

1999

# West Valley City v. Greg Roberts and Roberts Roofing Inc., : Reply Brief

Utah Court of Appeals

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Bret M. Hanna; Weiss Berrett Petty; Attorney for Appellant.

Elliot R. Lawrence; West Valley City Attorneys Office; Attorney for Appellee.

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 990349

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**IN THE UTAH COURT OF APPEALS**

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WEST VALLEY CITY,

Plaintiff and Appellee,

vs.

GREG ROBERTS AND ROBERTS  
ROOFING, INC.,

Defendants and Appellants.

**REPLY BRIEF  
OF APPELLANT**

Appellate Court No. 990349-CA

---

**Appeal from the Third District Court Salt Lake County Judge Ann Boyden.**

---

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**FIL** Argument Priority Classification 15  
Utah Court of Appeals

AUG 23 1999

Julia D'Alesandro  
Clerk of the Court

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**IN THE UTAH COURT OF APPEALS**

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WEST VALLEY CITY,

Plaintiff and Appellee,

vs.

GREG ROBERTS AND ROBERTS  
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**Appeal from the Third District Court, Salt Lake County, Judge Ann Boyden.**

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Argument Priority Classification - 15

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## **REPLY STATEMENT OF FACTS**

1. The Petition to Review Administrative Hearing Officer's Decision specifically sets forth the bases upon which Greg Roberts and Roberts Roofing, Inc., claim that the decision of the Administrative Hearing Officer was arbitrary, capricious, or illegal. The bases derive from due process violations and arbitrary and capricious decisions made by the Administrative Hearing Officer and include:

- a. The Notice of Violation issued by West Valley City which initiated the Administrative Code Enforcement Action did not set forth the specific alleged Uniform Building Code violations for which West Valley City sought to impose significant fines upon Greg Roberts and Roberts Roofing, Inc., such that they could prepare their defense and they were not advised of the specific allegations or code violations until the Administrative Code Enforcement Order was issued.
- b. The Notice of Violation did not adequately advise Greg Roberts and Roberts Roofing, Inc., of their rights to obtain information necessary to respond to the alleged violations at the Administrative Hearing.
- c. Greg Roberts and Roberts Roofing, Inc., were not given sufficient time or opportunity to inspect the subject roof or have

an independent expert of their choosing inspect the roof so that they could adequately prepare a defense or response to the violations alleged by West Valley City.

- d. West Valley City was timely informed that Greg Roberts and Roberts Roofing, Inc., wished to be represented by counsel at the Administrative Hearing, the coordinator in charge of scheduling the Administrative Hearings was very uncooperative in coordinating schedules such that counsel could appear on behalf of Greg Roberts and Roberts Roofing, Inc., and the Administrative Hearing Officer started the hearing without counsel for Greg Roberts and Roberts Roofing, Inc., being present.
- e. Greg Roberts and Roberts Roofing, Inc., were not advised that despite their choice to exercise their right to request an Administrative Hearing and filing their request for same in a timely manner, the fines West Valley City wished to impose upon them would continue to accrue if they did not comply with the requirements set forth in the Notice of Violation, even though the date of compliance was before the date of the Administrative Hearing.

- f. Greg Roberts and Roberts Roofing, Inc., were not adequately advised of their right to appeal 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 Greg Roberts and Roberts Roofing, Inc., were informed that they were required to initiate the review process using forms prepared and maintained by West Valley City and only upon receipt of the Petition to Review were Greg Roberts and Roberts Roofing, Inc., given a basic information sheet which describes the Ordinance Review Process.
- 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.
- h. 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 and Greg Roberts and Roberts Roofing, Inc., set forth specific reasons why the interpretation



of the definition of “repair” was contrary to the evidence presented at the Administrative Code Hearing.

(Court Record - Pages 1 - 4 and Addendum - Exhibit “A”)

2. The Third District Court, by and through Judge Ann Boyden, did not take any action on the Petition to Review Administrative Hearing Officer’s Decision or the Request for Hearing *De Novo* because there is no record to review and the text of the Ruling specifically states this is the basis of the Ruling. (Court Record - Pages 20 - 21 and Addendum - Exhibit “B”)

3. West Valley City admits that pursuant to its own ordinances, a tape recorder was set up to record the Administrative Code Enforcement Hearing. (Brief of Appellee, Statement of the Case, Paragraph 11)

4. West Valley City admits that its taping equipment failed and that there is no record of the Administrative Code Enforcement Hearing. (Brief of Appellee, Statement of the Case, Paragraph 16)

### **ARGUMENT**

#### **I. GREG ROBERTS AND ROBERTS ROOFING, INC.’S DUE PROCESS RIGHTS WERE NOT PRESERVED BECAUSE ALTHOUGH WEST VALLEY CITY CLAIMS TO HAVE FOLLOWED THE PROCEDURES ESTABLISHED IN ITS ORDINANCES, WEST VALLEY CITY STILL FAILED TO MAINTAIN AN ADEQUATE RECORD OF THE ADMINISTRATIVE CODE ENFORCEMENT HEARING.**

In its argument, West Valley City spends a fair amount of time arguing that it had the

authority to conduct the Administrative Code Enforcement Hearing and that it followed the procedures set forth in its ordinances. Greg Roberts and Roberts Roofing, Inc., have not and do not contend that West Valley City does not have the specific authority to regulate building construction and repair, or that it did not have the authority to conduct the Administrative Code Enforcement Hearing. However, Greg Roberts and Roberts Roofing, Inc., have always contended and continue to contend that West Valley City assumed the obligation for maintaining a record of the hearing and that its admitted failure to do so has deprived Greg Roberts and Roberts Roofing, Inc., of any meaningful review by the Third District Court, which review is granted pursuant to the West Valley City Administrative Code.

West Valley City also cites *Tolman v. Salt Lake County Attorney*, 818 P.2d 23 (Utah Ct. App. 1991), to support its contention that persons appearing before an administrative agency have a due process right to receive a fair trial in front of a fair tribunal. Greg Roberts and Roberts Roofing, Inc., agree with this contention. However, Greg Roberts and Roberts Roofing, Inc., come to the opposite conclusion as to whether that standard was met in this case.

West Valley City claims that the existing record shows that Greg Roberts and Roberts Roofing, Inc., were given a fair trial in front of a fair tribunal, that they were allowed to present evidence, and that they had access to the courts for review.<sup>1</sup> This is only partly true.

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<sup>1</sup> West Valley City includes the documentary evidence that it claims comprises an adequate record as Exhibit D to its Brief. A cursory review of this “record” demonstrates why it

Greg Roberts and Roberts Roofing, Inc., were not advised of the specific alleged code violations until the Administrative Code Enforcement Order was issued sometime after the Hearing was completed. As such, Greg Roberts and Roberts Roofing, Inc., were not properly advised of the alleged violation so that they could prepare an adequate defense. Moreover, the hearing was started and evidence was taken before counsel for Greg Roberts and Roberts Roofing, Inc., could appear at the hearing despite the fact that West Valley City was aware that Greg Roberts and Roberts Roofing, Inc., wanted to have counsel present, had spoken with counsel on numerous occasions regarding scheduling, and were specifically aware that counsel for Greg Roberts and Roberts Roofing, Inc., had a scheduling conflict and most likely could not be there at the scheduled start time for the hearing. This notwithstanding, West Valley City decided to start the hearing at the time selected by West Valley City despite the fact that counsel for Greg Roberts and Roberts Roofing, Inc., was not present. Moreover, since West Valley City's taping system failed, there is no record of what oral testimony was provided by witnesses for either party to the hearing, either before

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is insufficient. For instance, it includes a report from a purported expert about the claimed deficiencies with the roof. But, Greg Roberts and Roberts Roofing, Inc., were not given a copy of the report prior to the Administrative Code Enforcement Hearing, they were not advised of the specific Uniform Building Violations before the Administrative Code Enforcement Hearing, nor were they given an opportunity to have an expert of their choosing inspect the roof before the Administrative Code Enforcement Hearing. As such, Greg Roberts and Roberts Roofing, Inc., were forced to go into the Administrative Code Enforcement Hearing blind.

Exhibit E to West Valley City's Brief is comprised of photographs which it also claims is part of a "sufficient" record. However, the photographs do not speak for themselves and all verbal explanation, interpretation, discussion and, most importantly, cross-examination has been lost because West Valley City's taping equipment failed.

counsel for Greg Roberts and Roberts Roofing, Inc., was present, or after. This is particularly critical in light of the fact that most, if not all, of the oral testimony provided the foundation and interpretation of the documentary evidence supplied by West Valley City.

Despite this, West Valley City contends that the existing record is sufficient and that the Third District Court, by and through Judge Boyden, had ample basis to deny the Petition for Review and the Request for Hearing *De Novo* because of the documentary evidence in the record. This not only flies in the face of common sense, it is contrary to the express Ruling of Judge Boyden. That is, Judge Boyden specifically indicated in her Ruling that the Petition for Review and the Request for Hearing *De Novo* were denied because she had no record upon which to make any determination.

In light of the foregoing, Greg Roberts and Robert Roofing, Inc., have been put in permanent limbo. This is particularly true since Greg Roberts and Roberts Roofing, Inc., submitted a request to West Valley City to make another record such that it could be properly reviewed if necessary, which request was never met with any response. This appeal process was the only option available to Greg Roberts and Roberts Roofing, Inc., to remove them from the permanent limbo created by West Valley City.

In this regard, the *Tolman* court stated “[a]s a general rule, ‘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* at 28, citing *Bunnell v. Industrial Commission*, 740 P.2d 1331 (Utah 1987). The fact that Greg Roberts

and Roberts Roofing, Inc., were not given a fair trial in front of a fair tribunal is highlighted by the fact that they were not notified of the alleged violations, that the hearing was begun without representation by counsel, and that their right to an appeal of the Administrative Code Enforcement Order was thwarted by West Valley City's failure to maintain a record such that the Third District Court had a record to review.

West Valley City next argues that *Tolman* and *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), support the argument that Greg Roberts and Roberts Roofing, Inc., are not entitled to any further review. This is not a fair reading of these cases. In *Tolman*, Mr. Tolman sought a reversal of an Administrative Decision by the Salt Lake County Career Services Counsel. The Career Services Counsel upheld the termination of Tolman's job with the Salt Lake County Attorney's Office and Mr. Tolman petitioned the District Court for an extraordinary writ. The District Court refused to grant Mr. Tolman any relief from the termination decision made by the Career Services Counsel. The Court of Appeals concluded that Mr. Tolman was entitled to a new hearing based on the factual history of the matter. In addressing Tolman's claims, the Court noted in pertinent as follows:

In the present case, Tolman does not challenge any of the CSC's findings of the basic facts. He does challenge the reasonableness of the CSC's conclusions that the evidence supports the charges and that his dismissal was warranted. Tolman also urges that the CSC abused its discretion by not providing a hearing that satisfies the minimal procedural requirements of due process. We are unable to address the reasonableness of the CSC's decision because of the lack of an adequate record.

*Tolman* at 27.

In a footnote, the Court referred to *Xanthos, supra*, regarding the questions of whether there was a sufficient record maintained during the hearing held by the Career Services Counsel.

It appears the tape was typically turned off when there was an objection. The issue would apparently be discussed off-the-record until a decision was made and then the tape would be turned on and the ruling made without any explanation. This practice, combined with the deficiencies in the CSC's findings and conclusions, has made it impossible for us to determine whether the CSC's decision were reasonable. Since we grant Tolman a new hearing before the CSC based upon the partial record before us, it is not necessary that we remand this case to the district court for the development of a reviewable record.

*Tolman*, Footnote 5.

In addition to the lack of adequate record, the Court held that the admission of hearsay evidence without an opportunity to cross-examine and the failure of the Community Services Counsel to address Tolman's legal claims deprived Tolman of his procedural due process rights and the matter was remanded to the Career Services Counsel to provide Tolman with a new hearing. This is one of the remedies sought in this case.

In *Xanthos*, Mr. Xanthos appealed from a judgment of the District Court which reversed a denial of a zoning variance by the Salt Lake City Board of Adjustment. After the Department of Building and Housing Services provided Mr. Xanthos with a notice that properties he owned were not in compliance with city zoning ordinances, he applied to the Salt Lake City Board of Adjustment for a variance to allow a non-conforming use of the

property. Following the hearing, the Board of Adjustment denied the requested variance. Mr. Xanthos then appealed to the District Court for judicial review of the Board's decision. After a bench trial in which the judge took evidence in addition to that obtained by the Board and after considering all of the evidence *de novo*, the court reversed the Board of Adjustment's decision. The Court cited *Denver & Rio Grand Western Railroad Company v. Central Weber Sewer Improvement District* 287 P.2d 884 (Utah 1955), and stated:

'[t]he nature and extent of the review depends on what happened below reflected by a true record of the proceedings, viewed in the light of accepted due process requirements.' The Court went on to say that if the hearing had proceeded in accordance with due process requirements, the reviewing court could look only to the record, but where it had not or where there was nothing to review, the reviewing court must be allowed to get at the facts.

*Xanthos* at 1034.

The *Xanthos* court then went on to say that since there was no record of the proceedings held before the Board of Adjustments, due process would be denied if the District Court could not get at the facts. As such, it was determined that the Court should be allowed to take its own evidence and need not necessarily be limited to the evidence before the Board of Adjustments. The court noted, however, that this Ruling did not dictate that the District Court trial should be a re-trial on the merits, or that the District Court could substitute its judgment for the Board of Adjustments. The Court then applied this standard to the *Xanthos* facts and determined that the Board of Adjustment's action was not arbitrary or capricious because there was a reasonable basis for its ruling based on the evidence before

the District Court.

In this case, however, the opposite is true. At best, the Third District Court had nothing other than the documents and photographs produced by West Valley City to consider. This notwithstanding, the Third District Court stated that it had no record upon which to consider either the Petition for Review or the Request for Hearing *De Novo* and, as such, took no action. As indicated, this put Greg Roberts and Roberts Roofing, Inc., in a permanent state of limbo. The Administrative Code Enforcement Order is still in effect, but Greg Roberts and Roberts Roofing, Inc., have had no substantive review whatsoever of that Order despite the fact that it is entitled to that review pursuant to the West Valley City Administrative Code. Accordingly, the standards set forth in both *Tolman* and *Xanthos* have been met and Greg Roberts and Roberts Roofing, Inc., is entitled to either a remand to the Administrative Code Enforcement Hearing level or a Hearing *De Novo* before the Third District Court.

**II. THE EXISTING RECORD DOES NOT ADEQUATELY SHOW THAT THE HEARING OFFICER'S DECISION WAS NOT ARBITRARY OR CAPRICIOUS.**

As indicated in the foregoing analysis, there is simply not enough evidence in the record for the Third District Court to determine whether the Administrative Enforcement Hearing Officer's Decision was arbitrary or capricious. This is because there is nothing other than some documents and photographs in the record. But there is no recorded testimony to provide the foundation and interpretation of those documents and photographs.



The Administrative Code Enforcement Hearing lasted for approximately five and a half hours. Moreover, a number of witnesses provided testimony and there was extensive cross-examination of the witnesses. None of that was available for the Third District Court to review. That is probably why the Third District Court determined on its own that there was an insufficient record to provide any review of the Administrative Code Enforcement Order. As such, it seems odd that West Valley City now argues that the record was sufficient for the Third District Court to review the matter when Judge Boyden did not think that it was sufficient.

**III. GREG ROBERTS AND ROBERTS ROOFING, INC.  
HAVE CONSISTENTLY REQUESTED RELIEF IN THE  
ALTERNATIVE.**

West Valley City argues that if the record is found to be too incomplete for meaningful review, the proper approach is to clarify the existing record, rather than conduct a new trial. This argument is without merit for several reasons. First, Judge Boyden determined that there was an insufficient record upon which she could review this matter on the merits. Second, West Valley City now claims that the proper approach is to clarify the existing record, but every request prior to the filing of this Appeal to start the Administrative Code Enforcement Hearing process anew, has met with no response whatsoever from West Valley City. Since Judge Boyden's Ruling placed Greg Roberts and Roberts Roofing, Inc., in permanent limbo, they have consistently requested relief in the alternative. That is, to have the matter remanded for a new Administrative Code Enforcement Hearing such that

an appropriate record can be developed or, in the alternative, a Hearing *De Novo* in front of the District Court so that Greg Roberts and Roberts Roofing, Inc., can get a full and fair consideration of this matter on the merits. Either option would accomplish this goal and the ruling of *Xanthos* not only does not preclude a Hearing *De Novo* in this case, its holding dictates that a Hearing *De Novo* is an appropriate remedy in this case.

**IV. THE ISSUE OF WHETHER GREG ROBERTS AND ROBERTS ROOFING, INC., ARE ENTITLED TO COSTS IS RIPE FOR DECISION AND THEY ARE ENTITLED TO SUCH COSTS.**

West Valley City claims that the matter is not ripe for decision because the argument was phrased that if the matter is remanded, the City should bear the costs for a second hearing. The cost issue is ripe for decision because the cost decision cannot be made until there is a determination of whether a remand is appropriate and that is the issue before this Court. Also, West Valley City claims that Greg Roberts and Roberts Roofing, Inc., raised this issue for the first time on appeal and because it was not raised before the trial court, it cannot be considered at this time. However, as the record reflects, nothing was considered by the Third District Court. Therefore, it could not be raised before the trial court and this argument is without merit.

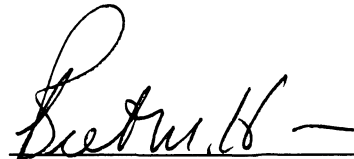
**CONCLUSION**

Appellants seek a ruling declaring that West Valley City's failure to maintain a record of the Administrative Code Enforcement Hearing was a due process violation which deprived appellants of their right for judicial review of the Administrative Code

Enforcement Order entered by the Administrative Hearing Officer and ordering that the Third District Court conduct a Hearing *De Novo* on the alleged Uniform Building Code violations or, in the alternative, remanding the matter for another Administrative Hearing to be conducted at West Valley City's expense, including appellant's attorney's fees, insofar as West Valley City's failure to maintain a record of the initial proceeding resulted in the deprivation of appellant's due process and statutory rights to judicial review of the Administrative Code Enforcement Order.

DATED this 23<sup>rd</sup> day of August, 1999.

WEISS BERRETT PETTY, L.C.



BRET M. HANNA  
Attorney for Defendants and Appellants  
Greg Roberts and Roberts Roofing, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of August, 1999, I mailed, postage prepaid, 2 true and correct copies of the foregoing to the following:

Elliot R. Lawrence  
WEST VALLEY CITY ATTORNEYS OFFICE  
3600 Constitutional Boulevard  
West Valley City, Utah 84119



## **ADDENDUM**

- A. Petition to Review Administrative Hearing Officer's Decision.
- B. Ruling

## Exhibit A

FILED  
THIRD DISTRICT COURT

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WEST VALLEY DEPARTMENT

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**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 Bryden

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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 question 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

Code viol  
at 1-30-00



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.

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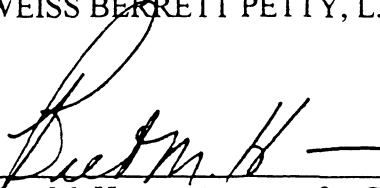
Petitioner **does** request oral argument for this Appeal.

Dated this 21 day of February, 1999.

  
\_\_\_\_\_  
Greg Robert, Roberts Roofing, Inc.

Dated this 21 day of February, 1999.

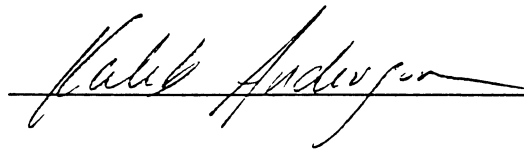
WEISS BERRETT PETTY, L.C.

  
\_\_\_\_\_  
Bret M. Hanna, Attorney for Greg Roberts

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> 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 B

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.

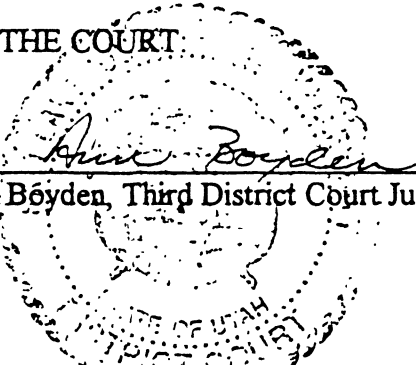
In pursuing his appeal, petitioner discovered there was no record of the proceedings before the Administrative Hearing Officer, and on March 2, 1999, requested of this Court a hearing de novo.

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

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling to Elliot R Lawrence, West Valley City Attorney's Office, 3600 Constitution Blvd, WVC UT 84119 and to Bret M Hanna, Attorney for Petitioner, Key Bank Tower, Suite 530, 50 South Main Street, SLC UT 84144.

DATED this 17th day of March, 1999.



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