

BOX ELDER COUNTY
December 17, 1992

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 7:30 p.m. on December 17, 1992.

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

Jon Thompson	Acting Chairman
DeVon Breitenbeker	Member
Deanne Halling	Member
Junior Okada	Member
Allen Jensen	Commissioner, Member
Denton Beecher	Ex-Officio Member
Marie Korth	Ex-Officio Member

Excused:

Richard Kimber	Chairman
Steve Grover	Member

APPROVAL OF MINUTES:

Acting Chairman Jon Thompson presented the Minutes of October 15, 1992, for approval. Ms. Halling made a motion to approve the Minutes of October 15, 1992, as written. Mr. Breitenbeker seconded. None opposed. The motion carried.

AGENDA: (Attachment No. 1)

WILLARD/BOX ELDER FLOOD DISTRICT:

Cook's Canyon Concerns: (Attachment No. 2)

Mr. Ron Nelson, Chairman, Willard/Box Elder Flood District, met with the Planning Commission to discuss some concerns regarding the activities by the DN Land Development Company in the Cook's Canyon area. Mr. Nelson stated Willard has had a long history of flooding. There have been floods because cattle grazed the grass down, lightning caused fires resulting in there being nothing to hold the flood waters. The flood in 1923 killed some people. He said the Forest Service purchased the Willard Basin at that time so that cattle would be kept out of it. A basin was built near the highway. Again in 1936 the water came down the canyon and took out the south wall of the dyke causing some damage to the city.

Mr. Nelson said Cook's Canyon is a huge alluvial fan, probably the largest along the Wasatch Front. It has protected the town from flooding for many years. After the war in the early 1940's, the CCC people came to the fan and put some gabion dykings in that act like little beaver dams. Mr. Nelson said these dykes still exist today. He stated they are concerned about this because they don't feel there is a safe way to take rocks from the site without

exposing the city. On several occasions in letters and personal appearances the concerns have been expressed to the Planning commission.

Mr. Nelson presented a letter (attached) addressed to the Planning Commission for their review. He said they have seen things that they consider being violations of the conditional use permit. Their number one concern is on the first page, someone has gone up into the mouth of the canyon and taken large machinery and dislodged some rocks from the north side of the canyon and placed them on the south side. This is a diversion method or attempt to get the water to go down the north side of the fan. On the north side of the fan is Willard City. There is an old channel that has formed on the side of the fan. He said that is the biggest violation. There are homes directly underneath the fan which could be damaged. Mr. Nelson stated there is evidence of blasting in the area.

Commissioner Jensen stated the Planning Commission went to the site. He said prior to that he went up there after reading the report prepared by Willard City's engineer. He said he didn't think there had been any blasting, but there has been a large piece of equipment with a large bucket. The teeth marks are on the rocks where there has been an attempt to pull or break them in an attempt to dislodge the rocks and move them from the area. Commissioner Jensen stated if you go to the mouth of the canyon and look down into the canyon, there is no way you can tell which way the water will go. It will take its own course. He said when he was up there, there was a foot and a half of water coming out of the canyon, but it was going into the ground. He said he didn't know what what would happen when there is more water than the ground can absorb. It could go either north or south. Commissioner Jensen said if there has been an attempt to dislodge the rocks in an attempt to divert the water one way or the other, it brings some question to his mind. He recommended as soon as it is accessible to get into the area, that the Planning Commission go and look at it.

Mr. Nelson stated the main channel comes down out of the mouth of the canyon and spreads out over the alluvial fan, and it then becomes a series of channels. The last time the channel ran in 1983 it flooded some basements. The permit states, "the main channel is not to be disturbed because of the potential of having it go into the city." They think that is probably the way it is going to go again. If there has been an intentional diversion of the canyon, it is a violation of the permit. He said if they could prove it, the Planning Commission should be able to do something. Mr. Nelson said there is a large mound of gravel about 50 feet high and about 100 yards across on the south side of the fan. The pile is sitting in the main channel and would block any water from coming down the canyon and going into the detention basin.

It was recommended that a controlled overflow structure be built to control the outlet so the overflow would never come near

the stockpile. Mr. Nelson stated he had doubts if this would work, stating you cannot channelize the water; it will take its own course. The overflow structure was not a part of the original conditional use permit.

Mr. Nelson stated the excavation that has been taking place has cut deep into the side of the mountain resulting in very steep slopes, and he could not see how the grade could be put back to the 2-1 slope as called for in the permit. He said when water does come down, it will bring debris on to some of the property below. This should have been resloped as the work was done. The property needs to be stabilized as soon as possible. Mr. Thompson stated he was very concerned about the situation, but they are going to insist that Mr. Nielsen do whatever is necessary to meet the conditions.

Mr. Nelson stated the Flood Control District feels that there is a responsibility to Willard City. Willard City cited the developer and recently went to court. At this time there has not been a court decision. It is still being taken under advisement. Mr. Nielsen read from the letter, "Willard City Special District for Flood Control and Drainage Committee Members feel that the Box Elder Planning Commission and County Commission should support our responsibilities with regard to Willard City. We consider this a violation of the use permit as it infringes upon the objectives of our Flood District's Master Plan which was adopted by Box Elder County in 1981." Mr. Nelson said he realized he should be meeting with Willard City, but they would like the Box Elder County Planning Commission's support.

Mr. Thompson stated the Planning Commission would support Willard to the extent that any operation of the Darrell Nielsen Land Development would not jeopardize property or safety to any of the citizens of Willard in an operation that would extend into Willard City. If there is opposition to that, they would support it as a Commission to curtail or restrict activity. They would cooperate with Willard City to that extent.

Mr. Nelson stated their last concern is: there has been very little activity in the pit. During the past few months it has basically been vacated. This concerns the Flood Control District about the flood hazards that have been created there. In the spring when the water comes out of the canyon, there is a good possibility that a lot of the excavation site will come down on the highway. He said there is a potential of great destruction. Mr. Nelson stated they wanted to make sure all of the twenty conditions imposed are enforced. They felt several of them have been violated. Mr. Beecher stated several years ago the Planning Commission expressed that their number one concern was the mouth of the canyon and the Flood District ignored it. This is a critical issue. The flow can change very quickly and send it north, and the Flood District should be concerned with the mouth of the canyon.

Mr. Nelson presented some pictures illustrating the areas of concern. He requested the Planning Commission place a cease and desist order on the permit until all of the violations identified have been corrected. Mr. Thompson stated it appears this warrants an immediate investigation. Mr. Nelson stated if they are not taken care of by spring time, they would like the permit revoked.

The Flood District would like the Planning commission to determine the status of the developer's bond; they are concerned about how much money it will take to put this back into a condition in compliance with the conditional use permit. Mr. Thompson stated if there is enough evidence to warrant a cease and desist order of the conditional use permit in their judgement, then that will happen.

Mr. Nelson presented a picture looking down towards the homes on the south side underneath the gravel pit. He pointed out the detention basin is being blocked. Mr. Nelson asked the Planning Commission to look at the magnitude of the pile and the hole that has been cut in the gravel pit with respect to the size and position of the detention pond. If they could envision water coming down through there and if they think it could hit the detention pond, he would quit his position and leave everything up to the Planning Commission. Mr. Nelson stated when the Flood District could see conditions were being met, they would not object; but when they see diversions of rocks in the mouth of the channel, they cannot go along with the program any more. They are in charge of protecting the people of Willard from flooding. Mr. Breitenbeker stated if there were rocks moved in the mouth of the canyon, it needs to be looked into. That has nothing to do with the conditions of the permit to cease and desist. That is a separate problem that needs to be addressed. Mr. Nelson stated nature wouldn't move the rocks from the north side to the south side.

Ms. Halling made a motion to accept the letter from the Box Elder/Willard City Flood District into the Minutes of the Planning Commission Meeting. Mr. Breitenbeker seconded. None opposed. The motion carried.

DARRELL NIELSEN REQUEST TO REMOVE ROCKS:

Activity in Gravel pit: Mr. Darrell Nielsen met with the Planning Commission to discuss his activities. The following discussion took place:

MR. NIELSEN: First of all I wanted to address this other situation. The way I am sitting here it sounds like I went up there and blasted and did this and that. I have been accused of that tonight. I would like, Marie, to have those things in the Minutes of what was said here today, word for word. I am going to swear on a stack of Bibles that I have never blasted from day one down there, since we got our permit. We have never blasted, we never blasted before. I will swear on a stack of Bibles.

Second of all, I have never been up there and moved one rock. I have told Denton this a jillion times when he has had complaints to go down and look for blasting that he has never saw one thing, and we have never done anything. I had to come to these Commission Meetings and listen to this every time I come by Ron Nelson. Another thing I want in the Minutes, I have told Denton Beecher he could go up on my property any time he feels like it. Now Ron Nelson and his other people have been trespassing on my property which he has no right to do. As of this night if he ever wants to get on my property, he will make a request from me to come up on my property because I own that property and nobody else. So that is the way it is going to be after tonight. Unless that Flood Control makes an appointment to meet me up there and discuss anything, that is going to happen. Nobody is going to go on my property again without my permission other than Denton Beecher and this Planning Commission. I think I will let you guys come up anytime you want to. I would like to be notified so I can be there. I think that is no more than fair. I want to see what has been going on. I have been up to the mouth of the canyon a jillion times. I have never seen anything that is a problem. I have never done anything. I want it in the records so that you understand where I am coming from.

MR. THOMPSON: I think we understand what you are saying, Darrell.

MR. OKADA: That is exactly what I have been saying all along. We should all go up there. If it takes part of the Planning Commission to go with Ron and Darrell, we should go up and instead of getting one side of the program, the other side of the program, and we are caught in the middle.

MR. NIELSON: I agree with you one hundred percent. This Flood Control gets me to do flood control. My property taxes go towards flood control just as much as anybody elses. Why aren't they willing to come up and say, "let's take and look at this situation and all work together and do this thing." But no. From day one they didn't want to do anything. It is just like this deal again tonight. They are still not willing to spend one dollar to do anything. But yet we can spend the tax money to do the flood control, but they are not willing to do anything. So if you guys prove, you search this thing out, you prove that I am wrong, you want to revoke my permit, that is fine. But the same token that you have set that you guys are willing to look at that, I would like you to make the same commitment to Darrell Nielsen that if these guys are wrong. It is the same old problem, it is getting sickening. The Flood Control has never offered one dollar to ever buy that property if they hate it so much, neither has Willard City. Another thing, let me tell you about cease and desist, they did that to Darrell Nielsen when he built that retention basin that this Commission said you do this before you go up there and move one ton of gravel. They got that court order to do it. Maybe you ought to ask Ron Nelson what the judge ruled. I will tell you what he ruled. He ruled in favor of Darrell Nielsen, and now I am supposed to get damages and attorney fees out of it. Did I show you

the letter, Denton? That is what the judge ruled. Before anybody puts a cease and desist, you better think very carefully about it because if it could lose, everybody could hurt again. Willard City is going to hurt over this deal for what they did to us the time that I was supposed to be going to work and I couldn't work. I just wanted to get a few of those things off my chest because I have listened to this long enough. I don't think that I am 100 percent wrong.

MR. THOMPSON: Well, it sounds kind of like a threat, too, Darrell, I feel bad that you are directing your anger towards us.

MR. NIELSEN: It is not this Planning Commission. They have never done one thing to me.

MR. THOMPSON: You seem to appear that you are quite upset with this Planning commisison and maybe I am reading you wrong.

MR. NIELSEN: I am not upset with you. I think the world of this Planning Commission. You guys have been 100 percent with me. We have heard this, you have heard this every two months for as long as I have had the permit. This gets awfully tiresome, Jon.

MR. THOMPSON: I don't think there is anybody here that likes to keep hearing this, but, Darrell, there are a lot of people in Willard City that also deserve to have their interests protected, and that is what we try to do as well as continue to allow you to mine your gravel pit. It puts us in the middle of this and so you can understand why you are going to hear both sides of this over this table. That is a natural consequence of the nature of this type of operation that you are running down there, especially in a very sensitive area like that. When there is evidence that has been brought forth, whether it was legal or illegal, we are not here to determine whether it was or not or whether somebody was trespassing. If there is evidence in the form of pictures that indicate that there is a violation here or there is a diversion of the stream alledgedly, then it warrants an investigation by this Commission and we plan on doing that.

MR. NIELSEN: That is right, you do it. But I have already told you that I did not do anything. I will swear on a stack of Bibles that I haven't done anything up there. Maybe they have been up. I don't know if they have or they haven't. Maybe somebody has done it before when the Flood Control was doing all that work in those areas. Did you ever think of that? They could have done that.

MR. THOMPSON: We will look into it.

REQUEST TO REMOVE ROCKS: (Attachment No. 3)

Mr. Nielsen stated he had received a lot of requests for landscaping rock and said he is requesting permission to remove rock from the top of the ground or just into the ground a little bit. He has a chance to sell the rocks. Mr. Nielsen said there are

others in the county who are allowed to sell rock. Commissioner Jensen stated he felt it was more than just surface rock, that he is digging the mountain. Every shovelful of dirt and every rock that is pulled out is another potential to create more flooding. Mr. Breitenbeker stated this is in a very delicate flood plain in which some of the others are not where they are removing the rock. Maybe the circumstances are different. Mr. Thompson stated he felt the effect of the removal of the rock should be investigated regarding flooding. Mr. Beecher suggested that a plan be submitted to the Planning Commission as to the location of where Mr. Nielsen wants to take the rock. He said this is a sensitive area and must be treated as such. Ms. Halling made a motion that the request be tabled until Mr. Nielsen brings back a formal proposal and a plan. Mr. Breitenbeker seconded. None opposed. The motion carried.

CHADWICK MINOR SUBDIVISION:

Mr. Beecher presented the Chadwick Minor Subdivision at 4400 West and 14865 North. Mr. Chadwick would like to create a two-lot subdivision from the existing one lot. Mr. Breitenbeker made a motion to approve the preliminary and final plan on the Chadwick Minor Subdivision when all of the conditions are met. Mr. Okada seconded. None opposed. The motion carried.

MARVIN HANSEN MINOR SUBDIVISION:

Mr. Beecher presented the Marvin Hansen Minor Subdivision. Mr. Hansen would like to create three parcels. Mr. Beecher stated Mr. Hansen is requesting preliminary approval only. Mr. Breitenbeker made a motion to give preliminary approval for the Marvin Hansen Minor Subdivision. Ms. Halling seconded. None opposed. The motion carried.

MICHAELIS MINOR SUBDIVISION: Mr. Beecher presented the Michaelis Minor Subdivision located north of Garland. This would create a building lot. Mr. Breitenbeker made a motion to approve the preliminary plan for the Michaelis Minor Subdivision. Mr. Okada seconded. None opposed. the Motion carried.

ONE ACRE MINOR SUBDIVISION: Mr. Beecher presented the One Acre Minor Subdivision at 6800 West, 9600 North. Mr. Reese Anderson would like to build a machine shop; there will be no sewer or water. Ms. Halling made a motion to approve the preliminary and final plan for the One Acre Minor Subdivision. Mr. Breitenbeker seconded. None opposed. The motion carried.

AMENDED RIVER FARM MINOR SUBDIVISION:

Mr. Beecher presented an amendment to the River Farm Minor Subdivision. The subdivision was approved several years ago for several lots in the area. They are now changing the configuration of the lots. All of the conditions have been met. Mr. Okada made a motion to approve the amendment to the River Farm Minor Subdivision, preliminary and final. Ms. Halling seconded. None opposed. The motion carried.

DARRLELL NIELSEN EXCAVATION:

Mr. Beecher stated Chairman Richard Kimber asked him to convey a message to the Planning Commission. He would recommend putting a cease and desist on Darrell Nielsen until he gets the overflow structure designed and approved and that no more excavation can continue in his pit until it is resolved. A discussion was held on the overflow structure and the possibility of future flooding. Mr. Beecher stated the basin is designed to hold a certain amount of water, but when it fills up, there needs to be a guarantee that the water will go to the northwest of the stockpile and go where it is supposed to go. He recommended putting a stop order with a time limit rather than a cease and desist.

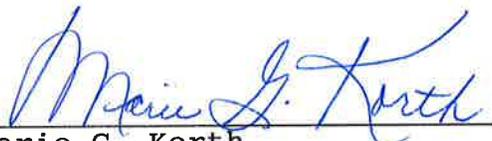
Mr. Okada made a motion to adjourn at 9:15 p.m. Ms. Halling seconded. None opposed. The motion carried.

Passed and adopted in regular session this 21st day of

January, 1993.


Richard D. Kimber, Chairman

ATTEST:


Marie G. Korth
Recorder/Clerk

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

COMMISSIONER ALLEN JENSEN
CHAIRMAN RICHARD KIMBER
BOX ELDER PLANNING COMMISSION
BOX ELDER COUNTY COURT HOUSE
BRIGHAM CITY, UTAH 84302

DECEMBER 17, 1992

Dear Planning Commission Members:

As you know, our Flood Control District has written several letters, and members have personally appeared before you to express our concerns with the activities of the D.N. Development Project. We have outlined numerous violations where the developer has breached conditions of the Conditional Use Permit. In our opinion these violations are exposing the citizens of Willard City (below Cook's Canyon) to a serious danger of flooding.

Some of the violations previously noted that currently exist are, (substantiated by observation and documentation) as follows.

VIOLATIONS AND CONCERNS:

1) There has been a road way carved across the main channel, and there is evidence that heavy equipment has moved up the channel above the excavation site into the mouth of Cook's Canyon. Large rocks have been dislodged (possibly by blasting) from the north wall of the canyon and moved to the south side of the channel. This was an obvious attempt to divert the flow of water north away from the excavation site, and down the northern most side of the alluvial fan (into Willard City). If this diversion was successful, and undetected it might appear that it was an act of nature for flood waters to go north. This could be interpreted at a later date to relieve responsibility from the existing gravel pit operation on the south side of the fan, where flood waters could pick up loose gravel and rocks from excavation and damage property below.

This main channel was not to be disturbed (and especially not diverted) by the conditions of the permit imposed on the developer.

2) A major part of the excavation site consists of a very large mound of gravel, approximately 50 feet high and 100 yards wide in each direction. It is built on (and is blocking) the southern most side of the alluvial fan. This makes it virtually impossible for any flood waters to enter the lower retention basin.

This defeats the purpose of the detention basin and exposes homes and property below to flooding. This violates the conditions of the use permit (which specify that this excavation should enhance and improve our Flood Districts goals).

3) Excavation has cut deep into the east mountain side and has resulted in very steep slopes (almost perpendicular). It will be very difficult and extremely expensive to re-slope these sites to a 2/1 grade. In order to avoid creating a flood hazard this sloping should have been cut to approximately the required grade as the excavation progressed. This was not accomplished and now is exponentially increasing the threat of flooding. There is no evidence such as top soil stockpiles or the replanned sloping to indicate that the developer is intending to reclaim these sites.

This activity is not in compliance with the specifications of the use permit that requires reclamation after excavating 5 acres. The spirit and intention of this condition is to aid in flood prevention.

4) The developer has taken advantage of this county granted use permit by making a road way from the northwest of the gravel pit into Willard City Limits and commenced digging. This property is almost directly below the mouth of Cooks Canyon and above the Federal CC gabion diking network. These conservation efforts were accomplished to control, spread and contain water flows that have occurred on the alluvial fan in past floods. This has caused Willard City to issue citations and take court action against the developer. It is difficult to assess the exact effect on flooding this excavation will cause, however we perceive that it is detrimental to our Willard Flood Control District objectives to enhance, complement and control flooding.

The Box Elder County "Willard City Special District" for Flood Control and Drainage Committee Members feel that the Box Elder Planning Commission and County Commission should support our responsibilities with regard to Willard City. We consider this a violation of the use permit as it infringes upon the objectives of our Flood Districts Master Plan which was adopted by Box Elder County in 1981.

5) There has been very little (if any) activity at the excavation site for the past 2-3 Months. It is apparent that the developer has basically vacated the property. The steepness of the excavation and the large mound of loose gravel is poised to present a very serious man made flood hazard to those living below, and serious safety concerns to anyone entering the site.

We ask The Box Elder County Planning Commission to determine the status of developer's bond at this time, to ensure that (if it becomes necessary) the financing is in place and adequate to reclaim the site to the condition as specified by the conditional use permit. This permit requires that the slopes be laid back to a grade of 2:1, covered with top soil and reseeded before any excavation or future development takes place. We request that this permit not be transferred to any other party until this operation is brought into full compliance with the conditions of the permit.

Our concerns are supported by recorded documentation of professionals in Watershed Management, Geology, State & Federal Governments, and a recent report given to you by Gale Larsen of LarWest Engineering. We also have received letters expressing apprehension from Willard citizens and the Box Elder Heritage Council.

We have identified, documented, and personally witnessed these violations. We therefore recommend that the Box Elder Planning Commission request a Cease and Desist Order immediately to avoid further damage.

The violations outlined above must be corrected in a timely manner. If they are not, we ask that The Conditional Use Permit be revoked.

If you need supporting documentation or any other information feel free to contact us.

Sincerely,



Ronald R. Nelson
Flood Control Chairman
P.O. Box 95
Willard, Utah 84340

(801-723-8049)

Copy: Box Elder County Commission
Willard City Planning Commission

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 17 December 1992. at 7: 30 P.M.
2. Notice given to the newspaper this 16 day of Dec. , 1992 .
3. Approval of the minutes of 15 October 1992.
4. Scheduled Delegations:
 - A. Willard / Box Elder Flood District; Cook Canyon And area Parson Constr. Co. is working in concerns.
 - B. Darell Nielsen request to remove rocks.
 - C. Chadwick Minor Subdivision Prelim and Final
 - D. Marvin Hansen Minor Subdivision Concept Submission.
 - E. Michaelis Minor Subdivision Concept Submission
 - F. One Acre Minor Subdivision Preliminary.
 - G. Ammended River Farm Minor
 - H.
 - I.
 - J.
5. Old Business
 - A.
 - B.
 - C.
 - D.

LAW OFFICES
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WALTER G. MANN, RETIRED

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

December 8, 1992

Richard Kimber, Chairman
Box Elder County Planning Commission
Box Elder County Courthouse
BRIGHAM CITY UT 84302

Re: Darrell Nielsen

Dear Mr. Kimber:

Darrell Nielsen had been issued a conditional use permit for a gravel operation within the county boundaries east of Willard, Utah.

He has been contacted by contractors who supply "large rocks" for landscaping companies.

He would like to sell the large landscaping rock on his county property to these contractors. The rocks are removed from the surface of the ground or a few feet below surface when they are partially buried.

It has been called to our attention that within the county jurisdiction on Rocky Point and on the Pettingill property contractors have been removing rock for a number of years and have also been removing rock during the past fall.

We have been told that the people removing rocks have not been issued any specific permits, and the County apparently has chosen to allow them to remove rock without any type of restriction.

For that reason, it is requested that Darrell Nielsen be allowed to remove the landscape rock on the property he has within Box Elder County, so that he may sell it to buyers.

Att. no. 3

Ltr. to BE Planning Commission
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December 8, 1992

While we do not know whether any special permits are required from the County to accomplish this, it would seem only fair that if others are doing and have done this, then Mr. Nielsen be afforded equal treatment under the laws and interpretations of the County.

Very truly yours,

MANN, HADFIELD & THORNE



Jeff R. Thorne

JRT/pj

cc: Box Elder Planning Commission Members ✓

pj/1:bep1comm