

District Court Rio Grande County, Colorado 925 6 th Street, Room 204 Del Norte, CO 81132 719-657-3394	
City of Monte Vista, State of Colorado, Plaintiff/Appellee v. Donald H. Shank, Defendant/Appellant	↑COURT USE ONLY↑
Attorney for Plaintiff/Appellee EUGENE L. FARISH, P. C. Eugene L. Farish, #2557 P. O. Box 430 Monte Vista, CO 81144 719-852-5101 719-852-4833 (f) gene@farishlaw.com	District Court Case Number: 2011CV29 Municipal Court Case Number: 2010-0936 Division: Courtroom:
STIPULATION REGARDING APPEAL	

The appellant/defendant, by and through his counsel, Ronald E. Howard and the appellee/plaintiff, by and through its counsel, Eugene L. Farish, stipulate and agree as follows:

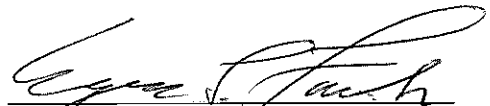
1. Appellant/defendant was convicted in the Monte Vista Municipal Court on April 1, 2011 in case number 2010-0936 of the unlawful storage of 17 rail cars in violation of §12-17-110(3) and (5) of the Monte Vista Municipal Code.
2. On April 8, 2011, the appellant/defendant was sentenced to 90 days in jail and a \$1,000.00 fine resulting from said violations.
3. On April 8, 2011, the appellant/defendant filed a *Notice of Appeal* in the District Court of Rio Grande County, which primarily, was based upon his assertion that his operation was a “railroad” engaged in transportation and therefore entitled to federal pre-emption by the United States Surface Transportation Board (STB).
4. The appellant/defendant thereafter filed an action *pro se*, before the STB and requested that the STB find the appellant/defendant to be a railroad entitled to federal pre-emption of state and local laws.
5. The STB, on August 18, 2014, ruled that the appellant/defendant’s activities do not constitute “transportation” within the STB’s jurisdiction and that the City’s zoning ordinances are not pre-empted with respect to the rail cars in issue.
6. Thereafter the appellant/defendant made various requests for reconsideration accompanied by another party’s notice of intent to participate. The parties are currently awaiting final ruling by the STB.
7. The parties desire a stipulated conclusion of the litigation in district court.
8. Therefore, the parties agree that the appeal filed in the District Court of Rio Grande County in Case Number 2011CV29 will be dismissed by the District Judge with prejudice upon acceptance of this Stipulation by the Monte Vista Municipal Court.

9. The parties agree that, upon remand of the case to the Monte Vista Municipal Court, the Municipal Judge will be requested to enter an order granting a deferred sentence, by which the original sentence will be stayed until May 31, 2015, conditioned upon the removal by the appellant/defendant of the subject 17 rail cars from the City of Monte Vista, Colorado, and not placing the same within the incorporated limits or the three-mile planning area of the City of Monte Vista. If appellant/defendant removes all of said cars by such time, then the parties will request dismissal of the Municipal Court case based upon completion of the terms of the deferred sentence. Otherwise, the city attorney will request imposition of the original sentence.
10. Should the STB find in the favor of appellant/defendant during the pendency of this Stipulation, the ruling of the STB shall have precedence over this present case; the matter shall be found moot; and, the case shall be dismissed with prejudice.
11. Nothing contained in this stipulated disposition shall affect or impair the rights or responsibilities of the parties in any other matter not specifically addressed in this present case. Nor the City's right to proceed against the Appellant for any alleged zoning or nuisance violations beyond the 17 rail cars addressed in this *Stipulation*. .

DONE and SIGNED this 16th day of March, 2015.



Attorney for Appellant



Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2015, the foregoing *Stipulation Regarding Appeal* was delivered to the following, via electronic mail:

District Court Clerk – via e-filing
Rio Grande County, Colorado
925 6th Street, Room 204
Del Norte, CO 81132

Municipal Court Clerk
City of Monte Vista
rhondav@ci.monte-vista.co.us

Ronald E. Howard
Attorney for Appellant
ron@rehowardlaw.com



Janet M. Warwick