

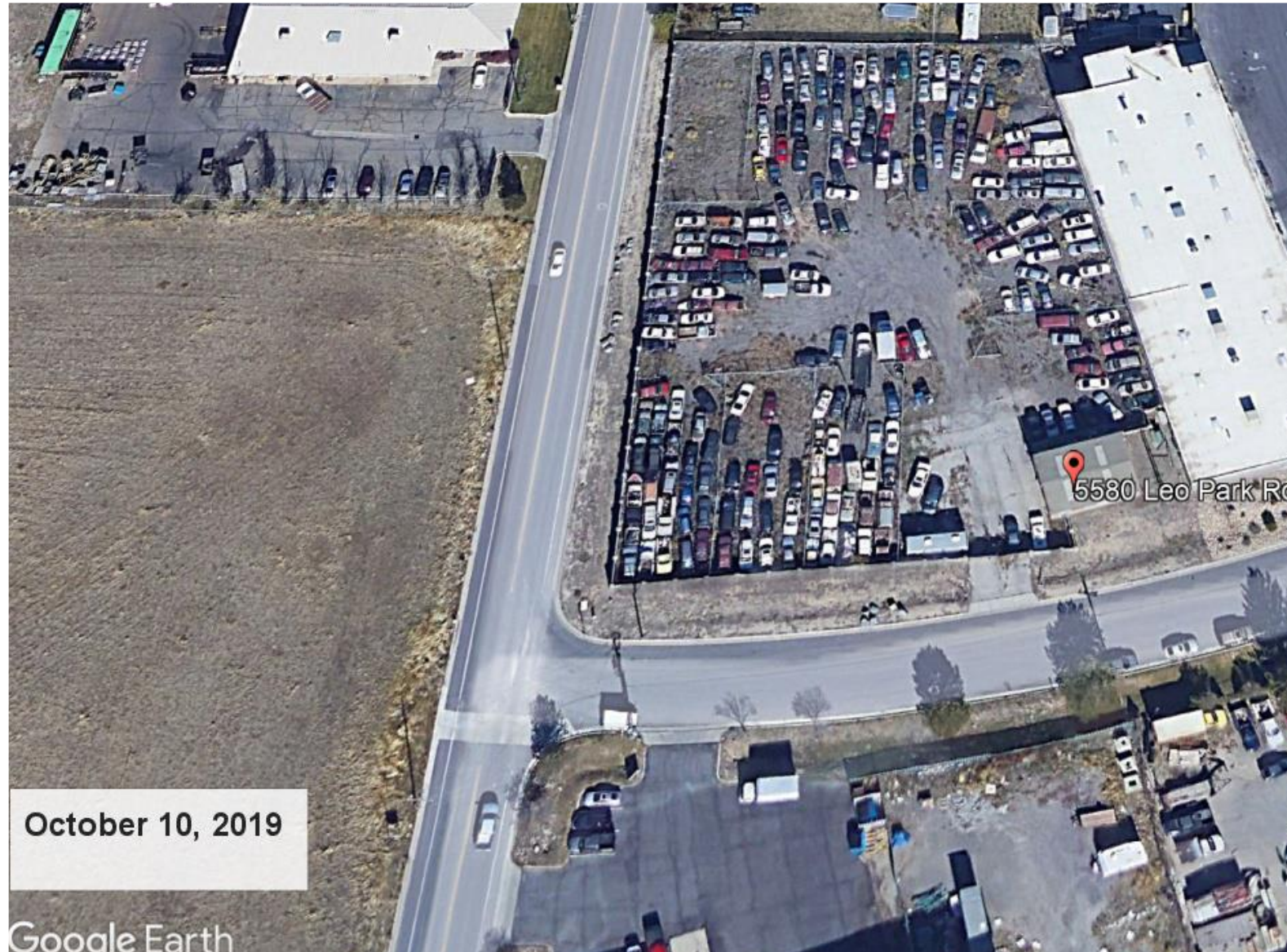
Mountain West Towing, et al

v.

West Jordan City

Lessons Learned

How did this case begin?



Tow truck companies awarded \$1.28 million in lawsuit against West Jordan



A state jury has issued a \$1.28 million verdict against the city of West Jordan in a case involving multiple tow truck companies.



By: [Emily Tencer](#)

Posted at 9:41 PM, Aug 22, 2023 and last updated 9:41 PM, Aug 22, 2023

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NEW AT NINE

9:04
70°



What mistakes did we make that got us into this lawsuit?

- Failure of communication between departments and failure to share documents between departments.
- Bad record keeping and prior employees not following our own department policies and city ordinances.
- Failure of departments to work with the legal department before issuing shutdown orders.

West Jordan City Code Requires the vehicles to be parked on asphalt or concrete only. Recycled Asphalt is not allowed.

13-12-6: PARKING LOT AND RESIDENTIAL DRIVEWAY DESIGN STANDARDS:

- A. Parking Plans: Plans for any proposed parking area shall be submitted to the Development Department at the time of application for site plan approval. If the project does not require site plan approval, the parking plan shall be submitted with an application for a building permit. The plan shall clearly indicate the proposed development, including location, size, shape, design, curb cuts, lighting, landscaping and other features of the proposed development.

Bates No.004855

https://sterlingcodifiers.com/codebook/index.php?book_id=680

269/291

/18/2019

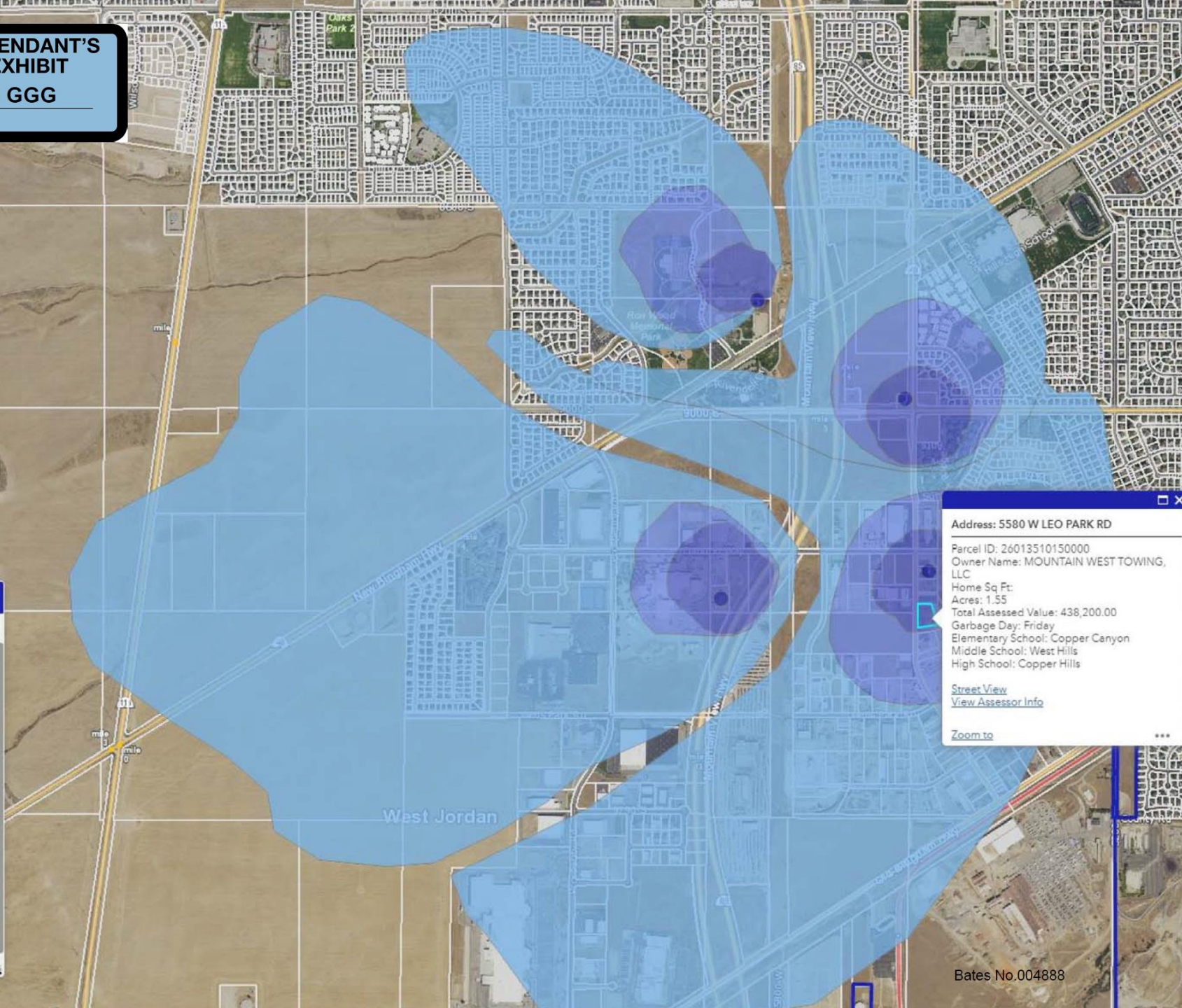
Sterling Codifiers, Inc.

- B. Driveway Access To Public Street: Every required parking area shall have unencumbered driveway access to a public street. Such access shall be through platted or recorded easements, reciprocal arrangements or other guaranteed means.

1. Unless otherwise approved by the Planning Commission, all public driveways accessing a public road shall be located a minimum of fifty feet (50') from other driveways or streets. One-way driveways shall have a minimum width of twelve feet (12'). Two-way driveways and all driveways on developments of one acre or larger in size shall have minimum widths of twenty feet (20').
2. Unless approved by the Planning Commission, parking lots shall not directly access arterial or collector streets but shall access such streets by way of an internal roadway system designed and constructed to City standards.
3. Nonresidential traffic on local streets should be minimized and directed out of neighborhoods. Parking lot access for nonresidential uses shall not be permitted from local or collector streets if adequate access is available to major streets.

- C. Parking Lot Materials And Drainage:

1. In all zones except in agricultural, rural residential zones and single family residential zones as required by subsection [13-12-5E1](#) of this chapter, every lot or parcel used as a public or private parking area required by section [13-12-2](#) of this chapter shall be paved with asphalt or concrete and maintained to eliminate dust or mud.



Plaintiffs were the only tow yard in the entire City located inside the Drinking Water Source Protection Overlay Zone and were located inside the most restrictive zone. Their lot was 235 feet from the well.

Brock Hudson

From: Mark Forsythe
Sent: Thursday, December 8, 2016 11:29 AM
To: Brock Hudson
Subject: Tow Yard
Attachments: CUP - 5580 W Leo Park Rd.pdf; Tow Yard CUP - 5580 W Leo Park Rd.pdf

Brock,

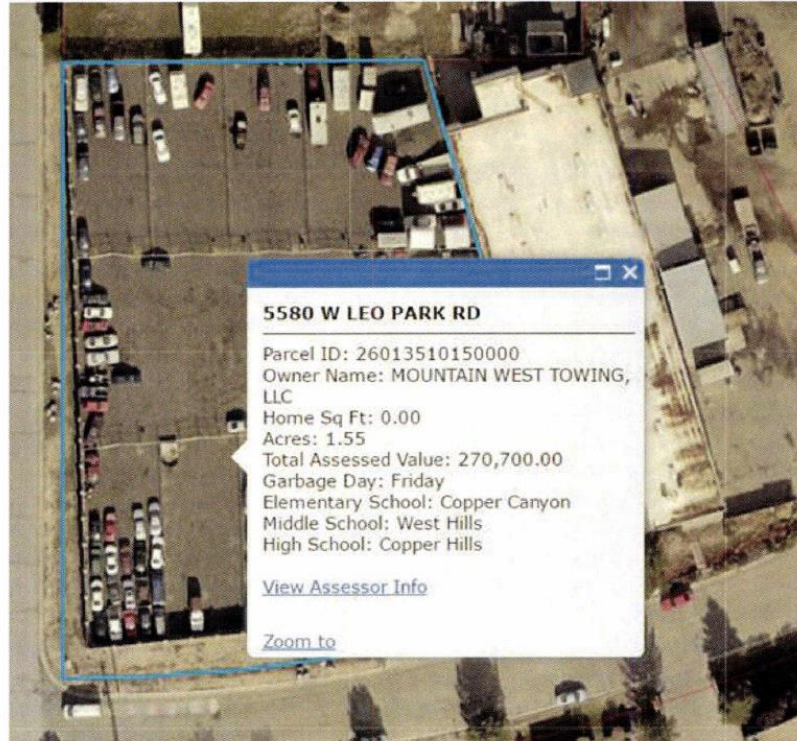
Here's the info for the CUP's for the tow yard at 5580 West Leo Park Road.

Mark Forsythe
Assistant Planner
City of West Jordan
8000 South Redwood Road
West Jordan, UT 84088

From: Brock Hudson
Sent: Thursday, December 8, 2016 2:41 PM
To: Marsha Lancaster
Cc: Joshua Long
Subject: Tow Yard

Marsha,

Good Afternoon. Could you please provide me with anything that you have regarding Mountain West Towing. Any Licensing or Conditional Use Permitting or anything else.



Thanks

Brock Hudson
Code Enforcement Manager
City of West Jordan
801-569-5137

The 1992 CUP

MOTION: MICHAEL COE — I MOVE THE CONDITIONAL USE PERMIT FOR OPEN STORAGE IN ASSOCIATION WITH A TOWING BUSINESS IMPOUND YARD FOR MCINELLY'S AUTO IMPOUND, PROPOSED TO BE AT 5580 WEST LEO PARK ROAD, DANNY MCINELLY (APPLICANT), BE APPROVED WITH THE FOLLOWING CONDITIONS:

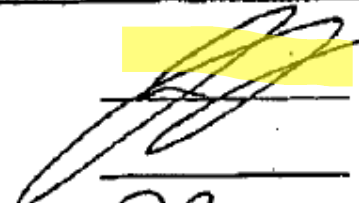
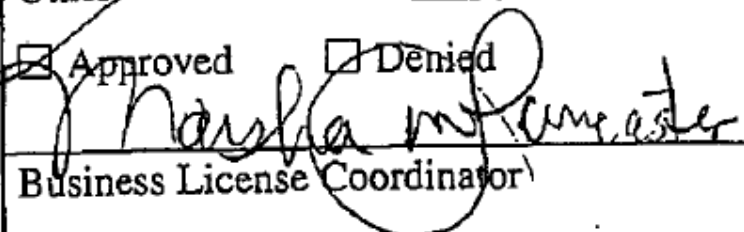
- 1. THE IMPOUND YARD BE RELOCATED IMMEDIATELY NORTH OF THE EXISTING BLANK TRUCKING BUILDING.**
- 2. THE IMPOUND YARD SHALL NOT EXCEED 50 FEET BY 40 FEET IN AREA AND BE SURROUNDED BY A 8 FOOT HIGH, SIGHT OBSCURING LIGHT GRAY OR LIGHT BROWN COLORED METAL FENCE OR BLOCK WALL.**
- 3. THE MAXIMUM NUMBER OF AUTOMOBILES ALLOWED TO BE IMPOUNDED IN THIS AREA SHALL BE LIMITED TO TEN (10). ALL THE AUTOMOBILES SHALL HAVE ALL FOUR TIRES TOUCHING THE GROUND. (THIS MEANS NOT TO BE STACKED ONE ON TOP OF THE OTHER AT ANY TIME.)**

13-7E-11: STATUS OF USE PERMIT:

A conditional use permit granted pursuant to provisions of this article shall run with the land and continue to be valid regardless of ownership of the site or structure subject of the use permit application, so long as it operates within the conditions, stipulations and terms of the conditional use permit approval. (2009 Code)

The 2002 CUP was for outdoor storage and not valid for a Tow and Salvage Yard and had Expired

3. eastern boundaries of the proposed outdoor storage area as per Section 88-3-501. Provide one tree per 30 feet of street frontage. A 50/50 or 40/60 mix of deciduous and evergreens will be provided. Deciduous trees will have a minimum height of 8 feet and a minimum caliper of 1 1/2". Evergreen trees will have a minimum height of 6 feet. All landscaping must be maintained with an automatic irrigation system (drip irrigation system encouraged). General landscaping should be drought tolerant and have low water usage.
 4. One 9' x 18' parking stall per 800 square feet of gross floor area is required. A minimum of 1 handicapped accessible stall is required.
 5. The storage area will be kept free of weeds, trash, and other debris.
 6. Should the applicant choose to locate motorized vehicles or any parts thereof in outdoor storage, the storage area will be surfaced with asphalt, concrete or recycled asphalt as per Section 88-3-502.
 7. Materials stored within 20' of the fence may not be stored higher than the fence.
 8. The Conditional Use Permit will expire if conditions 1 and 2 are not met in one year from this approval, and if condition 3 is not met in one-and-a-half years from this approval.
- ... to review and/or revocation per Section 88-3-604.

Inspections	Approved	Denied	Date
Zoning			12/19/12
Building			
Fire	PB		2/14/13
Animal Control			
Health			
SVWRF			
Other			
<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied			
		Date 2/19/13	
Business License Coordinator			
Vehicles shall be parked on a paved surface.			

Base 18.75
 Full Time Empl. 3 2.25
 Part Time Empl. _____
 Development Services 50.00
 Fire Department 28.00

 Date 12/11/12 Total 99.00
 Rec # 031914117 75432
 Acct # 20854 Owner # 32653
 District: A B C D
 Jul Oct Jan Apr
 SICC: 488210 1
 Description: Transportation Services
 Zone: M-1
 Use: outdoor storage 12/19/12

Inspections	Approved	Denied	Date
<input checked="" type="checkbox"/> Zoning	_____	_____	9/18/2014
<input type="checkbox"/> Building	_____	_____	_____
<input checked="" type="checkbox"/> Fire	PB	_____	10/1/14
<input type="checkbox"/> In House	_____	_____	_____
<input type="checkbox"/> Health	_____	_____	_____
<input type="checkbox"/> SVWRF	_____	_____	_____
<input type="checkbox"/> Other	_____	_____	_____

Base 37.50
 Full Time Empl. _____
 Part Time Empl. 2 1.50
 Fire Department 28.00
 Development Services 50.00

Date 9/12/14 Total 117.00

Rec # 02/978297-7-14611

Acct # 22421 Owner # 35208

District: A B C D
 Jul Oct Jan Apr

SICC: 488410

Description: Motor Vehicle Towing

Zone: M-1

Use: Outdoor Storage (CUP issued 4/07/2002)

Approved Denied
Marsha Oncaeste 10/2/14
 Business License Coordinator Date

All vehicles must be parked on
 an asphalt, concrete or recycled
 asphalt surface.



Administrative Code Enforcement Program
8000 South Redwood Road
West Jordan, Utah 84088
(801) 256-2107

CASE Number: 16-01502

PARCEL: 26013510150000

NOTICE OF VIOLATION

Name of Responsible Person(s): MOUNTAIN WEST TOWING
Mailing Address: 3648 WING POINTE DR, MAGNA UT, 84044
Place of Violation Occurrence: 5580 LEO PARK RD
Inspection/Observation Date: Wednesday, February 8, 2017

SUMMARY OF FINDINGS

Code Section(s) violated:

13-5F-2 ~ Permitted and Conditional Uses

YOUR RESPONSIBILITIES

1. CEASE AND DESIST FROM AND/OR ABATE ALL VIOLATIONS.
2. CONTACT CODE ENFORCEMENT FOR A RE-INSPECTION WHEN VIOLATION(S) ARE IN COMPLIANCE.

Required Remedy

YOU ARE REQUIRED TO CEASE AND DESIST FROM AND/OR ABATE THE CODE VIOLATIONS DESCRIBED ABOVE.

SPECIFICALLY:

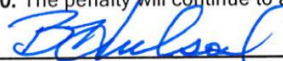
You must obtain a Conditional Use Permit in order to operate a towing and/or salvage yard in a M1 manufacturing zone. All tow companies on the property must cease operation until this permit is obtained.

Deadline for Compliance No Later Than: **Thursday, March 2, 2017**

ADMINISTRATIVE PENALTY ASSESSED

A penalty of **\$50.00** per day will be assessed for the above described violation(s) and this penalty will accrue daily until the violation is corrected. **If you correct the described violation(s) and seek a City compliance inspection by the DEADLINE, the City will suspend any and all penalties.**

For example, if you fail to correct the violation by the 14th day following the date hereof, the accrued penalty will be **\$700.00**. The penalty will continue to accrue at the rate of **\$100.00** per day after the DEADLINE date.


Signature of Issuing Enforcement Official

Code Enforcement Officer
Title of Enforcement Official

801.256.2107
Contact Number for Enforcement Official



**West Jordan Development Services
Code Enforcement Division**

8000 South Redwood Road
West Jordan, Utah 84088
(801) 256-2107
Email code@wjordan.com

February 14, 2017

Cory Fox
3648 Wing Pointe Drive
Magna, UT 84044

Re: All Mountain West Towing, 5580 West Leo Park Road, West Jordan, UT 84081

Your towing/salvage yard business is currently operating at 5580 W Leo Park Dr., West Jordan, Utah 84081. It is not a permitted use in a M1 Manufacturing Zone **without a Conditional Use Permit** issued by the City of West Jordan Planning Commission.

The current property owner has not obtained a Conditional Use Permit and is in violation of city ordinance. Therefore, all businesses that are currently operating at this location will need to immediately cease operations and vacate this location by March 20, 2017.

If you have any questions please call.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Hudson", is written over a horizontal line.

Brock Hudson
Code Enforcement Manager

City Manager
Mark R. Palesh

**Development
Services Director**
David Oka

**Code Enforcement
Manager**
Brock Hudson

Code gathered documents, met with zoning and planning and determined that Mt. West did not have a CUP for a Tow and Salvage yard for the property and that the property did not have the proper surface. Code also learned about the water well next to the property.

What mistakes were made here? What could have been done differently in this phase of investigating the issues?

We didn't find the 2013 Land Disturbance Permit that specifically allowed them to put in RAP surface. That was not given to the Code or the Attorney office until 2019.

Police Tow Rotation

Our Police Tow Policy required us to provide written notice or removal from the tow rotation.

Removal from List/Appeal

A tow company, whose business, yard, trucks, or employees are not in compliance with the requirements set forth in this policy, may be suspended and/or removed from the West Jordan Police Department approved list of tow service providers. Notice of removal will be in writing from the Police Tow Rotation Coordinator and delivered to the tow company at least five (5) business days prior to the date of suspension.

West Jordan reserves the right to conduct immediate suspensions based on the severity of all violations.

Police did not send a separate notice of removal from the tow rotation but relied upon the notices sent by code enforcement.

Brock Hudson

From: Kiel Coomes
Sent: Tuesday, February 21, 2017 9:20 AM
To: Brock Hudson
Subject: RE: Tow Yards

Ok, I had them removed on Sunday from our rotation so just making sure they got their notices.

Thanks

RE: Case # 16-01502

From: Brock Hudson <brockh@wjordan.com>

To: lbutcher19751 <lbutcher19751@aol.com>

Date: Wed, Feb 22, 2017 2:40 pm

 [Planning Minutes 199...pdf \(195 KB\)](#)

Lisa,

Here is the copy of the Planning Commission minutes on the Condition Use Permit.

The tow companies that you are leasing to will need to relocate due to not being able to utilize the entire parcel at this time. If at some point the Conditional Use is changed and the entire parcel is able to house the other companies, they will be allowed to return.

If you have any questions please call.

Brock Hudson

Code Enforcement Manager

City of West Jordan

801-569-5137

From: lbutcher19751@aol.com [<mailto:lbutcher19751@aol.com>]

Sent: Friday, February 17, 2017 12:37

To: Brock Hudson <brockh@wjordan.com>

Subject: Re: Case # 16-01502

Brock,

I have attached the paperwork that I had in my files. As I said on the phone, in my file I have noted that it was Jennifer whom I spoke with in the planning and zoning office when I went in with the conditional use permit paperwork. Again she stated that we only needed the conditional use permit for Outdoor Storage and she looked into the property file and confirmed that it was already in place. She told us however that we would need to work with engineering department in order to complete the surfacing requirements and then we also needed to apply for and obtain a sign permit. We applied for the business license on 12/11/2012 and we were finally issued the license on February 19, 2013, which is over 90 days so it seems that they must have really looked into everything at that time to ensure it was all proper. We also had Salt Lake Towing who applied a few years later and were approved to operate at our location along with Utah Towing and GW Towing. These companies all had different application dates and all were approved for operations with no issues. None of the businesses who applied were ever denied for any reasons and all licenses were issued. I will wait to hear back from you.

Please let me know that you received this email and the attachments.

Thank you,

Lisa Butcher

Mountain West Towing

901.674.5466

Lisa told us on February 17th that Jennifer, in zoning, had approved her for an Outdoor Storage CUP and they were approved for the RAP surface. We should have investigated this further.

Thank you,
Lisa Butcher
Mountain West Towing
801-949-3514

-----Original Message-----

From: Scott Langford <slangford@wjordan.com>
To: lbutcher19751 <lbutcher19751@aol.com>
Sent: Thu, Feb 23, 2017 4:44 pm
Subject: FW: Mountain West Towing

Let me try that again.

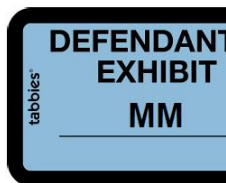
Scott Langford, AICP

City Planner
City of West Jordan
8000 South Redwood Road
801.569.5065
slangford@wjordan.com

From: Scott Langford
Sent: Thursday, February 23, 2017 4:28 PM
To: 'lbutcher1975@aol.com' <lbutcher1975@aol.com>
Cc: Brock Hudson <brockh@wjordan.com>; David Oka <david@wjordan.com>; Mark Forsythe <markf@wjordan.com>
Subject: Mountain West Towing

Lisa,

It was good to meet with you this morning to go over a few of your options. As promised, I have been able to review the past conditional use permits issued on the property and have the following information to present.



departments. As such, in order to save time, I recommend that you contact the City's Office of Development Assistance (ODA). The representatives in ODA are very good at helping people navigate the strange world of local government, especially when you have to deal with multiple city departments. LuAnn and Loretta are the two representatives from ODA (801-569-5182). I recommend that you contact them to schedule a pre-application meeting where staff from Planning, Engineering, and the Fire departments can be present to make sure you get all the pertinent information.

4. Points of clarification: In our meeting this morning, you asked a few questions about some of the code requirements. Here are answers to your questions;
 - a. Minimum Building size of 2,000 sqft: You can count loft and mezzanine space toward meeting this requirement.
 - b. Recycled Asphalt: Code Section 13-12-6C of the City Code requires either concrete or asphalt for vehicle parking areas. Recycled asphalt is not allowed. Solid pavement on this property is critical since the property is less than 400 feet away from a well site that provides drinking water.

Please give me a call if you have questions,

Scott Langford, AICP

City Planner
City of West Jordan
8000 South Redwood Road
801.569.5065
slangford@wjordan.com

First time we mention the well.

V. CONCLUSION:

Subject to the findings discussed in this report and compliance with the conditions of approval, all applicable requirements and findings for a Conditional Use can be met.

VI. STAFF RECOMMENDATIONS:

Based on the information and findings set forth in this staff report and upon the evidence and explanations received today, I move that the Planning Commission approve the Conditional Use Permit to operate a Junk and Salvage Yard and a Conditional Use Permit to operate a Junk and Salvage Yard in Drinking Water Source Protection Overlay Zone on property located at 5580 West Leo Park Road subject to the conditions 1-17 listed in the staff report.

1. Site plan approval as directed by City Staff shall be obtained before any business licenses are renewed or issued.
2. Business Licenses shall be obtained and maintained for any and all businesses operating on the site.
3. The site where business is to occur, excluding landscaped areas, shall be completely hard surfaced as directed by 2009 City Code.
4. The site shall be continuously operated as directed by the most current West Jordan Police Department standards for operation of impound lots.
5. Stacking of cars one on top of another is prohibited.
6. Parts or tire stacking shall not exceed 6 feet in height.
7. Parts and tires shall be stacked as to not store water to mitigate creation of a mosquito breeding environment.
8. The height of any fuel tanks cannot exceed 6 feet in height and must be approved by the West Jordan Fire Department.
9. Any fuel tanks must be enclosed in a designed and Fire Department approved containment area adequate to hold 110% of the largest fuel tank's capacity.
10. The fuel tanks may only be used as accessory to the business and may only serve the vehicles related to the businesses on the property.
11. Any chemicals, solvents, oils, coolants, fuels and other substances known to be hazardous if released in to ground water or drinking water shall be contained and stored in the appropriate containers for that substance and as approved by the West Jordan Fire Department.
12. Any oil, fluid, fuel or coolant leaks that occur on the site shall be immediately cleaned up and disposed of in a manner consistent with the West Jordan Fire Department and County Health Department regulations.
13. Direct dumping of automobile fluids, fuels, oils, coolants onto the parking surface,

They came in and applied for a CUP and worked closely with the City to begin the process to come into compliance. They were approved for their CUP and began work and did the engineering work at great expense and then they went silent and subsequently filed a lawsuit.

MOUNTAIN WEST TOWING, a corporation; **LISA BUTCHER**, an individual; **ADVANTAGE AUTO & TOWING**, a corporation; **WILLIAM BUTCHER**, an individual; **QUALITY AUTO & TOWING**, a corporation; **PENNY BUTCHER**, an individual; **WEST BENCH TOWING**, a corporation; **BARBARA BUTCHER**, an individual; **ALL MOUNTAIN TOWING**, a corporation; **CORY FOX**, an individual; **READY SET TOW**, a corporation; **LEEANN DOPPEL**, an individual; **GW TOWING**, a corporation; **ALBERTO GASTON WACHTERDORFF**, an individual,

Plaintiffs,

vs.

WEST JORDAN CITY, a Utah municipal corporation; **KIEL COOMES**, in his official and individual capacity; and **BROCK HUDSON**, in his official and individual capacity,

Defendants.

**(PROPOSED) FIRST AMENDED
COMPLAINT
(Jury Demand)**

Case No. 180909099

Judge Keith Kelly

Negligence

Breach of Contract

Breach of Duty of Good Faith
and Fair Dealing

Intentional Interference with
Economic Relations

Due Process Violation

Equal Protection Violation

Zoning Estoppel



Engineering Department
 8000 South Redwood Road
 West Jordan, Utah 84088
 (801) 569-5091
 Fax (801) 569-5099



LAND DISTURBANCE PERMIT
 APPLICATION AND AGREEMENT
 Application Fee - \$150.00

Date: 3/25/13
 Name of Applicant: MOUNTAIN WEST TOWING
 Mailing Address: 3648 Wing Pointe drive MAGNA, UT 84044
 (24 HR) Phone: 801 949 3514 Fax: 801 508 7063

Please Check One
 Subdivision
 Site Plan
 Other

Location of Land Disturbance: 5580 LED PARK ROAD

Purpose of Land Disturbance: PLACE NEW CRUSHED ASPHALT SURFACE

Cubic Yards _____ Square Feet 34,000 S.F.

Please provide the following:

Purpose of Land Disturbance:

PLACE NEW CRUSHED ASPHALT

- The elevations, dimensions, locations, extent, and slopes of all proposed land disturbance activities shown by contours
- A certification of the quantity and type of material of proposed excavation or fill
- The estimated starting and completion dates
- Detailed plans of all drainage devices, walls, cribbing, dams, or other protective devices to be constructed with or as a part of the proposed work
- Temporary construction entrance and exit plan
- Type of structure to be constructed on site
- Erosion Control Plan
- Revegetation Plan
- Stormwater Pollution Prevention Plan (SWPPP) and State N.O.I. Permit

Motion for Summary Judgment

Based on the foregoing, the Court CONCLUDES and ORDERS as follows:

- 1. Summary Judgment is GRANTED as to Plaintiffs' First Cause of Action for Negligence against all Defendants and it is dismissed as a matter of law and with prejudice;
- 2. Summary Judgment is GRANTED as to Plaintiffs' Fourth Cause of Action for Intentional Interference with Economic Relations against all Defendants and it is dismissed as a matter of law and with prejudice;
- 3. The Court CONCLUDES that Plaintiffs' state law claims are barred as a matter of law under Utah Code Ann. § 63G-7-201, et seq. through 202, et seq. as to Coomes and

Hudson individually and Summary Judgment is GRANTED as to Coomes and Hudson as to Plaintiffs' First (Negligence) and Fourth (Intentional Interference with Economic Relations) Cause of Action and they are dismissed as a matter of law and with prejudice;

- 4. The Court CONCLUDES that Plaintiffs' United States Constitutional claims under 42 U.S.C. § 1983 are barred as a matter of law under qualified immunity as to Coomes and Hudson individually and Summary Judgment is GRANTED as to Coomes and Hudson as to Plaintiffs' Fifth (Due Process Violation) and Sixth (Equal Protection Violation) Causes of Action and they are dismissed as a matter of law and with prejudice;

- 5. Summary Judgment in favor of the City is DENIED as to Plaintiffs' Second (Breach of Contract), Third (Breach of the Implied Covenant of Good Faith and Fair Dealing), Fifth (Due Process Violation), Sixth (Equal Protection Violation) and Seventh (Zoning Estoppel) Causes of Action.

Breach of Contract Claim. Does a City Tow Rotation Policy Create a Binding Contractual Relationship?

Our Tow Rotation Policy stated:

- “inclusion on the towing rotation is voluntary and a discretionary privilege extended by the West Jordan Chief of Police . . . and is not a legal right.”
- It specifically stated it did not create a contractual right.
- “The Chief of Police, or his designee, retains sole discretion in determining the selection of authorized tow companies for the Department.”
- We could limit the number on the rotation and remove from the rotation.

West Jordan Police Department Tow Rotation Application July 1, 2016 - June 30, 2017

The West Jordan Police Department has established a towing rotation list in order to assist with towing vehicles from traffic accidents, disabled vehicles, or abandoned vehicles. Eligibility to be placed on the towing rotation list, each towing company must fill out a towing rotation application and must agree to comply with the rules and regulations of West Jordan Police Policy No. 045, Towing Services. Companies on the towing rotation list must also follow all federal and state laws and regulations pertaining to towing services. Failure to comply with the terms of West Jordan Police Policy No. 045 or applicable federal and states laws and regulations will result in suspensions or removal of the towing company from the rotation list.

The applicant must ensure the information given is complete and accurate. Each tow company and its employees are bound by all provisions of West Jordan Police Policy No. 045. Each tow company understands the requirements to be placed onto and remain on the West Jordan Towing Services rotation. Each tow company accepts the conditions of the West Jordan Police Policy No. 045, and accepts responsibility for the actions of its owners, agents, and employees as they relate to this policy and do so with the **full understanding that inclusion on the towing rotation is voluntary and a discretionary privilege extended by the West Jordan Chief of Police, or his designee, and is not a legal right.** Falsification of any portion of this application, or in the documentation provided with the application, shall be cause for denial of your application and immediate removal from the current towing rotation list if applicable.

Minimum requirements for rotation consideration:

The company making application is located within the corporate limits of West Jordan City with its own impound yard where towed cars may legally be stored.

The company making application is a separate and distinct entity and does not share any of the following with another company: owners, tow trucks, tow truck operators, telephone numbers, business licenses or insurance policies.

What we argued:

Did not meet basic elements of contract:

“An enforceable contract . . . consists of the terms of a bargained-for exchange between the parties. And the terms of the bargain are defined by the meeting of the minds of the parties—through an offer and acceptance **upon consideration.**” *Rossi v. University of Utah*, 2021 UT 43, ¶ 31,

“Consideration sufficient to support the formation of a contract requires that a performance or a return promise must be bargained for.” *Aquagen Int’l*, 072 P.2d at 413.

What Consideration did the City receive? **The City received zero income or monetary benefit from the rotation.**

6th Circuit Court of Appeals case faced a similar question about a tow rotation policy creating a contractual relationship and the court in *Nationwide Recovery, Inc. v. City of Detroit*, 336 F.Supp.3d 790 (E.D. Mich. 2018) held that there was not “any evidence of consideration.” The court further held that the **“payment of a simple license or permit fee is not such consideration that will support the existence of a contractual relationship.”**

City also argued that we followed the terms of the policy so if it did create a contract we did not breach.

And City argued that if there was a contract, Plaintiffs breached first.

Plaintiffs argued:

There was consideration:

“Consideration is an act or promise, bargained for and given in exchange for a promise.” *Resource Management Co. v. Weston Ranch*, 706 P.2d 1028, 1036 (Utah 1985).

They argued that the tow policy created a mutual promise for consideration.

They argued they had to sign the tow policy and agree to follow the terms of the tow policy and that the City also agreed by the language in the policy to follow the terms of the tow policy.

They also argued that the city received a benefit by **having wrecked and inoperable vehicles removed from their streets** in a timely and efficient manner.

The Court Ruled on Our Motion for Summary Judgment:

Questions of material fact remain if there was sufficient consideration.

Whether the contract, if any, was breached and by whom.



Wait, What? How are there disputed facts as to consideration when the written policy is the alleged consideration?

Motion In Limine to Exclude Economic Damages

Rule 26(a)(1), requires that at the outset of the case, a party must, without waiting for a discovery request, serve on the other parties. . .

(C) a **computation of any damages** claimed and a **copy of all discoverable documents or evidentiary material on which such computation is based**, including materials about the nature and extent of injuries suffered;

Rule 26(d)(4) also states: “If a party **fails to disclose** or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document, or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failure.”

Expenses and Revenue through December 2017

West Jordan Expenses

Engineering:	\$31,700.00
Title Report:	\$200.00
Landscape Plans:	\$1,375.00
West Jordan Permits/Fees:	
CUP Review	\$200.00
CUP Fee	\$700.00
Pre-App Meeting	\$50.00
Plan Submittal Fees	\$100.00
Records Request	\$24.50
(1000 Eng Review Fee App 1586 Site Amendment)	\$2,586.00
Water Fee from City on Dead Property Feb-Dec:	\$1,276.00
Rotations Lost:	
South Jordan 2 Year Rotation July2017-July2019	\$288,000.00
UHP Rotation March-Current	\$40,000.00
West Jordan Rotation Feb-Current	\$88,000.00
Unified Rotation	\$80,000.00
Rents lost: Mar-Dec	
GW	\$10,000.00
Ready Set Tow	\$10,000.00
Advantage	\$10,000.00
Quality	\$10,000.00
All Mountain West Towing	\$10,000.00
West Bench Towing	\$10,000.00
Other Lots that I had renters for but had to turn away for outdoor storage & building inside storage	\$75,000.00
Rv Storage Rentals	\$7,500.00
The city said we would be put back to work so we kept paying the office manager until 4/10/17 because we needed to have her available immediately once they put us back on rotation.	\$3,923.00
Unemployment rate increase...I had to lay off the officer manager and the rate will increase on all future wages.	
Office Manager was forced by Utah Unemployment to take a job that pays her \$2.00 less per hour...	
<u>Total</u>	<u>\$680,634.50</u>

Case law on 26a Disclosures for Lost Profit cases:

“First, [l]ost profits must be established with reasonable certainty . . . or, in other words, with sufficient certainty that reasonable minds might believe from a preponderance of the evidence that the damages were actually suffered.” *Stevens-Henager College v. Eagle Gate College*, 2011 UT App 37, ¶ 28, 248 P.3d 1025

Carlson Distributing Co., v. Salt Lake Brewing Co., L.C., 2004 UT App 227, ¶ 17, 95 P.3d 1171, held: “We agree with the trial court that Carlson only presented evidence of gross profits and that, under the circumstances of this case, such a showing was insufficient to permit Carlson's lost profits claim to reach the jury.” Further, “[u]nder these circumstances, any verdict awarding Carlson lost profits would have been speculative and would not have been supported by the evidence. A directed verdict was the correct remedy.” *Id.* at ¶ 24. The problem in Carlson, was that “the estimate must include proof of the costs that would be incurred in producing the profit.” *Id.* at ¶ 21 (internal citations omitted).

Sunridge Development Corp. v. RB &G Engineering, Inc., 2013 UT App 146, 305 P.3d 171, the Court of Appeals held: “When the alleged damages include lost profits, the plaintiff must prove *net* loss. *Id.* at ¶ 14

The Court in our case ruled:

“In this case, applying the case law, there are several problems. The **initial disclosures** only included a **broad statement of gross loss of towing revenues**. There was no disclosure of how Plaintiffs’ alleged revenue losses would be calculated or what the basis for each would be. Plaintiffs provided **no computation showing the losses** and no indication of costs per tow or **what kind of documentation would support the damage claims** or evidence of costs...

Based on the foregoing findings and analysis, the Court CONCLUDES that the Initial Disclosures **did not satisfy the requirements of Rule 26(a)(1)(c)**, because it included **only a broad statement of damages without providing information on which the computation was based or the documents or evidentiary material upon which it was based**, and there was no material upon the nature and extent of injuries suffered... The disclosures during that discovery period were inadequate, and even now there has not been a sufficient disclosure of costs. Therefore, because the disclosure of documents or evidentiary material was insufficient during the discovery period, the City was hampered in exploring those issues in discovery.

Therefore, applying the case law and Rule 26(a)(1) and (d), the Court CONCLUDES that the Motion in Limine is well taken and GRANTED. The Court hereby EXCLUDES any and all evidence of economic damages that are sought by the Plaintiffs.”

We won!! Over \$16,000,000 in economic damages were completely excluded!!!

Without economic damages, plaintiffs breach of contract claims were dismissed after another motion.

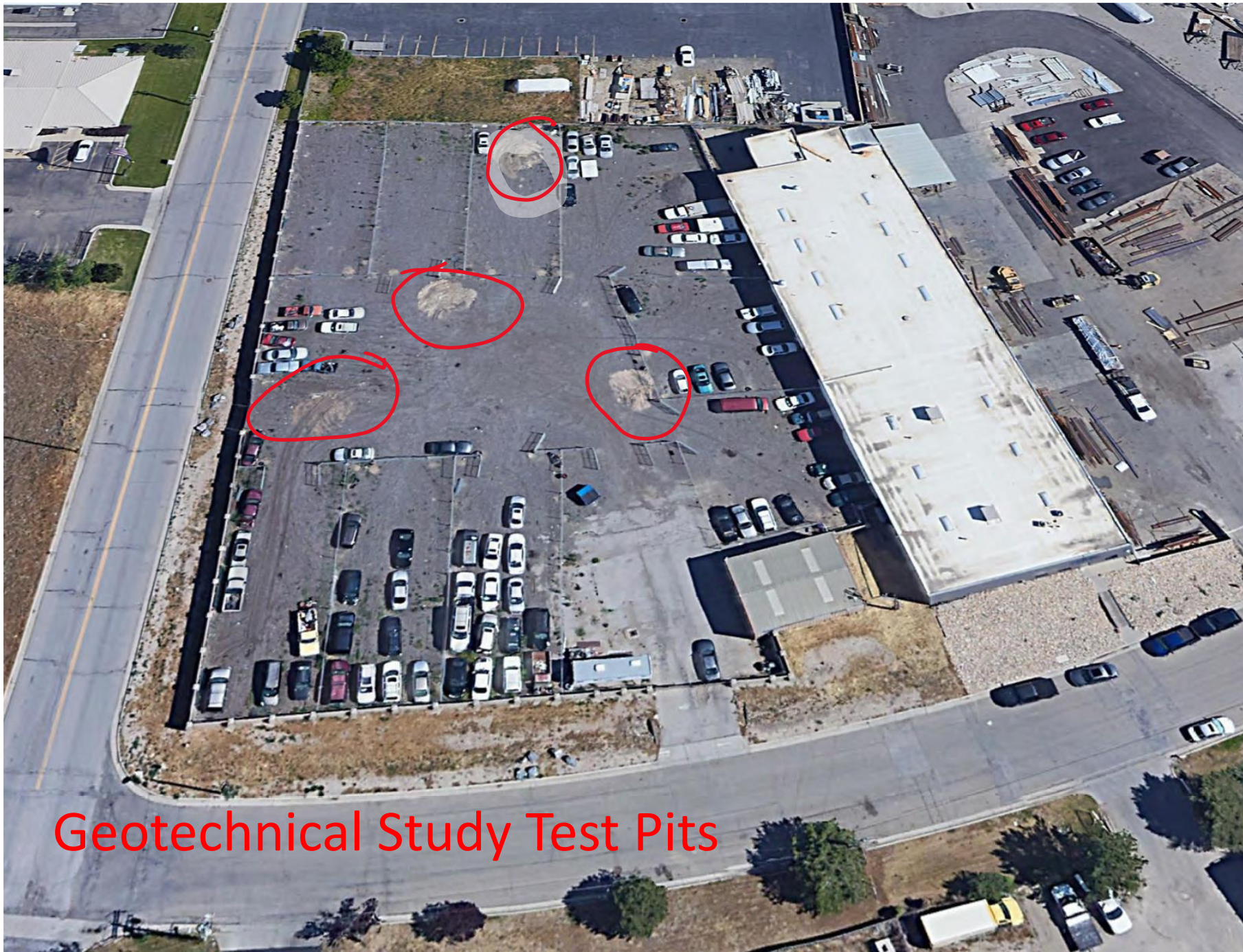
“As to Plaintiffs’ claim for breach of contract (Second Cause of Action) and breach of the implied covenant of good faith and fair dealing (Third Cause of Action), the Court CONCLUDES that these claims were only brought by the Plaintiff Corporations and were not brought on behalf of the individual plaintiffs. Because **emotional distress damages are not available to a corporation and because there are no economic damages**, specific performance, attorneys fees, or other remedies available to the Plaintiff corporations under these causes of action, **the Court GRANTS judgment as a matter of law** under Utah R. Civ. P. 50(a)(2) in favor of the City and dismisses the second and third causes of actions with prejudice.”

“As to the **Plaintiff Corporations’ Constitutional claims**, that Court applies the same rationale as that of the breach of contract claims and CONCLUDES that **corporations cannot suffer emotional distress**. Therefore, if any constitutional violations are found, the Plaintiff Corporations may only recover **nominal damages**.”

Trial:

Proceeded to trial with only section 1983 constitutional claims of:

1. Due Process
2. Equal Protection



Geotechnical Study Test Pits

EXECUTIVE SUMMARY

Below is a summary of the site findings based on the geotechnical investigation.

1. Based on the four test pits that were advanced for this investigation, the site is covered with approximately 6-inches of Recycled Asphalt Pavement (RAP/Rotomill) over 6-inches to 18-inches of undocumented fill consisting of sandy clay with organics, debris and mixed dark colors. In the

Torrey Copfer testified of what he saw on site

- The Lot was dirt and loose gravel and not hard pavement
- Top layer (first 6 inches) was Recycled Asphalt mixed with dirt, loose gravel
- Next 18 inches was **GARBAGE DIRT** with wood chips, clay, metal garbage etc.
- There was **ZERO Roadbase and NO Binding Agent** on the RAP

Due Process:

Plaintiffs were claiming both substantive and procedural due process violations.

Procedural due process... refers to the procedures that the government must follow before it deprives a person of life, liberty, or property... *Substantive due process ...* asks whether the government has an adequate reason for taking away a person's life, liberty, or property.

After the Plaintiffs rested, we moved pursuant to Rule 50(a) for judgment as a matter of law, dismissing the substantive due process claims in the case.

The judge ruled, “the ultimate standard for determining whether there has been a substantive due process violation is whether the challenged government action **shocks the conscience**...To show a defendant's conduct is conscience shocking, a plaintiff must prove a government actor arbitrarily abused his authority or employed it as an instrument of oppression. The **behavior** complained of must be **egregious and outrageous**.”

Procedural Due Process

1. Requires Notice (Does not have to be before the action in cases of health and safety)
2. Requires a meaningful opportunity to be heard.



Administrative Code Enforcement Program
8000 South Redwood Road
West Jordan, Utah 84088
(801) 256-2107

CASE Number: 16-01502

PARCEL: 26013510150000

NOTICE OF VIOLATION

Name of Responsible Person(s): MOUNTAIN WEST TOWING
Mailing Address: 3648 WING POINTE DR, MAGNA UT, 84044
Place of Violation Occurrence: 5580 LEO PARK RD
Inspection/Observation Date: Wednesday, February 8, 2017

SUMMARY OF FINDINGS

Code Section(s) violated:

13-5F-2 ~ Permitted and Conditional Uses

YOUR RESPONSIBILITIES

1. CEASE AND DESIST FROM AND/OR ABATE ALL VIOLATIONS.
2. CONTACT CODE ENFORCEMENT FOR A RE-INSPECTION WHEN VIOLATION(S) ARE IN COMPLIANCE.

Required Remedy

YOU ARE REQUIRED TO CEASE AND DESIST FROM AND/OR ABATE THE CODE VIOLATIONS DESCRIBED ABOVE.

SPECIFICALLY:

You must obtain a Conditional Use Permit in order to operate a towing and/or salvage yard in a M1 manufacturing zone. All tow companies on the property must cease operation until this permit is obtained.

Deadline for Compliance No Later Than: **Thursday, March 2, 2017**

ADMINISTRATIVE PENALTY ASSESSED

A penalty of **\$50.00** per day will be assessed for the above described violation(s) and this penalty will accrue daily until the violation is corrected. **If you correct the described violation(s) and seek a City compliance inspection by the DEADLINE, the City will suspend any and all penalties.**

For example, if you fail to correct the violation by the 14th day following the date hereof, the accrued penalty will be **\$700.00**. The penalty will continue to accrue at the rate of **\$100.00** per day after the DEADLINE date.

Signature of Issuing Enforcement Official

Code Enforcement Officer

Title of Enforcement Official

801.256.2107

Contact Number for Enforcement Official

Lisa Butcher admitted that she received the NOV in the mail.

All the other Plaintiffs admitted to having received Cease Operations Letters.



Administrative Code Enforcement Program
8000 South Redwood Road
West Jordan, Utah 84088
(801) 256-2107

CASE Number: 16-01502

PARCEL: 26013510150000

NOTICE OF VIOLATION

IMPORTANT: Please read carefully:

- * IF YOU NEED ADDITIONAL TIME FOR CURE OR COMPLIANCE, YOU MUST SEEK AN EXTENSION OF THE DEADLINE IN WRITING FROM THE ISSUING ENFORCEMENT OFFICIAL WITHIN FOURTEEN (14) BUSINESS DAYS OF THE DATE OF THIS NOTICE OF VIOLATION.
- * ONCE THE VIOLATIONS HAVE BEEN CORRECTED AND/OR OR STOPPED, THE RESPONSIBLE PERSON(S) HAS THE RESPONSIBILITY TO REQUEST A COMPLIANCE INSPECTION AND TO OBTAIN A NOTICE OF COMPLIANCE TO BRING THIS MATTER TO A CONCLUSION.
- * THIS NOTICE OF VIOLATION SHALL BECOME A FINAL CITY CODE ENFORCEMENT ORDER BY DEFAULT UNLESS, **NO LATER THAN 14-DAYS AFTER THE DATE OF THIS NOTICE, ANY PERSON AGGRIEVED BY THIS NOTICE OF VIOLATION REQUESTS, IN WRITING, A HEARING. A HEARING MAY BE REQUESTED THROUGH THE CITY ATTORNEY'S OFFICE AT THE ADDRESS SHOWN ABOVE.**

The Notice of Violation clearly had the appeal notice on the second page.

West Jordan Tow Policy required us to send notice of removal to Tow Companies. Police did not send a notice of Removal because code had sent notices to cease operations.

Removal from List/Appeal

A tow company, whose business, yard, trucks, or employees are not in compliance with the requirements set forth in this policy, may be suspended and/or removed from the West Jordan Police Department approved list of tow service providers. Notice of removal will be in writing from the Police Tow Rotation Coordinator and delivered to the tow company at least five (5) business days prior to the date of suspension.

West Jordan reserves the right to conduct immediate suspensions based on the severity of all violations.

If any tow truck company has three (3) violations in a 12-month period, the assigned deputy police chief or designee may permanently remove such company from the list.

West Jordan reserves the right to conduct immediate suspensions based on the severity of all violations.

Any company suspended or removed by the West Jordan Police Department from the approved list of tow service providers may request a hearing on the decision to remove or suspend, in writing, to the Police Chief or his designee, within ten (10) business days of the notice provided by West Jordan Police Department. Results of the hearing will be delivered to the tow company within ten (10) business days following the date of the hearing.

NOTICE OF CONFIDENTIALITY: *The contents of all West Jordan Police Department Policies & Procedures are confidential and for WJPD use only. The contents shall not be viewed by, or distributed by any method to, anyone outside the WJPD unless prior approval is given by the WJPD Chief of Police.*

West Jordan City Ordinance and Federal Law allows for the City to send an Immediate Cease Operations Order prior to and/or at the same time as the notice. The right to appeal can legally be after the cease operations.

13-4-9: IMMEDIATE ENFORCEMENT:

A. When delay in enforcement would seriously threaten the effective enforcement of this title or an imminent danger to the public health, safety or welfare exists, the City may, without prior notice to the responsible person:

1. Enter the property without a search warrant or court order, if exigent circumstances or probable cause exists;
2. Using the emergency orders provisions of [title 16](#) of this Code:
 - a. Order the immediate vacation of any tenants or occupants;
 - b. Prohibit occupancy until all repairs are completed;
 - c. Post the premises as unsafe, substandard or dangerous;
 - d. Board, fence or secure the building or site;
 - e. Raze and grade any portion of a building or site to prevent further collapse and remove any danger to the public;

Bates No.004679

https://sterlingcodifiers.com/codebook/index.php?book_id=680

93/291

8/18/2019

Sterling Codifiers, Inc.

- f. Make minimal emergency repairs that are necessary to abate any imminent danger to the public; and
- g. Take any other appropriate action to abate any imminent danger to the public.

Hodel v. Va. Surface Mining & Reclamation Ass'n, 452 U.S. 264, 299-301, 101 S. Ct. 2352, 2372-73 (1981)

Our cases have indicated that due process ordinarily requires an opportunity for "some kind of hearing" prior to the deprivation of a significant property interest. The Court has often acknowledged, however, that summary administrative action may be justified in emergency situations . . . Protection of the health and safety of the public is a paramount governmental interest which justifies summary administrative action. Indeed, deprivation of property to protect the public health and safety is "[one] of the oldest examples" of permissible summary action. Moreover, the administrative action provided through immediate cessation orders responds to situations in which swift action is necessary to protect the public health and safety. This is precisely the type of emergency situation in which this Court has found summary administrative action justified.

The Jury did not think the well water protection zone was a true emergency health issue for the City because we did not mention it until after the cease operations letters were sent out.

Jury also did not believe the notices sent out by code enforcement were sufficient notice of the removal from the police tow rotation.

Equal Protection Claims:

To establish a claim under the equal protection clause for a class of one, each plaintiff must:

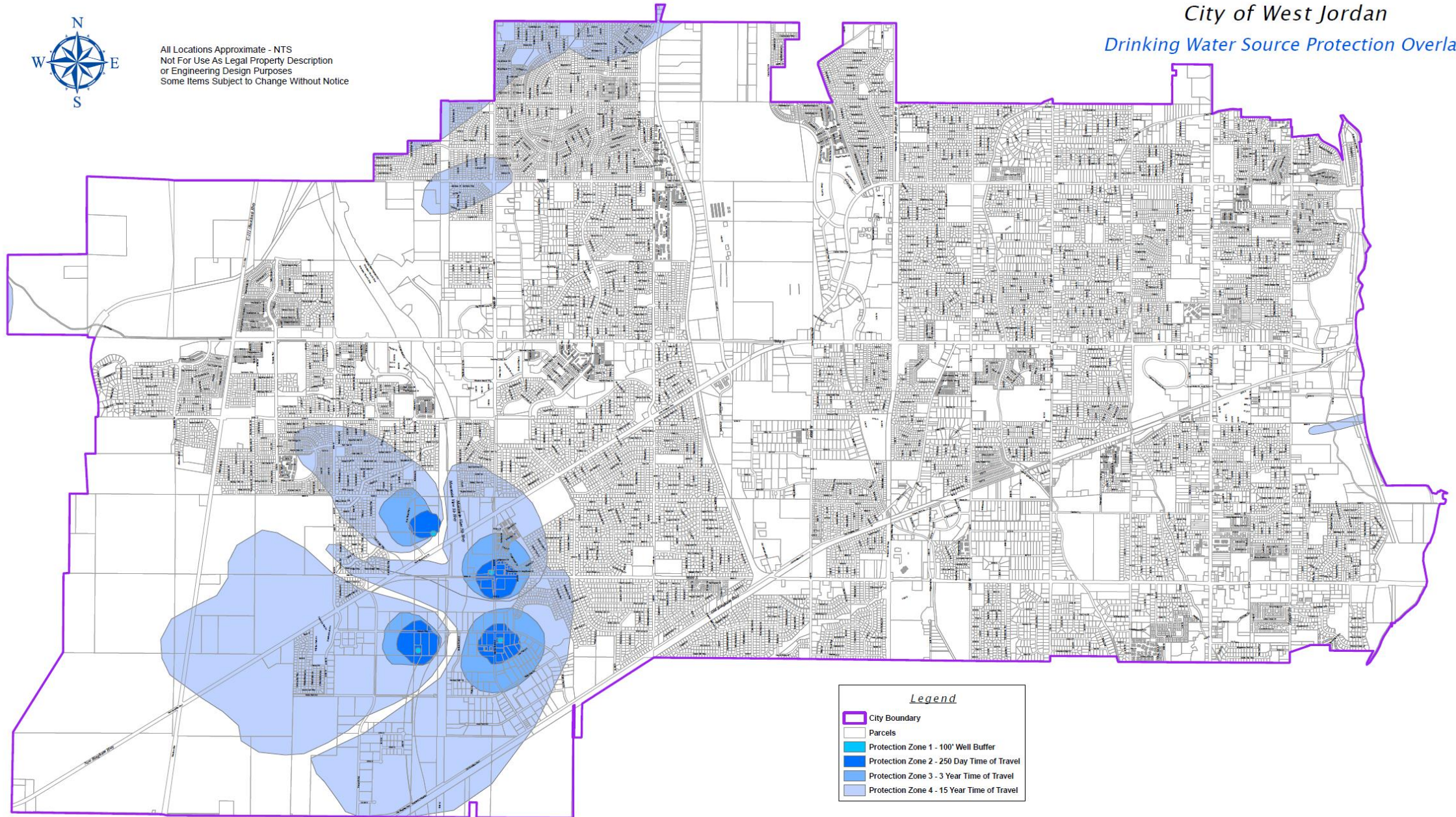
1. establish that others similarly situated in every material respect were treated differently; and
2. must then show this difference in treatment was without rational basis, that is, the government action was irrational and abusive, and wholly unrelated to any legitimate state activity.

During discovery Plaintiffs disclosed two other tow yards in West Jordan that did not have the correct CUP and that also did not have concrete or asphalt surface and they argued that we did not shut these tow companies down. However, Code Enforcement was not aware of these lots until they were disclosed by the Plaintiffs as they only respond to complaints for enforcement. Further, both of these other lots were not in the Well Water Protection Zone.

City of West Jordan
Drinking Water Source Protection Overlay



All Locations Approximate - NTS
Not For Use As Legal Property Description
or Engineering Design Purposes
Some Items Subject to Change Without Notice



Legend

- City Boundary
- Parcels
- Protection Zone 1 - 100' Well Buffer
- Protection Zone 2 - 250 Day Time of Travel
- Protection Zone 3 - 3 Year Time of Travel
- Protection Zone 4 - 15 Year Time of Travel

ARTICLE F. DRINKING WATER SOURCE PROTECTION OVERLAY ZONES

13-6F-1: PURPOSE:

The purpose of the drinking water source protection zones is to protect, preserve and maintain existing and potential public drinking water sources to safeguard the health, safety and welfare of city residents and visitors. The intent is to establish and designate drinking water source protection zones and ground water recharge areas for all sources of public drinking water within city boundaries and jurisdiction, and to regulate land use within identified areas where ground water is or could be affected by the use. This shall be accomplished by the designation and regulation of property uses and conditions that may be maintained within such zones or areas. The degree of protection afforded by this article is considered adequate for regulatory purposes. This article does not ensure that public drinking water sources will not be subject to accidental or intentional contamination. This article does not create liability on the part of the city, or its officers or employees, for any damages to the public water supplies from reliance on this article, nor any administrative order made thereunder. (2001 Code § 89-4-701; amd. 2009 Code)

13-6F-2: DEFINITIONS:

Terms that are defined in section [9-7A-3](#) of this code shall have the same meaning when used in this article. (2001 Code § 89-4-702)

13-6F-3: ESTABLISHMENT OF DRINKING WATER SOURCE PROTECTION OVERLAY ZONES:

The drinking water source protection overlay zones are restrictive designations applied in addition to any other zone in this title. The drinking water source protection overlay zones shall consist of the areas designated on the recharge area and protection zone map, as amended. (2001 Code § 89-4-703; amd. 2009 Code)

13-6F-4: APPLICABILITY:

- A. Unless otherwise specified, this article applies to handling, movement and storage of potentially hazardous materials, and any development, development activity, land use or development project authorized by this title, including, but not limited to, subdivisions, site plans and building permits.
- B. This article applies to all developments within the city in the drinking water source protection zones. No structure or land shall hereafter be constructed, located, extended or altered without full compliance with this article and other applicable regulations. This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. The provisions of this article shall be considered minimum requirements, liberally construed in favor of the city and water protection, and deemed neither to limit nor repeal any other powers granted under state law. (2001 Code § 89-4-704; amd. 2009 Code)

13-6F-5: DESIGNATION OF RECHARGE AREAS AND PROTECTION ZONES:

- A. Designation: The following recharge areas and protection zones are hereby designated within the city:
 1. Primary recharge area, as determined by the USGS.
 2. Secondary recharge, as determined by the USGS.

The Drinking Water Source Protection Overlay Zone was created in 2005. This code gave a rational basis for the City's actions to treat companies on the Leo Park Rd Lot differently than other Town Companies not in that zone.

We lost the equal protection claim as to Mountain West Towing because the Jury, again, did not really believe the well water protection zone was a big deal to the City because it was not mentioned in the original notices. We should not have lost this issue.

The Jury thought it was unfair we did not shut down other tow yards that had outdoor storage CUP's or gravel lots (even though none were in the Well Water Protection Zone).

Mountain West Towing

1. Do you find, by a preponderance of the evidence, that West Jordan City violated Mountain West Towing's procedural Due Process rights?

Answer: Yes: No:

2. Do you find, by a preponderance of the evidence, that West Jordan City violated Mountain West Towing's rights to Equal Protection?

Answer: Yes: No:

3. If you answered "Yes" to questions 1 and/or 2, do you award nominal damages to Mountain West Towing?

Answer: Yes: No:

If yes, what amount of nominal damages do you award: \$ 1,000

Lisa Butcher

1. Do you find, by a preponderance of the evidence, that West Jordan City violated Lisa Butcher's procedural Due Process rights?

Answer: Yes: No:

2. Do you find, by a preponderance of the evidence, that West Jordan City violated Lisa Butcher's rights to Equal Protection?

Answer: Yes: No:

3. If you answered "Yes" to questions 1 and/or 2, do you find by a preponderance of the evidence that Lisa Butcher directly and personally suffered a wrong, not derivative of any loss or injury sustained by Mountain West Towing due to West Jordan City's Constitutional violations?

Answer: Yes: No:

4. If you answered "Yes" to question 3, do you award non-economic damages to Lisa Butcher for emotional distress?

Answer: Yes: No:

5. If you answered yes, to question 4, what amount of non-economic damages do you award to Lisa Butcher?

\$ 550,000.00

Jury Verdict Form:

Awarded Nominal damages to each company and emotional distress damages to each individual plaintiff in different amounts for a total verdict of \$1.27 million dollars. The only emotional distress they testified to was fights among the family and not getting together for holidays and not being as close as they were previously.

Speaking with the Jury after the trial, during deliberations the jury considered how much business the companies must have lost as part of their award for emotional distress damages, even though they were specifically instructed to not do so.

The issue of **Prudential Standing** was left for the jury to decide.

Prudential Standing:

Generally, a shareholder or owner of a company cannot sue for harms suffered by their company unless they suffered an injury that was distinct and not merely derivative of a loss or harm suffered by the corporation.

The city argued prior to trial and during trial that only the tow companies, and no individual person, was accepted to or removed from the tow rotation and only the tow companies, and no person, were ordered to cease operations of their tow business. As a result, the Plaintiff individuals, in their personal capacity, failed to adequately support their claims for violations of procedural due process or equal protection for the removal of their respective companies from the tow rotation or the inability of their respective companies to use the lot as a salvage and tow yard. Only the companies had standing to sue for those alleged violations, not the individuals. And the companies can not suffer emotional distress so they can only be awarded nominal damages and attorneys fees.

The Judge decided that the question was a mixed question of law and fact and decided to let the jury decide. This is being appealed.

Zoning Estoppel:

Estoppel doctrines are all about fairness—holding a party to their word once another party has reasonably relied on those words. Zoning estoppel prevents a government entity from enforcing zoning laws against a property owner that is contrary to the entity’s prior acts or omissions. The doctrine of zoning estoppel may be evoked when the municipality’s action is “of a clear, definite, and affirmative nature.” *Fox v. Park City*, 2008 UT 85, ¶ 35. The municipality’s action must be one that a landowner could reasonably rely on. *Checketts*, 2018 UT App. 48, ¶ 21.

Plaintiff argued that West Jordan told them in 2013 that they had the correct CUP, had approved the plans for RAP surface they installed, and had approved business licenses for the plaintiffs from 2013-2017 and therefore the City should be estopped from making them comply with the zoning ordinances that would require them to pave their lot.

West Jordan argued that estoppel claims are about equity, and although West Jordan mistakenly told plaintiffs they had the appropriate CUP and approved the RAP surface, the City also specifically approved plans that required the surface to be installed with 6 inches of road base, 3 inches of RAP with a sealer on top. The engineer that Plaintiffs hired proved that the plaintiffs did not comply with the plans the city approved. The did not install any road base and did not put a sealer on the RAP. Since Plaintiff failed to comply with the approved plans, it would not be equitable to grant the zoning estoppel claim.

The Judge Ruled on the Zoning Estoppel Claim after trial and held:

“Plaintiffs cannot seek an equitable remedy when they have failed to comply with the conditions in the very permits they claimed to have relied upon.” The judge denied their motion and now the Plaintiffs have to obtain the appropriate CUP and pave their lot if they want to use it for their towing business.

On Jul 31, 2014, at 9:37 AM, Mark Forsythe <markf@wjordan.com> wrote:

Mike,

To answer your questions about the approved surfacing material, the Planning and Engineering staff have determined that since you are located outside of the Drinking Water Source Protection Overlay zone, we can allow the use of recycled asphalt. The roto mill that you have proposed should be adequate to meet this requirement. The Engineering department requires that the roto mill be a minimum depth of 2".

I hope that answers your question. If you have any other questions, feel free to let me know.

Mark Forsythe

Development Technician

City of West Jordan

8000 South Redwood Road

West Jordan, UT 84088

From: Mike Astill [<mailto:astillfamily@yahoo.com>]

Sent: Wednesday, July 30, 2014 4:14 PM

To: Greg Mikolash

Cc: Mark Forsythe

Subject: Re: Case 14-00867 extension

What depth constitutes an adequate base?

What material can be used for the base?

And are there requirements on the depth of the roto mill?

Thank you for helping us in this matter.

Mike Astill

This email was not given to me until January of 2024, when I was working with Planning about the other lots. If we would have had this email during the trial, we probably win the equal protection claim. I was told that the email was not given because the employee thought it was harmful to the city.

What else did we fail to do?

We did not ask how did Mt. West get zoning approval in 2013, how did they get business licenses for several years if they did not have a CUP?

We didn't notice that some of the business license approvals specifically mention the 2002 CUP.

We did not say anything in the Notice of Violation about the surface of the lot and the concerns with the well and city water. That was not brought up by the City until after the companies got the cease operations letter.

We did not inspect the property in 2013 to make sure they complied with the Land Disturbance Permit.

There was no way to prove that we mailed the Notice to Mountain West Towing or to the other companies.

We shut the companies down without any prior notice or ability to correct before we shut them down.

We took the tow companies off the police tow rotation without sending a separate notice for the tow rotation.

We did not inspect the property in 2012 to see if it still complied with the Conditions of the 2002 or 1992 CUP.

We did not revoke the 2002 CUP or 1992 CUP for noncompliance.