Weber Basin, today, and he told me they are probably going to bid this project at Willard Bay the end of this month. I said something might hold it back that we can't get a bid firmed up. But he said we are in the process of getting this thing out for bid. So the thing that bothers me; if we wait until Willard City looks this over, if it takes and gets this thing into February before maybe this thing can get approved, or a permit, I am kind of bothered with that, with waiting for another 30 days to let Willard City see this. I think if we get the letter from the dam State Engineer on this, I think that ought to be as far as we have to go on this. That's the way I look at it.

WANGSGARD: You know, actually, that earlier drawing that we submitted with the round circle on it, that showed 9 acre feet, that was just to indicate what the concept was. If the concept was acceptable, which it evidently was accepted, has been accepted by them.

You know, this is just a detail of how it is going to be done. This hasn't changed at all from the first time it was submitted. All the first drawing was to say was that the minimum detention basin would be 9.4 acre feet. This will be 9.4 acre feet, but as it goes bigger, as I pointed out, it's going to go from 20 to 40 to 60. It's always going to change. The concept was that it just needed 9 acre feet to store a hundred year frequency storm. This is just to show you what the topography is going to be and how it moves. That's all this is for.

KIMBER: I understand that. I think the problem that we are faced with at this point, Darrell, is this Commission imposed upon themselves a requirement to do this. I think that really the only way we could violate that condition we imposed would be for those attorneys to get together and waive that, your attorney and Mr. Molgard. I don't see items that need a 30 days review or study. I agree with you. I guess it's a condition that this Commission imposed on themselves, and that's the position we are coming from; and I'm sure that Mr. Grover -- and I would have no opposition to waiving that 30 days requirement. We have had the documentation to study the items, and there has been nothing new of great significance that would require 30 days study as far as I am concerned. So I guess, at this point, that's where we are. We are kind of stuck. Unless you wanted to get your attorney with Mr. Molgard. I don't know how to proceed with that.

GROVER: Could we get an exception to that if Lonnie would accept that? Where he's the Mayor?

NIELSEN: Well, the only thing that I am trying to say is I don't think it's that crucial to getting the thing passed, and like you said, and maybe I can get the two attorneys to talk about it and see if they can't waiver it.

BREITENBEKER: Could we make a motion if they decide to do that, that would be acceptable to this Planning Commission?

KIMBER: Well, what I would prefer, we have a regular meeting coming up in two weeks, the 19th?

WANGSGARD: Mr. Chairman, could I just ask one more question? I'm trying to understand, is what you are trying to do is give them 30 days to look at this?

BREITENBEKER: We made an agreement with them that we would give them 30 days to look if they would give us 30 days to look.

WANGSGARD: To look at what?

KIMBER: Whatever documents came in.

WANGSGARD: Well, it was just submitted for informational purposes. The concept was submitted months ago.

BREITENBEKER: But we requested though that we get a more detailed drawing. That's why --

WANGSGARD: But you haven't changed anything. What you have said is here is "here is you 9 acre foot hold in the ground" that's all it is.

BREITENBEKER: That's true, but we requested that, that we do get a more detailed drawing of what this retention basin was going

to be. At our last meeting, and I am sure that's why Mr. Nielsen had submitted this to us because we did request that. Now if he doesn't want to submit that to us, then we are going to sit back and say "Hey, we still don't have that other information yet." So it's a Catch-22 situation. We asked them for the additional information, and now according to our agreement with Willard City, we've got to let them look at it. I'm not saying that's going to change anything, but we still have to let them look at it. That's the way I personally feel. I'm just speaking now for myself.

NIELSEN: You were saying something a few minutes ago, Mr. Kimber, can you remember what you were going to say?

KIMBER: I think what I started to say is from my position, if we have a meeting in two weeks, if those attorneys could come to some agreement to waive that 30 day requirement, which in essence they have not kept either. Then I would have no opposition to addressing the issue at that point. At this point, I don't feel that I could even recommend to this group that they make it contingent upon -- that they make a motion accepting contingent upon that. If we have that, then we will put it on the Agenda.

NIELSEN: I'll see what I can do. I appreciate that. Thanks.

KIMBER: While you are up here, Mr. Nielsen, one document that came to our attention, this, you are familiar with this. Is that going to have any bearing on this?

NIELSEN: No, none whatsoever. I can tell you personally, but I'm not telling, you know. Is that fair?

KIMBER: I would like an explanation.

NIELSEN: I sure will, gladly, No problems as far as I am concerned.

KIMBER: Gentlemen, it is a little over an hour, but --

THORPE: Mr. Chairman, on No. 17, at the last discussion we had with you gentlemen, that Willard City could get some consideration in -- if a modification was made in the hours and the time that he was able to work in that pit. Willard City would be given some consideration as to having a say in that. You said at that time you would. Is that going to be in the conditions?

BREITENBEKER: When you say modifications, what --

THORPE: On the time frame that he could work in the pit, the hours that he could work and the days that he could work. And if that does happen, if he does get the Conditional Use Permit, and gets in to operate, in comes a rush project, and they want to load gravel and rock on Sundays.

GROVER: Now let's see, this calls that he works five days, Mondays through Saturday, so it would be six days a week from 7:00 a.m. to 7:00 p.m.

BREITENBEKER: Yes, but we also made a stipulation, and I think this is what Lonnie is referring to, that it could be reviewed under certain circumstances to be changed.