



Teton County Press Release - For Immediate Release Burns Concrete Judgment

May 18, 2021 - Teton County, Idaho

After 13 years of litigation involving three different prosecuting attorneys and seven different Boards of County Commissioners, Burns Concrete was awarded monetary damages and attorney fees of \$2,310,238. The final judgment was filed on May 7, 2021 by the 7th Judicial District Court following a November 2020 ruling by the Supreme Court of Idaho. This is the third time the Idaho Supreme Court has weighed in on lawsuits filed against Teton County by Burns Concrete.

Burns Concrete was also awarded \$389,125 in prejudgment interest after Judge Dane Watkins reconsidered his previous decision to deny it. His reconsideration was based on recent case law released by the Idaho Supreme Court on March 22, 2021.

In early 2007, Burns Concrete proposed a concrete batch plant north of Driggs. The project required a zone change from commercial (C-3) to light industrial (M-1) based on the City of Driggs' zoning ordinance for the Area of Impact. The maximum building height for the M-1 zone is 45 feet.

Land use applications in the Area of Impact are processed by the City of Driggs, receive a recommendation from the Driggs Planning and Zoning Commission (P&Z), and are approved or denied by the Board of County Commissioners (BoCC).

The zone change was recommended for approval by Driggs P&Z and granted by the BoCC in February 2007. At the hearing, the BoCC expressed concern over the increased height allowance from 35 feet to 45 feet. They were assured by Burns Concrete that the batch plant would be no higher than the hangars currently in the area.

One of the conditions of the zone change was that Burns Concrete enter into a development agreement with Teton County. The development agreement was written by the City of Driggs and signed by the BoCC in August 2007. It authorized a temporary batch plant while the permanent facility was under construction and included a schematic drawing with a 75-foot structure.

Although the temporary batch plant still stands, the permanent facility was never built. Burns Concrete was unable to obtain subsequent approvals from Teton County for the 75-foot facility that they proposed.

The first lawsuit filed by Burns Concrete in 2008 was to refute Teton County's decision to deny a Conditional Use Permit (CUP) for the 75-foot facility. The district court confirmed Teton County's right to deny the CUP with Prosecuting Attorney Kathy Spitzer arguing the case. Burns Concrete appealed, and the Idaho Supreme Court agreed with Teton County.

The temporary batch plant sat idle for several years after Burns Concrete lost their first lawsuit against Teton County. On April 9, 2012, Teton County sent Burns Concrete a notice requesting removal of the temporary batch plant saying the 18-month timeframe to construct the permanent facility that was outlined in the development agreement had long passed.

In subsequent correspondence, Teton County explained that Burns Concrete could apply for a height variance if they still wanted to build a 75-foot structure or they could adjust their plan to meet the height restriction. Burns Concrete went back to the Driggs P&Z with a height variance application for the permanent facility. Teton County denied the height variance based on the city's recommendation.

Burns Concrete filed a new lawsuit against Teton County in 2013 claiming the County breached the development agreement by demanding removal of the temporary batch plant. Teton County filed a counterclaim and Judge Watkins ruled in the County's favor, ordering the temporary batch plant be removed. In his Memorandum Decision and Order filed on December 19, 2014, Judge Watkins confirmed the County's position that the "temporary facility is in violation of Teton County Zoning Laws" because it exceeded the height limit of 45 feet.

Burns Concrete appealed the district court's decision, and the Idaho Supreme Court ruled in favor of Burns Concrete on a single element of their claim: the "force majeure" clause in the development agreement. Because denial of the 75-foot height variance was not foreseeable, the 18-month time limit for construction of the permanent facility was not enforceable.

The Idaho Supreme Court remanded the case for further review by the District Court in response to their ruling. Burns Concrete responded by filing a renewed motion for

summary judgment in District Court shortly before Billie Siddoway took office as Teton County's Prosecuting Attorney.

Prior to meeting with the former Prosecuting Attorney or Board of County Commissioners, the new Prosecutor attended a hearing on the plaintiff's renewed motion (April 2017). During that hearing, Prosecutor Siddoway failed to present Teton County's winning argument that despite the alleged "breach of contract", the County had every right to demand removal of the temporary batch plant because it exceeded the height limit of 45 feet.

As a result, an expensive trial ensued with a focus on how much money the County would owe Burns Concrete in damages. Prosecutor Siddoway argued, unsuccessfully, that no damages should be awarded because Burns Concrete would not have made any money even if they had been operating the temporary batch plant.

The decision was appealed a third time (by both parties) to the Idaho Supreme Court who ruled in favor of Burns Concrete. The Supreme Court's November 2020 Opinion cited flawed references to case law, lack of a counter claim by Teton County, and failure to preserve other legal arguments, including the zoning violation.

According to Teton County Commissioner Cindy Riegel, "Prosecutor Siddoway refused to partner with a more experienced civil litigator and made decisions that completely undermined years of work on this case. She tried to play nice with the plaintiff, and they took full advantage of that and the taxpayers of Teton County."

Both Courts acknowledged that the temporary batch plant must be taken down. The Board of County Commissioners will be approving the process for paying the judgment award at a Special Meeting on May 19th.