

**FREMONT COUNTY PUBLIC HEARING**  
**Huber Appeal of Stoddard Brothers – Gravel Extraction**

**Date:** March 10, 2011

**Time:** 6:00pm

**Location:** Annex

**Attended by:** Commissioners Skip Hurt, Lee Miller, Jordon Stoddard

**Also attended by:** Clerk Abbie Mace, Deputy Clerk Cathy Conger, Hearing Officer Blake Hall, Planning and Building Administrator Stephen Loosli and Prosecuting Attorney Joette Lookabaugh

Commissioner Hurt called the hearing to order at 6:08 pm and welcomed the public.

Commissioner Hurt introduced those in attendance. He requested that all cell phones be turned off.

**Hearing Officer Blake Hall**

Hearing Officer Hall welcomed everyone. He stated that this is the time and place for the hearing as advertised. He asked Clerk Mace if the appropriate advertisement has been done she said that it has.

Hearing Officer Hall asked if any of the commissioners have a conflict of interest. Commissioner Miller responded no; Commissioner Stoddard responded no; Commissioner Hurt responded no.

The purpose of the hearing is to provide for public comment. He explained that the public comments will be kept to four minutes each. He will give a signal as they get down to one minute. Mr. Hall read through the sign in sheet for those in attendance.

**Staff report**

Planning & Building Administrator Stephen Loosli presented the staff report and explained the purpose of the hearing for permit #11-006.

Exhibit 1 appellant binder 6:12pm

Exhibit 2 respondent's binder 6:12pm

Exhibit 3 staff report binder 6:12pm

Tab 8 exhibit 3 contains staff report proposed findings of facts and conclusion of law

Hearing Officer Hall addressed the applicant's motion to strike. This will be given 10 minutes to present and 10 minutes to respond.

**Mark Fuller (410 Memorial Dr., Ste. 201, Idaho Falls, ID)**

He is legal counsel for Stoddard Brothers. They have made the motion to strike some documents from Exhibit 1. This body has the authority as adopted in development code to establish relevancy standards. This hearing should be addressing compliance and whether they comply with development code. Other documentation written and spoken should be stricken from record such as "there is a significant provision regarding personal friendships between Commissioner Hurt,

Stephen Loosli, Joette Lookabaugh and Stoddard Brothers" "mortgage between Stephen Loosli and Joette Lookabaugh" "debt owed by Stephen Loosli to Stoddard Brothers" "Loosli amendment" "Stephen Loosli's bankruptcy" "lawsuit on Stephen Loosli and Joette Lookabaugh" "appointment of Planning & Zoning commission". Stephen Loosli is not a decision maker. We request that all the information in tabs 1 through 16 be stricken from the record because they are irrelevant allegations.

Hearing Officer Hall questioned if he thought the determination would be with commissioners. Mr. Fuller agrees.

Hearing Officer Hall questioned if he is aware of any business relationship and if the commissioners may receive some benefit on how this is decided. Mr. Fuller responded that to his knowledge they have not.

Greg Stoddard replied to Hearing Officer Hall's question that they do not have a business relationship.

Karl Lewies (343 E 4<sup>th</sup> N, Rexburg, ID)

Mr. Lewies is the legal counsel for the appellants. Mr. Lewies stated this public hearing is not a judicial hearing. There are no legal objections, no discovery, and no motion practice. This is open to another appeal if they agree with this motion. He has an affidavit submitted by Kurt Hibbert former Fremont County Planning & Building Administrator. He was involved in the proceedings for a period of time. In Mr. Hibbert's statement he states "At the Planning & Zoning commission hearing following the hearing he heard Greg Stoddard say that they owed them too much money to not approve this. I assumed he meant his involvement with Stephen Loosli. Kristi Owens did not feel that the hearing was fair. Greg Stoddard had told him that getting involved with Stephen Loosli was a mistake." For you to use judicial tactics and strike this information is certainly unlawful procedure.

Hearing Officer Hall questioned if Mr. Lewies agrees that the correct standard is Idaho Code 67-6506. Mr. Lewies agrees that it is a standard but not the only one. This would be a conflict of interest standard. The parties are entitled to a fair and impartial decision. The Idaho case that indicates that bias and impartiality is the Idaho case of Hebert and Bonneville County.

Hearing Officer Hall questioned that some of this appears to be a claim that Stephen Loosli owes Stoddard Brothers money but there is no money owed because it was discharged. Mr. Lewies responded that these questions should come from the commission. Hearing Officer Hall stated that he has been charged with this task by the commission. Mr. Lewies stated that Mr. Loosli advised the commission that the Stoddard gravel pit be approved because he used to owe them money.

Hearing Officer Hall asked if he is saying that Stephen Loosli controls the commission decision. Mr. Lewies stated that anybody involved in the process and is biased would taint the decision.

Hearing Officer Hall stated that in this case we would look at the decision makers. He questioned if it is Mr. Lewies opinion that the Planning & Zoning has a part in the decision makers. Mr. Lewies

replied yes. Mr. Lewies stated that a lot of information that the commissioners have is from Mr. Loosli. What good is staff if you can't rely on them?

Hearing Officer Hall stated that the only claim is the money that used to be owed by Mr. Loosli. Mr. Lewies replied that there is a pattern of behavior.

Hearing Officer Hall stated that the decision should be made on relevant information and not irrelevant information. The appellant has entered into the record irrelevant information. Hearing Officer Hall recommends the commissioners disregard the irrelevant information as noted.

Commissioner Lee Miller made the motion to accept the recommendation from the hearing officer to strike sections 6-12. Commissioner Jordon Stoddard seconded the motion. A full voice vote was heard with all voting in favor.

Mr. Lewies asked to speak with Hearing Officer Hall and Mr. Fuller in private. During this time Joette Lookabaugh objected to the diagram from Mr. Lewies.

#### **Opening comments:**

##### Karl Lewies (343 E 4<sup>th</sup> N, Rexburg, ID)

Mr. Lewies presented an outline form of everything that is in the binder. His client's first argument is that their constitutional rights have been violated. Review of the appellant's written materials will show that public officials, specifically Commissioner Hurt, Joette Lookabaugh & Stephen Loosli, are unfair and biased. A lot of the evidence that we have has just been ruled as irrelevant. There are relationships between Mr. Loosli, Stoddard Brothers, Ms. Lookabaugh, and Commissioner Hurt that his clients do not have. His clients have received intimidating phone calls from Commissioner Hurt, and Ms. Lookabaugh. His clients feel that the hearing is unfair. In light of these relationships we maintain that the only way to cure these violations is to deny the permit and to admit that the prior proceedings were biased. It would be appropriate to have the applicant start from the beginning to make absolutely sure that there are no involvements from those that could be biased. Clients maintain that the prior proceedings are flawed because the commissioners exceeded their legal authority when it remanded the appeal back to Planning & Zoning, failed to remit a findings of facts, failed to produce a performance checklist, did not decide appeal within the 60 day deadline, no decision letter, transcribable record of 10/12/10 meeting, failed to indicate if the application complied with comprehensive plan or development code. The county failed to appeal the old standards when they adopted the new standards. There are two standards active. This application cannot be approved without a land evaluation. The pending appeal tonight is tainted with unfairness, bias and conflict of interest. It would be in the best interest of Fremont County to deny the permit.

Hearing Officer Hall questioned if the Prosecuting Attorney is relevant in the decision. Mr. Lewies stated that it appeared that she was involved in this group and her purpose was to intimidate his client.

Hearing Officer Hall stated that Ms. Lookabaugh was informing his client that they cannot have ex-parte communication between the commissioners and the appellant. Mr. Lewies stated that in the first appeal they were represented by other counsel.

Steve Huber (248 N 2400 E, St. Anthony, ID)

Mr. Huber stated that he did receive a phone call from Commissioner Hurt and that he heard the comment from Greg Stoddard. He was the one that found the liens against Stephen Loosli's organization and gave them to Stoddard's. He believes that Mr. Loosli tries to do a good job. DeVerle Stoddard called him to talk about these documents. Mr. Loosli wrote the first recommendation. He believes that ex-parte communication happened. Two appointees that have first degree relations to the Stoddard Brothers are Patty Crapo as her daughter is married to a Stoddard and Larry Singleton. It has the appearance to look like the deck was stacked against us. It is not their intent to drag anyone through the mud which is why they did it the way they did the first time. They believe that they were not notified of land use change. He believes that the county failed to send notice to citizens. He knew that appendix J & appendix K were being adjusted but didn't know that it was related to land use. He believes that they are non-compatible land use.

Commissioner Hurt questioned who invited the gravel operators to the meeting regarding appendix J & K. Mr. Huber responded that it was Kurt Hibbert.

Commissioner Hurt clarified the phone call that he had made to Mr. Huber where he stated "I know we can't talk about the case and I have heard that there is bias between them."

Commissioner Miller clarified that Larry Singleton was appointed to Planning & Zoning in 2002 prior to the election.

Commissioner Miller questioned if he felt that it would be in the best interest of the county to have as many committee members from a variety of areas rather than one area on Planning and Zoning. Mr. Huber stated that he does.

Mark Fuller (410 Memorial Dr., Ste. 201, Idaho Falls, ID)

The application submitted by his client is in compliance. Notification is limited because its affect is limited. You cannot change the law. You have to apply the law as it now exists. There is no question as to that law. Provisions were modified in March 2010. Stoddard Brothers submitted their application for a reclamation plan to the state. The legislature has delegated authority to this board. This plan was approved. Idaho Codes 67-6521 also stated "Grant, deny or delay decision for additional study." This gives them the authority to remand it back to Planning & Zoning. There cannot be a findings of facts. The law requires that the development agreement be completed after the recommendations of the Planning & Zoning. Planning & Zoning completed a review of all permits. Josh Chase determined that all prior compliance requests were followed. After 4<sup>th</sup> public hearing due process has been complied with. Buffering has been complied with and all provisions of the Idaho Code have been complied with. Notice is to be given to those that are affected.

Hearing Officer Hall questioned if any decision makers have a conflict of interest they are to recuse themselves and it is a criminal violation too. Mr. Fuller agreed with this statement.

Hearing Officer Hall questioned if it is a violation of the law to bribe, threaten or to influence the outcome of the proceedings. Mr. Fuller stated that it is.

Hearing Officer Hall clarified that it should be disqualified if you have inappropriate ex-parte communications with the applicant or appellant in regards to the merit of the proceedings. Mr. Fuller believes that this is correct.

Hearing Officer Hall questioned if it is his view that petitioners argument against two appendix J's is correct. Mr. Fuller stated that it is similar to Mickelsen vs Rexburg. The ruling was that the second statute was the current and appropriate statute. There have been 3 legislative actions determining which is correct.

**Public Comment:**

Carolyn Quayle (272 N 2300 E, St. Anthony, ID)

If our property values go down I expect taxes to go down. She resents the gravel property owners being invited to establish the permits without the knowledge of those that are affected. Is there a comprehensive study of county roads and culverts? Are the gravel mining companies prepared to make the improvements on the roads to accommodate them? 35 mph speed limit and it should be complied with.

Clark Hill (2910 Hackamore Dr., St. Anthony, ID)

He feels like the gravel has to come from somewhere. It appears that the Stoddard Brothers have followed the law.

Dale Swenson (2353 E 200 N, St. Anthony, ID)

He asks the commissioners to give a fair and unbiased decision in this manner. He supports Mr. Huber.

Cathie Shirley (2202 E 300 N, St. Anthony, ID)

Idaho Code 59-702 declared that a public official is to first ensure public trust, protect the integrity of the county, assure and inform citizens when it presents a conflict of interest, prevent personal gain, and assure that government functions reflect the maximum extent of public interest

Jennifer Daniel (209 N 2300 E, St. Anthony, ID)

She questioned if the LESA standards are still being used in Fremont County.

Kay Hildebrand (209 N 2300 E, St. Anthony, ID)

She questioned Appendix J pg 22 land evaluation site assessment crop land quality discouraging land use for other purposes. The Loosli amendment was repealed. If we use LESA as a quality determination is appendix J an addition? It doesn't address where it should be allowed. The comprehensive plan states that we use LESA. It appears that Planning & Zoning was in a hurry to allow gravel mining. They did not address this location.

Submitted exhibit 5

Ben Hildebrand (209 N 2300 E, St. Anthony, ID)

Josh Chase made another staff analysis. There are questions that the county's planner had that were not addressed. He questioned the reclamation. It appears that the state was met but county

standards were not. He questioned the development agreement – the applicant has not clearly identified reuse. It appears that not all of the rules were followed.

Rachel Huber (248 N 2300 E, St. Anthony, ID)

This is the first time that appendix J has been put to the test. Is appendix J legal? We state that it is illegal and therefore the permit is illegal. It was brought forth by a certain part of the community and they were asked to come help write it. They were not effectively notified. Amendments are only allowed if it is in compliance with public interest. Gravel pits are a form of development. Says nothing about where they can be located. Therefore LESA must be used. It is the most restrictive standard. There is nothing in this that states where they can be. Few restrictions that the gravel pit has adopted have not been complied with.

Steve Huber (248 N 2300 E, St. Anthony, ID)

Fundamental issue is non-compatible land use. Spot zoning is a form of discriminatory zoning for the purpose of a few specific individuals. It is not conducive to compatible land use. Preferred land use map should have been done prior to the gravel pit area. If done properly we would have been informed.

Hearing Officer Hall asked for a clarification of the first report. Mr. Huber stated that it was written prior to the first appeal and written by Stephen.

Hearing Officer Hall stated that it was written by Kurt Hibbert & Josh Chase. It was presented at the hearing by Mr. Loosli because that was the position he held at the time.

Neal Shirley (2202 E 300 N, St. Anthony, ID)

LESA was adopted to assist state and local government to protect agricultural areas against land development. When he questioned why LESA wasn't used Mr. Loosli said that he would discuss this with me after the meeting and would not be included in the hearing. Mr. Loosli said that it was not used and was an oversight. Mr. Loosli told him that he is against LESA. LESA should not have been ignored.

Submitted exhibit 6

Troy Thurgood (81 E 3500 N Rexburg, ID)

It started from an invitation from Kurt Hibbert. It was a committee from the community. There was never any indication that this was crafted by the gravel pit owners. We did not have any input into the final decision. The law has been followed.

Cheryl Messervy (259 N 2400 E, St. Anthony, ID)

There is controversy between staying rural or encouraging development. This is a real concern for property owners. There is concern about procedures being followed. She feels that it got slid under the mat. There needs to be growth and development but all parties should be concerned.

Steve Lookabaugh (2781 E 800 N, St. Anthony, ID)

Tonight was character assignation. Stoddard Brothers answered the issues that were in the appellants complaints.

Greg Stoddard (1991 E 183 N, Rexburg, ID)

Reuse of the gravel pit – when we are done at minimum it will be pasture. We did not insist on that meeting but we were invited. Karl Lewies was present at that meeting. We try to be very careful about what and who we talk to about this. Regarding the affidavit read at the beginning of this – he did not say what Kurt Hibbert said he did. Knows this is an emotional thing but if the law is on your side you need to use it. The facts are on our side. We want to do what the ordinance and laws ask.

Hearing Officer Hall asked for clarification about his alleged statement. Mr. Stoddard stated that he never made that statement

Hearing Officer Hall asked if the commissioners or Mr. Loosli owe him any money. Mr. Stoddard replied that they do not.

Jamie Birch (2250 E 300 N, St. Anthony, ID)

He expressed support for Mr. Huber. He has a vested interest as a resident of the area. He is concerned that the rights of the people are not being heard.

Commissioner Miller questioned if there were any concerns about pits in his yard when he moved here. Mr. Birch replied that no not at the time. They were in the distance.

Public Comment portion closed at 9:00pm

Closing Comments:

Mark Fuller (410 Memorial Dr., Ste. 201, Idaho Falls, ID)

The way this was presented Mr. Lewies went first and then I went. I can't respond to him because he has not responded to my initial comments. How will he respond to his statement that you broke the law in remanding that decision? The purpose of the hearing is, did the application comply with requirements. He has not heard anything regarding documents submitted or whether they have complied with the law. There have been four separate hearings. They were given apt notification – this was not snuck in. We have met the requirements necessary. The map is not a comprehensive plan. There has been no evidence presented that shows the regulations and requirements have not been met.

Karl Lewies (343 E 4<sup>th</sup> N, Rexburg, ID)

The bulk of our case tonight is that our clients have been denied a fair and unbiased hearing. That has been moved to strike that evidence of constitutional violations. The commissioners have now set that precedence. Decision to strike the evidence of constitutional violations will be challenged. He questioned what happened at the first appeal unknown because there was no transcribable record or findings of facts and conclusions of law. He questioned what the remand back to Planning & Zoning means. He questioned if there was a decision or not. There are different interpretations. Applicant's attorney states that there was no decision. He wants to hear why I didn't state the whole statute. I didn't intend to mislead anyone. The commissioners can delay their decision for a specific time – 60 days. They have not done that. Any arguments that we make are only shots in the dark. The law requires that the commissioners provide facts and findings and conclusion of law. Mr. Loosli's understanding of commissioner work meeting was that the board decided to modify the application and that the modification confirmed most of the

Planning & Zoning decision. Another interpretation is from Planning & Zoning commission as stated by Mr. Loosli – we are effectively starting over. The only advantage is that fees will not be charged. The application has been suspended. We have the unfairness and biased issue in addition to hardnosed facts about procedural errors.

Hearing Officer Hall asked whether it was denied or approved or remanded with instruction would you agree that it has not been approved. Mr. Lewies responded that he doesn't know what happened.

Hearing Officer Hall questioned if there has been a permit issued. Mr. Lewies stated that there was a permit pending.

Hearing Officer Hall restated his question of was there a permit granted. Mr. Lewies stated that it does not need to go to the commissioners for that.

Hearing Officer Hall asked if a permit been issued. Mr. Lewies responded no.

The hearing was closed at 9:23 p.m. by Mr. Hall.

Commissioner Hurt stated that they have 60 days to make a determination.

Commissioner Hurt thanked everyone for the comments and their attendance.

There being no further business to come before the board, the hearing was adjourned.

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Skip Hurt, Chairman  
Fremont County Commission

Attest: \_\_\_\_\_  
Abbie Mace, Clerk

Exhibit List  
Huber Appeal of Stoddard Brothers – Gravel Extraction  
Held March 10, 2011

Exhibit #1 – Appellant notebook

Exhibit #2 – Respondents' notebook

Exhibit #3 – Administrator's report

Exhibit #4 – Written comment submitted to the hearing

Exhibit #5 – Information from Kaye Hildebrand

Exhibit #6 – Newspaper article and written comment from Neal Shirley