

PLANNING COMMISSION MEETING

June 20, 1985

Minutes of the regular meeting of the Box Elder County Planning Commission held Thursday, June 20, 1985, at 7:30 p.m.

Members present were: Richard Kimber, Don Chase, Devon Breitenbeker, Thomas Mower, Kent Newman, Jon Thompson, and Don Petersen.

Ex-officio members were Denton Beecher and Jay Hirschi

Chairman Richard Kimber, conducting, called the meeting to order.

Mr. Kimber asked for a motion to approve the minutes of May 16, 1985. Motion was made by Devon Breitenbeker that the minutes of May be approved. The motion was seconded by Don Chase, with all voting in favor.

CONDITIONAL USE PERMIT BY MCI TELECOMMUNICATIONS

Mr. Leland Pemberton representing MCI Telecommunications Corp. met with the Commission to get approval on his Application For Conditional Use Permit to install a communications tower in the Rosette area. He said the tower would be South of State Highway 30 in a MU 40 zone. Denton Beecher said this zone does allow a tower to be constructed with a Conditional Use Permit. Mr. Pemberton said the tower would be installed on a 60' X 60' plot of ground which they have leased from Mr. Kunzler. Mr. Beecher said everything looks in order and would recommend that it be approved. Don Chase made a motion that the Conditional Use Permit be approved with the inclusion in the permit that all facilities and any county road in the area will be protected which Mr. Beecher feels is needed. Motion was seconded by Jon Thompson and approved.

Mr. Pemberton had a request for the installation of another tower in the Rose Bud ranch area by Emigrant Pass. The tower would be located on BLM property and would be about 80' high. Mr. Pemberton said he did not have time to prepare the necessary paper work, but this tower location has been approved by BLM and would be similar to the one in Rosette. Don Chase said, in keeping with past practices, he feels that all papers and approvals should be submitted in sufficient time for Mr. Beecher to review before coming before the Planning Commission. He said this policy tends to eliminate any problems in the future, and would recommend this be done before the construction of this tower be approved. Mr. Chase said the road right-of-way should be checked along with the other usual items. Following a discussion, it was the conclusion of the Planning Commission that the permit for this tower be tabled until the following Planning Commission meeting, which would give Mr. Pemberton sufficient time to follow through on the required paper work.

ZONING INFORMATION - THATCHER AREA

A citizens group from Thatcher area met with the Commission to discuss the possibility of zoning their area. Calvin Hunsaker, spokesman for the group, said they have been looking at the zoning in the County with the intention of zoning, either in part or all, of the Thatcher-Penrose area. Mr. Hunsaker said they have established a service district which controls the culinary water supply. He said the purpose of meeting with the Commission was to get information on how to proceed in getting their area zoned.

Don Chase stated that both the Planning Commission and County Commissioners have been trying to encourage zoning within the county, because it is a protection for those living in the County, but it takes the initiative of the people to get it done.

Mr. Chase said they would be willing to help in any way and would do what the people want regarding types of zoning. The usual question asked when zoning is being considered, and was asked by one of the group, does zoning increase property taxes? Answer, No, only improvements to the property effects property taxes and not zoning. Following the discussion, and suggestions from the Commission, Mr. Hunsaker said they would get a group together and let Don Chase know when they would be ready to set up a meeting to go over zoning possibilities and procedures, to explain the advantages of zoning, and to answer any questions prior to holding a hearing.

ED HIGLEY - CONDITIONAL APPROVAL FOR SUMMER HILLS SUBDIVISION

In response to the previous Planning Commission meeting, Mr. Higley met with the Commission to get preliminary and final plan approval to develop his Summer Hills Subdivision. He said the Health Department has approved and signed the plat for water and sewer service availability. Mr. Higley said the roads will be checked and they will work with Mr. Beecher to see that the roads will meet County specs or they will tear up what roads are there and build them to the required specs. Mr. Higley said they have done all things requested by Mr. Beecher except the signature from the County Attorney. Mr. Beecher had to leave the meeting earlier and was unable to verify the statement, but prior to his absence, he reported to the Commission that the corrections he made on the sketch plan were not fully completed and there were other items yet to be done. Thomas Mower made a motion that the preliminary and final approval plan be approved subject to Mr. Beecher having everything which he has requested and approved by the Attorney, and not to be approved until all has been furnished. Motion was seconded by Jon Thompson and approved by all present.

GRAVEL PIT EXPANSION BY FIFE ROCK PRODUCTS CO.

In reference to the previous Planning Commission meeting, Mr. Cliff Woodland, representing Fife Co., requested an expansion to their present Conditional Use Permit to include phase #4. In completion of the motion made during that meeting, a letter was received from County Attorney Jon Bunderson which was read to the Commission. (Copy 2). Following a discussion Don Petersen made a motion that as advised by the attorney, the Commission request a new conditional use permit be submitted for approval consideration for phase #4, because this request is not a continuation of the present permit. Motion was seconded by Jon Thompson and approved by all present.

JACK PARSONS GRAVEL PIT

As a result of the complaint presented by Steven Pettingill during the previous Planning Commission meeting regarding the hauling of gravel

from the Parsons gravel pit between Perry and Willard, a letter was received from the County Attorney with his comments and was read to the Commission. (Copy 3). Mr. Breitenbeker stated to the Commission that unless it can be proven that gravel has not been taken out of the pit by Mr. Parsons Co., at least the minimum amounts each year, then the Commission is not able to deny the operation. Motion was made by Jon Thompson that no action be taken by the Commission as advised by the Attorney. Motion was seconded by Thomas Mower and approved.

JONES MINOR SUBDIVISION FINAL APPROVAL

The Jones Minor Subdivision was submitted for final approval. Following a discussion, Don Petersen made a motion that if Mr. Beecher has received all the information requested, final approval be given and the plat be signed following the approval by Denton Beecher. Motion was seconded by Jon Thompson and approved.

LETTER FROM CLYDE WESTLEY ON GRAVEL PITS

A letter was received from Clyde Westley concerning the approval of Conditional Use Permits submitted by Darrell Nielsen and Cliff Woodland which was read to the Commission. (Copy 4). Following which Devon Breitenbeker made a motion that the letter be made a matter of record and included in the minutes. Motion was seconded by Con Chase and approved.

DEED RESTRICTIONS - DARRELL NIELSON AND COMPANY

Don Chase presented a proposed document given to him by Earl Gray as a suggestion to the Planning Commission for restricting the evacuation of gravel by Darrell Nielson and Company from proposed gravel pits. (Copy 5). The proposal was reviewed and made a matter of record.

Meeting adjourned at 9:25 p.m.

APPLICATION FOR CONDITIONAL USE PERMIT

Copy 1
Minutes 6/20/85

Applicant's Name MCI Telecommunications Corp. Application No. 33
 Address 1133 19th St., N.W. Date Received by Building Inspector _____
Washington, D.C. 20036
 Telephone (202) 872-1600
(415) 978-1444 Date of Hearing _____

Application is hereby made to the Planning Commission requesting that
 a microwave repeater facility be permitted as a "conditional use"
 on approximately one acre located at Rosette, Utah
 (Sq. Ft. or Acres) Street Address

in a Multiple Use-40 zone (see attached location map). The site is
 located on a portion of Assessor's Parcel 07-061-0001.

Please complete the following:

I. State in detail what is intended to be done on or with the property.
 Include Site Plan as required in the Conditional Use Chapter of the
 Zoning Ordinance. See attached site drawings for details of the
 proposed use. Essentially, MCI proposes to construct a facility
 consisting of a 100-foot tall guyed tower; a fenced area 60'x60';
 an 11'x18' equipment shelter; an 8'x10' generator shed with propane
 tank; and necessary overhead powerline and access driveway from
 an existing county road.

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

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

MCI is a telecommunications company in business to provide
 low-cost long distance telephone service. MCI is the nation's
 second largest telephone company in competition with AT&T. The
 resulting competition benefits the American consumer with new
 technologies and lower priced alternatives.

(b) The proposed use will not, under the circumstances of the particular
 case, be detrimental to the health, safety or general welfare of
 persons nor injurious to property or improvements in the vicinity.

The Rosette facility would be an additional repeater in an
 already existing microwave route. The extremely low power
 (approx. 5 watts) of the signal being transmitted results in
 no risk to health or safety.

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

The proposed use is consistent with the existing use which is stock grazing. MCI has obtained a lease from the landowner who ranches the area. This is an unmanned facility which will generate infrequent traffic once construction is complete.

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

The Box Elder County Zoning Ordinance provides for utility-type uses. The ordinance provides for exceptions to height limitations for structures such as towers. As long as the space above the height limit is not to be used for providing additional floor space, the use permit provides authorization in this zone.

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

The facility is intended to improve the quality of transmission signals between Salt Lake City, UT and Sacramento, CA which are already being served by MCI.

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

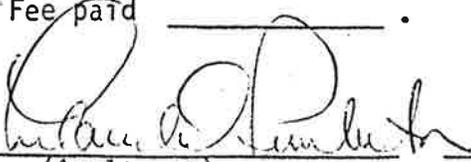
As a major telecommunications company, MCI is attempting to provide an alternative service in a competitive environment. This helps provide a higher quality telephone service at reduced costs to the consumer. MCI also pays all applicable local taxes which provides an additional source of revenue to the county.

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

Max Kunzler, et al.

- VI. Fee paid _____

Signed:



(Applicant) _____ (Address) _____
 Leland D. Pemberton, Manager
 For: MCI Telecommunications Corp.
 West Area Site Acquisition
 201 Spear Street
 P. O. Box 7167
 San Francisco, CA 94120

(415) 978-1444
 (Phone)

Zoning Administrators Action:

Date Approved: 6/20/85

Date Disapproved: _____

Date Referred to Planning Commission for Action _____

Planning Commission Action:

Date Approved: 6/20/85

Date Disapproved: _____

Governing Body Action if Appealed From Decision of Planning Commission:

Date Approved: _____

Date Disapproved: _____

Public Hearing Date if Deemed Necessary NA

Conditions of Approval , or Reasons for Disapproval

- List: 1. TO PROTECT ANY FACILITIES IN THE AREA
2. OBTAIN FCC & FAA APPROVAL.
3. PROTECTION OF COUNTY ROAD FROM EROSION.

Signature: Richard D. [Signature]
Chairman, Planning Commission or, Zoning Administrator

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

Appealed to the Planning Commission from Decision or Zoning Administrator _____

Appealed to the Governing Body from Decision of Planning Commission _____



CIRCA 1890's

Box Elder County,

COUNTY COMMISSIONERS

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

STATE OF UTAH

BRIGHAM CITY, UTAH 84302
OFFICERS

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



CIRCA 1980's

June 13, 1985

*Copy 2
Minutes 6/20/85*

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

RE: Fife Gravel Pit

Gentlemen:

The Planning Commission requested a legal opinion as to whether or not the request for phase 4 of the Fife Gravel Pit should be construed as a new application (requiring a new conditional use permit) or merely a continuation or change of the original conditional use permit issued in 1979.

After examining the information provided me by Denton Beecher, it appears that this is not a legal issue but simply a factual issue.

A conditional use permit was issued in 1978, covering the gravel pit located in the west half of the relevant section, over an area of "approximately 40 acres."

The application was submitted with a map, showing phase 1, phase 2, and phase 3, all of which have now been completed.

The special conditions of approval indicated on the permit do not refer to bridging the stream or channeling the stream in any way.

The gravel pit owner now desires to engage in a phase 4, bridging and channeling the stream, crossing a natural geographical barrier or feature (the stream). The owner, as I understand it, desires to do so under his existing conditional use permit rather than applying for a new permit.

The language of our ordinance simply does not cover this point except to the extent that the Planning Commission is given the authority to, among other things, describe and itemize the conditions imposed on the use. Thus, I believe the Planning Commission does indeed have the authority to restrict the geographical area of the nonconforming use. The real question is whether or not the initial permit did or was intended to restrict the geographical area to phases 1, 2, and 3.

As I stated above, the question of whether or not the geographical area under the permit was restricted to phases 1, 2, and 3 is simply a question of fact, and therefore is not a subject upon which I can give a definitive or firm legal opinion. There is not really a statutory interpretation involved or a point of law to be dissected or defined.

The facts which would indicate that the conditional use permit issued in 1978 was not restricted to phases 1, 2, and 3 would be as follows:

1. The permit itself, without examining the accompanying map, simply allows gravel excavation upon the entire 40 acre parcel owned by Fife.

- ~~2. The permit itself does not, under the conditions of approval, refer to a "map" or restrict itself specifically to phases 1, 2, and 3.~~

The facts which would indicate that the permit is restricted to phases 1, 2, and 3 are as follows:

1. The conditions of approval in the permit do not refer to channeling or bridging the stream, which would seem to be important issues had it been intended that the approved gravel pit would cross the stream.

2. Item #9 of the conditions of approval refers to "enclosed plan shows how items are to be facilitated". Since there is nothing in the file other than the original map showing phases 1, 2, and 3, it would appear that this reference is to that particular map.

3. Whether or not there is an actual reference in the permit itself to the map, I think that it is obvious that the submitted map was the basis for the discussion, application, and approval of the original permit.

4. The map itself, which was submitted with the application and which should be interpreted as part of the application, shows only phases 1, 2, and 3, and shows an access road only to areas 1, 2, and 3.

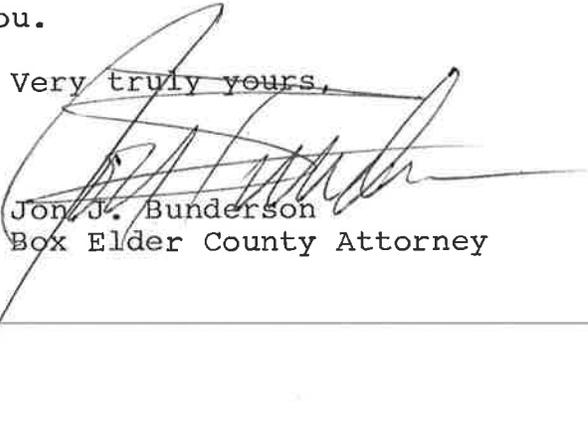
Another point I would suggest is that you are interpreting your own permit and your own previous decision, and you do not sit as a court, judge, or jury would. In other words, I believe that to some extent you have the authority to define the intent of the Planning Commission in 1978.

CONCLUSION

This is not a legal issue, but a factual decision. In making that decision, you should consider the facts recited above. The map submitted in 1978 is of critical significance, because it was submitted in support of the application and because it was created by the person applying, and thus could be construed as an expression of their intent.

I hope the above is helpful to you.

Very truly yours,



Jon J. Bunderson
Box Elder County Attorney

JJB:jh



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Box Elder County

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JAMES J. WHITE

STATE OF UTAH

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CIRCA 1980's

June 13, 1985

*Copy 3
Minutes 6/20/85*

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

RE: Box Elder County Planning Commission
Parsons Gravel Pit

Gentlemen:

You have requested my opinion, through Denton Beecher, as to whether or not the Parsons Gravel Pit north and west of the KOA Campground is operating in violation of our zoning ordinance.

As I understand the facts, our zoning ordinance as applicable to that area first went into effect in December of 1973. At that time, the property in question was a gravel pit and had been for some time.

During a period of time between December, 1973, and November, 1979, the property was owned by an individual named Ward.

In November of 1979, the Parson Asphalt Company purchased the property in conjunction with the construction of the freeway, and until such time as the freeway was completed actively operated the property as a gravel pit.

According to Jack Parson, the owner of Parson Asphalt; he has made sure that a minimal amount of gravel removal has occurred every year since the completion of the freeway work.

I am informed that no information is available at this time as to whether or not the property was operated as a gravel pit, either minimally or actively, between the years 1973 and 1979.

If the County were to take any action to enforce its ordinance, that action would be in the form of a lawsuit, seeking an injunction against the further operation of the property or other penalties. In any event, Box Elder County would be cast as the plaintiff in any such suit, and as plaintiff would have the burden of proving either one or both of the following:

1. That during the period of time from 1973 to the present, the use of the property as a gravel pit was abandoned for a period of time of at least one year.

2. In the alternative, that the use of the property changed sometime during that same time frame for a period of time in excess of one year.

Obviously, the use of the property has never changed during the relevant time span.

As to whether or not the use of the property as a gravel pit was abandoned for a period of time in excess of one year, note that the term "abandonment" not only requires the actual lack of use of the property as a gravel pit but also may require an intent to quit using the property as a gravel pit.

The only facts of which I am aware at this time relating to the time from 1979 to the present would establish that the property has not been abandoned for use as a gravel pit.

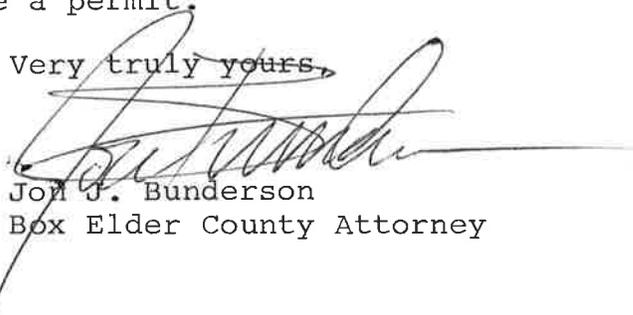
At this time, I am not informed of any facts which would either prove or disprove abandonment during the period of time from 1973 to 1979. Since the County would have the burden of establishing abandonment during that period of time, without any facts tending to show an abandonment, the County would not be able to meet its burden of proof.

CONCLUSION

Based upon the facts as reported to me, the County is not in a position to establish abandonment, and thus is not in a position to require a permit for the future operation of the gravel pit.

If investigation were to clearly establish facts which would support an abandonment for a period of time in excess of one year at sometime since 1973, at that time it would be feasible to explore the possibility of requiring a permit, but until such facts become established and provable, my opinion is that you are not in a position to require a permit.

Very truly yours,


Jon J. Bunderson
Box Elder County Attorney

3p4
Minutes 6/20/85

19 June 1985

I would like this letter read in the Planning Commission Meeting 20 June 1985, your support is very much appreciated.

Commission Members,

In reference to May 16, Box Elder County Planning Commission Meeting, Mr. Darrell Nielsen - Application for Conditional Use Permit and Cliff Woodland - Application for Conditional Use Permit.

I was in attendance at the May 16, 1985 Planning Commission Meeting, with many other Willard residence. At this meeting, it was suggested by Mr. Don Chase that the Commission make contact with the people in the area of Willard to get their feelings of the gravel pit matter (before any decision is made on issuing the requested Conditional Use Permits). I don't know what contacts have been made by any Commission members, however the attendance at the May 16, Meeting should be an obvious indication that there is a major concern among Willard residence against these gravel pits.

One item that was left out of the May 16, 1985 meeting minutes which should be documented is the 17 page report filed by Willard Citizens at the County Court House in 1981 (Brought to the Commissions attention by Mr. Roger Boisjoly former Willard Mayor). This report stated opposition to the gravel pit, and included a petition with some 250 names which was gathered in only two days. It is a very detailed report and if there is any question of the feelings of the people in Willard at this time I suggest it be reviewed by each Commission Member.

I would also like to comment on one statement that was made by one of the Commission Members at the Meeting. It was questioned if Willard Residence had elected officials to represent them (referencing to the fact that even if the Box Elder County Planning Commission did approve the Conditional use permit, it was under the condition of Willard City Council concurrence). I have lived in Willard City for only two years, however I have lived in Box Elder County all my life, I would hope that the Box Elder County Planning Commission would be representing my interests to the best of their abilities regardless of any other representation I may or may not have.

I appreciate the support that Mr. Don Chase has given the Willard City residence, and commend the Box Elder Planning Commission as a whole because of the fairness in which I feel prevailed in how they handled the matter (being open minded enough to collect the facts) before making a final decision.

Sincerely,

Clyde Westley

Clyde Westley,
Life long Box Elder County Resident

RECEIVED BY

JUN 11 1985

BOX ELDER COUNTY

*Copy 5
Minutes 6/20/85*

DEED RESTRICTIONS
DARRELL NEILSON AND COMPANY

STATE OF UTAH)
)
COUNTY OF BOX ELDER)

KNOW ALL MEN BY THESE PRESENTS that DARRELL NEILSON AND COMPANY, owner of _____ acres of land lying within the limits of the City of Willard ^{and} Box Elder County, Utah, and more particularly described in a certain plat, to wit: Section 25, ^{and 26} T.8N., R2W SLM, such plat being recorded in vol. _____ page _____ of the Plat records of Box Elder County, Utah, reference to such plat being hereby made for a metes and bounds description of such land and for all other purposes, for and in consideration of the mutual covenants existing or hereafter to exist by and between itself and the grantee or grantees of any site or lot lying within the boundaries of said property, does hereby adopt and place the following restrictions upon any and all sites and lots within such property.

1. Excavation. There shall be no excavation of gravel, sand, or rock within 50 feet of adjoining property or within 50 feet of existing or future water or utility pipe lines.
2. Maintenance of Property. All holding tanks, reservoir, or dirt basins shall be maintained and in working condition at all times.

3. Right of Way. Established rights-of-way shall be preserved and kept open at all times unless adjoining property owners or legal users of said rights-of-way provide written permission otherwise.

4. Destruction of Environment. The owner shall cease and desist from any activity which measurably causes damage or destruction to trees, vegetation or other natural resources of adjoining or nearby property as a result of dust or any other environmental disturbance resulting from owners activities on the property.

5. Partial invalidity. The invalidation of any one of these restrictions herein set forth or the failure to enforce any of such restrictions at the time of violation shall in no event affect any of the other restrictions nor be deemed a waiver of the right to enforce the same thereafter.

6. Term. Each condition and covenant herein contained shall terminate and be of no further effect as of exactly 25 years from the date this instrument is executed. However, at any time prior to the expiration date, any adjoining property owner may by written declaration, signed and recorded by them, and duly recorded in the Deed of Records of Box Elder County, Utah extend such restriction, conditions, and covenants for a period of 10 additional years, and this right to extend for additional 10 year periods by the then owners shall exist so long as any adjoining owner deems it necessary or desirable.

7. Beneficiaries. These restrictions and covenants are made for the benefit of any and all persons who may now own, or who may hereafter own adjoining property, without requiring proof of damage or injury, or other property owners within the boundaries of Willard City ^{or Box Elder County} who can prove actual damage to themselves or their property. Such persons are specifically given the right to enforce these restrictions and covenants by injunction or other lawful procedure, and to recover damages resulting from any violation thereof.

Executed at Willard, Utah on the _____ day of _____ 1985.

DARRELL NEILSON & CO.

attest _____

by _____
President

Subscribed and sworn to before me by Darrell Neilson, President of Darrell Neilson & Co. on this _____ day of _____ 1985.

My commission expires:

Notary Public
Residing At:



CIRCA 1890's

Box Elder County,

STATE OF UTAH

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

BRIGHAM CITY, UTAH 84302
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VON R. CURTIS, COUNTY ASSESSOR
DENTON BEECHER, COUNTY SURVEYOR
DORIS L. OLSEN, COUNTY AUDITOR



CIRCA 1980's

July 30, 1985

Box Elder County Commission
County Courthouse
Brigham City, Utah 84302

Dear Commissioners,

Enclosed please find a copy of the July 18, 1985 Planning Commission minutes.

I hereby certify that these are the official minutes of said meeting and that said minutes do hereby express the recommendations of the Planning Commission which is to approve both requests for a zone change. These requests are in the Harper area and the South Willard area.

Respectfully submitted by Denton H. Beecher



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Box Elder County,

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STATE OF UTAH

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VON R. CURTIS, COUNTY ASSESSOR
DENTON BEECHER, COUNTY SURVEYOR
DORIS L. OLSEN, COUNTY AUDITOR



CIRCA 1980's

July 26, 1985

TO ALL P.C. MEMBERS

Dear

Enclosed is a copy of the July 18, 1985 minutes of the Planning Commission wherein we heard the referral of the County Commission hearing of June 26, 1985 for two zoning change requests.

Would you please read these minutes and if you have any corrections, please let us know by 9:00 a.m. on Tuesday, July 30 as at the County Commission meeting on this day, we are to certify our recommendations to the commission.

If we do not hear from you by this time, we will submit to the commission these minutes with a letter of certification.

Thanks.

Respectfully,


Denton Beecher

Encl.

DHB:j