

BOX ELDER COUNTY
March 18, 1993

The Board of Planning Commissioners of Box Elder County, Utah, met in regular session in the Commission Chambers of the Box Elder County Courthouse, 01 South Main Street, in Brigham City, Utah, at 7:15 p.m. on March 18, 1993.

The meeting was called to order by Acting Chairman DeVon Breitenbeker, with the following members present, constituting a quorum:

DeVon Breitenbeker	Acting Chairman
Allen Jensen	Commissioner, Member
Junior Okada	Member
Steve Grover	Member
Denton Beecher	Ex-Officio Member, Surveyor
Marie Korth	Ex-Officio Member, Recorder/ Clerk

Excused:

Jon Thompson	Member
Deanne Halling	Member
Richard Kimber	Chairman

Chairman Kimber, who was out of town, had asked DeVon Breitenbeker to act as Chairman.

APPROVAL OF MINUTES:

Acting Chairman Breitenbeker presented the Minutes of January 21, 1993, for approval. Commissioner Jensen made a motion to approve the Minutes as written. Steve Grover seconded. None opposed. The motion carried.

WILLARD/BOX ELDER FLOOD DISTRICT:

Discussion by Ron Nelson: (Attachments 2 & 3) Mr. Ron Nelson, Chairman, Willard/Box Elder Flood District, met with the Planning Commission to discuss safety concerns at the DN gravel pit as follows:

MR. NELSON: Last time I was here I was unable to give you copies of some pictures. These are in black and white. I would like to give each of you a copy. We have, as you know, a Master Plan for our Flood Control District as set up by you folks. It is dated July, 1981, Master Plan for Box Elder County Special District for Flood and Controlled Drainage. I am going to read a couple of things. The plan was to develop a cost effective Master Plan for storm water management within the District's boundary and identify a means of both frequent small storms and the large major storms, the hundred

year re-occurrence from flood damage. We paid a lot of money and took a lot of time to put this together back in 1981 to set up the fact that any activity that goes on in the Wasatch Front within our District would enhance, improve, or complement our Flood District's goal and this Master Plan.

We feel at this time that our goal of providing that safety to the people of Willard from the dangers of flooding has been violated. A couple of examples: we have seen diversions of water channels, we have seen rocks dislodged from one area on the north side moved to the south side of the channel. We have seen other channels dug, diverting water north away from a gravel pit operation. We are concerned about those things. We think they are dangerous. We think they are not in compliance with the spirit of our Master Plan or in compliance of the conditions of your use permit.

We see a large stockpile placed in the south channel which is very dangerous in the event of water coming out of that canyon, a lot of loose debris would be picked up and possibly do some considerable damage down below as well as obstructing the intent of the water to go into our debris basin, which again we paid a lot of money and spent a lot of time enlarging. Now we would have a very difficult time getting any water into that basin. Who is responsible? Is the developer? Is Box Elder County? Willard City Flood Control District? We are not sure in the event of a flood who the fingers are going to be pointed at. These are only a couple of the concerns, questions, that we have.

We have documented many, many letters to you, as you are all aware. Lots of personal presentations. It seems like, to us, we have gone unnoticed to this point. At least we haven't been appraised or advised of your position and what your intentions are. It brings us to this tonight. I would like to just take a minute to tell you that we are a friendly group. This is a friendly Flood Control District set up by the County Commission to do a job to help you folks, to help your Commissioners, to help the planning Commission do their job in protecting the people of Willard from a safety of flooding aspect. That's our intention. By taking the action that is about to follow, we are just here to help. We want to hold up our duty to protect the health, safety, and welfare of the people and their property. All of these issues that you are aware of and have been presented with we feel must be addressed now, and they must be corrected before someone gets hurt.

I would like to introduce Lisa Schlottman from the attorney firm of Mazuran & Hayes in Salt Lake City who is going to take a minute and say something to you.

MS. SCHLOTTMAN: I assume that you are all aware of the specifics of the violations that D N Development has committed in violation of the Conditional Use Permit so I won't go into those. I am

just here to notify you of the significant hazards that these violations create for the citizens of Willard City and Box Elder County and urge you to take immediate action in this matter. I know that you have been notified many times in the past of the details of the violations and have chosen not to take any action thus far. It is the duty of our client, the Flood Control District, to preserve the public health, safety, and welfare of the citizens of Willard City and Box Elder County. These violations threaten this safety and therefore, we have advised our client that it is their duty and obligation to take action to remedy these violations. Therefore, we are here this evening to request of you that you issue an immediate cease and desist order against D N Development requiring D N Development to immediately comply with the terms of the conditional Use Permit, and should D N Development fail to comply within a reasonable time with the cease and desist order, we further request that you exercise your power to revoke their conditional use permit. Once again I would like to emphasize that the violations pose significant threat of flood harm to the citizens, and we feel that the measures we are requesting this evening are necessary and imperative to insure the safety of these citizens and also to ensure that our client, the District, is performing its duties and obligations required of it under law.

If D N Development or any of its representatives would like to make a statement at this point, we would like to hear from them and give them an opportunity to take the floor, if that's all right, so long as we can have the chance for rebuttal after.

Acting Chairman Breitenbeker stated the Planning Commission did not want to get into a legal debate at this time between the Flood District and Mr. Nielsen and the attorney involved. He said they would listen to the allegations and would also listen to the other side. He said the Planning Commission will take under advisement the allegations they are making.

Commissioner Jensen stated he would like to comment on Mr. Nielsen's letter. The last paragraph says that the Willard Flood District wants the County Commission to employ a ballistics expert to investigate the allegations of blasting in the area. Commissioner Jensen said he had been in the area and had seen evidence of something happening, however, he is not convinced that blasting has occurred. He said it is the Willard Flood District's position to provide the evidence of blasting and if they want to hire a ballistics expert to do that, that is their prerogative; but he did not think the county should hire an expert to try to find the evidence.

Ms. Schlottman stated since the county issued the Conditional Use Permit, she felt it was their duty to insure that the permit is being complied with. Mr. Nelson stated the county imposed the conditions and issued the permit, and the Flood District would point out the infractions and bring them to their attention. He said it was

their understanding the county would oversee any of the situations or violations.

Mr. Breitenbeker stated it is the obligation of the Planning Commission to enforce the conditions of the permit issued by the county, however, he did not understand how the blasting enters into the conditional use permit. Mr. Beecher said there is a clause in the conditions, "there shall be no blasting." Mr. Okada stated he felt the burden of proof should be with the party making the allegation. Ms. Schlottman said she felt the violations of the conditional use permit should be spelled out. The Planning Commission as an enforcement agency has a duty to investigate. Mr. Breitenbeker said unless there is proof that there has been blasting, no action could be taken. At this point there is evidence of heavy equipment in the area, but not whose equipment.

Mr. Nelson brought up Condition number 7 which states this activity is to enhance, improve, and complement the Flood District's goals.

Mr. Beecher stated the part of the mountain under consideration is not part of the conditions. The mouth of the canyon is not a part of the pit. It is a diversion of the water that comes down through the pit that is the concern. He said this is a concern of the Flood District and they should take care of it as a Flood District.

A discussion was held on the stock pile and its location. Mr. Beecher stated the stock pile was put in the unincorporated area of the property; and after the court ruled that the Willard City Zoning Ordinance was invalid, the stock pile was expanded into Willard City to allow more space. Mr. Nelson expressed concern regarding the stock pile in the county area and that it might prevent water from running. Mr. Beecher stated the water will never reach the stock pile because it will go to the west out the lower end of the elevation of the debris basin.

Mr. Beecher stated the violation that has been committed is that Mr. Nielsen has created a diversion at the top of the excavation. When the Flood District met at the site with the Planning Commission, they decided that Mr. Nielsen should submit an amended drawing to show how he would amend the plan to accommodate it. He submitted the amendment to the Flood District, and after many months it was denied. Nothing has changed except that he has started to work on the east side of the pit to bring the 2-1 slope down.

Mr. Nelson expressed his appreciation for the Planning Commission and stated the safety of the people is their only concern.

Mr. Breitenbeker asked that the letter from Lisa Schlottman be made a part of the Minutes.

It was brought out that there is water coming out of the canyon and going north in a natural channel. Mr. Beecher suggested the Flood District discuss the situation with Mr. Nielsen and work out a way to reroute the channel. Mr. Nelson stated the predominant channel at this time appears to drain toward 200 South Street. There are two additional main channels, but they don't both go south, one goes north and the other south; there are many subchannels.

No action was taken on this matter.

JEFF THORNE:

DN Development, Conditional Use Permit Letters: (Attachments No. 4, 5, & 6)

Mr. Thorne stated when Mr. Nielsen applied for a Conditional Use Permit, there were 20 conditions imposed. Condition No. 17 stated, "no activity, construction, excavation, operation or work of any sort shall be conducted upon the premises between the hours of 7:00 p.m. and 7:00 a.m. the following day. In addition no such action, construction, excavation, operation or work shall be conducted between the hours of 7:00 p.m. on Saturday and 7:00 a.m. on the following Monday. Upon application to the Box Elder County Commission for good cause shown, the Box Elder County Commission may alter or modify these hours." Mr. Thorne requested an amendment to that condition. He said the hours and days of operation were imposed at the request of Willard City to be consistent with their hours of operation. Mr. Thorne stated Mr. Nielsen felt he should have the same rights as any other gravel operator in the county. Recently Mr. Nielsen was cited by Willard City for violation of its Hours of Operation Ordinance.

Mr. Thorne referred to a copy of a findings of fact in a case between Willard City and Darrell Nielsen, dba K. D. Sand and Gravel. In the case there were three objectives, to protect against excessive noise, excessive dust, and excessive traffic within the city. After review the court found the Ordinance to be unconstitutional. Mr. Thorne discussed the findings in detail. He said that was a decision which was not involving Box Elder county and it did not deal with this situation. Mr. Thorne stated the same basic facts which were in that case are in Mr. Nielsen's present situation with the county. He said Mr. Nielsen has an opportunity to bid on a rather large construction project which could cause the removal of six million tons of material. In order to be able to bid on the project, he would have to have at least sixteen hour days to operate. Mr. Thorne stated the county does not impose hours of operation on the other two pits that are in the general vicinity and in Brigham City. He said Brigham City will grant variances when there is an extra need. Mr. Thorne stated he felt 6:00 a.m. to 10:00 p.m. is not unreasonable. He gave the following two reasons for not restricting Mr. Nielsen's hours; 1) no other pit in the county is required to do this, 2) It was imposed to be consistent

with Willard's Ordinance, and Willard's Ordinance has now been ruled to be unconstitutional.

Mr. Thorne stated upon completion of phase one of the gravel pit, Mr. Nielsen agreed to do reseeded. He presented a letter (attached) addressed to the box Elder County Planning Commission dated March 16. In the letter it states Mr. Nielsen has about 100,000 tons of material left to be removed in phase one, and it is his desire to be able to start working in phase two prior to doing the reseeded in phase one. Mr. Thorne stated Mr. Nielsen would be willing to re-escrow sufficient money in addition to the \$20,000.00 which is already in escrow. In addition the retention basin would be built much quicker and would be a benefit to the Flood District. Mr. Nielsen assured the Planning Commission that even if he is allowed to proceed into phase two, he will continue to work in phase one doing the resloping.

Mr. Grover made a motion to approve the hours of operation to be competitive with the other contractors in the area with the stipulation that the county attorney approve it. Mr. Okada seconded. The voting was as follows:

Mr. Grover: Yea
Mr. Okada: Yea
Mr. Breitenbeker: Yea
Commissioner Jensen: No.

Commissioner Jensen stated there has been a lot of discussion concerning the conditions that were applied to this permit. Those conditions were discussed pro and con, back and forth, for a long time. He said it was his opinion that Mr. Nielsen agreed to the 20 conditions to be placed on the permit, and he would abide by those conditions if he were given the permit. Mr. Nielsen agreed to the hours, and Commissioner Jensen stated he would not vote to change the conditions on the permit. Commissioner Jensen stated the hours were only unconstitutional for the one court case. If it were to be heard by the judge again, the records will state that Mr. Nielsen agreed to all of the conditions and that may shine a different light on the opinion. Mr. Breitenbeker called for the vote again:

Mr. Grover: Yea
Mr. Okada: Yea
Mr. Breitenbeker: Yea
Commissioner Jensen: No.

The motion passed.

Mr. Bill Merritts, a citizen of Willard, expressed his concerns regarding the noise levels, stating he has seen trucks coming out of the pit area at midnight. He asked the Planning Commission to reconsider.

Mr. Okada made a motion to have Mr. Nielsen complete all conditions in phase one with the exception of the reseeded and that be done as quickly as possible and to put another \$5,000.00 in escrow. Mr. Grover seconded. Commissioner Jensen stated that is a deviation of the Conditional Use Permit. He said Mr. Nielsen could not go into phase two until he plants phase one.

Acting Chairman Breitenbeker called for the vote.

Voting:

Mr. Okada: Yea
Mr. Grover: Yea
Mr. Breitenbeker: Yea
Commissioner Jensen: No.

The motion passed.

HARDY SUBDIVISION:

Mr. Greg Hansen, Hansen & Associates, met with the Planning Commission to represent Mr. Dee Hardy. He presented the Dee Hardy subdivision plat and stated Mr. Hardy is requesting final approval for his subdivision. This is being platted on an existing subdivision which is the River Bank Tract B filed in 1918. Mr. Hardy's intent is to vacate that portion which lies underneath the proposed subdivision property. Mr. Hansen stated they are asking for final approval conditional upon having the property vacated and meeting the escrow stipulation.

Mr. Beecher stated the request is lacking in several areas. The escrow agreement has not been filed with the county, the title insurance has not been cleared which will guarantee that the right of ways and the roads would be dedicated to the public free and clear. Mr. Hardy would have to petition the County Commission to vacate the property, and this will go before the County Commission on Tuesday, March 23. By law the Commissioners must hold a public hearing. In addition the County Attorney must approve the concept. Mr. Hardy is requesting conditional final approval authorizing the Chairman to sign it when those conditions are met. Mr. Okada made a motion to table the request until all conditions are met. Mr. Grover seconded. None opposed. The motion passed.

JACK B. PARSONS, CONDITIONAL USE PERMIT:

Mr. Fay Facer, Jack B. Parsons Companies, and Mr. Gary Newman, Great Basin Engineering, met with the Planning Commission to request an amendment to the conditional use permit on the Parsons/Willard North Pit. Mr. Facer presented a map and explained their plans. The existing Conditional Use Permit issued in 1986 provided for a series of pads to be mined. They are proposing to change their method of mining, doing it in levels rather than pads.

Mr. Facer stated the changes in the permit would include: 1) Expansion of the area, 2) Redefining the way it would be mined, 3) the capability of an asphalt plant, a ready mix plant, crushing and washing. The asphalt plant and the ready mix plant would be an addition to the present permit. He said it could be financially advantageous to the county. Mr. Facer stated they recognize dust control would be an issue and they anticipate drilling a well.

Commissioner Jensen stated there have been many complaints from people who live in a mobile home court near the operation and asked if Parsons would be willing to give up the haul road near the court. Mr. Facer replied it would be necessary for Parsons to retain the road. Commissioner Jensen then asked if Parsons were aware of the twenty conditions placed on the DN operation and if they were prepared to accept those same conditions. Mr. Facer stated he felt each pit should stand on its own. Mr. Breitenbeker stated he felt there are certain conditions that are unique to each situation and each operation should be considered on its own.

Mr. Gary Newman discussed potential storm water problems in the Parson pit. He stated they want to make sure that they adequately take care of any problems that might arise. He asked if he needed to meet with the Flood District or could they interface with their engineer to try and solve any problems. He stated he would prefer to work through the Planning Commission and deal with the Flood District's engineer and make a decision that will satisfy him. Commissioner Jensen stated it was his understanding that any plans or information concerning the project should be conveyed to the Willard Flood District. Mr. Beecher stated some years ago the Planning Commission passed a policy that any activity or any permit in the Willard/Box Elder Flood District area would be referred to the Flood District for review and comment. He said he felt it would be proper to forward a set of the plans to the Flood District. Mr. Beecher said the Flood District is only an advisory board to help make a decision that what is being done is in the best interest of the people in the area and also the contractor. Mr. Grover made a motion to table the plan to give the Planning Commission time to study the 20 conditions that apply to Darrell Nielsen and see how or if they apply to this situation and then meet again with Parsons to see if some conditions can be made to fit this particular application and that we co-ordinate with the Willard Flood District and look at the existing conditions on the current permit and that the Planning Commission would send a copy of the information to the Flood District asking for their review and comment. Mr. Okada seconded. None opposed. The motion passed.

Commissioner Jensen made a motion that the Planning Commission notify the Willard Flood District with a copy of the plans and request that they respond back with their comments within two weeks. Mr. Okada seconded. None opposed. The motion passed.

Mr. Facer will be on the Agenda for April for further discussion.

LAND USE CODE BOOKS:

Mr. Beecher presented copies of the new Land Use Code Books which contain the Subdivision Ordinance, the Mobile Home Ordinance, and the Zoning Ordinance.

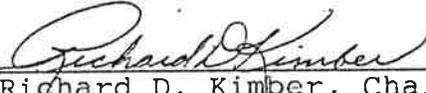
APRIL MEETING DATE:

Mr. Beecher stated the scheduled meeting date is the third Thursday, which would be April 15. He, Commissioner Jensen, and Mrs. Korth will be out of town for the Utah Association of Counties meetings in Cedar City. He requested that the meeting be rescheduled for April 22. Mr. Beecher said Chairman Kimber was in agreement. Mr. Beecher also asked about setting a specific time for the Planning Commission meetings rather than changing with day light savings time. It was decided 7:00 p.m. would be the official time.

Mr. Grover made a motion to adjourn at 9:50 p.m.

Passed and adopted in regular session this 22nd day of

April, 1993.


Richard D. Kimber, Chairman

ATTEST:


Marie G. Korth
Recorder/Clerk

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

1. Public agenda for the Box Elder County Planning Commission meeting scheduled for 18 March 1993 at 7:00 P.M.
2. Notice given to the newspaper this 17 day of March , 1993 .
3. Approval of the minutes of 18 February 1993.
4. Scheduled Delegations:
 - A. Willard-Box Elder Flood District 7:05 to 7:20
 - B. Jeff Thorne; two letters 7:20 to 7:45
 - C. Greg Hansen; Hardy Subdivision, request for conditional approval. 7:45 to 8:00
 - D. Fay Facer; Jack B. Parson Company, Conditional Permit for a gravel pit operation, presentation.
 - E. Land use code books
 - F. April meeting date discussion
 - G.
 - H.
 - I.
 - J.
5. Old Business
 - A.
 - B.
 - C.
 - D.

Planning Commission
March 18, 1992

Name

Address/Title

Ron Nelson

WILLARD, UT CHAIR BE/WILLARD FCD

Lisa R. Schlottman

Salt Lake City; Attorney for Willard FCD.

Carl J. Baud

Ogden, Utah

Robert W. Zindel

Willard Utah

bystander

Patricia C. Hemmley

Willard

Kenneth Hemmley

WILLARD

Bill Merritts

Willard

Gary L. Newman

Great Basin Eng.

Ogden

R. Fry FACER

Jack Parsony Co. S.

Ogden

Carroll Petersen

D. N. Land

Bountiful

JEFF R THORNE

ATTORNEY

BRIGHAM CITY

MICHAEL J. MAZURAN
MICHAEL Z. HAYES

LAW OFFICES
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BRICKYARD TOWER - SUITE 250
1245 EAST BRICKYARD ROAD
SALT LAKE CITY, UTAH 84106

TELEPHONE (801) 484-6600
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March 18, 1993

Hand Delivered

Box Elder Planning Commission
Box Elder County Court House
Brigham City, Utah 84302

re: Request for Cease and Desist Order against D.N.
Development Project for Permit Violations

Dear Planning Commission Members:

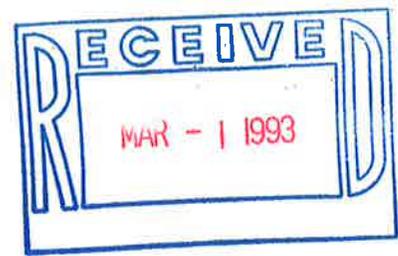
As attorneys for the Box Elder County/Willard City Flood Control District (hereinafter the "District"), our office has reviewed information regarding gravel operations conducted by the D.N. Development Project and/or Darrell Nielson (hereinafter "D.N. Development") pursuant to Conditional Use Permit # 38 issued by the Box Elder County Commission in 1989.

It appears that D.N. Development has substantially deviated from the terms of the conditional use permit and is in violation thereof. The violations of the conditional use permit are significant and create a real and immediate threat of flood damage to the citizens of Willard City. It is the obligation of the District to preserve the health, welfare, and safety of its citizens. In order to comply with this obligation, prompt action must be taken to ensure that D.N. Development corrects past violations and to prevent any further violations which may increase the risk of flood damage in Box Elder County.

Accordingly, it is imperative that the Planning Commission immediately issue a Cease and Desist Order to D.N. Development requiring D.N. Development to comply with the terms of the conditional use permit within a reasonable time. Should D.N. Development fail to comply with the Cease and Desist Order within a reasonable time, it is further requested that the Planning Commission promptly exercise its power to revoke the conditional use permit. These measures are necessary to preserve the health, welfare, and safety of the citizens of Box Elder County and those in the District.

Sincerely,


Lisa R. Schlottman



LAW OFFICES
MANN, HADFIELD AND THORNE

A PROFESSIONAL CORPORATION

ZIONS BANK BUILDING

98 NORTH MAIN

P. O. BOX 876

BRIGHAM CITY, UTAH 84302-0876

TELEPHONE (801) 723-3404

FAX (801) 723-8807

WALTER G. MANN
1906-1992

REED W. HADFIELD
JEFF R. THORNE
BEN H. HADFIELD

February 23, 1993

Box Elder Planning Commission
Box Elder County Courthouse
BRIGHAM CITY UT 84302

Gentlemen & Ladies:

Darrell Nielsen has been issued a conditional use permit to operate the K. D. Gravel pit within the County jurisdiction east of Willard City.

One of the conditions imposed upon Mr. Nielsen was that his hours of operation would be from 7:00 a.m. to 6:00 p.m. The hours of operation were imposed at the request of Willard City and its citizens, who indicated these were the same hours of operation imposed in Willard's ordinance.

A recent decision of Judge Robert Daines of the First Circuit Court held that Willard City's hours of operation and days of operation were unconstitutional. A copy of the Court's decision is attached hereto as Exhibit A.

In view of the fact that Willard City did not appeal the decision, this decision is binding upon Willard City.

While Box Elder County was not a party to that lawsuit, it would appear that the same logic which governed Willard City's restriction on hours and days of operation would also apply to Box Elder County's restriction.

For that reason, it is requested that the condition imposing days and hours of operation limitations on Mr. Nielsen's pit be lifted so that Mr. Nielsen would be able to operate his pit in the same manner that he can now operate within Willard City. There are no hours of operation on Mr. Nielsen's pits in Willard City at the present time. Additionally, the Court struck down the restrictions on days of operation.

We are asking that the conditions restricting days and hours of operation be removed from Mr. Nielsen's conditional use permit.

Ltr. to BE Planning Commission
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February 23, 1993

We believe removing these restrictions is only fair, inasmuch as Box Elder County has not imposed any hours of operation or days of operation on the Fife gravel pit and on the Parson gravel pit which lie within county jurisdiction.

We would appreciate being apprised of any decision made in this matter.

Very truly yours,

MANN, HADFIELD & THORNE



Jeff R. Thorne

JRT/pj

cc: Box Elder County Commission
Jon Bunderson, Box Elder County Attorney

pj/1:beplcm

Jeff Home

EXHIBIT A

COPY

IN THE FIRST CIRCUIT COURT, STATE OF UTAH
COUNTY OF BOX ELDER, BRIGHAM CITY DEPARTMENT

WILLARD CITY)	
	*	
Plaintiff)	FINDINGS OF FACT
	*	CONCLUSIONS OF LAW
)	AND JUDGMENT OF ACQUITTAL
	*	
VS)	Case # 916000240 MC
DARRELL NIELSEN dba	*	
K D SAND & GRAVEL)	
	*	
Defendant)	
	*	

In this case the defendant has been charged with three (3) counts of violation of Willard City Ordinance # 12-300-1-01. This ordinance regulates the hours and days of operation of the defendant's gravel pit operation and applies to all excavations.

The court finds that the defendant did operate said pit outside the limits of the ordinance on all three counts. Therefore, the Court must consider the defendant's defense based on the claim that the ordinance violated the police powers of the city in limiting hours of operation and days of operation.

The court must first determine the objectives of the ordinance and whether the limitation of hours and days was a reasonable basis for promoting those objectives.

The court finds the objectives were to control:

1. Excessive noise
2. Excessive dust
3. Excessive traffic within the city.

The court finds that all of the above objectives are proper for the city under the police powers. The next question is: Was the limitation of hours and days of operation of gravel pits and

commerical excavations a reasonable classification of probable source of excessive noise, dust or traffic?

There was a lack of any evidence that such problems were existing with the defendant's pit operation or any other similar pit operation at the time the ordinance was passed.

The court finds the defendant's pit under regular operation does not produce excessive noise, dust, or traffic.

The court finds that Darrell Nielsen is one of the owners of K & D Sand & Gravel. K & D Sand and Gravel is a rock and gravel extraction business which is situated completely within the corporate limits of Willard City. Ingress and egress to the K & D Sand Gravel Pit is obtained by traveling on a private haul road connecting to U.S. Highway 89-90. This private haul road is not owned by Willard City nor maintained by Willard City, nor does the roadway have any home adjoining it. The roadway is a hard surfaced asphalt road.

The loudest noise created from the gravel pit operations was caused by the gravel trucks' use of the Jacob brake as the loaded gravel trucks leave the pit and go down the haul road towards Highway 89-91. At one location a home owned by Craig Toone is approximately 150 feet south of a fence line south of a fence line south of a creek bed adjacent to the haul road. The noise level at the home would be 41 to 53 dBA. This noise level would last from 50 to 60 seconds. This noise level is substantially less (by 15 dBA) than any reconized noise levels prohibited by federal, state or local governments. The noise from the trucks driving on the haul road from the K.D. Pit is

substantially less than the noise emanating from Highway 89-91.

The court finds that the maximum number of trucks which could be loaded at K & D Sand & Gravel Pit would be ten per hour (one every six (6) minutes). If one were to assume that the maximum capabilities at the gravel pit would continue at ten trucks each hour, the trucks' noise from the gravel pit would only increase the highway noise one Leq. Thus, the noise from K & D Gravel Pit trucks would be negligible compared to the noise which is created by the existing volume of traffic on Highway 89-91 through Willard City.

The court finds that there are no conditions produced by conceivable operations at the gravel pit that result in noise impacts exceeding any recognized noise standards or regulations. In particular, the conditions along Highway 89 exceed anything attributable to the gravel pit trucking by at least 15 decibels. The K & D Pit gravel operation and truck traffic do not contribute in any significant manner whatsoever to the volume of traffic or noise emanating from the existing traffic on Highway 89-91.

The State of Utah Department of Environmental Quality Division of Air Quality monitored dust emissions in the Willard area for the months of July, August, and September, 1990. The national and state standards prohibit emissions greater than 150 micrograms per cubic meter. The highest measured values during this time frame were 10 micrograms per cubic meter in July, 37 in August and 27 in September, 1990. The K & D Sand & Gravel Pit was in operation during this period of time, as were several other

gravel pits in the area, The court finds that there was no dust problems created by the K & D Pit or by any other gravel pits in the area.

All gravel pits within the Brigham City, Perry and Willard areas compete in the same markets for sales. The Parson Gravel Pit in South Willard and the Fife Pit east of Willard located within county jurisdiction have no hours of operations, nor does the gravel pit in Perry, Utah. The court finds the hours of operation on the Willard gravel pits places those owners in a competitive disadvantage in the market, in that most gravel is hauled during the construction months of the summer and in order to meet large projects, it is often necessary to haul gravel longer than the 11 hour days permitted by Willard's ordinance. The restriction of hours of operation on the pits located within the Willard area creates a substantial economic disadvantage to those owners as compared to permits which do not have restricted hours of operation.

In bidding on contracts a supplier has to know he has a firm agreement and that he can get the gravel to the site in a timely manner. Willard City, by restricting hours of operation, effectively prohibited Darrell Nielsen from furnishing gravel on large construction projects.

Conclusion:

The Court finds that the attempt to control excessive

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noise, dust, and traffic by setting time limits on operations of gravel pits was too remote from the probability of reaching its objective to be found reasonable. Therefore, that portion of the ordinance limiting hours and days of operation, Section F, is held to be unconstitutional.

Defendant is found not guilty on all three counts.

Dated this December 14, 1992.

A handwritten signature in cursive script, reading "Robert W. Daines", is written over a horizontal line.

Robert W. Daines, Judge

0356A

Case No: 916000240 MC

Certificate of Mailing

I certify that on the 16th day of December, 1992,

I sent by first class mail a true and correct copy of the
attached document to the following:

JEFF THORNE
Atty for Defendant
98 NORTH MAIN
BRIGHAM CITY UT 84302

JACK MOLGARD
Atty for Plaintiff
P.O. BOX 461
BRIGHAM CITY UT 84302

Circuit Court Clerk

By: Elizabeth McCarley
Deputy Clerk



LAW OFFICES
MANN, HADFIELD AND THORNE

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March 16, 1993

REED W. HADFIELD
JEFF R. THORNE
BEN H. HADFIELD

WALTER G. MANN
1906-1992



Box Elder Planning Commission
Box Elder County Courthouse
BRIGHAM CITY UT 84302

Re: Conditional Use Permit of Darrell Nielsen

Gentlemen & Ladies:

Darrell Nielsen was granted a conditional use permit by Box Elder County to operate a gravel pit extraction business. He is approaching the conclusion of phase one and it appears he has approximately 100,000 tons of material left to be removed in phase one.

Mr. Nielsen has an opportunity to bid on a project which would entail the removal of 6,000,000 tons of material, and if he is able to secure the contract, he would need to enter into the phase two portion prior to the time that the reseeding on phase one could be accomplished.

The experts he has employed have told him that reseeding would be better done in the fall months than in the heat of the summer. Thus it appears that if he gains this contract, he would not be able to reseed the slopes until cooler weather begins in the fall.

For that reason, he is asking that if the contract is awarded to him, he be allowed to proceed with excavation in phase two prior to actual planting of plant materials and reseeding takes place in phase one.

Mr. Nielsen is willing to escrow any additional monies the Planning Commission believes may be necessary to complete reseeding if this request is granted.

Ltr. to BE Planning Commission
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March 16, 1993

In addition, if he is allowed to proceed into phase two, the construction of the retention basin will proceed much sooner than he otherwise had contemplated. The construction of the retention basin would appear to be a sizeable benefit to the flood district and to the citizens of Willard.

Very truly yours,

MANN, HADFIELD & THORNE



Jeff R. Thorne

JRT/pj
cc: Darrell Nielsen
pj/1:beplcomm.dn

IN THE FIRST CIRCUIT COURT, STATE OF UTAH
COUNTY OF BOX ELDER, BRIGHAM CITY DEPARTMENT

Jeff Moore
COPY

WILLARD CITY

Plaintiff

VS

DARRELL NIELSEN dba
K D SAND & GRAVEL

Defendant

)
*
) FINDINGS OF FACT
* CONCLUSIONS OF LAW
) AND JUDGMENT OF ACQUITTAL
*
) Case # 916000240 MC
*
)
*

In this case the defendant has been charged with three (3) counts of violation of Willard City Ordinance # 12-300-1-01. This ordinance regulates the hours and days of operation of the defendant's gravel pit operation and applies to all excavations.

The court finds that the defendant did operate said pit outside the limits of the ordinance on all three counts. Therefore, the Court must consider the defendant's defense based on the claim that the ordinance violated the police powers of the city in limiting hours of operation and days of operation.

The court must first determine the objectives of the ordinance and whether the limitation of hours and days was a reasonable basis for promoting those objectives.

The court finds the objectives were to control:

1. Excessive noise
2. Excessive dust
3. Excessive traffic within the city.

The court finds that all of the above objectives are proper for the city under the police powers. The next question is: Was the limitation of hours and days of operation of gravel pits and

commerical excavations a reasonable classification of probable source of excessive noise, dust or traffic?

There was a lack of any evidence that such problems were existing with the defendant's pit operation or any other similar pit operation at the time the ordinance was passed.

The court finds the defendant's pit under regular operation does not produce excessive noise, dust, or traffic.

The court finds that Darrell Nielsen is one of the owners of K & D Sand & Gravel. K & D Sand and Gravel is a rock and gravel extraction business which is situated completely within the corporate limits of Willard City. Ingress and egress to the K & D Sand Gravel Pit is obtained by traveling on a private haul road connecting to U.S. Highway 89-90. This private haul road is not owned by Willard City nor maintained by Willard City, nor does the roadway have any home adjoining it. The roadway is a hard surfaced asphalt road.

The loudest noise created from the gravel pit operations was caused by the gravel trucks' use of the Jacob brake as the loaded gravel trucks leave the pit and go down the haul road towards Highway 89-91. At one location a home owned by Craig Toone is approximately 150 feet south of a fence line south of a fence line south of a creek bed adjacent to the haul road. The noise level at the home would be 41 to 53 dBA. This noise level would last from 50 to 60 seconds. This noise level is substantially less (by 15 dBA) than any reconized noise levels prohibited by federal, state or local governments. The noise from the trucks driving on the haul road from the K.D. Pit is

substantially less than the noise emanating from Highway 89-91.

The court finds that the maximum number of trucks which could be loaded at K & D Sand & Gravel Pit would be ten per hour (one every six (6) minutes). If one were to assume that the maximum capabilities at the gravel pit would continue at ten trucks each hour, the trucks' noise from the gravel pit would only increase the highway noise one Leq. Thus, the noise from K & D Gravel Pit trucks would be negligible compared to the noise which is created by the existing volume of traffic on Highway 89-91 through Willard City.

The court finds that there are no conditions produced by conceivable operations at the gravel pit that result in noise impacts exceeding any recognized noise standards or regulations. In particular, the conditions along Highway 89 exceed anything attributable to the gravel pit trucking by at least 15 decibels. The K & D Pit gravel operation and truck traffic do not contribute in any significant manner whatsoever to the volume of traffic or noise emanating from the existing traffic on Highway 89-91.

The State of Utah Department of Environmental Quality Division of Air Quality monitored dust emissions in the Willard area for the months of July, August, and September, 1990. The national and state standards prohibit emissions greater than 150 micrograms per cubic meter. The highest measured values during this time frame were 10 micrograms per cubic meter in July, 37 in August and 27 in September, 1990. The K & D Sand & Gravel Pit was in operation during this period of time, as were several other

gravel pits in the area, The court finds that there was no dust problems created by the K & D Pit or by any other gravel pits in the area.

All gravel pits within the Brigham City, Perry and Willard areas compete in the same markets for sales. The Parson Gravel Pit in South Willard and the Fife Pit east of Willard located within county jurisdiction have no hours of operations, nor does the gravel pit in Perry, Utah. The court finds the hours of operation on the Willard gravel pits places those owners in a competitive disadvantage in the market, in that most gravel is hauled during the construction months of the summer and in order to meet large projects, it is often necessary to haul gravel longer than the 11 hour days permitted by Willard's ordinance. The restriction of hours of operation on the pits located within the Willard area creates a substantial economic disadvantage to those owners as compared to permits which do not have restricted hours of operation.

In bidding on contracts a supplier has to know he has a firm agreement and that he can get the gravel to the site in a timely manner. Willard City, by restricting hours of operation, effectively prohibited Darrell Nielsen from furnishing gravel on large construction projects.

Conclusion:

The Court finds that the attempt to control excessive

noise, dust, and traffic by setting time limits on operations of gravel pits was too remote from the probability of reaching its objective to be found reasonable. Therefore, that portion of the ordinance limiting hours and days of operation, Section F, is held to be unconstitutional.

Defendant is found not guilty on all three counts.

Dated this December 14, 1992.

A handwritten signature in cursive script, reading "Robert W. Daines", is written over a horizontal line.

Robert W. Daines, Judge

Case No: 916000240 MC

Certificate of Mailing

I certify that on the 16th day of December, 1992,

I sent by first class mail a true and correct copy of the
attached document to the following:

JEFF THORNE
Atty for Defendant
98 NORTH MAIN
BRIGHAM CITY UT 84302

JACK MOLGARD
Atty for Plaintiff
P.O. BOX 461
BRIGHAM CITY UT 84302

Circuit Court Clerk

By: Elizabeth McCarley
Deputy Clerk



Molgard & Hunsaker

Jack H. Molgard
Quinn D. Hunsaker

ATTORNEYS AT LAW

102 SOUTH 100 WEST - P. O. BOX 461 - BRIGHAM CITY, UTAH 84302

OFFICE
801-723-8569

March 18, 1992

RECEIVED

MAR 19 1992

TO: Box Elder County Commission
Box Elder County Planning Commission
Denny Beecher, B. E. County Zoning Administrator
Jon J. Bunderson, Box Elder County Attorney

COUNTY COMMRS

RE: Darrell Nielson Conditional Use Permit/
Division of Air Quality Amendments

Gentlemen:

My client, Willard City, and many individual citizens residing in the Willard City area are very concerned with the Division of Air Quality's amended Approval Order for Crushing Plant dated February 19, 1992, in relation to the Darrell Nielson Conditional Use Permit. There are a number of changes from the original Air Quality Permit which were adopted by reference by the Box Elder County Planning Commission.

Of particular concern is an allowance that forty (40) acres may be opened without, first, rehabilitation. As you will recall, the original permit specifically Item No. 11 had the following limitation: "The total area of unreclaimed disturbed soils shall not exceed four (4) acres at any given time." The Box Elder County Planning Commission granted the original Conditional Use Permit with that limitation intact, and based several conditions on the fact that no more than four acres would be disturbed at any one time such as: the fixing of bond, the possibility of rehabilitation, dust, flooding, and many other factors.

I have discussed the Air Quality amendments with Denny Beecher; and it is my understanding that Mr. Beecher thinks the four-acre limitation is no longer in effect because Air Quality is not requiring it. It is our position that Box Elder County cannot grant the division of Air Quality authority to amend the Conditional Use Permit in any of its terms including Air Quality requirements without positive action by the Box Elder County Planning Commission. The Utah Enabling Act does not allow Box Elder County to grant bodies other than the Planning Commission authority to grant or amend Conditional Use Permits.

Further, it is our position that if the four-acre limitation and other limitations contained in the original Air Quality Permit are to be amended as they apply to the original Conditional Use Permit, that the Box Elder County Planning Commission should hold appropriate hearings and allow all parties to be heard pursuant to past practices. We are concerned that the four-acre limitation has already been violated; and if Box Elder County does not take appropriate actions to insure compliance with the four-acre limitation or move to amend the Conditional Use Permit in the appropriate way, we will consider taking further actions to insure enforcement by Box Elder County of the Conditional Use Permit issued by Box Elder County.

We would appreciate a response to this letter at your earliest convenience.

Sincerely,



Jack H. Molgard
Willard City Attorney

JHM/aw

cc: Willard City
B. E. County Willard City Flood Control District
Jeff R. Thorne
Jody Burnett

Richard Kimber

*24, 25¹ / 31
also available*