

PLANNING COMMISSION MEETING

December 20, 1984

Minutes of the regular meeting of the Box Elder County Planning Commission held Thursday, December 20, 1984, at 7:00 p.m.

Members present were: Richard Kimber, J. Glen Nelson, Jay Macfarlane, Thomas Mower.

Ex-officio: Denton Beecher, Jay Hirschi.

Excused: Devon Breitenbeker and Kent Newman

Chairman Richard Kimber called the meeting to order and asked for a motion to approve the minutes of November 15, 1984, meeting. J. Glen Nelson made a motion that the minutes of November be approved as corrected. Motion was seconded by Richard Kimber and the voting was unanimous.

DOVE CREEK FARMS & RANCHES

Denton Beecher reported on the progress regarding Dove Creek Farms & Ranches in that Attorney Jon Bunderson was contacted to express an opinion regarding vested rights. A letter was written by attorney Bunderson to Brian C. Johnson and a letter was written to the Planning Commission regarding this matter. (Copy 1). Following a discussion, Jay Macfarlane made a motion that the matter be discussed further during the meeting to be held on January 17, 1985. Motion was seconded by Thomas Mower and approved.

PERRY CITY CONDITIONAL USE PERMIT

Newell Francis and Judy Bylsma visited with the Planning Commission to obtain approval on their Application For Conditional Use Permit. Mr. Francis said Perry City has a problem with their sewer lagoon dikes because of the rising water in the Great Salt Lake. They have received some emergency money to increase the height of the dikes and have found a gravel hill on the property of Bob Reese which contains sufficient gravel for their dikes and in turn would level the ground in the area. (Copy 2). The hill is located West of the KOA campground which is in an RR 10 zone. If the Conditional Use Permit is approved, specific requirements could be stated in the permit which they would be willing to adhere to. Mr. Francis also stated that other state agencies are making studies and proposals, but may take several years and Perry City needs to do something now. He said it will take about 30 days to complete the necessary paper work and get approvals, then should take about 60 days to haul the gravel, this being in accordance with the Corps of Engineers. Denton Beecher presented a list of the requirements which were acceptable to Mr. Francis and Judy Bylsma, and would be stated on the Permit. Mr. Francis said they would take off the top soil and put back when the gravel is hauled out which would be satisfactory with the owner of the property. Following a discussion, Glen Nelson made a motion that Conditional Use Permit #30 be approved for a 6 month period from January 1, 1985, with the right to ask for an extension of time if needed. Motion was seconded by Thomas Mower. Voting was unanimous.

No further business, meeting adjourned at 8:00 p.m.

APPLICATION FOR CONDITIONAL USE PERMIT

COPY 2
Minutes 12/20/84

Applicant's Name PERRY CITY Application No. 30
Address 3005 South 1200 West Perry Date Received by Building Inspector _____
Telephone 723-6141 Date of Hearing _____

Application is hereby made to the Planning Commission requesting that
Material removal be permitted as a "conditional use"
on 1.5 acres located at 3800 South 1200 W. Perry ?
(Sq. Ft. or Acres) Street Address
in a RR 10 zone (see attached location map).

Please complete the following:

I. State in detail what is intended to be done on or with the property. Include Site Plan as required in the Conditional Use Chapter of the Zoning Ordinance.
Remove hill to match surrounding terrain.

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

(a) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or community.
The material taken out will be used to build up the sewer lagoon for community safety. Restore the property back to a viable, usable condition by removing the hill.

(b) The proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons nor injurious to property or improvements in the vicinity.
No, we will be removing a safety hazard.

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

Yes, it will increase the property value, be more aesthetic, and eliminate a safety hazard.

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

When the material has been removed, this property could then be farmed as the existing surrounding property is used for.

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

Not applicable

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

Benefit the health and safety of the community by raising the sewer lagoon dikes. It will be a beneficial service for all parties concerned.

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

VI. Fee paid _____ .

Signed:



(Applicant)

2725 S. 1200 W. Perry

(Address)

734-9354

(Phone)

Newell Francis

2895 S. Hwy 89

723-2814

Judy Bylsma

2530 S. 550 W. Perry

723-5030

Zoning Administrators Action:

Date Approved: _____

Date Disapproved: _____

Date Referred to Planning Commission for Action _____

Planning Commission Action:

Date Approved: Dec. 20, 1984

Date Disapproved: _____

Governing Body Action if Appealed From Decision of Planning Commission:

Date Approved: _____

Date Disapproved: _____

Public Hearing Date if Deemed Necessary _____

Conditions of Approval

, or Reasons for Disapproval

List:

1. Proper traffic control on 1200 W. & 3600 N. as per MUTCD.
2. Fence to be replaced after completion.
3. All slopes to be maintained at 2:1 during construction.
4. At conclusion of work if any of the hill is left all slopes shall be left at 2:1.
5. Bottom elevation to be ~~to~~ graded such that it will match the farm land to the west and match into 1200 W. on the east without any depressions which could hold water.
6. 1200 West within County shall be left in an equal or better condition when construction is complete.
7. Route from site to lagoon shall be north along 1200 West.
8. All dust shall be controlled at all times. 9. Duration of permit is from 1/1/85 to 7/1/85.

Signature:

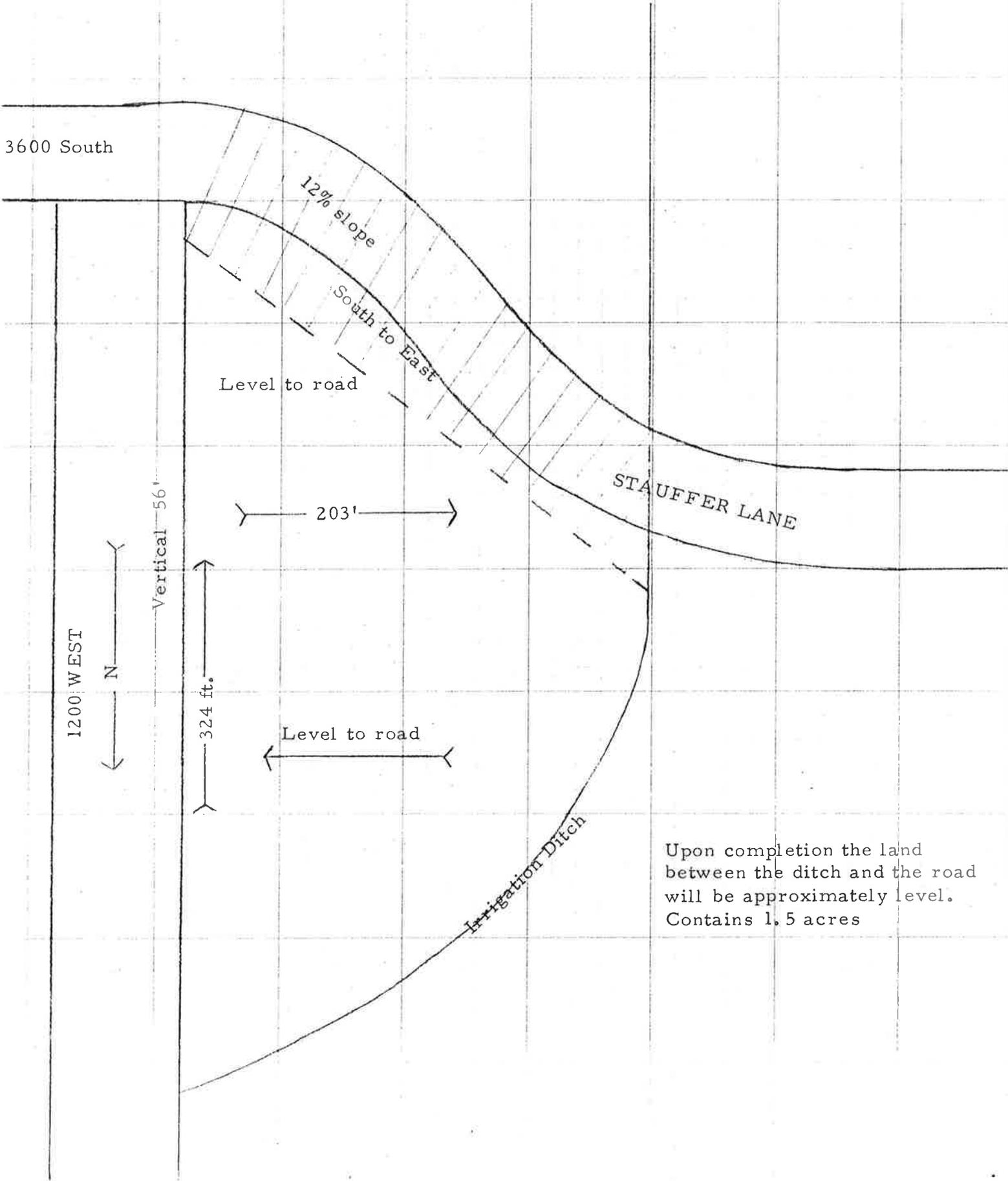
Denton F. Beecher
Chairman, Planning Commission or, Zoning Administrator

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

Appealed to the Planning Commission from Decision or Zoning Administrator _____

Appealed to the Governing Body from Decision of Planning Commission _____

3600 South



Upon completion the land between the ditch and the road will be approximately level. Contains 1.5 acres

Box Elder County,

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



CIRCA 1890'S

STATE OF UTAH

BRIGHAM CITY, UTAH 84302
OFFICERS

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



CIRCA 1980'S

December 11, 1984

Copy 1
Minutes 12/20/84

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

RE: Dove Creek Farms & Ranches Unit 5

Gentlemen:

Attached you will find a copy of a letter I have sent to Mr. Johnson, which I believe you will find self-explanatory.

Betty Jensen told me that you had some questions you would like answered by December 20th. As you can see from the enclosed letter to Mr. Johnson, I think the real issues are a little different than framed by your questions, and Mr. Johnson and I have agreed that he would do a little more research and get me the benefit of that research before I give you a final opinion.

Preliminarily, my advice would be not to worry too much about whether or not anybody acquired a so-called "vested right". Having a "vested right" simply means that the right has come into existence and is capable of being reduced to ownership, as opposed to being a possibility. Although I would advise you not to concede the point at this time, you should be aware that the deceased Mr. Hanks may very well have obtained a "vested right" to the extent that prior to his deadline of March 1, 1984, he may have had the existing right to apply for approval of a final sub-division plat under the old zoning. That in no way means he was entitled to have the plat approved even if he had submitted it prior to the deadline, but means only that he may have had the right to seek approval under the old law rather than be forced to proceed under the new law.

However, as you can see from my letter, I think the more important issue is whether or not whatever rights he may have had to proceed further expired because nothing was done prior to the deadline. Perhaps that answers your first question, to wit, how long does a "vested right" last? The answer is that it lasts until it expires, and the expiration date can be set either by statute, agreement, or some sort of legislative determination. In this case, through your determination and through an agreement with Mr. Hanks, in my opinion the right expired on March 1, 1984.

In answer to your second question, if you should grant another extension, is it legal to grant it under the old zoning or must it be under the new zoning, I submit the following.

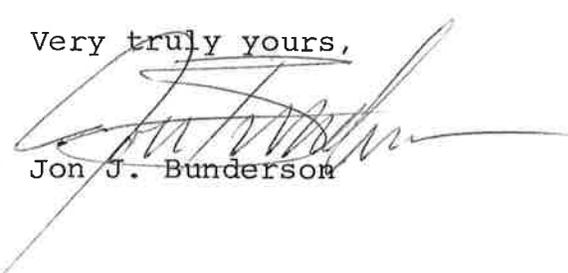
I would advise you that you cannot grant another extension unless the request to grant the extension was made prior to the expiration of the deadline. In this case, as far as I can tell, there was no request for an extension, nor was there action of any sort, prior to March 1, 1984. That being the case, in my opinion the chain has been broken, so to speak, and you could not grant another extension.

As to whether or not you could allow someone to proceed under the old five acre zoning, my opinion is that any application should be considered a new application and handled under the new zoning. The applicant could make a request for a zoning variance, and ask that the new zoning be waived and that he be allowed to proceed under the five acre zoning. However, this would not be a continuation of a previously existing sub-division, but would be considered a new request, and should be treated as such for purposes of considering a zoning variance.

This is a preliminary opinion, and is given without the benefit of input from Mr. Johnson on the issues pointed out in my attached letter, or any extreme research on my part.

I will submit a final opinion prior to your January meeting so that you can make a final decision at that time.

Very truly yours,



Jon J. Bunderson

JJB:jh
Enclosure



CIRCA 1890'S

Box Elder County,

STATE OF UTAH

COUNTY COMMISSIONERS

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GLEN R. CURTIS
JAMES J. WHITE

BRIGHAM CITY, UTAH 84302

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CIRCA 1980'S

December 11, 1984

COPY

Mr. Brian C. Johnson
Attorney at Law
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

RE: Dove Creek Farms & Ranches Unit 5

Dear Brian:

As you know, after your last meeting with the Planning Commission on November 15, the Planning Commission submitted some legal issues to me for comment, including particularly the questions surrounding the so-called "vested right" issue.

We discussed this matter on the telephone recently, and I pointed out that in my opinion even if we assume, for the sake of argument, that you have a "vested right", there are other issues which I feel are probably more important, or at least as important. Those would be as follows:

1. If a "vested right" did indeed exist, was it extinguished upon the death of Mr. Hanks, can it be inherited or transferred by will, and, if so, who now owns it.

2. Again assuming for the sake of argument that a so-called "vested right" existed, why didn't it expire for lack of action on March 1, 1984, which was the end of the one-year extension period?

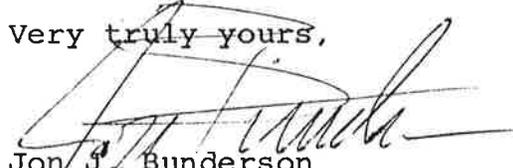
I told you in our telephone conversation the Planning Commission wanted some comment from me by December 20, which is the date of their next meeting, but we agreed that you would provide me

with some legal research on the two questions posed above before I submit any opinion to the Planning Commission. We further agreed that if I had not received this information from you in adequate time prior to the 20th to do my research, we would simply request that the Planning Commission delay its decision until their January meeting.

As of the date I am dictating this letter, December 11th, I haven't heard from you, and I am assuming that I won't hear in time to adequately research a response for the Planning Commission by December 20th.

Accordingly, pursuant to our agreement, I will assume that I will be receiving the your research from you shortly, and I will then submit my opinion to the Planning Commission, and it appears that they will be able to finalize their decision at their January meeting.

Very truly yours,



Jon J. Bunderson

JJB:jh
✓CC: Box Elder County Planning Commission
Denny Beecher