

assured Mr. Nelson that the flood control information was all taken care of.

PETITIONS:

Zoning Change: (Attachment No. 2)

Reggie Petersen of the Safe Drinking Water Association met with the Planning Commission to inform them of his intention to submit a Petition to Require a Conditional Use Permit and Amend the Box Elder County Zoning Map. Last month Mr. Petersen submitted a petition to amend the Box Elder County Zoning Map to designate a certain area as a Sensitive Area (SA) District. Mr. Petersen then read No. 1 from the attached petition. He added the comments, "...which refers to dealing with the Sensitive Area that we talked about last month."

Mr. Petersen continued by reading No. 2, pointing out that reference is made to the 1976 County Zoning Ordinance in the 1992 Box Elder County Land Management and Development Code because of discussion relative to which one of these codes or zoning ordinances applies to the landfill site. He said, "The only place that you can find solid waste management or site or landfill in either code book is under Multiple Use District 160, under Required Conditional Use Permit. The zoning book, as I understand it, is adopted for the unincorporated areas of Box Elder County, and within the unincorporated areas, you have some zoning and you have some areas that are not zoned. Nowhere, in either of these codes, do I find the word 'unrestricted' defined or used. Yet, on the zoning map, it is stated as unrestricted. I think that needs to be clarified or corrected. To me, this is a misnomer. There is no such term because it isn't mentioned in either of the code books. In the petition, we briefly give you a background. The last five lines read: Various Box Elder County officials have raised the question whether the landfill site is subject to the 1992 Code or 1976 Ordinance. Under either ordinance, a conditional use permit is required for the landfill site, and the requested zoning map amendment should be approved."

Mr. Petersen continued reading I. A Conditional Use Permit is Required, and II. The Zoning Maps Should be Amended. Mr. Petersen concluded that the area is in an earthquake zone and prone to flooding as evidenced by the testimonies and actual pictures which he said Chairman Kimber has in his possession. He then read "Request for Hearing" from the petition.

Chairman Kimber: "Let me see if I understand this clearly. The petition is essentially for a zoning change and some conditions within the zoning change - is that correct?"

Mr. Petersen: "What we are saying is that the zoning would be pre-conditioned to the landfill. We can't have a landfill without the zoning as stated by your code."

Mr. Beecher stated that there is no zoning in that area right now.

Mr. Petersen: "And since you have no zoning, and since it is for the unincorporated areas, in order to have a landfill I must petition for either a change or a conditional use permit."

Chairman Kimber: "Has this particular group or any other group made application for a zone change, or has it just come through this process of the petition?"

Mr. Petersen: "Process of the petition."

Chairman Kimber: "Are you aware of the process for a zone change request?"

Mr. Petersen: "I thought I was."

Chairman Kimber: "I think within the law in our procedure, there is a process. Denton, would you please read that. I am not so sure we haven't got the horse before the cart again."

Mr. Petersen: "...I've read the zoning, and what we are doing is petitioning you, as a body of commissioners, to consider this (petition) in light of what we have shared with you."

Chairman Kimber: "I understand what you're attempting to do."

Mr. Petersen: "And this follows the code."

Chairman Kimber: "What I'm trying to get to is the formality of a zone change."

Mr. Beecher: "In order for a zone change to be legal and to be binding, we need to follow the proper steps as set forth in the law because we have seen in other areas where it wasn't done, and the courts ruled it invalid. Therefore, we need to follow the proper procedures. If someone were to challenge it, it could be thrown out. Chapter 3 of the Code outlines the procedures for amendment and rezoning. The County Commission is the body who will amend the code, after your recommendation."

Mr. Beecher then read from the Box Elder County Land Use Management and Development Code Manual of November 1992:

3.1.2 Any resident or other person having an equitable interest in the county may petition the county for an amendment or rezoning. (and that's what Mr. Petersen's group has done)."

3.1.3 The person seeking to amend this Code or zoning map shall make application for such amendment by taking required actions and filing the following information and documents with the Planning Commission:

3.1.3.1 A written application describing the change desired

and the reasons therefore. (and I think, pretty much, Mr. Petersen has done that).

3.1.3.2 A non returnable amendment application fee. (which you have not established any fees yet, so we have never charged for a zoning change to date).

3.1.3.3 A Vicinity Plan

3.1.3.4 Names of all owners of the subject property,

3.1.3.4.1 Names of all owners within 400 feet of the subject property boundary when an identified property is the specific beneficiary,

3.1.3.5 A sufficient number of plain white legal size envelopes, addressed to required recipients and with proper postage affixed.

3.1.3.6 Place posters provided by the county at all corners of the property, and every 400 feet of frontage on any road.

3.1.4 The County shall prepare and give notice of public hearings to consider such amendment as provided by law for zoning amendments.

3.1.4.1 At least 14 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the county.

3.1.5 The Planning Commission shall review the application and make its recommendation concerning the proposed amendment to the County Commission within 30 days from receipt of the amendment application in a regularly scheduled meeting. The Planning Commission shall recommend adoption of a proposed amendment only when the following findings are made.

3.1.5.1 The proposed amendment is in accord with the comprehensive general plan, goals and policies of the county.

3.1.5.2 Changed or changing conditions make the proposed amendment reasonable necessary to carry out the "Purposes" stated in the chapters of this Code.

3.1.6 When the Planning Commission recommends the amendment the County Commission may:

3.1.6.1 Adopt the amendment by majority vote;

3.1.6.2 Reject the amendment.

3.1.6.3 Modify the proposed amendment and refer back to the

Planning Commission for its recommendation to be returned to the County Commission within 30 days."

At this point, Mr. Petersen asked Mr. Beecher to repeat the last few sentences. Hence, Mr. Beecher clarified: "When the Planning Commission recommends the amendment to the County Commission, in other words, they have favorably voted on it and passed it on to the County Commission, then the County Commission may adopt the amendment by a majority vote, reject the amendment, modify the proposed amendment and refer back to the Planning Commission for its recommendation to be returned to the County Commission within 30 days."

Mr. Petersen responded: "The biggest problem and one of the reasons we have taken the approach that we have, although I would have preferred to have followed this line by line, is that the County Commission has signed an agreement with the landfill promoter that they will exercise no authority whatsoever. The point here is, you've got a very unique situation that I don't believe anybody has had to deal with in the State of Utah."

Mr. Beecher: "We have no choice by law, the Planning Commission cannot change the code."

Mr. Petersen: "No, but you can make a recommendation."

Mr. Beecher: "We can make a recommendation, but if the County Commission cannot hold a hearing, then it is dead because this body cannot change it."

Mr. Petersen: "Well, not necessarily. You are right in your statement that this group cannot change it, but it isn't dead."

Mr. Beecher: "Well, it can be appealed to the higher court."

Mr. Petersen: "That's right, and for that reason we are using this approach."

Mr. Beecher: "Well, we haven't gone through this process yet. We haven't had an opportunity to see an application, to see the documentation, nor had an opportunity to review it and make a recommendation for a hearing."

Mr. Petersen then asked if the Planning Commission has available a copy of the August petition.

Mr. Beecher read in section 3.2:

3.2.2 Upon receipt of all required fees (which we don't have) and information for any specific step of the review procedure, the Zoning Administrator and other members of the Technical Review Committee, shall review the application for completeness and compliance with the provisions of this Code and

other pertinent county regulations. When the Zoning Administrator determines that the application is ready for Planning Commission review, the Chairman of the Planning Commission will docket the application for review at the next regular public meeting of the Planning Commission. Incomplete applications shall not be docketed for Planning Commission review. Mr. Beecher added, "And that review has been circumvented."

Mr. Petersen: "If that has been circumvented, then why weren't we made aware of this in our August meeting when we made the petition?"

Mr. Thompson: "It wasn't clear that what you were intending to do is to make a zoning change per se. It was my understanding that most of the information that you and Boyd Marble gave dealt with the danger of allowing a landfill to be placed in that area because of the Sensitive Area and the 18 wells that were up there and the Bothwell pocket. That was my understanding of what that discussion was leading to."

Chairman Kimber: "As I recall, and I agree with Jon, I saw nothing in there that talked about the zoning change. In your new petition, there is a request for the zoning change. At that point, as you recall, we were hit cold with that information, and we didn't have sufficient documentation. We requested it, and Mr. Petersen did deliver this to me last Friday afternoon." (September 10th)

Mr. Petersen then apologized for not being more specific and clear. He said, "We are not asking for a zoning change or implementation of zoning. We are asking that what we have in the code books be followed by all of those who have an interest in that site. It is a Sensitive Area because of it's characteristic. Whether we have acted on it or not does not make it a Sensitive Area. And according to your new code book, it is well stated there. Whether it is marked on the map or not, it is still considered that."

Mr. Thompson: "It may be designated."

Mr. Petersen: "It is considered that. And in the next part, in order for someone to have a landfill there, they must fall under the regulations of conditional use. They must have it an MU-160, according to your (1992) code book or in the 1976 book, designated as an Industrial District MG. What I am asking is that those people (Davis County) be required to follow the code that exists - that's all we are asking. And that area is subject to what we have stated, a Sensitive Area."

Chairman Kimber: "Then you're not asking for a zoning change. I appreciate that clarification." There were no further questions regarding the petition, so the Chairman said he appreciated the presentation and said he would take the material under advisement.

Mr. Thompson made a motion that the Planning Commission take the proposal under advisement. Mr. Grover seconded. Mr. Douglas asked what was meant by taking the issue "under advisement," meaning, who would they be getting advice from. Response: "Anyone we need to - an attorney or whoever." Chairman Kimber called for the vote. None opposed. The motion carried.

MINOR SUBDIVISIONS:

There was a discussion concerning the cumbersome procedures and length of time (sometimes months) required to gain approval for a minor subdivision. For the benefit of the two new members on the commission, Mr. Beecher explained that a minor subdivision is required when a developer wants to divide a parcel in less than ten lots. The lots must have a frontage on a dedicated street, with no right-of-way or easements, and the lot size must meet the zoning requirements. A developer may then sell the land by metes and bounds without recording a subdivision plat in the county recorder's office, after approval of the County Commission which necessitates the Planning Commission's approval as well. "In other words," Mr. Beecher explained, "it is a relaxation of the subdivision law and allows an individual to create his parcel of land into nine sellable lots."

Mr. Beecher recommended when a minor subdivision is submitted to him, that he would go through the ordinance and make sure all requirements are met and then bring it to the Planning Commission for one submittal and final approval. He added that this process would necessitate that the subdivisions be submitted to him no later than one week prior to planning commission meeting in order to be put on the agenda. This would give Mr. Beecher the time he needs to review the subdivision.

Mr. Thompson then made a motion that the Planning Commission approve Mr. Beecher's recommendation to allow him to review all minor subdivision plats for accuracy and ordinance criteria before submitting them to the Planning Commission for final approval, and that subdivisions must be submitted to Mr. Beecher at least one week in advance of Planning Commission Meeting in order to be put on the agenda. Ms. Halling seconded the motion. The motion carried.

PERMITS:

Cellular One Conditional Use Permit:

Mr. Beecher presented requests for two conditional use permits for two towers being constructed by Cellular One. He explained the towers are being built in Box Elder County to enhance their telephone system to give more coverage along I-84 out into western Box Elder County. The one site, adjacent to the existing repeater tower (just south of White's Valley) is called Blue Springs. He said he was told that U.S. West Corporation plans to put a tower there also. This area is in an unzoned area, which does not require a conditional permit per se, but Mr. Beecher said he has asked them to go through the process of a conditional permit application as a courte-

sy process so the Commission would be aware of what was going on before the building permit is issued. The second site, south of Snowville at a location called Hauns Peak, will give coverage along I-84. This will necessitate an access road going south into the Holmgren Land & Livestock property which is already in process, with the road leading south and around to Hansel Valley rather than straight west. This tower will necessitate bringing power to the site via an underground power line. Mr. Beecher said he understands that U.S. West is also planning a tower on the same mountain, but he foresees no problem.

Mr. Thompson asked for clarification of the repeater station. Mr. Beecher explained that the facility would include the installation of a communication shelter measuring 10 x 20 feet to house the cellular telephone equipment, installation of a 60 foot tower to hold the receiver and transmitting antennae, and a 6 foot chain link fence. It would be monitored with a 24-hour security system.

There was some discussion regarding the problem of cellular telephones interfering with the mobile radios, as has already been experienced. Mr. Thompson said he saw the phones as an asset to the community, and he felt sure there are regulations in effect that can deal with the interference problem. He asked Mr. Beecher if he perceived any environmental problems with the towers. Mr. Beecher replied he did not because to date, one tower has already been completed and is utilizing the same exiting utilities. With the second tower, the power would be underground, with a maintained (controlled) road rather than a public road.

Ms. Halling made a motion to approve applications for Conditional Use Permit applications for Blue Springs and Hauns Peak locations. Mr. Thompson seconded. The motion was put to vote. Mr. Grover voted "no." Majority ruled, and the motion passed.

Mr. Thompson made a motion that the meeting be adjourned. Mr. Grover seconded.

Mr. Beecher made a request that before adjourning, there were some things that we needed to be done regarding Mr. Petersen's request, either at this meeting or through assignments. He said the attorney needed to be asked about legalities on some of the issues that were raised and that the Planning Commissioners needed to do some work on Mr. Peterson's request so that they would have an answer for him.

Chairman Kimber responded that he felt he understood where Mr. Petersen was coming from, and from his perspective, since it has been clarified that it is not a request for a zoning change, the petition should be looked at by the county attorney to determine whether or not the Planning Commission has any authority to proceed

with a hearing on the petition without going through the other process."

Chairman Kimber then asked if there were any other discussion, concerns or questions.

Mr. Thompson: "At this point I don't know really what authority we have as a planning commission to address this. The zoning issue is something for which I think we have the authority."

Mr. Beecher: The question that I think we need to have answered is, as I understand their request, that they want the conditional use permit enacted upon the property so that the developers for whatever reason, must get a conditional use permit as to the ordinance. I think we need to have the attorney interpret whether or not this statement is correct - whether we are applicable or not, and whether we can enforce it or whether we cannot.

Chairman Kimber then asked Mr. Petersen, "Is that the question as you see it, Reggie?"

Mr. Petersen: "The way I see it, Mr. Chairman, is for you or your body to make a recommendation, either for or against. You are pretty much ex officio, and when it comes down to it, you don't have a lot of administrative authority, but you are a very important body. I am saying the County Commission really is the authority that exists. You can make a recommendation to them based upon what you know.

Mr. Thompson then asked Mr. Beecher to read Section 1.11.3 of the 1992 Box Elder County Land Management & Development Code.

Mr. Beecher read from 1.11.3: "Any person seeking to amend this Code or map shall make application for such amendment by filing the following material with the Planning Commission."

Mr. Petersen said this was not the section he meant to refer to. It was determined through discussion that Mr. Petersen was referring to paragraph 7.6.2.1 "No person shall commence or perform any grading or excavation, including those in gravel pits and rock quarries, in excess of the limits specified below without first obtaining a conditional use permit for such grading or excavation." Mr. Beecher clarified that the area has to be zoned by delineating on a map the area affected. "In the MU-160 zone, it says gravel pits are a conditional use permit, and they have to do these certain things. First of all, we have to have an MU-160 zone in place, and then this will comply. In the old 1976 zone, there is not a chapter that says it is mandatory whether it has zoning or not. This one says a landfill must get a conditional use permit, and this is what we want the attorney to clarify for us."

Mr. Grover: The only place you find solid waste disposal is under the MU-160 requirement.

It was voiced by Chairman Kimber that the question that needs to be answered is, is it possible to have the landfill without the zoning in place, and further, since the Planning Commission has several different interpretations, the correct interpretation is needed by the county attorney.

Mr. Thompson made a motion that the Planning Commission seek legal council regarding the legality of making any recommendations pertaining to a piece of property that is not zoned. Mr. Douglas Seconded.

Mr. Grover asked if this was the first time the Planning Commission has been involved in making a decision on the landfill.

Chairman Kimber said that last month a petition was brought to the Commission, along with some supporting documentation which was to be delivered. He said the Commission took it under advisement and indicated to the petitioners that it would be placed on the agenda for discussion, and either the revised petition or the new petition was submitted.

Mr. Thompson asked that after the Planning Commission received legal counsel on the issue, that they then bring it to the Planning Commission Meeting to have a vote to determine what the interpretation would be.

Mr. Grover asked what the definition of adoption in Box Elder County was.

Mr. Beecher responded that the only thing the Planning Commission by law can adopt is the Master Plan at that time. He said, "Now, with the new law, the Planning Commission can only adopt the General Plan, and that was done. The County Commission adopted zoning, subdivision, and mobile home ordinances. There was nothing adopted as "land use planning." That is totally another program, separate from what we are doing.

Mr. Grover: "But if there is no land use planning in Box Elder County, why do we have a planning commission?"

Mr. Beecher: "Because the planning commission does not function with land use planning. It functions with zoning and is not called land use planning. It is called a general plan for zoning and subdivision."

Ms. Halling: "So we functioned from 1976 under the Master Plan, and then we went to the General Plan with the new legislation of 1992. Land use is another term that people use.

Mr. Thompson made another motion to adjourn at 8:10 p.m. Mr. Grover seconded. None opposed. The motion carried.

Passed and adopted in regular session this 21st day of October, 1993.

ATTEST:



Marie G. Korth
Recorder/Clerk



Richard D. Kimber, Chairman

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

1. Public agenda for the Box Elder County Planning Commission meeting scheduled for 16 September 1993 at 7:00 P.M.
2. Notice given to the newspaper this 15 day of Sept , 1993 .
3. Approval of the minutes of 19 August 1993.
4. Scheduled Delegations:
 - A. Ron Nelson Flood issues for planning 15 minutes
 - B. Reggie Petersen Safe Ddrinking Water Assoc. Petition for zone change. 20 minutes
 - C. Minor Subd.
 - D. Cellular One Conditional Use Permit for repeaters
 - E.
 - F.
 - G.
 - H.
 - I.
 - J.
5. Old Business
 - A.
 - B.
 - C.
 - D.

PETITION TO REQUIRE CONDITIONAL USE PERMIT
AND AMEND BOX ELDER COUNTY ZONING MAP

Petitioner

Safe Drinking Water Association
7965 North 11600 West
Penrose, Utah 84337

Requested Action and Amendment

In addition to the petition submitted in August 1993 by petitioner, Safe Drinking Water Association ("SDWA"), to designate the identified area described therein as a Sensitive Area (SA) District, SDWA petitions the Box Elder County Planning Commission ("Planning Commission") as follows:

1. Conditional Use Permit. Petitioner respectfully petitions the Planning Commission: to notify all individuals or entities owning an interest in proposed site of the Box Elder County Landfill described herein ("landfill site") that they will be required to apply for and receive a conditional use permit prior to and as a precondition to the commencement of any construction or other activity at the landfill site; to resolve that the requirements of Box Elder County ordinances relating to issuance of conditional use permits be satisfied prior to and as a precondition to any construction or other activity at the landfill site; and to resolve that the conditional use permit process be used to address all environmental issues previously raised by the Safe Drinking Water Association.

2. Zoning Map Amendment. Pursuant to Section 1.11.3 of the 1992 Box Elder County Land Management and Development Code ("1992 Code") and Section 1-15 of the 1976 Box Elder County Zoning Ordinance ("1976 Ordinance"), petitioner requests an amendment to the Box Elder County Zoning Map to designate the landfill site either Multiple Use District MU-160 pursuant to Chapters 9 and 10 of the 1992 Code or General Industrial District M-G under Chapters 13 and 16 of the 1976 Ordinance.

BACKGROUND

In August 1993, petitioner submitted a petition to designate an identified area within Box Elder County as a Sensitive Area (SA) District. (See Petition attached hereto.) Box Elder County obtained a Solid Waste Plan Approval dated May 25, 1993 from the Utah Division of Solid and Hazardous Waste for the landfill site located in Township 13 North, Range 4 West SLB&M, Sections 28 and 29, Box Elder County, Utah. The landfill

site is located within the boundaries of the proposed Sensitive Area (SA) District described in petitioner's August petition. Various Box Elder County officials have raised the question whether the landfill site is subject to the 1992 Code or 1976 Ordinance. Under either Ordinance, a conditional use permit is required for the landfill site, and the requested zoning map amendment should be approved.

I.

A CONDITIONAL USE PERMIT IS REQUIRED

Chapter 7 of the 1992 Code clearly requires a conditional use permit for the landfill site. Section 7.6.2.1 provides: "No person shall commence or perform any grading or excavation . . . in excess of the limits specified below without first obtaining a conditional use permit." Similarly, Chapter 11 of the 1976 Ordinance requires a site development permit, which essentially has the same procedures and requirements as a conditional use permit. (See 1976 Ordinance § 11-4.) Section 11-2 of the 1976 Ordinance states, "No person shall commence or perform any grading in excess of the limits specified below without first obtaining a site development permit." The proposed landfill without question would exceed specified limits and is not otherwise exempt from the conditional use permit requirement elsewhere in either Ordinance.

Should the County designate the identified area (described in petitioner's August petition) as a Sensitive Area (SA) District, Chapter 20 of the 1976 Ordinance and Chapter 14 of the 1992 Code also would require a conditional use permit for the landfill site. Further, if the landfill site were zoned Multiple Use District MU-150 under the 1992 Code or General Industrial District M-G under the 1976 Ordinance, Section 10.3.17 of the 1992 Code and Sections 16-3(3)(P) and 16-3(5)(B) of the 1976 Ordinance also would require a conditional use permit for the landfill site.

II.

THE ZONING MAP SHOULD BE AMENDED

The County should amend the zoning map as requested herein to protect the regional water supply that could suffer adverse environmental impacts from contaminants associated with solid waste disposal at the landfill site. Section 10.2.1 of the 1992 Code requires the county to create multiple use districts "to avoid excessive damage to watersheds, water pollution, soil erosion . . . and to promote the health, safety, convenience, order, prosperity and general welfare of the inhabitants of the

community." Section 16-1(6) of the 1976 Ordinance also requires the County to designate General Industrial District M-G "to protect environmental quality of the district and adjacent lands."

The landfill site must be zoned as requested herein to avoid the adverse environmental impact to the regional water supply surrounding the landfill site. As explained in the August petition, leaching of solid waste pollutants from the landfill site into surface or ground water could contaminate the valuable regional water supply. (See Petition, at 3-5.) The landfill site is in an earthquake zone and an area prone to flooding. (See Petition, at 5-6.) For these reasons the zoning map should be amended as requested herein to protect the regional water supply that could be adversely impacted by contaminants associated with solid waste disposal at the landfill site.

CONCLUSION

For the foregoing reasons a conditional use permit should be required prior to and as a precondition to any construction or other activity at the landfill site, the conditional use permit process should be used to address the environmental issues raised by petitioner, and the Box Elder County Zoning Map should be amended to designate the landfill site Multiple Use District MU-160 under the 1992 Code or General Industrial District M-G under the 1976 Ordinance.

REQUEST FOR HEARING

Petitioner requests a hearing before the Planning Commission to address this petition and suggests that the Planning Commission consider in the same hearing petitioner's August petition for designation of a Sensitive Area (SA) District.

BOX ELDER CO/WILLARD FLOOD CONTROL DISTRICT
P.O. BOX 286
WILLARD, UTAH 84340

June 30, 1993

Mr. Dale Peterson
Director, District One
Utah Dept. of Transportation
169 North Wall Avenue
Ogden, Utah 84404

Dear Mr. Peterson,

In our Flood District meetings it has been brought to our attention that there are several areas where drains and culverts along Highway 89 are not functioning well. One box near Flying J Service in south Wilford where the state placed a grate is damaging adjacent property. We need to determine whether these culverts belong to the Utah Highway Department, Pineview Canal, or others.

In a recent conversation with our board member, Dale Zito, Mr. Dave Cottle stated that the state feels the drains located approximately 8800 South Highway 89 in Box Elder County are adequate in their present condition and location. The highway bed has been raised over the years and some of the pipes become plugged or the water does not drain away after exiting the pipe. These areas are threatening property and home owners.

We would appreciate meeting with you and your engineers to determine what precautions and remedies may be feasible. The Box Elder County Planning Commission meets on July 15, 1993. We would like to complete this survey prior to their meeting. Please advise us of a time that would be convenient for you to meet. Thank you for your consideration and assistance.

Sincerely,



Ronald R. Nelson, Chairman

RRN:lch

cc: Robert L. Morgan, Ut. St. Water Rights
Robert L. Fotheringham, No. Reg. Water Rts.
Craig Zwick, Director, UDOT
Comm. Allen Jensen, B.E. County



State of Utah

UTAH DEPARTMENT OF TRANSPORTATION

Transportation Commission

Samuel J. Taylor
Chairman

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Secretary

Michael O. Leavitt
Governor

W. Craig Zwick
Executive Director

Dale E. Peterson, P.E.
District Director

District One
169 North Wall Avenue
P.O. Box 12580
Ogden, Utah 84412
(801) 399-5921
FAX: (801) 399-5926

July 13, 1993

Mr. Ronald R. Nelson, Chairman
Box Elder County/Flood Control District
P.O. Box 286
Willard, Utah 84340

Dear Mr. Nelson:

We agree there is a problem with drainage and runoff along State Road 89. This problem not only exists through the Willard area but up through Perry as well, in fact all the way to 1100 South in Brigham. When the highway was originally constructed pipes were placed across the road that accommodated both irrigation and highway drainage. In many cases boxes were constructed on the east side of the highway near the right-of-way line to collect unused water from irrigation and runoff above the highway. Many of these boxes still exist, however, we doubt if any are being used as they were originally intended. The pipes under the highway were placed at locations to accommodate natural drainage as well as the land use at the time. Much of this water runoff was balanced somewhat by other government projects such as C.C.C. and W.P.A.. We believe that much of this balancing has been compromised by land owners and development. At these crossings, catch basins were also constructed at the flowline of the highway cut ditch to intercept water that came off the highway and flowed along the highway drainage ditches.

Some of the runoff water problem was mitigated for many years when the Pineview Canal was constructed. We have been led to believe that many times canal washout problems occurred out of the small canyons along the canal. We have also been told that in recent years the Pineview Canal Company has covered their canal at most of their problem areas. This transfers the problem downstream to the land owners as well as the highway.

We believe that the existing highway pipes can accommodate the drainage, but they cannot accommodate the uncontrolled changes of land use above their inlets. They also cannot accommodate the utter disregard for unused irrigation water drainage from orchard irrigation and the siltation it causes. Plus, they cannot function when the outlet ends are constricted so that the water cannot get away properly. We recently cleaned some cut ditches at spot locations, which is again almost silted in because of this problem.

State Code 27-12-141, titled "Escaping Water, Penalty for Violations" covers the responsibility of water users. This section states "Any person who willfully or carelessly obstructs or injures any public highway by causing or permitting flow or seepage of water, or who willfully or carelessly permits water under his control to escape in any manner so as to injure any such highway, and any person who willfully or carelessly places or leaves, or causes to be placed or left, anything upon any such highway in such a way as to obstruct travel or to endanger property or persons passing upon such highway, is guilty of a misdemeanor".

The Department of Transportation constructed the existing pipes across the highway. We believe these pipes adequately convey water from one side of the highway to the other. We are pursuing through our Risk Management and the Attorney Generals Office legal direction for a solution to the siltation from the unused irrigation water. During the summer our crews spend time almost everyday mitigating irrigation water problems which in our opinion are the landowners responsibility. We can manage the pipes under the highway. We don't believe it is our responsibility to handle what occurs above and below.

If we understand the situation at Flying J correctly, the problem really occurs west of our right-of-way where the drainage is compromised. 8800 South, in our opinion, is also a potential problem. Local landowners have worried for years that the old Cold Water Spring pond would be over-flowed causing bank failure as well as culinary water failure for those residents. The Department caused a pipe to be placed just north of there to help mitigate that problem. The outlet drainage for this pipe was taken into swamp ground owned by one of those effected. Gravel pit workings north and east of this facility could effect this pipe so that it would not be adequate.

In closing, we think there is a severe problem along this highway and we would be happy to meet with those concerned. We certainly want to take care of our responsibilities along this highway. We can meet after July 19, 1993. Our time schedules are tied up before that time. Please contact me at 399-5921, Ext. 300, if you are interested in meeting and we can set up a time.

Sincerely,

A handwritten signature in cursive script that reads "Dale E. Peterson".

Dale E. Peterson, P.E.
District One Director

DEP/JDG/cs

BOX ELDER COUNTY/WILLARD CITY
FLOOD CONTROL DISTRICT
P.O. BOX 95
WILLARD , UTAH 84340

Willard Mayor and City Council

August 26, 1993

Dear Mayor and Council Members:

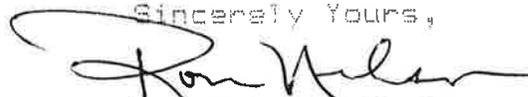
A Special District For Willard Flood Control was established by the Box Elder County Commission under Ordinance Number 163 Section 1.0 (1.3) Statement of Purpose. It is the intent of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions to these specific areas by provisions designed.

A Master Plan For Box Elder County/Willard City Special District For Flood Control and Drainage was adopted in July 1981. This Plan develops an order for storm water management within the district boundaries. Section 2.0 Page 2 of the Master Plan for flood control includes "structural" improvements encompassing detention basins, open channels, pipes, curb, and gutter, and all other improvements for the handling of storm water and also "non-structural" measures such as zoning, land use, and storm water regulations that will reduce or eliminate future runoff problems.

Our board is dedicated to serve the people within our district by taking measures necessary to provide the greatest possible protection to minimize the dangers and risks involved in flooding and runoff along this frontal section of the Wasatch Mountains. It has come to our attention that there are building plans and/or permits being considered in Box Elder County and Willard City without the erudition and/or comment of the Flood Control Board. We ask for your cooperation in bringing before our board any subject activity that falls within the above ordinance. We request that you submit detailed plans before any decision is made with regard to building permits, conditional use permits, excavation, construction or any activity that may effect flooding and/or drainage within our jurisdiction.

We are enclosing of a letter dated April 24, 1993 to Rodney B. Mund, Mayor and City Council Members as an example of why we are concerned. This letter is intended to promote a spirit of cooperation. We feel that if we work together we can accomplish the goals of all entities. We ask for your response.

Sincerely Yours,



Ron Nelson, Chairman

Copy: Michael Z. Hayes, Attorney
Box Elder Planning Commission

Rodney B. Mund, Mayor and
City Council Members
Willard, Utah 84340

April 24, 1993

Dear Mayor and Council Members:

As you know, Willard has an extensive history of flooding, a great deal of property has been destroyed and lives have been lost. Many tax dollars have been spent by Federal, State, and Local Governments to control flooding in this area. For example, the catch basin and spillway east of the highway below Willard Canyon was constructed, the CCC effort built many Gabion Dikes on the Cook Canyon Alluvial Fan, and Various Sections of land (including Willard Basin) were acquired by the Forest Service to permanently protect these flood areas from excavation, development or other uses that have the potential of causing flooding.

On May 26, 1936 President, Franklin D. Roosevelt signed an Executive Order under the Public Land Law that legally classified and identified certain sections of Utah lands (including section 25 owned primarily by Darrell Nielsen). Upon the recommendation of the Secretary of Agriculture it was ordered that these lands be included in and made a part of the Cache National Forest and further, it reserved these sections from any purpose other than classification, flood control, and watershed protection.

As populations increased so did the dangers of flooding, as a result many organizations have been formed such as the Utah State Division of Water Rights (Dam Safety), and the Willard City-Box Elder County Special District for Flood Control and Drainage (FCD). The objective of these entities was to provide safety and welfare to people and their property from the hazards of flooding. In July 1981 the Willard City (FCD) prepared and adopted a MASTER PLAN FOR FLOOD CONTROL AND DRAINAGE for the Willard area.

A request to Box Elder County and WILLARD CITY for a Conditional Use Permit for a gravel excavation and processing facility was made by MR. DARRELL NIELSEN, prepared by SCHICK INTERNATIONAL, INC., dated January 1981. The Willard City (FCD) MASTER PLAN stated the following with regard to this request: "The proposed drainage plan for the gravel operation does not provide any positive flood control benefits. Its implementation may actually increase the damage potential to lands below the canal". This request was denied by the Box Elder County Commission and our (FCD) believes this was a correct determination.

Mr. Nielsen filed another application on July 14, 1987 for a Conditional Use Permit for a gravel excavation project "similar" to the one described in the 1981 plan. We believe that this plan (and the developer's activities, since the permit was issued in 1989 by the Box Elder County Commission) HAS NOT Enhanced Improved, or Complemented the Willard City-Box Elder County Flood District's plans and Goals as required by the (FCD) Master Plan.

The Country Commission and Willard City denied Mr. Nielsen's request of January 1981. Nielsen's attorneys then filed law suits against some Elected Officials. Nielsen lost these law suits primarily due to the fact that the Box Elder County and Willard City Officials did not deviate from their MASTER PLANS which were adopted to the inhibit the danger of flooding.

Our present (FCD) Chairman and the majority of Board Members support the position taken in 1981 with respect to this project as it is consistent with the language in the Willard City (FCD) Master Plan. We do not However, support the Willard City Flood Control resolution made on September 1, 1988 by the Flood Control Board Members stating that "Issues could be resolved if the Box Elder County Planning Commission granted a permit to Darrell Nielsen". The motion was made by **Rod Mund**, the vote was affirmative, the letter was signed by **Wayne Braegger** and sent to the County planning Commission.

We hereby inform you that the foregoing events represent true facts supported by irrefutable evidence that indicates gross negligence and intentional disregard of the Master Plan for Willard Flood Control and Drainage has occurred. These actions negate the efforts (and tax dollars spent) by Federal, State and Local Governments to control flooding in this area. This is contrary to the Willard City (FCD) objective to provide safety and welfare to the people and property within our jurisdiction with regard to the dangers from flooding.

On March 18, 1993 our (FCD) Attorney, Mazuran and Hayes served a formal complaint with the Box Elder County Planning Commission requesting that a Cease and Desist Order be issued against the D.N. Development Project for permit violations. Information has been submitted recently to the Utah State Attorney General's Office for investigation into alleged misconduct on the part of some of our Elected City Officials and Employees.

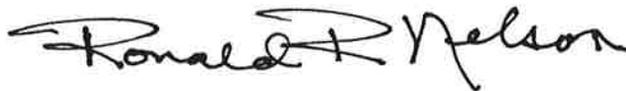
In regard to the (counter) suit recently filed against Willard City by Darrell Nielsen. It is imperative that our Willard City Box Elder County Flood Control District be included in and be a part of any pending litigation strategies being discussed in open, special, emergency or "**Closed Meetings by the Mayor and City Council**". Our (FCD) not only has valuable legal information available for input, we also have a legal right, and obligation to be involved in judicial matters (including City Ordinances) or any other subject that might have an effect with regard to flood control within our jurisdiction.

We further state that the subject property involve in this Counter Suit within Willard City Limits is a component of the Cook Canyon Alluvial Fan, and as such is under the jurisdiction of the Willard (FCD). In order for us to carry out our sworn duty to protect the citizens of Willard our (FCD) must be allowed assess to any plans and applications for a conditional use permit or other projects **before** they are enacted. This includes but is not limited to any agreement or plea bargains from litigation or out of court settlements that by its character might initiate the issuance of a permit. We (FCD) are legally obligated in these matters in order that the Conditions of any Use Permit or Agreement, before being issued can be imposed upon the developer in accordance with the law and our Master Plan. These conditions should be at least as stringent as those (that set a precedent) adopted by the Box Elder County Planning Commission and placed on Darrell Nielsen (D.N. Development).

It is therefore the opinion of the Willard City Box Elder County Flood Control Chairman and the majority of Board Members that Willard City **MUST NOT** make any concessions, agreements or plea bargains with regard to this counter suit that involves property within potential flood areas, within the jurisdiction of our Flood Control District. Further that Willard City Officials should compel Willard City's Insurance Carrier to defend this action in court if necessary. To do otherwise could "in essence" issue a Conditional Use Permit to Darrell Nielsen illegally, by not going through the proper procedures. Any Concession made would only be of value to the Developer or the Insurance Carrier and is not in the best interest of the people of Willard.

If this happens you (Mr. Mayor and City Council Members) could be accused of intentionally and willfully violating the law by ignoring the facts as presented in the forgoing and by deviating from the Box Elder County Master Plan and the Willard City FLOOD CONTROL DISTRICT MASTER PLAN. This act could plausibly obligate our citizens, and conceivably place yourselves in jeopardy, collectively and/or **individually** to legal liability.

Respectfully Yours,



Ronald R. Nelson
Chairman-Box Elder County
Willard City, Flood Control Dist.

Copy: Jody Burnett, Attorney
Michael Z. Hayes, Attorney
Willard City Planning Commission
Box Elder County Planning Commission
Utah Attorney General's Office