

1999

West Valley City v. Greg Roberts and Roberts Roofing, Inc., : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
Appellee,

vs.

GREG ROBERTS, and ROBERTS
ROOFING, INC.,
Appellant.

Case No.: 990349-CA

Priority Number: 15

BRIEF OF APPELLEE

Appeal From the Decision of the Third District Court, Judge Ann Boyden

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over appeals from the Third District Court pursuant to Section 78-2a-3(2)(b)(i), of the Utah Code Annotated 1953, as amended.

STATEMENT OF THE ISSUES

A. The only issue before the Court is whether or not the Trial Court properly upheld the decision rendered by West Valley City's Administrative Hearing Officer, by denying the Appellant's Request for Hearing *De Novo*. The trial court's decision to deny Appellant's Request should be reviewed for correctness. *West v. Thomson Newspapers*, 872 P.2d 999 (Utah 1994). The standard of review for decisions of the City's Administrative Hearing Officer is whether or not the decision was arbitrary, capricious, or illegal. West Valley City Municipal Code, § 10-2-601(3)(b).

B. Appellant's request for costs if this matter is remanded for another hearing was not raised before the trial court, and thus cannot be considered on appeal. *Shire Development v. Frontier Investments*, 799 P.2d 221, 224 (Utah Ct. App. 1990).

DETERMINATIVE PROVISIONS

West Valley City Municipal Code, § 10-2-601. Appeal of Administrative Code Enforcement Hearing Decision.

(1) Any person adversely affected by any decision made in the exercise of the provisions of this Chapter may file a petition for review of the decision or order with the district court within 30 days after the decision is rendered.

(2) No person may challenge in district court an administrative code

enforcement hearing officer's decision until that person has exhausted his or her administrative remedies.

(3) The courts shall:

(a) Presume that the administrative code enforcement hearing officer's decision and orders are valid; and

(b) Review the record to determine whether or not the decision was arbitrary, capricious, or illegal.

West Valley City Municipal Code, § 10-2-508. Powers of Code Enforcement Hearing Officer.

(1) The code enforcement hearing officer has the authority to hold hearings on any matter subject to the provisions of this Title.

(2) The code enforcement hearing officer may continue a hearing based on good cause shown by one of the parties to the hearing, or if the hearing officer independently determines that due process has not been adequately afforded.

(3) The Director, on behalf of the hearing officer, at the request of any party to the hearing, may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness for the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The Director shall develop policies and procedures relating to the issuance of subpoenas in administrative code enforcement hearings, including the form of the subpoena and related costs.

(4) The code enforcement hearing officer has continuing jurisdiction over the subject matter of an administrative code enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative code enforcement order using any remedies available under the law; ensuring compliance of that order, which includes the right to authorize the City to enter and abate a violation; modifying an administrative code enforcement order; or, where extraordinary circumstances exist, granting a new hearing.

(5) The code enforcement hearing officer has the authority to require a responsible person to post a code enforcement performance bond to ensure compliance with an administrative code enforcement order.

West Valley City Municipal Code, § 10-2-509. Procedures at Administrative Code Enforcement Hearing.

(1) Administrative code enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required. The request must be in writing. Failure to request discovery shall not be a basis for a continuance. Complainant information is protected and shall not be released unless the complainant is a witness at the hearing. The procedure and format of the administrative hearing shall follow the procedures promulgated by the Director.

(2) The City bears the burden of proof at an administrative code enforcement hearing to establish the existence of a violation of the City Code or applicable state codes.

(3) The standard of proof to be used by the code enforcement hearing officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

(4) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be given by telephone or other electronic means.

(5) All hearings are open to the public. They shall be recorded by audio tape. Hearings may be held at the location of the violation.

(6) The responsible person has a right to be represented by an attorney. If an attorney will be representing the responsible person at the hearing, notice of the attorney's name, address, and telephone number must be given to the City at least one day prior to the hearing. If notice is not given, the hearing may be continued at the City's request, and all costs of the continuance assessed to the responsible person.

Uniform Building Code Section 103 — Violations.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

NOTE: The Uniform Building Code has been adopted by West Valley City.

STATEMENT OF THE CASE

A. Nature of the Case

This matter concerns the appeal of an administrative hearing conducted pursuant to the West Valley City Municipal Code. The Third District Court upheld the decision of the City's administrative hearing officer, and denied the Appellant's Request for Hearing *De Novo*.

B. Course of Proceedings

This matter began as an administrative hearing conducted on January 13, 1999. The Administrative Order announcing the decision from that hearing was entered on February 1, 1999. Pursuant to the West Valley City Municipal Code, Appellants sought appeal in the Third District Court. Appellants filed a Request for Hearing *De Novo*, which was opposed by the City. Judge Ann Boyden of the Third District Court denied Appellant's Motion, and upheld the Administrative Hearing Officer's decision on March 17, 1999.

C. Disposition in Trial Court

The Trial Court denied Appellant's Request for Hearing *De Novo*, and upheld the decision of the City's administrative hearing officer.

D. Statement of Facts.

1. On December 8, 1998, West Valley City (the "City") issued a Notice of Violation to Greg Roberts and Roberts Roofing, Inc. ("Roberts"). (Exhibit B, Notice of Violation)

3. The Notice of Violation explained that a home belonging to Michelle Felis had been inspected by the City's Chief Building Official, who found several problems with a roof that had been installed by Roberts. *Id.*
4. The Notice outlined the problems that had been found, and how Roberts could correct them. *Id.*
5. The Notice also explained that Roberts could request a hearing to dispute the allegations in the Notice. *Id.*
6. The Notice also explained that Roberts would be fined for the violations if they were not corrected by January 11, 1999. *Id.*
7. Roberts requested that a hearing be conducted on the allegations. (Exhibit C, Request for Hearing and Notice of Hearing).
8. A hearing was conducted on January 13, 1999. *Id.*
9. At the hearing, documentary evidence was presented, including the following:
 - Contract between Roberts Roofing and Michelle Felis. (Exhibit D)
 - The Chief Building Official's report of his inspection of the roof. *Id.*
 - A report from Kraig Clawson, an independent consultant who also inspected the roof. *Id.*
 - Photographs of the roof, taken by the Chief Building Official. (Exhibit E)
10. Oral testimony was also taken at the hearing. (Exhibit H, Memorandum in Opposition

to Petitioner's Request for Trial *De Novo*)

11. Pursuant to the City's Ordinances, a tape recorder was set up to record the hearing

Id

12. After considering all of the evidence that was presented, the Administrative Hearing Officer determined that the violations did in fact exist, and that Roberts was responsible for them (Exhibit F, Administrative Code Enforcement Order)

13. The Hearing Officer ordered that Roberts correct the violations by June 1, 1999. If the roof was not properly repaired by that date, Roberts would be liable for fines. *Id*

14. Roberts appealed the Hearing Officer's decision to the Third District Court, as provided in the West Valley City Municipal Code (Exhibit G, Petition for Review)

15. Because the court reviews the record of the decision, Roberts contacted the City about preparing a transcript of the hearing (Exhibit H)

16. When Roberts requested the tapes for the transcript, it was discovered that nothing had been recorded. The City was not aware of the problem at the time of the hearing, and did not know why the equipment had not functioned properly. *Id*

17. Roberts filed a Request for Hearing *De Novo* with the district court. The City filed a memorandum opposing the motion. On March 17, 1999, Judge Ann Boyden of the Third District Court denied Roberts's Request, and upheld the Hearing Officer's decision (Exhibit I, Trial Court's Decision)

18. Judge Boyden held that there was no legal basis for a *de novo* hearing, and since there was no record to review, dismissed Appellant's Petition. *Id.*

SUMMARY OF THE ARGUMENT

I Roberts's Due Process Rights Were Preserved, Because The City Acted Within Its Authority, And Followed Its Procedural Rules.

Roberts's due process rights were not violated. The City acted within its authority to enforce its ordinances and the Uniform Building Code. In addition, the City followed the procedures outlined in its Municipal Code, and afforded Roberts notice, a fair hearing, and the right to seek judicial review. The City attempted to record the hearing, in accordance with its procedures, but the equipment did not operate correctly. This equipment malfunction does not rise to the level of a due process violation. *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 28 (Utah Ct. App. 1991).

II A Trial *De Novo* Is Not Necessary Because There Is a Sufficient Record of the Administrative Hearing.

A *de novo* hearing is not required in this matter, because an adequate record exists. Even though the hearing was not successfully recorded, the existing record adequately supports the Hearing Officer's decision, and so that decision should be upheld. Even if the Court finds that the record is insufficient, the proper approach would be to supplement the existing record, not to begin again with a new hearing. *Xanthos v. Salt Lake City Board of Adjustment*, 685 P.2d 1032, 1034-35 (Utah 1984).

III Roberts Is Not Entitled to Costs, Because the Issue Is Not Ripe for Decision, and Also Because There Is No Statutory Basis for Such an Award.

Roberts's preemptive demand for costs is not ripe. The demand is for costs "if this matter is remanded for a second administrative hearing." This issues was not raised before the trial court, and is not ripe for judicial review. Furthermore, a claim for costs must be based on a statute or contractual provision. *State ex rel. Department of Social Services v. Ruschetta*, 742 P.2d 114, 117 (Utah Ct. App. 1987). Roberts has cited to no law or contract provision which would award costs.

DETAIL OF THE ARGUMENT

I. ROBERTS'S DUE PROCESS RIGHTS WERE PRESERVED, BECAUSE THE CITY ACTED WITHIN ITS AUTHORITY, AND FOLLOWED ITS PROCEDURAL RULES.

Because the City acted within its authority and followed its procedural rules, Roberts's due process rights were not abridged. Due process in an administrative hearing requires fundamental fairness, an opportunity to present evidence and legal argument, and the right for judicial review. Roberts appeared at a hearing held at his request, was given the opportunity to present his case, and has sought judicial review. The City followed its procedural rules and acted within its authority. There was no due process violation, even though the hearing was not successfully recorded.

A. *The City Acted Within its Authority to Enforce Obedience to the Uniform Building Code Using an Administrative Process.*

There was no due process violation, because the City acted within its authority to enforce obedience to its ordinances, and penalize violations. Cities are authorized to enact ordinances and rules, and to take reasonable steps to enforce those ordinances by fines or other penalties.

[Municipalities] may pass all ordinances and rules, and make all regulations, not repugnant to law, *necessary for carrying into effect or discharging all powers and duties conferred by this chapter* [Chapter 10-8], and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city; *and may enforce obedience to the ordinances with fines or penalties as they may deem proper . . .*

UTAH CODE ANN. § 10-8-84 (1996) (emphasis added). This grant of authority includes establishment of an administrative procedure to enforce city ordinances. Furthermore,

[w]hen the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, *i.e.*, providing for the public safety, health, morals, and welfare. . . . And the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws . . .

State v. Hutchinson, 624 P.2d 1116, 1124 (Utah 1980). In § 10-8-84 of the Utah Code, the Utah Legislature granted general welfare power to cities. Therefore, cities have authority to

pass ordinances reasonably related to the objectives of that power. An administrative hearing procedure to enforce city ordinances is reasonably and appropriately related to the objectives of the general welfare power.¹

In addition to general welfare authority, cities are also authorized to enforce uniform building standards. *See* UTAH CODE ANN. § 58-56-8 (1998).² "[S]pecific grants should generally be construed with reasonable latitude in light of the broad language of the general welfare clause which may supplement the power found in a specific delegation." *Hutchinson*, 624 P.2d at 1126. The general welfare authority discussed above supplements the specific delegation of authority to enforce uniform building standards. A city has authority to enact ordinances reasonably and appropriately related to carrying out and enforcing the Uniform Building Code.

To sum up, the City has specific authority to regulate building construction and repair, consistent with the Uniform Building Code. That authority, coupled with the general welfare power granted by the Utah Legislature, permits the City to enact ordinances and rules

¹ *See e.g., Whiting v. Clayton*, 617 P.2d 362 (Utah 1980); and *Buhler v. Stone*, 533 P.2d 292 (Utah 1975), in which the Utah Supreme Court approved the use of administrative hearing procedures to enforce local ordinances.

² *See also* UTAH CODE ANN. § 10-9-102 (1996) (authorizing cities to regulate structures and buildings.) The City has adopted the Uniform Building Code as part of its ordinances.

necessary to carry out that authority. Enforcing the Uniform Building Code via an administrative hearing process is reasonably and appropriately related to the City's duty to enforce building standards. The City thus acted within its authority to use an administrative hearing process to determine whether Roberts violated the Uniform Building Code, and doing so did not violate Roberts's due process rights.

B. Roberts's Due Process Rights were Preserved, Because the City Followed the Procedures Established in its Ordinances.

Roberts suffered no deprivation of due process rights, because the City followed the procedures outlined in its Municipal Code. "Every person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal." *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 28 (Utah Ct. App. 1991). The Utah Supreme Court explained that due process of law includes "an opportunity to present [one's] cause, that is [one's] evidence and [one's] contentions, to a tribunal vested with authority to make a determination thereon. Further, . . . [That person] should have a right of access to the courts to review and test the validity of his contention." *Peatross v. Board of Commissioners of Salt Lake County*, 555 P.2d 281, 283 (Utah 1976).

The existing record shows that Roberts was given a fair trial in front of a fair tribunal, was allowed to present evidence, and has had access to the courts for review. Pursuant to Title 10 of the City Code, Roberts was notified of the alleged violations, how those violations

should be corrected, and was informed that a hearing could be requested. (*See* Exhibit B.) Roberts requested a hearing, which was held before an independent administrative hearing officer.³ Roberts was represented by counsel and was allowed to present his own evidence as well as dispute the evidence submitted by the City, including cross-examination of the City's witnesses. Roberts has obviously taken advantage of his right to appeal the Hearing Officer's decision. This shows that Roberts has not suffered any deprivation of his due process rights.

Roberts contends that the failure to successfully record the hearing constitutes a due process violation requiring a trial *de novo*. However, "due process demands a new trial when the appearance of unfairness is so plain that we are left with the abiding impression that a reasonable person would find the hearing unfair." *Tolman*, 818 P.2d at 28. A failure to maintain a record because of an unknown equipment malfunction does not rise to the level of unfairness that requires a new hearing.⁴

There are two appellate cases which provide valuable guidance in this situation. In

³ Administrative hearing officers are not employees of the City.

⁴ Roberts mistakenly relies on *Springville Citizens for a Better Community v. Springville*, 365 Utah Adv. Rep 23 (Utah 1999). In that case, the court overturned a zoning approval because the city failed to follow distinct procedural requirements found in its ordinances. In this matter, the City followed its ordinances, including the recording requirement. The City had no way of knowing that the recording equipment was not operating properly.

Tolman, the Court of Appeals determined that the recording of the hearing at issue was so incomplete that the court could not confidently review the hearing. *Tolman*, 818 P.2d at 27, n.5. The recording was deemed incomplete because of faulty recording, and because the recording equipment was turned off while significant matters were discussed. *Id.* However, the court did not hold that the condition of the recording violated due process. Rather, the court would have remanded the matter to develop a reviewable record. *Id.*⁵ In other words, the lack of a complete record did not leave the abiding impression that a reasonable person would find as unfair.

In the second case, *Xanthos v. Board of Adjustment of Salt Lake City*, 685 P.2d 1032 (Utah 1984), there was no recording of the administrative hearing at all. The Utah Supreme Court addressed the argument that due process required a trial *de novo* to create a record. The court held that the reviewing court could take evidence to clarify the administrative hearing, "but it must be relevant to the issues that were raised and considered [in the administrative hearing]" *Xanthos*, 685 P.2d at 1035. In *Tolman*, discussed above, the Court of Appeals cited *Xanthos* to support the proposition that "development of a reviewable record" was the proper remedy when the record is too incomplete to review. *See Tolman*,

⁵ In *Tolman*, the court found other unfair due process violations based on the procedures used at the hearing. *Tolman*, 818 P.2d at 27-33. The condition of the record was not a due process violation.

818 P.2d at 27-28, n.5

Thus, there was no due process violation because the hearing was not successfully recorded. The City attempted to record the hearing in compliance with its ordinances, but for some reason the equipment did not work properly. Had the problem been known the City could have corrected it. However, the absence of the recording does not mean the absence of a record. As has been stated, documentary evidence was submitted which supports the Hearing Officer's decision. An incomplete record does not amount to a due process violation which requires a new hearing.

To conclude, Roberts suffered no due process violation. The City acted within its statutory authority to enforce the Uniform Building Code. The City may choose to enforce its ordinances and codes using an administrative hearing process. Roberts was afforded due process by being given a hearing, and judicial review. The City followed its procedures, including an attempt to record the hearing. The recording equipment malfunctioned, however, but that does not rise to the level of a due process violation.

II A TRIAL *DE NOVO* IS NOT NECESSARY BECAUSE THERE IS A SUFFICIENT RECORD OF THE ADMINISTRATIVE HEARING.

The trial judge did not violate Roberts's due process rights by denying the Request for Hearing *De Novo*. Trial *de novo* is not the proper remedy for this situation, even though the record is incomplete. Furthermore, a trial *de novo* is not necessary in this matter because

a sufficient record of the administrative hearing exists to sustain the hearing officer's decision. Finally, the existing record could be clarified with additional evidence if deemed necessary.

A. A Record of the Proceeding Exists, Even Though the Hearing was Not Successfully Recorded.

An adequate record of the proceedings exists in the form of documents presented at the hearing. This evidence adequately support the Hearing Officer's decision that the alleged violations did occur, and that Roberts is the responsible party. Although the tape recorder failed to operate correctly, the record consists of more than the audio recording of the hearing. The Hearing Officer also accepted documentary evidence tending to support the decision that the alleged violations occurred. This documentary evidence includes the contract between Roberts and Michelle Felis, the written report of the City's Chief Building Official, and another written report by an independent consultant who had inspected the roof. In addition, photographs taken by the City showing the alleged violations were introduced into evidence. This shows that a substantial portion of the record does exist, and that the decision may be reviewed based on that record. (*See Exhibits D and E*).

B. The Existing Record Adequately Shows that the Hearing Officer's Decision was Not Arbitrary or Capricious.

The existing written record provides a sufficient basis upon which the court can determine whether the Hearing Officer's decision was arbitrary or capricious. The Utah

Supreme Court explained the "arbitrary and capricious" standard in *Carlsen v. State ex rel. Department of Social Services*.⁶ When considering issues of fact, "[t]he [administrative] agency's finding will be sustained if there is evidence of any substance whatever which can reasonably be regarded as supporting the determination made. . . . Under this 'substantial evidence' standard, the agency's decision will be overturned only if it is so lacking in factual foundation that it is deemed to be arbitrary and capricious." *Carlsen*, 722 P.2d at 777 (citations omitted). The Hearing Officer's factual determinations must thus be upheld if there is any evidence of any substance which can reasonably be regarded as supporting the determination.

The documentary evidence supports the Hearing Officer's determination that the violations occurred. The City's Chief Building Official submitted a written report and photographs showing the violations on the roof. An independent consultant also submitted a written report finding that the violations occurred. The contract between Roberts and Michelle Felis confirmed that Roberts conducted the work and was the responsible party. This evidence reasonably supports the conclusions of the Hearing Officer that the violations existed, and that Roberts was responsible. Therefore, the decision was not arbitrary or capricious, and the decision should be upheld.

⁶ 722 P.2d 775 (Utah 1986).

C. *Even if the Record is Insufficient, the Proper Remedy is to Clarify the Existing Information with Supplemental Evidence.*

If the record is found too incomplete for a meaningful review, the proper approach is to clarify the existing record, rather than conduct a new trial. In *Xanthos*, the Utah Supreme Court addressed this very issue. *Xanthos* involved an appeal from the Salt Lake City Board of Adjustment. The hearing was not recorded, and on appeal to district court the trial judge conducted a trial *de novo* and considered evidence that had not been submitted to the board. *Xanthos*, 685 P.2d at 1035. The supreme court overturned the trial judge's decision and held that a trial *de novo* is not the proper remedy in such a situation. Rather, the judge should have supplemented the record that did exist, but only as necessary to clarify the decision. "This does not mean that the hearing in the district court should be a retrial on the merits, or that the district court can substitute its judgment for that of the [administrative agency]. . . [T]he district court may take additional evidence, but it must be relevant to the issues that were raised and considered by the [administrative agency]." ⁷ In other words, even though the record was incomplete because the hearing was not recorded, the proper approach would be to take only the information that is necessary to understand the Hearing Officer's decision.

Contrary to Roberts's contention, a partial record exists in this case. While the

⁷ *Xanthos* dealt with an appeal from a local Board of Adjustment, but the analysis regarding review applies generally to all administrative decisions. See *Tolman*, 818 P.2d at 27-28, n.5.

hearing was not recorded, there is the documentary evidence that the Hearing Officer considered. This information provides a foundation which could be supplemented with evidence relevant to understanding the Hearing Officer's decision. The individuals who testified at the hearing are available to clarify that documentary evidence if required. A trial *de novo* is not necessary, but taking supplementary evidence may be advisable.⁸

III ROBERTS IS NOT ENTITLED TO COSTS, BECAUSE THE ISSUE IS NOT RIPE FOR DECISION, AND ALSO BECAUSE THERE IS NO STATUTORY BASIS FOR SUCH AN AWARD.

Roberts is not entitled to a preemptive award of costs if there is another hearing. In the first place, such a request is not ripe for decision:

In order to constitute a justiciable controversy, a conflict over the application of a legal provision must have sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto. Where there exists no more than a difference of opinion regarding the hypothetical application of a piece of legislation to a situation in which the parties might, at some future time, find themselves, the question is unripe for adjudication.

Redwood Gym v. Salt Lake City Commission, 624 P.2d 1138, 1148 (Utah 1981). The very nature of Roberts's requested relief indicates that it is unripe. Roberts asks that *if* this matter is remanded, then the City should bear the costs for a second hearing. This issue has not sharpened into an actual or imminent clash of legal rights, and is merely speculation

⁸ This was the position taken by the City in its Memorandum in Opposition to Roberts's Motion for Trial *De Novo*. (See Exhibit H).

regarding a hypothetical situation. It is thus not ripe for adjudication.

Furthermore, Roberts is not entitled to costs unless such an award is granted by statute or rule. "Under Utah [Rules of Civil Procedure] 54(d)(1) costs against the State of Utah [and its officers and agencies] may be awarded only upon express statute or rule allowing such an award." *State ex rel. Department of Social Services v. Ruscetta*, 742 P.2d 114, 117 (Utah Ct. App. 1987). In addition, "[c]osts were not recoverable at common law; and are therefore generally allowable only in the amounts and in the manner provided by statute." *Frampton v. Wilson*, 605 P.2d 771, 773 (Utah 1980). Roberts has not cited to any statute or rule allowing an award of costs, or designating the amount or manner in which costs may be awarded against the City, which is a political subdivision of the state. *See* UTAH CODE ANN. § 10-1-201 (1996). Therefore, Roberts is not entitled to an award of costs.

Finally, Roberts has raised this issue for the first time before this Court, and did not raise it before the trial court. "As we have reiterated many times, we will not consider an issue raised on appeal for the first time." *Shire Development v. Frontier Investments*, 799 P.2d 221, 224 (Utah Ct. App. 1990). Since Roberts has raised this issue for the first time on appeal, it cannot be considered.

CONCLUSION

Roberts has not suffered any deprivation of due process rights. The City is authorized to enforce the Uniform Building Code, and may use an administrative process to carry out

its enforcement duties. See UTAH CODE ANN §§ 10-8-84, 10-9-102, 58-56-8, *see also Hutchinson*, 624 P 2d at 1126. The City was thus acting within its authority. Furthermore, the City followed the procedures outlined in its Municipal Code, and provided Roberts with notice, a hearing, and the right to an appeal. (See generally, Exhibits A - F) Roberts was thus provided with due process. *Peatross*, 555 P 2d at 283, *Tolman*, 818 P 2d at 28.

The lack of a complete record does not constitute a due process violation. See *Tolman*, 818 P 2d at 27-28, n 5. There is a partial record of the proceedings available. This record adequately shows that the Hearing Officer's determination that the violations of the Uniform Building Code existed was not arbitrary and capricious. *Carlsen*, 722 P 2d at 777. Even if the Court determines that the record is too incomplete to conduct a review, the proper remedy is to supplement the existing record, not to retry the merits. See *Xanthos*, 685 P 2d at 1034-35, *Tolman*, 818 P 2d at 27-28, n 5.

Finally, Roberts's demand that the City bear the costs if any further hearings are required must be denied. In the first place, since there has been no ruling that any additional hearings are required, the request is not ripe for adjudication. *Redwood Gym*, 624 P 2d at 1148. Secondly, costs may only be awarded if they are authorized by statute. *Frampton*, 605 P 2d at 773, *Ruscetta*, 742 P 2d at 117. Roberts has not cited to any statutory authority to justify his claim for costs. Finally, Roberts has raised this issue for the first time on appeal, so it cannot be considered. *Shire Development*, 799 P 2d at 224. Therefore, the

request must be denied.

The reasoning set forth herein demonstrates that Roberts has not suffered any deprivation of his due process rights. The City respectfully asks that this Court uphold the decision of the trial court denying Roberts's Request for Hearing *De Novo*, and sustain the Hearing Officer's decision.

RESPECTFULLY SUBMITTED this 22nd day of July, 1999.



ELLIOT R. LAWRENCE
Assistant City Attorney

CERTIFICATE OF MAILING

This certifies that two copies of the foregoing Brief were mailed to the following:

Bret M. Hanna
WEISS BERRETT PETTY, L.C
Key Bank Tower, Suite 530
Salt Lake City, Utah 84144

DATED this 22nd day of July, 1999

A handwritten signature in cursive script, reading "Eliot R. Lawrence", is written over a horizontal line.

LIST OF EXHIBITS

EXHIBIT A:

West Valley City Municipal Code, Title 10

EXHIBIT B:

Notice of Violation, Greg Roberts

EXHIBIT C:

Request for Hearing and Notice of Hearing, Greg Roberts

EXHIBIT D:

Documentary Evidence – Contract and Written Reports

EXHIBIT E:

Photographs of Alleged Violations

EXHIBIT F:

Administrative Code Enforcement Order

EXHIBIT G:

Petition for Review, Greg Roberts

EXHIBIT H:

**City's Memorandum in Opposition
to Petitioner's Request for Trial *De Novo***

EXHIBIT I:

Decision, West Valley City v. Roberts

EXHIBIT A:
West Valley City Municipal Code, Title 10

TITLE 10. ADMINISTRATIVE CODE ENFORCEMENT HEARING PROGRAM

- CHAPTER 10-1. GENERAL PROVISIONS AND DEFINITIONS
- CHAPTER 10-2. ADMINISTRATIVE CODE ENFORCEMENT PROCEDURES
- CHAPTER 10-3. ADMINISTRATIVE AND JUDICIAL REMEDIES
- CHAPTER 10-4. RECOVERY OF CODE ENFORCEMENT PENALTIES AND COSTS

CHAPTER 10-1. GENERAL PROVISIONS AND DEFINITIONS

PART 1 - GENERAL PROVISIONS

- 10-1-101. SHORT TITLE.
- 10-1-102. DECLARATION OF PURPOSE.
- 10-1-103. SCOPE.
- 10-1-104. EXISTING LAW CONTINUED.
- 10-1-105. CRIMINAL PROSECUTION RIGHT.
- 10-1-106. EFFECT OF HEADING.
- 10-1-107. VALIDITY OF TITLE SEVERABILITY.
- 10-1-108. NO MANDATORY DUTY CIVIL LIABILITY.
- 10-1-109. GENERAL RULES OF INTERPRETATION OF ORDINANCES.
- 10-1-110. DEFINITIONS APPLICABLE TO TITLE GENERALLY.
- 10-1-111. ACTS INCLUDE CAUSING, AIDING, AND ABETTING.

PART 2 - SERVICE REQUIREMENTS

- 10-1-201. SERVICE OF NOTICES.
- 10-1-202. CONSTRUCTIVE NOTICE OF RECORDED DOCUMENTS.

PART 3 - GENERAL AUTHORITY AND OFFENSES

- 10-1-301. GENERAL ENFORCEMENT AUTHORITY.
- 10-1-302. ADOPTION OF POLICY AND PROCEDURES.
- 10-1-303. AUTHORITY TO INSPECT.
- 10-1-304. POWER TO ARREST.
- 10-1-305. FALSE INFORMATION OR REFUSAL PROHIBITED.
- 10-1-306. FAILURE TO OBEY A SUBPOENA.

PART 1 - GENERAL PROVISIONS

- 10-1-101. SHORT TITLE.

This Title shall be known as the "Administrative Code Enforcement Hearing Program (A.C.E. Hearing Program)." This Title shall also be known as Title 10, West Valley City Municipal Code. It may be cited and pleaded under either designation.

(Ord No 97-57, Enacted 09/09/97)

- 10-1-102. DECLARATION OF PURPOSE.

The City Council of West Valley City finds that the enforcement of the West Valley City Municipal Code and applicable state codes throughout the City is an important public service. Code enforcement is vital to the protection of the public's health, safety, and quality of life. The City Council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative code enforcement hearings and judicial proceedings. The City Council further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with these regulations. Failure to comply with an administrative code enforcement action may require the City Attorney to file a judicial action to gain compliance.

(Ord No 97-57, Enacted, 09/09/97)

- 10-1-103. SCOPE.

The provisions of this Title may be applied to all violations of the City Code. It has been designed as an additional remedy for the City to use in achieving compliance of its ordinances. It applies to all zoning areas equally.

(Ord No 97-57, Enacted, 09/09/97)

- 10-1-104. EXISTING LAW CONTINUED.

The provisions of this Title do not invalidate any other title or ordinance, but shall be read in conjunction with those titles and ordinances as an additional remedy available for enforcement of those ordinances.

(Ord No 97-57, Enacted, 09/09/97)

- 10-1-105. CRIMINAL PROSECUTION RIGHT.

The City has sole discretion in deciding whether to file a civil or criminal case for the violation of any of its ordinances. The City may choose to file both, or one or the other. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute City ordinance violations as criminal offenses. The City may use any of the remedies available under the law in both civil and criminal prosecution. If the City chooses to file both civil and criminal charges for the same day of violation, no civil penalties may be assessed, but all other remedies are available.

(Ord. No 97-57, Enacted, 09/09/97)

- 10-1-106. EFFECT OF HEADING.

Title, chapter, part and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any title, chapter, part, or section hereof

(Ord No 97-57, Enacted, 09/09/97)

- 10-1-107. VALIDITY OF TITLE -- SEVERABILITY.

If any section, subsection, sentence, clause, phrase, portion, or provision of this Title is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Title. The

City Council of this City hereby declares that it would have adopted this Title and each section, subsection, sentence, clause, phrase, portion, or provision thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions, or provisions be declared invalid or unconstitutional. This Section shall apply to all amendments heretofore or hereafter made to this Title.

(Ord No 97-57, Enacted 09/09/97)

10-1-108. NO MANDATORY DUTY -- CIVIL LIABILITY.

It is the intent of the City Council that in establishing performance standards or establishing an obligation to act by a City officer or employee, these standards shall not be construed as creating a mandatory duty for purposes of tort liability if the officer or employee fails to perform his or her directed duty or duties.

(Ord No 97-57 Enacted 09/09/97)

10-1-109 GENERAL RULES OF INTERPRETATION OF ORDINANCES.

For purposes of this Title

- (1) Any gender includes the other gender
- (2) "Shall" is mandatory, "may" is permissive
- (3) The singular number includes the plural and the plural the singular
- (4) Words used in the present tense include the past and future tense, and vice versa
- (5) Words and phrases used in this Title and not specifically defined shall be construed according to the context and approved usage of the language

(Ord No 97 57 Enacted 09/09/97)

10-1-110. DEFINITIONS APPLICABLE TO TITLE GENERALLY.

The following words and phrases, whenever used in this Title, shall be constructed as defined in this section unless a different meaning is specifically defined elsewhere in this Title and specifically stated to apply

- (1) "Abatement" means any action the City may take on public or private property and any adjacent property as may be necessary to remove or alleviate a violation, including, but not limited to, demolition, removal, repair, boarding, and securing or replacement of property
- (2) "Administrative Code Enforcement Order" means an order issued by a hearing officer. The order may include an order to abate the violation, pay civil penalties and administrative costs, or take any other action as authorized or required by this Title and applicable state codes
- (3) "City" means the area within the territorial city limits of West Valley City, and such territory outside of this City over which the City has jurisdiction or control by virtue of any constitutional or incorporation provisions or any law
- (4) "City Council" means the City Council of West Valley City
- (5) "Code Enforcement Hearing Officer" means any person appointed by the Community and Economic Development Director or his or her designee to preside over administrative code enforcement hearings

(6) "Code Enforcement Lien" means a lien recorded to collect outstanding civil penalties, administrative fees, and costs

(7) "Code Enforcement Performance Bond" means a bond posted by a responsible person to ensure compliance with the City Code, applicable state titles, a judicial action, or an administrative code enforcement order

(8) "Director" means the Community and Economic Development Director or his or her designee

(9) "Enforcement Official" means any person authorized to enforce violations of the City Code or applicable state codes

(10) "Financial Institution" means any person that holds a recorded mortgage or deed of trust on a property

(11) "Good Cause" means incapacitating illness, death, lack of proper notice, unavailability due to unavoidable, unpreventable, or extenuating emergency or circumstance causes an imminent and irreparable injury, and acts of nature adverse to the requirements

(12) "Imminent Life Safety Hazard" means any condition that creates a present, extreme, and immediate danger to life, property, health, or public safety

(13) "Legal Interest" means any interest that is represented by a document, such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien, or other similar instrument that is recorded with the County Recorder

(14) "Notice of Compliance" means a document issued by the City, representing that a property complies with the requirements outlined in the notice of violation

(15) "Notice of Satisfaction of Judgment" means a document or form approved by the Community and Economic Development Director or his or her designee, which indicates that all outstanding civil penalties and costs have been either paid in full, or that the City has negotiated an agreed amount, or that a subsequent administrative or judicial decision has resolved the outstanding debt. In addition to the satisfaction of the financial debt, the property must also be in compliance with the requirements outlined in the notice of violation

(16) "Notice of Violation" means a written notice prepared by an enforcement official that informs a responsible person of code violations and orders them to take certain steps to correct the violations

(17) "Oath" includes affirmations and oaths

(18) "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization or the manager, lessee, agent, sergeant officer, or employee of any of them or any other entity that is recognized by law as the subject of rights or duties

(19) "Property Owner" means the record owner of real property based on the County Assessor's records

(20) "Public Nuisance" means any condition caused, maintained or permitted to exist that constitutes a threat to the public's health, safety, and welfare, or that significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood or community or by any considerable number of persons. A public nuisance also has the same meaning as set forth in the Utah Code Annotated

(21) "Responsible Person" means a person the City determines is responsible for causing or maintaining a violation of the City Code or applicable state codes. The

term "Responsible Person" includes, but is not limited to, a property owner, tenant, person with a legal interest in real property, or person in possession of real property

(22) "Written" includes handwritten, typewritten, photocopied, computer printed, or facsimile

(Ord No 97-57, Enacted, 09/09/97)

10-1-111. ACTS INCLUDE CAUSING, AIDING, AND ABETTING.

Whenever any act or omission is made unlawful in this Title, it shall include causing, permitting, aiding, or abetting such act or omission

(Ord No 97-57 Enacted 09/09/97)

PART 2 - SERVICE REQUIREMENTS

10-1-201 SERVICE OF NOTICES.

(1) Whenever a notice is required to be given under this Title for enforcement purposes, the notice shall be served by any of the following methods, unless different provisions are otherwise specifically stated to apply

- (a) Personal service,
- (b) Regular mail, postage prepaid, to the last known address of the owner(s) or other responsible person(s)
- (c) Posting the notice conspicuously on or in front of the property. The form of the posted notice shall be approved by the Director or his or her designee or
- (d) Published in a newspaper of general circulation

(2) Service by regular mail in the manner described above shall be deemed served on the fourth day after the date of mailing

(3) The failure of any person with an interest in the property to actually receive any notice served in accordance with this Section shall not affect the validity of any proceedings taken under this Title

(Ord No 97-57 Enacted 09/09/97)

10-1-202 CONSTRUCTIVE NOTICE OF RECORDED DOCUMENTS.

Whenever a document is recorded with the County Recorder as authorized or required by this Title or applicable state codes, recordation shall provide constructive notice of the information contained in the recorded documents

(Ord No 97 57 Enacted 09/09/97)

PART 3 - GENERAL AUTHORITY AND OFFENSES

10-1-301. GENERAL ENFORCEMENT AUTHORITY.

Whenever the Director or enforcement official finds that a violation of the City Code or applicable state codes has occurred or continues to exist, the appropriate administrative enforcement procedure may be used as outlined in this Title. The Director or any designated enforcement official has the authority and power necessary to gain compliance with the provisions of the City Code and applicable state codes. These powers include the power to issue notices of violation and administrative citations, inspect public and private property, abate public and private property, and use whatever judicial and administrative remedies are available under the City Code or applicable state codes

(Ord No 97 57 Enacted 09/09/97)

10-1-302 ADOPTION OF POLICY AND PROCEDURES

The Director is authorized to develop policies and procedures relating to the qualifications and appointment of hearing officers, hearing officer powers, hearing procedures, scope of hearings, subpoena powers, and other matters relating to administrative code enforcement hearings

(Ord No 97 57 Enacted 09/09/97)

10-1-303 AUTHORITY TO INSPECT.

The Director or any designated enforcement official is authorized to enter upon any property or premises to ascertain whether the provisions of the City Code or applicable state codes are being obeyed and to make any examinations and surveys as may be necessary in the performance of his or her enforcement duties. This may include the taking of photographs, samples, or other physical evidence. All inspections, entries, examinations, and surveys shall be done in a reasonable manner based upon probable cause. If the responsible person refuses to allow the enforcement official to enter the property, the enforcement official shall obtain a search warrant

(Ord No 97 57 Enacted 09/09/97)

10-1-304 POWER TO ARREST

The Director or any designated enforcement official is authorized to arrest without a warrant, any person whenever the enforcement official has reasonable cause to believe that the person has committed a violation of the City Code or applicable state codes in his or her own presence. The enforcement official can arrest a person only by issuing a misdemeanor citation or administrative citation. The enforcement official may not take any person into physical custody unless the enforcement official has reason to believe that he or she or others is/are in danger

(Ord No 97 57 Enacted 09/09/97)

10-1-305 FALSE INFORMATION OR REFUSAL PROHIBITED

It shall be unlawful for any person to willfully make a false statement or refuse to give his or her name or

address with intent to deceive or interfere with a city employee when in the performance of his or her official duties under the provisions of this Title. A violation of this Section is a class B misdemeanor.

(Ord No. 97-57, Enacted, 09/09/97)

10-1-306. FAILURE TO OBEY A SUBPOENA.

It is unlawful for any person to refuse or fail to obey a subpoena issued for an administrative code enforcement hearing. Failure to obey a subpoena constitutes contempt and may be prosecuted as a class B misdemeanor.

(Ord No 97-57, Enacted, 09/09/97)

**CHAPTER 10-2. ADMINISTRATIVE CODE
ENFORCEMENT
PROCEDURES****PART 1 - ADMINISTRATIVE ABATEMENT**

- 10-2-101. AUTHORITY.
10-2-102. NOTICE OF VIOLATION.
10-2-103. REQUESTING HEARING.
10-2-104. FAILURE TO BRING PROPERTY INTO
COMPLIANCE.
10-2-105. INSPECTIONS.

PART 2 - EMERGENCY ABATEMENT

- 10-2-201. AUTHORITY.
10-2-202. PROCEDURES.
10-2-203. NOTICE OF EMERGENCY ABATEMENT.

PART 3 - DEMOLITIONS

- 10-2-301. AUTHORITY.
10-2-302. PROCEDURES.

PART 4 - ADMINISTRATIVE CITATIONS

- 10-2-401. DECLARATION OF PURPOSE.
10-2-402. AUTHORITY.
10-2-403. PROCEDURES.
10-2-404. CONTENTS OF NOTICE.
10-2-405. CIVIL PENALTIES ASSESSED.

**PART 5 - ADMINISTRATIVE CODE ENFORCEMENT
HEARING PROCEDURES**

- 10-2-501. DECLARATION OF PURPOSE.
10-2-502. AUTHORITY AND SCOPE OF HEARINGS.
10-2-503. REQUEST FOR ADMINISTRATIVE CODE
ENFORCEMENT HEARING.
10-2-504. NOTIFICATION OF ADMINISTRATIVE
CODE ENFORCEMENT HEARING.
10-2-505. QUALIFICATIONS OF CODE
ENFORCEMENT HEARING OFFICER.
10-2-506. APPOINTMENT OF CODE ENFORCEMENT
HEARING OFFICER.
10-2-507. DISQUALIFICATION OF CODE
ENFORCEMENT HEARING OFFICER.
10-2-508. POWERS OF CODE ENFORCEMENT
HEARING OFFICER.
10-2-509. PROCEDURES AT ADMINISTRATIVE
CODE ENFORCEMENT HEARING.
10-2-510. FAILURE TO ATTEND ADMINISTRATIVE
CODE ENFORCEMENT HEARING.
10-2-511. ADMINISTRATIVE CODE ENFORCEMENT
ORDER.
10-2-512. FAILURE TO COMPLY WITH ORDER.

PART 6 - ADMINISTRATIVE ENFORCEMENT APPEALS

- 10-2-601. APPEAL OF ADMINISTRATIVE CODE
ENFORCEMENT HEARING DECISION.

PART 1 - ADMINISTRATIVE ABATEMENT**10-2-101. AUTHORITY.**

Any condition caused, maintained, or permitted to exist in violation of any provisions of the City Code or applicable state codes that constitutes a violation may be abated by the City pursuant to the procedures set forth in this Part.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-102. NOTICE OF VIOLATION.

(1) Whenever the Director determines that a violation of the City Code or applicable state codes has occurred or continues to exist, the Director or enforcement official may choose to proceed under the administrative abatement procedures. If this procedure is used, a notice of violation shall be issued to a responsible person. The notice of violation shall include the following information

- (a) Name of property owner;
- (b) Street address of violation;
- (c) Date violation observed;
- (d) All code sections violated and description of condition of the property that violates the applicable codes;
- (e) All remedial action required to permanently correct outstanding violations, which may include corrections, repairs, demolition, removal, or other appropriate action;
- (f) Specific date to correct the violations listed in the notice of violation, which date shall be ten days from the date of service;
- (g) Explanation of the consequences should the responsible person fail to comply with the terms and deadlines as prescribed in the notice of violation, which may include, but is not limited to, criminal prosecution, civil penalties; revocation of permits; recordation of the notice of violation, withholding of future municipal permits; abatement of the violation; costs; administrative fees; and any other legal remedies;
- (h) That civil penalties will begin to accrue immediately on expiration of the date to correct violations;
- (i) The amount of the civil penalty on each violation and that the penalty will accrue daily until the property is brought into compliance;
- (j) If the Director determines that the violations are continuing, demand that the responsible person cease and desist from further action causing the violations and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City departments
- (k) That only one notice of violation is required for any 12-month period, and that civil penalties begin immediately upon any subsequent violations of the notice. The responsible person may request a hearing on the renewed violations by following the same procedure as provided for the

original notice.

- (i) Procedures to request a hearing, and consequences for failure to request one.

(2) The notice of violation shall be served by one of the methods of service listed in Section 10-1-201 of this Title.

(3) More than one notice of violation may be issued against the same responsible person, if it encompasses different dates, different violations, or different hearings

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-103. REQUESTING HEARING.

The responsible person has the right to request an administrative hearing. The request must be in writing and must be filed within ten days from the date of service of the notice of violation. Failure to request a hearing as provided shall constitute a waiver of the right to a hearing.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-104. FAILURE TO BRING PROPERTY INTO COMPLIANCE.

(1) If a responsible person fails to bring a violation into compliance within ten days of service of the notice of violation, civil penalties shall be owed to the City for each and every subsequent day of violation.

(2) Failure to comply with the notice of violation is a class B misdemeanor.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-105. INSPECTIONS.

It shall be the duty of the responsible person to request an inspection when his or her property has been brought into compliance. It is *prima facie* evidence that the violation remains on the property if no inspection is requested. Civil penalties accumulate daily until the property has been inspected and a notice of compliance is issued. Reinspection fees shall be assessed pursuant to the costs remedies section of this Title, if more than one inspection is necessary

(Ord. No. 97-57, Enacted, 09/09/97)

PART 2 - EMERGENCY ABATEMENT

10-2-201. AUTHORITY.

(1) Whenever the Director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the responsible person:

- (a) Order the immediate vacation of any tenants, and prohibit occupancy until all repairs are completed,
- (b) Post the premises as unsafe, substandard, or dangerous;
- (c) Board, fence, or secure the building or site,
- (d) Raze and grade that portion of the building or site to prevent further collapse, and remove any hazard to the general public,
- (e) Make any minimal emergency repairs as necessary to eliminate any imminent life

safety hazard; or

- (f) Take any other action appropriate to eliminate the emergency.

(2) The Director has the authority, based on probable cause, to enter the property without a search warrant or court order to accomplish the above listed acts to abate the safety hazard.

(3) The responsible person shall be liable for all costs associated with the abatement of the life safety hazard. Costs may be recovered pursuant to this Title. The responsible person has a right to a costs hearing.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-202. PROCEDURES.

(1) The Director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the City during the emergency abatement process shall be assessed and recovered against the responsible person through the procedures outlined in the "Remedies" section of this Title.

(2) The Director may also pursue any other administrative or judicial remedy to abate any remaining violations.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-203. NOTICE OF EMERGENCY ABATEMENT.

After an emergency abatement, the City shall notify the owner or responsible person of the abatement action taken. This notice shall be sent within ten days of completion of the abatement.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 3 - DEMOLITIONS

10-2-301. AUTHORITY.

Whenever the Director determines that a property or building requires demolition, the Director may exercise the following powers once appropriate notice has been given to a reasonable person pursuant to the Uniform Abatement of Dangerous Buildings Code or Uniform Fire Codes as required under state law. The responsible person shall be liable for all costs associated with the demolition. Costs may be recovered pursuant to this Title. The responsible person has a right to a costs hearing.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-302. PROCEDURES.

Once the Director has determined that the City Chief Building Inspector or the Fire Marshall has complied with all of the notice requirements of the applicable laws, the property will be abated pursuant to the abatement remedy. Other applicable remedies may also be pursued

(Ord. No. 97-57, Enacted, 09/09/97)

PART 4 - ADMINISTRATIVE CITATIONS**10-2-401. DECLARATION OF PURPOSE.**

The City Council finds that there is a need for an alternative method of enforcement for minor violations of the City Code and applicable state codes. The violations include, but are not limited to, animal control, business licenses, obstruction of sidewalk, snow removal, signs, dumping, and building and fire code violations. The City Council further finds that an appropriate method of enforcement for such violations is an administrative citation program.

The procedures established in this Part shall be in addition to criminal, civil, or any other legal remedy established by law that may be pursued to address violations of the City Code or applicable state codes.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-402. AUTHORITY.

(1) Any person violating any minor provision of the City Code or applicable state codes may be issued an administrative citation by an enforcement official as provided in this Part.

(2) A civil penalty shall be assessed by means of an administrative citation issued by the enforcement official, and shall be payable directly to the City Treasurer's Office.

(3) Penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in the remedies section of this Title.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-403. PROCEDURES.

(1) Upon discovering any minor violation of the City Code or applicable state codes that does not require a notice of violation, an enforcement official may issue an administrative citation to a responsible person in the manner prescribed in this Part. The administrative citation shall be issued on a form approved by the Director.

(2) If the responsible person is a business, the enforcement official shall attempt to locate the business owner and issue an administrative citation to the business owner. If the enforcement official can only locate the manager of the business, the administrative citation may be given to the manager of the business. A copy of the administrative citation shall also be mailed to the business owner or responsible person in the manner prescribed in Section 10-1-201 of this Title.

(3) Once the responsible person has been located, the enforcement official shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(4) If the enforcement official is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in Section 10-1-201 of this Title.

(5) If no one can be located at the property, then the

administrative citation may be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by Section 10-1-201 of this Title.

(6) The administrative citation shall also contain the signature of the enforcement official.

(7) The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Part.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-404. CONTENTS OF NOTICE.

(1) The administrative citation shall refer to the date and location of the violations and the approximate time the violations were observed.

(2) The administrative citation shall refer to the Code sections violated and the titles of those sections.

(3) The administrative citation shall state the amount of penalty imposed for the violations.

(4) The administrative citation shall explain how the penalty shall be paid, the time period by which the penalty shall be paid, and the consequences of failure to pay the penalty.

(5) The administrative citation shall identify the right and the procedures to request a hearing.

(6) The citation shall contain the signature of the enforcement official and the signature of the responsible person, if he or she can be located, as outlined in Section 10-2-403 of this Title.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-405. CIVIL PENALTIES ASSESSED.

(1) The Director shall establish policies to assist in the assessment of civil penalties for administrative citations.

(2) Civil penalties shall be assessed immediately for each violation listed on the administrative citation.

(3) Subsequent violations may be handled under the "Administrative Abatement" section.

(4) Payment of the penalty shall not excuse the failure to correct the violations, nor shall it bar further enforcement action by the City.

(Ord. No. 97-57, Enacted, 09/09/97)

**PART 5 - ADMINISTRATIVE CODE ENFORCEMENT
HEARING PROCEDURES****10-2-501. DECLARATION OF PURPOSE.**

The City Council finds that there is a need to establish uniform procedures for administrative code enforcement hearings conducted pursuant to the City Code. It is the purpose and intent of the City Council to afford due process of law to any person who is directly affected by an administrative action. Due process of law includes adequate notice, an opportunity to participate in the administrative hearing, and an adequate explanation of the reasons justifying the administrative action. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly resolve issues raised in any administrative code enforcement action.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-502. AUTHORITY AND SCOPE OF HEARINGS.

The City is authorized to establish an administrative hearing program, which shall be known as the "Administrative Code Enforcement Hearing." The Director shall develop policies and procedures to regulate the hearing process for any violation of the City Code and applicable state codes that are handled pursuant to the administrative abatement procedures, the emergency abatement procedures, the demolition procedures, or the administrative citation procedures.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-503. REQUEST FOR ADMINISTRATIVE CODE ENFORCEMENT HEARING.

(1) A person served with one of the following documents or notices has the right to request an administrative code enforcement hearing, if the request is filed within ten calendar days from the date of service of one of the following notices:

- (a) Notice of violation;
- (b) Notice of itemized bill for costs;
- (c) Administrative citation;
- (d) Notice of emergency abatement;
- (e) Notice deeming dog vicious;
- (f) Notice of revocation of dog license;
- (g) Notice revoking kennel permit; or
- (h) Notice of revocation of right to possess animals.

(2) The request for hearing shall be made in writing and filed with the Director

(3) As soon as practicable after receiving the written notice of the request for hearing, the Director shall appoint an administrative code enforcement hearing officer and schedule a date, time, and place for the hearing.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-504. NOTIFICATION OF ADMINISTRATIVE CODE ENFORCEMENT HEARING.

(1) Written notice of the day, time, and place of the hearing shall be served to a Responsible Person as soon as practicable prior to the date of the hearing.

(2) The format and contents of the hearing notice shall be in accordance with rules and policies promulgated by the Director

(3) The notice of hearing shall be served by any of the methods of service listed in Section 10-1-201 of this Title.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-505. QUALIFICATIONS OF CODE ENFORCEMENT HEARING OFFICER.

The Director shall promulgate rules and procedures as are necessary to establish a pool of qualified persons who are capable of acting on behalf of the City as code enforcement hearing officers

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-506. APPOINTMENT OF CODE ENFORCEMENT HEARING OFFICER.

Code enforcement hearing officers presiding at administrative code enforcement hearings shall be appointed by the Director and compensated by the City. The hearing officer may not be an employee of the City and may have no personal or financial interest in any case it hears. The Director shall develop policies and procedures relating to the employment and compensation of code enforcement hearing officers.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-507. DISQUALIFICATION OF CODE ENFORCEMENT HEARING OFFICER.

Any person designated to serve as a code enforcement hearing officer is subject to disqualification for bias, prejudice, interest, or any other reason for which a judge may be disqualified in a court of law. Rules and procedures for the disqualification of a code enforcement hearing officer shall be promulgated by the Director.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-508. POWERS OF CODE ENFORCEMENT HEARING OFFICER.

(1) The code enforcement hearing officer has the authority to hold hearings on any matter subject to the provisions of the Title.

(2) The code enforcement hearing officer may continue a hearing based on good cause shown by one of the parties to the hearing, or if the hearing officer independently determines that due process has not been adequately afforded.

(3) The Director, on behalf of the hearing officer, at the request of any party to the hearing, may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness for the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The Director shall develop policies and procedures relating to the issuance of subpoenas in administrative code enforcement hearings, including the form of the subpoena and related costs.

(4) The code enforcement hearing officer has continuing jurisdiction over the subject matter of an administrative code enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative code enforcement order using any remedies available under the law; ensuring compliance of that order, which includes the right to authorize the City to enter and abate a violation; modifying an administrative code enforcement order; or, where extraordinary circumstances exist, granting a new hearing.

(5) The code enforcement hearing officer has the authority to require a responsible person to post a code enforcement performance bond to ensure compliance with an administrative code enforcement order.

(Ord. No. 97-57, Enacted, 09/09/97)

10-2-509 PROCEDURES AT ADMINISTRATIVE CODE ENFORCEMENT HEARING

(1) Administrative code enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply, however, an informal exchange of discovery may be required. The request must be in writing. Failure to request discovery shall not be a basis for a continuance. Complainant information is protected and shall not be released unless the complainant is a witness at the hearing. The procedure and format of the administrative hearing shall follow the procedures promulgated by the Director.

(2) The City bears the burden of proof at an administrative code enforcement hearing to establish the existence of a violation of the City Code or applicable state codes.

(3) The standard of proof to be used by the code enforcement hearing officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

(4) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be given by telephone or other electronic means.

(5) All hearings are open to the public. They shall be recorded by audio tape. Hearings may be held at the location of the violation.

(6) The responsible person has a right to be represented by an attorney. If an attorney will be representing the responsible person at the hearing, notice of the attorney's name, address, and telephone number must be given to the City at least one day prior to the hearing. If notice is not given, the hearing may be continued at the City's request, and all costs of the continuance assessed to the responsible person.

(Ord No 97 57 Enacted 09/09/97)

10-2-510 FAILURE TO ATTEND ADMINISTRATIVE CODE ENFORCEMENT HEARING

Any party whose property or actions are the subject of any administrative code enforcement hearing and who fails to appear at the hearing is deemed to waive the right to a hearing, the adjudication of the issues related to the hearing, and the right to appeal, provided that proper notice of the hearing has been provided.

(Ord No 97 57 Enacted 09/09/97)

10-2-511 ADMINISTRATIVE CODE ENFORCEMENT ORDER

(1) The parties may enter into a stipulated agreement which must be signed by both parties. This agreement shall be entered as the administrative code enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

(2) Once all evidence and testimony are completed, the code enforcement hearing officer shall issue an administrative code enforcement order that affirms or rejects the notice or citation. The code enforcement hearing officer may increase or decrease the total amount of civil penalties and costs that are due pursuant

to the City's fee schedule and the procedures in this Title.

(3) The code enforcement hearing officer may issue an administrative code enforcement order that requires the responsible person to cease from violating the City Code or applicable state codes and to make necessary corrections.

(4) The code enforcement hearing officer may order the City to enter the property and abate all violations which may include removing animals in violation.

(5) The code enforcement hearing officer may revoke a kennel permit, an animal license, or the right to possess animals as provided in the City Code.

(6) As part of the administrative code enforcement order, the code enforcement hearing officer may establish specific deadlines for the payment of penalties and costs, and condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.

(7) The code enforcement hearing officer may issue an administrative code enforcement order imposing additional civil penalties that will continue to be assessed until the responsible person complies with the hearing officer's decision and corrects the violation.

(8) The code enforcement hearing officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative code enforcement order.

(9) The code enforcement hearing officer may order the responsible person to post a performance bond to ensure compliance with the order.

(10) The administrative code enforcement order shall become final on the date of the signing of the order.

(11) The administrative code enforcement order shall be served on all parties by any one of the methods listed in Section 10-1-201 of this Title.

(Ord No 97 57 Enacted 09/09/97)

10-2-512 FAILURE TO COMPLY WITH ORDER

(1) Upon the failure of the responsible person to comply with the terms and deadlines set forth in the administrative code enforcement order, the Director may use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance.

(2) After the code enforcement hearing officer issues an administrative code enforcement order, the Director shall monitor the violations and determine compliance.

(Ord No 97 57 Enacted 09/09/97)

PART 6 - ADMINISTRATIVE ENFORCEMENT APPEALS**10-2-601 APPEAL OF ADMINISTRATIVE CODE ENFORCEMENT HEARING DECISION**

(1) Any person adversely affected by any decision made in the exercise of the provisions of this Chapter may file a petition for review of the decision or order with the district court within 30 days after the decision is rendered.

(2) No person may challenge in district court an administrative code enforcement hearing officer's decision until that person has exhausted his or her administrative remedies.

(3) The courts shall

- (a) Presume that the administrative code enforcement hearing officer's decision and orders are valid; and
- (b) Review the record to determine whether or not the decision was arbitrary, capricious, or illegal.

(Ord No. 97-57, Enacted, 09/09/97)

CHAPTER 10-3. ADMINISTRATIVE AND JUDICIAL REMEDIES

PART 1 - RECORDATION OF NOTICES OF VIOLATION

- 10-3-101. DECLARATION OF PURPOSE.
- 10-3-102. AUTHORITY.
- 10-3-103. PROCEDURES FOR RECORDATION.
- 10-3-104. SERVICE OF NOTICE OF RECORDATION.
- 10-3-105. FAILURE TO REQUEST.
- 10-3-106. NOTICE OF COMPLIANCE - PROCEDURES.
- 10-3-107. PROHIBITION AGAINST ISSUANCE OF MUNICIPAL PERMITS.
- 10-3-108. CANCELLATION OF RECORDED NOTICE OF VIOLATION.

PART 2 - ADMINISTRATIVE CIVIL PENALTIES

- 10-3-201. AUTHORITY.
- 10-3-202. PROCEDURES FOR ASSESSING CIVIL PENALTIES.
- 10-3-203. DETERMINATION OF CIVIL PENALTIES.
- 10-3-204. MODIFICATION OF CIVIL PENALTIES.
- 10-3-205. FAILURE TO PAY PENALTIES.

PART 3 - ABATEMENT OF VIOLATION

- 10-3-301. AUTHORITY TO ABATE.
- 10-3-302. PROCEDURES FOR ABATEMENT.

PART 4 - COSTS

- 10-3-401. DECLARATION OF PURPOSE.
- 10-3-402. AUTHORITY.
- 10-3-403. NOTIFICATION OF ASSESSMENT OF REINSPECTION FEES.
- 10-3-404. FAILURE TO TIMELY PAY COSTS.

PART 5 - ADMINISTRATIVE FEES

- 10-3-501. ADMINISTRATIVE FEES.

PART 6 - INJUNCTIONS

- 10-3-601. CIVIL VIOLATIONS -- INJUNCTIONS.

PART 7 - PERFORMANCE BONDS

- 10-3-701. PERFORMANCE BOND.

PART 1 - RECORDATION OF NOTICES OF VIOLATION

10-3-101. DECLARATION OF PURPOSE.

The City Council finds that there is a need for alternative methods of enforcement for violations of the City Code and applicable state codes that are found to exist on real property. The City Council further finds that an appropriate method of enforcement for these types of violations is the issuance and recordation of notices of violation.

The procedures established in this Part shall be in addition to criminal, civil, or any other remedy established by law that may be pursued to address the violation of the City Code or applicable state codes

(Ord No 97-57, Enacted, 09/09/97)

10-3-102. AUTHORITY.

Whenever the Director determines that a property or violation has not been brought into compliance as required in this Title, the Director has the authority to record the notice of violation or administrative code enforcement order with the Recorder's Office of Salt Lake County.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-103. PROCEDURES FOR RECORDATION.

(1) Once the Director has issued a notice of violation to a responsible person, and the property remains in violation after the deadline established in the notice of violation, and no request for an administrative hearing has been filed, the Director shall record a notice of violation with the Recorder's Office of Salt Lake County

(2) If an administrative hearing is held, and an order is issued in the City's favor, the Director shall record the administrative code enforcement order with the Recorder's Office of Salt Lake County.

(3) The recordation shall include the name of the property owner, the parcel number, the legal description of the parcel, and a copy of the notice of violation or order.

(4) The recordation does not encumber the property, but merely places future interested parties on notice of any continuing violation found upon the property.

(Ord No 97-57, Enacted, 09/09/97)

10-3-104. SERVICE OF NOTICE OF RECORDATION.

A notice of the recordation shall be served on the responsible person and the property owner pursuant to any of the methods of service set forth in Section 10-1-201 of this Title.

(Ord No 97-57, Enacted, 09/09/97)

10-3-105. FAILURE TO REQUEST.

The failure of any person to file a request for an administrative code enforcement hearing when served with a notice of violation shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded notice of violation.

(Ord No 97-57, Enacted, 09/09/97)

10-3-106. NOTICE OF COMPLIANCE -- PROCEDURES.

(1) When the violations have been corrected, the responsible person or property owner may request an inspection of the property from the Director.

(2) Once the Director receives this request, the Director shall reinspect the property as soon as practicable to determine whether the violations listed in the notice of violation or the order have been corrected, and whether all necessary permits have been issued and final inspections have been performed

(3) The Director shall serve a notice of compliance to the responsible person or property owner in the manner provided in Section 10-1-201 of this Title, if the Director determines that

- (a) All violations listed in the recorded notice of violation or order have been corrected,

- (b) All necessary permits have been issued and finalized;
- (c) All civil penalties assessed against the property have been paid; and
- (d) The party requesting the notice of compliance has paid all administrative fees and costs.

(4) If the Director denies a request to issue a notice of compliance, the Director shall serve the responsible person with a written explanation setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service listed in Section 10-1-201 of this Title.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-107. PROHIBITION AGAINST ISSUANCE OF MUNICIPAL PERMITS.

The City may withhold business licenses; permits for kennels; or permits for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property, or any permits pertaining to the use and development of the real property or the structure. The City may withhold permits until a notice of compliance has been issued by the Director. The City may not withhold permits that are necessary to obtain a notice of compliance or that are necessary to correct serious health and safety violations.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-108. CANCELLATION OF RECORDED NOTICE OF VIOLATION.

The Director or responsible person shall record the notice of compliance with the County Recorder's Office. Recordation of the notice of compliance shall have the affect of canceling the recorded notice of violation.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 2 - ADMINISTRATIVE CIVIL PENALTIES

10-3-201. AUTHORITY.

(1) Any person violating any provision of the City Code or applicable state codes may be subject to the assessment of civil penalties for each violation.

(2) Each and every day a violation of any provision of the City Code or applicable state codes exists is subject to the assessment of civil penalties.

(3) Civil penalties cannot be assessed when a criminal case has been filed, as fines will be assessed with the criminal case.

(4) Interest shall be assessed per City policy on all outstanding civil penalties balances until the case has been paid in full.

(5) Civil penalties for violations of any provision of the City Code or applicable state codes shall be assessed pursuant to the City fee schedule or as ordered by the administrative code enforcement hearing officer. The maximum rate shall be \$1,000 per violation per day

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-202. PROCEDURES FOR ASSESSING CIVIL PENALTIES.

(1) If a responsible person fails to bring a violation into compliance within ten days of service of the notice of violation, civil penalties shall be owed to the City for each and every subsequent day of violation.

(2) Civil penalties are assessed and owing immediately for any violation of the City Code or applicable state codes that does not require a prior notice.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-203. DETERMINATION OF CIVIL PENALTIES.

(1) Civil penalties shall be assessed per violation per day pursuant to the City fee schedule.

(2) Civil penalties shall continue to accrue until the violation(s) has/have been brought into compliance with the City Code or applicable state codes.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-204. MODIFICATION OF CIVIL PENALTIES.

(1) Upon completion of the notice of violation or administrative enforcement order, the administrative code enforcement hearing officer may modify the civil penalties on a finding of good cause.

(2) Civil penalties may be waived or modified by the hearing officer if there is a finding of good cause based on the responsible person's claim of nonconforming use or conditional use and:

- (a) The City's need to verify the claim; or
- (b) The responsible person's filing of an application for either use before expiration of the date to correct.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-205. FAILURE TO PAY PENALTIES.

The failure of any person to pay civil penalties assessed within the specified time may result in the Director's pursuing any legal remedy to collect the civil penalties as provided in the law.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 3 - ABATEMENT OF VIOLATION

10-3-301. AUTHORITY TO ABATE.

The Director is authorized to enter upon any property or premises to abate the violation of the City Code and applicable state codes. The Director is authorized to assess all costs for the abatement to the responsible person and use any remedy available under the law to collect the costs. If additional abatements are necessary within two years, treble costs may be assessed against the responsible person(s) for the actual abatement

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-302. PROCEDURES FOR ABATEMENT.

(1) Once the procedures set forth in this Title have been completed, the violation may be abated by City personnel or by a private contractor acting under the direction of the City

(2) City personnel or a private contractor may enter upon private property in a reasonable manner to abate the ordinance violation as specified in the notice of violation or administrative code enforcement order.

(3) If the responsible person abates the violation before the City performs the actual abatement pursuant to a notice of violation or administrative code enforcement order, the Director may still assess all costs incurred by the City against the responsible person.

(4) When the abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the responsible persons of each parcel, the tax parcel number, and a legal description of the property.

(5) The Director shall serve the notice of costs and the itemized bill of costs by registered mail to the last known address of the responsible person(s). The notice shall demand full payment within 20 days to the City Treasurer.

(6) The Director shall schedule an itemized bill for costs hearing, if requested in writing by any or all responsible persons.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 4 - COSTS

10-3-401. DECLARATION OF PURPOSE.

(1) The City Council finds that there is a need to recover costs incurred by enforcement officials and other City personnel who spend considerable time inspecting and reinspecting properties throughout the City in an effort to ensure compliance with the City Code or applicable state codes.

(2) The City Council further finds that the assessment of costs is an appropriate method to recover expenses incurred for actual costs of abating violations, reinspection fees, filing fees, attorney fees, hearing officer fees, title search, and any additional actual costs incurred by the City for each individual case. The assessment and collection of costs shall not preclude the imposition of any administrative or judicial civil penalties or fines for violations of the City Code or applicable state codes.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-402. AUTHORITY.

(1) Whenever actual costs are incurred by the City on a property to obtain compliance with provisions of the City Code and applicable state codes, the Director may assess costs against the responsible person.

(2) Once a notice of violation has been issued, the property will be inspected one time. Any additional inspections shall be subject to reinspection fees pursuant to the City fee schedule.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-403. NOTIFICATION OF ASSESSMENT OF REINSPECTION FEES.

(1) Notification of reinspection fees shall be provided on the notice of violation served to the responsible person(s).

(2) Reinspection fees assessed or collected pursuant to this Part shall not be included in any other costs assessed.

(3) The failure of any responsible person to receive notice of the reinspection fees shall not affect the validity of any other fees imposed under this Part.

(Ord. No. 97-57, Enacted, 09/09/97)

10-3-404. FAILURE TO TIMELY PAY COSTS.

The failure of any person to pay assessed costs by the deadline specified in the invoice shall result in a late fee pursuant to City policy.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 5 - ADMINISTRATIVE FEES

10-3-501. ADMINISTRATIVE FEES.

The Director or code enforcement hearing officer is authorized to assess administrative fees for costs incurred in the administration of this program, such as investigation of violations, preparation for hearings, hearings, and the collection process.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 6 - INJUNCTIONS

10-3-601. CIVIL VIOLATIONS -- INJUNCTIONS.

In addition to any other remedy provided under the City Code or state codes, including criminal prosecution or administrative remedies, any provision of the City Code may be enforced by injunction issued in the Third District Court upon a suit brought by the City.

(Ord. No. 97-57, Enacted, 09/09/97)

PART 7 - PERFORMANCE BONDS

10-3-701. PERFORMANCE BOND.

(1) As part of any notice, order, or action, the administrative code enforcement hearing officer has the authority to require responsible persons to post a performance bond to ensure compliance with the City Code, applicable state codes, or any judicial action.

(2) If the responsible person fails to comply with the notice, order, or action, the bond will be forfeited to the City. The bond will not be used to offset the other outstanding costs and fees associated with the case.

(Ord. No. 97-57, Enacted, 09/09/97)

**CHAPTER 10-4. RECOVERY OF CODE
ENFORCEMENT
PENALTIES AND COSTS**

PART 1 - CODE ENFORCEMENT TAX LIENS

- 10-4-101. DECLARATION OF PURPOSE.
10-4-102. PROCEDURES FOR TAX LIENS WITHOUT
A JUDGMENT.
10-4-103. PROCEDURES FOR TAX LIENS WITH A
JUDGMENT.
10-4-104. CANCELLATION OF CODE
ENFORCEMENT TAX LIEN.

PART 2 - WRIT OF EXECUTION

- 10-4-201. RECOVERY OF COSTS BY WRIT OF
EXECUTION.

PART 3 - WRIT OF GARNISHMENT

- 10-4-301. RECOVERY OF COSTS BY WRIT OF
GARNISHMENT.

**PART 4 - ALLOCATION OF FUNDS COLLECTED UNDER
ADMINISTRATIVE CODE ENFORCEMENT HEARING
PROGRAM**

- 10-4-401. ABATEMENT SUPERFUND.
10-4-402. REPAYMENT TO ABATEMENT
SUPERFUND.
10-4-403. CODE ENFORCEMENT ADMINISTRATIVE
FEES AND COST FUND.
10-4-404. ALLOCATION OF CIVIL PENALTIES.

PART 1 - CODE ENFORCEMENT TAX LIENS

10-4-101. DECLARATION OF PURPOSE.

The City Council finds that recordation of code enforcement tax liens will assist in the collection of civil penalties, administrative costs, and administrative fees assessed by the administrative code enforcement hearing program or judicial orders. The City Council further finds that collection of civil penalties, costs, and fees assessed for code enforcement violations is important in deterring future violations and maintaining the integrity of the City's code enforcement system. The procedures established in this Part shall be used to complement existing administrative or judicial remedies that may be pursued to address violations of the City Code or applicable state codes.

(Ord No 97-57, Enacted, 09/09/97)

**10-4-102. PROCEDURES FOR TAX LIENS WITHOUT
A JUDGMENT.**

(1) Once the City has abated a property for weeds, garbage, refuse, or unsightly or deleterious objects or structures, the Director shall record a code enforcement tax lien against any real property owned by the responsible person(s).

(2) The Director shall provide to the responsible person a written notice informing him or her that a code enforcement tax lien is being recorded for the amount of actual costs of abatement. Payment shall be due within 20 calendar days from the date of mailing

(3) The Director shall serve the notice of code

enforcement tax lien by any one of the methods of service set forth in Section 10-1-201 of this Title.

(4) Three copies of the itemized statement of expenses incurred in the removal and destruction of the violations shall be filed with the County Treasurer within ten days after completion of the work of removing the violations.

(5) The failure of any person with a financial interest in the property to actually receive the notice of the lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding costs of abatement.

(Ord. No. 97-57, Enacted, 09/09/97)

**10-4-103. PROCEDURES FOR TAX LIENS WITH A
JUDGMENT.**

Once a judgment has been obtained from the appropriate court assessing costs against the responsible person(s), the Director may record a code enforcement tax lien against any real property owned by the responsible person(s).

(Ord No 97-57, Enacted, 09/09/97)

**10-4-104. CANCELLATION OF CODE
ENFORCEMENT TAX LIEN.**

Once payment in full is received for the outstanding civil penalties and costs, or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Director shall either record a notice of satisfaction of judgment, or provide the property owner or financial institution with the notice of satisfaction of judgment so that it can record this notice with the County Recorder's office. The notice of satisfaction of judgment shall include the same information as provided for in the original code enforcement tax lien. Such notice of satisfaction of judgment shall cancel the code enforcement tax lien.

(Ord. No 97-57, Enacted, 09/09/97)

PART 2 - WRIT OF EXECUTION

**10-4-201. RECOVERY OF COSTS BY WRIT OF
EXECUTION.**

After obtaining a judgment, the Director may collect the obligation by use of all appropriate legal means. This may include the execution on personal property owned by the responsible person by filing a writ with the applicable court

(Ord No 97-57, Enacted, 09/09/97)

PART 3 - WRIT OF GARNISHMENT

**10-4-301. RECOVERY OF COSTS BY WRIT OF
GARNISHMENT.**

After obtaining a judgment, the Director may collect the obligation by use of all appropriate legal means. This may include the garnishment of paychecks, financial accounts, and other income or financial assets by filing a writ with the applicable court

(Ord No 97-57, Enacted, 09/09/97)

**PART 4 - ALLOCATION OF FUNDS COLLECTED UNDER
ADMINISTRATIVE CODE ENFORCEMENT HEARING
PROGRAM**

10-4-401. ABATEMENT SUPERFUND.

There is hereby established a revolving fund to be known as the "Abatement Superfund" to defray costs of administrative and judicial abatements. The fund shall be reimbursed by collection from the property or property owner as specified in this Title and by the courts. The Director shall establish accounting procedures to ensure proper account identification, credit, and collection. This fund may be operated and used in conjunction with procedures ordered or authorized under the abatement provision of this Title.

(Ord. No. 97-57, Enacted, 09/09/97)

**10-4-402. REPAYMENT TO ABATEMENT
SUPERFUND.**

All monies recovered from the sale or transfer of property or by payment for the actual abatement costs shall be paid to the City Treasurer, who shall credit the appropriate amount to the Abatement Superfund.

(Ord. No. 97-57, Enacted, 09/09/97)

**10-4-403. CODE ENFORCEMENT ADMINISTRATIVE
FEES AND COST FUND.**

Administrative fees and administrative costs, except for actual abatement costs, collected pursuant to this Part shall be deposited in the Code Enforcement Administrative Fees and Costs Fund, as established by the Director for the enhancement of the City's code enforcement efforts and to reimburse City departments for investigative costs and costs associated with the hearing process. Fees and costs deposited in this fund shall be appropriated and allocated in a manner determined by the Director. The City auditor shall establish accounting procedures to ensure proper account identification, credit, and collection.

(Ord. No. 97-57, Enacted, 09/09/97)

10-4-404. ALLOCATION OF CIVIL PENALTIES.

Civil penalties collected pursuant to this Part shall be deposited in the General Fund of the City. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the City Manager and the City Council. The City auditor shall establish accounting procedures to ensure proper account identification, credit, and collection.

(Ord. No. 97-57, Enacted, 09/09/97)

EXHIBIT B:
Notice of Violation, Greg Roberts



NOTICE OF VIOLATION

Date: **December 8, 1998**

LOCATION OF VIOLATION 3970 South 2665 West Case No B98-0124
Owner of Record Michelle A Felis Assessor's Parcel No 15-33-451-013-000

Greg Roberts
Robert's Roofing Inc
1238 S 800 West
Salt Lake City, Utah 84104

Dear Mr Roberts

As the Chief Building Official, I conducted an inspection of the property identified above, on October 16, 1998 Robert's Roofing Inc installed a new roof covering on the single family dwelling owned by Ms. Michelle Felis in April/May 1995. The installation had numerous problems including five separate roof leaks, which have since been repaired at the owner's expense. Ms Felis did not get a roof installation which was in code compliance as is required by both State law and City ordinance. While I do not believe it was your intent to install a faulty roof covering, Robert's Roofing Inc has failed to take responsibility for these problems. Because of no response by Robert's Roofing Inc, Ms Felis has invested more than \$7,000.00 in this roof covering installation to correct the problems caused by Robert's Roofing based on your original bid of \$4800.00. Today Ms Felis has a roof covering which will not endure for 20 years as implied by Robert's Roofing Inc. In fact, it may begin leaking again with the next major storm. In accordance with the West Valley Municipal Code, the following violation(s) observed in the roof covering installation on this property include

1. Adoption of the Uniform Building Code 16-1-101
- 1.- ✓ 1) Roof ponds water in large area on main roof due to lack of adequate roof slope (\$25.00/day) *20 yr roof - Defective.*
- ✓ 2) Blisters and bubbles appear in numerous locations in roof membrane around the evaporative cooler (\$25.00/day)
- ✓ 3) Vertical seams in roof flashing are not sealed and are pulling apart. (\$25.00/day)
- ✓ 4) There are buckles in the base flashing on the main house roof (\$25.00/day)

- J 5) There is no counterflashing where the carport runs into the wall of the main house.
J/ (\$25.00/day)
J 6) The evaporative cooler duct was not properly flashed. (\$25.00/day)
J 7) Roof does not have minimal 1/4" per foot slope to insure water drains to roof scuppers.
(\$25.00/day)

In order to bring this property into compliance with the law, you are required to meet the conditions stated below and obtain an inspection and a Notice of Compliance from the Chief Building Official. A Notice of Compliance must be obtained by January 11, 1999. ✓

1. Remove existing roof covering.
2. Cricket roof to create minimal 1/4" roof slope.
3. Properly flash roof.
4. Install new built-up roof covering in accordance with original contract and in compliance with the Uniform Building Code.

Failure to comply by January 11, 1999 shall result in a daily fine of \$25.00 per violation beginning on January 12, 1999. The fines will be owed every day until the Chief Building Official inspects the property and finds it in compliance. It is your responsibility to contact our office and schedule a compliance inspection. No additional notice will be sent to you. If you fail to have the property inspected and obtain a Notice of Compliance, you will be billed on a monthly basis for fines and fees owed to the city. Without additional notice to you, the city may also obtain an order to enter this property and remove the violations at your expense.

Please be advised that the city will conduct one compliance inspection at no charge to you. If the property is not in compliance at that time and additional inspections are necessary, a \$50 reinspection fee will be charged for each additional inspection. This amount will be added to your monthly bill.

Attached is a document which outlines your rights and the procedures available to you to assist in handling this matter. If you have any questions, please call 963-3283 or write to the above address.

Edmund C. Domian
Chief Building Official

c: Gordon Summers, Investigator - DOPL

Encl.

IMPORTANT--PLEASE READ

Defense

If you no longer own this property, please immediately provide the City with a copy of the documents showing the transfer of ownership so that no charges are assessed to you. If you believe you have a non-conforming use, conditional use or variance which would allow the use to remain on your property, please immediately provide the City with a copy of your supporting documents. Any application for special use permits must be made by the due date in this notice or the penalties will be assessed until application is made or the condition removed.

Hearing Rights

You have the right to request a hearing to determine if any violations exist on your property or if you have allowed violations to occur for which you are responsible. You must file a **written** request for hearing within 10 days from the date the notice of violation was issued. If the notice was mailed, the request for hearing must be made within 13 days of the mailing date. Address the request to the attention of "Administrative Hearing Coordinator." Please include your name, address, telephone number, case or citation number, and violation address. An Administrative Fee may be assessed for costs associated with the hearing of your case. You have the right to hire an attorney to represent you in the hearing although it is not required. An attorney will not be appointed for you. If you hire an attorney, you must notify this office at least 24 hours before the hearing. A notice of hearing will be mailed to you instructing you when and where to appear.

*****Failure to file a written request for a hearing within
10 days waives your right to a hearing.*****

How to Pay Fine

The amount of the fine is indicated on the first page of this notice. That amount is due each day the property remains in violation. Prior to receiving an invoice from the City Treasurer, you may pay by mail at 3600 South Constitution Blvd., West Valley City, 84119, or in person at the Information Counter. Payment should be made by personal check, cashier's check, or money order, payable to the City Treasurer. Please write the citation or account number on your check or money order so that it will be properly credited to your account.

You will receive a request for payment from the City. Please follow the instructions on the request to ensure proper processing of your payment.

Consequences of Failure to Pay the Fine

The failure of any person to pay the fine assessed in this notice within the time specified on the Treasurer's invoice will result in a claim being filed with the Small Claims Court or other legal remedy to collect such money. The City has the authority to collect attorney fees as well as all additional costs associated with the filing of such actions.

Consequences of Failure to Correct Violations

If you fail to correct the violations on your property the City may use any remedies available under the law which include but are not limited to civil penalties (fines), removing or correcting the violation and associated costs, criminal prosecution, lawsuits, revocation of permits, withholding future permits, administrative fees, recording the violation with the County Recorder and a lien on any of your property. These options empower the City to collect fines, to demolish structures, or make necessary repairs at the owner's expense. Any of these options, or other legal remedies, may be used if the notice of violation does not achieve compliance.

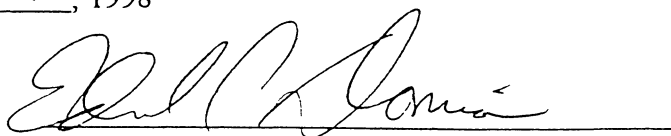
Second or Subsequent Violations

All cases will be tracked for a twelve-month period. A second or subsequent violation of the same ordinance(s) in a twelve-month period will result in fines being charged to you without a ten-day grace period.

CERTIFICATE OF MAILING

I certify that I mailed, postage prepaid, a true and correct copy of the foregoing Notice of Violation to the above-named person.

This 8th day of December, 1998



Edul C. Jomian

EXHIBIT C:
Request for Hearing and Notice of Hearing, Greg Roberts

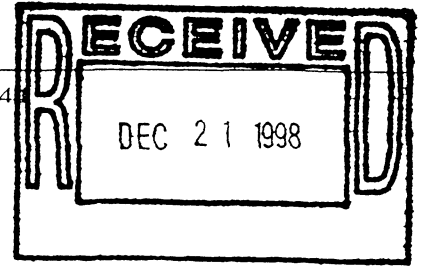
WEISS BERRETT PETTY, L.C.

KEY BANK TOWER SUITE 530 • 50 SOUTH MAIN STREET • SALT LAKE CITY, UTAH 84141

TELEPHONE (801) 531-7733 • FACSIMILE (801) 531-7711

LOREN E. WEISS
BARBARA K. BERRETT
RALPH C. PETTY
BRET M. HANNA

OF COUNSEL
CHARLES F. LOYD



December 17, 1998

Administrative Hearing Coordinator
Community & Economic Development Department
WEST VALLEY CITY
3600 Constitution Boulevard
West Valley City, Utah 84119-3720

RE: Request for Administrative Hearing

Dear Hearing Coordinator:

The undersigned represents Greg Roberts and Roberts Roofing. This will serve as the written request of Greg Roberts and Roberts Roofing for an administrative hearing in the following matter:

Case Number.:	B98-0124
Location of Alleged Violation:	3970 South 2665 West
Owner of Record:	Michelle A. Felis
Assessor's Parcel Number:	15-33-451-013-000

Please direct all notices and communications to this office.

Your attention to this matter is appreciated.

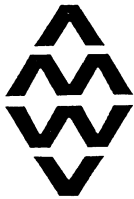
Sincerely,

WEISS BERRETT PETTY, L.C.

A handwritten signature in dark ink, appearing to read "Bret M. Hanna", followed by a horizontal line.

Bret M. Hanna

BMH/bmh
c. Greg Roberts



WEST VALLEY CITY
Unity · Pride · Progress

COMMUNITY & ECONOMIC DEVELOPMENT
DEPARTMENT

ADMINISTRATIVE CODE ENFORCEMENT
HEARING PROGRAM (A.C.E.)
DIVISION

NOTICE OF HEARING

January 5, 1999

Greg Roberts
Roberts Roofing
1238 South 800 West
Salt Lake City, Utah 84104

Subject: West Valley City Ordinance Enforcement vs. Roberts Roofing
Notice of Violation
Case No. B98-0124
3970 South 2665 West

Your request for a hearing on the Notice of Violation issued to you, has been received. A hearing has been scheduled for:

Date: Wednesday, January 13, 1998

Time: 5:30 p.m.

Place: CED Conference Room #240
West Valley City Hall

A copy of the file may be obtained upon request for a discovery fee of \$5.00. **In addition, an administrative fee of \$95 may be ordered to cover the costs of conducting the hearing.**

Legal representation is not required for this hearing; however, if you choose to have legal representation, you must immediately notify this office of your attorney's name, address and phone number 24 hours prior to the hearing.

The presentation of evidence shall be limited to only that which pertains to the existence of the violation. Formal rules of evidence do not apply. Hearsay is admissible. You have the right to subpoena or bring witnesses and/or cross-examine the City's witnesses.

If you are unable to attend this hearing as scheduled, you may send a representative accompanied by written authorization indicating that he or she may act in your place, or you may submit a written affidavit along with any evidence or documents in place of personal appearance. Failure to appear without sending a representative or submitting a written affidavit constitutes a waiver of your hearing rights to the Notice.

It is the responsibility of the respondent to provide a translator for any language other than English.

Should you have any questions regarding the above or need additional information, please contact Candace Gleed at (801) 963-3289.

A handwritten signature in cursive script that reads "Candace Gleed".

Candace A. Gleed

A C E Coordinator/Paralegal

cc. Bret Hanna, Attorney at Law

EXHIBIT D:
Documentary Evidence – Contract and Written Reports

File 600

ROBERTS ROOFING

GENERATIONS
OF PRIDE

3rd GENERATION
ROOFERS

1238 South 800 West • Salt Lake City, Utah 84104 • 974-0098

Date of Proposal: 3/7/95

Estimator: GREG

Referred by:

WE WILL BEGIN WORK AT THE EARLIEST POSSIBLE DATE, SUBJECT TO WEATHER, MATERIAL AVAILABILITY, WORK LOAD AND ACTS OF GOD BEYOND OUR CONTROL.

PROPOSAL SUBMITTED TO:

Name MICHELLE FELIX
Street 3770 S. 2665 W
City WEST VALLEY
State UT. Res. Phone 7694046 Work Phone 4613805

WORK TO BE PERFORMED AT:

Street _____
City SAN State _____ Zip _____
Resident Name _____
Res. Phone _____

THIS DOCUMENT, INCLUDING THE PROVISIONS ON THE REVERSE HEREOF, WHEN EXECUTED CONSTITUTES A BINDING AGREEMENT BETWEEN CUSTOMER AND ROBERTS ROOFING. PLEASE READ BEFORE SIGNING.

TYPE OF ROOF SYSTEM PROPOSED: 20 yr Built Up Roof with Gravel Surface.
DESCRIBE: REMOVE EXISTING ROOF TO DECK INCLUDING CARPORTS AND HALL
OPTIONS: 1044. INSTALL NEW ROOF TO INCLUDE TAPERED CRICKET
4' PITCH SLOPE ON AREA AS SHOWN ON ATTACHED ROOF TOP DRAWING
TO PROVIDE WATER DRAINAGE OF ROOF SECTION. SECTION A INSTALL 12"
OF SQUARE NEW AND REPLACE EXISTING WITH 12" WIDE STOPPER.

WE WILL FURNISH ALL MATERIAL AND LABOR NECESSARY FOR THE COMPLETION OF ROOFING WORK OR REPAIR WORK AT THE PROJECT ADDRESS LISTED ABOVE.

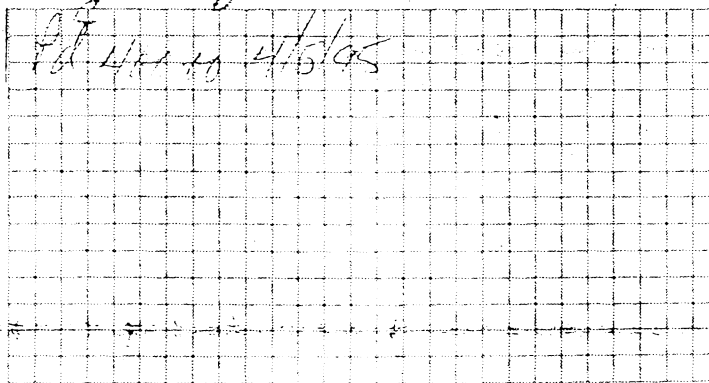
ANY ALTERATIONS OR DEVIATIONS FROM THE ROOF SYSTEM DESCRIBED ABOVE, INVOLVING EXTRA COSTS, WILL BE EXECUTED ONLY UPON OWNER APPROVAL, AND WHEN POSSIBLE BY WRITTEN CHANGE ORDER, AND WILL BECOME AN EXTRA CHARGE OVER AND ABOVE THE ESTIMATE, EXCEPT 1/2 INCH PLYWOOD AND 1 X 8 SPACED SHEETING DECKS WHICH WILL BE BILLED AT PER SQUARE FOOT PLYWOOD OR PER LINEAL FOOT 1 X 8 SPACED SHEETING ADDITION. ALL AGREEMENTS CONTINGENT UPON ACCIDENTS OR DELAYS BEYOND OUR CONTROL. STANDARD WORKMANSHIP GUARANTEES ARE FOR A TWO YEAR PERIOD. REPAIRS ARE FOR 30 DAYS UNLESS EXTENDED BY CONTRACT TERMS IN WRITING.

PRICE PER FT. \$ 125

NOTES FOR JOB PARTICULARS:

NOTE: WHERE CARPORTS ABUT
HOUSE SECTION 1X4 SIDING BOARD
WILL BE CUT TO APPROX 12" ABOVE
CONT LINE OF CARPORT AT HOUSE TO
ALLOW FOR PROPER FLASHING AND
COUNTER FLASHING INSTALLATION

ROOF DIAGRAM



ACCEPTANCE OF PROPOSAL

THE CONDITIONS OF THE PROPOSAL ARE SATISFACTORY AND ARE HEREBY ACCEPTED. YOU ARE AUTHORIZED TO DO THE WORK AS DESCRIBED.

PAYMENTS TO BE MADE AS FOLLOWS: 10% DOWN 40% WHEN STARTED BALANCE ON COMPLETION.

CONTRACT PRICE \$ 4800.00

OPTIONS DESCRIBED \$ _____

CONTRACT SUBJECT TO APPROVAL BY CONTRACTOR

Michele A. Felix
SIGNATURE
Greg Roberts
SIGNATURE

4/5/95
DATE

3/7/95
DATE

THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN 30 DAYS.

1. Contractor means Roberts Roofing Company contracted to provide services as agreed on for the owner.
2. Owner means Owner of building, owner's architect, general contractor, owner's agent or others acting in behalf of owner.
3. Terms are payment of 1/2 down and balance in full immediately upon completion of the work. In the event payments are not timely made, a finance charge of 3% per month will be charged on the unpaid balance from the date of completion to date of payment before and after judgment. Customer agrees to pay all costs of collection and attorney's fees after default and referral to attorney and further agrees to pay after judgment costs of collection.
4. Tender of payment with checks or other negotiable instruments bearing words purporting to release all liens and/or fully satisfying the outstanding contract balance when the amount shown on such instrument is less than the full amount of the contract balance, shall be null and void and shall constitute a breach of this agreement. Contractor shall be entitled to present such instruments for payment without regard to such working or legend and shall be entitled to pursue the balance of its claim in court or otherwise.
5. In the event the Customer sells, offers to sell, mortgage, or otherwise transfers or encumbers said premises, total amount of contract herein provided shall become immediately due and payable as to any and all amounts then unpaid, without necessity of any notice by the then owner and holder of contract. By the terms of this agreement, Customer hereby irrevocably assigns the amount due to contractor and directs any escrow agent or purchaser to honor this assignment.
6. In the event the building or structure described shall be destroyed or damaged by fire or other cause prior to the payment in full of the contract herein provided for and the Customer shall become entitled to receive insurance by virtue thereof. Contractor shall subrogate to the claim of customer for the balance then due on said contract the insurance proceeds from any insurance companies liable to make such payment.
7. Customer waives all benefit of homestead and other exemption now or hereafter in force, together with the benefit of all statutes that may be conflict with this agreement.
8. Customer realizes heavy equipment must be used to complete work and gives Contractor permission, when necessary, to park or drive across grass, concrete, blacktop, etc., at Customer's own risk and will not hold Contractor liable for damages.
9. Contractor will not be liable for damage to any part of the interior of the building or its contents which may arise from leaks of any nature either before, during or after roof has been applied.
10. This contract does not include repairs to gutters, downspouts, pipes, metal flashings, or modifications by verbal agreements, unless expressly stipulated in the specifications.
11. This bid price is based on 1 roof removal. If more than 1 roof exists, there will be an added charge of 25 cents per square foot for each additional roof to be removed and 15 cents per square foot for additional insulation layers if discovered after project start, while said price was included in original bid.
12. Warranty: All roof repairs guaranteed for a period of 30 days unless special one year guarantee is issued. All complete new roofs guaranteed for two years. All guarantees begin on completion date. Contractor agrees to repair any defect from faulty workmanship for the period of guarantee at no charge to property owner. Non-Payment of the contract balance for more than 30 days after completion or substantial completion voids all warranties, express or implied.
13. If a problem should arise and workman cannot contact Customer, Contractor will proceed with the job utilizing Contractor's best judgment. In the event that additional costs are incurred by Contractor under these circumstances, Customer authorizes Contractor to proceed with the project and agrees to pay any increase in costs.
14. Starting dates are estimated and are subject to availability of supplies, weather, and Contractor's workload.
15. Customer or agent shall not withhold payment to Contractor for alleged liability claim against Contractor or its employees. All such claims shall be submitted to Contractor's liability insurance carrier for resolution.
16. No costs of service, materials, or goods supplied by owner or his agent, contractor, or employees shall be charged back against Contractor's invoice unless such services, goods or materials were furnished to Contractor or its employees, pursuant to Purchase Order issued by Contractor.
17. Any damage caused by Contractor for which Contractor may be liable and which requires repair, services or materials customarily provided by Contractor, Contractor shall be given first opportunity to repair any damage before other contractors are retained by owner.
18. Payment for this agreement will be made in full when due and all payments shall reflect Contractor as payee. Payments made to any other payee shall be at the risk of Customer and may void any warranty if, for any reason, contractor does not receive full payments for the job. All roof repairs or maintenance during warranty period or warranted roofs must be done by Contractor to maintain Contractor's warranty.
19. Unless Customer requests Contractor's employee to inspect the interior surfaces of the building before roofing work is commenced by Contractor, it will be assumed that interior damages were caused prior to commencement of roof work by Contractor and owner agree to hold Contractor harmless from such damages.
20. In the event Customer defaults in payment of the contract price, Customer assigns all rents and profits from the premises upon which the work was performed until Contractor is paid in full.
21. Contractor will proceed with the work once it is commenced on a continual basis, subject, however, to unavoidable delays due to inclement weather, strikes, availability of materials specified by owner or agent, and conditions commonly referred to as acts of God.
22. Oral requests shall not be binding on Contractor unless reduced to writing by signed Change Order.
23. Owner represents that the roof surface to be worked on by Contractor shall be free from impediments which may interfere with Contractor in performance of this contract. Any obstructions such as air conditions, ducts, vents, pipes, conduits, wires, heating coils, heaters, and other objects which obstruct Contractor's performance, shall be the sole responsibility of Owner and Contractor shall be relieved of all claims for damage or loss to such objects or arising as a result of necessity to remove or install such objects or the necessity to work around such obstructions.
24. Any agreement to arbitrate disputes between Contractor and any other party shall be at the expenses of the party seeking arbitration. Upon request of arbitration, the party requesting arbitration, shall arrange for arbitration hearing to be held within thirty (30) days from demand for final payment. In the event that the arbitration hearing is not held within the thirty (30) days heretofore referred to, Contractor shall be relieved of any and all obligations to arbitrate and may elect to initiate legal action to secure payment of the such claimed.
25. Owner shall not use Contractor's equipment to gain access to or descend from any roof or building or any other portion of the realty. Such use is strictly prohibited by Contractor. Any use of Contractor's equipment of any kind shall be at owner's risk and owner waives all liability for injury, loss, or damage which may occur as a result of any such use.
26. The parties agree that the prevailing party in any lawsuit arising from or as a result of this agreement, whether the action is based on the contractual provisions or on any other theory of liability, shall be entitled to an award of attorney's fees and costs including witness fees, professional experts fees and such other costs to prosecute or defend any action described above.
27. Contractor will not assume any responsibility for payment of any fee charged for outside consultation or inspections requested by owner or owner's representative.
28. Owner agrees to a fee lien of \$75.00 if it becomes necessary for contractor to file a lien to secure payment of contract.



INNOVATIVE

*Roofing
Consultants,
Inc.*

28 September 1998

Michelle Felis
3970 S 2665 W
West Valley City, Utah 84119

RE Roofing Inspection
IRCI Job No 2383

Dear Ms Felis

On 04/14/98 I made a visual inspection of the roofing on your residence located at 3970 S 2665 W in West Valley City, Utah. The purpose of my inspection was to determine if the recently installed roofing was applied correctly.

No roofing test cuts were made and no portion of the roofing or building was dismantled during my inspection. I submit the following observations and comments:

A General Information

- 1 Inspector Kraig S. Clawson
- 2 Inspection Authorized By Michelle Felis
- 3 For orientation purposes, the front of the building faces east
- 4 The following individuals were in attendance at the time of my inspection:
 - a Michelle Felis
 - b Ron Legg
- 5 Information Provided by the individuals listed in A 4 above
 - a The roofing was installed in May 1995
 - b It rained when the roofing was installed, and there was damage to the interior of the home
- 6 The Following Regulations and Standards Governed the Application of the Roofing at the Time of Installation
 - a The owner-roofing contractor agreement
 - b The contemporary application requirements defined by the built-up roofing manufacturer and the manufacturers of all roofing and roofing related products not supplied by the built-up roofing manufacturer
 - c *Applicable sections of the contemporary editions of the following publications*
 - 1 The Uniform Building Code and related standards
 - 2 Factory Mutual (FM) and Underwriters Laboratories (UL) roofing related publications
 - 3 American Society for Testing and Materials (ASTM) roofing related publications
 - 4 The National Roofing Contractors Association (NRCA) Roofing and Waterproofing Manual
 - 5 The Sheet Metal and Air Conditioning Contractors National Association (SMACNA) Architectural Sheet Metal Manual
 - 6 The Western States Roofing Contractors Association (WSRCA) Roofing Details

B. Roofing Conditions:

1. Type of Roofing System: Gravel surfaced asphalt built-up roofing.
2. Estimated age of roofing: 3+- years old.
3. Approximate Roof slope: 0-1/8+- inch per foot.
4. Portions of the house and carport roof edge are raised with a canted edge. The remaining roof edges are flat with a metal gravel stop flashing except on portions of the upper main house roof where no metal flashing was installed.
5. As observed, the roofing is in compliance with the requirements outlined in A.6 above except as outlined below:
 - a. There is ponding around the evaporative cooler.
 - b. There are blisters and buckles in the roofing membrane around the evaporative cooler.
 - c. There are buckles in the base flashing on the main house roof.
 - d. There are open laps along the base flashing on the main house roof.
 - e. The granule surfaced flashing membrane is unadhered along some canted edges.
 - f. The evaporative cooler duct was not properly flashed.
 - g. There is no counterflashing around the chimney.
 - h. There is no gravel stop metal flashing along some portions of the upper main house roof. The base flashing on the lower roof extended up over the edge of the upper roof.
 - i. Some of the pipe flashings are less than eight inches high.
 - j. The quantity of asphalt used for the flood coat is inadequate in some locations.
 - k. The gravel embedment is poor in some locations.
 - l. Some of the old rusted metal pipe flashings were reused.
 - m. There is no counterflashing where the carport roof runs into the wall of the main house.

C Evaluation:

- 1 Further inspection, including dismantling portions of the roofing, will be needed to verify the nature and extent of all defects and deficiencies. This can be accomplished when the remedial work is performed.
- 2 If not corrected, the defects and deficiencies outlined in B above will lead to leaking and premature failure of the roofing system.
- 3 The defects and deficiencies outlined in B above are the result of improper application by the roofing contractor.
- 4 Normal life expectancy for this type of roofing in this geographic location is 20+- years.
- 5 This type of roofing system requires periodic maintenance to prevent leaking and reach its normal life expectancy.
- 6 With regular inspections, proper repairs and maintenance, the roofing should last another 10+ years.

D Recommendations:

- 1 Send a copy of this report to the West Valley City Building Official and request the following
 - a. The Building Official inspects the roofing on your residence and/or read through this report and verifies all conditions that do not meet code.
 - b. Send a letter to you outlining his findings.
- 2 Send a letter to Roberts Roofing certified mail requesting the following:
 - a. Carefully inspect the roofing to identify all defects and deficiencies that require repair, including the items listed in this report
 - b. Complete all work to correct the defects and deficiencies in the work within 30 days of receipt of the letter.
 - c. Include a copy of pertinent sections of this report and the Building Officials letter.

3. Send a copy of this report and the Building Official's report to your attorney and request his counsel regarding legal recourse to the contractor.

If needed, I can provide copies of pertinent sections of the requirements outlined in A.6 above. I can also provide specifications and drawings for all remedial roofing and related work if needed. I have attached a roof plan for reference.

If you have any questions or need additional information, please call me.

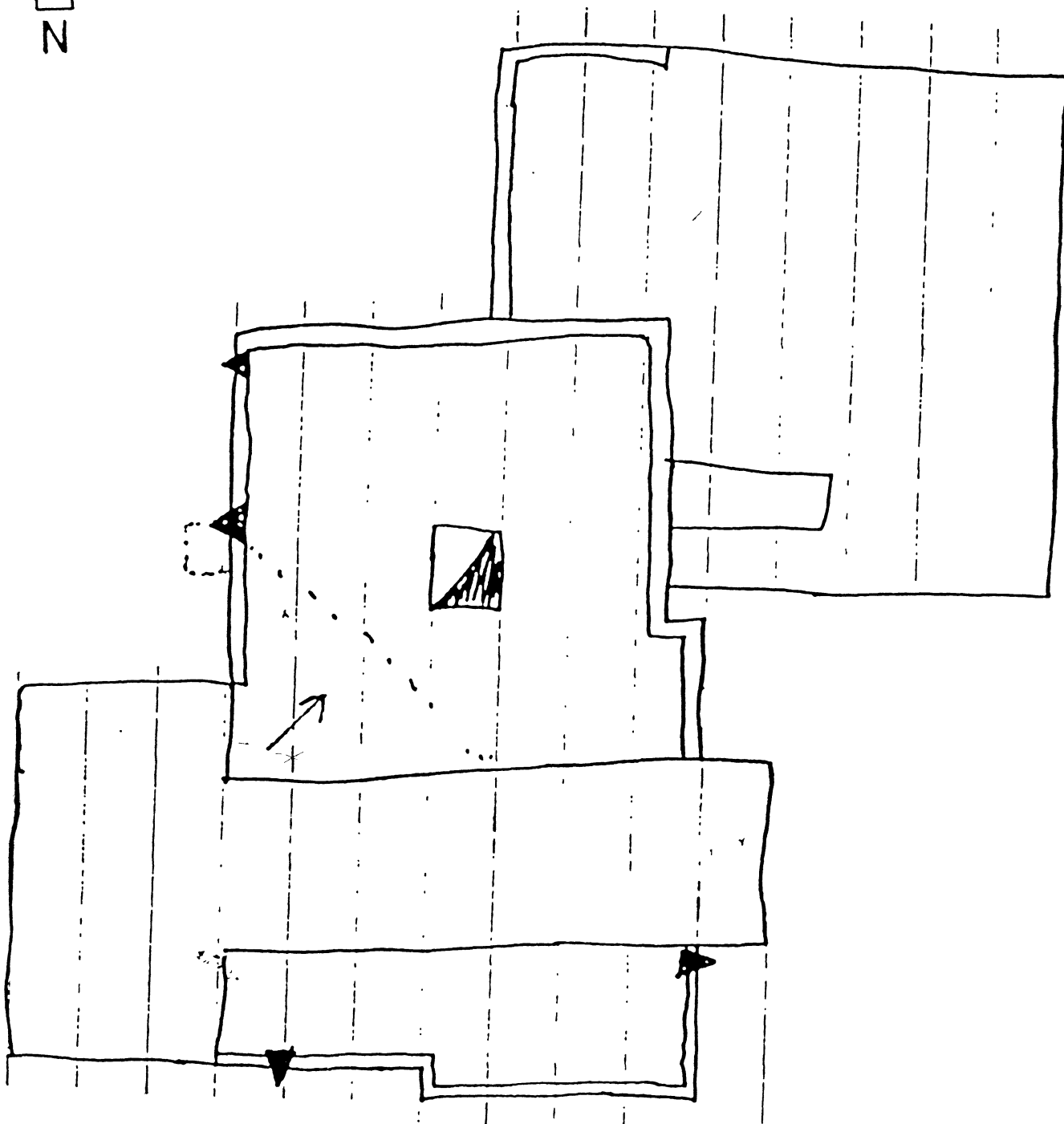
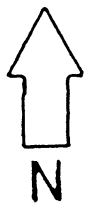
Sincerely,



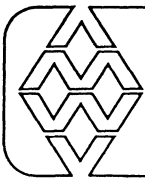
Kraig S. Clawson
President

Enclosures

Scale: None



ROOF PLAN



West Valley City
3600 S. Constitution Blvd.
West Valley City, Utah 84119-3720
Phone No. 963-3283

ED

BUILDING COMPLIANCE INSPECTION REPORT

☐ Business License
☒ Complaint

3970 S 2665W

BLDG. USE
☐ Commercial ☐ New
☒ Residential
☐ Garage ☐ Carport
☐ Addition ☐ Remodel
☐ Roof ☐ Basement
☐ Church

JOB ADDRESS ~~3970 S 2665W~~

BLDG. PERMIT NO. _____

CONTRACTOR/OWNER Michelle Elias

DATE

10/28/98

TIME

830

SUBDIVISION _____

LOT# _____

BUSINESS NAME _____

BLDG./SPACE# _____

INSP. CATEGORY

☐ Mobile Home
☐ Solid Fuel Appliance
☐ Swimming Pool
☐ Sign
☐ Demolition/Moving
☐ Fire Repair
☐ Preinspection
☐ Special/Other
☐ _____

INSP. LEVEL

☐ Footings
☐ Foundation
☐ Bond Beam
☐ Underground
☐ 4 Way
☐ Rough
☐ Plumbing
☐ Mechanical
☐ Electrical
☐ Framing
☐ Power to Panel
☐ Service Upgrade
☐ Insulation
☐ Drywall/Nailing
☐ Subsiding
☐ Susp. Ceiling
☐ Reinspection
☐ Final
☐ Progress
☐ Other _____

COMMENTS

- USED LOT 10000000
- LIT EDGE OF ROOF (1/2" SLOPE PLYWOOD)
NOT SLOPED ALONG EDGE
- BUBBLING FROM USING LIT 1/2" SLOPE
- EDGE OF ROOF GAVEL STOP @ FRONT
- LOCAL AROUND AIRWAY SLOPE COOL DUCT
- CONTRACT WAS TO CHECK (DRAINAGE) (ROOF) & NOT CHECK
- PENDING

SIGNATURE _____

WORK APPROVED

or

WORK IN VIOLATION

REQUIREMENTS FOR

POWER and/or FINAL

Building complete _____

Work passes - authorized to proceed _____

Prior violations corrected _____ not corrected _____ DO NOT PROCEED with work _____

Work must be completed with a call for inspection _____

Work not ready for inspection _____

REINSPECTION FEE \$42.42 (paid before next inspection)

Cannot locate property _____ Building locked _____

Approved plans and/or site plan not available as required. _____

Contractor Verification Form Required Yes _____ No _____ Received Yes _____ No _____

Bond required by Planning & Zoning for landscaping Yes _____ No _____

Landscaping Installed Yes _____ No _____ Landscaping Agreement Required Yes _____ No _____ Received Yes _____ No _____

Yardlight Required Yes _____ No _____ Installed Yes _____ No _____

Overpressure Zone Glass Certificate Required Yes _____ No _____ Received Yes _____ No _____

Cold Weather Agreement Required Yes _____ No _____ Received Yes _____ No _____

Sidewalks cracked/chipped: Public Works must approve repair or have a BOND before power clearance. _____

OK for Power Clearance Yes _____ Date Cleared _____



November 3, 1998

Robert's Roofing Inc.
1238 S. 800 West
Salt Lake City, Utah 84104

Re: Roof installation

Dear Mr. Roberts:

Last week I responded to a citizen complaint concerning the new roof covering installed by your company, *Roberts Roofing Inc.* (State license # 953129695501), on the Michelle Felis residence located at 3970 S. 2665 West in West Valley City, Utah. My understanding of the history of this complaint is as follows:

- 1) Ms. Felis decided to replace the roof on her home after frequent repairs, even though this roof had not leaked in more than 1 ½ years.
- 2) Ms. Felis hired your company, *Roberts Roofing Inc.*, to remove the old roof covering and install a new roof covering.
- 3) *Roberts Roofing Inc.* removed the old roof covering but left a portion of the roof unprotected and exposed to the weather for at least five days.
- 4) A rainstorm occurred while this portion of the roof was still unprotected.
- 5) The kitchen ceiling collapsed on the evening of the rainstorm due to water leaking through the roof which had been left unprotected by *Roberts Roofing Inc.*
- 6) The owner, Michelle Felis, informed you of this damage as soon as it occurred.
- 7) Ms. Felis paid an independent contractor to replace the damaged kitchen ceiling at her own expense.
- 8) *Roberts Roofing Inc.* refused to reimburse Ms. Felis for the replacement of the kitchen ceiling. It was your argument that the roof had leaked elsewhere, even though your company had left a critical portion of this roof unprotected from the weather.
- 9) After the new roof covering was installed by *Roberts Roofing Inc.*, the roof continued to leak, thereby causing more damage to the new kitchen ceiling, which required repairs by others, which cost Ms. Felis more money, above and beyond the amount Ms. Felis had already paid your company, *Roberts Roofing Inc.* \$4800.00.
- 10) Ms. Felis filed a complaint with the Small Claims Court, where with your attorney, you were required to pay nothing to Ms. Felis.
- 11) The new roof covering which was installed by *Roberts Roofing Inc.* continues to leak to this day.

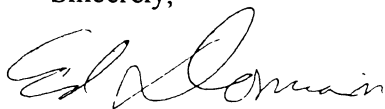
12) To this day, *Roberts Roofing Inc.* has not taken responsibility for any of the new roof leaks since your company installed the present roof covering.

An investigation was performed by *Innovative Roofing Consultants Inc.* on April 14, 1998 at the request of Ms. Felis. According to that report, which was sent to you, there is little that is right about this roof covering installation. The minimal standard of any roof covering application is that the roof shall not leak. This application has failed that test on numerous occasions requiring repairs at the expense of Ms. Felis. Ms. Felis hired *Roberts Roofing Inc.* to replace an old roof covering on her home to avoid future roof leak problems. What she received in return for the \$4800.00 paid to *Roberts Roofing Inc.* was a "new" roof covering which did anything but perform. In fact, in her attempts to solve this problem through *Roberts Roofing Inc.*, Ms. Felis has paid out more than \$7100.00. In return Ms. Felis is not only no better off than before she hired *Roberts Roofing Inc.*; in fact things are far worse. She has a roof that needs repairs constantly and will probably not last more than a couple of years; far short of the 20-year roof she thought she had purchased from *Roberts Roofing Inc.* This is a very disturbing picture which West Valley City does not want its residents to experience.

I realize there are two sides to every story. I have read the investigation report produced by *Innovative Roofing Consultants Inc.* I have been up on the roof to look at the roof myself on two occasions. I noticed bubbles in the roof membrane at various locations. I saw vertical seams which were not sealed. Although it did not rain in the previous 48 hours, there was a large pond of water in place that covered at least ½ of the main roof deck. The roof does not drain properly. I have also reviewed the responsibilities of your contractor's license under State law. You should be aware that any code violations found in this installation are subject to daily fines of \$25.00 per violation per day if they are not corrected upon request, per City ordinance.

It appears that Ms. Felis' roof is not only no better off than before you began this roof installation, but her home is in worse condition with a *new* roof that continues to leak, and \$7000.00 invested in attempting to have all damages repaired. Please call me at (801) 963-3276. I would like to arrange a meeting with you at my office to discuss these matters. This meeting should be requested before November 15, 1998. Your cooperation in this matter would be greatly appreciated.

Sincerely,



Ed Domian
Chief Building Official

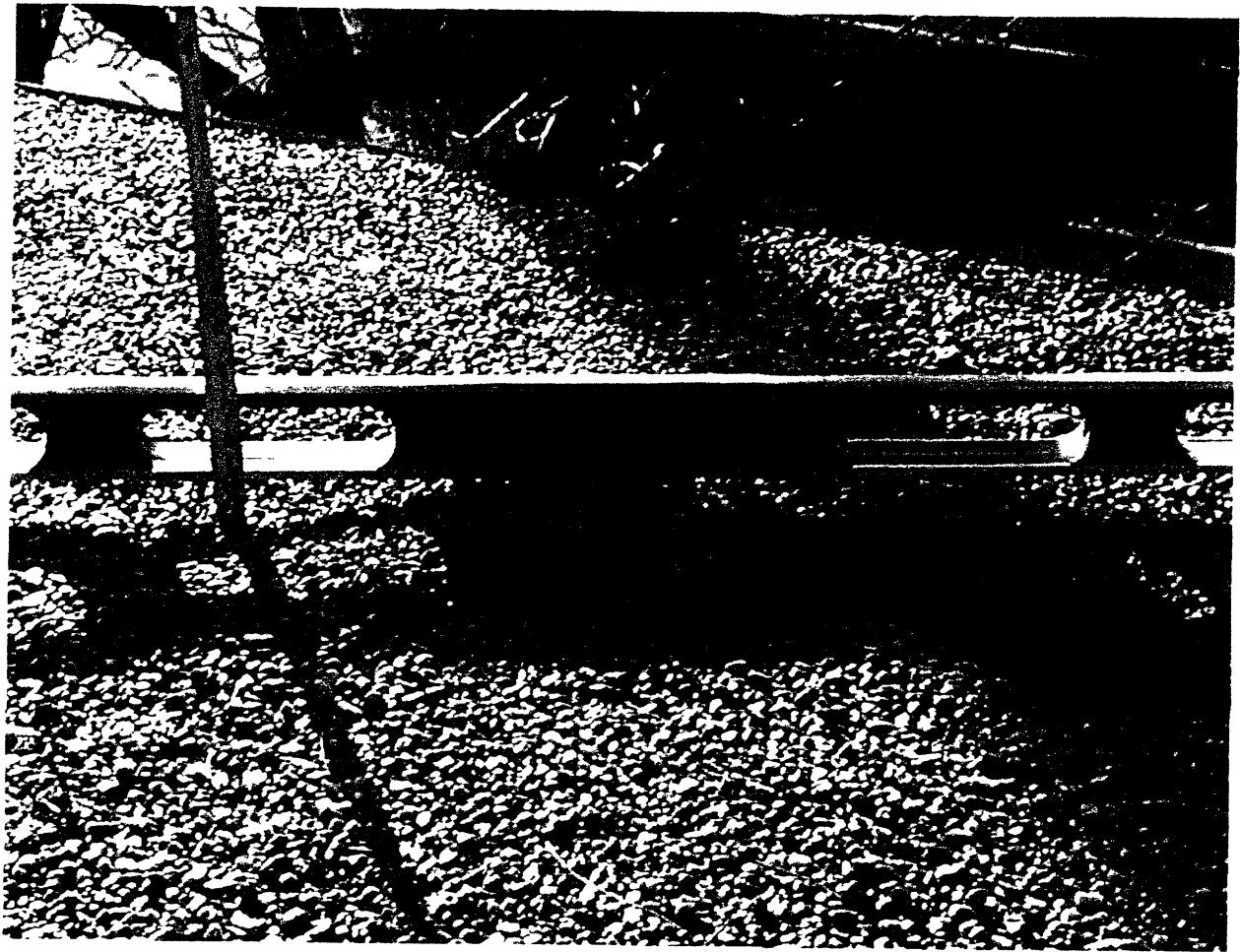
c: Elliot Lawrence, Assistant City Attorney
d: Joseph Moore, Community & Economic Development Director
e: ✓ File

EXHIBIT E:
Photographs of Alleged Violations



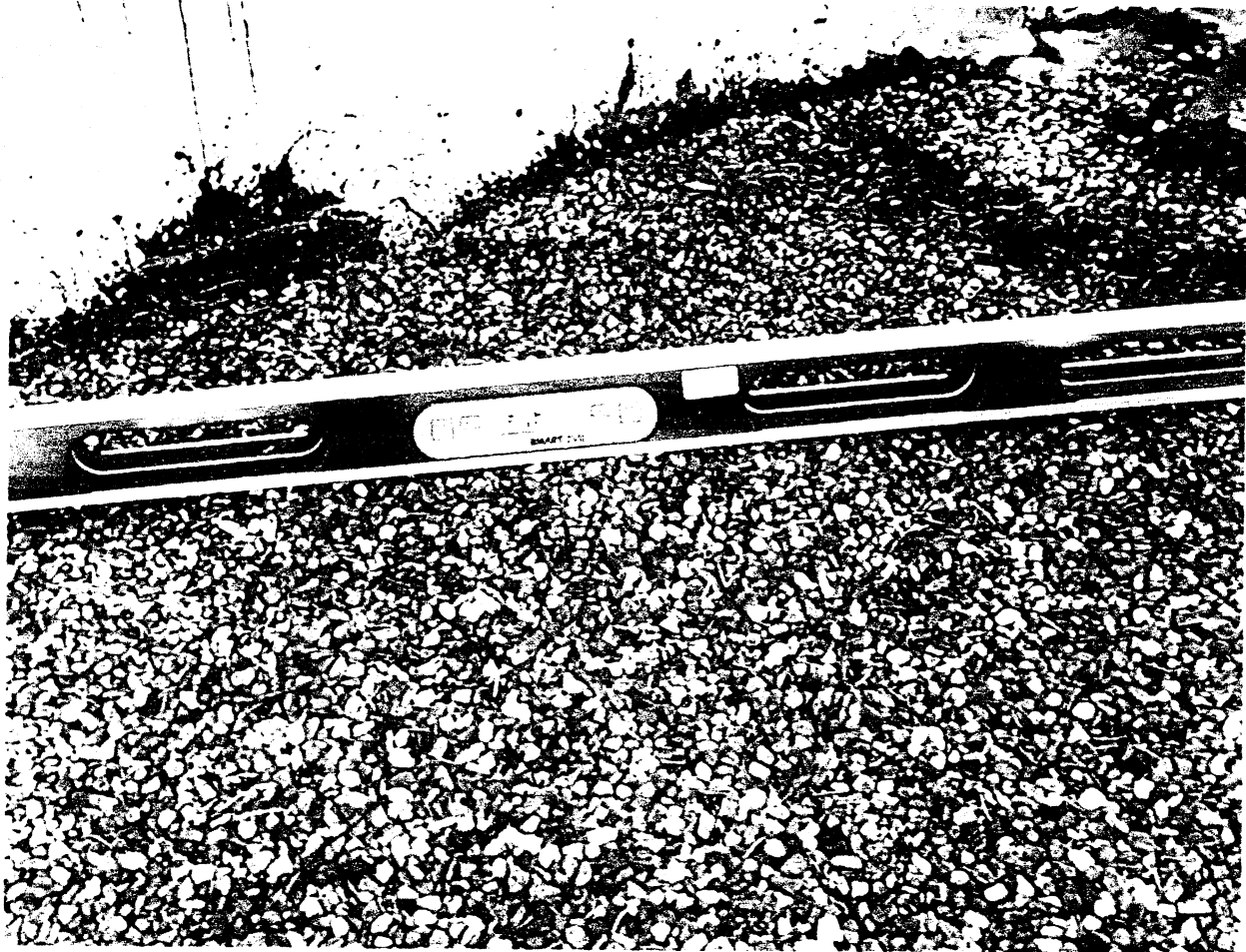
December 30, 1998
Photo By: Ed Domian

1/13/99
C-1 348-0124



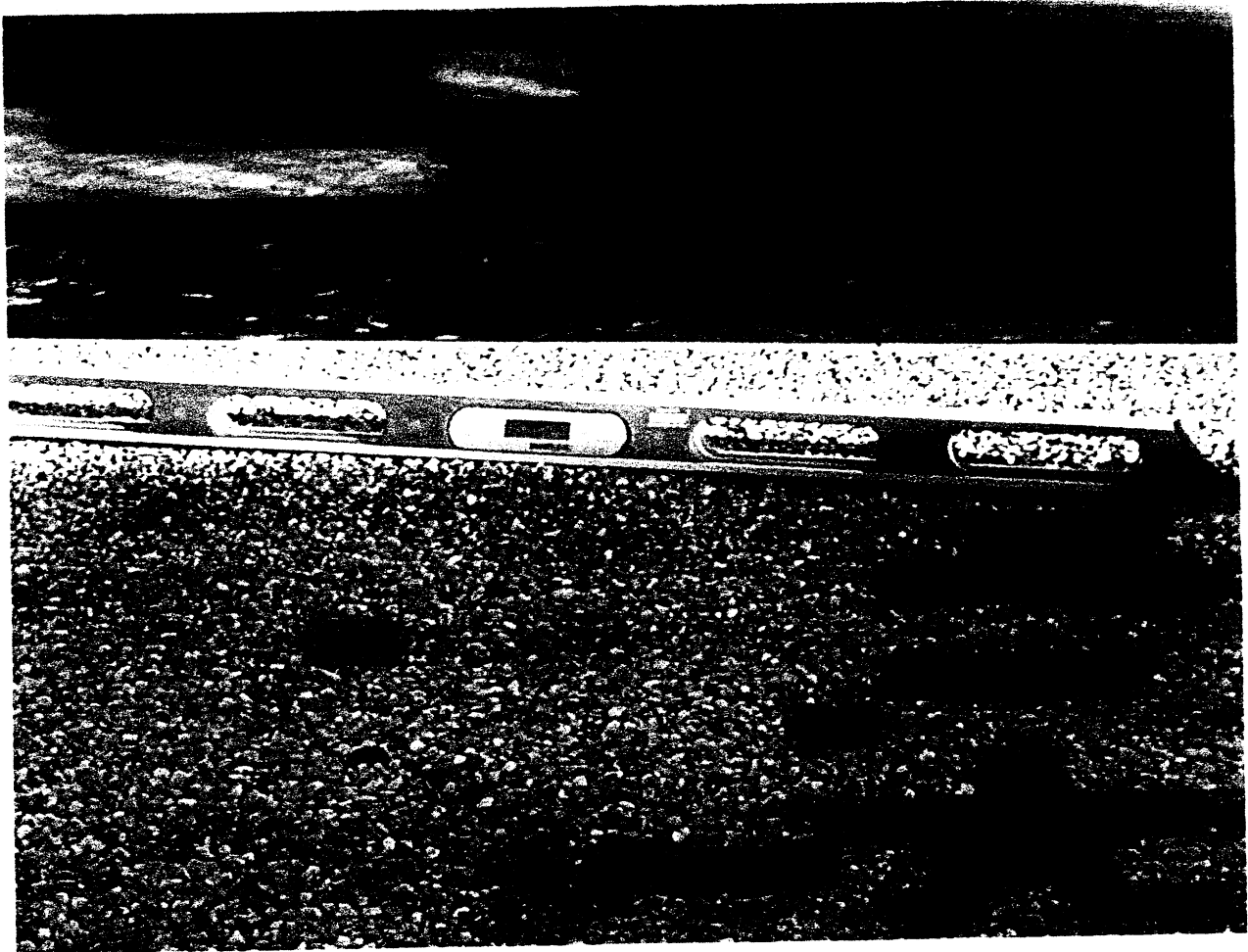
December 30, 1998
Photo By: Ed Domian

C-2 1/13/99
B98-C.124



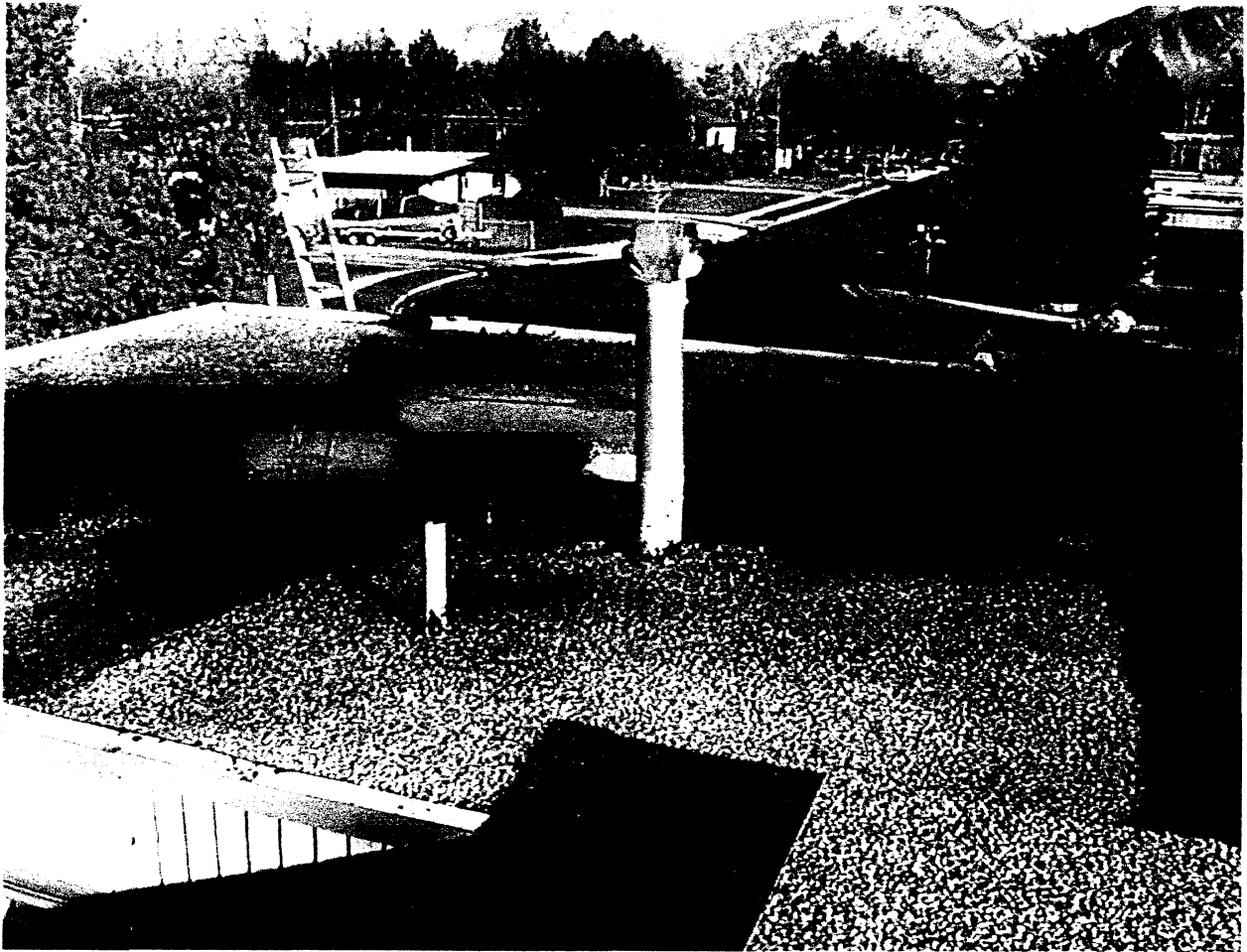
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Photo By: Ed Domian

C-3 1/13/99
B98-0121



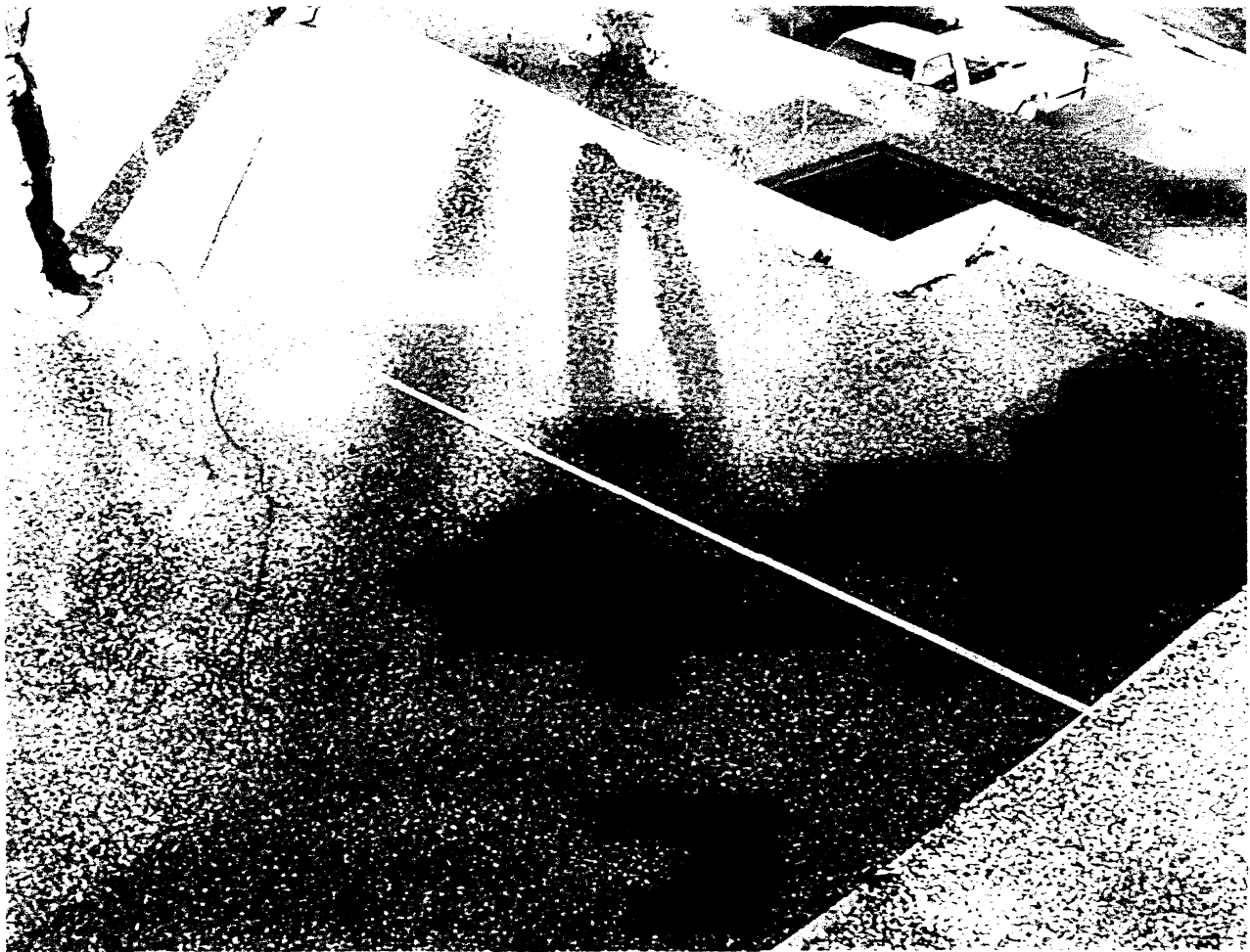
December 30, 1998
Photo By: Ed Domian

C-4 1/13/99
Doo 1/13/99



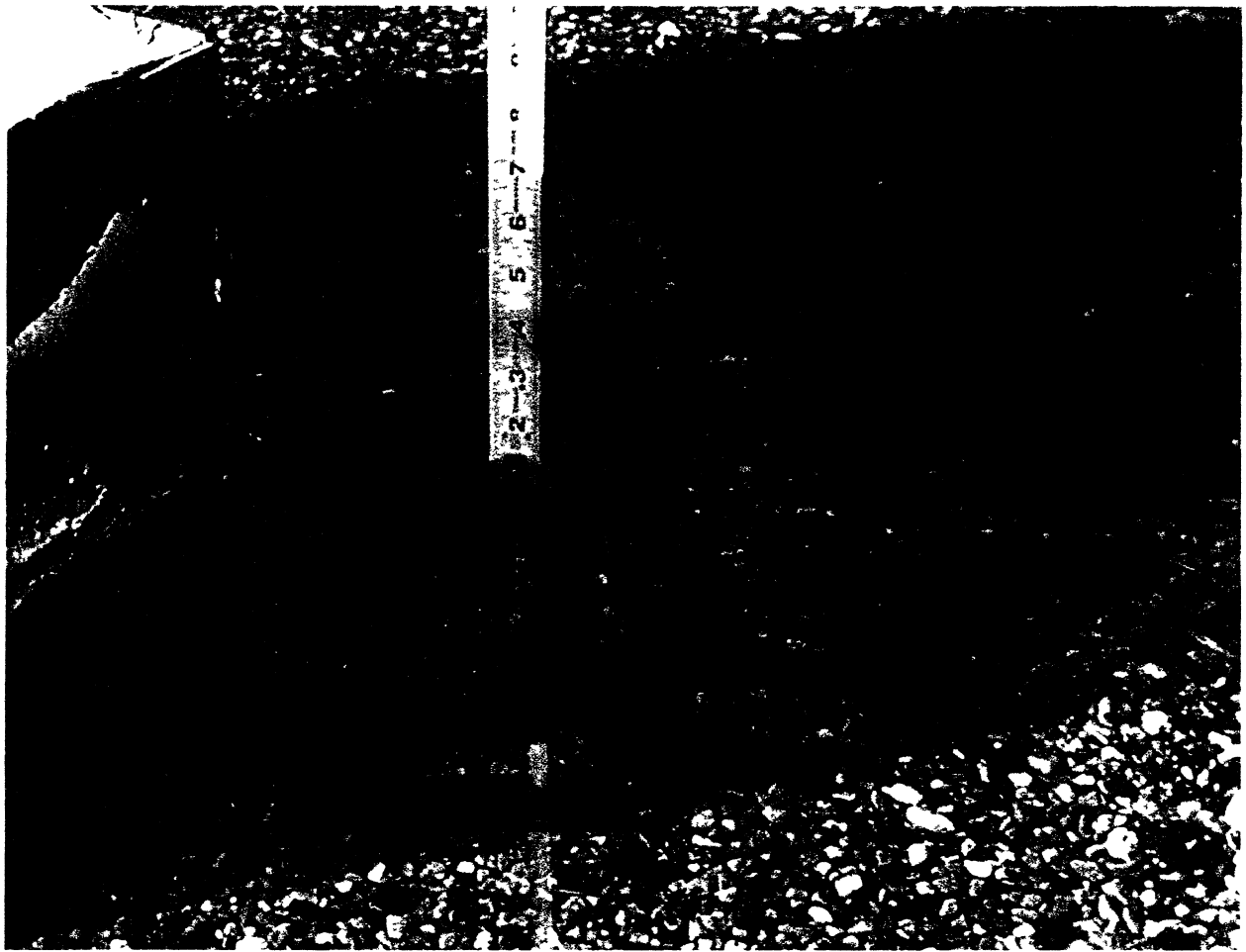
December 30, 1998
Photo By: Ed Domian

C-6 1/13/99
BC98-0124



December 30, 1998
Photo By: Ed Domian

C-7 1/13/99
R98-A124



December 30, 1998
Photo By: Ed Domian

C-8
B98-0124
1/13/99



December 30, 1998
Photo By: Ed Domian

C-10 1/13/99
B98 0124



December 30, 1998
Photo By Ed Domian

C-11
B98-0124
1/13/99

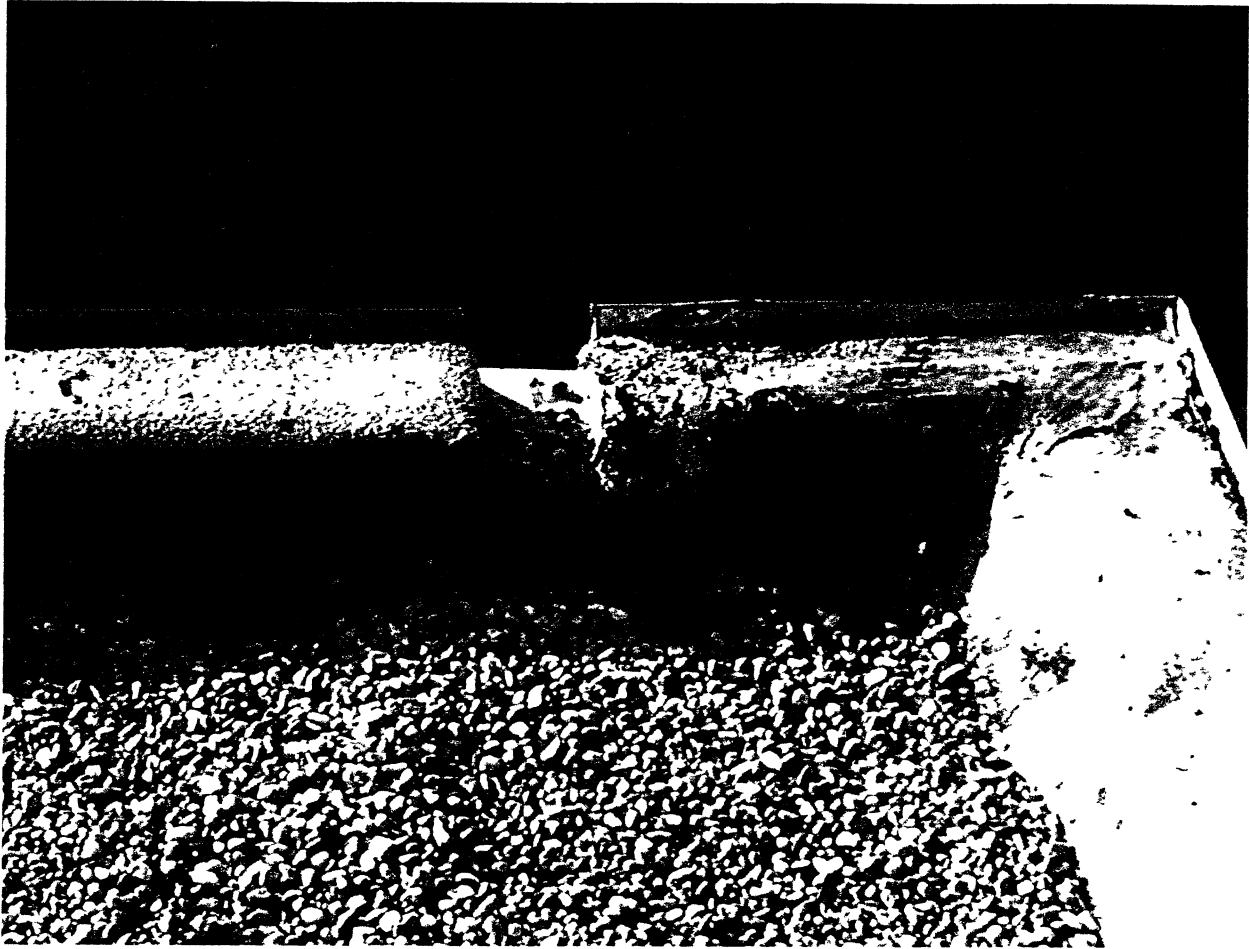


December 30, 1998
Photo By: Ed Domian

C-12 01/13/99
B98-0124



December 30, 1998
Photo By: Ed Domian



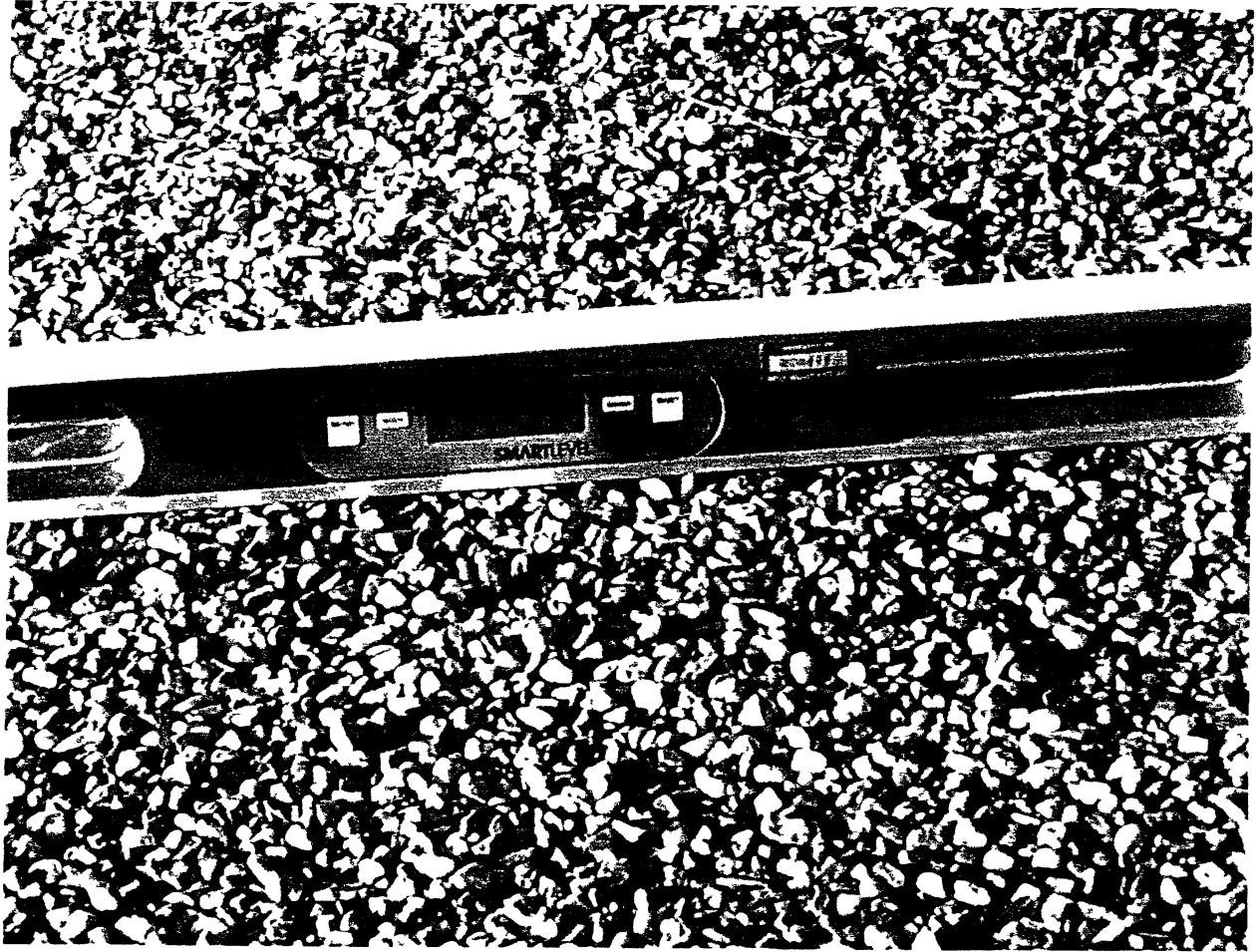
December 30, 1998
Photo By: Ed Domian

C-16 1/13/99
B98-0124



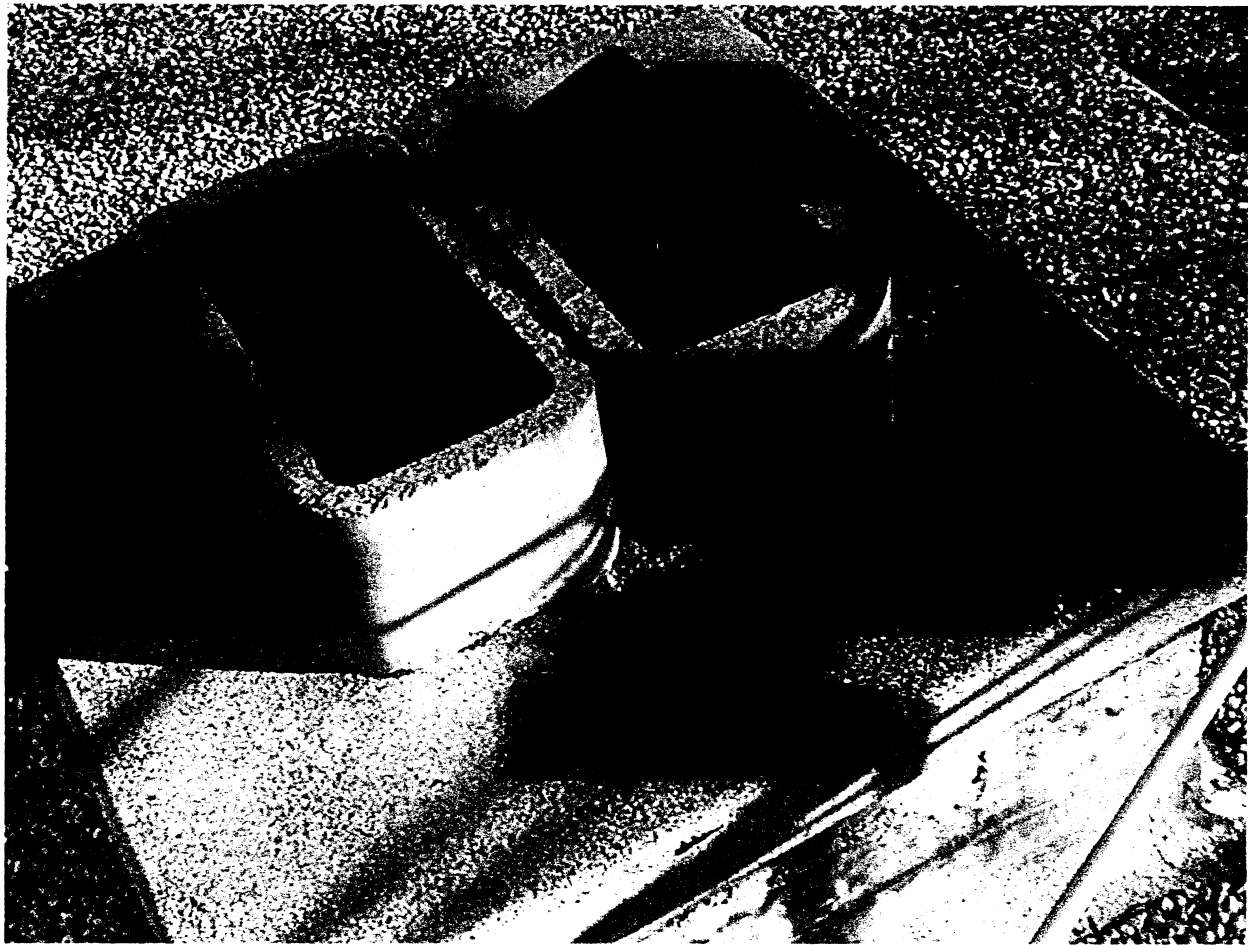
December 30, 1998
Photo By: Ed Domian

C-77 1/13/99
B98-0124



December 30, 1998
Photo By: Ed Domian

C-18 1/13/99
B98 01.24



December 30, 1998
Photo By: Ed Domian

C-19 1/13/99
B98-0124

EXHIBIT F:
Administrative Code Enforcement Order

IN THE ADMINISTRATIVE COURT OF WEST VALLEY CITY
COUNTY OF SALT LAKE, STATE OF UTAH

IN THE MATTER OF)	
)	ADMINISTRATIVE CODE
)	ENFORCEMENT
<u>Greg Roberts</u>)	
<u>Roberts Roofing,</u>)	ORDER
)	
ADDRESS OF SUBJECT PROPERTY:)	
<u>3970 South 2665 West,</u>)	Case No. B98-0124
<u>West Valley City, UT</u>)	
)	

I.

STATEMENT OF THE CASE

This matter came on regularly for hearing before Phil Roberts, Administrative Hearing Officer for the City of West Valley, on Wednesday, January 13, 1999 at West Valley City Hall CED Conference Room, and was heard on that date, notice duly and regularly given. The purpose of the hearing was to determine whether the Responsible Person has caused or maintained a violation of the Municipal Code or applicable state code that existed on the date specified in the Notice of Violation; and whether the amount of civil penalties assessed by the Director pursuant to the procedures and criteria outlined in the Notice of Violation was reasonable.

Elliot Lawrence, Assistant City Attorney, appeared on behalf of the City. Respondent, Greg Roberts, appeared represented by counsel, Bret Hanna.

The following individuals testified on behalf of the City:

Chief Building Official Ed Domian
Michelle Felis
Kraig Klawson
Ron Legg

The following documents or other physical evidence were introduced by the City and received into evidence:

Notice of Violation, Case #B98-0124
Photographs taken by Ed Domian on December 30, 1998
#C-1 through C-19

II FINDINGS OF FACT

1. On December 8, 1998, an inspection was conducted by Ed Domian, Chief Building Official at 3970 South 2665 West, West Valley City, Utah. Chief Building Official observed roofing violations on Mrs. Felis roof located at the above-mentioned address. Mr. Domian found violations of the roof according to 1994 Uniform Building Code 103, 1506.1, 1501, 1509 and Adoption of the Uniform Building Code, West Valley City Municipal Code, Section 16-1-101. The specific violations are listed below:
 - a. UBC 1506.1, Roof ponds water in large area on main roof due to lack of adequate roof slope,
 - b. UBC 1501, Blisters and bubbles appear in numerous locations in roof membrane around the evaporative cooler,
 - c. UBC 1509, Vertical seams in roof flashing are not sealed and are pulling apart,
 - d. UBC 1509, There are buckles in the base flashing on the main house roof,
 - e. UBC 1509, There is no counterflashing where the carport runs into the wall of the main house,
 - f. UBC 1509, The evaporative cooler duct was not properly flashed, and
 - g. UBC 1509, Roof does not have minimal 1/4" per foot slope to insure water drains to roof scuppers.
2. Greg Roberts is the owner of Roberts Roofing.
3. Roberts roofing installed a roof at the location listed above for Michelle Felis in April/May 1995.
4. On October 6, 1998, West Valley City Building Inspection Division issued a Notice of Violation to Greg Roberts DBA Roberts Roofing at the last known address provided at 1238 South 800 West, Salt Lake City, Utah. The Notice of Violation requires the property to be in compliance with the above-stated ordinance on or before January 11, 1999, or a civil penalty of \$25 per day per violation will be assessed to the business owner.
5. The Notice of Violation was served upon the respondent in accordance with West Valley City Ordinance Section 10-1-201.

6. Written notice of the time and place of the hearing was served upon the respondents in accordance with West Valley City Ordinance Section 10-1-201.

III. CONCLUSIONS OF LAW

1. The Respondent is the Responsible Party.
2. The Respondent was properly served with the Notice of Violation.
3. The Respondent was properly notified of the hearing.
4. The Respondent(s) violated the West Valley City Ordinances as stated in the Notice of Violation served December 8, 1998 pursuant to Adoption of the Uniform Building Code and West Valley City Municipal Code as follows:

#1 Ponding on Roof UBC 1506.1
#2 Blisters and bubbles UBC 1501
#3 Vertical Seams UBC 1509
#4 Buckles in Flashing UBC 1509

IV. ORDER

THEREFORE, the following order is made:

1. The violations found to exist in the Findings of Fact and Conclusions of Law.
2. The Respondent will contact Chief Building Official Ed Domian for compliance inspections. If the property is in compliance with the above ordinances on or before June 1, 1999, all civil penalties and fines will be waived. If the property has a violation of any of the above ordinances or an inspection has not been obtained, the Respondent shall be responsible for civil penalties of \$25.00 per day per violation pursuant to paragraph 4 of the Conclusions of Law beginning January 20, 1999 until an inspection and a Notice of Compliance is obtained.
3. The Respondent shall be responsible for an administrative fee of \$95.00.
4. The Respondent shall receive one courtesy inspection. The Respondent shall be responsible for any additional necessary inspections \$50.00 per inspection until the property passes inspection and is brought into compliance.
5. The City may enter and abate the property after June 2, 1999 or a reasonable time thereafter if the property is not brought into compliance. All costs associated with

an abatement of the property will be assessed to the Respondent.

6. Kraig Klawson of Innovative Roofing Consultants, Inc. shall oversee the work performed by the Respondent and the inspections conducted by Ed Domian.
7. The Enforcement Hearing Officer retains continuing jurisdiction in this matter.

DATED: 2-01-99



Phil Roberts
Administrative Hearing Officer

West Valley City A.C.E. Hearing Program, 3600 Constitution Blvd., West Valley City, UT 84119

Phone: 963-3289 Facsimile: 963-3559

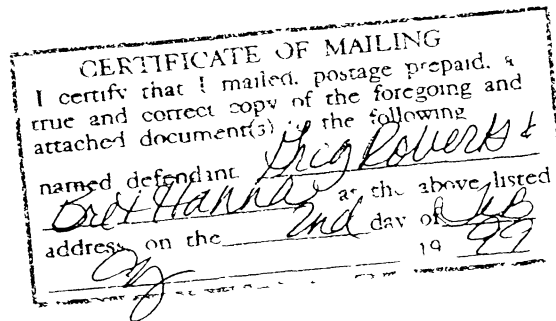


EXHIBIT G:
Petition for Review, Greg Roberts

Received 2/8/99
A. McKendrick

RECEIVED
CITY CLERK
FEB 11 1999

PETITIONER

GREG ROBERTS/ROBERTS ROOFING
1238 South 800 West
Salt Lake City, Utah 84144
Telephone: (801) 974-0098

ATTORNEY FOR PETITIONER

BRET M. HANNA [A6885]
WEISS BERRETT PETTY, L.C.
Key Bank Tower, Suite 530
50 South Main Street
Salt Lake City, Utah 84144
Telephone: (801) 531-7733
Facsimile: (801) 531-7711

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY, a Utah municipal
corporation

Respondent,

v.

Greg Roberts and Roberts Roofing, Inc.,

Petitioner.

City Case No.: B98 0124

**PETITION TO REVIEW
ADMINISTRATIVE HEARING
OFFICER'S DECISION**

West Valley City Administrative Code
Enforcement

Case No. 990101244

Judge Boyd

Pursuant to Section 10-2-601 of the West Valley City Municipal Code, Petitioner hereby
appeals the decision of Phil Roberts, Administrative Hearing Officer in the above-named case. The
decision being appealed was rendered on January 13, 1999.

Petitioner alleges that the decision of the decision of the Administrative Hearing Officer was

arbitrary, capricious, or illegal, because of the following:

1. The procedures employed by and the actions taken by West Valley City and Phil Roberts, the Administrative Hearing Officer, violated the Due Process Clauses of the Fifth and Fourteen Amendments of the United States Constitution and the Due Process Clause of the Utah Constitution as set forth in Article I, Section 7, of the Utah Constitution. Due Process violations include, but are not necessarily limited to, the following:
 - a. The Notice of Violation which initiated the Administrative Code Enforcement Action did not set forth the alleged Uniform Building Code violations for which West Valley City sought to impose significant fines upon Petitioner with any specificity such that the Petitioner could prepare his defense. Petitioner was not advised of the specific code references for each alleged violation until receipt of the Administrative Code Enforcement Order which was executed by the Administrative Hearing Officer more than two weeks after the Administrative Hearing.
 - b. The Notice of Violation did not adequately advise Petitioner of his rights to obtain information necessary to respond to the alleged violations at the Administrative Hearing which was Petitioner's right to request.
 - c. Petitioner was not given sufficient time or any opportunity to inspect the roof or have an independent expert of his choosing inspect the roof so that he could prepare a defense or response to the violations alleged by West Valley City.
 - d. West Valley City was timely informed that Petitioner wished to be represented by counsel at the Administrative Hearing and the coordinator for scheduling the Administrative Hearings was very uncooperative in coordinating schedules such that counsel could appear and, as such, the Administrative Hearing was begun without counsel for Petitioner being present because of a scheduling conflict.
 - e. Petitioner was not advised that despite his choice to exercise

his right to request an Administrative Hearing and filing his request for same in a timely manner, the fines West Valley City wished to impose upon him would accrue if Petitioner did not comply with the Notice of violation even though the date of compliance was before the date of Administrative Hearing. This is an unconstitutional taking without due process.

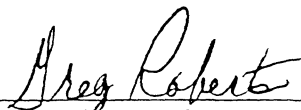
- f. Petitioner was not adequately advised of his rights of appeal of the decision rendered by the Administrative Hearing Officer. It was only upon persistent questioning by counsel after reviewing the West Valley City Administrative Code which is silent on the procedural requirements that Petitioner was advised that Petitioner must initiate the review process using forms prepared and maintained by West Valley City and only upon receipt of the Petition was Petitioner given a basic information sheet which in summary fashion describes the Ordinance Review Process. None of this information which governs the procedures was provided, despite several requests for information, until after the Administration Code Enforcement Order was entered.
- g. Section 10-2-601 of the West Valley City Administrative Code does not advise participants in the Administrative Code Hearing process that their appeal rights are limited such that those seeking judicial review are not entitled to a hearing.

- 2. The decision rendered by the Administrative Hearing Officer was arbitrary and capricious because undue deference was given to an interpretation of the definition of a “repair” set forth in the Uniform Building Code. In this regard, once it became apparent that the West Valley City was taking the position that the roofing project in questions was new construction, despite no factual basis for same, rather than a “repair,” the Administrative Hearing Officer deemed that the roof did not meet the slope requirements for a new construction roof. This alleged violation subsumed all seven of the alleged violations. In other words, once it was determined that the roof did not meet the slope requirements of the Uniform Building Code for new construction, the roof would have to be replaced to come into compliance and all of the other alleged violations were rendered moot because an entirely new roof system would include replacement of all

facets of the roof system. The determination concerning a repair versus a new construction was made despite facts entered into the record that the house was thirty-five plus years old and that Petitioner made no structural changes whatsoever to the existing roof system. Rather, he simply removed the old built up roof system materials and replaced them with new materials without changing the slope or structure in any way. This is industry practice. The Uniform Building Code does not require that new roof covering systems on existing buildings comply with requirements for roof systems on new buildings.

Petitioner **does** request oral argument for this Appeal.

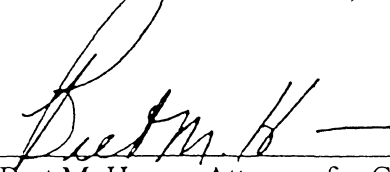
Dated this 8th day of February, 1999.



Greg Robert, Roberts Roofing, Inc.

Dated this 8th day of February, 1999.

WEISS BERRETT PETTY, L.C.



Bret M. Hanna, Attorney for Greg Roberts

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 1999, a true and correct copy of the foregoing instrument was delivered to the following:

West Valley City Recorder
3600 Constitution Blvd
West Valley City, Utah 84119

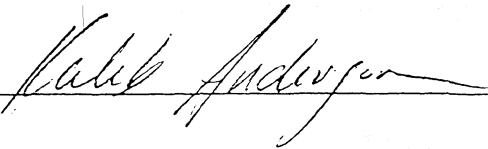


EXHIBIT H:
City's Memorandum in Opposition
to Petitioner's Request for Trial *De Novo*

Elliot R. Lawrence — Bar no. 6917
Attorney for Plaintiff
WEST VALLEY CITY ATTORNEY'S OFFICE
3600 Constitution Blvd.
West Valley City, Utah 84119
Phone: (801) 963-3271
Fax: (801) 963-3366
Elawrence@ci.west-valley.ut.us

IN THE THIRD DISTRICT COURT, STATE OF UTAH

IN AND FOR SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

WEST VALLEY CITY, a Utah municipal
corporation,

Respondent,

vs

**GREG ROBERTS & ROBERTS
ROOFING, INC.,**

Petitioner

**MEMORANDUM IN OPPOSITION TO
PETITIONER'S REQUEST FOR
HEARING *DE NOVO*.**

Case no.: 990101244

Judge. Ann Boyden

RESPONDENT, WEST VALLEY CITY (the "City") respectfully submits this Memorandum in Opposition to Petitioner's Request for Hearing *De Novo*. Petitioner, Greg Roberts, bases his Request on the unfortunate fact that the hearing at issue was not tape recorded, although there were exhibits and documents introduced that are part of the record. The City opposes Petitioner's Request, because a *de novo* hearing is not an appropriate remedy under the circumstances. Even though a transcript of the hearing itself is not available, there is a sufficient record upon which to base a review. Utah law prohibits a *de novo* review of an administrative hearing when the record is adequate to determine whether or not the decision was arbitrary or capricious. The documents and exhibits presented at the hearing are sufficient to determine whether or not the hearing officer's

decision was arbitrary or capricious. Under these circumstances, the Court is authorized to take additional evidence, but only what is consistent with the proceeding that is being reviewed. The authority to take additional evidence includes discretion to remand for another hearing before the hearing officer. For these reasons, which are explained more fully herein, the City opposes Petitioner's Request for a Hearing *De Novo*, and proposes that the matter be remanded for supplemental proceedings to clarify the existing record.

FACTUAL BACKGROUND

The facts pertaining to Petitioner's Request are essentially undisputed. The City initiated an administrative proceeding against Petitioner, citing violations of the Uniform Building Code. Pursuant to City ordinance, the hearing was conducted by an independent hearing officer. In addition to testimony presented at the hearing, several exhibits were also introduced, including photographs and reports from both the City's Chief Building Official and an independent consultant.

Based on all of the evidence presented, both testimonial and documentary, the hearing officer determined that Petitioner had violated the Uniform Building Code. Petitioner appealed that decision to this Court. As stated in the City ordinances, the record of an administrative hearing is reviewed to determine if the decision was arbitrary, capricious, or illegal. Part of the record included a transcript of the hearing, which was tape-recorded. When Petitioner requested copies of the tapes for transcription, it was discovered that, for some reason the hearing had not been successfully recorded.¹ The City suggested that a supplemental hearing be conducted, and that the parties agree

¹ There was nothing recorded on the tapes, presumably due to either mechanical or operator error. The City cannot determine with certainty why the recorder failed to capture the hearing.

to specific issues to expedite the hearing. Petitioner refused this offer, and has now requested a *de novo* hearing before this Court.

ARGUMENT

The Court must deny Petitioner's Request for Hearing *De Novo*, because such an action is not allowed. In the first place, the proceeding before the Court is a review of the administrative proceedings, which is limited by statute to a review of the record to determine whether the decision was arbitrary, capricious, or illegal. The portion of the record that does exist provides sufficient information to review the hearing officer's decision. No additional hearing is necessary.

Secondly, even if the Court finds that the existing record is inadequate, additional evidence may be taken, but only to the extent necessary to complete or clarify the existing record. The Court also has the discretion to remand the matter back to the hearing officer for supplemental proceedings. Remand is consistent with the Court's authority to supplement the record as needed, and is appropriate in this matter.

I *A DENOVO HEARING IS NEITHER AUTHORIZED NOR NECESSARY, BECAUSE THE COURT'S REVIEW IS LIMITED TO THE RECORD, AND THE EXISTING RECORD IS SUFFICIENT TO CONDUCT A REVIEW OF THE HEARING OFFICER'S DECISION.*

B *A De Novo Hearing is not Authorized, Because the Court's Review is Limited to the Record.*

A de novo hearing is not authorized, because the Court's review is limited to the record. Pursuant to the West Valley City Code, appeals from decisions of administrative hearings be taken to district court.

(1) Any person adversely affected by any decision made in the exercise of the

provisions of this Chapter may file a petition for review of the decision or order with the district court within 30 days after the decision is rendered.

(2) No person may challenge in district court an administrative code enforcement hearing officer's decision until that person has exhausted his or her administrative remedies.

(3) The courts shall:

(a) Presume that the administrative code enforcement hearing officer's decision and orders are valid; and

(b) *Review the record to determine whether or not the decision was arbitrary, capricious, or illegal.*

West Valley City Municipal Code, § 10-2-601 (emphasis added). The district court must therefore review the record to determine whether or not the hearing officer's decision was arbitrary or capricious. There is no provision authorizing a *de novo* hearing by the district court. Thus, Petitioner's Request must be denied, because the Court has no authority to conduct a *de novo* hearing.

C. *A De Novo Hearing is not Necessary, Because the Existing Record is Sufficient to Determine Whether the Hearing Officer's Decision was Arbitrary or Capricious.*

A hearing *de novo* is not necessary, because the existing record is sufficiently complete to review the administrative hearing officer's decision. While the hearing was not recorded, the decision was also based on written evidence submitted at the hearing. This evidence includes photographs showing the alleged violations, and written reports from the City's Chief Building Officer and an independent consultant. These photographs and reports provide a sufficient record to review the hearing officer's conclusion that sections of the Uniform Building Code had been violated. Additional testimony is not necessary, and so Petitioner's Request for a *de novo* hearing should be denied.

**II ADENOVO HEARING IS NOT AUTHORIZED, BECAUSE THE COURT
MAY ONLY TAKE EVIDENCE TO COMPLETE OR CLARIFY THE
RECORD, WHICH MAY BE DONE BY REMANDING THE MATTER**

A. *The Court may Only Take Evidence to Complete or Clarify the Existing Record*

Under the circumstances, the Court may take evidence, but only such evidence as the Court determines is necessary to review the basis of the administrative decision. Since a substantial portion of the record exists as written evidence considered by the hearing officer, the Court may consider evidence relevant to understanding or interpreting that documentation. The Utah Supreme Court directed trial courts to do so when the administrative record is incomplete. *Xanthos v. Board of Adjustment of Salt Lake City*² overturned a district court's decision to conduct a *de novo* hearing on an issue that had already been determined by an administrative body. In *Xanthos*, no transcript of the local board of adjustment's hearing existed, so the trial judge conducted a *de novo* review of the matter, and considered evidence not considered by the board. *Xanthos*, 685 P 2d at 1034-35. The Supreme Court sharply criticized the judge's action, and held that a review of administrative decisions is limited to determining whether the decision was arbitrary or capricious. *Id.*³ Because the hearing had not been recorded, the trial court could have taken additional evidence, but only what was relevant to the issues considered by the board.

Since there is no record of the proceedings, due process would be denied if the district court could not get at the facts. Therefore, the court must be allowed to take its own evidence and need not necessarily be limited to the evidence presented before

² 685 P 2d 1032 (Utah 1984)

³ Although *Xanthos* was a review of a zoning decision issued by a board of adjustment, the analysis is applicable to all administrative decisions. See *Xanthos*, 685 P 2d at 1034.

the Board of Adjustment *This does not mean that the hearing in the district court should be a retrial on the merits, or that the district court can substitute its judgment for that of the Board.*

Therefore, it follows that the role of the district court in reviewing the decision is to determine whether the action taken was so unreasonable as to be arbitrary and capricious. In order to make that determination, the district court may take additional evidence, but *it must be relevant to the issues that were raised and considered*

Id (emphasis added, citations omitted)

In addition, the Utah Supreme Court criticized the trial judge for substituting his judgment and views for that of the board

[I]t does not matter whether the judge agrees or disagrees with the rationale of the [administrative body] or the policy grounds upon which a decision is based. It does not lie within the prerogative of the trial court to substitute its judgment of that of the [administrative body] where the record discloses a reasonable basis for the decision

Xanthos, 685 P 2d at 1035

In this matter, a substantial portion of the record exists in the form of written material submitted to the hearing officer. The court may not conduct a retrial on the merits, but may take evidence that helps interpret the material considered by the hearing officer that is in the record. In addition, the record also shows the individuals who offered testimony, including the Chief Building Official, and the independent consultant who both inspected the alleged violations. Those individuals may be questioned about the reports they submitted, along with their observations. Thus, the administrative record can be supplemented so that the Court understands the basis of the hearing officer's decision, and determine whether the decision is arbitrary and capricious. A *de novo* hearing is not permitted, and Petitioner's Request must be denied

B. The Court has Discretion to Remand the Matter Back to the Hearing Officer.

Since the Court has authority to take additional evidence to clarify the administrative decision, the Court also has discretion to remand the matter back to the hearing officer. It is well within the Court's power to remand with instructions that the hearing focus on issues necessary to clarify the material in the existing record. Remand would provide a more complete record for the Court's review.

It is proper to remand a case to the [administrative] agency when the record is incomplete. For example, if the record does not contain a transcript of hearings held before the agency the case should be remanded to the agency with instructions to reconstruct, if possible, the record of the hearings originally heard before it. . . .

It is necessary for a court to remand to the [administrative] agency for the making of a more complete record where the administrative record is inadequate or incomplete, . . . and is an advisable procedure even in cases where the court could conduct a de novo trial.

2 AM. JUR. 2D *Administrative Law* § 631 (1994).

As has been stated, a substantial portion of the record exists in this matter, and so the hearing could be easily reconstructed. The Court could also instruct the hearing officer to focus only on those issues from the existing record which need clarification. In this manner, a complete record could be formed and reviewed. Furthermore, the hearing officer has expertise with the Uniform Building Code, which the Petitioner allegedly violated. Remand is therefore advisable, not only to complete the record, but also take advantage of the hearing officer's knowledge.

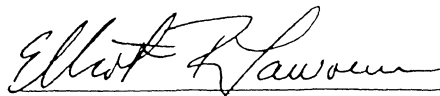
CONCLUSION

To conclude, Petitioner's Request for Hearing *De Novo* must be denied. In the first place, no such hearing is authorized. The Court's review is limited to the record of the administrative proceedings, and there is no provision for a *de novo* review. See West Valley City Municipal Code, § 10-2-601. Second, the record is adequate to review the hearing officer's decision. While the hearing was not successfully recorded, the written documents that constitute the existing record are sufficient to determine whether or not the hearing officer's decision was arbitrary or capricious.

Third, if the Court determines that additional evidence is necessary to clarify what is in the record, additional evidence may be taken, but only what is relevant to the issues that were considered by the hearing officer. A retrial on the merits is not permitted, and the Court may not substitute its judgment for the hearing officer's. *Xanthos*, 685 P.2d at 1034-35. Finally, since the Court may take additional evidence to clarify the record, it has discretion to remand the matter back to the hearing officer to reconstruct the record as far as possible. See 2 AM. JUR. 2D *Administrative Law* § 631. The Court may also direct that the hearing officer focus only on issues for which additional information is required. Remand is advisable, not only to complete the record, but also to take advantage of the hearing officer's expertise in the applicable codes which are at issue in this matter.

For these reasons, Petitioner's Request for Hearing *De Novo* should be denied.

RESPECTFULLY SUBMITTED this 15th day of March, 1999


ELLIOT R. LAWRENCE
Assistant City Attorney

CERTIFICATE OF MAILING

This certifies that a copy of the foregoing Memorandum in Opposition to Petitioner's Request for Hearing *De Novo* was mailed to the following address:

Brett M. Hanna
Weiss Berrett Petty L.L.C.
Key Bank Tower, Suite 530
50 South Main St.
Salt Lake City, Utah 84144

DATED this 15th day of March, 1999

A handwritten signature in cursive script, reading "Elliot R. Lawrence", is written over a horizontal line.

EXHIBIT I:
Decision, West Valley City v. Roberts.

MAR 19 1999

THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

West Valley City,
a Utah municipal corporation,

Respondant,

vs

Greg Roberts and Roberts Roofing Inc.,

Petitioner.

RULING

Case #990101244

Judge Ann Boyden

On February 8, 1999, the petitioner petitioned this Court to review the January 13, 1999, decision of Administrative Hearing Officer, Phil Roberts, in the above case.

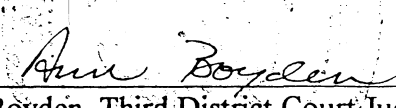
In pursuing his appeal, petitioner discovered there was no record of the proceedings before the Administrative Hearing Officer, and on March 2, 1999, requested of this Court a hearing de novo.

Because section 10-2-601 of the West Valley City Municipal Code limits and restricts this Court's review to the record of the proceedings, and because no other legal basis is provided in petitioner's request, the request for a hearing de novo is DENIED.

Also, because there exists at this time, no record to review, the petition to Review Administrative Hearing Officer's Decision is DISMISSED.

DATED this 17th day of March, 1999.

BY THE COURT:


Ann Boyden, Third District Court Judge

