MINUTES
BOX ELDER PLANNING COMMISSION
FEBRUARY 18, 1999

The Board of Planning Commissioners of Box Elder County met in regular session in the Commission Chamber of Box Elder County Courthouse, 01 South Main in Brigham City, Utah at 7:00 p.m. on February 18, 1999.

The following members were present constituting a quorum:

Richard Kimber	Chairman
Stan Reese	Member
Jon Thompson	Member
Deanne Halling	Member
David Tea	Member
Royal Norman	Commissioner
Jim Marwedel	Planner
LuAnn Adams	Recorder/Clerk

ABSENT:

Theron Eberhard	Member

AGENDA: (ATTACHMENT NO. 1)

PUBLIC HEARING REGARDING CONDITIONAL USE PERMIT FOR THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS IN PARK VALLEY, UTAH

Chairman Kimber declared the public hearing regarding a conditional use permit for the Church of Jesus Christ of Latter-Day Saints open at 6:30 p.m.

(Attachment No. 2 - Attendance List)

County Planner Jim Marwedel explained that the LDS Church is remodeling their church in Park Valley. They will be increasing the parking lot capacity which borders the State Hwy. This is a use that requires a CUP. The zoning is RR-1. The LDS Church has applied for the CUP and the County is required to hold a public hearing relative to the CUP because they have an impervious surface ratio (ISR) greater than that allowed under the zoning (see Code 5.52 relative to pre-existing uses).

Commissioner Norman asked about information from UDOT regarding road drainage. Jim Marwedel said UDOT is fine with the drainage. The asphalt previously went to the right-of-way line. They will tear the asphalt out and put it back. Mr. Marwedel said in the future the developer will pay UDOT to widen the road if the road is ever worked on. The church's ISR is nonconforming, but uses all

around are nonconforming, so he does not see any impacts on neighbors. It is pre-existing. It is a matter of remodeling to increase the size and a change in the parking area.

Commissioner Norman said he was in Park Valley on a day when they had the heaviest rain storm. He was standing on the front steps of the chapel, and there was no problem with drainage. It all flows to the low spot and runs west.

There were no other comments and Chairman Kimber closed the public hearing at 6:45 p.m.

MOTION: A motion was made by Jon Thompson to recommend to the County Commissioners to issue the conditional use permit for this project with the condition that they get approval from UDOT to proceed. The motion was seconded by David Tea and unanimously carried.

CHAIRMAN RICHARD KIMBER PRESENTED THE MINUTES OF JANUARY 21, 1999 FOR APPROVAL. A MOTION WAS MADE BY DAVID TEA TO APPROVE THE MINUTES AS WRITTEN. THE MOTION WAS SECONDED BY STAN REESE AND UNANIMOUSLY CARRIED.

APPLICATION TO REZONE APPROXIMATELY 116 ACRES IN SECTION 23, T12N, R2W FROM MU-40 TO A-20 AND 40 ACRES WITH AN OVERLAY ZONE TO ALLOW FOR THE TRANSFER OF DEVELOPMENT RIGHTS

CONCERNS ABOUT PROPOSED HIGH COUNTRY ESTATES SUBDIVISION - BEAVER DAM & TWITCHELL SPRINGS WATER USERS

(THESE TWO AGENDA ITEMS WERE TALKED ABOUT AT THE SAME TIME)

County Planner Jim Marwedel said these two items were a result of the Alton Veibel Subdivision which was approved in concept plan only last month to have a "P District" and create a subdivision. There was one lot left out of the proposed subdivision. The owner of the lot that was left out wants to make the lot legal so they are asking for a zone change in order to make the lot legal. The application is to rezone approximately 115 acres from a MU-40 to an A-20 and 40 acres with an overlay zone to allow for the transfer of development rights. They want to create the same amount of lots, which is two, and reserve a large open area that you can't build on. The lots are not legal and were never created by a subdivision. The pre-existing lots came in with a subdivision request, but the subdivision never made it through the process and the lots were sold without final plan approval. This happened in 1981. Mr. Marwedel said the person who owned the lot built a shop on it, but then illegally converted it into a home. (Attachment No. 3 - Zoning Application)

Charlotte Nelson, Gerald Howard and Terri Howard came to the Commission Table.

Charlotte Nelson said the request for a zone change is a solution for a problem that has been in existence for 18 years. She said it took a lot of thought and consideration to come up with a solution that would recognize all the important factors, rights and conditions that exist in the area. The zone change will involve 115-116 acres. The A-20 zone overlay will allow for development rights to be transferred from one area to the other so the density created would not be detrimental to the area. This would make a legal creation of two parcels sold in 1981. She said the additional acres of the Erickson Property is included in order to not create spot zoning. The Erickson family is comfortable with the zoning the way it is. The MU-40 designation is also compatible with the zoning presently in place with Cache County. The other zoning to the south is MU-160. She said even though it is going to an A-20 this would be an effective compromise to correct the problem that has been in existence for many years. She said there have been many opportunities to remedy this situation. Mrs. Nelson went into the history of the lots and the violations of the County Ordinances (See Attachment No. 4)

Gerald Howard said the lot was sold as a building lot in a subdivision. It wasn't just sold as a piece of land to Greg Collins.

Terri Howard detailed the history over the last 20 years regarding the lot. (See attachment No. 5)

County Planner Jim Marwedel submitted to the record a letter dated February 5, 1999 regarding the "P District Zoning".

Terri Howard said Mr. Collings was between a rock and a hard spot regarding the lot. They recently purchased the lot from Mr. Collings. She said the bottom line is the lot was illegally created with knowledge that it couldn't be sold as a building lot at the time and nothing has been done to remedy what happened in 1981. The Collings are still connected to the property. They hold the contract. The Howards and Mrs. Nelson would like to see the lot become a legal lot. Because of what the Collings went through from the purchase of the property and building a shop they have lost $40,000-$50,000 dollars. They talked about a deeded right-of-way from Mr. Veibel in which some litigation is going on right now. They are willing to forego county services. They will clean their own road. The proposed zone change will include the proposed Veibel Subdivision property.

Gerald and Terri Howard and Charlotte Nelson are concerned about the proposed High Country Estates Subdivision. It has no access through Box Elder County. They cannot guarantee perpetual maintenance of roads. Special Service Districts are set up to be dissolved. There are some legal issues as to whether it could exist as a service district. It will not be an asset to Box Elder County except potential legal problems. Terri Howard said Mrs. Nelson's family farm has been put in a precarious position since the service district has many powers including eminent domain. It is an extreme infringement on her rights. If the subdivision is approved by the county, the county will be setting extreme precedence concerning the problems of an illegal subdivision. The big lots won't appeal to regular family housing. There are also some water source protection problems and under the county ordinance this does qualify as sensitive zoning. Dr. Robert Oakes, who recently did a water study, said there is an active fault line. The septic tanks will be extremely close to the springs.

Beaver Dam has applied for a source protection study. They are very concerned. In last month's meeting Mr. Veibel said it was proven in court that they would not take Beaver Dam's water. This was an appeal to the engineer, not evidence.

Chairman Kimber made a clarification that the Planning Commission has every right to act on a concept plan. The issues the group are opposing regarding the subdivision will be addressed with the next plan. He told the group that they keep saying "you" to a special service district. The Planning Commission does not address special service districts. Chairman Kimber indicated the Planning Commission will be looking at the water source issues and additional information would be helpful.

MOTION: A motion was made by Jon Thompson to recommend to the County Commission no action on the rezoning request pending further investigation. The motion was seconded by Deanne Halling and unanimously carried.

BAY VIEW ESTATES MAJOR SUBDIVISION

Bay View Estates is a 25-lot subdivision located 7550 S Hwy 89. It is 1/4 mile east of Hwy 89. They did not have their escrow and title insurance and the Willard Flood District has not given their approval. This subdivision was tabled until the developer gets all the information.

A. JENSEN MINOR SUBDIVISION

The A. Jensen Minor Subdivision is a two-lot subdivision located at 4800 N Hwy 38. They have utility approval and Hwy access.

MOTION: A motion was made by David Tea to approve the A. Jensen Minor Subdivision with the five notes and to waive all the further steps in the process and approve as a final plat and authorize Chairman Kimber to sign the plat. The motion was seconded by Stan Reese and unanimously carried.

AMENDED SHAFFER MINOR SUBDIVISION

The Shaffer Minor Subdivision is a two-lot subdivision. The amended plat is creating a 4-lot subdivision at 4400 West, South of Hwy 30 in East Garland. The lots are ½ acre, and there is no zoning. They have received health department approval and proof of water for one of the lots.

MOTION: A motion was made by Jon Thompson to approve the Amended Shaffer Minor Subdivision subject to the notes provided on the plat and that lot two should be subject to proof of water before being sold as a residential lot and authorize Chairman Kimber to sign the plat. The motion was seconded by Stan Reese and unanimously carried.

RON SMITH AGRICULTURAL PROTECTION AREA PROPOSAL

In the January meeting the Ron Smith Agricultural Protection Area proposal was discussed. At that time there were questions as to whether the land was currently being used for agricultural purposes. Ron Smith was asked to attend the meeting and answer questions regarding his proposal.

MOTION: A motion was made by David Tea to approve the Ron Smith Agricultural Protection Proposal as modified, and that the Planning Commission refer the proposal to the County Commission. The motion was seconded by Stan Reese and unanimously carried.

CONSIDER CONDITIONAL USE PERMIT FOR A CHURCH FARM ON SECTION 27, T6N, R18W

An application was submitted for a conditional use permit for a farm on a self-contained oriented structure. The farm is located 9 miles south of Lucin. The farm would be used as a program for indigent people trying to get off the street. This program will give people a chance to reconnect with society. This will be part of the Salt Lake City Mission. They will take people to the ranch and establish temporary housing. There is an existing septic tank and water for three trailers. They want to fence the perimeter of the 640 acres. There would be four miles of fencing. They will plant some crops. They will cross the BLM land and will need to apply for access. They propose to construct the church farm in the desert in five phases.

Phase I — Establish temporary housing (self-contained mobile homes) using existing septic and waste water systems. We want to fence the perimeter, plant crops, establish temporary water, power and communication systems. Begin construction of the chapel and recreational hall.

Phase II — Erect Chapel, build out buildings and erect ranch and volunteer housing, put up corrals, cross fence and temporary irrigation systems.

Phase III — Plant trees (shade and fruit), permanent irrigation systems, develop maintenance and security systems, build new septic and waste water systems (to Box Elder County specs.).

Phase IV — Build and staff a rural medical clinic to serve Western Box Elder Co.

Phase V — Gravel all private roads. Plant all other landscaping. Build resident spa and swimming pools.

County Planner Jim Marwedel said he and County Surveyor Denton Beecher thought this would be a good use for the land.

Chairman Kimber said they will need to be more specific on what they will be doing out there. In addition they will need health department approval, water, power and follow the phases and plans as submitted. They will need to get a letter from BLM regarding access.

MOTION: A motion was made by Jon Thompson to approve the concept plan for the High Desert Retreat, Salt Lake City Mission. The motion was seconded by Stan Reese and unanimously carried.

GRAVEL & ROCK EXTRACTION IN SOUTH WILLARD

Darrell Home, Wilkinson Construction, met in regards to a violation of a zoning ordinance to excavate without a permit. A backhoe operator under the employment of Mark Archer was cited with a Class B Misdemeanor. The judge issued a continuance to allow time for them to work out a solution to the problem, i.e. restitution. Wilkinson Construction has been hired to restore the property.

It was suggested that an engineer be in place to propose a plan to control water runoff and re-vegetation plus work with the flood control's engineer to make sure that they are meeting their needs. The engineer would need to be in place at the property owner's expense.

Jim Marwedel will check with the judge regarding an engineer.

Darrell Home will get an engineer's plan from Reeve and Associates Inc for a concept design.

ZINCK MINOR SUBDIVISION

The Zinck Minor Subdivision is a three-lot minor subdivision located in South Willard.

MOTION: A motion was made by Deanne Halling to approve the Zinck Minor Subdivision noting that right of use is established on the south side of the properties and authorize Chairman Kimber to sign the plat. The motion was seconded by Stan Reese and unanimously carried.

AMENDED YEATES MINOR SUBDIVISION

The Amended Yeates Minor Subdivision is located on Hwy 38 in Harper Ward. They are amending the subdivision to 5 lots.

MOTION: A motion was made by Jon Thompson to approve the concept plan on the Amended Yeates Minor Subdivision as a planned unit development to comply with the County Ordinance and to waive the preliminary design plan requirement and approve both the conceptual and preliminary plan excluding Parcel No. 5 from any building

privileges and authorize Chairman Kimber to sign the plat. The motion was seconded by David Tea and unanimously carried.

SOUTH FARM MINOR SUBDIVISION

The South Farm Minor Subdivision is a two-lot subdivision with a remainder parcel owned by Vern Roche in Thatcher.

MOTION: A motion was made by Stan Reese to accept the South Farm Minor Subdivision as a concept and preliminary and waive all requirements and authorize Chairman Kimber to sign the plat. The motion was seconded by Jon Thompson and unanimously carried.

KEVIN GARN MINOR SUBDIVISION

The Kevin Garn Minor Subdivision is a 2 lot minor subdivision located south of Fielding Town.

MOTION: A motion was made by Stan Reese to approve the Kevin Garn Minor Subdivision. The motion was seconded by Deanne Halling and Jon Thompson abstained.

ADJOURNMENT

A motion was made by Stan Reese to adjourn. The motion was seconded by Deanne Halling, and the meeting adjourned at 10:10 p.m.

Passed and adopted in regular session this _____ day of _____, 1999.

Richard D. Kimber

Richard D. Kimber, Chairman

ATTEST:

_____

LuAnn Adams
Recorder/Clerk

AGENDA
BOX ELDER COUNTY PLANNING COMMISSION
MEETING PLACE: COUNTY COMMISSION CHAMBERS
BOX ELDER COUNTY COURTHOUSE
BRIGHAM CITY, UTAH

Public agenda for the Box Elder County Planning Commission meeting scheduled for February 18, 1999 at 6:00 p.m.

Notice given to the newspaper this 16th day of February, 1999

6:00 p.m. Work Session (no actions taken):

A. Scheduling and procedures for holding required public hearings
B. Planning Commission Voting and Chairmanship
C. Report on County Commission decision on Bothwell zoning petition
D. Past illegal subdivisions

6:30 p.m. Regular Session:

1. Public Hearing regarding conditional use permit for the Church of Jesus Christ of Latter-day Saints in Park Valley, Utah
2. Approval of the minutes of January 21, 1999
3. Application to rezone approximately 115 acres in section 23, T12N, R2W from MU-40 to A-20 and 40 acres with an overlay zone to allow for the transfer of development rights
4. Concerns about proposed High Country Estates Subdivision - Beaver Dam & Twitchell Springs Water Users
5. Bay View Estates Major Subdivision
6. Minor Subdivisions:
   A. Kevin Garn
   B. A. Jensen
   C. Others
7. Streamlined procedures for minor subdivisions
8. Ron Smith Agricultural Protection Area petition
9. Consider Conditional Use Permit for a church farm on section 27, T6N, R18W
10. Consider proposed Telecommunications tower regulations
11. Gravel & Rock Extraction in South Willard

ATT #1

We propose to construct this church farm in the desert in Five phases.

Phase I	Establish temporary housing (self- contained mobile homes) using existing septic and waste water systems. We want to fence the perimeter, plant crops, establish temporary water power, and communication systems. Begin construction of the chapel and recreational hall.
Phase II	Erect Chapel, build out buildings and erect ranch and volunteer housing, put up corrals, cross fence, and temporary irrigation systems.
Phase III	Plant trees(shade and fruit), permanent irrigation systems, develop maintenance and security systems, build new septic and waste water systems(to Box Elder County specs.).
Phase IV	Build and Staff a rural medical clinic to serve Western Box Elder Co.
Phase V	Gravel all private roads. Plant all other landscaping. Build resident spa and swimming pools.

PUBLIC HEARING
BOX ELDER COUNTY

Date: 2-18-99

Public Hearing - CUP LDS Church, Park Valley

NAME (Please Print)	ORGANIZATION	ADDRESS/TELEPHONE
Lythe C. Veibell	Veibell Proj	14015 N 400 W, Beaver Dam
Bruce King	Veibell Proj	Logan, Ut
Allan Veibell	Veibell proj	14015 N 400 W Beaver Dam Ut.
Lynne Bowen		15020 N 400 W Beaver Dam
Mary Jane Bowen		15020 N. 400 W. Beaver Dam
LaDean Rushton		16436 No Beaver Dam Rd
Spencer Rushton		" " "
Charlotte E. Nelson		16085 No. Beaver Dam Rd
Grant W. Bowen		15720 N. " " "
Terri Howard		15515 N. 400 W Beaver Dam
Grant Howard		" "
RUSSELL RAY		228 W 400 S LOGAN UT
Marilyn E. Ray		228 W 400 S Logan Ut
Troy E. Sadler		1055 S 660 W, Tremonton
Steven Sadler		1055 S. 660 W. Tremonton
ALAN J. IMMEL	S.L. City Mission	468 W. 200 S. SLCity Ut.
DALE STEWART	Salt Lake City Mission	1435 No 1500 W. FARMINGTON
Craig Veibell	Veibell Proj.	14085 N 400 W Beaver Dam
A.M. Christensen		588 E. David Dr. Tremonton, UT.
Maja J. Christensen		" " " " "

ATT #2

Date Received: 2/8/99
Fee Paid: $100
Application #: 299-3

FOR ZONING AMENDMENT APPLICATION
BOX ELDER COUNTY, UTAH

Applicant Information

Name: Gerald Howard Phone Number: 435-458-9100

Address: 15515 N 400 W State: Utt Zip Code: 84306
Beaver Dam, Utt

Location of land to be rezoned (attach map) :

Proposed New Zoning District AND/OR Proposed New Text in Zoning Regulation:
A-20 and overlay zone for a portion (see map) that would allow for development rights to be transferred from one area or parcel to another area within the zone such that lots smaller than the minimum lot size specified in 10.5.1 could be created so long as the total number of residential or commercial buildings that would have been allowed is not exceeded.

Current Zoning of Subject Property AND/OR Original Wording of Text to be Changed:
MU-40

Names of owners of subject property:
RHN Corporation
Leola J Erickson family ltd partnership
A. Marius Christensen
Cache Box Development Co.

Checklist of Attachments

- ☐ Legal description of property or properties to be rezoned
- ☑ Vicinity plan and map
- ☑ Required $100 application fee
- ☑ Plain white envelopes with proper postage, addressed to all owners within 400 feet of subject area (if an identified

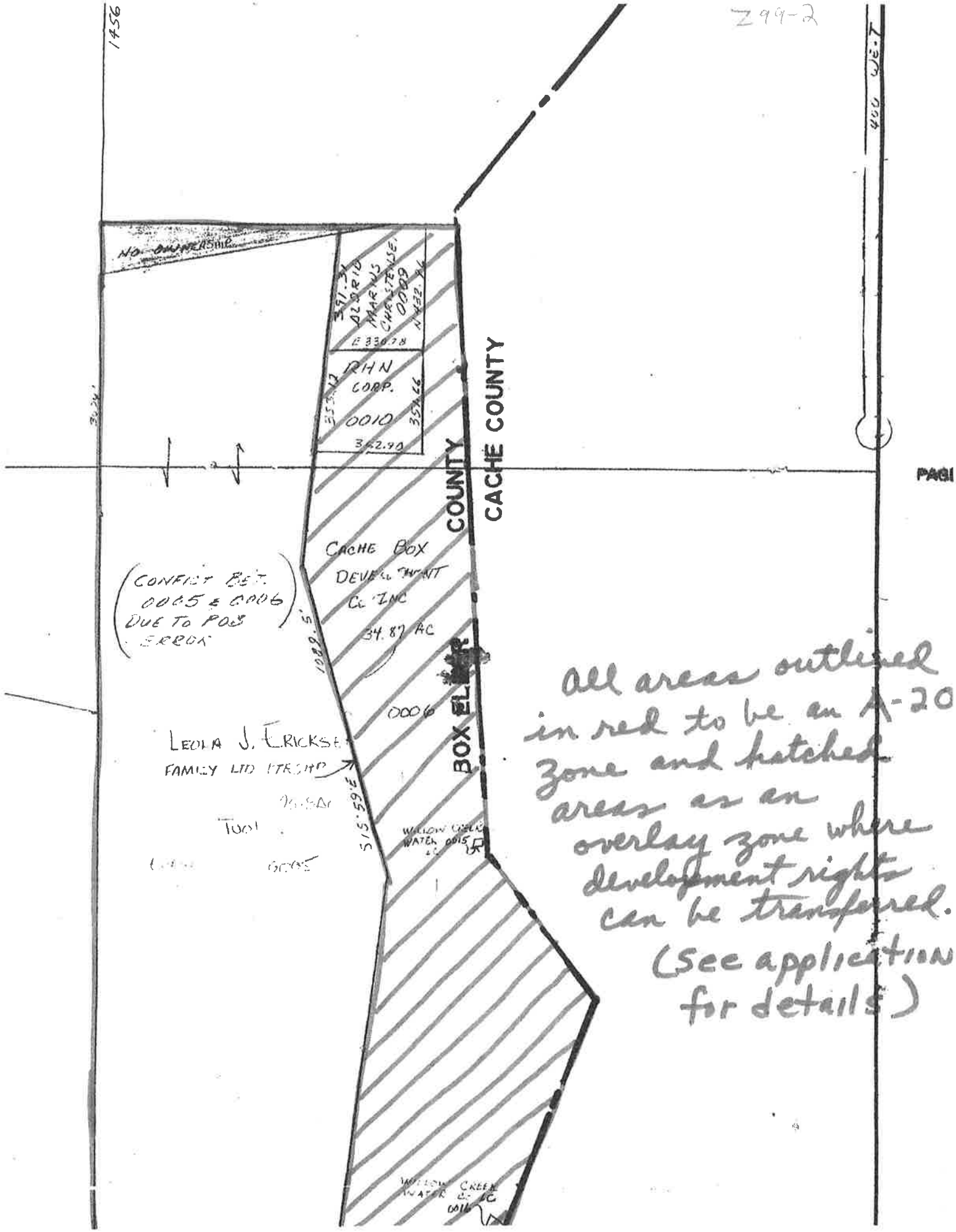
Checklist of Things to Do

- ☐ Return application and proper attachments to the Box Elder County Planning Department or Surveyor's Office.
- ☐ Pay the required $100.00 fee and any costs of required notice publications
- ☐ Post public notice posters (provided by county). Unless only changing regulatory text, posters are to be placed at all corners of subject property and every 400 feet along frontage of any road.

Signature(s) of petitioner(s) and date(s): [signature] 2/8/99
Charlotte E. Nelson 2/8/99
Lorri R. Howard

ATT #3

Z99-2



All areas outlined in red to be an A-20 Zone and hatched areas as an overlay zone where development rights can be transferred. (See application for details)

Violations of County Ordinances February 18, 1999

12-18-80 Veibell sold 2 lots, stating a misunderstanding of the ordinance.

3-26-81 Sold another 2 lots 3 months later.

Veibell has had many opportunities over the years to remedy the illegal creation of the Collings and Christensen parcels. Veibell did not return the purchase price to Collings when Collings could not obtain a residential building permit. Collings approached the County several times over the years to see what could be done for him. Formal application for a variance in 1992 still met with no resolution. A five month option for purchase by an agent of Veibell in 1997 was not executed. Excluding the parcel from the current concept plan still does not solve the original illegal creation.

A business sign on Highway 30 was determined to be in violation of County ordinances and was subsequently removed. Later, placement of the "High Country Estates" sign was made in violation of County ordinances both in placement and in content.

Brochures advertizing the development were sent out in response to telephone calls generated by the sign.

By Veibell's affidavit and sworn deposition, at least 4 options were sold.

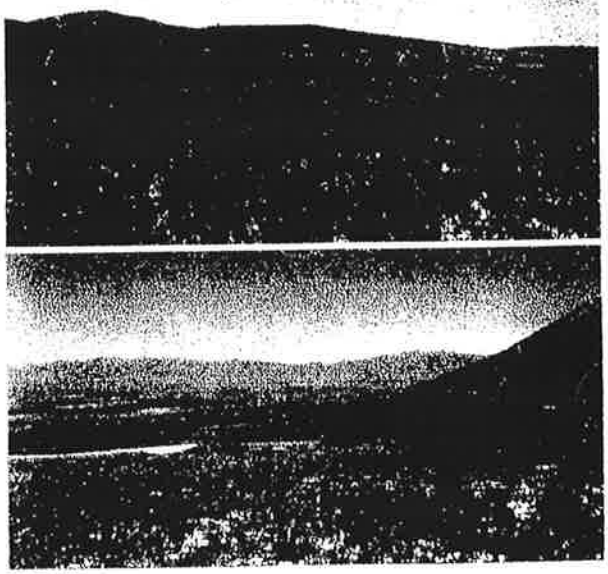
HIGH COUNTRY ESTATES

A DREAM COME TRUE

AN ADVENTURE IN LIFE

AN ADVENTURE IN LIVING

ALL LOCATED IN THE SHADOWS OF THE WELLSVILLE MOUNTAINS ON A PLANE OVERLOOKING CACHE VALLEY, BUT ABOVE THE EVERY DAY TRAVELS OF ORDINARY LIFE. 12 MILES WEST OF LOGAN, CLOSE ENOUGH TO THE AMENITIES TO MAINTAIN THE SECURITIESTHEY PROVIDE.



For Information Write:

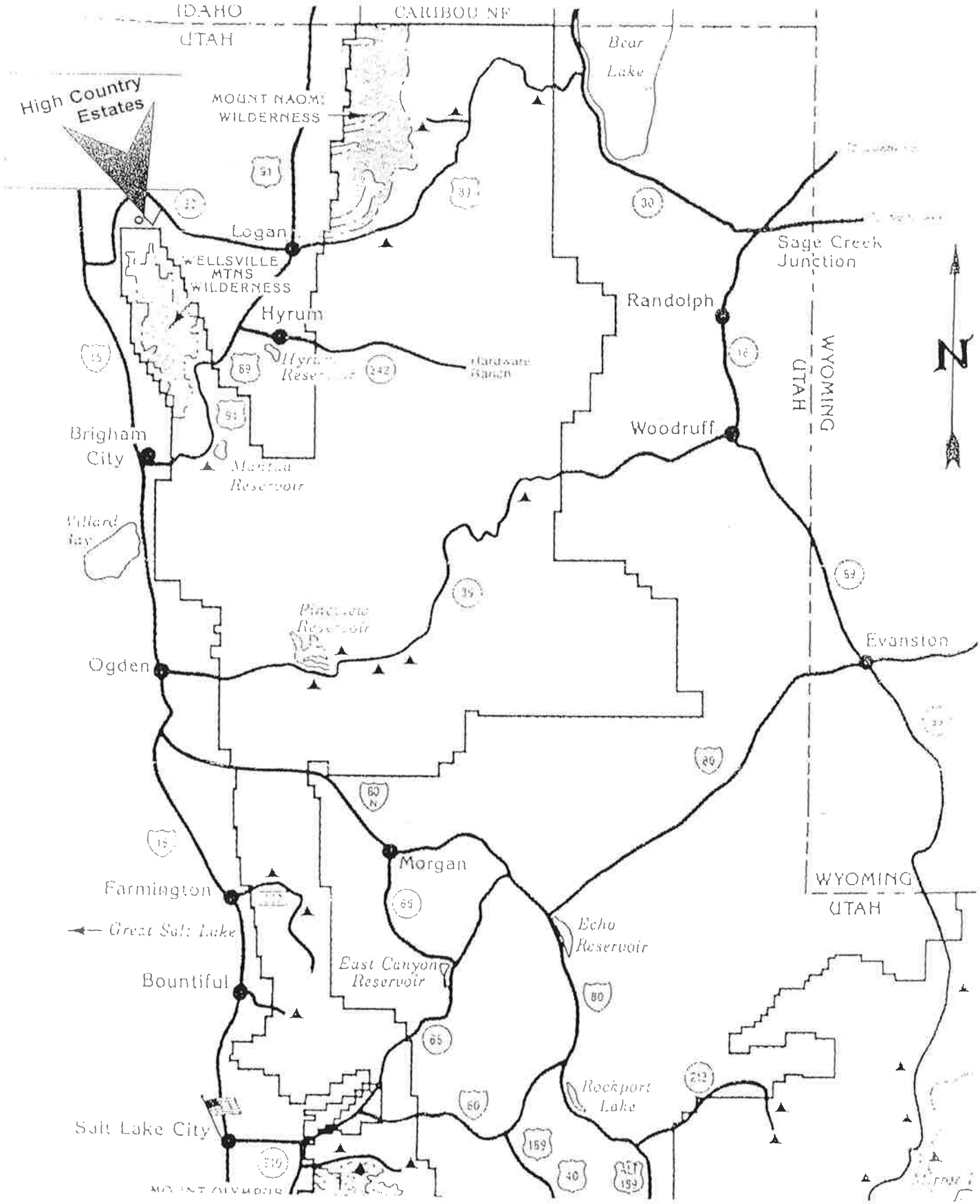
High Country Estates
14015 N. 400 West
Beaver Dam, Ut 84306

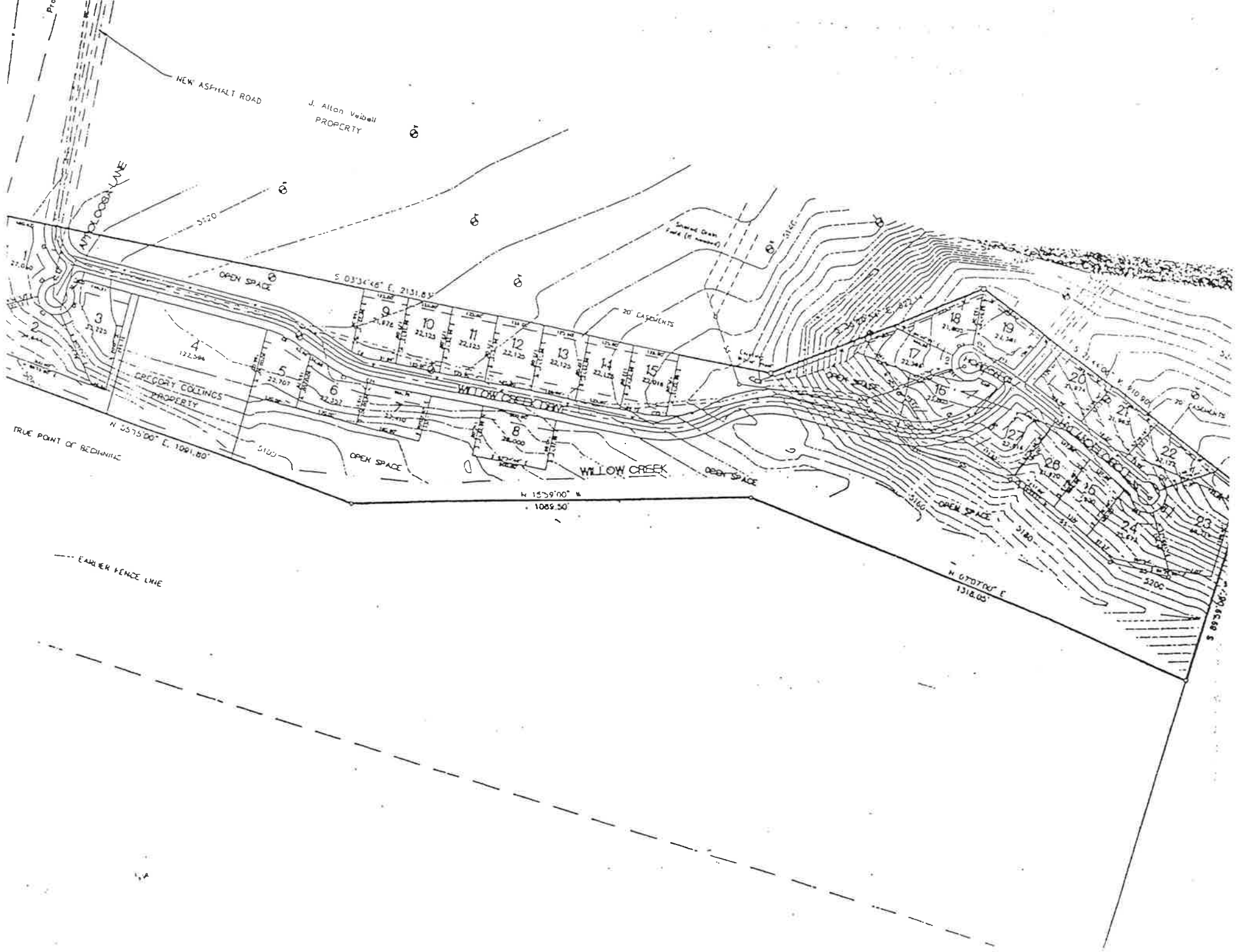
or call

801-458-3429

Ask for Alton

"Once you have visited us here
You just don't want to leave."


IDAHO
UTAH
CARIBOU NF
Bear Lake
High Country Estates
MOUNT NAOMI WILDERNESS
Logan
WELLSVILLE MTNS WILDERNESS
Hyrum
Hyrum Reservoir
Hardware Ranch
Sage Creek Junction
Randolph
WYOMING
UTAH
N
Woodruff
Brigham City
Mantua Reservoir
Willard Bay
Pineview Reservoir
Ogden
Evanston
Morgan
Farmington
Great Salt Lake
Bountiful
East Canyon Reservoir
Echo Reservoir
WYOMING
UTAH
Rockport Lake
Salt Lake City


NEW ASPHALT ROAD
J. Alton Veibell
PROPERTY
ATTOLOOGA LANE
OPEN SPACE
S 03°34'48" E 2131.83'
20' EASEMENTS
GREGORY COLLINGS
PROPERTY
WILLOW CREEK DRIVE
WILLOW CREEK
OPEN SPACE
TRUE POINT OF BEGINNING
N 55°15'00" E 1091.80'
N 15°59'00" W
1089.50'
N 07°07'00" E
1318.05'
EARLIER FENCE LINE
S 89°59'00" W

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IN THE FIRST JUDICIAL DISTRICT COURT IN AND FOR BOX ELDER COUNTY
STATE OF UTAH

TWITCHELL SPRINGS CULINARY WATER, SLEEPY HOLLOW WATER WORKS, BEAVER DAM WATER GROUP, LOWER BEAVER DAM IRRIGATORS, GRANT BOWEN, MAURINE BOWEN, LARRY BOWEN, RANDEL BOWEN, DEAN BOWLES, NEDRA BOWLES, ANNA DURFEY, LEO ERICKSEN, MIKE ERICKSEN, MARIAN ERICKSEN, DAVID EARL, JONI EAR., WARNER FISHER, JERRY FISHER, KELLY HANSEN, ARLINDA HANSEN, GERALD HOWARD, TERRI HOWARD, BEN JOHNSON, KELLY JOHNSON PERRY, GARTH KIDMAN, VEDA KIDMAN, CLARENCE RICHARDS, LODEES RICHARDS, DAVID NELSON, CHARLOTTE NELSON, STAN RICHARDSON, NATALIE RICHARDSON, AUDREY SIMMONS STAN SIMMONS, HUGH B. PETERSON, AND SHAUNA PETERSON, Plaintiffs, vs. ROBERT L. MORGAN, STATE ENGINEER, JAMES ALTON VEIBELL, Defendants.	AFFIDAVIT OF ALTON VIEBELL CIVIL NO. 970000358AA JUDGE BEN H. HADFIELD

the drainage field design on the new plats. Nick Gallowey from the State Board of Health, Logan office, came to the location and 30 test holes were dug with a backhoe. The State Department of Health approved the drainage field/septic tank design for the Project with the drainage field for each house being built to their specifications.

22. On January 18, 1996, I submitted the modified plan to the County. The County tabled it until the zoning issue was resolved.

23. On February 15, 1996, I re-submitted the concept plat to the County and the concept plat was formally approved on February 20, 1996.

24. On June 6, 1996, Box Elder County gave preliminary plat approval to the Project and the County gave me permission to put the remaining improvements in.

25. I had earlier discovered that a deed had been misrecorded and that part of the road accessing the Project was on a neighbor's land. When the neighbor refused to accommodate as per my original correspondence dated June 17, 1995, in 1996 I started moving the road back onto my own property. LarWest aided in the construction of the road, and thousands of dollars were spent to move the road back on to my property.

26. Once a preliminary plat approval was granted on June 6, 1996, I immediately began rebuilding much of the road structure for the original project in a manner consistent with the revised plats.

27. In 1997, I sold options on 4 lots, pending final plat recording. These options are subject to final plat recording which is expected to occur late this year or early next year when the remaining improvements are completed or a bond is posted.

28. Although the Project was nearing completion in 1996, the 1993 Change

Application extension expired and I applied for an extension on May 31, 1996. On November 20, 1996, the State Engineer's Office held a public hearing on the issue. On April 10, 1997, the State Engineer again extended the Change Application until August 31, 2003 after finding that I had qualified for an additional extension.

29. Plaintiffs' challenge the granting of this extension, alleging that I did not demonstrate sufficient diligence or reasonable cause for delay to justify granting an extension. However, there was more than sufficient basis for granting this extension.

30. The Project will soon be ready to market. Recently, we had a "High County Estates - coming soon" sign near the Project and received numerous telephone calls.

DATED this 4 day of August, 1997.

J. Alton Viebell

Alton Viebell

Sworn and subscribed before me this 4th day of August, 1997.

NOTARY PUBLIC
JANICE ANN S. GARNER
880 North 325 West
Bountiful, UT 84010
My Commission Expires
June 7, 2001
STATE OF UTAH

Janice Ann S. Garner

Notary Public

An illegal development will be created by excluding the RHN property since that parcel was created illegally.

Approval of the concept plan is in violation of Ordinance No. 216. Establishing Drinking Water Source Protection, "...no building permit or other form of approval from the County to develop or use real property within the County shall be issued unless the applicant establishes that its proposed development or use of real property complies with the requirements of Ordinance No. 216."

Veibell has not established any vested rights regarding a development. No legal rights to develop property can be obtained simply by trying and failing over the course of several years.

The access road has been an issue for 20 years and cannot be ignored. A review of the Planning Commission meetings is in order (see attached). The recent letter from Cache County dated January 4, 1999, firmly establishes "...that the road be perpetually secured in private custody to assure that our County will not be pressed to take over maintenance responsibilities at some future time." Box Elder County cannot maintain a private road in another county.

Veibell knew that geologic hazards exist, yet the statement was made that "available reports indicate that faults in the area do not extend onto subject property, but that the closest is located farther south nearer the town of Mendon." The Oaks report identifies the existence of fault lines on the property including active faults in the area.

The Market Analysis is the same one used in 1996 and is based on three phases, the first being 26 lots. The market has also changed since that time.

This project cannot be phased. According to Section 3.6.12.1, a development can be phased if it's more than 25 lots, but in this case the minimum phase would be 25 lots.

Access alone precludes the subdivision regardless of any other consideration. The additional problems of zoning, drinking water source protection, geological hazards, and impact on the surrounding landowners are further indications of the inadvisability of a development in this area. Neither an SSD or a homeowner's association will adequately solve the problems faced by this development. Legal issues are being addressed.

Zone change from MU-40 to A-20 for approximately 116 acres. February 18, 1999

Total acreage yields 5 development rights (five 20-acre parcels)

75 acres	Ericksen family
35 acres	Cache Box Development
3 acres	RHN Corp.
3 acres	M. Christensen

A-20 zoning with an overlay zone for Cache Box, RHN and Christensen would allow for development rights to be transferred from one area or parcel to another area within the zone such that lots smaller than the minimum lot size specified in 10.5.1 could be created so long as the total number of residential or commercial buildings that would have been allowed is not exceeded.

This would correct Veibell's illegal creation of RHN and Christensen parcels with utilization of two development rights. Ericksen would retain three rights. Ericksen land is included only so this is not spot zoning.

Veibell has had many opportunities over the years to remedy the illegal creation of the Collings and Christensen properties. Veibell did not return the purchase price to Collings when Collings was not able to obtain a residential building permit. Collings approached the County several times over the years to see what could be done for him. Formal application for a variance in 1992 still met with no resolution. A five month option for purchase of the Collings property by an agent of Veibell in 1997 was not executed. Excluding the Collings-RHN parcel from the current concept plan still does not solve the original illegal creation.

Chapter 14 of the Development Code establishes guidelines for a Sensitive Area (SA) overlay zone. The earthquake fault lines identified by Dr. Robert Oaks in a preliminary report to the County Commission (study funded in part by the County) and subsequent meetings with the County Planner qualify this area for the SA designation.

The above resolution of the problems created by Veibell's violation of county ordinances also respects the rights of the adjacent land owners, preserves the agricultural use, recognizes the sensitive area identified by the presence of geologic hazards and watershed designation including consideration of the drinking water source protection plan currently in preparation for the Beaver Dam community.

Planning Commission Meetings - Veibell subdivision efforts February 18, 1999
(County Commission Meetings are identified individually as are other events)

9-20-79 Access through Cache for Box Elder subdivision addressed. "The Commission said he would just have to take his chances with the road as they don't know what Cache County will do. The Commission said he should first get the road dedicated to Cache."

12-18-80 Road problems again. Also, Veibell said he misunderstood and thought he could sell two lots before he had to subdivide. (Son's and brother-in-law David Christensen - both on 400 West).

3-19-81 Phase I preliminary concept approval. Avoided any mention of access problem.

3-26-81 **SALE** of lots to Greg Collings and Marius Christensen. (In violation of County ordinance)

4-16-81 Changed concept to show acre lots, expanding from 14 to 24 lots. No action taken.

4-21-83 Resubmitted plan. Roads discussed. No conclusions made. No further submittals until several years later.

9-17-83 **Building Permit** issued to Greg Collings for wood shop. Residential building permit denied and was continually denied for several years even though property was taxed as a residential building lot.

6-16-88 Made a request for a private road in order to sell a lot and received approval on the private road.. County stated they will not assume responsibility for maintenance or legal claims resulting from this approval. "All other requirements, e.g., water, sewer, power, all seem to be in order." The lot in question was the Collings lot sold in 1981. No power was available.

7-16-92 Lloyd Bytheway (appearing as a prospective buyer of the Greg Collings property) requested a residential building permit and help from the County in correcting the original violation of County ordinances in Veibell's sale of the property. The request was denied "...until Mr. Veibel completes the requirements for the subdivision."

3-21-95 **Petition to Bear River Water Conservancy District**
For a production well to supply 1100 dwelling units, 18 hole golf course and secondary water for Beaver Dam community including church site and Sleepy Hollow.

6-6-95 **County Commissioners Meeting**
Representative property owners in the Beaver Dam-Collinston area expressed concerns about land use planning including preservation of agricultural lands, critical wildlife habitat, watersheds, and the quality of life and cultural heritage of its citizens.

"Chairman Allen told the group that the Commissioners understand their concerns because they, too, are concerned. He asked them to help Box Elder County with land use planning and said, "If we want to protect agriculture in Box Elder County, we will have to zone."

6-15-95 A zoning application was presented which included signatures of 56 property owners. "Chairman Kimber complimented the citizens for taking this initiative. He said the Planning Commission is here to assist people in zoning if they want to protect their property." Chairman Kimber suggested the formation of a committee to formulate and make recommendations to the planning commission. At this time the Beetonville area joined in the planning effort.

11-16-95 The Planning Commission accepted the proposed zoning plan and recommended adoption to the County Commission. (No submittal was available from Veibell.)

1-2-96 **County Commission public hearing**
The hearing was dominated by Veibell's plan to build approximately 70 homes in the Beaver Dam area. The entire zoning plan was tabled to allow consideration of this development and to receive more information from Cache County because of the plan involving Cache County and the location along the county line.

(See also Jim Marwedel's Feb. 5, 1999 letter explaining events and decisions regarding zoning.)

1-18-96 Concept submittal - High Country Estates. The zoning plan was changed to include a P District designation. "County Surveyor Denton Beecher said he is concerned about the width of the roads drawn on the concept plan. He feels his biggest concern is working together with Cache County. He stated, "**If Cache County says no, the whole thing is dead because all of the access is in Cache County**...." "He feels this development will be strongly contingent on how Cache County feels. He pointed out there will need to be several interlocal agreements in place."

2-15-96 Revised concept plan. It was changed as a result of deficient planning and inaccurate representation of land and water rights.

2-20-96 **County Commission public hearing**
Zoning approved including a P District designation for the High Country Estates concept plan. (See additional comments from Jim Marwedel 2-5-99.)

6-6-96 Approved preliminary concept plan for SSD. "Denton Beecher reported that the developer has complied with all of the regulations to proceed and they are now in the last phase." The motion was made "...work on roads and public utilities can now begin." Unknown to the County at this time, was that basic elements of approval for the P District designation had not been met. Provisions of the developer's proposal included assessing property owners along 400 West for paving the road.

TO WHOM IT MAY CONCERN

After a review of the Planning Commission minutes. Mr. Alton Veibell made the following presentations:

16, April 1981:
Submitted a subdivision plan and received concept approval.

21, April 1983:
Resubmitted plan - no action taken.

16, June 1988:
Made a request for a private road and received approval.

20, April 1989:
Requested a variance it was stated the original was submitted in 1981. He was considering less lots. He was advised all of his documents would need to be updated to a current status including water, health and then resubmit.

18, January 1996:
Submitted concept plan, motion made to table for further information.

15, February 1996:
Revised concept plan. Motion to approve concept. Also a motion to accept the conditions of a P district and recommend to the County Commission.

6, June 1996:
Submit Preliminary Design,Motion to approve same and allow him to work on roads and public utilities if he wants to.

Since this time there has been no additional submittals or information. As the time limit of one year between preliminary and final has passed it will require re-submission.

Denton H. Beecher

Denton H. Beecher
Zoning and Planning Supervisor
Box Elder County

Rev:veibellSeptember 9, 1997

9-20-79

ALTON VEIBELL REGARDING SUBDIVISION

Alton Veibell met with the Commission and reported he is considering a subdivision along the county line by Beaver Dam and he has some questions because of the dispute over the county line. It was explained that Mr. Veibell's home is actuall in Cache County but it is assessed in Box Elder County. Member Chase explained the present problem if the actual county line and the line established by the County assors years ago for assessment purposed. Mr. Veibell said the subdivision will all be in Box Elder County even if he has to make some minor changes on the location to make sure it is in Box Elder County. However, his question is the access road to the property as the access property will be in Cache County. The Commission said he would just have to take his chances with the road as they don't know what Cache County will do. The Commission said he should first get the road dedicated to Cache. It was also brought out the actual county line will have to be physically established as it follows the drainage line.

12-18-80

ALTON VEIBELL MINOR SUBDIVISION

Alton Veibell from Beaver Dam met with the Commission and said there has been a misunderstanding on his part as th thought he could sell two lots before he had to subdivide and he has gone ahead and sold two so instead of having created two parcels he has created three so he came in to see what he can do.. He showed the Commission a map of his proposed subdivision. Mr. Beecher said this is the first that he has seen what Mr. Veibell is asking. It was brought our the Commission could grant a variance on these two lots; however, it was also pointed out there is a problem as he can't go with a minor subdivision because it is not on a dedicated road or it would have to be on an approved private road. The Commission said he

Pond me

could go with a full subdivision and record it; however, getting an approved private road is a problem as it has to be approved by the governing body and the road would be in Cache County. It was also brought out that the road from the highway up to his property, is in Cache County and Cache won't maintain the road. The Commission talked to Mr. Veibell about the possibility of maintaining the road himself from the highway to his proposed subdivision but said that is a long way from the highway. He was also told he would want a 66 ft. right-of-way, but said eh wouldn't have to develop the full 66 ft. but it would have to be approved. Member Nelson, after some further discussion, made the motion they they accept it as to Concept Plan. This was seconded by member MacFarlane with all voting in favor. Mr. Beecher said he would have to research it to see what can be done and the Commission told Mr. Eeibell they would recommend he work with Mr. Beecher.

VEIBELL SUBDIVISION-PHASE I 3-19-81

Alton Veibell met with the Commission and showed them a plat of his proposed subdivision in the Beaver Dam Area. He said, as was brought out before, when he met with the Planning Commission, he is going to have a private road to get to his subdivision and he said he is going to put in a few more lots to help pay for building the road. He said the sewer system will be septic tanks. For Culinary water he will have a well and resevoir. He said he is asking for concept approval as he has changed the proposed subdivision from what had been previously presented. Mr. Beecher reported Mr. Veibell has all of the things he needs for concept approval. Member MacFarlane made the motion they give Mr. Veibell concept approval for Phase I of his proposed subdivision. This was seconded by member Glen Nelson with all voting

4-16-81

ALTON VEIBELL SUBDIVISION PRELIMINARY AMENDED

Alton Veibell and Terry Abplanalp met with the Commission to discuss Mr. Veibell's subdivision in Beaver Dam Area. They have now changed the division to show acre lots and on both sides of the road. They are expanding from 14 to 24 lots. It was moved by Don Chase, seconded by Charles Kimber to accept the amended Concept Plat, all in favor. Mr. Veibell requested to be on the agenda for the May Planning Commission meeting.

BUSINESS

4-21-83

J. ALTON VEIBELL SUBDIVISION

J. Alton Veibell re-submitted his plan for his subdivision. There was a discussion on the pump and water system. The County Boundaries and road development were also questioned with no conclusion made.

Meeting adjourned, following the approval of the minutes of the previous Commission meeting.

6-16-88

Mr. Alton Veibel appeared before the Planning Commission to request approval for a private road. The request involves continuation of an existing non-approved private road in Cache County that extends into Box Elder County. In order to sell a lot, he must develop a private road. All other requirements, e.g., water, sewer, power, all seem to be in order Mr. Thompson made a motion to approve the request for a private road stating the County will not assume responsibility for maintenance or legal claims resulting from this approval. Mr. Grover seconded. None opposed. The motion carried.

7-16-92

AGENDA: (Attachment No. 1)

Lloyd Bytheway, Request for Variance: (Attachment No. 2)

County Surveyor Denton Beecher stated approximately ten years ago Mr. Alton Veibel requested approval of a subdivision on his property at 400 West, south of Hwy 30. At that time it was partly in Box Elder County and Partly in Cache County. The Planning Commission was only able to act on the portion in Box Elder County. Mr. Beecher stated Mr. Veibel received approval on a sketch plan and a preliminary plan; however, he never submitted a final plan for the subdivision. The Planning Commission gave permission to a Mr. Greg Collings to build an outbuilding on a lot he purchased from Mr. Veibel, but did not give him permission to build a residence as no subdivision improvements had been made.

Mr. Beecher said Mr. Lloyd Bytheway would like to purchase the property from Mr. Collings. Mr. Bytheway has made a formal request for some variances (attached). Mr. Bytheway explained his written "reasons for which a variance makes good sense."

Chairman Kimber asked the status of the subdivison plan. Mr. Beecher replied Mr. Veibel had only received preliminary approval. Chairman Kimber asked Mr. Bytheway if he had purchased the property. Mr. Bytheway said, "no". Chairman Kimber said he would like more information before doing anything. Mr. Beecher agreed, stating the state law has changed the definition of a subdivision. Mr. Beecher said his recommendation would be to encourage Mr. Veibel to proceed with his subdivision, thus solving the problem.

Mr. Bytheway asked what the Planning Commission would require from Mr. Veibel and from him to grant approval, based on what he has presented. Chairman Kimber replied the Planning Commission would require a final plan in addition to all of the stipulations connected with it. He further said he felt granting a variance at this point would be very unwise. Mr. Beecher stated Mr. Veibel has done most of the work, and it could be completed in one Planning Commission meeting. Mr. Thompson made a motion to table the request until Mr. Veibel completes the requirements for the subdivision. Commissioner Jensen seconded. None oposed. The motion carried.

July 6th, 1992

Mr. Beecher:

This letter is to bring attention to the planning commission of some of the underlying reasons for which we feel that the Collings property should be granted a variance permitting it to be built on as a place of residence. It presently fails to meet the requirements of the county in this respect because the original subdivider has not made good his contract to complete all the elements of a subdivision, including:

1) A paved road to the property.
2) Electricity, water, and telephone services to the property.
3) Curb and gutter.
4) Fire hydrant and water reserves for fire fighting purposes.

I am asking you to please review the following information which I believe not only minimizes the hardships resulting from the subdivider's breech of contract, but provides good reasoning for granting a variance in this case.

Your thoughtful consideration on this matter is greatly appreciated.

Yours very truly,

Lloyd G. Bytheway

LLoyd G. Bytheway

Michael W. Crippen*
Russell A. Cline
of Counsel
Alan L. Smith

Law Offices of
CRIPPEN & CLINE
A Limited Liability Company
310 South Main, Suite 1200
Salt Lake City, UT 84101
Telephone: (801) 539-1900
Telefax: (801) 322-1054

Also Admitted In:
*Idaho
*Washington

October 27, 1997

COPY

Jon J. Bunderson
Box Elder County Commissioner
01 South Main
Brigham City, UT 84302

Re: Alton Veibell

Dear Mr. Bunderson:

Alton Veibell recently received the attached letter from Denton Beecher, the Box Elder County Surveyor. Alton Veibell's property had been zoned "P-Zone." Enclosed herewith are the minutes of the Box Elder County Commission, dated February 20, 1996 in which the property was so zoned.

Apparently, based on misinformation, Denton Beecher changed the zoning to "MU40." This was apparently done on Mr. Beecher's understanding that less than 100% of the property owners had approved of the "P-Zone" zoning. In fact, 100% of the property owners had approved of the "P-Zone" zoning. Attached hereto is a copy of the list of all of the property owners consenting to the P-Zone. Apparently, there was a question as to whether Gregory Collins had signed this. As you can see from the attached, Gregory Collins had signed. (Note that Heidi Collins did not need to sign since she had never been put on title to the property.) The original signatures were filed with the County Commission.

Mr. Beecher said that he would refer this to you for your consideration. I trust that you will make the appropriate recommendation to Mr. Beecher that this property be zoned P-Zone, as the County Commission approved in it's February 20, 1996 meeting.

Please do not hesitate to call should you have any questions or comments regarding the foregoing.

Very Truly Yours,

Russell A. Cline

cc: Alton Veibell
RAC/sr

COUNTY COMMISSIONERS
R. LEE ALLEN
JAY HARDY
ROYAL K. NORMAN

BOX ELDER COUNTY
STATE OF UTAH

OFFICERS
CARLLA, J. SECRIST, COUNTY AUDITOR
LUANN ADAMS, COUNTY RECORDER-CLERK
LEON JENSEN, COUNTY SHERIFF
JON J. BUNDERSON, COUNTY ATTORNEY
MONTE R. MUNNS, COUNTY ASSESSOR-TREASURER
DENTON BEECHER, COUNTY SURVEYOR
KEVIN R. CHRISTENSEN, COUNTY JUDGE

Box Elder County Commission
Royal Norman Chairman

After a review by the Box Elder County Planning Commission, we hereby find that the following conditions exist as per 17-41-303(2)(a) & 17-41-305 of the Utah Code for the Ron Smith Etux Petition.

1. The land petitioned for Agriculture Protection is being used for agriculture production except for the areas where the structures exist and that portion that is designited wetlands.

2. The portion of land in section 35 and 36 T10N,R2W is zoned RR-5 the remainder of land is unzoned. Of the total acres only that portion east of the old UIC RR is not clasified as wetlands.

3. Upon a quick review of the property it appears that of the 356 acres that at best 50 acres might be productive agriculture land. There are an additional 89 acres applied for that are within the city limits of Brigham City and we therefore have no jurisdiction and these areas are disqualified.

4. For the most ~~port~~ part this entire application is marginal grazing or pasture land and none of it is used for row crops only pasture and wild hay crops. A portion in Section 36 has been used as a feed yard. We are not aware of any farm improvement plans for this application.

5. The anticipated trends in agricultural and technological conditions would be for better usage of the lands to produce a higher crop yield, and better livestock feeding processes.

Therefore, as a Planning Commission we hereby feel that because this property meets the requirements as set forth in Section 17-41-303(2)(a) of the Utah Code, we hereby recommend to the County Commission that they proceed with the process to create an agriculture protection area for the property described as being owned by Ron Smith Etux. See attached maps for detail locations.

Date this 18 **day of** February **1999**

Richard D Kimber

Box Elder County Planning Commission
by Richard Kimber Chairman

(ii) the recommendations of the advisory committee and planning commission; and

(iii) any requests for modification of the proposal and any objections to the proposal.

(3) (a) Any person wishing to modify the proposal for the creation of the agriculture protection area shall, within 15 days after the date of the notice, file a written request for modification of the proposal, which identifies specifically the land that should be added to or removed from the proposal.

(b) Any person wishing to object to the proposal for the creation of the agriculture protection area shall, within 15 days after the date of the notice, file a written objection to the creation of the agriculture protection area. 1998

17-41-303. Review of proposal for creation of agriculture protection area.

(1) After 15 days from the date of the notice, the applicable legislative body shall refer the proposal and any objections and proposed modifications to the proposal to the advisory committee and planning commission for their review, comments, and recommendations.

(2) (a) Within 45 days after receipt of the proposal, the planning commission shall submit a written report to the applicable legislative body that:

(i) analyzes and evaluates the effect of the creation of the proposed area on the planning policies and objectives of the county or municipality, as the case may be;

(ii) analyzes and evaluates the proposal by applying the criteria contained in Section 17-41-305;

(iii) recommends any modifications to the land to be included in the proposed agriculture protection area;

(iv) analyzes and evaluates any objections to the proposal; and

(v) includes a recommendation to the applicable legislative body either to accept, accept and modify, or reject the proposal.

(b) Within 45 days after receipt of the proposal, the advisory board shall submit a written report to the applicable legislative body that:

(i) recommends any modifications to the land to be included in the proposed agriculture protection area;

(ii) analyzes and evaluates the proposal by applying the criteria contained in Section 17-41-305;

(iii) analyzes and evaluates any objections to the proposal; and

(iv) includes a recommendation to the applicable legislative body either to accept, accept and modify, or reject the proposal.

(c) The applicable legislative body shall consider a failure of the planning commission or advisory committee to submit a written report within the 45 days under Subsection (2)(a) or (b) as a recommendation of that committee to approve the proposal as submitted. 1998

17-41-304. Public hearing — Review and action on proposal.

(1) After receipt of the written reports from the advisory committee and planning commission, or after the 45 days have expired, whichever is earlier, the county or municipal legislative body shall:

(a) schedule a public hearing;

(b) provide notice of the public hearing by:

(i) publishing notice in a newspaper having general circulation within:

(A) the same county as the land proposed for inclusion within the agriculture protection area, if the land is within the unincorporated part of the county; or

(B) the same city or town as the land proposed for inclusion within an agriculture protection area, if the land is within a city or town; and

(ii) posting notice at five public places, designated by the applicable legislative body, within or near the proposed agriculture protection area; and

(c) ensure that the notice includes:

(i) the time, date, and place of the public hearing on the proposal;

(ii) a description of the proposed agriculture protection area;

(iii) any proposed modifications to the proposed agriculture protection area;

(iv) a summary of the recommendations of the advisory committee and planning commission; and

(v) a statement that interested persons may appear at the public hearing and speak in favor of or against the proposal, any proposed modifications to the proposal, or the recommendations of the advisory committee and planning commission.

(2) The applicable legislative body shall:

(a) convene the public hearing at the time, date, and place specified in the notice; and

(b) take verbal or written testimony from interested persons.

(3) (a) Within 120 days of the submission of the proposal, the applicable legislative body shall approve, modify and approve, or reject the proposal.

(b) The creation of an agriculture protection area is effective at the earlier of:

(i) the applicable legislative body's approval of a proposal or modified proposal; or

(ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if the applicable legislative body has failed to approve or reject the proposal within that time.

(4) (a) In order to give constructive notice of the existence of the agriculture protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area, within ten days of the creation of an agriculture protection area, the applicable legislative body shall file an executed document containing a legal description of the agriculture protection area with:

(i) the county recorder of deeds; and

(ii) the affected planning commission.

(b) If the legal description of the property to be included in the agriculture protection area is available through the county recorder's office, the applicable legislative body shall use that legal description in its executed document required in Subsection (4)(a).

(5) Within ten days of the recording of the agriculture protection area, the applicable legislative body shall:

(a) send written notification to the commissioner of agriculture and food that the agriculture protection area has been created; and

(b) include in the notification:

(i) the number of landowners owning land within the agriculture protection area;

(ii) the total acreage of the area;

(iii) the date of approval of the area; and

(iv) the date of recording.

(6) The applicable legislative body's failure to record the notice required under Subsection (4) or to send the written notification under Subsection (5) does not invalidate the creation of an agriculture protection area.

(7) The applicable legislative body may consider the cost of recording notice under Subsection (4) and the cost of sending notification under Subsection (5) in establishing a fee under Subsection 17-41-301(4)(b). 1998

17-41-305. Criteria to be applied in evaluating proposals for the creation of agriculture protection areas.

In evaluating a proposal and in determining whether or not to create or recommend the creation of an agriculture protection area, the advisory committee, planning commission, and applicable legislative body shall apply the following criteria:

(1) whether or not the land is currently being used for agriculture production;

(2) whether or not the land is zoned for agriculture use;

(3) whether or not the land is viable for agriculture production;

(4) the extent and nature of existing or proposed farm improvements; and

(5) anticipated trends in agricultural and technological conditions. 1998

17-41-306. Adding land to or removing land from an agriculture protection area.

(1) (a) Any owner may add land to an existing agriculture protection area by:

(i) filing a proposal with:

(A) the county legislative body, if the agriculture protection area and the land to be added are within the unincorporated part of the county; or

(B) the municipal legislative body, if the agriculture protection area and the land to be added are within a city or town; and

(ii) obtaining the approval of the applicable legislative body for the addition of the land to the area.

(b) The applicable legislative body shall comply with the provisions for creating an agriculture protection area in determining whether or not to accept the proposal.

(2) (a) Any owner may remove land from an agriculture protection area by filing a petition for removal of the land from the agriculture protection area with the applicable legislative body.

(b) (i) The applicable legislative body shall:

(A) grant the petition for removal of land from an agriculture protection area even if removal of the land would result in an agriculture protection area of less than the number of acres established by the applicable legislative body as the minimum under Section 17-41-301; and

(B) in order to give constructive notice of the removal to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area and the land removed from the agriculture protection area, file a legal description of the revised boundaries of the agriculture protection area with the county recorder of deeds and the affected planning commission.

(ii) The remaining land in the agriculture protection area is still an agriculture protection area.

(3) (a) When a municipality annexes any land that is part of an agriculture protection area located in the unincorporated part of the county, the county legislative body shall, within 30 days after the land is annexed, review the feasibility of that land remaining in the agriculture protection area according to the procedures and requirements of Section 17-41-307.

(b) If appropriate, the county legislative body shall remove the annexed land from the agriculture protection area.

(c) Removal of land from an agriculture protection area under this Subsection (3) does not affect whether that land may be:

(i) included in a proposal under Section 17-41-301 to create an agriculture protection area within the municipality; or

(ii) added to an existing agriculture protection area within the municipality under Section 17-41-306. 1998

17-41-307. Review of agriculture protection areas.

(1) In the 20th calendar year after its creation under this part, each agriculture protection area shall be reviewed, under the provisions of this section, by:

(a) the county legislative body, if the agriculture protection area is within the unincorporated part of the county; or

(b) the municipal legislative body, if the agriculture protection area is within the municipality.

(2) (a) In the 20th year, the applicable legislative body shall:

(i) request the planning commission and advisory board to submit recommendations about whether the agriculture protection area should be continued, modified, or terminated;

(ii) at least 120 days before the end of the calendar year, hold a public hearing to discuss whether the agriculture protection area should be continued, modified, or terminated;

(iii) give notice of the hearing using the same procedures required by Section 17-41-302; and

(iv) after the public hearing, continue, modify, or terminate the agriculture protection area.

(b) If the applicable legislative body modifies or terminates the agriculture protection area, it shall file an executed document containing the legal description of the agriculture protection area with the county recorder of deeds.

(3) If the applicable legislative body fails affirmatively to continue, modify, or terminate the agriculture protection area in the 20th calendar year, the agriculture protection area is considered to be reauthorized for another 20 years. 1998

PART 4

PROTECTION OF LAND IN AN AGRICULTURE PROTECTION AREA

17-41-401. Farmland Assessment Act benefits not affected.

(1) Creation of an agriculture protection area shall not impair the ability of land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act.

(2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding the land's location within an agriculture protection area. 1997

17-41-402. Limitations on local regulations.

(1) Each political subdivision within which an agriculture protection area is created shall encourage the continuity, development, and viability of agriculture within the area by not enacting local laws, ordinances, or regulations that would unreasonably restrict farm structures or farm practices within the area unless those laws, ordinances, or regulations bear a direct relationship to public health or safety.

(2) A political subdivision may not change the zoning designation of or zoning regulations affecting land within an

NOTICE OF PROPOSAL FOR CREATION OF AN AGRICULTURE PROTECTION AREA

NOTICE IS HEREBY GIVEN that a proposal to create an agriculture protection area has been filed with the legislative body of Box Elder County, Utah by the owners of the following described property located in Box Elder County, Utah:

cel#: 03-067-0001 Owner: SMITH, RONALD J & SHARON H JT

Legal Description
PART OF SEC 2 & NW/4 OF SEC 2, TWP 9 N, R 2 W, SLM, BEG AT A PT ON N LI OF SD SEC 2 & ON W LI OF O.S.L. R.R R/W SD PT BEING S 89*34'28"W 3109.29 FT FRM NE COR OF SD SEC 2, RUNNING TH ALG SD R/W S 23*58'06" E 2837.74 FT TO AN EXISTING FENCE LI: TH ALG EXST FENCE LI FOR FOL EIGHT COURSES & DISTANCES, S 89* 57' 07" W 1203.78 FT, S 0* 08' 16" W 347.54 FT, S 83* 27' 03" W 342.64 FT, S 0* 19' 20" E 654.40 FT N 85* 54' 16" W 344.59 FT, S 0* 08' 50" E 190.87 FT, N 88* 36' 48" W 1376.04 FT, N 0* 58' 55" E 5753.92 FT TO N LI OF SD SEC 2, TH ALG SD SEC LI N 89* 34' 28" E 2013.67 FT TO PT OF BEG. CONTG 296.26 ACS M/L

rcel#: 03-095-0033 Owner: SMITH, RONALD J

Legal Description
BEG 164.98 FT E & 126 FT N OF SW COR OF BLK 58 PLAT C, B.C.S., N 69.62 FT, E 29.3 FT, S 65 FT, E 1.51 FT, S 4.62 FT, W 30.81 FT TO BEG.

BC

cel#: 03-108-0014 Owner: SMITH, RONALD J & SHARON H

Legal Description
BEG AT A PT 75 RDS S OF NE COR OF SEC 15, TWP 9N, R 2W, SLM. RUNNING S 10 RDS, W 160 RDS, N 10 RDS, E 160 RDS TO BEG

BC

rcel#: 03-108-0015 Owner: SMITH, RONALD J & SHARON H

Legal Description
BEG AT A PT 85 RDS S OF NE COR OF SEC 15, TWP 9N, R 2W, SLM RUNNING S 25 RDS, W 160 RDS, N 25 RDS, E 160 RDS TO BEG

BC

cel#: 03-108-0016 Owner: SMITH, RONALD J & SHARON H

Legal Description
BEG AT A PT 25 RDS N OF SE COR OF NE/4 OF SEC 15, TWP 9N, R 2W, SLM RUNING W 64 RDS, N 25 RDS, E 64 RDS S 25 RDS TO BEG. CONTG. 10 ACS,ALSO BEG AT A PT 50 RDS N, 64 RDS W OF SE COR OF NE/4 OF SEC 15, TWP 9N, R 2 W, SLM RUNNING S 25 RDS, W 32 RDS N 25 RDS, E 32 RDS TO BEG. CONTG. 15 ACS

BC

Parcel#: 03-108-0017 Owner: SMITH, RONALD J & SHARON H

Legal Description
REMAINDER DESC INSIDE CITY LIMITS BEG AT SE COR OF NE/4 OF SEC 15 T9N R2W SLM. W 2640 FT, N 825 FT ALG THE 1/4 SEC LINE TO THE SW COR OF PARCEL #03-108-0015, E 1056 FT TO THE NW COR OF PARCEL #03-108-0016, S 412.5 FT, E 1584 FT TO 1200 W ST, S 412 FT M/L TO POB.
CONT 35 AC M/L

BC

Parcel#: 03-108-0053 Owner: SMITH, RONALD J & SHARON H

Legal Description
REMAINDER DESC OUTSIDE CITY LIMITS BEG AT SE COR OF NW/4 OF SEC 15 T9N R2W SLM, W 528 FT, N 660 FT, E 528 FT TO THE CORP LIMIT LINE, S 660 FT M/L TO POB.
CONT 8 AC M/L

OK

Parcel#: 04-048-0015 Owner: SMITH, RONALD J & SHARON H JT

Legal Description
THAT PART OF FOLLOWING LYING W OF HWY. BSG 262.8 FT W & 769 FT N OF SW COR OF SEC 36, TWP 10N, R 2W, SLM, N 497.2 FT, N 85*16'E 2911.8 FT TO 1/4 SEC LINE, S ON SEC LINE 579 FT, S 86*527W 2906.2 FT TO BEG. EXC OF ROADS & R.R. BEING IN SECS 35 & 36, TWP 10N, R 2W, SLM.
CONTG 19.69 ACRES

Parcel#: 04-048-0016 Owner: SMITH, RONALD J & SHARON H JT

Legal Description
THAT PART OF FOLLOWING LYING W OF HWY. BEG 58 FT S & 137.9 FT W OF SW COR OF SEC 36, TWP 10N, R 2W, SLM, W 124.9 FT, N 769 FT, N 86*52'E 1906.2 FT, S 927.8 FT TO SE COR OF SW/4 OF SEC 36, S 88*48'W 2780.5 FT TO BEG. LES O.L & I R/W & CO ROAD. BEING IN SECS 35 & 36, TWP 10N, R 2W, SLM.

BC

The proposal was filed on December 16, 1998.

The proposal will be open to public inspection in the office of the Box Elder County Recorder-Clerk, the official office of the county legislative body of Box Elder County, Utah, at the Box Elder County Courthouse, Main at Forest, Brigham City, Utah.

Any person or entity affected by establishment of the proposed agriculture protection area may file a written request for modification of the proposal or written objections to the proposal within fifteen days of the date of this notice by mailing or delivering notice to:

Box Elder County Commission
c/o Box Elder County Recorder/Clerk
Main at Forest
Brigham City, Utah 84302

The Box Elder County Commission will submit the proposal to the Box Elder County Agriculture Protection Area Advisory Board and to the Box Elder County Planning Commission for review and recommendations.

The Box Elder County Commission will hold a public hearing to discuss and hear public comment on the proposal to create the agriculture protection area, the recommendations of the Box Elder County Agriculture Protection Area Advisory Board, the recommendation of the Box Elder County Planning Commission and any requests for modification of the proposal and any objections to the proposal to create the agriculture protection area. Public notice will be given of the date, place and time for the hearing.

DATED this 23rd day of December, 1998.

CHAIRMAN, BOARD OF COMMISSIONERS
OF BOX ELDER COUNTY, UTAH

COUNTY COMMISSIONERS
R. LEE ALLEN
JAY HARDY
ROYAL K. NORMAN

BOX ELDER COUNTY
STATE OF UTAH

OFFICERS
CARLLA, J. SECRIST, COUNTY AUDITOR
LUANN ADAMS, COUNTY RECORDER-CLERK
LEON JENSEN, COUNTY SHERIFF
JON J. BUNDERSON, COUNTY ATTORNEY
MONTE R. MUNNS, COUNTY ASSESSOR-TREASURER
DENTON BEECHER, COUNTY SURVEYOR
KEVIN R. CHRISTENSEN, COUNTY JUDGE

February 5, 1999

To whom it may concern:

Many inquiries have been made concerning the zoning of property in Box Elder County in Section 23, Township 12 North, Range 2 West (SLB&M) adjacent to the Cache County line, specifically, those properties owned by Christensen, RHN Corporation, and the Cache Box Development Company. To clear up any confusion, the Box Elder County Planning Department submits the following as an explanation of events and decisions that transpired in the process of zoning those properties and other properties in the area:

January 2, 1996

The Box Elder County Commission held a public hearing to consider zoning properties in Beaver Dam and Collinston. The proposal that was considered that day included zoning the Above specified property MU-40, or Multiple Use 40-acre minimum lot size. No action was taken.

February 20, 1996

The Box Elder County Commission held another public hearing to consider zoning properties in Beaver Dam and Collinston. The proposal that was considered that day included zoning the above specified property with a "P" designation, or a Planned District. A motion was made to approve the proposal, but an ordinance was not adopted to actually enact zoning. Furthermore, some of the procedural requirements that must be complete before adopting an ordinance establishing a P district had not been fully complied with. The primary requirement that had not been met is stated in the Box Elder County Land Use Management and Development Code (Code) section 15.2.2, which states:

> No ordinance establishing a P District shall be adopted unless and until there is on file with Box Elder County written consent of every property owner within such district at the time of adoption of the Ordinance, agreeing: That the owner will be bound by the conditions and regulations proposed and which will be effective within the District, and, To record such written agreement with Box Elder County Recorder.

October 8, 1997

Box Elder County Zoning Administator Denton Beecher sent a letter to Mr. Veibell informing him that over one year had passed since the preliminary design plan approval (approved June 6, 1996) of his High Country Estates subdivision, the one whose concept plan was also to be the concept plan for the P district. (Note: preliminary design plan approvals are only valid for one year, and after such time the approval expires - see Code section 3.6.11). Mr. Beecher also informed Mr. Veibell in this letter that the County "must receive 100% of the property owners signature of approval and then establish an ordinance stating the

conditions, etc." in order for a "P" zone to be adopted. Mr. Beecher suggested in this letter that, as all of the requirements to establish a "P" zone had never been met, that Mr. Veibell resubmit the District. (See attached letter.)

October 15, 1997

County Attorney Jon Bunderson sent a letter to attorney Larry S. Jenkins regarding Mr. Veibell's development. Mr. Bunderson stated that the County Commission had not zoned the area as a P zoning district. He said that the County had "reserved Mr. Veibell's property as a potential 'P' zone". And, indeed, the County Commission, though they had made a motion to approve the P zone, had not adopted it by ordinance; nor could they have legally adopted such an ordinance as not all the requirements for its establishment had been met. (See attached letter.)

October 16, 1997

Mr. Beecher sent another letter to Mr. Veibell restating much of the above. (See attached letter.)

June 2, 1998

Between October 16, 1997 and June 2, 1998 the County received no further submissions from Mr. Veibell. It had thus been over 2 years since the County Commission made a motion to approve the P district, and nearly 2 years since the Planning Commission gave preliminary design plan approval on the High Country Estates Subdivision. So, the Box Elder County Commission finally proceeded with the last legal action necessary to enact zoning in the Beaver Dam and Collinston areas by adopting an ordinance to enact the zoning as proposed and deliberated at the January 2, 1996 public hearing with changes as deliberated at hearings on October 15, 1996 and July 22, 1997. This action included zoning the subject property to MU-40.

The P district was not included in the adoption of this zoning ordinance as not all the requirements had been met for adopting such a zoning district. Moreover, it had been over two years since the submission for approval of the P district. The Code (section 15.6.1) says that even for P districts that are duly created, the County Commission, upon recommendation of the Planning Commission, may order the reversion of the area to its original zoning without a public hearing, if no development occurs within two years following the creation of a P district. A P district had never truly been created, nonetheless, a recommendation was made by the Planning Commission at their May 21, 1998 meeting. They recommended to proceed with the zoning for the Beaver Dam and Collinston areas with the vacation of the P district zoning designation (see attached copy of portion of May 21, 1998 minutes). The Box Elder County Commission subsequently acted upon such recommendation in their meeting on June 2, 1998 and enacted the ordinance 219 to properly establish zoning in the Beaver Dam and Collinston areas. (See attached minutes from June 2, 1998 and ordinance 219.)

It is the hope of the Box Elder County Planning Department that the above will provide adequate explanation of the events and decisions that occurred in zoning the properties in

section 23, Township 12 North, Range 2 West (SLB&M). Any inquiries regarding the matter should be directed to :

Box Elder County Zoning Administrator
01 South Main Street
Brigham City, Utah 84302
phone: (435) 734-3304
e-mail: nsbxeldr.boxelder.jmarwedel@state.ut.us

Sincerely,

L. James Marwedel II

Jim Marwedel
Box Elder County Planner and Zoning Administrator