

**BOX ELDER COUNTY**  
**October 21, 1993**

The Board of Planning Commissioners of Box Elder County, Utah, met in regular session in the Commission Chambers of the Box Elder County Courthouse, 01 South Main Street, in Brigham City, Utah, at 7:00 p.m. on October 21, 1993.

The meeting was called to order by Chairman Richard Kimber, with the following members present, constituting a quorum:

Richard Kimber	Chairman
Allen Jensen	Commissioner, Member
Deanne Halling	Member
Jon Thompson	Member
Steve Grover	Member
David Tea	Member
Denton Beecher	Ex-Officio Member
Marie Korth	Ex-Officio Member, Recorder/ Clerk

**APPROVAL OF MINUTES:**

Chairman Kimber presented the Minutes of September 16, 1993, for approval. Mr. Beecher pointed out on page 10 the Minutes state, "The Planning Commission can only adopt the General Plan." He stated the Planning Commission can only "recommend"; the County Commission is the body who adopts the plan. Mr. Beecher also requested striking "You adopted a General Plan," in the same paragraph. Mr. Thompson made a motion to approve the Minutes of September 16, 1993, as corrected. Mr. Grover seconded. None opposed. The motion carried.

**AGENDA: (Attachment No. 1)**

**LANDFILL:**

**Letter from Davis County Solid Waste Management and Recovery Special Service District. (Attachment No. 2)**

Mr. LeGrand W. Bitter, Director, Davis County Solid Waste Management and Recovery Special Service District, presented a letter from the District. Chairman Kimber read the letter and requested it be entered into the Minutes. Mr. Thompson made a motion to make the letter from the Davis County Solid Waste Management and Recovery Special Service District a part of the Minutes and that the Planning Commission be willing to respond to the request. Ms. Halling seconded. None opposed. The motion carried.

**SAFE DRINKING WATER ASSOCIATION:**

**Petitions previously submitted and response to Attorney Bunderson's letter: (Attachments No. 3 & 4)**

Mr. Reggie Petersen, Safe Drinking Water Association, met with the Commissioners to discuss landfill concerns. Discussion was as follows:

**MR. PETERSEN:** We would request notifications of any meetings or any copies of any memos, letters, or documents pertaining to the petitions which we have submitted as it relates to this Commission, and as it relates to any communication with interests outside of this county as well as the County Attorney and the Commission. If at the end, if someone would like to entertain a motion, we will see how things go and take it from there.

It is our position that the 1976 and 1992 codes do apply to the unincorporated areas of Box Elder county and not just the unincorporated zoned areas that have been discussed. At this time I would like to refer to Mr. Bunderson's opinion relative to these particular petitions. I would like to emphasize that it is only an opinion and not a decision or a verdict.

First, We do not want to amend, as it is stated here, the zoning laws. That is not our intent. We want to enforce the zoning laws as they already exist.

Secondly, in February of 1993, pursuant to requirements imposed by the State Legislature, Box Elder County adopted a new zoning law replacing the previous existing law which stated 1976. That is not a correct statement. The code of 1992 was adopted 24 November, 1992, and it became effective 17 February, 1993.

He (Mr. Bunderson) indicates here that he has been provided with two petitions; both of those petitions are undated. We would like to indicate as far as the petitions are undated, we accept the date of record as referred to in the Minutes. Since both were addressed on September 16, 1993, that is the date that we would choose to have them recognized. I would first note that any amendment can be prospective only, not retroactive. In most cases this is true, but in the case of the White's Valley site, it is not. I will demonstrate that later in the presentation.

Next it talks about a petition to amend the current zoning laws. The 1992 Land Use Management Development Code for Box Elder County must meet chapter three of the law. Neither of the petitions in my possession meet that requirement. Thus you are not required to act upon either of these petitions. That is what Mr. Bunderson commented. I would like to read to you our response in our letter, second paragraph, "First, contrary to Mr. Bunderson's statement, the petition satisfies all mandatory requirements in Section 1.11.3 of the 1992 Box Elder County Land Use Management and Development Code. According to Mr. Bunderson, the 1992 Code became effective February of 1993. Section 1.11.3 of the code requires any person seeking to amend the code or map to file a written petition designating the change desired and the reason therefore." 1.11.3 reads "Any person", and this is under 1.11, Code and Map Amendment Procedures, "Any person seeking to amend this code or map shall make application for such amendment by filing the following materials with the Planning Commission, 1) a written petition designating the changes de-

sired and reasons therefore." Mr. Beecher indicated the last time we met that this particular requirement has been waived and will be waived until further notice.

Under Item 1.11.4, "The Planning Commission shall review the amendment application and certify its recommendation concerning the proposed amendment to the County Commission within 45 days of the receipt of the amended application. As you can see, this is not an applicable statement; the statement made by Mr. Bunderson under Chapter Three. Since we do not believe the form of the petition to be a significant factor, we will stand advised by this Commission. However, as the Code states in direct contradiction to what he states that you are not required to act upon either of these petitions, we support the code and do request action based on its requirements.

I do appreciate Mr. Bunderson's statement in the second paragraph, about the last sentence when he states, "It would be lawful for the Planning Commission to itself make recommendations without requiring the redrafting of the petition." We agree with that as well.

I would like to refer to the second paragraph, Request to Require Conditional Use Permit. The current zoning law effective in February of 1993 does indeed allow sensitive area designation and also appears to impose conditional use permit requirements on landfills anywhere in the county. The only statement to that is that we concur one hundred percent.

Next, one of the major differences between the two codes, and he goes on here to allude that prior to February of 1993, the provisions of the zoning ordinances applied only in areas specifically by County Commission and affirmative action. Our contentions are reflected and documented in the petitions that we have submitted to you that reflect the 1976 and the 1992 code. Due to the fact that there is confusion as to which of these codes really apply here, we took the time to address both. You have that in your possession and I would recommend that we review that in light of what we are going to discuss tonight. I will be submitting a case law example which will probably merit review of that. I will bring that out in just a minute.

Mr. Bunderson states here that there was a meeting held in the Bothwell Church. Mr. Beecher, as I recall, you were in attendance at the meeting, is that correct? It wasn't the Bothwell Church, but it was that Thatcher/Penrose Church. Who was in attendance, was that Mr. Holmgren? Mr. Holmgren had contacted me to set up a meeting of the Bothwell/Thatcher/Penrose citizens and any other interested people.

**MR. BEECHER:** The one we are referring to is the one in the Bothwell Church. I don't know if you were in attendance in Bothwell,

but the one you have referred to is the Bothwell Church. It was in 1972, and I am not sure there are too many here who could remember.

**MR. PETERSEN:** My point is it really doesn't make any difference. It does make a difference that they didn't want any zoning of any sort. He makes the statement. Quite frankly, if you will recall, the Bothwell people did petition and did apply for zoning.

**MR. BEECHER:** Some time later.

**MR. BEECHER:** No, it wasn't the same people, it was the water company that petitioned to have it changed.

**MR. PETERSEN:** It represents the same people. They didn't have a turn over either by death or moving out or moving in. The same people petitioned this Commission to maintain their rural atmosphere and have a minimum of five acres, is that correct?

**MR. BEECHER:** That's correct in certain areas, but in the area we are talking about the people did not want anything done.

**MR. PETERSEN:** I just wanted to know if that was a correct statement. In order for these people to create a situation where there was a minimum of five acres, they had to approach you to do that. The point is, anybody who is going to put together a proposal of the magnitude of the landfill, it seems to me they ought to do the same thing.

**CHAIRMAN KIMBER:** Let me clarify one thing, Reggie. When you say "this Commission", are you talking about the Planning Commission or the County Commission?

**MR. PETERSEN:** This Commission here tonight, the Planning Commission.

**MR. BEECHER:** At the time it was done, there were different members, but it was brought to the Planning Commission first.

**MR. PETERSEN:** At this time I would like to pass out to you a time line (Attached). I would like to share with you this time line. This is a chronology of the landfill.

March 31, 1992, Alex Hurtado secured an option from Hunsakers.

June 8, 1992, he conveyed that to Mr. Wangsgard.

July 1, 1992 was the effective date from the State for counties to adopt use codes. I don't want that statement to be misrepresented. I think Mr. Beecher could probably explain that a lot better than I could. I think that was the effective date that counties needed to proceed and adopt the Land Use Code.

September, 1992, Box Elder County paid Millard Consulting for drafting and work sessions and consultation at that time, \$1,295.00.

October 1, 1992, Safe Drinking water Association obtained the 1992 code. There is one chapter missing. There were also a couple of penciled additions that Mr. Beecher provided for.

**MR. BEECHER:** That was a rough draft which we have never had returned to us.

**MR. PETERSEN:** I would be happy to talk to you about that. The directions that you gave me, Mr. Beecher, were, "When do you want it back?" "Don't worry about it, when you are through with it, throw it away." Mr. Chairman, the copy that he is referring to is enroute to his office by mail as we speak. We obtained that October 1, 1992.

October 29, 1992, an application was submitted to the Division of Solid and Hazardous Waste.

November 10, 1992, the County entered into an engineering agreement with Mr. Wangsgard. It wasn't until the 17th of November that Mr. Wangsgard assigned the option and the option actually became the property of the County.

November 24, 1992, Box Elder County adopted a Land Use Code.

November 24, 1992, the County gives notice of an extension of the option for \$25,000.00 to Hunsakers.

December 18, 1992, and I have a copy of that particular deficiency letter. A notice of deficiency given to Box Elder County. Question Number One. What is the current zoning at the proposed landfill site? Evidently up to that point in time the application had not addressed the zoning.

December 29, 1992, was the first revision of the permit.

January 15, the second.

January 29, the third.

February 17, 1993, effective date of the Box Elder County Code.

May 24, 1993, the fourth revision of the permit.

May 25, 1993 was the final revision and permit issuance by the Division of Solid and Hazardous Waste to Box Elder County. I would like you to keep in mind these various dates and the chronology of these dates as we proceed.

Referring to our letter to you in response to Mr. Bunderson's letter where it refers to the second. Mr. Bunderson's analysis of

the vested rights doctrine in Utah is incomplete, misleading, and unpersuasive. Under Utah law an applicant acquires a vested right obtaining the application from parts of the zoning ordinances in effect at the time of the application is filed unless changes to the zone ordinance are pending. Or unless a compelling reason exists for applying, the amendment is retroactive to the date. Mr. Bunderson maintains that on October 29, 1992, an application was filed with the Division. The 1976 Box Elder County Zoning Ordinance was in effect at the time. You can go ahead and read the rest of that. I am referring to Chapter eleven of the code which requires a site development permit.

Mr. Bunderson indicates in his letter that the current zoning law does indeed allow for sensitive areas. He goes on further on the very last page and talks about a vested rights doctrine adopted by subsequent amendment. We are talking about a pending amendment. So it is subsequent amendment versus pending amendment. I would like to read for you and, I have provided you with a copy of the text of the Western Land Equity's suit with the City of Logan. If you read through the part that I highlighted, you will come to a place that we hold instead that an applicant has the right and a vested interest unless changes in zoning ordinances are pending which would prohibit the use applied for. We are talking about Supreme Court case law.

Mr. Chairman, it is our position at this time, that the code of 1992 or the one that became effective in February of 1993 was indeed pending with that question that there had been meetings, work meetings, modifications, discussions. You can see that in September the consultant received his money. According to him, he had been a part of several work sessions prior to that. He alluded to the fact that it had been adopted once. Our point is we believe that the landfill is not only subject to the 1976 code, but truly is very much subject to the 1992 code. I refer to the one that was adopted and effective in January of 1993.

One of the other statements in this court case, "or unless the municipality can show a compelling reason for exercising its police power retroactively to the date of the application." My point is, how much more compelling can a municipality, or in this case, a county government be, that a landfill that affects the lives and the quality of life of the people in this valley. How much more compelling can it be to require that there is at least a public hearing on the local level so that the citizens will have input as to how they feel about that particular landfill issue.

The other thing, with all due respect to Mr. Bitter, we are talking about a landfill that isn't even owned by this county, but by somebody outside of the county. We are talking about a landfill that has the intent of collecting garbage for up to 150 miles in radius. I want Mr. Bitter to correct me, if I am wrong, but it is also as it has been told to me by members of the Board down there, to be reciprocal of ash, and potentially sludge, is that correct?

**MR. BITTER:** It will receive Class I material which is nonhazardous waste.

**MR. PETERSON:** Ash is considered to be a municipal waste? I am not trying to taint ash, I am saying that its characteristics are much different than other solid waste materials. Based upon that, Mr. Chairman, number one, we would like to have this particular Commission address the two petitions that we have submitted to you. We feel that we have provided for you some factual, solid information relative to a response to Mr. Bunderson's letter. We would like this Commission to consider the information which we have given you and to know that we, the citizens, respect the position which you have. It is not an easy one. It is very thankless in a lot of respects. Whatever the decision you come up with, we will respect and accept and then we will meet from there. I appreciate your time, Mr. Chairman.

Mr. Petersen then asked the status of the two petitions. Chairman Kimber replied there has been no disposition on the petitions. In the Planning Commission meeting of September 16, 1993, a motion was made to take Mr. Petersen's proposal under advisement. Mr. Petersen asked if there are any time constraints. He was concerned about time limitations and expired petitions; he would like them to be very active and receive either an affirmative or a negative response. Mr. Petersen stated the court affords a 45 day time period to address the petitions and asked that the date of the petitions be recognized as September 16, 1993.

Mr. Bitter asked for a moment to address the Commission.

**MR. BITTER:** The District would be pleased to respond in writing to any of the requests that have been made here this evening and present the District's arguments in light of those. The District has been involved in the landfill business for over ten years. We understand what we are doing. The State knows what they are doing. The permit has been issued in the face of Sub-title D which is the most restrictive law that has ever been in place regarding the management of solid waste in regards to materials that Mr. Petersen is concerned about.

To the issue in general, first of all, the District does concur with Mr. Bunderson's opinion that is provided. Secondly, when the District purchased the property, it was based upon the facts that existed at the time of the purchase which included the zoning of the site. Thirdly, the District has a substantial vested interest in the property based upon the facts that existed at that time. Fourth, any change in zoning will result in damaging the District's interests. As a result of that, the District will vigorously oppose any attempt to change the zoning in the area in question.

Ms. Gretta Spendlove, representing Wood, Spendlove, and Quinn, the legal counsel for the Davis District, was present and said Mr.

Petersen stated he had reviewed Mr. Bunderson's letter, and it appeared to represent a very clear statement of the law. The District does have a vested right in the property without a change in zoning. If any change were attempted, the District would vigorously oppose it.

Mr. Grover asked: Who is the "District"?

Mr. Bitter replied that the Davis County Solid Waste Management and Energy Recovery Special Service District was formed in 1985 by two counties and 15 cities, all of the cities in Davis and Morgan Counties excluding Bountiful City. There are 180,000 citizens and 40,000 households. They deal in regional management of municipal solid waste. The District is a separate government entity, not tied to the County. They have the landfill own revenue stream; it is not tax based; it is totally supported by energy revenues from electricity and steam sales and tipping fees. The District was created solely for the purpose of managing municipal solid waste in an environmentally sound manner. They own a landfill in Layton.

Mr. Bitter stated they understand the concerns Mr. Petersen expressed. There are \$200,000.00 homes built within the last two years adjacent to the landfill fence line. They have a lot of experience in dealing with that. The waste energy plant is about 200-300 yards from an expensive subdivision. The District is competent in the area of municipal solid waste.

Mr. Bitter said he is the Director of the District; there is a nineteen member board of directors comprised of one representative from each of the government entities they represent along with all three Davis County Commissioners.

Chairman Kimber asked if there was any reason why the Planning Commission was bypassed in the process of obtaining the land. Mr. Bitter stated there were no issues pending before this body relative to the purchase of the land; the solid waste permit was issued by the State of Utah. Mr. Grover asked if the permit was issued to Box Elder County, not Davis County. Mr. Bitter replied that was correct.

Mr. Petersen asked if Davis County has requested that the permit be transferred. Mr. Bitter responded it is public knowledge that the District has requested that modification. The permit was issued by the State; the request has been submitted to the state.

Mr. Thompson made a motion that the Planning Commission consider and take the information presented under advisement again and that Mr. Petersen and his constituents be advised to proceed with all of the requirements necessary to produce the application to Mr. Beecher or to the Commission to implement a zone in the sensitive area. Mr. Grover seconded.

## DISCUSSION:

Chairman Kimber stated Mr. Petersen will need to formalize his plan specifically. At the September 16 Planning Commission meeting Chairman Kimber asked Mr. Petersen if the request was for a zone change and Mr. Petersen told him "no". Mr. Petersen stated it is to affect a law that already exists and that the particular characteristics of the property merit it. Mr. Petersen referred to Section 14 and stated he would prepare a "brief" of a sensitive area zoning district which would include areas of Box Elder County with certain characteristics. It has been indicated the area is in a flood plain, it is geologically hazardous because of the earthquakes, and it is an environmentally sensitive area. Mr. Petersen referred to a letter from a geologist, Mr. Ben Averett, who stated the area is a water recharge area for the Bothwell Pocket. Mr. Petersen stated he had read to the Planning Commission from Section 1.11, and that he had followed the procedures for the amendment.

Mr. Thompson restated his motion for Mr. Petersen's benefit and added to the motion that this Commission ask for legal counsel as to some of the questions which have been raised concerning the vested rights doctrine. Commissioner Jensen stated if Mr. Petersen is not requesting a zoning change, the only other issue is the vested rights doctrine. He further said if the vested rights doctrine is the only issue, he felt the motion was unnecessary. Mr. Petersen stated it was a request for the map to be amended. Commissioner Jensen advised him that would require a zone change. He said it is his contention that zoning is not an issue, rather the vested rights doctrine is the issue. In reading the case law provided by Mr. Petersen, the law supports Mr. Bunderson's decision. Commissioner Jensen read from the case law: "Unless changes in the Zoning Ordinance are pending which would prohibit the use applied for, or unless the municipality can show a compelling reason for exercising its police power retroactively to the date of application. . ." the compelling interest is the issue. He said it is his belief that the only way that compelling issue is going to be resolved is through the court. Mr. Petersen said zoning is already the issue. He said it is their position that the landfill site is governed by the 1992 code based upon the case law he provided. If that is true, a conditional use permit is required. He then referred to Chapter 7 of the UBC (Utah Building Code) in which the state requires the counties to police any kind of excavation that exceeds a certain level which requires a building permit. Mr. Petersen said we are just scratching the surface; it is zoning, vested interests, something that should already be in place, such as the sensitive area overlay. Commissioner Jensen stated the case law does support Attorney Bunderson's opinion.

Chairman Kimber called for the vote on Mr. Thompson's motion and addition to the motion.

Mr. Thompson: Yes  
Mr. Grover: Yes  
Ms. Halling: Yes

Mr. Tea: Yes  
Commissioner Jensen: No

The motion carried.

Mr. Petersen requested he be provided a copy of the Minutes of this meeting. Chairman Kimber informed him an approved copy of the Minutes would not be available until after the November meeting.

**BOX ELDER COUNTY/WILLARD FLOOD CONTROL DISTRICT:**

Mr. Ron Nelson, Chairman, Box Elder County/Willard Flood Control District, met with the Commissioners to discuss concerns in the area of the Darrell Nielsen gravel pit.

Mr. Nelson began by referring to past major and minor flooding events in the Willard area. He said the Flood District's main concern was with the Cook's Canyon area immediately south of Willard. A developer is attempting to mine gravel just below the mouth of the canyon which they consider to be a very sensitive, dangerous area for flooding. They have had a lot of advice by different professional people to leave it alone.

Mr. Nelson stated Box Elder County issued a permit in 1989 with some very stringent conditions attached. The project was set up in two phases. He said he was under the impression an agreement has been made for the developer to move into phase two. The Flood District feels there are some violations of the conditions. He brought up the revegetation aspect stating the developer was to have taken care of the revegetation this fall; however, nothing has been done, constituting a violation of the permit. Mr. Nelson emphasized the revegetation is needed to stabilize the alluvial fan. In addition, he reported a diversion ditch has been dug and a channel cut north of the pit which routed the water west toward the Woodyatt Subdivision. He said it was agreed that the main, or south, channel would be restored so the water would go through the pit and proceed to the enlarged retention basin. It is not going into the retention basin as stipulated in the conditional use permit; this is a major problem. Mr. Nelson said it was agreed when the developer reached phase two all of the water would then be going through the pit. He quoted from the Minutes of September 10, 1991: "Mr. Beecher: It has to go south, that is the only way the plan will be approved." Mr. Nelson emphasized Mr. Nielsen (the developer) is going into phase two, and that has not happened. The water is not going into the pit, into the excavation site. According to the plan, all of the dirt was supposed to enhance, improve, and complement the goals of the Flood Control District. Mr. Beecher stated permission has not been given to go into phase two. To his knowledge the developer has not gone into phase two.

Mr. Nelson next brought up the issue of the existing stock piles, stating the excavation site itself is a huge stockpile, 100 yards in each direction. This blocks the south main channel from delivering

the water into the retention basin. The Flood District paid \$160,000.00 to construct a retention basin which Mr. Nelson stated is completely useless at this time. He said the water needs to go into the pit, the stockpile needs to be removed so the water can go into the basin to provide protection for the people below. Mr. Nelson quoted from Mr. Russ Brown, the original engineer, and Mr. Gale Larson, the Flood District's engineer. Both agreed "The Master Plans which were approved by the County Planning Commission in March, 1989, have not been followed." The Flood District's attorney has presented to the Planning Commission a statement that this gravel operation cease and desist until the violations are corrected and safety measures are implemented.

In conclusion Mr. Nelson stated the Flood Control District is charged by the county with providing flood protection that will provide safety, welfare, and life itself. They do not feel that this particular project is in compliance. He said the State of Utah has written to the Flood District expressing their concerns about flooding in the area, there is a potential of some real damage.

Mr. Nelson read a prepared statement: "The conditions of the conditional use permit must be brought into compliance with the conditions of the conditional use permit before this developer proceeds into phase two. Until all of the violations identified by the Flood Control District have been corrected, it is our opinion that the conditions of this use permit are not in compliance with the conditions of the conditional use permit. We feel like you gave us a commitment; we feel like you have betrayed it."

Mr. Nelson asked the Planning Commission to please accept the advice of their attorney and request again that a cease and desist order be placed on this project until the violations are corrected. He said they do not want the responsibility for this as a Flood Control District until the conditions are brought into compliance.

Chairman Kimber asked for a printed copy of Mr. Nelson's letter signed by the officers of the Flood Control District. Mr. Nelson agreed to provide the letter with signatures to Chairman Kimber.

Chairman Kimber stated after receiving the letter from the attorney, the Planning Commission went out and looked at the project and their engineer did not feel there was any violation of the conditions.

Mr. Nelson asked if the Planning Commission would agree to go with the Flood Control District and inspect the property. Chairman Kimber stated the Planning Commission would be happy to do this at any time.

Ms. LaVee Hemsley, Secretary of the Flood Control District, stated, "when we presented this a year ago in September, Mr. Larsen came and gave his presentation and left his recommendations. At the

time he did the analysis, there was a plan that had been submitted. The Planning Commission asked the Flood Control District if the plans for the spillway were adequate. The Flood District said, 'no'. This was put in writing; many things are lacking, and Mr. Larsen recommended the plan be reviewed." She asked if it had been reviewed as they have never heard anything.

Mr. Beecher stated there was a request for the review of the Flood District to see if the overflow structure would be acceptable. After that the Planning Commission made a motion that the two engineers get together and resolve the issues, and that was the last that had been heard. (This was about a year ago.) Ms. Hemsley said she has a very good chronology of events from 1987 through 1993. A list of recommendations was prepared for an independent engineer and submitted in September of 1992. These recommendations have never been addressed by the Planning Commission. She said they were presented in Planning Commission meeting.

**GRAVEL PIT:**

**Darrell Nielsen, Rebuttal to Flood Control District:**

Mr. Darrell Nielsen stated the basin in question has been enlarged tremendously; they are taking out approximately 25 - 3,000 ton a day, and every shovelful taken out enlarges the basin. He said he would like to divert the water into the basin immediately; he has a million dollars worth of equipment in the area. There must still be a great deal of material removed before the revegetation can be done.

Mr. Beecher asked Mr. Nielsen if he is going north of phase one. Mr. Nielsen replied, no. Mr. Beecher reported all of Mr. Nielsen's equipment is located within Willard City limits. The excavation is also in Willard City and not under county jurisdiction. Mr. Nielsen stated within the next two or three weeks if Willard City follows through, an agreement will be reached and all of the problems with the City will be solved.

For the record Mr. Nielsen stated Mr. Ron Nelson is not to be allowed on his property unless he obtains a court order.

With reference to the spillway into the basin, Mr. Nielsen stated originally a pipe was approved, then a concrete spillway was required. This was approved by Pineview Water Company, the BLM, and Mr. Beecher. However, the Flood Control District rejected it. He said he would not build it until somebody decides to do things the way they should be. He added that his inlaws live directly below the operation and they are not at all worried about flooding. Mr. Nielsen asked for a motion to see if the Flood District wanted it dumped.

Mr. Beecher stated the channel under discussion is not a part of the plan; it is something that was done against the design. The previous Flood Control District and the Planning Commission had no

objection to it and said they could live with it. There was never anything done to finalize it. Mr. Beecher said if Mr. Nielsen agrees to take the ditch out and put it back the way it was before he dug it, that would be good a good thing.

Mr. Nelson stated the Flood Control District would always like to go along with the conditions set up by the Planning Commission. They condone the activities of the Planning Commission to have Mr. Nielsen comply with each and every condition along with this particular one.

Mr. Nelson stated the ditch was done without the knowledge of the Flood District. He said they would like it filled in and put where the conditions say it is supposed to go.

Chairman Kimber stated if the Flood Control District wants the channel filled in, Mr. Neilsen has offered to do it. Mr. Nelson said the Flood District would like to have their engineer look at the site before anything is done. Mr. Nielsen asked Mr. Beecher to meet with him at the site and decide exactly how the work should be done.

**Landscape Rock:**

Mr. Nielsen stated landscape rock is getting to be a premium and is also getting to be very much in demand. He said he has large rocks on the mountain near a green house which he owns and asked permission to go up and remove large rocks for sale.

Mr. Beecher stated Mr. Nielsen's request would come under the new Ordinance. Under Chapter 7 of the Code: "A permit is required. No person shall commence and perform any grading or excavation including those in gravel pits and rock quarries in excess of the limits specified without first obtaining a conditional use permit for such grading or excavation . . . a conditional use permit shall be required in all cases where development comes under any one or in any of the following provisions unless such work is otherwise exempted elsewhere in this chapter." Mr. Beecher said exemptions are for homes, septic tanks, etc. Nothing is said about taking rocks off the surface. If any excavation is below five feet, a permit is required.

Chairman Kimber said no formal application had been received, and until such application is received, no action can be taken.

**MINOR SUBDIVISIONS:**

**Clyde A. Sorensen Minor Subdivision:**

Mr. Beecher presented the Clyde A. Sorensen Minor Subdivision at 14400 North and 4000 West for final approval. Mr. Sorensen would like to break off some parcels along the street, retaining an access on one lot. Mr. Beecher explained the plan. Commissioner Jensen made a motion to accept and approve the Clyde A. Sorensen Minor Subdivision. Mr. Grover seconded. None opposed. The motion carried.

**Gale Welling Minor Subdivision:**

Mr. Beecher presented the Gale Welling Minor Subdivision near Fielding. He pointed out the current Fielding Town limits, explaining part of Mr. Welling's property is within the city limits. Mr. Beecher stated the Planning Commission cannot approve a lot within city limits, and the lot cannot be bounded by a municipal boundary. However, Mr. Welling is selling the lot in question in order to meet the requirements. Mr. Beecher reported water will be provided by the Yukon Water Company, sewer will be septic systems approved by the Bear River Health District, drainage shall be approved by the county. To avoid any ground flooding, all homes are to be above or equal to the elevation of the county road and the county assumes no responsibility for the same. Mr. Beecher stated this will be put on the minor subdivision regulations so people will be aware if they build their homes and then get flooded, it is not the county's fault.

Commissioner Jensen made a motion to approve and accept the Gale Welling Minor Subdivision. Mr. Grover seconded. None opposed. The motion carried.

**Clark Wakley Minor Subdivision:**

Mr. Beecher presented the Clark Wakley Minor Subdivision, stating it is located on 9600 North and pointed it out on the map. He indicated it is in the Weiss Apple Orchard Subdivision which was never developed. Mr. Wakley owns all of lot 1 of that Subdivision. Mr. Thompson made a motion to accept the Clark Wakley Minor Subdivision subject to the same restrictions as on the Gale Welling Minor Subdivision. Mr. Grover seconded. None opposed. The motion carried.

**KIM HAWKER CONDITIONAL USE PERMIT:**

Commissioner Jensen stated he had visited the Kim Hawker property on Wednesday, and there is water standing in the corral areas. He said he could not support the requested permit; due to existing conditions, he felt the number of cattle would pollute the canal. The Health Department said if the runoff is polluting a stream that goes into the drainage of waters of the State of Utah, it will not be allowed.

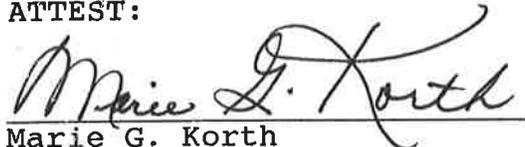
Mr. Beecher said many conditions have been discussed in previous meetings; however, nothing was ever acted upon. He stated the Sheriff's Department has been investigating some cruelty to animals reports by Mr. Hawker. A discussion was held concerning Mr. Hawker's request and possible solutions to the problems. Commissioner Jensen made a motion to table the request for one month and that the Planning Commission obtain the counsel of the Agricultural Extension Office and see if information can be obtained relative to what feed lot sizes should be per acre and what controls can be placed upon them that would be equitable and fair to farmers. Mr. Tea seconded. None opposed. The motion carried.

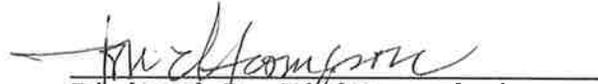
Mr. Thompson made a motion to adjourn at 9:20 p.m. Mr. Grover seconded. None opposed. The motion carried.

Passed and adopted in regular session this 18<sup>TH</sup> day of

NOVEMBER, 1993.

ATTEST:

  
Marie G. Korth  
Recorder/Clerk

  
Richard D. Kimber, Chairman  
ACTING 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 21 October 1993 at 7:00 P.M.
  2. Notice given to the newspaper this 20 th day of October 1993 .
  3. Approval of the minutes of September 16, 1993.
  4. Scheduled Delegations:
    - A. Letter From Davis County Solid Waste Management and Recovery Special Service District
    - B. Reggie Petersen - Safe Drinking Water Association
      - a. Decision on petitions previously submitted
      - b. Response to Attorney Bunderson's letter
    - C. Ron Nelson - Willard / Box Elder County Flood District - Present a letter concerning reclamation of Nielsen gravel pit.
    - D. Darrell Nielsen - rebuttal and request to extract rock from his property near the green house.
    - E. Minor Subdivisions
      - a. Clyde Sorensen
      - b. Gale Welling
      - c. Clark Wakley
    - F. Kim Hawker Conditional Use Permit .
    - G.
    - H.
- Old Business
- A.
  - B.



DAVIS COUNTY SOLID WASTE MANAGEMENT  
AND ENERGY RECOVERY SPECIAL SERVICE DISTRICT  
650 East Highway 193 / Layton, Utah 84041  
(801) 771-3032 / FAX: 771-8615

September 28, 1993

Mr. Richard Kimber, Chairman  
Box Elder County Planning Commission  
01 South Main Street  
Brigham City, UT 84032

Mr. Denton Beacher, Zoning Official  
Box Elder County Planning Commission  
01 South Main Street  
Brigham City, UT 84032

Re: Petitions to declare the West Hills region sensitive area

Dear Messrs. Kimber and Beacher:

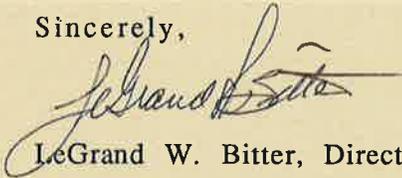
The Purpose of this letter is to request notification of any action, meeting, petition or responsive deadline regarding declaration of the West Hills region as a sensitive area. As a property owner in the West Hills region, Davis County Solid Waste Management and Energy Recovery Special Service District has an interest in any actions affecting zoning or land use.

Please send any notices to the following:

LeGrand W. Bitter, Director  
Davis County Solid Waste Management and Energy Recovery Special  
Service District  
650 East Highway 193  
Layton, Utah 84041

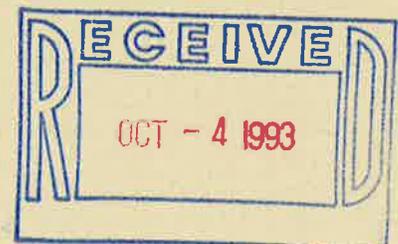
Should you have any questions, please feel free to call. Thank you for your cooperation.

Sincerely,



LeGrand W. Bitter, Director

LWB/JAS





CIRCA 1890'S

# Box Elder County,

STATE OF UTAH

## COUNTY COMMISSIONERS

R. LEE ALLEN  
ALLEN L. JENSEN  
JAMES J. WHITE

### OFFICERS

CARLLA J. SECRIST, COUNTY AUDITOR-TREASURER  
MARIE G. KORTIL, COUNTY RECORDER-CLERK  
ROBERT E. LIMB, COUNTY SHERIFF  
JON J. BUNDERSON, COUNTY ATTORNEY  
MONTE R. MUNN'S, COUNTY ASSESSOR  
DENTON BEECHER, COUNTY SURVEYOR



CIRCA 1980'S

September 23, 1993

RECEIVED

SEP 24 1993

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

COUNTY COMMISS

Attn: Denton Beecher

Dear Members of the Planning Commission:

Denton Beecher has requested an opinion regarding two Petitions presented by Mr. Reggie Petersen to the Planning Commission, which I understand were discussed with Mr. Petersen at your most recent meeting.

I have reviewed the minutes of the meeting, and it appears that Mr. Petersen, after some discussion, told the Planning Commission that he was not seeking an amendment to the Zoning Law.

Nonetheless, since both Petitions clearly present a request to amend the Zoning Law, I will address that issue first.

### ZONING LAW AMENDMENT

In February, 1993, pursuant to requirements imposed by the State Legislature, Box Elder County adopted a new Zoning Law, replacing the previously existing law which dated to 1976.

I have been provided copies of two separate Petitions, which I am informed are the Petitions submitted by Mr. Petersen, one in August, 1993, the other more recent (both Petitions are undated).

To the extent either or both of these Petitions request amendments to the Zoning Laws, I would first note that any amendment can be prospective only, not retroactive.

Box Elder County Planning Commission  
September 23, 1993  
Page 2

Secondly, a Petition to amend the current Zoning Law (more technically referred to as the 1992 Land Use Management and Development Code for Box Elder County), must meet certain requirements under Chapter 3 of that law. Neither of the Petitions in my possession meet the requirements. Thus, you are not required to act upon either of these Petitions, and you may, if you choose, strictly enforce the requirements of Chapter 3.

Although I would not suggest waiving those requirements for anyone, if you believe that a particular situation warrants action, once it has been brought to your attention, it would be lawful for the Planning Commission to itself make recommendations without requiring the redrafting of the Petition.

REQUESTS TO REQUIRE A CONDITIONAL USE PERMIT  
OR IMPOSE A SENSITIVE AREA OVERLAY ZONE

Mr. Petersen's other request, contained in both of the Petitions when read together, is to impose a Sensitive Area Overlay Zone (or designate the identified area as a Sensitive Area District), and/or to impose Conditional Use Permit Requirements.

The current Zoning Law, effective in February, 1993, does indeed allow Sensitive Area Designations, and also appears to impose Conditional Use Permit Requirements on landfills anywhere in the county.

One of the major differences between the earlier code (the 1976 Law) and the current code (the February, 1993 Law) is the treatment of areas that are not actually zoned. Prior to February, 1993, the provisions of the Zoning Ordinance applied only in areas specifically zoned by the County Commission. In other words, the County Commission had to take affirmative action and impose some land use restrictions, designated by ordinance, before any zoning or land use restriction of any sort applied to that area. Prior to the adoption of the 1976 Code, Box Elder County proposed a Zoning Ordinance and held hearings throughout much of the county. I am informed that at a hearing or hearings held in the Bothwell Church during that period of time, the residents and landowners of the area in question very emphatically stated that they didn't want zoning of any sort. As a consequence, the geographical area in question remained unzoned, and there were no land use restrictions of any sort imposed.

Box Elder County Planning Commission  
September 23, 1993  
Page 3

This continued to be the case until February, 1993, when the new ordinance was adopted. On October 29, 1992, prior to the adoption of the new ordinance, an application for a landfill was filed. Under the "Vested Rights Doctrine" adopted by the Utah Supreme Court, applicable to zoning laws, a subsequent amendment of a zoning law does not affect a land use for which a filing or application had been officially made prior to the change. In simpler terms, the February, 1993 Zoning Law is not retroactive concerning a use which either existed or for which official application had been made.

Thus, the county may not impose the new provisions of the February, 1993 Law upon the so-called White's Valley Landfill at this time, since a proper application was made and was pending at the time of the change in the law. The application itself created a vested right to proceed under the law as it existed at the time of the application. As noted above, the area was unrestricted, unzoned, and there were no land use provisions in place at the time of the application.

The County Commission certainly has the power to rezone the area or impose a Sensitive District Overlay, but such action would not affect the so-called White's Valley landfill site. By the same token, although the new Land Use Code provides that all landfills are subject to Conditional Use Permit Requirements, those requirements do not apply to the White's Valley landfill.

I hope this satisfies your request and concerns; if not, please feel free to ask for a further opinion, clarification, or whatever assistance you deem appropriate and necessary.

Very truly yours,



Jon J. Bunderson  
Box Elder County Attorney  
45 North 100 East  
Brigham City, Utah 84302  
Telephone: (801) 734-9464

JJB:me

CHRONOLOGY OF LANDFILL

MARCH 31, 1992, ALEX P. HURTADO SECURED AN OPTION FROM HUNSAKERS

JUNE 8, 1992, ALEX P. HURTADO CONVEYS OPTION TO WANGSGARD

JULY 1, 1992, EFFECTIVE DATE FROM STATE FOR COUNTIES TO ADOPT USE CODE

SEPT. 1992, BOX ELDER COUNTY PAYS MILLARD CONSULTING FOR DRAFT, WORK SESSIONS AND CONSULTATION. \$1,295.00

OCT. 1, 1992, SDWA OBTAINS COPY OF 1992 CODE. (MISSING ONE CHAPTER)

OCT. 29, 1992, APPLICATION FOR LANDFILL SUBMITTED TO THE DIVISION OF S&HW

NOV. 10, 1992, COUNTY ENTERS INTO AN ENGINEERING AGREEMENT WITH WANGSGARD

NOV. 17, 1992, WANGSGARD ASSIGNS OPTION TO COUNTY

NOV. 24, 1992, BOX ELDER COUNTY ADOPTED LAND USE CODE

NOV. 24, 1992, COUNTY GIVES NOTICE OF EXTENSION OF OPTION FOR \$25,000 TO HUNSAKERS

DEC. 18, 1992, NOTICE OF DEFICIENCY GIVEN TO BOX ELDER COUNTY, QUESTION NUMBER 1. WHAT IS THE CURRENT ZONING AT THE PROPOSED LANDFILL SITE?

DEC. 29, 1992, 1ST REVISION OF PERMIT

JAN. 15, 1993, 2ND REVISION OF PERMIT

JAN. 29, 1993, 3RD REVISION OF PERMIT

FEB. 17, 1993, EFFECTIVE DATE OF BOX ELDER COUNTY CODE

MAY 24, 1993, 4TH REVISION OF PERMIT

MAY 25, 1993, PERMIT IS ISSUED TO THE COUNTY