

1996

## West Valley City v. Dawn Sweazey : Reply Brief

Utah Court of Appeals

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 960724-CA

**IN THE UTAH COURT OF APPEALS**

West Valley City,  
Plaintiff and Appellee,  
v.  
Dawn Sweazey,  
Defendant and Appellant.

Case No. 960724 - CA  
Priority two

**REPLY BRIEF OF APPELLANT**

**AN APPEAL FROM THE THIRD JUDICIAL COURT OF SALT LAKE COUNTY,  
WEST VALLEY DEPARTMENT, THE HONORABLE RONALD E. NEHRING**

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**MAR 10 1998**

**COURT OF APPEALS**

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**ARGUMENT**

**A.**

**THE ORDINANCE'S REFERENCE TO "THE OFFICIAL PLAT" MAINTAINED BY THE COUNTY RECORDER, MAKES THE ORDINANCE UNCONSTITUTIONALLY VAGUE AND PREVENTS ANY COMPETENT ASCERTAINMENT OF WHERE SUCH A LINE EXISTS ON THE GROUND**

As discussed in Appellant's opening brief, West Valley City's set-back ordinance is inapplicable to the fence/wall. It is only West Valley's fence ordinance which is alleged to proscribe the fence/wall on Defendant/Appellant's property. It is the fence ordinance, found in West Valley City code § 7-2-117, which provides that "(1) A six-foot fence of any material may be constructed on or within property lines as shown on the official plats maintained in the Office of the County Recorder, in rear and side yards. . . . (2) In front yards a 20-foot set back from the front property line shall be maintained for fences over four feet in height. . . ." (Emphasis supplied).

1 Here, where the ordinance refers to “plats,” the question becomes whether this refers  
2 to 1) the plats which private landowners must prepare and sign in order to effect a  
3 subdivision of their property under Utah Code § 10-9-804; or 2) the “Ownership Plats”  
4 which are to be maintained by the County Recorder under Utah Code § 17-21-21. By  
5 referring to the “official” plats, the West Valley Ordinance seems to clearly refer to  
6 documents which were officially created by a governmental body, to wit: the County  
7 Recorder. Thus, the language of the ordinance seems to refer to ownership plats prepared  
8 under § 17-21-21.

9 However, such “ownership” plats cannot work to establish ownership. Section 10-9-  
10 804 provides that the plats which are to sub-divide parcels, and establish the internal  
11 boundaries of ownership, are to be signed by both the property owner, and by the licensed  
12 surveyor who conducted such survey and prepared the plat thereof. The “ownership” plats  
13 prepared by the County Recorder under § 17-21-21, (also known as SIDWELL maps or tax  
14 maps), cannot work to subdivide property, nor to establish actual boundary lines on the  
15 ground. “Many state, county and city agencies prepare and distribute plats and maps that  
16 depict property lines and corners. Perhaps the most widely used are those that are referred  
17 to as *tax maps*. These plats have no more authority to identify or depict corners and/or  
18 property lines between private land owners than those prepared by private surveyors. They  
19 merely represent the opinions of those who prepared them. In most instances no boundaries  
20 were run when the maps were prepared.” Clark on Surveying and Boundaries § 21.19 (7th  
21 ed. 1997).

22 “In a suit to determine the true and correct boundary between the land of two  
23 individuals, a Department of Transportation map was held not to be competent evidence of  
24 the location of the disputed corner monument and the lines that were determined by the  
25 respective monument. The court stated that no testimony was offered to indicate the purpose  
26 for which the map was prepared, whether it followed the original government field notes or  
27 if it even purported to fix the location of the disputed corner. The court held that there was  
28 no supportive data introduced by either party, even though each party had stipulated as to its

1 authenticity.” Id., citing Gilman Paper Co. v. Newman, 398 So. 2d 887 (Fla. Dist. Ct. App.  
2 1981).

3 Even if the actual survey were utilized at the trial, no testimony of a licensed surveyor  
4 was offered to show the location of the boundary on the ground. Without such location of  
5 the actual boundary, it is impossible to know the distance of the fence/wall from this  
6 boundary.

7 Further, the concept of unconstitutionality of the ordinance is independent from the  
8 question of whether sufficient evidence was garnered to show the property line’s location,  
9 and thus to show whether the West Valley ordinance was violated.

10 As recited in the City/Appellee’s brief, documents prepared by a surveyor and signed  
11 by the owner can work to create a new legal description which can thereafter be referenced  
12 by survey and lot number. However, such reference is to map or plat prepared under Utah  
13 Code § 10-9-804, and not to the mere compilation of data by the County Recorder as shown  
14 on its map prepared under Utah Code § 17-21-21. Surely, the County Recorder does not  
15 purport to act as a licensed surveyor, who has the burden to locate boundaries on the ground,  
16 under the exacting standards and high duties of a professional land surveyor.

17  
18 **B.**  
19 **FAIRNESS REQUIRES THAT THE CITY/APPELLEE**  
20 **BE BOUND BY ITS PRIOR REPRESENTATIONS**

21 Originally, the City/Appellee asserted to the trial tribunal that the photographs  
22 numbered 13 through 19 were taken on January 27, 1995, and that they accurately showed  
23 the status of the property on that date. Later, after Defendant pointed out that the photos  
24 indicate her innocence of the January 27, 1995 offenses, the City sought to change its mind,  
25 and make a contrary assertion. Even now, it is unclear what date the City asserts these  
26 photographs were taken.



1 In essence, the City argues that it is entitled, in a criminal prosecution, to take photos  
2 without thought for adequate preservation of the date thereof, then affirmatively assert such  
3 a date to the trial judge, then later change its position as to such an assertion, and then, after  
4 the trial court determines that good cause exists to have the City abide by its representation,  
5 the City endeavors to challenge this ruling on appeal, despite no effort by the City to file any  
6 notice of appeal nor cross-appeal. Further, despite the City's claim that Defendant/Appellant  
7 has failed to marshal evidence, the City declines to marshal evidence in support of the trial  
8 judge's ruling that the City must be bound by its prior representation.

9 Matters which are stipulated by the parties may properly be considered by the trier  
10 of fact. Indeed, it would be incorrect to presume that the jury did other than consider this  
11 stipulation to be true, in reaching its decision to convict. We should not assume that the jury  
12 engaged in overt disobedience to clear direction from the trial judge that the photos were to  
13 be considered taken on January 27, 1995, as previously represented by the City.

14 Because the photos show an absence of violative items on Defendant's property, the  
15 City now seeks to withdraw its prior representation that these photos show the status of the  
16 property on January 27, 1995, the alleged date of violation. Withdrawal of the stipulation,  
17 despite the trial court's determination that the City should be bound thereby, would indeed  
18 be unfair.

19 Regarding another stipulation, the City purports to marshal evidence that Count 9,  
20 Property to be Kept Clean, under West Valley City code § 24-8-105(4), was violated not just  
21 by the presence of bricks, but also of vehicles, appliances, chairs, and wood. See Appellee's  
22 brief at page 16. Yet, the trial judge made clear to the jury another stipulation of the City  
23 (also unappealed by the City) that "the only alleged violation on count 9 is the presence of  
24 the bricks." See Reporter's Transcript 147:8-10. Thus, the City seeks to avoid another of its  
25 stipulations.

1 **CONCLUSION AND RELIEF SOUGHT**

2 Defendant/Appellant Dawn Sweazey was convicted, without justification, as to  
3 Counts 4 through 9. Accordingly, it is requested that each of these convictions be overturned.

4 Dated this 10th day of March 1998.

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6 

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MARK J. GREGERSEN,  
7 Co-counsel for Defendant/Appellant  
8 Dawn Sweazey

9  
10 **CERTIFICATE OF MAILING**

11 I hereby certify that on the date set forth below, I served two true and correct copies  
12 of the document entitled REPLY BRIEF OF APPELLANT by placing copies of this  
13 document in the mail, postage prepaid in an envelope addressed as follows:

14 (Counsel for Plaintiff/Appellee:)  
15 J. Richard Catten  
16 West Valley City Senior Attorney  
17 3600 South Constitution Blvd.  
18 West Valley City, UT 84119

19 Dated this 10th day of March 1998.

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