

MINUTES
Box Elder County Planning Commission Meeting
July 1, 1999 at 7 p.m.

ATTENDANCE:

Jon Thompson	Vice-Chair
Royal Norman	Commissioner, Ex-officio member
David Tea	Member
Stan Reese	Member
Theron Eberhard	Member

The Board of Planning Commissioners of Box Elder County met in special session in the Commission Chamber of Box Elder County Courthouse, 01 South Main in Brigham City, Utah, to consider a request to rezone about 40 acres in the Beaver Dam area from MU-40 to a Planned District and consider approval of an associated subdivision. Jon Thompson Vice-Chair called the meeting to order at 7:08 p.m. with a quorum present.

Jim Marwedel read to those in attendance the attached letters from himself(attachment #1) and County Attorney Jon Bunderson(attachment #2) regarding the issues revolving around the proposed zone change and preliminary plan for High Country Estates.

In the letter from Attorney Jon Bunderson he concurred with Jim Marwedel that a public hearing be held in regards to issue #3 of Jim Marwedel's letter regarding recommendations of procedures that should be followed prior to granting approval of the 1999 proposal.

Jim also presented a letter (attachment #3)dated June 29, 1999 to Mr. Leonard Hawks of the Beaver Dam Water Company from Mr. Mark Jensen, Environmental Scientist, geologist, who works with the Division of Drinking Water. The letter is in reference to the preliminary evaluation report for Beaver Dam Water Company, Sleepy Hollow, lower Beaver Dam and Twitchell Springs.

Letters from the law offices of Snell & Wilmer, representing Alton Veibell (attachment #4)and Wood Crapo LLC, representing RHN Corporation(attachment #5) were also presented to the committee. These letters are also in reference to the J. Alton Veibell proposed development - High Country Estates.

Much discussion surrounded the impact of septic systems of the proposed development on nearby water sources.

Mr. Norman asked if Jim's recommendation is to deny the request for a zone change and the preliminary design plan because of the potential impacts. Mr. Marwedel said yes, but he feels there is a larger issue. He discussed that the county has never approved a major subdivision

that did not have paved access to a highway. This development would be over a mile from pavement.

Finally, Mr. Marwedel said that the Planning Commission and County Commission ought to consider a way to compensate and equitably distribute development rights to those who have their property in the Source Protection Zone 2 of an approved Drinking Water Source Protection Plan.

Mr. Tea made a motion to submit the letters presented above to the July 1, 1999 minutes. Mr. Eberhard seconded the motion passed unanimously.

Mr. King was invited to the table. He explained that the Beaver Dam Source Protection Plan has not been approved nor submitted, just the delineation for the Preliminary Evaluation Report. He also explained that the delineation shows that there is only one zone boundary line that shows the area in zones 2, 3, 4. Mr. King pointed out that the County's ordinance defines what the zones mean, and it is specific that they refer to the basis in ground water time of travel. The Beaver Dam Zone delineation is not based in time of travel, but something else.

Mr. King brought up that the property is still under ordinance 121, not 216, because Section 2 of 216 itself so provides.

He said that there are other alternatives for the Twitchell Springs:

1. They can put in a well.
2. They can each have individual wells.

Mr. Finley proposed that Mr. Veibell can also pump the septic to Cache County, out of the watershed. He proposed that the Planning Commission give tentative approval for the plan to go ahead and if the state does approve the Twitchell Springs Source Protection plan, that Mr. Veibell will put in a system that will pump the septic to outside the zone 2

But Mr. Norman asked that could we in good conscience, even if the water source is considered not to be allowed and so the state does not approve the plan, allow 27 more septic systems when there is already a concern that only 3 contaminate the system.

The attorney then said, OK, then will the Planning Commission allow Mr. Veibell to proceed if he pumps all the septic to Cache County outside zone 2 regardless?

Mr. Finley then asked about the road and spot zoning issue. The attorney brought up Utah State Code Section 75-5-104 that says that the private access road will become a public after the road has been used by the public for a period of 10 years.

Mr. Tea said that private access is not the only issue but that also the issue of 27 homes using

a dirt road. Other counties apparently require pavement to another paved road. Mr. Veibell said that he will contact Logan about them paying for their share of paving a route to Highway 30.

Mr. Royal asked about spot zoning. Mr. King said that he asks that the commissioners look at other areas around Box Elder County and think about whether this would be any more spot zoning compared to what already is there.

They identified issues that ought to be resolved to approve the Preliminary Plan and zone change:

1. The septic will be brought outside of zone 2 for disposal
2. There will be paved access all the way to Highway 30
3. Change the statute that requires that phases be in minimum blocks of 25 lots. This is the county's responsibility.
4. Resolve that this is not spot zoning.
5. The SSD be granted by the County Commission.

Other issues that Mr. Marwedel brought up:

1. The "Horse Trail" ought not to go west of the RHN lot, to avoid potential a nuisance or trespass issues.

After thorough discussion, spokespersons for Beaver Dam Water Users were invited to make a presentation. They submitted the attached written comments (attachment #5). They mentioned that the delineation will not change prior to final approval of the Source Protection Plan. Mrs. Nelson stated that approval of Veibell's request would be premature at this time. Mrs. Nelson reviewed several elements of the delineation map. She also pointed out that the subdivision appears to on be located on a fault, according to recent geology studies. She said that any waste water system be engineered so that source protection would not be threatened by an earthquake. Mrs. Howard said that the previous zoning request ought to be resolved before giving any decision on the Veibell proposal.

Summary of other issues:

1. Wastewater system be engineered to withstand earthquake or to protect water sources if there is an earthquake
2. Decide on other zoning request
3. Cache County has requested that the private access road be secured in private ownership and perpetually maintained so that it will not fall under Cache County's responsibility for maintainance
4. How many homes will it take in a fee-based maintainance plan to make it work. The first phase should be large enough and there should be bonds or escrow to ensure the development will not go defunct.

5. There is a possibility that the subdivision may not be viable in the market and the County could be stuck with it (which would violate 3.4.3.4.3)
6. The Commission has turned down another proposal based on incompatibility and this one could be too.
7. There are three other ordinances even without the Source Protection Plan that the Planning Commission should consider the health, safety and welfare of the citizens, one of which is 3.4.3.4.4

Jon Thompson outlined 3 options that they have:

1. Recommend Approval based on conditions
2. Deny
3. Table until more information

After further discussion, Stan Reese moved to approve the Preliminary Design Plan, and recommend approval of the zone change to a P district as outlined in the currently submitted plan based on if these conditions or alterations are met:

1. That the septic waste will be brought outside of zone 2 of the Water Source Protection delineation for the Beaver Dam and Twitchell Springs for disposal and be disposed in a manner approved by the Bear River Health Department,
2. That there will be paved access all the way to Highway 30,
3. That the statute that requires that phases be in minimum blocks of 25 lots (county responsibility) will be changed following a public hearing and other procedures as outlined by law,
4. Resolve that this is not spot zoning by getting zoning approval for the P district following a public hearing and other procedures as outlined by law,
5. That the Special Service District will be granted by the County Commission following a public hearing and other procedures as outlined by law,
6. That the "Horse/Pedestrian Trail" not traverse past the lot owned by RHN, Inc.
7. That they meet all other county specifications for a subdivision as found in the Box Elder County Land Use Management and Development Code.

The motion was approved unanimously.

David Tea moved to adjourn. The meeting adjourned at 10:10 p.m.

Passed and adopted in regular session this 19th day of August, 1999.


Richard D. Kimber

Box Elder County Planning Commission Chair

ATTACHMENT
#1

COUNTY COMMISSIONERS
R. Lee Allen
Royal K. Norman
Suzanne Rees



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

July 1, 1999

Box Elder County Planning Commission
01 South Main Street
Brigham City, UT 84302

Re: High Country Estates Preliminary Plan and Request for Zone Change to P District

Dear Commission,

After seeking opinions of various parties, including County Attorney, Jon Bunderson, and Deputy County Attorney, Kevin McGaha, and professional planners from other jurisdictions, and after as much analysis as time would allow, I offer the following to the Planning Commission for guidance and recommendation concerning the High Country Estates proposal:

1. The Current Proposal Should Be Considered On Its Own Merits

It is important to realize that the current proposal be considered upon the current facts. Any decision on the current proposal must be rested upon the current facts and not upon what may have happened before in regards to any earlier proposal. There has been some confusion that the current proposal must be decided upon as though the applicant has some vested rights or reliance upon earlier decisions. As County Attorney Jon Bunderson has stated, there are two separate items for consideration or debate. The only item the Planning Commission currently has to consider is the current proposal that was submitted in concept form in January, 1999 and resubmitted for Preliminary Plan approval and zone change in June, 1999. The other item, which is separate, would be an argument that Mr. Veibell still has some lingering rights from an earlier proposal that received concept and preliminary plan approval in 1996. While this argument has been raised by Mr. Veibell's attorney, it should not, and in fact cannot, be used as a reason to grant the current request. The current request must fulfill the letter of the law and be decided upon according to the degree to which it satisfies the conditions outlined in the Box Elder County Land Use Management and Development Act (the Code). Some of the laws in that act are specific and objective, and strict adherence must be met. Others are more subjective in nature and the Planning Commission and County Commission (as final decision-maker) have some discretion.

2. The Loss Of Any Vesting of Rights

While the argument of vesting of rights should not be considered in the present matter, I will offer a brief explanation of the facts and conditions to the best of my knowledge in regards to the vesting of any rights from the 1996 proposal. In early 1996, Mr. Veibell received concept approval for a similar subdivision plan which was also called High Country Estates. In July of 1996 he was granted preliminary approval by the Planning Commission for the plan. Mr. Veibell had one year to submit a Final Plan before expiration of the Preliminary Plan as outlined in Section 3.6.11 of the Code. Even after reminder letters, Mr. Veibell did not submit a Final Plan and thus his plan approvals lapsed. He would thus be required to start over with the process. As Mr. Veibell never received final approval, and his preliminary approvals lapsed, he did not secure any rights to subdivide and develop his land.

Granted, the issue is clouded by the fact that Mr. Veibell had sought a "P" zoning district, which is intrinsically tied to the Concept and Preliminary Plan. The matter is further complicated by the fact that many procedural steps were not completed and while Mr. Veibell was told he had approval of a P district, no such ordinance was passed to adopt a P district because all the procedures had not been followed. After consultation with staff and others who were involved, it appears that an ordinance to adopt the zoning was intended to be adopted once a Final Plan was approved. In any case, the motion to approve the P district in February, 1996 could not fully establish a new P zoning district as the standards that are required to regulate such a district as required by Section 15.2.4 of the Code are to be in an approved Preliminary Plan, and the Preliminary Plan had not even been submitted in February, 1996, much less approved. In other words, a P district that would be legal and binding had not been fleshed out at the time the County Commission voted to approve the concept in February, 1996. Thus, no ordinance was adopted at that time. [It may be beneficial to point out here that even if an ordinance had been adopted, Mr. Veibell still would have lost his right to subdivide and develop because his plan approvals expired before a Final Plan was submitted. Furthermore, the Planning Commission and County Commission could have then proceeded to revoke the P district according to provisions in 15.6.1, 15.6.2 or 15.6.3 of the Code without fear of taking away any vested rights because zoning does not vest any rights (See Smith Investment Company vs. Sandy City). Such actions to revoke were not taken because there was never a P district formally created that could be revoked.]

In summary, Mr. Veibell lost any vesting of rights upon the expiration of his Preliminary Plan in July 1997. It was almost a year later that the County finally acted to adopt other zoning proposals that were submitted and considered between 1995 and 1997.

3. Recommendations of Procedures that Should be Followed Prior to Granting Approval of Current Proposal

As stated above, the standards that regulate uses in a P district shall be contained in an approved Preliminary Design Plan. Thus, if the zone change is to be granted, I recommend that it only be done in conjunction with approval of the Preliminary Design Plan to follow the law. I would also recommend that, as the Preliminary Design Plan calls for a Special Service District to maintain or operate the water, roads and other elements of the Plan, and is thus an essential part of the plan, that approval of the Preliminary Design Plan and zone change be contingent upon or in conjunction with approval of the Special Service District (SSD) by the County Commission. Please note here that the Planning Commission has no authority in relation to the establishment of a Special Service District. The Planning Commission, of course, has the right and charge to make recommendations of any sort, but they have no authority to give any approvals for a Special Service District, even preliminary. Utah State Code makes it clear that the County Commission is the body that would establish a SSD, after a public hearing and other prescribed procedures.

As the SSD and the P district are intrinsically tied and rely on one another, and as they both require the County Commission to hold a public hearing prior to the establishment of either, I recommend that if the Planning Commission wishes to further consider approval of High Country Estates, they recommend to the County Commission that they hold a public hearing on both matters simultaneously. I further recommend that if the Planning Commission chooses to approve the Preliminary Plan, they do it upon the condition that the County Commission approves both the zone change and the SSD, as all of these are intrinsically related. (This would also mean that the Planning Commission would have to recommend approval of the zone change prior to sending it to the County Commission.)

4. Source Protection Plan for Beaver Dam Water Company (including Twitchell Springs)

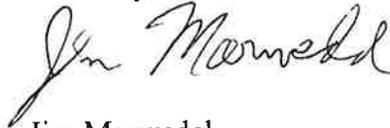
Apparently, the delineation for the Beaver Dam Water Source Protection is complete and approved by the State. It shows that zone 2, or the zone in which the County would forbid any septic drain fields, follows the ridge line straddling Box Elder and Cache Counties on the south half of Mr. Veibell's property (see attached map). As the zone 2 appears to cover most all of Veibell's property, enforcement of County Ordinance 216 would thus preclude the location or use of septic drain fields on all lots except perhaps lots 18 and 19 on the current plan (as lots 18 and 19 might include some area on the other side of the ridge line). With this factor to consider, Mr. Veibell would have to propose an alternate method of sewage disposal.

One word might be said about the validity of the Beaver Dam Source Protection delineation. Mr. Veibell has apparently challenged its validity. The County relies upon the State to verify these plans as the Division of Drinking Water has the expertise to do so. The County does not pretend to have any expertise in the matter, and disputes over

the validity of such plans must be raised with the State Division of Drinking Water. The County's Ordinance 216 clearly states that the County will enforce the plans that the State approves. Unless the ordinance is changed, or the State revokes its acceptance of a plan, the County will not permit septic drain fields in Zone 2.

Finally, I wish to add one more comment regarding the possibility of approving High Country Estates before Beaver Dam's Water Source Protection Plan is completely approved by the State and then submitted to the County (approval of the delineation does not constitute approval of the entire plan). Some may argue that since Mr. Veibell submitted his applications prior to approval of the plan, that he should be given consideration as if it did not exist. But the whole purpose for public hearings, staff review, and other fact finding that occurs between submission of a proposal and a decision upon that proposal is to find a basis to either deny or approve an item under consideration. Factors discovered through such fact finding, such as threats to public water systems and inadequacy of roads inside or outside of a subdivision have been upheld in courts to be valid reasons for denials of subdivisions (see Garipay vs. Town of Hanover). It would be foolish to ignore such factors when they are brought to light, and could in fact result in adverse consequences and costly remediation.

Sincerely,



Jim Marwedel
Box Elder County Planner

JM/cc

Attachment

cc: Jon Bunderson
Kevin McGaha
Larry Jenkins
Bradley Cahoon

ATTACHMENT

#2

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



OFFICERS
CARLA, 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

July 1, 1999

Box Elder County Planning Commission
01 South Main Street
Brigham City UT 84302

Re: High Country Estates Preliminary Plan
and Request for Zone Change to P District

Dear Commission Members:

As an attachment to Jim Marwedel's letter, I wish to emphasize the separate nature of two applications, one dated 1996, the other dated 1999.

The two are similar, but not identical.

The two should be considered separately, and I'm informed that your agenda for the July 1 meeting specifies consideration of the 1999 proposal only. Accordingly, the discussion tonight should deal only with the 1999 Application.

If Mr. Veibell at some point desires consideration of his 1996 proposal, he can request that item be placed on the agenda for a future meeting.

I concur in Mr. Marwedel's position that a public hearing be held, as noted on page 3 of his letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jon J. Bunderson", is written over a horizontal line.

Jon J. Bunderson
Box Elder County Attorney

JJB:vll1

ATTACHMENT
#3



DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF DRINKING WATER

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

Kevin W. Brown, P.E.
Division Director

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P.O. Box 144830
Salt Lake City, Utah 84114-4830
(801) 536-4200 Voice
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www.deq.state.ut.us

June 29, 1999

Mr. Leonard Hawkes
Beaver Dam Water Company
15750 N. Beaver Dam Rd.
Beaver Dam, Utah 84306

Dear Mr. Hawkes:

Subject: Preliminary Evaluation Report for Beaver Dam Water Co. (system no. 02002)
Sleepy Hollow (01), Lower Beaver Dam (02), and Twitchell (03) Springs

Thank you for submitting the Delineation Report section of your Preliminary Evaluation Report for Sleepy Hollow, Lower Beaver Dam, and Twitchell Springs. I have reviewed this Delineation Report according to requirements of the Utah Drinking Water Source Protection Rule (R309-113, Utah Administrative Code), and **concur** with the Delineation Report.

This concurrence is only for the Delineation Report section of your Preliminary Evaluation Report. Other sections that must be developed and submitted before we can concur with the Preliminary Evaluation Report for these spring sources are explained in the *Standard Report Format for New Wells and Springs*, a copy of which is enclosed, and include:

- 3.0 Inventory of potential contamination sources,
- 4.0 Land ownership map and list, and
- 5.0 Land use agreements, letters of intent, or zoning ordinances.

One issue with these springs is the presence of septic tanks and drain field systems within zones one and two. In unprotected aquifers such as this, a public water supplier shall not locate a new groundwater source of drinking water where an uncontrolled potential contamination source or an uncontrolled pollution source exists within zone one, or where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water. Septic tanks and drain fields are pollution sources as defined in R309-113-6(1)(t). **We cannot approve these springs as public water sources with uncontrolled pollution sources in zones one or two.** All information required for new spring sources in R309-204-7(4) through (6) must also be submitted and approved. An outline of these requirements is enclosed.

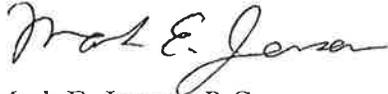
Mr. Leonard Hawkes

June 29, 1999

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If you have any further questions concerning this delineation report or further steps in your Drinking Water Source Protection program, please call me at (801) 536-4199.

Sincerely,

A handwritten signature in cursive script that reads "Mark E. Jensen".

Mark E. Jensen, P.G.

Environmental Scientist / Geologist

Special Services Section

cc: Delmas W. Johnson, Hansen, Allen & Luce, Inc., 6771 South 900 East, Midvale, Utah 84047
Joel B. Hoyt, Bear River District Health Department

enclosures

ATTACHMENT
#4

For Jim Marwadel
File in Veibell Zoning

Bunderson

Snell & Wilmer

L.L.P.
LAW OFFICES

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(801) 237-1900
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Bradley R. Cahoon (801) 237-1948
Internet: bcahoon@swlaw.com

March 26, 1999

HAND DELIVERED

Lee Allen
Box Elder County Commission
13225 North 4400 West
Garland, UT 84312

Royal Norman
Box Elder County Commission
7006 West 2400 North
Corinne, UT 84307

Susanne Rees
Box Elder County Commission
1790 North Highway 69
Brigham City, UT 84302

Deanne Halling
Box Elder Planning Commission
140 South Meadow Road
Mantua, UT 84324

Richard Kimber
Box Elder Planning Commission
803 Edgehill Drive
Brigham City, UT 84302

Stan Reese
Box Elder Planning Commission
6055 West 13600 North
Garland, UT 84312

David Tea
Box Elder Planning Commission
2870 North Highway 69
Brigham City, UT 84302

Jon Thompson
Box Elder Planning Commission
11790 Highway 69
Deweyville, UT 84309

Re: High Country Estates -- Alton Veibell

Dear Commissioners:

We are writing on behalf of our client, Alton Veibell, to discuss with you certain issues pertaining to Mr. Veibell's High Country Estates subdivision project. We have reviewed documents maintained in your planning and zoning files concerning High Country Estates and have met with Jon Bunderson, Denton Beecher, and Jim Marwedel to review the history of the planning and zoning for High Country Estates.

Based on the foregoing review and discussions, the prudent way to resolve the disputes that have arisen over the planning and zoning of High Country Estates is for you to complete

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the rezoning process for this project. As you probably know, the Planning Commission recently recommended approval for the revised Concept Plan for High Country Estates that is the precursor for a rezoning. The next step in the process is for Mr. Veibell to submit a rezone application, which we understand will be filed shortly. We request that you take prompt action on the rezone application and approve the same as soon as practicable.

Your staff and/or some of the few opponents of Mr. Veibell have misinformed you concerning several matters affecting High Country Estates: (i) Mr. Veibell did not illegally subdivide Lot 4 of his subdivision owned now by RHN Corporation and formerly owned by Greg Collings, (ii) the Planned District zone was validly created for High Country Estates, and the County Commission should have issued an ordinance for that zone, and (iii) the Planning Commission illegally vacated the Planned District Zone in violation of Mr. Veibell's civil rights. We briefly address these items to simply set the record straight and, more important, illuminate why you should approve Mr. Veibell's rezone application and his other development requests.

Mr. Beecher correctly informed us that Mr. Veibell's sale of Lot 4 did not violate the subdivision statute in effect at that time, Utah Code Ann. 17-27-27, which was subsequently repealed by the current statute. Section 17-27-27 regulated only the division of a tract into three or more lots. Mr. Beecher also confirmed that the illegal act that occurred on Lot 4 took place after Mr. Veibell had sold the same. According to Mr. Beecher, the illegal act was converting a barn on Lot 4 into a home without first obtaining a building permit. Mr. Veibell had nothing to do with this conduct. We understand that your planning staff and some of the few opponents of Mr. Veibell may be asserting that Mr. Veibell illegally subdivided Lot 4. As you can see, this is incorrect.

We also understand that your staff and some of the few opponents of Mr. Veibell have incorrectly asserted that the Planned District zone was never created because Greg Collings' signature was not notarized on the Consent and Agreement for the Planned District zoning of High Country Estates. Mr. Collings' signature did not need to be notarized for the County Commission to establish an ordinance creating the Planned District.

As a prerequisite for the County to adopt a Planned District ordinance, Section 15.2.2 of your Land Use Management and Development Code ("Code") simply required each landowner within the District to sign a written consent agreeing to two things: (i) that the owner will be bound by the conditions and regulations proposed and which will be effective within the District, and (ii) to record such written agreement with Box Elder County Recorder. Mr. Collings signed the written consent agreeing to both of these obligations. Nothing in Section 15.2.2 required the actual recording of the written consent as a prerequisite for the County to establish the Planned District ordinance, as has been misrepresented to you.

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The Planning Commission illegally vacated the Planned District zoning for High Country Estates. Without prior notice to Mr. Veibell and without conducting a hearing and allowing Mr. Veibell an opportunity to present evidence of his development, the Planning Commission vacated the Planned District zoning. This was an illegal violation that deprived Mr. Veibell of his rights to due process and may ultimately amount to an unconstitutional taking of his property.

The Planning Commission vacated the Planned District by misapplying Section 15.6.1 of your Code, which provides in pertinent part, "If no **development** has occurred . . . within 2 years after the district is created, the Planning Commission shall review the action and determine whether or not the continuation of a given P District is in the public interest." The term "development" is defined in Section 1.43.4.3 of your Code to mean, in relevant party, "The conversion or alteration of use or physical characteristics of land."

In June 1996, the Planning Commission approved Mr. Veibell's Preliminary Plat and stated, "Work on roads and public utilities can now begin" on High Country Estates. In direct reliance on this approval, Mr. Veibell proceeded to invest and expend several thousand dollars to construct roads for his subdivision. The work he completed can be visibly observed on the Planned District lands. These valuable improvements converted and altered the use and the physical characteristics of Mr. Veibell's lands. More important, the substantial investments in reliance on your approvals vested the Planned District zoning in High Country Estates pursuant to the doctrine of zoning estoppel which long ago was clearly adopted as the law in Utah.

The Planning Commission had no basis for vacating the Planned District zoning under Section 15.6.1. Further, the manner in which they vacated the same without notice and public hearing is an unequivocal violation of Mr. Veibell's civil rights for which he is entitled to damages.

Finally, Jim Marwedel has asserted that the Planning Commission could have vacated the Planned District zoning pursuant to Section 15.6.2 of your Code. This is incorrect. Section 15.6.2 mandates the Planning Commission to "require the new owner(s) to accept in writing all obligations and guarantees required by the Preliminary Design Plan of the original owner(s)," in the event the "land within a P District is sold to a new owner(s). The Planning Commission has never taken any action under this Section. Moreover, the Planning Commission never required Mr. Collings to accept in writing all obligations and guarantees required by the Preliminary Design Plan. Those obligations and guarantees have only been imposed on Mr. Veibell, the developer, and not any other landowner. Further, even if the new owner did not agree to accept those obligations and guarantees, the County Commission has discretion whether to vacate the Planned District. Section 15.6.2 states, "In the event that such agreement is not provided, the Governing Body **may**, without a public hearing, return the zoning of the P District to the original zoning."

March 26, 1999

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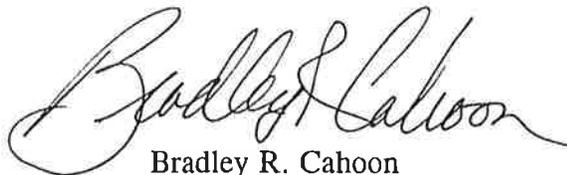
Further, when Mr. Veibell first submitted his Concept Plan for the creation of the Planned District, he did not include Lot 4. Mr. Beecher required Mr. Veibell to include Lot 4 in the Concept Plan. Mr. Veibell included Lot 4 in the revised Concept Plan that you ultimately approved for the Planned District. Nothing prevented you from simply removing Lot 4 from the Planned District after Mr. Collings sold Lot 4 to RHN Corporation.

Mr. Veibell's current Concept Plan that the Planning Commission recently approved excludes Lot 4. After all he has had to go through and the thousands of dollars he has invested, he is reverting back to where he started by excluding Lot 4 from the Planned District.

For the foregoing reasons, we request that you process and consider at your earliest convenience Mr. Veibell's rezone application, after the same is filed, and approve the Planned District zoning for High Country Estates pursuant to that request. Rather than taking this matter up with a court, this is the prudent way to resolve this matter and to allow Mr. Veibell the opportunity to receive the investment expectations pertaining to High Country Estates.

We also request that you deny all attempts by RHN Corporation and its affiliates and agents to rezone Mr. Veibell's lands in an attempt to obstruct, interfere with and prevent the development of High Country Estates.

Very truly yours,



Bradley R. Cahoon

BRC:bb
Enclosures

cc: J. Alton & Grethe C. Veibell
Jon J. Bunderson, Esq.

ATTACHMENT
#5

WOOD CRAPO LLC

ATTORNEYS AT LAW

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May 3, 1999

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Garland, Utah 84312

David Tea
Box Elder Planning Commission
2870 North Highway 69
Brigham City, Utah 84302

Jon Thompson
Box Elder Planning Commission
11790 Highway 69
Deweyville, Utah 84309

Re: J. Alton Veibell Proposed Development – High County Estates

Dear Commissioners:

This firm represents RHN Corporation (“RHN”), which owns property involved with a proposed development by J. Alton Veibell in the Collinston/Beaver Dam area of Box Elder County. The shareholders of RHN are, among others, Charlotte Nelson, Terri Howard, Gerald Howard, Clarence Richards, and Lodees Richards.

We understand that you recently received a letter from Bradley Cahoon, dated March 26, 1999, written on behalf of Mr. Veibell, concerning his proposed development. This letter responds to the points raised in Mr. Cahoon’s letter, and it discusses other problems with Mr. Veibell’s proposed development.

1. **Response to Mr. Cahoon's Letter**

Shrouded in thinly veiled threats and legal jargon, Mr. Cahoon's letter is a desperate attempt to supposedly reclaim something for his client—a Planned District designation—that his client never had in the first place. Mr. Cahoon argues that a Planned District was properly created for Mr. Veibell's property and that the County illegally vacated that designation. This is not true. It is undisputed that a zoning ordinance creating a Planned District for Mr. Veibell's property was never formally adopted. It was not adopted because all the requirements for the designation were not met.

a. **Mr. Veibell Did Not Obtain Proper Consents from All Property Owners in 1996**

A Planned District was not created because one of the property owners within the proposed zone—Greg Collings—never executed a validly notarized consent to inclusion in the zone. Mr. Collings signed an initial document Mr. Veibell brought to him when the concept was first proposed, but by the time Mr. Veibell brought the official consent that required notarization Mr. Collings had determined he did not want to be part of Mr. Veibell's development and he refused to sign.

A notarized consent was required because, as even Mr. Cahoon states, the Land Use Management and Development Code "required each landowner within the District to sign a written consent agreeing to two things: (i) that the owner will be bound by the conditions and regulations proposed and which will be effective within the District, and (ii) to record such agreement with the Box Elder County Recorder." Cahoon letter at 2 (emphasis added); *see* Section 15.2.2.2 of the Development Code. Anyone who has tried to record anything with the County Recorder knows that a notarial certificate or its substantial equivalent is required on an instrument that is to be recorded. *See* Utah Code Ann. § 57-3-101 (statute requires notarial certificate for recorded instruments).

That initial document also could not be recorded because it did not contain a property description. Because Mr. Collings never signed a document that could be recorded, all of the requirements contained in the Development Code for a Planned District were not met and the area could not be zoned as a Planned District. Copies of two letters Denton Beecher sent to Mr. Veibell in October, 1997, informing him of these facts are attached together as Exhibit A.

b. **The County Did Not "Vacate" Mr. Veibell's Planned District Because It Never Existed in the First Place**

Further, because a Planned District never came into existence, the Planning Commission did not "vacate" anything. The Planning Commission merely concluded that where Mr. Veibell had not followed through to complete the zoning process, it would not hold open the possibility of that zone any longer and he would have to reapply. In the same letters from Denton Beecher attached as Exhibit A, Mr. Beecher informed Mr. Veibell of this and that Mr. Veibell had allowed his concept plan and SSD preliminary approvals to lapse. Mr. Cahoon's arguments and threats become hollow when it is understood that a Planned District never existed and that Mr. Veibell himself allowed his approvals to lapse.

On May 21, 1998, a zoning ordinance for the area was finally adopted, which zoned Mr. Veibell's property MU-40. This came more than seven months after Mr. Beecher informed Mr. Veibell that his property was zoned MU-40.

c. **Mr. Veibell Has Not Acquired Any Vested Rights to a Planned District Designation**

Mr. Cahoon argues that because Mr. Veibell has spent money widening the roads on his property and developing plans, all in reliance on the preliminary approvals received in 1996, the doctrine of "zoning estoppel" vests Mr. Veibell's property with a Planned District designation. Mr. Cahoon claims that "zoning estoppel" was "long ago . . . adopted as the law in Utah." Interesting, the term has only been used in one Utah case, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), and the court did not use "zoning estoppel" as the basis for its decision in that case; indeed, the court rejected the doctrine. The court also noted that "[p]reconstruction activities such as the execution of architectural drawings or the clearing of land and widening of roads are not sufficient to create a vested right[.]" *Id.* at 392. All that Mr. Veibell has engaged in is such "preconstruction activities." Thus, even if "zoning estoppel" were the law of Utah, it would not apply to give Mr. Veibell a Planned District designation for his property.

Moreover, zoning estoppel only prevents a governmental entity from changing a zoning designation that once allowed a particular land use to a designation that prohibits the land use where the landowner substantially relies on the previous designation. Mr. Veibell's proposed use of his land has never been allowed by any final zoning designation that has applied to the property and his proposed use is not now allowed. A change in zoning is required to make it possible for his development.

The actual ruling in *Western Land Equities* was that

an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest. Furthermore, if a city or county has initiated proceedings to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning classification.

617 P.2d at 396. This ruling does not benefit Mr. Veibell. The applications Mr. Veibell filed in 1996 mean nothing now because he did not proceed with reasonable diligence and he allowed his 1996 applications to lapse. Denton Beecher told him as much in October, 1997, yet Mr. Veibell did not reapply until January, 1999, after an MU-40 zoning designation had been approved at a properly noticed public meeting. Thus, the holding of *Western Land Equities* only applies to Mr. Veibell's 1999 applications. When he applied in 1999, his property was zoned MU-40 and that is the zoning designation he has a "vested right" to under *Western Land Equities*.

d. **The Creation of the Collings Lot Violated the Law and Mr. Veibell Knew It**

Finally, Mr. Cahoon argues that the sale of the lot by Mr. Veibell to Mr. Collings in 1981 did not violate the law in effect at that time because the sale did not involve the division of Mr. Veibell's property into three or more lots. Mr. Cahoon fails to tell you, however, that Mr. Veibell also sold another lot to his brother-in-law at the same time—making three lots. Worse than this, Mr. Veibell had sold a lot to his son and a lot to David Christensen just a few months prior and had been told by the Planning Commission at its December 18, 1980 meeting that dividing off these two lots was illegal. This makes five lots that he divided his property into, the last two of which he clearly knew he did in violation of the law. This violation made it impossible for Mr. Collings to obtain a building permit to build a home on his lot, and should be remedied before any consideration is given to Mr. Veibell's proposed development.

Other problems exist with Mr. Cahoon's analysis, but we believe we have addressed the key points. You should not allow yourselves to be persuaded by Mr. Cahoon's threats of litigation because following his proposed course of action will violate the law and provide a sound basis for my clients and others in the Beaver Dam community, including the Beaver Dam water users, to challenge the County's actions. We trust that you will follow appropriate procedures and reach a proper result.

2. **Other Problems With Mr. Veibell's Proposed Development**

Because the zoning issue Mr. Cahoon addressed is just the tip of the iceberg of the problems associated with Mr. Veibell's proposed development, we felt it appropriate to inform you of some of the other problems we see.

Mr. Veibell's proposed development is right on the border of Box Elder County and Cache County. Mr. Veibell lives in Cache County. A few years ago, Mr. Veibell proposed a development that would straddle the county line, but he was informed by Cache County that it was opposed to the development. After that, he scaled the project back to be, purportedly, just a development in Box Elder County. RHN's property was part of the proposed development in 1996, but it has now been carved out. The project, however, can only be accessed by a Cache County road (400 West), then over a private road on Mr. Veibell's Cache County property. No other routes exist to access the property. The only way RHN currently can access its property is over Mr. Veibell's private road, and RHN's property fronts on Mr. Veibell's road. Yet, RHN's property has been carved out of the currently proposed development. So that you can get some perspective, a copy of Mr. Veibell's 1999 concept plan is attached as Exhibit B.

Mr. Veibell lives along the Cache County road. His son's family and three other families also live along that road. All of them obtain water from a water system Mr. Veibell constructed several years ago. The well from which the water system obtains its water is located in the proposed development on the Box Elder County side, and the system is a public water system because of the number of people it serves.

This configuration of the property and the water system provide numerous legal hurdles for Mr. Veibell. We have identified at least the following:

a. **Special Service District.** Mr. Veibell has indicated he proposes to provide services to his development by having Box Elder County create a special service district for the roads, water, and a community septic system. He may plan to include additional services. The problem with using a special service district to provide these services is that a special service district is limited to providing services "within the area of the service district." Utah Code Ann. § 17A-2-1304(1)(a). Yet, the water system already provides water to five homes in Cache County and the RHN property, all of which are outside the proposed area of the special service district. Currently, there is a lawsuit pending over whether Mr. Veibell is obligated to continue to provide water to RHN's property. Also, the road over Mr. Veibell's Cache County property and which the RHN property fronts would be serviced by the special service district. Again, persons outside the district or county would receive services from the district.

This should be of concern to the County because the County Commission would be the governing body of the special service district and the special service district would not be able to enforce anything against a person receiving services outside the district, such as the collection of fees and other assessments. Obviously, Box Elder County could not put uncollected fees on the tax notice of Cache County residents. Services cannot be provided by a Box Elder County special service district to Cache County residents without Cache County also agreeing to participation in the special service district or through an interlocal agreement with Cache County. Yet, Cache County has told Mr. Veibell it will not do that and it is opposed generally to his development. It appears Mr. Veibell's plans to use a special service district vehicle could cause more problems for you than it would solve.

Use of a homeowners' association likely would not solve these problems and, of course, would create new problems of its own. We understand that Cache County will not accept a dedication of the road leading into the development—even though the Box Elder County Commission told Mr. Veibell in 1979 he would have to get the road dedicated to Cache County before you could proceed to consider the development. Mr. Veibell will have to maintain the road, water system, and other community services with dues from the homeowners. Yet, a homeowners' association lacks power to enforce dues other than through costly litigation.

b. Source Protection. As you know, state and federal law and County Ordinance Nos. 121 and 216 regulate location of developments near sources of culinary water. Mr. Veibell's water system obtains its water from a well that is located near the center of the proposed development. Lots in the proposed development south of the well are uphill and upgradient, from the well. We understand that Mr. Veibell is preparing a source protection plan for his development to comply with state and federal regulation. The Beaver Dam Water Company is also developing a source protection plan for their springs to determine whether Mr. Veibell's proposed development will negatively impact their water sources. We understand the Planning Commission is waiting for these to be completed before it proceeds any further with consideration of his development.

We have two primary concerns at this time in relation to Mr. Veibell's compliance with the source protection ordinances and laws:

First, Mr. Veibell proposes to use septic tanks and/or drain fields for the houses that would be built in the development. Under Ordinance No. 216, however, septic tanks and drain fields are generally prohibited in a Zone 2 area around a source of culinary water. A "Zone 2" area is everything "within a 250-day groundwater time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer." Ordinance No. 216, § 3(b).

As such, Mr. Veibell likely cannot build upgradient from his well absent special design provisions because all or a large portion of that property likely is within the Zone 2 around his well.

But, as discussed more fully below, the entire area of Mr. Veibell's development is in an earthquake hazard area, making it unlikely any design standards can be implemented to protect the wellhead from possible contamination from septic tanks or community drains installed above the well. Indeed, according to information my clients have received from Dr. Robert Oaks from Utah State University, a fault appears to run through Mr. Veibell's proposed development just south of the well. Given this apparent earthquake hazard, any development that is approved for Mr. Veibell should preclude development south of the well.

Second, Ordinance No. 216 prohibits the County from issuing a "building permit or other form of approval from the County to develop or use real property . . . unless the applicant establishes that its proposed development or use of real property complies with the requirements of this Ordinance." This section precludes the Planning Commission or the County Commission from giving any approvals to Mr. Veibell's development, including preliminary plan approval, change in zoning approval, subdivision plat approval, SSD preliminary approval, or the like, until he demonstrates that his proposed use complies with the Ordinance. To our knowledge, no such compliance has been demonstrated to the Planning Commission, yet the Planning Commission has given preliminary concept approval. We believe that further approvals should not be given until compliance with the ordinance is demonstrated.

c. **Sensitive Area.** We understand that a study by Dr. Robert Oaks and a graduate student of Utah State University, which the County has partially funded, has concluded that the area including Mr. Veibell's proposed development is an earthquake hazard area. The final report has not been presented to the County, but we understand that a verbal report has been presented to the County Planner and perhaps others. We also understand that a fault runs directly through Mr. Veibell's proposed development. As an earthquake hazard area, the area qualifies as a Sensitive Area Overlay Zone under the Development Code, even though no formal action has been taken by the County to designate it as such. Section 14.4.2 of the Development Code provides that "[g]eological hazards including earthquake areas" are Sensitive Area Overlay Zones, even "if not marked on the zoning map per se." As a Sensitive Area Overlay Zone, uses other than tilling the soil, raising crops, and horticulture and gardening are conditional uses that require a conditional use permit.

We submit that because the area is an earthquake hazard area, Mr. Veibell cannot be given any preliminary approvals, zoning changes, or the like, unless he is able to obtain a conditional use permit. I understand from my clients, who have talked with Dr. Oaks, that,

because of the earthquake hazard, he would recommend, at the most, very low density residential development as a permitted conditional use in the area of Mr. Veibell's proposed development. At the very least, under Section 7.2.1.5 of the Development Code, Mr. Veibell should be required to incorporate design, construction, and location restrictions sufficient to protect those who will live in the development from the earthquake hazards Dr. Oaks has identified. Mr. Veibell should also be required to meet the general standards for conditional use permits contained in Section 7.3 of the Development Code.

d. **Phased Development.** We understand Mr. Veibell plans to develop his property in two phases, with the first phase consisting of 15 lots and the second phase 12 lots. Section 3.6.12.1 of the Development Code, however, requires that phased development include at least 25 lots in each phase. Thus, it appears Mr. Veibell's plan to have a smaller phased development is not allowed. Further, Section 3.6.12.3 precludes acceptance of a final plan for a development including more than 25 lots (Mr. Veibell's includes 27) absent the

submission of qualified evidence indicating that the market absorption rate and the financial ability of the developer are such that the off-site improvements for all lots in such Final Plan will be completed within 1 year, and that on-site improvements will be completed on at least 70 percent of the lots within 2 years of such approval.

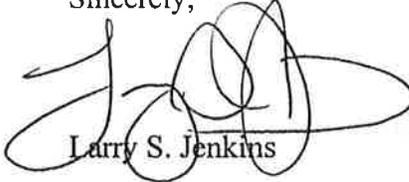
Mr. Veibell submitted a document to the Planning Commission entitled "Market Analysis" when he obtained his concept plan preliminary approval in January, 1999, that is identical to a document he submitted in 1996 when he was then attempting his development. (I am informed that Mr. Veibell's 1996 development plans are different from the ones he now seeks approval for.) A copy of the Market Analysis is attached as Exhibit C. This Market Analysis contains no date and does not contain the opinions required by the Development Code. In fact, the Market Analysis concludes that it will take three years just to sell the lots in the development, and it says nothing about how long it will take to make off-site improvements or how long it will take for on-site improvements to be made on 70 percent of the lots. This does not comply with the Development Code and any approval of Mr. Veibell's development absent this information would be subject to challenge.

Given the serious concerns we have raised in this letter, we hope the County will carefully consider the issues and make a reasoned decision based on the law, not on politics or friendships. My clients and others in the Beaver Dam community are ready to challenge actions of the County that do not conform with the law in order to protect their rights and their community.

Box Elder County Commission
Box Elder County Planning Commission
May 3, 1999
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We look forward to an opportunity to present our positions more fully at public meetings in the future.

Sincerely,



Larry S. Jenkins

cc: RHN Corporation and shareholders ✓

EXHIBIT A

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



OFFICERS
CARLA J. SECREST, COUNTY CLERK
LUANN ADAMS, COUNTY CLERK
LEON JENSEN, COUNTY CLERK
JON J. BUNDERSON, COUNTY ATTORNEY
MONTE R. MUMFORD, COUNTY ASSESSOR-TREASURER
DENTON BEECHER, COUNTY SURVEYOR
KEVIN R. CHRISTENSEN, COUNTY JUDGE

October 8, 1997

J. Alton Veibell
14015 North 400 West
Collinston, Utah 84306

RE: High Country Estates.

Dear Alton:

We feel that we should remind you that there has been over a year pass from the time that you received preliminary approval. Also it has been since February 1996 that the County approved the zoning in this area there by they reserved a "P" designation for your property. However in order for a "P" zone to be adopted we must receive 100% of the property owners signature of approval and then establish an ordinance stating the conditions etc.

As all of the requirements to establish a "P" zone have never been met it will be considered that this area, that was to be designated "P" is now reverted back to the zone surrounding it which is an MU40 zone.

We also need to remind you that as per 7.7.1 and 7.7.2 of the County code that it states that no person may sell or offer to sell or exchange any parcel of land without complying with the Development Code of the County.

We cannot deny you the right to create roads anywhere upon your property or to develop any other improvements on your property.

We therefore suggest that if you are ever going to complete this subdivision that you now resubmit your preliminary plan along with your District to maintain and then proceed on to your final submittal. If you do not have plans to finalize this plan please let us know and we will consider the matter closed.

Respectfully,

A handwritten signature in cursive script, appearing to read "Denton H. Beecher".

Denton H. Beecher
Box Elder County Surveyor

CC: File

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

BOX ELDER COUNTY

STATE OF UTAH

OFFICERS

CARLA J. SECURE, COUNTY AUDITOR
LUANN ADAMS, COUNTY RECORDER-CLERK
LEON JENSEN, COUNTY SHERIFF
JON J. BUNDERSON, COUNTY ATTORNEY
MONTE R. MUNNS, COUNTY ASSESSOR-TREASURER
DINTON BEECHER, COUNTY SURVEYOR
KEVIN R. CHRISTENSEN, COUNTY JUDGE

October 16, 1997

J. Alton Veibell
14015 North 400 West
Collinston UT 84306

Re: High County Estates

Dear Alton:

It has come to my attention that more than one year has elapsed from the time you received preliminary approval of your plat for High County Estates. Also, in February 1996 the County approved MU40 zoning in that entire area, but reserved a "P" designation for your parcel of property. The reservation was made at your request, but there was no "P" designation granted; the property was merely reserved pending such designation. A "P" zone cannot be adopted unless 100% of the property owners approve, in writing. After such approval is received, then an ordinance is passed setting forth the conditions for that particular "P" designated property.

Currently, your property is actually zoned MU40, since no "P" zone has ever gone into effect, due to the fact that the requirements for such a zone have never been met.

Also, please note that Sections 7.7.1 and 7.7.2 of our County Code state that no person may sell, offer to sell, or offer to exchange any parcel of land without first meeting all of the requirements of the County's development code. You have not met those requirements regarding the property within your proposed "P" zone.

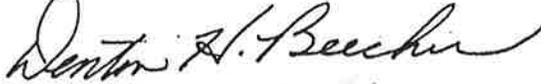
Our development code does not prohibit a person from creating roads upon their property, or improving the property with such things as water lines, sewer lines, etc. However, if you can't sell any lots, it seems pointless to engage in any substantial development.

If it is your plan to create a subdivision on your property, please resubmit your preliminary plan in order to commence the process.

J. Alton Veibell
Page 2

If you desire to pursue the "P" designation, please obtain the necessary signatures of approval. On the other hand, if you do not plan to pursue this subdivision, please let me know.

Very truly yours,



Denton H. Beecher
Box Elder County Surveyor

cc: File

EXHIBIT B

HIGH COUNTRY ESTATES SUBDIVISION PHASES I & II

LEDA LARSEN
Surveyor
P.O. Box 100
Fargo, ND 58103

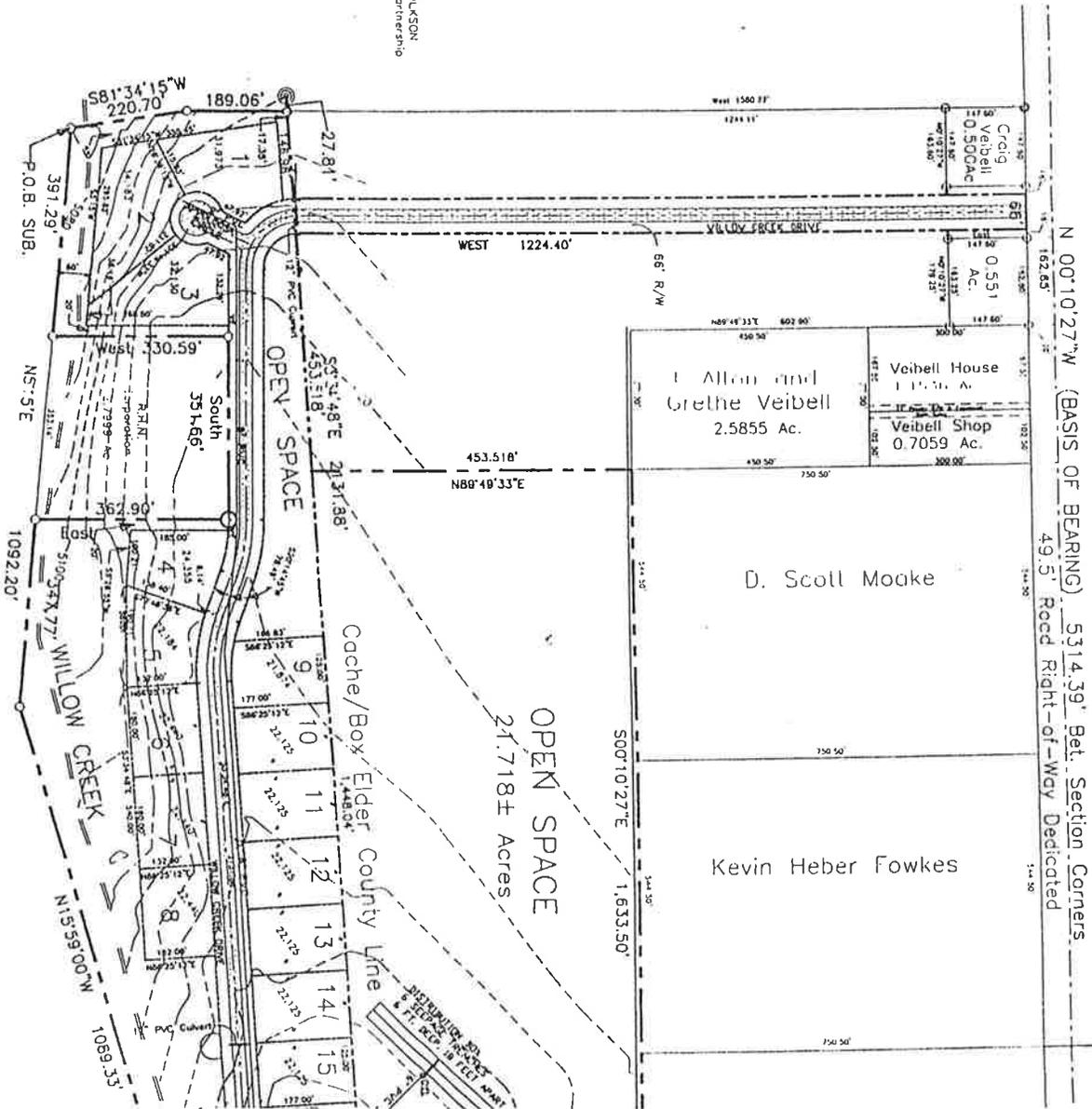


EXHIBIT C

Market Analysis

Pursuant to your request, I have examined the proposed Phase 1 (26 units) of High Country Estates, owned by Mr. J. Alton Veibell, for the purpose of determining the demand and absorption rate of the estate sites.

I have been a Real Estate Broker since 1974, and hold pin number 2000 as a C.C.I.M. and have completed a partial list of development. I have held an ownership interest in developing that may have helped me have a feel for this type of use.

The subject property located north west of Mendon, Utah; area in Beaver Dam serviced by Box Elder County.

The site plan is well conceived and engineered professionally to handle a high quality Equestrian development with common area for riding, stable and pasture facilities. It is unique and one of a kind to my knowledge in either of the Cache or Box Elder counties.

The property is serviced by a special service district for secondary water, electricity by Utah Power, propane as fuel, and US West on phone, as well as open space areas.

All of the lots are situated to maximize the views and adequate to accommodate a housing style from \$150,000 upwards. The lots will be self-contained, fee simple ownership, small enough to conserve water and allow for much open space and visual relief.

In conclusion, there is a strong but limited market for rural, well planned estate sites of this nature.

It is my belief the units will sell from \$30,000 to \$40,000 per lot based on size and location of each estate and will be sold conservatively over a 3 year period .

In this price range, it appears to the owner's experts, the engineers, that water and necessary information; structural items can be built and well maintained if the market remains as strong as it is projected to be in Cache County, Box Elder County and the rest of the Wasatch front.

As the world becomes welcomed in Utah, as the Olympic games approach this type of lifestyle will be extremely popular which would allow the owner-developer to hold a second phase available at a much more premium price.

Recent sales in Greystone Development in Hyde Park, Utah which are agriculturally zoned for horses have gone as high as \$55,000 for a one acre lot and Echo Hill Subdivision in Providence, Utah on a 1.05 acre lot with similar uses brought \$83,000.

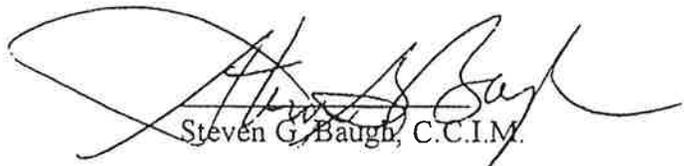
The subject property has the same spectacular view elements however, time will likely prove the distance to the subject property is less an obstacle as counties expand outward and demand grows.

It is my opinion the project is well advised to proceed in a phase by phase year 1, year 2, and year 3 basis with proper budget first to facilitate infra-structure and next any common area spaces that are so necessary to go in if planned, to keep the high integrity and buyer confidence of the project.

Common facilities should be few but very functional amenities such as stable, pastures with avoidance of pools and other high maintenance facilities on a project with this low of density (less than 1 unit per acre) requires.

I feel it will be an excellent project if professional management and engineering is continued.

Sincerely,



Steven G. Baugh, C.C.I.M.

SB/bj

List of Author's Projects

*Edgewood Hall Development - Providence

*Golf Course Subdivision - Logan

*Glennwood Hills - Logan

*Village Green - Logan

*Elkhorn Ranch - Nibley

*Quailbluff -PUD - Logan

*Evergreen Shopping Center - Logan

*Eckhill Development - Providence

*Logan Nursing Home - Logan

*Allsop Development - Smithfield

*Baugh Motel Master Plan - Logan

July 1, 1999

Re: Application of J. Alton Veibell for Preliminary Plan Approval and Rezoning to Create P District

To the Honorable Members of the Box Elder County Planning Commission:

These written comments are submitted by the Beaver Dam Water Company and RHN Corporation in opposition to the application of J. Alton Veibell for preliminary plan approval for the High Country Estates Subdivision and for the rezoning of Mr. Veibell's property to create a P district. We incorporate by reference the letter to you from Larry S. Jenkins dated May 3, 1999, on behalf of RHN Corporation, and we have been assured by Jon Bunderson and Jim Marwedel that Mr. Jenkins' letter has been made a part of the record of these proceedings.

The points we wish to make are as follows:

1. Beaver Dam Water Company has received a letter from the Utah Division of Drinking Water dated June 29, 1999, formally concurring in the delineation report submitted by Beaver Dam in support of its source protection plan. A copy of this letter along with the source delineation map has already been submitted to Jim Marwedel. Now that concurrence has been received from the State, the zones established by this delineation report will not change prior to final source protection plan approval. The property Mr. Veibell plans to develop falls within Beaver Dam's source protection zone 2. As such, state law and Box Elder County Ordinance No. 216 preclude Mr. Veibell, or anyone else who would want to develop in zone 2, from using septic tanks or drain fields.

Because Mr. Veibell's proposed development would require the use of septic tanks, we submit that the planning commission has no choice but to reject it in its present form. Ordinance No. 216 prohibits the County from issuing a "building permit or other form of approval from the County to develop or use real property . . . unless the applicant establishes that its proposed development or use of real property complies with the requirements of this Ordinance." Mr. Veibell should be required to present a new concept plan that would incorporate a waste water system that would be allowed in a drinking water source protection zone 2. Because a new concept plan would be required to correct this issue, approving Mr. Veibell's request for creation of a P district would be premature at this time.

For the same reasons, Beaver Dam Water Company submits that the request filed by RHN Corporation to rezone the area to A-20 should also be denied. No residential development can occur within Beaver Dam's source protection zone 2 that would require use of a septic tank or drain field. Both Mr. Veibell's and RHN Corporation's requests for rezoning should be denied because they would not comply with Ordinance No. 216.

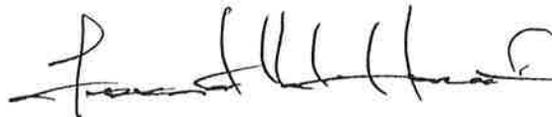
Beaver Dam's source protection delineation report is now officially accepted by the State. Only a few remaining items need to be submitted to the State before it can approve the

entire source protection plan. That process should be completed before the end of the summer.

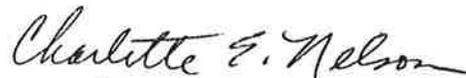
2. There has been some indication that the planning commission would act favorably on Mr. Veibell's applications because of a belief that he has acquired vested rights to the zoning designation and approval of the subdivision. While Mr. Jenkins addressed this issue in his May 3, 1999 letter, we want to reiterate that Mr. Veibell only has "vested rights" to the zoning designation that existed in January, 1999, when he refiled his application. He has no vested rights to a P district designation. No authority exists in Utah law for someone to obtain vested rights to a zone change. The case law deals only with vested rights to an existing zone designation at the time a building permit or subdivision approval is sought. Thus, Mr. Veibell's applications should be considered in light of the ordinances that existed in January, 1999, and not in light of whatever he may have done or tried to do in the past.

3. Beaver Dam Water Company is also concerned that Mr. Veibell's proposed development appears to be located directly on a fault, according to information already submitted to the County from Dr. Robert Oaks. As such, Chapter 14 of the Development Code strictly limits the uses of the property, absent conditions being placed on development that will protect against the hazards listed. If Mr. Veibell's request for the creation of a P district is granted once he has corrected his plans for waste water treatment, at the very least the planning commission should also formally recognize a Sensitive Area Overlay Zone covering Mr. Veibell's development. Recognition of a Sensitive Area Overlay Zone should require Mr. Veibell to design and engineer any waste water system so that Beaver Dam Water Company's source protection zone 2 would not be threatened by an earthquake.

Beaver Dam Water Company and RHN Corporation respectfully request that the planning commission deny Mr. Veibell's requests for preliminary approval and for creation of a P district.



Leonard M. Hawkes, President
Beaver Dam Water Company



Charlotte E. Nelson, Secretary
Beaver Dam Water Company
Secretary and Director
RHN Corporation

WOOD CRAPO LLC

ATTORNEYS AT LAW

500 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111

TELEPHONE (801) 366-6060

FACSIMILE (801) 366-6061

MARY ANNE Q. WOOD
DAVID J. CRAPO
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LARRY S. JENKINS
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OF COUNSEL

May 3, 1999

Lee Allen
Box Elder County Commission
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Garland, Utah 84312

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Box Elder County Commission
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Corinne, Utah 84307

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Box Elder Planning Commission
140 South Meadow Road
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Stan Reese
Box Elder Planning Commission
6055 West 13600 North
Garland, Utah 84312

David Tea
Box Elder Planning Commission
2870 North Highway 69
Brigham City, Utah 84302

Jon Thompson
Box Elder Planning Commission
11790 Highway 69
Deweyville, Utah 84309

Re: J. Alton Veibell Proposed Development – High County Estates

Dear Commissioners:

This firm represents RHN Corporation (“RHN”), which owns property involved with a proposed development by J. Alton Veibell in the Collinston/Beaver Dam area of Box Elder County. The shareholders of RHN are, among others, Charlotte Nelson, Terri Howard, Gerald Howard, Clarence Richards, and Lodees Richards.

We understand that you recently received a letter from Bradley Cahoon, dated March 26, 1999, written on behalf of Mr. Veibell, concerning his proposed development. This letter responds to the points raised in Mr. Cahoon’s letter, and it discusses other problems with Mr. Veibell’s proposed development.

1. **Response to Mr. Cahoon's Letter**

Shrouded in thinly veiled threats and legal jargon, Mr. Cahoon's letter is a desperate attempt to supposedly reclaim something for his client—a Planned District designation—that his client never had in the first place. Mr. Cahoon argues that a Planned District was properly created for Mr. Veibell's property and that the County illegally vacated that designation. This is not true. It is undisputed that a zoning ordinance creating a Planned District for Mr. Veibell's property was never formally adopted. It was not adopted because all the requirements for the designation were not met.

a. **Mr. Veibell Did Not Obtain Proper Consents from All Property Owners in 1996**

A Planned District was not created because one of the property owners within the proposed zone—Greg Collings—never executed a validly notarized consent to inclusion in the zone. Mr. Collings signed an initial document Mr. Veibell brought to him when the concept was first proposed, but by the time Mr. Veibell brought the official consent that required notarization Mr. Collings had determined he did not want to be part of Mr. Veibell's development and he refused to sign.

A notarized consent was required because, as even Mr. Cahoon states, the Land Use Management and Development Code "required each landowner within the District to sign a written consent agreeing to two things: (i) that the owner will be bound by the conditions and regulations proposed and which will be effective within the District, and (ii) to record such agreement with the Box Elder County Recorder." Cahoon letter at 2 (emphasis added); *see* Section 15.2.2.2 of the Development Code. Anyone who has tried to record anything with the County Recorder knows that a notarial certificate or its substantial equivalent is required on an instrument that is to be recorded. *See* Utah Code Ann. § 57-3-101 (statute requires notarial certificate for recorded instruments).

That initial document also could not be recorded because it did not contain a property description. Because Mr. Collings never signed a document that could be recorded, all of the requirements contained in the Development Code for a Planned District were not met and the area could not be zoned as a Planned District. Copies of two letters Denton Beecher sent to Mr. Veibell in October, 1997, informing him of these facts are attached together as Exhibit A.

b. **The County Did Not “Vacate” Mr. Veibell’s Planned District Because It Never Existed in the First Place**

Further, because a Planned District never came into existence, the Planning Commission did not “vacate” anything. The Planning Commission merely concluded that where Mr. Veibell had not followed through to complete the zoning process, it would not hold open the possibility of that zone any longer and he would have to reapply. In the same letters from Denton Beecher attached as Exhibit A, Mr. Beecher informed Mr. Veibell of this and that Mr. Veibell had allowed his concept plan and SSD preliminary approvals to lapse. Mr. Cahoon’s arguments and threats become hollow when it is understood that a Planned District never existed and that Mr. Veibell himself allowed his approvals to lapse.

On May 21, 1998, a zoning ordinance for the area was finally adopted, which zoned Mr. Veibell’s property MU-40. This came more than seven months after Mr. Beecher informed Mr. Veibell that his property was zoned MU-40.

c. **Mr. Veibell Has Not Acquired Any Vested Rights to a Planned District Designation**

Mr. Cahoon argues that because Mr. Veibell has spent money widening the roads on his property and developing plans, all in reliance on the preliminary approvals received in 1996, the doctrine of “zoning estoppel” vests Mr. Veibell’s property with a Planned District designation. Mr. Cahoon claims that “zoning estoppel” was “long ago . . . adopted as the law in Utah.” Interesting, the term has only been used in one Utah case, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), and the court did not use “zoning estoppel” as the basis for its decision in that case; indeed, the court rejected the doctrine. The court also noted that “[p]reconstruction activities such as the execution of architectural drawings or the clearing of land and widening of roads are not sufficient to create a vested right[.]” *Id.* at 392. All that Mr. Veibell has engaged in is such “preconstruction activities.” Thus, even if “zoning estoppel” were the law of Utah, it would not apply to give Mr. Veibell a Planned District designation for his property.

Moreover, zoning estoppel only prevents a governmental entity from changing a zoning designation that once allowed a particular land use to a designation that prohibits the land use where the landowner substantially relies on the previous designation. Mr. Veibell’s proposed use of his land has never been allowed by any final zoning designation that has applied to the property and his proposed use is not now allowed. A change in zoning is required to make it possible for his development.

The actual ruling in *Western Land Equities* was that

an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest. Furthermore, if a city or county has initiated proceedings to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning classification.

617 P.2d at 396. This ruling does not benefit Mr. Veibell. The applications Mr. Veibell filed in 1996 mean nothing now because he did not proceed with reasonable diligence and he allowed his 1996 applications to lapse. Denton Beecher told him as much in October, 1997, yet Mr. Veibell did not reapply until January, 1999, after an MU-40 zoning designation had been approved at a properly noticed public meeting. Thus, the holding of *Western Land Equities* only applies to Mr. Veibell's 1999 applications. When he applied in 1999, his property was zoned MU-40 and that is the zoning designation he has a "vested right" to under *Western Land Equities*.

d. **The Creation of the Collings Lot Violated the Law and Mr. Veibell Knew It**

Finally, Mr. Cahoon argues that the sale of the lot by Mr. Veibell to Mr. Collings in 1981 did not violate the law in effect at that time because the sale did not involve the division of Mr. Veibell's property into three or more lots. Mr. Cahoon fails to tell you, however, that Mr. Veibell also sold another lot to his brother-in-law at the same time—making three lots. Worse than this, Mr. Veibell had sold a lot to his son and a lot to David Christensen just a few months prior and had been told by the Planning Commission at its December 18, 1980 meeting that dividing off these two lots was illegal. This makes five lots that he divided his property into, the last two of which he clearly knew he did in violation of the law. This violation made it impossible for Mr. Collings to obtain a building permit to build a home on his lot, and should be remedied before any consideration is given to Mr. Veibell's proposed development.

Other problems exist with Mr. Cahoon's analysis, but we believe we have addressed the key points. You should not allow yourselves to be persuaded by Mr. Cahoon's threats of litigation because following his proposed course of action will violate the law and provide a sound basis for my clients and others in the Beaver Dam community, including the Beaver Dam water users, to challenge the County's actions. We trust that you will follow appropriate procedures and reach a proper result.

2. **Other Problems With Mr. Veibell's Proposed Development**

Because the zoning issue Mr. Cahoon addressed is just the tip of the iceberg of the problems associated with Mr. Veibell's proposed development, we felt it appropriate to inform you of some of the other problems we see.

Mr. Veibell's proposed development is right on the border of Box Elder County and Cache County. Mr. Veibell lives in Cache County. A few years ago, Mr. Veibell proposed a development that would straddle the county line, but he was informed by Cache County that it was opposed to the development. After that, he scaled the project back to be, purportedly, just a development in Box Elder County. RHN's property was part of the proposed development in 1996, but it has now been carved out. The project, however, can only be accessed by a Cache County road (400 West), then over a private road on Mr. Veibell's Cache County property. No other routes exist to access the property. The only way RHN currently can access its property is over Mr. Veibell's private road, and RHN's property fronts on Mr. Veibell's road. Yet, RHN's property has been carved out of the currently proposed development. So that you can get some perspective, a copy of Mr. Veibell's 1999 concept plan is attached as Exhibit B.

Mr. Veibell lives along the Cache County road. His son's family and three other families also live along that road. All of them obtain water from a water system Mr. Veibell constructed several years ago. The well from which the water system obtains its water is located in the proposed development on the Box Elder County side, and the system is a public water system because of the number of people it serves.

This configuration of the property and the water system provide numerous legal hurdles for Mr. Veibell. We have identified at least the following:

a. **Special Service District.** Mr. Veibell has indicated he proposes to provide services to his development by having Box Elder County create a special service district for the roads, water, and a community septic system. He may plan to include additional services. The problem with using a special service district to provide these services is that a special service district is limited to providing services "within the area of the service district." Utah Code Ann. § 17A-2-1304(1)(a). Yet, the water system already provides water to five homes in Cache County and the RHN property, all of which are outside the proposed area of the special service district. Currently, there is a lawsuit pending over whether Mr. Veibell is obligated to continue to provide water to RHN's property. Also, the road over Mr. Veibell's Cache County property and which the RHN property fronts would be serviced by the special service district. Again, persons outside the district or county would receive services from the district.

This should be of concern to the County because the County Commission would be the governing body of the special service district and the special service district would not be able to enforce anything against a person receiving services outside the district, such as the collection of fees and other assessments. Obviously, Box Elder County could not put uncollected fees on the tax notice of Cache County residents. Services cannot be provided by a Box Elder County special service district to Cache County residents without Cache County also agreeing to participation in the special service district or through an interlocal agreement with Cache County. Yet, Cache County has told Mr. Veibell it will not do that and it is opposed generally to his development. It appears Mr. Veibell's plans to use a special service district vehicle could cause more problems for you than it would solve.

Use of a homeowners' association likely would not solve these problems and, of course, would create new problems of its own. We understand that Cache County will not accept a dedication of the road leading into the development—even though the Box Elder County Commission told Mr. Veibell in 1979 he would have to get the road dedicated to Cache County before you could proceed to consider the development. Mr. Veibell will have to maintain the road, water system, and other community services with dues from the homeowners. Yet, a homeowners' association lacks power to enforce dues other than through costly litigation.

b. Source Protection. As you know, state and federal law and County Ordinance Nos. 121 and 216 regulate location of developments near sources of culinary water. Mr. Veibell's water system obtains its water from a well that is located near the center of the proposed development. Lots in the proposed development south of the well are uphill and upgradient, from the well. We understand that Mr. Veibell is preparing a source protection plan for his development to comply with state and federal regulation. The Beaver Dam Water Company is also developing a source protection plan for their springs to determine whether Mr. Veibell's proposed development will negatively impact their water sources. We understand the Planning Commission is waiting for these to be completed before it proceeds any further with consideration of his development.

We have two primary concerns at this time in relation to Mr. Veibell's compliance with the source protection ordinances and laws:

First, Mr. Veibell proposes to use septic tanks and/or drain fields for the houses that would be built in the development. Under Ordinance No. 216, however, septic tanks and drain fields are generally prohibited in a Zone 2 area around a source of culinary water. A "Zone 2" area is everything "within a 250-day groundwater time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer." Ordinance No. 216, § 3(b).

As such, Mr. Veibell likely cannot build upgradient from his well absent special design provisions because all or a large portion of that property likely is within the Zone 2 around his well.

But, as discussed more fully below, the entire area of Mr. Veibell's development is in an earthquake hazard area, making it unlikely any design standards can be implemented to protect the wellhead from possible contamination from septic tanks or community drains installed above the well. Indeed, according to information my clients have received from Dr. Robert Oaks from Utah State University, a fault appears to run through Mr. Veibell's proposed development just south of the well. Given this apparent earthquake hazard, any development that is approved for Mr. Veibell should preclude development south of the well.

Second, Ordinance No. 216 prohibits the County from issuing a "building permit or other form of approval from the County to develop or use real property . . . unless the applicant establishes that its proposed development or use of real property complies with the requirements of this Ordinance." This section precludes the Planning Commission or the County Commission from giving any approvals to Mr. Veibell's development, including preliminary plan approval, change in zoning approval, subdivision plat approval, SSD preliminary approval, or the like, until he demonstrates that his proposed use complies with the Ordinance. To our knowledge, no such compliance has been demonstrated to the Planning Commission, yet the Planning Commission has given preliminary concept approval. We believe that further approvals should not be given until compliance with the ordinance is demonstrated.

c. **Sensitive Area.** We understand that a study by Dr. Robert Oaks and a graduate student of Utah State University, which the County has partially funded, has concluded that the area including Mr. Veibell's proposed development is an earthquake hazard area. The final report has not been presented to the County, but we understand that a verbal report has been presented to the County Planner and perhaps others. We also understand that a fault runs directly through Mr. Veibell's proposed development. As an earthquake hazard area, the area qualifies as a Sensitive Area Overlay Zone under the Development Code, even though no formal action has been taken by the County to designate it as such. Section 14.4.2 of the Development Code provides that "[g]eological hazards including earthquake areas" are Sensitive Area Overlay Zones, even "if not marked on the zoning map per se." As a Sensitive Area Overlay Zone, uses other than tilling the soil, raising crops, and horticulture and gardening are conditional uses that require a conditional use permit.

We submit that because the area is an earthquake hazard area, Mr. Veibell cannot be given any preliminary approvals, zoning changes, or the like, unless he is able to obtain a conditional use permit. I understand from my clients, who have talked with Dr. Oaks, that,

because of the earthquake hazard, he would recommend, at the most, very low density residential development as a permitted conditional use in the area of Mr. Veibell's proposed development. At the very least, under Section 7.2.1.5 of the Development Code, Mr. Veibell should be required to incorporate design, construction, and location restrictions sufficient to protect those who will live in the development from the earthquake hazards Dr. Oaks has identified. Mr. Veibell should also be required to meet the general standards for conditional use permits contained in Section 7.3 of the Development Code.

d. Phased Development. We understand Mr. Veibell plans to develop his property in two phases, with the first phase consisting of 15 lots and the second phase 12 lots. Section 3.6.12.1 of the Development Code, however, requires that phased development include at least 25 lots in each phase. Thus, it appears Mr. Veibell's plan to have a smaller phased development is not allowed. Further, Section 3.6.12.3 precludes acceptance of a final plan for a development including more than 25 lots (Mr. Veibell's includes 27) absent the

submission of qualified evidence indicating that the market absorption rate and the financial ability of the developer are such that the off-site improvements for all lots in such Final Plan will be completed within 1 year, and that on-site improvements will be completed on at least 70 percent of the lots within 2 years of such approval.

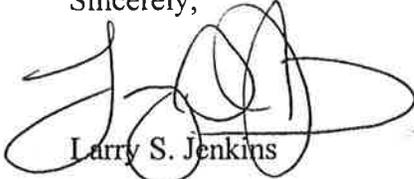
Mr. Veibell submitted a document to the Planning Commission entitled "Market Analysis" when he obtained his concept plan preliminary approval in January, 1999, that is identical to a document he submitted in 1996 when he was then attempting his development. (I am informed that Mr. Veibell's 1996 development plans are different from the ones he now seeks approval for.) A copy of the Market Analysis is attached as Exhibit C. This Market Analysis contains no date and does not contain the opinions required by the Development Code. In fact, the Market Analysis concludes that it will take three years just to sell the lots in the development, and it says nothing about how long it will take to make off-site improvements or how long it will take for on-site improvements to be made on 70 percent of the lots. This does not comply with the Development Code and any approval of Mr. Veibell's development absent this information would be subject to challenge.

Given the serious concerns we have raised in this letter, we hope the County will carefully consider the issues and make a reasoned decision based on the law, not on politics or friendships. My clients and others in the Beaver Dam community are ready to challenge actions of the County that do not conform with the law in order to protect their rights and their community.

Box Elder County Commission
Box Elder County Planning Commission
May 3, 1999
Page 9

We look forward to an opportunity to present our positions more fully at public meetings in the future.

Sincerely,



Larry S. Jenkins

cc: RHN Corporation and shareholders ✓

EXHIBIT A

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



OFFICERS
CARLA J. SECHRIST, COUNTY AUDITOR
LUANN ADAMS, COUNTY CLERK
LEON JENSEN, COUNTY ENGINEER
JON J. BUNDERSON, COUNTY ATTORNEY
MONTE R. MUNNS, COUNTY ASSESSOR-TREASURER
DENTON BEECHER, COUNTY SURVEYOR
KEVIN R. CHRISTENSEN, COUNTY JUDGE

October 8, 1997

J. Alton Veibell
14015 North 400 West
Collinston, Utah 84306

RE: High Country Estates.

Dear Alton:

We feel that we should remind you that there has been over a year pass from the time that you received preliminary approval. Also it has been since February 1996 that the County approved the zoning in this area there by they reserved a "P" designation for your property. However in order for a "P" zone to be adopted we must receive 100% of the property owners signature of approval and then establish an ordinance stating the conditions etc.

As all of the requirements to establish a "P" zone have never been met it will be considered that this area, that was to be designated "P" is now reverted back to the zone surrounding it which is an MU40 zone.

We also need to remind you that as per 7.7.1 and 7.7.2 of the County code that it states that no person may sell or offer to sell or exchange any parcel of land without complying with the Development Code of the County.

We cannot deny you the right to create roads anywhere upon your property or to develop any other improvements on your property.

We therefore suggest that if you are ever going to complete this subdivision that you now resubmit your preliminary plan along with your District to maintain and then proceed on to your final submittal. If you do not have plans to finalize this plan please let us know and we will consider the matter closed.

Respectfully,

A handwritten signature in cursive script that reads "Denton H. Beecher".

Denton H. Beecher
Box Elder County Surveyor

CC: File

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

BOX ELDER COUNTY

STATE OF UTAH

OFFICERS

CARLA J. SECING, COUNTY AUDITOR
LUANN ADAMS, COUNTY RECORDER-CLERK
LEON JENSEN, COUNTY SHERIFF
JON J. BUNDERBACH, COUNTY ATTORNEY
MONTE R. MUNNS, COUNTY ASSESSOR-TREASURER
DENTON BEECHER, COUNTY SURVEYOR
KEVIN R. CHRISTENSEN, COUNTY JUDGE

October 16, 1997

J. Alton Veibell
14015 North 400 West
Collinston UT 84306

Re: High County Estates

Dear Alton:

It has come to my attention that more than one year has elapsed from the time you received preliminary approval of your plat for High County Estates. Also, in February 1996 the County approved MU40 zoning in that entire area, but reserved a "P" designation for your parcel of property. The reservation was made at your request, but there was no "P" designation granted; the property was merely reserved pending such designation. A "P" zone cannot be adopted unless 100% of the property owners approve, in writing. After such approval is received, then an ordinance is passed setting forth the conditions for that particular "P" designated property.

Currently, your property is actually zoned MU40, since no "P" zone has ever gone into effect, due to the fact that the requirements for such a zone have never been met.

Also, please note that Sections 7.7.1 and 7.7.2 of our County Code state that no person may sell, offer to sell, or offer to exchange any parcel of land without first meeting all of the requirements of the County's development code. You have not met those requirements regarding the property within your proposed "P" zone.

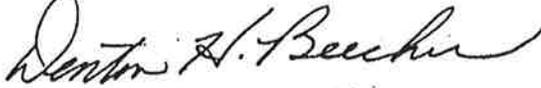
Our development code does not prohibit a person from creating roads upon their property, or improving the property with such things as water lines, sewer lines, etc. However, if you can't sell any lots, it seems pointless to engage in any substantial development.

If it is your plan to create a subdivision on your property, please resubmit your preliminary plan in order to commence the process.

J. Alton Veibell
Page 2

If you desire to pursue the "P" designation, please obtain the necessary signatures of approval. On the other hand, if you do not plan to pursue this subdivision, please let me know.

Very truly yours,



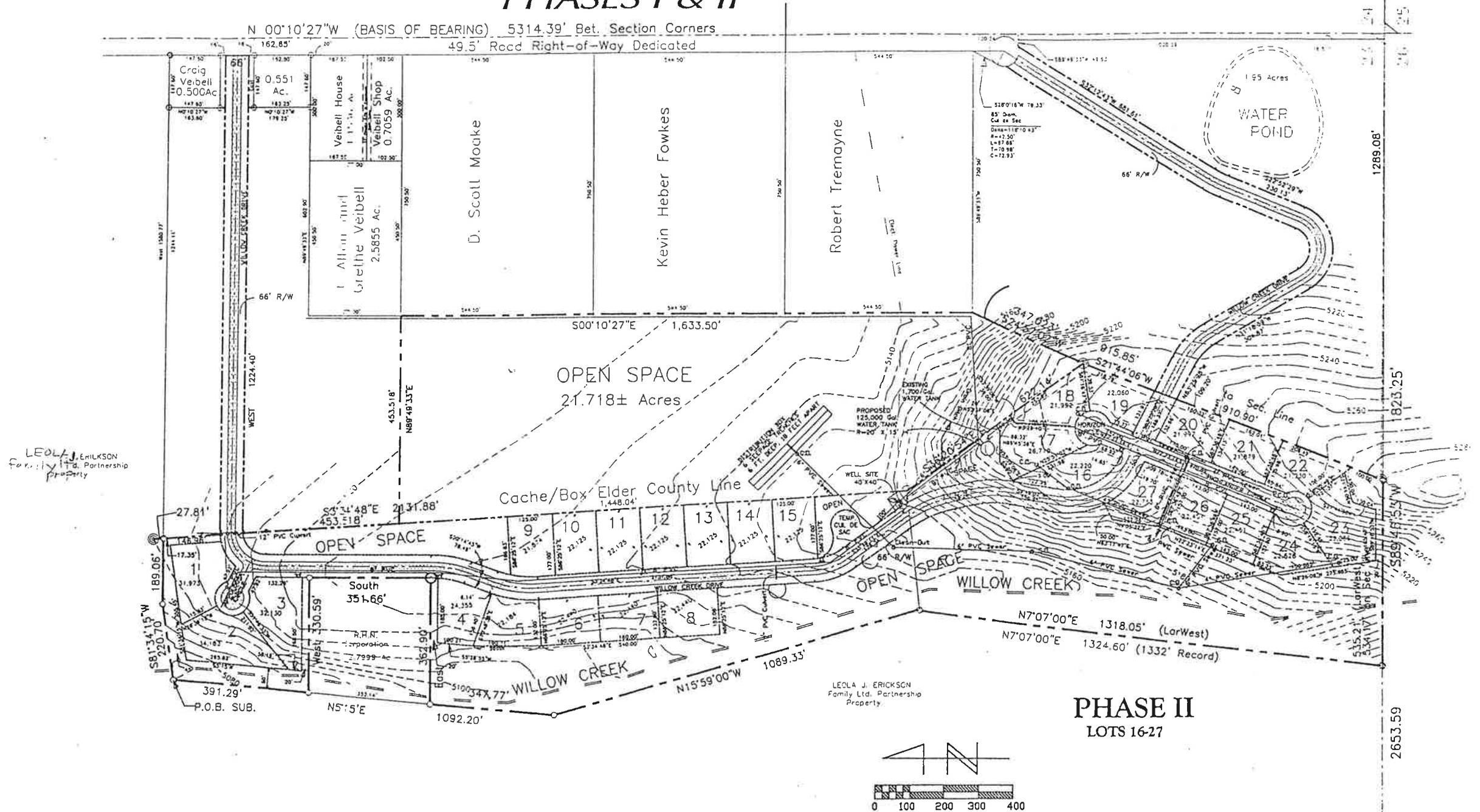
Denton H. Beecher
Box Elder County Surveyor

cc: File

EXHIBIT B

HIGH COUNTRY ESTATES SUBDIVISION - CONCEPT PLAN

PHASES I & II



LEOLA J. ERICKSON
 Family Ltd. Partnership
 Property

LEOLA J. ERICKSON
 Family Ltd. Partnership
 Property

PHASE II
 LOTS 16-27

EXHIBIT C

Market Analysis

Pursuant to your request, I have examined the proposed Phase 1 (26 units) of High Country Estates, owned by Mr. J. Alton Veibell, for the purpose of determining the demand and absorption rate of the estate sites.

I have been a Real Estate Broker since 1974, and hold pin number 2000 as a C.C.I.M. and have completed a partial list of development. I have held an ownership interest in developing that may have helped me have a feel for this type of use.

The subject property located north west of Mendon, Utah; area in Beaver Dam serviced by Box Elder County.

The site plan is well conceived and engineered professionally to handle a high quality Equestrian development with common area for riding, stable and pasture facilities. It is unique and one of a kind to my knowledge in either of the Cache or Box Elder counties.

The property is serviced by a special service district for secondary water, electricity by Utah Power, propane as fuel, and US West on phone, as well as open space areas.

All of the lots are situated to maximize the views and adequate to accommodate a housing style from \$150,000 upwards. The lots will be self-contained, fee simple ownership, small enough to conserve water and allow for much open space and visual relief.

In conclusion, there is a strong but limited market for rural, well planned estate sites of this nature.

It is my belief the units will sell from \$30,000 to \$40,000 per lot based on size and location of each estate and will be sold conservatively over a 3 year period .

In this price range, it appears to the owner's experts, the engineers, that water and necessary information; structural items can be built and well maintained if the market remains as strong as it is projected to be in Cache County, Box Elder County and the rest of the Wasatch front.

As the world becomes welcomed in Utah, as the Olympic games approach this type of lifestyle will be extremely popular which would allow the owner-developer to hold a second phase available at a much more premium price.

Recent sales in Greystone Development in Hyde Park, Utah which are agriculturally zoned for horses have gone as high as \$55,000 for a one acre lot and Echo Hill Subdivision in Providence, Utah on a 1.05 acre lot with similar uses brought \$83,000.

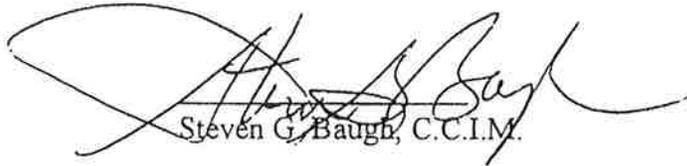
The subject property has the same spectacular view elements however, time will likely prove the distance to the subject property is less an obstacle as counties expand outward and demand grows.

It is my opinion the project is well advised to proceed in a phase by phase year 1, year 2, and year 3 basis with proper budget first to facilitate infra-structure and next any common area spaces that are so necessary to go in if planned, to keep the high integrity and buyer confidence of the project.

Common facilities should be few but very functional amenities such as stable, pastures with avoidance of pools and other high maintenance facilities on a project with this low of density (less than 1 unit per acre) requires.

I feel it will be an excellent project if professional management and engineering is continued.

Sincerely,



Steven G. Baugh, C.C.I.M.

SB/bj

List of Author's Projects

*Edgewood Hall Development - Providence

*Golf Course Subdivision - Logan

*Glennwood Hills - Logan

*Village Green - Logan

*Elkhorn Ranch - Nibley

*Quailbluff -PUD - Logan

*Evergreen Shopping Center - Logan

*Eckhill Development - Providence

*Logan Nursing Home - Logan

*Allsop Development - Smithfield

*Baugh Motel Master Plan - Logan

July 1, 1999

Re: Application of J. Alton Veibell for Preliminary Plan Approval and Rezoning to Create P District

To the Honorable Members of the Box Elder County Planning Commission:

These written comments are submitted by the Beaver Dam Water Company and RHN Corporation in opposition to the application of J. Alton Veibell for preliminary plan approval for the High Country Estates Subdivision and for the rezoning of Mr. Veibell's property to create a P district. We incorporate by reference the letter to you from Larry S. Jenkins dated May 3, 1999, on behalf of RHN Corporation, and we have been assured by Jon Bunderson and Jim Marwedel that Mr. Jenkins' letter has been made a part of the record of these proceedings.

The points we wish to make are as follows:

1. Beaver Dam Water Company has received a letter from the Utah Division of Drinking Water dated June 29, 1999, formally concurring in the delineation report submitted by Beaver Dam in support of its source protection plan. A copy of this letter along with the source delineation map has already been submitted to Jim Marwedel. Now that concurrence has been received from the State, the zones established by this delineation report will not change prior to final source protection plan approval. The property Mr. Veibell plans to develop falls within Beaver Dam's source protection zone 2. As such, state law and Box Elder County Ordinance No. 216 preclude Mr. Veibell, or anyone else who would want to develop in zone 2, from using septic tanks or drain fields.

Because Mr. Veibell's proposed development would require the use of septic tanks, we submit that the planning commission has no choice but to reject it in its present form. Ordinance No. 216 prohibits the County from issuing a "building permit or other form of approval from the County to develop or use real property . . . unless the applicant establishes that its proposed development or use of real property complies with the requirements of this Ordinance." Mr. Veibell should be required to present a new concept plan that would incorporate a waste water system that would be allowed in a drinking water source protection zone 2. Because a new concept plan would be required to correct this issue, approving Mr. Veibell's request for creation of a P district would be premature at this time.

For the same reasons, Beaver Dam Water Company submits that the request filed by RHN Corporation to rezone the area to A-20 should also be denied. No residential development can occur within Beaver Dam's source protection zone 2 that would require use of a septic tank or drain field. Both Mr. Veibell's and RHN Corporation's requests for rezoning should be denied because they would not comply with Ordinance No. 216.

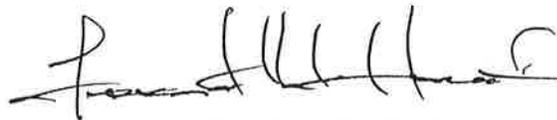
Beaver Dam's source protection delineation report is now officially accepted by the State. Only a few remaining items need to be submitted to the State before it can approve the

entire source protection plan. That process should be completed before the end of the summer.

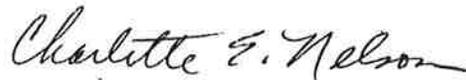
2. There has been some indication that the planning commission would act favorably on Mr. Veibell's applications because of a belief that he has acquired vested rights to the zoning designation and approval of the subdivision. While Mr. Jenkins addressed this issue in his May 3, 1999 letter, we want to reiterate that Mr. Veibell only has "vested rights" to the zoning designation that existed in January, 1999, when he refiled his application. He has no vested rights to a P district designation. No authority exists in Utah law for someone to obtain vested rights to a zone change. The case law deals only with vested rights to an existing zone designation at the time a building permit or subdivision approval is sought. Thus, Mr. Veibell's applications should be considered in light of the ordinances that existed in January, 1999, and not in light of whatever he may have done or tried to do in the past.

3. Beaver Dam Water Company is also concerned that Mr. Veibell's proposed development appears to be located directly on a fault, according to information already submitted to the County from Dr. Robert Oaks. As such, Chapter 14 of the Development Code strictly limits the uses of the property, absent conditions being placed on development that will protect against the hazards listed. If Mr. Veibell's request for the creation of a P district is granted once he has corrected his plans for waste water treatment, at the very least the planning commission should also formally recognize a Sensitive Area Overlay Zone covering Mr. Veibell's development. Recognition of a Sensitive Area Overlay Zone should require Mr. Veibell to design and engineer any waste water system so that Beaver Dam Water Company's source protection zone 2 would not be threatened by an earthquake.

Beaver Dam Water Company and RHN Corporation respectfully request that the planning commission deny Mr. Veibell's requests for preliminary approval and for creation of a P district.



Leonard M. Hawkes, President
Beaver Dam Water Company



Charlotte E. Nelson, Secretary
Beaver Dam Water Company
Secretary and Director
RHN Corporation