

PLANNING COMMISSION MEETING

January 17, 1985

Minutes of the regular meeting of the Box Elder County Planning Commission held Thursday, January 17, 1985 at 7:00 o'clock P.M.

Members present were: DeVon Breitenbeker, Thomas Mower, Kent Newman, J. Glen Nelson, Don Chase and Jon Thompson.

Ex-officio: Denton Beecher, Jay R. Hirschi.

Excused: Richard Kimber, Don Petersen.

Co-chairman Kent Newman conducting and called the meeting to order. He asked for a motion to approve the minutes of December 20, 1984. Motion was made by G. Glen Nelson that the minutes of December be approved. Motion was seconded by Thomas Mower, with the voting unanimous.

LARRY SCHULTZ - MOBILE HOME IN CH ZONE APPROVAL - REQUEST FOR ZONE CHANGE -

Larry Schultz visited with the Planning Commission to get permission to put a mobile home in a CH Zone to use as his residence. The area of request is located north of the KOA Campground between Perry and Willard Cities, and the CH Zone does not permit residence in the zone area. Denton Beecher said a permit was not issued and Mr. Schultz appealed to the Board of Adjustments, who turned down his appeal. (Copy attached). Mr. Beecher said that a CD Zone would allow a residence, but if approved and changed to the CD Zone, a conditional use permit would be issued. Mr. Schultz said he is aware that the area is zoned CH, but there are mostly houses in the area with only one business, and another residence would not make that much difference. He was informed by the commission that the residential homes were already there prior to the area being zoned, but once an area is zoned, any request is subject to the zone regulation. DeVon Breitenbeker stated that the Planning Commission is legally bound to uphold the zone regulation, and if the people there want to change the zone, they can do so under proper

guidelines, with petitions and a public hearing part of that requirement.

Motion was made by DeVon Breitenbeker that due to the fact that the zone is presently a CH Zone, the Planning Commission has no option but to deny any permit being issued to put a mobile home in the area. Motion was seconded by Thomas Mower, with all in approval. Mr. Larry Schultz presented the application for amending the zoning ordinance. He was informed that the matter would be discussed later in the meeting. After other business was completed, the request by Mr. Schultz was again discussed by the Planning Commission. DeVon Breitenbeker made a motion that further action be tabled until sufficient evidence has been submitted to warrant a public hearing. Motion was seconded by Thomas Mower, and approved.

PAGING TOWER IN SOUTH WILLARD BY MOUNTAIN BELL TELEPHONE COMPANY -

Brad Carter and Raymond Wall from Mountain Bell visited with the Planning Commission and submitted an Application for Conditional Use Permit. Mr. Carter reported that Mountain Bell has an option to purchase some ground located at the NE  $\frac{1}{4}$  of Section 13, T.7N, R2W to locate a paging tower, if approved by the Planning Commission. The area is zoned MU 160, and a building would be built in the center of the property with a tower height of 85 feet. He reported that because the property is in Weber County, per assessment line agreement and Box Elder by legal line, the Warranty Deed would be recorded in both Box Elder and Weber Counties, but the utility would be assessed by the State. Don Chase said if approved, it would be contingent on Weber County's approval, as a courtesy to Weber County. Following a discussion, Mr. Chase made a motion that the Application For Conditional Use Permit be approved contingent upon a letter being received by the Weber Planning Commission giving their approval. Motion was seconded by Thomas Mower, and approved.

HARVEY MUND REQUEST FOR ZONE CHANGE -

Harvey Mund met with the Planning Commission to request an amendment to the zoning ordinance to allow him to expand his business, or to receive approval to build a new building to replace his old one. He said his present place is too small to perform adequately in the

business of well drilling and pumping, welding, fabrication and storage of forms, parts, etc. The property where he is presently located is in South Willard, and is zoned RR5. He said the ground has some fruit trees, but has been used mostly for storage of his well drilling equipment. There are also some sheds on the property, and a barn which they would like to enlarge or build new. He was informed that when the area was zoned any type of activity at that time would be allowed to continue, but any improvement, or new building in relation to a business would be in violation of the zoning ordinance. To change the three acres to another zone would be spot-zoning, which is illegal. The commission said Mr. Mund could continue to use the present facilities and ground for storage and repair, but the commission could not allow any expansion of present existing buildings. Following the discussion, DeVon Breitenbeker made a motion that the request be tabled for one month to allow Mr. Mund and Denton Beecher more time to research the possibility of arriving at a solution. Mr. Mund is to make contacts with those within the area, and Mr. Beecher to check on the rules and regulations. Motion was seconded by Thomas Mower, and approved.

DOVE CREEK FARMS AND RANCHES #5

Maxine Hanks and Attorney Brian Johnson appeared before the Planning Commission for the purpose of receiving final plat approval on the Dove Creek project. The question being, does "vested rights" still exist, or must the developer commence anew. To these questions, County Attorney Jon Bunderson has written letters to the Planning Commission explaining his opinion. The most recent letter dated January 15, 1985, which was read by the Planning Commission earlier and attached hereto. Attorney Johnson said he is not in complete agreement with the decision of Attorney Bunderson, but said the Attorney has presented some fair arguments. Attorney Johnson said there exists a confusion in the matter because of the passing of Mr. Hanks. He related cases in other states which would seem to substantiate in favor of Mrs. Hanks that "vested rights" has not terminated. Atty. Johnson said he and Atty. Bunderson interprets some cases related thereto differently and feels th at the lapse of time was

caused by circumstances beyond the control of Mrs. Hanks. The death of her husband at this crucial time was part of the problem, but she never intended to walk away from the project, only to continue on, and feels that vested rights can be altered for the interest of the land owner. DeVon Breitenbeker said he felt that they have covered all matters, but the vested rights, and still feels that vested rights is not applicable. He said the Planning Commission approved an extension of time which has since expired, and now required starting over under the present zoning regulations. Don Chase said he feels the same even though he feels bad about the situation, because of what has happened. He said the meetings with Mr. Hanks goes back a long way and he has raised questions about the project many times and is sorry if there is any misunderstanding. Thomas Mower said vested right does not seem to fit this problem, in that everything done has expired and needs to be started over. Glen Nelson said when the extension of time lapsed last March, no contact was made with the Planning Commission which would indicate that the project was dropped.

A motion was made by Don Chase that all rights, if any, created by the filing of the preliminary plat has terminated pursuant to the Sub-Division Ordinance, by failure of the applicant to proceed within the allowed time limits or extension thereof, and that the final plat approval be denied. Motion was seconded by DeVon Breitenbeker, with all members of the Commission voting in favor of the motion.

Meeting adjourned at 9:10 p.m.

APPLICATION FOR AMENDING THE  
ZONING ORDINANCE

Fee 10.00 - 10.00  
show proof of payment  
to change.

Fee Paid \_\_\_\_\_

Date: 11/15

I (we), the undersigned property owners, respectfully request that the Zoning Ordinance be amended by changing  
the present CH zone to a C-O zone.

for the purpose of Building a residential home  
on my property adjacent to a  
Commercial office already constructed on  
this property.

\*\* The Planning Commission must review the request from the standpoint that changes in the Zoning Ordinance cannot be made unless it is in the best interest of the public generally and in conformity with the policies of the general or specific Master Plan.

Please answer the following questions: (Attach additional sheet for statements, if necessary.)

1. How is this proposal consistent with the policies of the general or specific Master Plan? All other lots in this area  
and Commercial also have residential  
dwellings on them at this time.

2. How will this proposal promote the health, safety, morals, convenience, order, prosperity, or welfare of the general public? It conforms with  
the nature of adjoining property owners  
and should not interfere with other homeowners.

3. Names of all owners of property in the proposed amendment area and signatures of property owners as available (Planning Commission may require signatures of all property owners showing approval of proposed change).

Name	Address	Phone	Approve	Disapprove
<u>Yang J. Shultz</u>	<u>3450 So 965 West</u>	<u>923-3763</u>	<u>[Signature]</u>	

RECEIVED BY

DEC 17 1984

BOX ELDER COUNTY

Clifton G. M. Kerr  
RFD 22 BOX 296  
MEMPHIS, TENN 38137

12-17-84

Box Elder Co. Commissioner:

Mr. Dennis Beecher acting as zoning administrator has referred a case to your Board of adjustment, i.e. that of an appeal by Larry E. Schultz for a variance in the Commercial zoning in the ferry area.

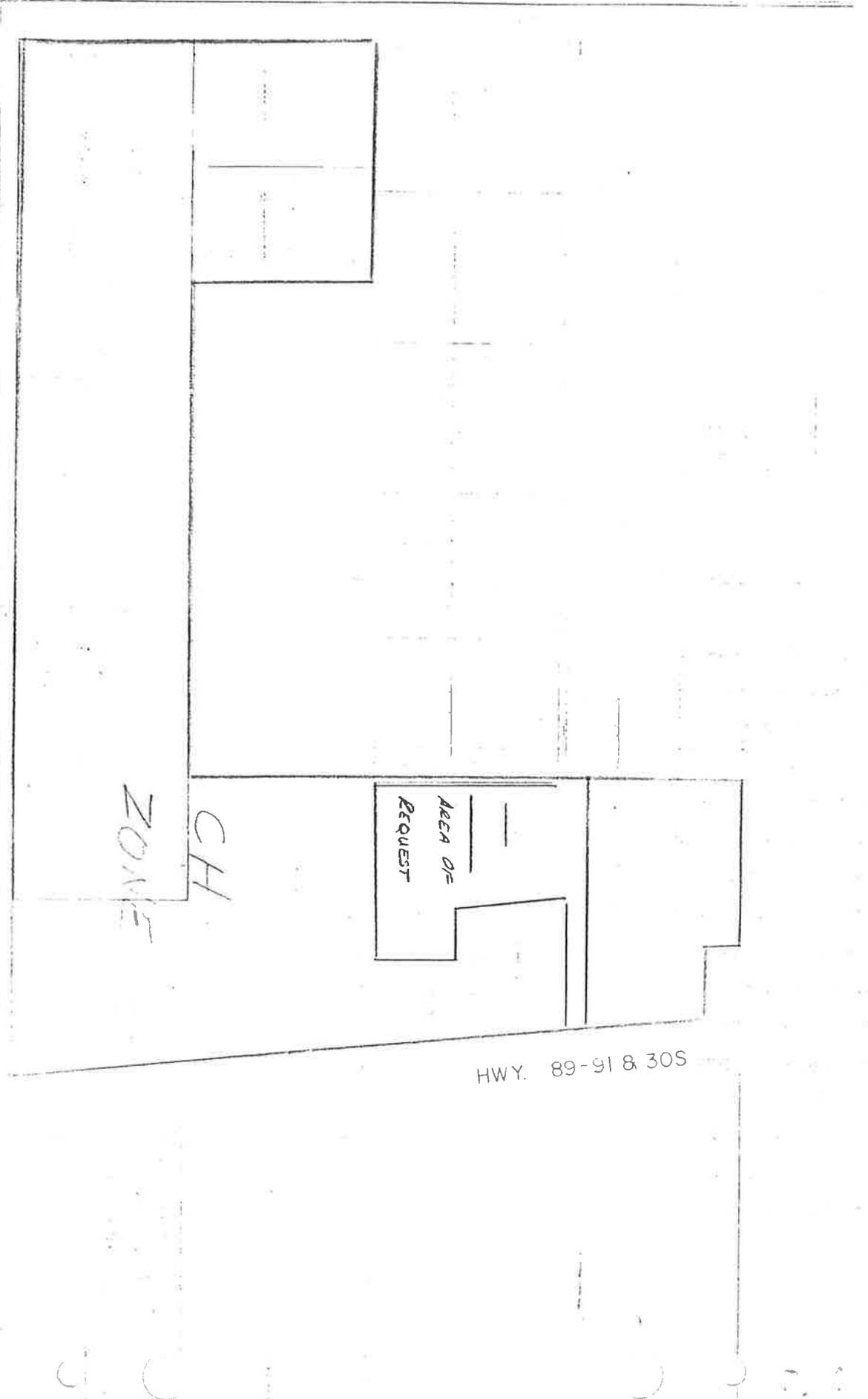
As per Mr Beecher's letter a mobile home was placed on property owned by Mr Schultz in violation of the zoning regulations. However Mr Schultz's appeal asks for the variance to build a home. He informed the Board that he was in the process of selling the mobile home.

Because of this conflict and the fact that the zoning and planning commission has been by-passed in this matter, your Board is unanimous in advising Mr Schultz to take his appeal to the above Commission for their action and public hearing <sup>if necessary</sup>.

This action is taken without any prejudice towards <sup>the</sup> merits of Mr. Schultz's appeal.

Respectfully,  
Clifton G. M. Kerr for  
The Board of Adjustment

CPH



APPLICATION FOR CONDITIONAL USE PERMIT

Applicant's Name Mountain Bell Application No. 31  
Address 250 Bell Plaza, Room 501,  
Salt Lake City, Utah 84111 Date Received by Building  
Inspector \_\_\_\_\_  
Telephone 237-3863 / 237-3751  
Darlene S. Bradley J. Date of Hearing \_\_\_\_\_  
Nelson Carter

Application is hereby made to the Planning Commission requesting that a Mountain  
Bell Radio Paging Site be permitted as a "conditional use"

on 2500 sq.ft. located at the NE ¼ of Section 13, T.7N,  
(Sq. Ft. or Acres) Street Address R.2W

in a MU-160 zone (see attached location map).

Please complete the following:

- I. State in detail what is intended to be done on or with the property. Include Site Plan as required in the Conditional Use Chapter of the Zoning Ordinance.

The 50' X 50' site will be utilized for a radio paging system. A metal or wood pole will be installed with a 20' whip antenna attached at the top of the pole. Near the base of the pole, we will place a pre-fab equipment shelter on a concrete pad. This structure is approximately 16' X 8' and 9' high.

- II. Explain fully how your application will satisfy each of the following conditions:

- (a) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or community.

Our radio engineers have identified this general vicinity as a strategic location for a radio paging system. This location is one of 11 sites that forms the Wasatch Front paging system for Mountain Bell. This system covers the areas between Payson and Pleasant View.

- (b) The proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons nor injurious to property or improvements in the vicinity. Our particular land use is not unique to the area. The site we've secured is contiguous to a railroad microwave station and just southeast of AT&T's microwave facility.

- (c) The proposed use will be compatible with and complimentary to the existing surrounding uses, buildings, and structures when considering traffic generation, parking, building design and location, landscaping, noise, or other pollution.

Our land use is compatible with that of the Railroad's, AT&T's and UP&L's towers, all of which are in the same vicinity. The location of our site will place our facilities a similar distance from the road as our neighbor's facilities (the railroad). Our equipment building is relatively smaller. We will secure adequate access for ingress and egress and have allowed an area for vehicles to park.

- (d) The proposed use conforms to the goals, policies, governing principles and emerging land use patterns of the Master Plan. Please list specific goals and policies as adopted in the Master Plan which would be pertinent.

III. Attach a copy of market analysis and economic study which justifies the proposed use, and any assurance of financial ability or program to complete and conduct the use (if required by Planning Commission)

IV. If proposed use is providing a public service, rather than a private personal use, explain how it will benefit the public or render a service to the community.

This service will provide a more efficient pocket paging service to people living or working in the Ogden, Salt Lake City and Provo areas.

V. List the names and addresses of all property owners within 300' of the subject property. (Use additional sheet if necessary)  
(see attached sheet)

VI. Fee paid \_\_\_\_\_ .

Signed: Darlene A. Nelson 250 Bell Plaza #501 237-3863  
(Applicant) (Address) (Phone)

Bradley J. Carter 250 Bell Plaza, #501 237-3751  
\_\_\_\_\_

Zoning Administrators Action:

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

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

Date Referred to Planning Commission for Action \_\_\_\_\_

Planning Commission Action:

Date Approved: Jan. 17, 1985

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

Governing Body Action if Appealed From Decision of Planning Commission:

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

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

Public Hearing Date if Deemed Necessary \_\_\_\_\_

Conditions of Approval

, or Reasons for Disapproval

List:

1. That before a permit may be issued that we receive a letter of confirmation from Weber County Planning Commission.
2. That a permit from FCC and FAA showing no conflict, be obtained.

Signature: \_\_\_\_\_

Denton A. Beecher  
Chairman, Planning Commission or, Zoning Administrator

The Building Inspector shall place the Conditional Use Application No. as well as any conditions of approval on the Building Permit.

Appealed to the Planning Commission from Decision or Zoning Administrator \_\_\_\_\_

Appealed to the Governing Body from Decision of Planning Commission \_\_\_\_\_

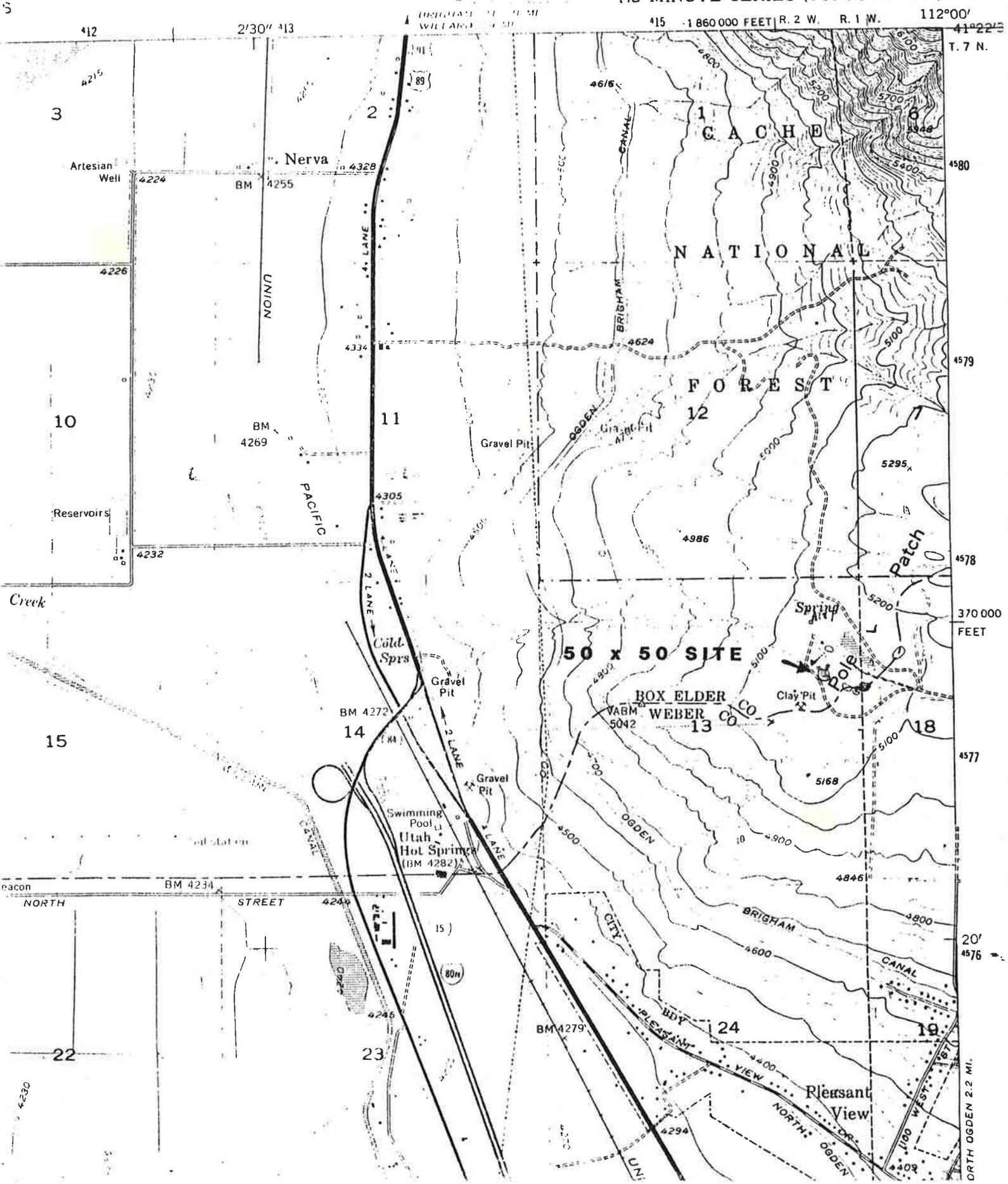
Property owners within 300' of subject property.

1. One Hundred Eleven Bar (111) Ranch, Ltd.  
G. Raymond Jones  
3243 North 400 West  
Ogden, Utah 84404
2. Oregon Short Line Railroad Company  
198 West 28th Street  
Ogden, Utah 84401

# LOCATION MAP

PLAIN CITY QUADRANGLE  
UTAH  
7.5 MINUTE SERIES (TOPOGRAPHIC)

3669 IV  
(MAN)





# WEBER COUNTY PLANNING COMMISSION

First Floor, Ben Lomond Hotel, Ogden, Utah 84401 (801) 399-8791

January 21, 1985

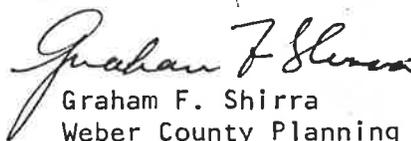
Denton Beecher  
P.O. Box 718  
Brigham City, Utah

Dear Mr. Beecher,

This is to advise that I have reviewed the plans of Mountain Bell for a Radio paging facility in Box Elder County near the Weber County line border of the City of Pleasant View in the N.E.  $\frac{1}{4}$  Sect 13. Tn. 7N R 2 W. SLB & M.

It is my opinion that this facility will have no adverse impact on Weber County and therefore I see no reason that this facility should not be constructed.

Yours Truly,

  
Graham F. Shirra  
Weber County Planning Director

GFS/jh

APPLICATION FOR AMENDING THE  
ZONING ORDINANCE

Fee Paid \_\_\_\_\_

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

I (we), the undersigned property owners, respectfully request that the Zoning Ordinance be amended by Harvey Sales & Service, Inc.

President: Harvey V. Mund

for the purpose of providing service for culinary water systems, irrigation systems, farm systems and for drilling wells and pump service. Also for repairs on all types of farm equipment. (Welding and fabricating)

\*\* The Planning Commission must review the request from the standpoint that changes in the Zoning Ordinance cannot be made unless it is in the best interest of the public generally and in conformity with the policies of the general or specific Master Plan.

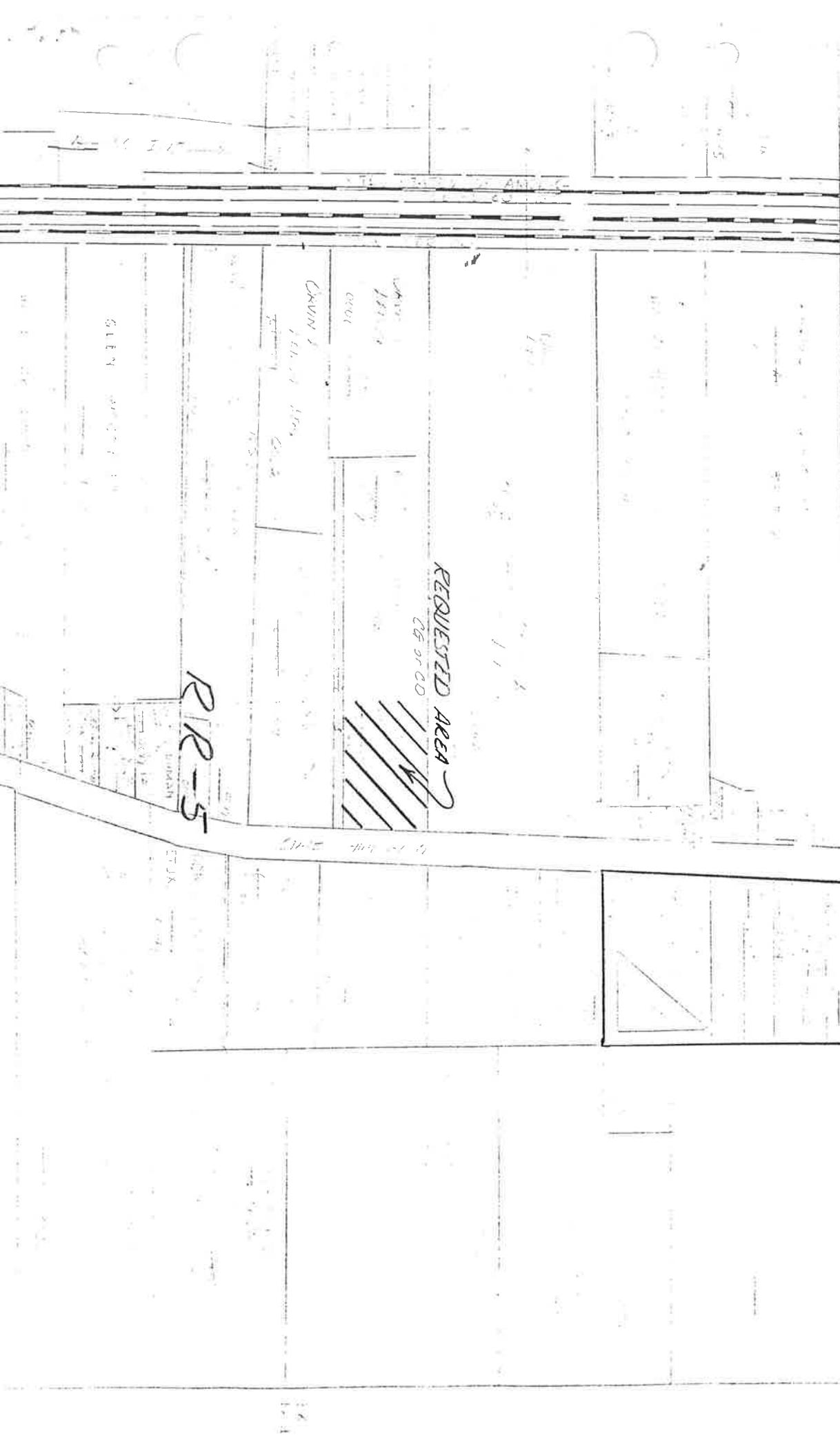
Please answer the following questions: (Attach additional sheet for statements, if necessary.)

1. How is this proposal consistent with the policies of the general or specific Master Plan? I'm not sure on the specifics of your Master Plan but we feel that this would fit in the existence of this community present and future.

2. How will this proposal promote the health, safety, morals, convenience, order, prosperity, or welfare of the general public? In helping provide sanitary wells and pump systems and in the repair of all types of farm equipment. This would be more available in the area which would contribute to the welfare of the general public.

3. Names of all owners of property in the proposed amendment area and signatures of property owners as available (Planning Commission may require signatures of all property owners showing approval of proposed change).

Name	Address	Phone	Approve	Disapprove
<u>Mrs. Lowell Lemon</u>	<u>7400 S Hwy 89, Willard</u>	<u>723-3561</u>		
<u>Mr. Dean Young</u>	<u>7510 S Hwy 89, Willard</u>	<u>723-8455</u>		



REQUESTED AREA  
06-01-00

CRUISE  
100-11-100

GLENN

RR-5

ETJX

RR-1

REQUESTED AREA  
25 of 50

RR-5





CIRCA 1890's

# Box Elder County,

STATE OF UTAH

COUNTY COMMISSIONERS  
DON E. CHASE  
GLEN R. CURTIS  
JAMES J. WHITE

BRIGHAM CITY, UTAH 84302  
OFFICERS

GLEN S. FIFE, COUNTY TREASURER  
JAY R. HIRSCHI, COUNTY CLERK  
ROBERT E. LIMB, COUNTY SHERIFF  
MARIE G. KORTH, COUNTY RECORDER  
JON J. BUNDERSON, COUNTY ATTORNEY  
VON R. CURTIS, COUNTY ASSESSOR  
DENTON BEECHER, COUNTY SURVEYOR  
DORIS L. OLSEN, COUNTY AUDITOR



CIRCA 1980's

January 15, 1985

Box Elder County Planning Commission  
Box Elder County Courthouse  
Brigham City, Utah 84302

RE: Dove Creek Farms and Ranches Unit 5

Gentlemen:

Please refer to my letter of December 11, 1984. You will recall that this letter was a preliminary legal opinion on the the questions you raised concerning the Dove Creek Farms and Ranches matter.

Mr. Johnson has done some further legal research and provided me copies, and I have now completed my legal research.

In essence, my preliminary opinion expressed in my letter of December 11th is not changed, so please consider this letter as a supplement to my previous opinion.

The case upon which the applicants rely for their "vested rights" doctrine is the Utah Supreme Court Case of Western Land Equities vs. the City of Logan.

Mr. Johnson is correct in telling us that this case establishes in Utah the so-called "vested rights" doctrine, which is a minority position among State Supreme Courts within the United States, but is nonetheless the law of Utah.

In the Western Equities Case, the aggrieved developer purchased a tract of land in 1969, and in April, 1976, Logan City zoned the land so as to permit single family dwellings.

On July 13, 1977, the developers filed a preliminary plan for a sub-division. On November 9, 1977, the City Planning Commission rejected the sub-division plan. Within the time limits allowed by the ordinance, the developer appealed that rejection to the City Council, and the City Council then rejected the sub-division. Again, within the time limits allowed by the ordinance and by governing statutes, the developers filed a lawsuit in the District Court. While the lawsuit was pending, on January 19, 1978, the zoning ordinance of Logan City was changed. This change directly affected the proposed sub-division, and basically prohibited it.

On these facts, the Supreme Court held that the developers, having filed their preliminary plat prior to the change in zoning, had acquired a "vested right" to have their sub-division considered under the old zoning laws rather than the new zoning laws.

The essential, critical difference between that case and the Dove Creek Farms and Ranches case is that the Western Equities vs. Logan City case did not involve an issue of termination or expiration of the so-called "vested right". That particular issue was not before the court, and, as is shown from the facts, the developers had not allowed any right to terminate because they had followed through the appeal process within all allowed time limits.

Another critical difference is that in the Western Equities vs. Logan City case the developer was prepared to meet the requirements of the old sub-division ordinance and zoning law. Dove Creek Farms and Ranches has continually sought variances from the requirements of the sub-division ordinance.

Thus, the issue in the Western Equities vs. Logan City case was whether or not a subsequent change in zoning would apply to an existing, unexpired, pending application. As a matter of fact, the court held that a developer does have a "vested right", but, under certain circumstances, new zoning laws could be applied to an existing application.

Sections 7-1(2) and 4-1(7) of our sub-division ordinance both provide that the final plat must be filed within 18 months of the filing date of the preliminary plat. Section 4-1(7) provides that approval of the preliminary plat is valid for 18 months, and, thereafter, "approval of the preliminary design plan will have expired unless a final plat has been submitted to the Planning Commission or an extension has been granted by the Planning Commission". Section 7-1(2) says again that the materials required for final plat approval must be submitted within 18 months of the date a preliminary plat has been approved, and further provides that "no final plat submission can be accepted which has exceeded this time-lapse period, unless otherwise provided by this ordinance.

The developers in this case recognized the fact that their time period was running out, and applied for and received an extension of time within which to file their final plat. No final plat was filed within that extension time, nor was another extension granted within the extension time.

Thus, pursuant to the terms of our own ordinance, the filing expired, any "vested rights" which may have existed expired, and the developers must commence anew, and cannot rely on their old filing.

Mr. Johnson has provided to you a letter dated December 31, discussing the issue of the expiration of "vested rights". The first case quoted therein, Putnam Armonk, did not involve a sub-division ordinance which had a self-contained termination provision, such as ours. Also, the case is not a Utah case.

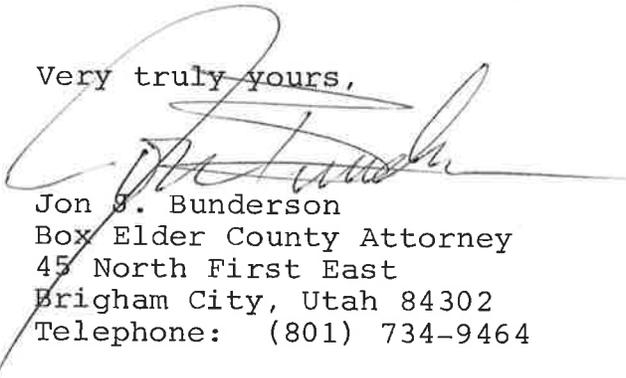
The second case quoted, Parkridge vs. City of Seattle, involved a building permit, and further involved a situation where the court found that the City involved had been at fault. In addition, the full opinion, which is not quoted in the letter, provides as follows, immediately after the portion which is quoted:

"The more partical rule to administer, we feel, is that the rights vests when the party, property owner or not, applies for his building permit, if that permit is thereafter issued. This rule, of course, assumes that the permit applied for and granted be consistent with the zoning ordinances and zoning codes in force at the time of application for the permit."  
(Underlining added)

Finally, the last case quoted, Mersiani vs. Lake County Board of Appeals, is not cited as determining any of the issues in this case. The letter merely states that the case "intimated" that intent to abandon rather than lack of affirmative action is the touchstone to use in evaluating whether or not a building permit expires if no work is commenced within six (6) months. That issue is not present in the Dove Creek case, and apparently really wasn't even decided in the Mersiani case, although it may have been discussed in the Mersiani case.

The balance of my opinion in my letter of December 11th remains unchanged, and, in fact, after research and examination, I feel confident in adopting that preliminary opinion, with this supplement, as a final opinion.

Very truly yours,



Jon S. Bunderson  
Box Elder County Attorney  
45 North First East  
Brigham City, Utah 84302  
Telephone: (801) 734-9464

JJB:jh  
CC: Brian Johnson