

1999

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

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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## Recommended Citation

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**UTAH COURT OF APPEALS  
BRIEF**

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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.

**BRIEF OF APPELLANT**

Appellate Court No. 990349-CA

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

---

Elliot R. Lawrence  
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Greg Roberts and Roberts Roofing, Inc.

Argument Priority Classification - 15

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Counsel withdrew same day

UTAH COURT OF APPEALS  
BRIEF

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**FILED**

Utah Court of Appeals

AUG 26 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  
ROOFING, INC.,

Defendants and Appellants.

**NOTICE OF ATTORNEY'S LIEN**

Appellate Court No. 990349-CA

---

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

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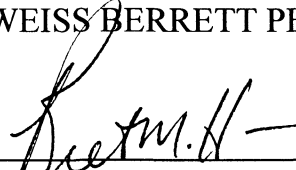
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Counsel for Defendants and Appellants  
Greg Roberts and Roberts Roofing, Inc.

Argument Priority Classification - 15

Pursuant to Section 78-51-41, Utah Code Ann., Bret M. Hanna and Weiss Berrett Petty, L.C., hereby claim a lien in the amount of FIVE THOUSAND SEVENTY DOLLARS AND THIRTY-THREE CENTS (\$5,070.33), for attorney's fees, costs and expenses incurred on behalf of defendant/appellant Greg Roberts and Roberts Roofing, Inc., in the above-captioned action.

DATED this 26th day of August, 1999.

WEISS BERRETT PETTY, L.C.

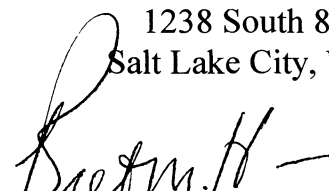
  
\_\_\_\_\_  
BRET M. HANNA

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of August, 1999, I mailed, postage prepaid, a true and correct copy of the foregoing to the following:

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

Greg Roberts  
ROBERTS ROOFING, INC.  
1238 South 800 West  
Salt Lake City, Utah 84104

  
\_\_\_\_\_

## **TABLE OF AUTHORITIES**

### **Cases Cited**

<i>West v. Thompson Newspapers</i> , 872 P.2d 999 (Utah 1994) . . . . .	4, 5
<i>Springville Citizens for a Better Community v. The City of Springville</i> , 365 Utah Adv. Rep. 23 (Utah 1999) . . . . .	16, 21

### **Constitutional Provisions**

The Fifth Amendment of the United States Constitution . . . . .	5, 10, 12, 15
Fourteenth Amendment of the United States Constitution, Section 1 . . . . .	5, 10, 12, 15
Article I, Section 7 of the Utah Constitution . . . . .	6, 10, 12, 15

### **Statutes**

Sections 10-2-601(1) and (3) of the West Valley City Municipal Code . . . . .	6, 9, 11, 12, 14, 15
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## **JURISDICTION**

The Utah Court of Appeals has jurisdiction in this matter pursuant to Section 78-2-2(4) of the Utah Code.

## **STATEMENT OF ISSUES**

1. Whether West Valley City's failure to maintain a record is a due process violation which has deprived Greg Roberts and Roberts Roofing, Inc., of their right for judicial review of the Administrative Code Enforcement Order entered in this matter. This matter is analogous to an appeal from a grant of summary judgment or other ruling on a question of law. As such, the Third District Court's Ruling should be reviewed for correctness. *West v. Thomson Newspapers*, 872 P. 2d 999 (Utah 1994).

2. Whether the Third District Court's failure to rule on the Petition to Review Administrative Hearing Officer's Decision, to grant Greg Roberts and Roberts Roofing, Inc.'s Request for a Hearing *De Novo*, or to remand the matter for another Administrative Hearing, is a due process violation which has deprived Greg Roberts and Roberts Roofing, Inc., of their right for judicial review of the Administrative Code Enforcement Order entered in this matter. This matter is analogous to an appeal from a grant of summary judgment or other ruling on a question of law. As such, the Third District Court's Ruling should be reviewed for correctness. *West v. Thomson Newspapers*, 872 P. 2d 999 (Utah 1994).



3. Whether West Valley City should be required to bear the costs incurred by Appellants if this matter is remanded for a second Administrative Hearing, insofar as West Valley City failed to maintain a record of the first proceeding which deprived Greg Roberts and Roberts Roofing Inc., of their right to judicial review of the Administrative Code Enforcement Order entered in this matter. This matter is analogous to an appeal from a grant of summary judgment or other ruling on a question of law. As such, the Third District Court's Ruling should be reviewed for correctness. *West v. Thomson Newspapers*, 872 P. 2d 999 (Utah 1994).

**DETERMINATIVE CONSTITUTIONAL PROVISIONS,**  
**STATUTES, ORDINANCES, AND RULES**

**The Fifth Amendment of the United States Constitution:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Fourteenth Amendment of the United States Constitution, Section 1:** All persons born or naturalized in the United States, and subject to the jurisdictions thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

**Article I, Section 7 of the Utah Constitution:** No person shall be deprived of life, liberty or property, without due process of law.

**Sections 10-2-601(1) and (3) of the West Valley City Municipal Code:** (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 thirty days after the decision is rendered. (3) The Court's 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.

### **STATEMENT OF THE CASE**

**Nature of the Case:** This appeal is from the Third District Court, State of Utah, Salt Lake County, West Valley Department. Specifically, the appeal is from a Ruling by the Honorable Ann Boyden, dated March 17, 1999.

**Course of Proceedings:** On December 8, 1998, West Valley City issued a Notice of Violation to Greg Roberts and Roberts Roofing, Inc., claiming that the roofing repair work performed at a residence located at 3970 South 2665 West, West Valley City, Utah, failed to conform to the Uniform Building Code in several respects. Greg Roberts and

Roberts Roofing, Inc., timely requested a hearing in accordance with the directions included with the Notice of Violation. On January 13, 1999, Phil Roberts, on behalf of West Valley City, conducted an informal Administrative Code Enforcement Hearing regarding the alleged Uniform Building Code violations pertaining to the roof installed by Greg Roberts and Roberts Roofing, Inc., at the property located at 3970 South 2665 West, West Valley City, Utah. On February 1, 1999, Administrative Hearing Officer Phil Roberts issued an Administrative Code Enforcement Order claiming that violations of the Uniform Building Code exist with respect to the subject roof, ordering that the property be brought into compliance by June 1, 1999, and ordering that if said property is not brought into compliance by said date, civil penalties will accrue. Greg Roberts and Roberts Roofing, Inc., as Petitioners, timely filed a Petition to Review Administrative Hearing Officer's Decision. Petitioners Greg Roberts and Roberts Roofing, Inc., then attempted to make arrangements to have the tapes which served as the record of the Administrative Code Enforcement transcribed and transmitted to the Third District Court in accordance with requirements set forth by West Valley City. Petitioners Greg Roberts and Roberts Roofing, Inc., were then informed by Candice Gleed, the Paralegal in charge of the Administrative Code Enforcement Hearing Program, that the tapes from the Administrative Code Enforcement Hearing are blank and that no record of the Hearing exists. Petitioners Greg Roberts and Roberts Roofing, Inc., then requested that the Third District Court schedule a Hearing *De Novo* because at that point, a Hearing *De Novo* was the only viable remedy

available to Petitioners. On March 17, 1999, the Third District Court, by and through the Honorable Ann Boyden, denied the request for *Hearing De Novo* because Section 10-2-601 of the West Valley Municipal Code restricts the Court's review to the record of the proceedings and there is no record of the proceedings. The Court also dismissed Greg Roberts and Roberts Roofing, Inc.'s Petition for Review of Administrative Hearing Officer's Decision. Counsel for Greg Roberts and Roberts Roofing, Inc., then wrote to the West Valley City Attorney and requested that West Valley City either reschedule an Administrative Enforcement Hearing in order that a proper record could be made or that West Valley City rescind the Administrative Enforcement Order. Counsel for Greg Roberts and Roberts Roofing, Inc., never received any response to this correspondence.

**Disposition at Trial Court:** The Third District Court, by and through the Honorable Ann Boyden, denied Petitioners Greg Roberts and Roberts Roofing, Inc.'s request for *Hearing De Novo* and dismissed their Petition for Review of Administrative Hearing Officer's Decision.

### **STATEMENT OF FACTS**

1. On December 8, 1998, West Valley City issued a Notice of Violation to Greg Roberts and Roberts Roofing, Inc., claiming that the roofing repair work performed at a residence located at 3970 South 2665 West, West Valley City, Utah, failed to conform to the Uniform Building Code in several respects. (Addendum - Exhibit "A")

2. Greg Roberts and Roberts Roofing, Inc., timely requested a hearing in

accordance with the directions included with the Notice of Violation. (Addendum - Exhibit "B")

3. West Valley City issued a Notice of Hearing on December 23, 1998, setting the hearing for Monday, January 4, 1999, at 6:00 p.m. (Addendum - Exhibit "C")

4. West Valley City issued a second Notice of Hearing on January 5, 1999, changing the date and time of the hearing to Wednesday, January 13, 1999, at 5:30 p.m. (Addendum - Exhibit "D")

5. On January 13, 1999, Phil Roberts, on behalf of West Valley City, conducted an informal Administrative Code Enforcement Hearing regarding the alleged Uniform Building Code violations pertaining to the roof system installed by Greg Roberts and Roberts Roofing, Inc., at the property located at 3970 South 2665 West, West Valley City, Utah.

6. West Valley City had responsibility for maintaining a record of the Administrative Code Enforcement Hearing.

7. On February 1, 1999, the Administrative Hearing Officer, Phil Roberts, issued an Administrative Code Enforcement Order claiming that violations of the Uniform Building Code exist with respect to the subject roof, ordering that the property be brought into compliance by June 1, 1999, and ordering that if said property is not brought into compliance by said date, civil penalties will accrue. (Addendum - Exhibit "E")

8. Pursuant to Section 10-2-601, West Valley City Municipal Code, Greg Roberts

and Roberts Roofing Inc., as Petitioners, timely filed a Petition to Review Administrative Hearing Officer's Decision. The Petition, filed in the Third District Court in and for Salt Lake County, West Valley Department, alleges that the decision of the Administrative Hearing Officer was arbitrary, capricious, or illegal, because the procedures employed by and the actions taken by West Valley City and 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, and that the decision rendered by the Administrative Hearing Officer was legally and factually incorrect. Petitioners sought oral argument. (Court Record - Page 1)

9. Respondent West Valley City filed an Answer to Petition for Review which indicated that a record, including a recording of the hearing, exists and that Petitioners were responsible for preparing a transcript and transmitting a copy of the transcript to the Court for use in the review of the matter. (Court Record - Page 6)

10. Counsel for Petitioners Greg Robert and Roberts Roofing, Inc., then attempted to make arrangements to have the tapes which served as the record of the Administrative Code Enforcement Hearing transcribed and transmitted to the Third District Court in accordance with requirements set forth by West Valley City. An Affidavit summarizing this situation was filed with the Third Judicial District Court by Bret M. Hanna, counsel for Petitioners Greg Robert and Roberts Roofing, Inc. (Court Record - Page 10)

11. Petitioners Greg Roberts and Roberts Roofing Inc., were then informed by

Candice Gleed, the Paralegal in charge of the Administrative Code Enforcement Hearing Program, that the tapes from the Administrative Code Enforcement Hearing are blank and that no record of the Hearing exists. An Affidavit summarizing this situation was filed with the Third District Court by Bret M. Hanna, counsel for Petitioners Greg Robert and Roberts Roofing, Inc. (Court Record - Page 10)

12. On March 2, 1999, Petitioners Greg Roberts and Roberts Roofing Inc., requested that the Third District Court schedule a Hearing *De Novo* because at that point, a Hearing *De Novo* was the only viable remedy or appeal available to Petitioner. (Court Record - Page 15)

13. On March 17, 1999, the Third District Court, by and through the Honorable Ann Boyden, denied the Request for Hearing *De Novo* because Section 10-2-601 of the West Valley City Municipal Code restricts the court's review to the record of the proceedings and there is no record of the proceedings. The Court also dismissed Greg Roberts and Roberts Roofing Inc.'s Petition for Review of Administrative Hearing Officer's Decision. (Court Record - 20)

14. On March 29, 1999, counsel for Greg Roberts and Roberts Roofing Inc., wrote to the West Valley City Attorney and requested that West Valley City either reschedule an Administrative Enforcement Hearing in order that a proper record can be made or that West Valley City rescind the Administrative Code Enforcement Order. Counsel for Greg Roberts and Roberts Roofing never received any response to this correspondence. (Addendum -

Exhibit “F”)

15. On April 15, 1999, Greg Roberts and Roberts Roofing, Inc. timely filed their Notice of Appeal. (Court Record - 31)

### **SUMMARY OF ARGUMENT**

The procedures employed by and the actions taken by West Valley City and the Third District Court violate 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. These due process violations have deprived appellants of any meaningful appeal or review of the Administrative Code Enforcement Order and the actions taken will deprive appellants of property without due process. This situation has developed despite the protections of the United States Constitution, the Utah Constitution and provisions of the West Valley City Municipal Code.

### **ARGUMENT**

#### **I. WEST VALLEY CITY’S FAILURE TO MAINTAIN A RECORD IS A DUE PROCESS VIOLATION WHICH DEPRIVED GREG ROBERTS AND ROBERTS ROOFING INC., OF THEIR RIGHT TO JUDICIAL REVIEW OF THE ADMINISTRATIVE CODE ENFORCEMENT ORDER.**

The facts of this matter are uncomplicated and clearly demonstrate that appellants have been denied any meaningful consideration of their rights in this matter and have been denied any review of the actions taken by West Valley City. The result has been a deprivation of appellants’ property rights without due process.



The history is simple: West Valley City issued a Notice of Violation claiming that the roof repairs performed by Greg Roberts and Roberts Roofing, Inc., resulted in seven violations of the Uniform Building Code. Each of the seven alleged violations carry with it a civil fine of \$25.00 per day. The Notice of Violation indicated that Greg Roberts and Roberts Roofing, Inc. had two options: (1) remove the existing roof covering, cricket the roof, re-flash the roof, and install a new built-up roof covering in compliance with the Uniform Building Code, or (2) file a written request for hearing within ten days of the Notice of Violation. In light of the fact that Greg Roberts and Roberts Roofing, Inc., contested the fact that the repairs to the subject roof resulted in any Uniform Building Code violations and in light of the fact that the demanded roof retrofit would be very expensive and would cause a severe financial hardship for Greg Roberts and Roberts Roofing, Inc., Greg Roberts and Roberts Roofing, Inc., exercised option number 2 and filed a written request for the hearing on the alleged Uniform Building Code violations.

Mr. Roberts and Roberts Roofing, Inc., retained counsel and participated in the Administrative Code Enforcement Hearing. The hearing took in excess of five hours and between preparation and participation time, cost Greg Roberts and Roberts Roofing, Inc. a considerable amount of money in attorneys' fees and related expenses. Because of the pre-hearing interaction between Mr. Roberts and the West Valley City Chief Building Official, and because of the events which transpired during the course of the hearing, Greg Roberts and Roberts Roofing, Inc., decided to appeal the Administrative Code Enforcement Order

which dictated that the Uniform Building Code violations existed, that the property had to be in compliance with the Uniform Building Code on or before June 1, 1999, or that Greg Roberts and Roberts Roofing, Inc. would be responsible for civil penalties or \$25.00 per day per violation beginning January 20, 1999, until a Notice of Compliance is issued by the city. The Order also assessed Greg Roberts and Roberts Roofing, Inc., an administrative fee of \$95.00 for exercising his right to have a hearing on the alleged violations. Finally, the Order dictates that Greg Roberts and Roberts Roofing, Inc. are responsible for paying consulting fees incurred by Innovative Roofing Consultants because its principal, Kraig Klossen, was ordered by the Administrative Hearing Officer to oversee the repair work performed by Greg Roberts and Roberts Roofing, Inc. at the subject home.

The appeal of the Administrative Code Enforcement Order was taken in accordance with Section 10-2-601 of the West Valley City Municipal Code, which dictates that appeals must be taken within thirty days and that appeals are limited to a review of the record to determine whether or not the decision was arbitrary, capricious, or illegal. The Petition filed by Greg Robert and Roberts Roofing, Inc., specified the basis for the appeal that the Administrative Code Enforcement Order was based upon determinations that were arbitrary, capricious, and illegal. Greg Roberts and Roberts Roofing, Inc., then attempted to make arrangements to have the record, which West Valley City assumed responsibility for

maintaining,<sup>1</sup> transcribed and transmitted to the Third District Court in accordance with requirements set forth by West Valley City. Upon learning that no record of the Administrative Code Enforcement Hearing was kept by West Valley City, Greg Roberts and Roberts Roofing, Inc., filed a request for a Hearing *De Novo* in order to avoid having to go to the time and expense of repeating the Administrative Code Enforcement Hearing process.

The Third District Court, by and through the Honorable Ann Boyden, however, dismissed the Petition for Appellant Review because there is no record of the Administrative Code Enforcement Hearing and dismissed the Request for Hearing *De Novo* because there is no record and the Court's review is limited to a review of the record by the West Valley City Municipal Code. Greg Roberts and Roberts Roofing, Inc., then determined that they had no option other than to request that West Valley City conduct another Administrative Code Enforcement Hearing. This request, in the form of correspondence directed to the West Valley City attorney, was not even met with the courtesy of a response.

Thus, as it stands, Greg Roberts and Roberts Roofing, Inc., face the cost of replacing the roof system, paying fines of \$175.00 a day (retroactive to January 20, 1999,) because the June 1, 1999, repair deadline was not met, plus the administrative fee and the consulting fees. The repair costs, fines and fees amount to thousands of dollars. This is a significant deprivation of appellant's property without due process in violation of the Fifth and

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<sup>1</sup>In footnote 1 of the Memorandum in Opposition to Petitioner's Request for Hearing *De Novo*, West Valley City admits that the tapes of the hearing are blank and that they do not know why the recorder failed to capture the hearing.

Fourteenth Amendments of the United States Constitution, the due process clause of the Utah Constitution, and the West Valley City Municipal Code.

**II. THE THIRD DISTRICT COURT'S FAILURE TO RULE ON THE PETITION TO REVIEW ADMINISTRATIVE HEARING OFFICER'S DECISION, TO GRANT GREG ROBERTS AND ROBERT'S ROOFING INC.'S REQUEST FOR A HEARING *DE NOVO*, OR TO REMAND THE MATTER FOR ANOTHER ADMINISTRATIVE HEARING, IS A DUE PROCESS VIOLATION WHICH DEPRIVED GREG ROBERTS AND ROBERT'S ROOFING INC., OF THEIR RIGHT TO JUDICIAL REVIEW OF THE ADMINISTRATIVE CODE ENFORCEMENT ORDER.**

The Third District Court's failure to affect any review or make any determination of the appropriateness of the Administrative Code Enforcement Order, or to remand the matter for an another hearing, was also a due process violation. In this regard, appellants could do no more to protect their rights and get a full and fair determination of the appropriateness of the Administrative Code Enforcement Order. The property taken without due process is as described above.

With respect to the ruling of the Third District Court, this case can by analogized to a case recently decided by the Utah Supreme Court. In *Springville Citizens for a Better Community v. The City of Springville*, 365 Utah Adv. Rep. 23 (Utah 1999) (Addendum - Exhibit "G"), citizens of Springville filed suit against the city challenging the City Council's approval of a planned unit development. The citizens alleged that the city's approval of the planned unit development was arbitrary, capricious, and illegal because the city failed to

follow its own ordinances, which under the city's code, are mandatory. The citizens also alleged violations of state statutory requirements and state and federal constitutions. The city moved for summary judgment and the District Court granted it, holding that the city had substantially complied with the ordinances governing approval for the planned unit development.

On appeal, the citizens argued that the summary judgment was improper because the city's decision to approve the planned unit development was arbitrary, capricious, and illegal and this was the issue considered on appeal. After analyzing the facts and circumstances of the approval granted by the city, the Supreme Court ruled that the city's decision to approve the planned unit development was not arbitrary or capricious. However, the Court determined that the city did not properly comply with the ordinances governing planned unit development approval and, therefore, concluded that the city's decision approving the planned unit development was illegal. The Court then determined that although the city's approval was illegal, plaintiffs had to establish that they were prejudiced by the city's non-compliance with its ordinances governing approval. The Court then determined that the District Court summarily dismissed certain claims without analysis and, therefore, the actions could not be reviewed for correctness. Accordingly, the matter was remanded for consideration of whether the citizens were prejudiced by the city's non compliance with its own approval ordinances.

In this case, appellants were entitled to a review by the Third District Court as to

whether the Administrative Code Enforcement Hearing Officer's decision was arbitrary, capricious or illegal. However, because West Valley City failed to maintain a record of the proceedings, this could not happen. Thus, appellants have been denied a meaningful review of the Administrative Code Enforcement Hearing Officer's rulings as set forth in his Order and still faces significant and accruing civil penalties because that Order is still pending. The Third District Court also failed to provide any alternative remedy in the form of a hearing *de novo* to consider the alleged Uniform Building Codes violations. Finally, West Valley City has refused to rescind the Administrative Code Enforcement Order or take any action whatsoever with respect to the matter. Thus, the Ruling issued by the Third District Court is a due process violation that has placed appellants in a no-win situation with a substantial amount of money on the line.

**III. WEST VALLEY CITY SHOULD BE REQUIRED TO BEAR THE COSTS INCURRED BY APPELLANT'S IF THIS MATTER IS REMANDED FOR A SECOND ADMINISTRATIVE HEARING.**

West Valley City's error has resulted in the current situation which has required appellant's to incur significant attorney's fees and related expenses. The initial hearing lasted more than 5 hours. Thereafter, appellants took every step required to obtain a review of the Administrative Code Enforcement Order, but every step taken has been thwarted by West Valley City's admitted failure to maintain a record of the initial hearing. Moreover, West Valley City failed to respond in any way to the offer of appellants to voluntarily start the process over so that a proper record can be made. Now, if the appropriate remedy is

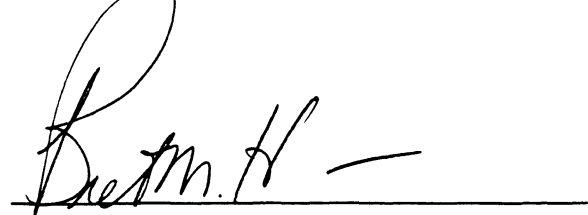
determined to be a remand for another Administrative Code Enforcement Hearing, appellant's should not be punished financially of having to start from square one because of the actions of West Valley City. As such, if the matter is remanded for another Administrative Code Enforcement Hearing, appellant's respectfully request that the remand Order be accompanied by an Order that the hearing be conducted at West Valley City's expense.

### **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 2nd day of July, 1999.

WEISS BERRETT PETTY, L.C.

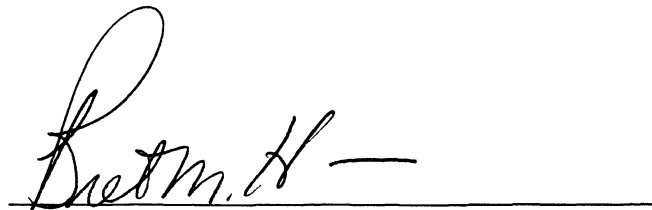
A handwritten signature in black ink, appearing to read "Bret M. Hanna", is written over a horizontal line.

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of July, 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

A handwritten signature in black ink, appearing to read "Bret M. Hanna", is written over a horizontal line.



## **ADDENDUM**

- A. Notice of Violation
- B. Request for Hearing
- C. Notice of Hearing
- D. Notice of Hearing
- E. Administrative Code Enforcement Order
- F. Correspondence from Bret M. Hanna to Elliot R. Lawrence dated March 29, 1999
- G. *Springville Citizens for a Better Community v. The City of Springville*, 365 Utah Adv. Rep. 23 (Utah 1999)

Ann Boyden  
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.

A handwritten signature in cursive script, appearing to read "B. Hanna", is written over a horizontal line.

## Exhibit A



## 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) Roof ponds water in large area on main roof due to lack of adequate roof slope. (\$25.00/day)
  - 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)

- 5) There is no counterflashing where the carport runs into the wall of the main house (\$25.00/day)
- 6) The evaporative cooler duct was not properly flashed.(\$25.00/day)
- 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 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 8<sup>th</sup> day of December, 1998.

A handwritten signature in cursive script, appearing to read "Edward J. Conner", is written over a horizontal line.



## Exhibit B

# WEISS BERRETT PETTY, L.C.

KEY BANK TOWER SUITE 530 • 50 SOUTH MAIN STREET • SALT LAKE CITY, UTAH 84111

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:

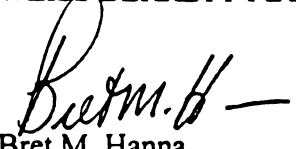
Case Number.:	B98-0124
Location of Alleged Violation:	3970 South 2665 West
Owner of Record:	Michelle A. Felis
Assessor's Parcel Number:	15-33-451-013-000

Please direct all notices and communications to this office.

Your attention to this matter is appreciated.

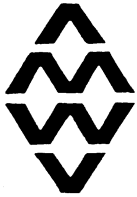
Sincerely,

WEISS BERRETT PETTY, L.C.

  
Bret M. Hanna

BMH/bmh  
c. Greg Roberts

## Exhibit C



WEST VALLEY CITY  
Unity • Pride • Progress

COMMUNITY ECONOMIC DEVELOPMENT  
DEPARTMENT

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

## NOTICE OF HEARING

December 23, 1998

Greg Roberts  
Roberts Roofing  
3970 South 2665 West  
West Valley City, Utah 84119

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: Monday, January 4, 1998  
Time: 6:00 p.m.  
Place: CED Conference Room #250  
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.

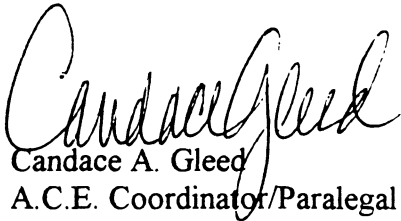
The presentation of evidence shall be limited to only that which pertains to the existence of the violation. Formal rules of evidence do not apply. Hearsay is admissible. You have the right to subpoena or bring witnesses and/or cross-examine the City's witnesses.

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.**

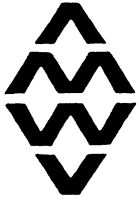
Should you have any questions regarding the above or need additional information, please contact Candace Gleed at (801) 963-3289.



Candace A. Gleed  
A.C.E. Coordinator/Paralegal

cc: Bret Hanna, Attorney at Law

## Exhibit D



**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 E

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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
West Valley City, UT	)	
	)	

---

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

CERTIFICATE OF MAILING	
I certify that I mailed, postage prepaid, a true and correct copy of the foregoing and attached document(s) to the following	
named defendant	<u>Greg Roberts</u>
<u>Bret Farnley</u>	at the above listed
address, on the	<u>2nd</u> day of <u>Feb</u>
<u>1999</u>	19 <u>99</u>

## Exhibit F

# WEISS BERRETT PETTY, L.C.

---

KEY BANK TOWER SUITE 530 • 50 SOUTH MAIN STREET • SALT LAKE CITY, UTAH 84111  
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

March 29, 1999

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

Re: *Michelle A. Felis*  
Case No.: B98-0124

Dear Elliot:

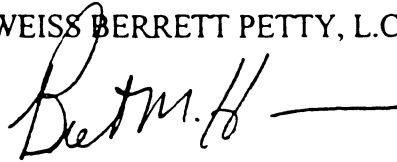
I am sure you have had an opportunity to review the Third District Court's ruling in the above-referenced matter. In light of the fact that the Court has taken the position that it cannot take any action at this juncture because West Valley City failed to record and maintain a record of the Administrative Enforcement Hearing, we are now back to square one. Since my client is not willing to comply with the Administrative Enforcement Order without a full and fair consideration of his rights and obligations which respect to the same, it would seem that we need to begin the process anew. Of course, this will not be necessary if West Valley City is willing to rescind the Administrative Enforcement Order and let the matter drop.

In the event that West Valley City is not willing to rescind the Administrative Enforcement Order and let the matter drop, I am writing to request that the Administrative Enforcement Hearing be scheduled this time with a bit more consideration for Mr. Roberts and his representatives. I would like to be actively involved in the scheduling of the hearing because I will need to take into account the busy schedules of representatives of the Salt Lake City Building Inspectors office and the Sandy City Building Inspectors office that I anticipate will be present to provide testimony. Also, in light of the fact that Ms. Felis and her representatives have photographic and personal information concerning the roof, I would like to have Mr. Roberts and his representatives, including the aforementioned Building Inspectors, have an equal opportunity to inspect the roof prior to the hearing. This is only fair and is critical to the adequate preparation of Mr. Roberts' defense to the allegations made by the West Valley City Building Inspector.

I look forward to hearing from you regarding a proposal to coordinate a fair resolution of this matter for all involved.

Sincerely,

WEISS BERRETT PETTY, L.C.

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

Bret M. Hanna

BMH/ke  
c. Greg Roberts



## Exhibit G

NOTICE: THIS OPINION HAS NOT BEEN  
RELEASED FOR PUBLICATION IN THE  
PERMANENT LAW  
REPORTS. UNTIL RELEASED, IT IS SUBJECT  
TO REVISION OR WITHDRAWAL.

**SPRINGVILLE CITIZENS FOR A BETTER  
COMMUNITY**, including Leland and LaJean  
Davies, Keith and Joanne Haeffele, Michael and  
Linda Krau, Blaine and Shirley  
Robertson, Brian and Marsha Ryder, and Russel  
and Nancy Weiser, and High Line  
Ditch Water Users, including Bryan and Belinda  
Adams, Bert and Debra  
Bartholomew, Lynn and Maxine Bartholomew,  
Darrell and Dorothy Bickmore, Merlene  
Bona, Carl and Rebecca Burrows, Donald and  
Debra Bushman, Walter and Manita  
Fowler, David and Ruth Fuller, Donald and  
Laura Gage, Michael and LaRae Hill,  
Dale and Melba Jarman, Glendon and Leila C.  
Johnson, Linda Powers, Blaine and  
Shirley Robertson, Ronald and Utawna Witney,  
Plaintiffs and Appellants,

v.

**The CITY OF SPRINGVILLE**, a municipality  
under Utah law (aka Springville City, a  
municipal corporation or Springville City, a  
municipality), Mayor Hal Wing, in  
his official capacity, and John and Jane Does I-  
XV, Defendants and Appellees.

No. 980028.

Supreme Court of Utah.

March 19, 1999.

Fourth District, Utah County The Honorable  
Anthony W. Schofield

Attorneys: Matthew Hilton, Springville, for  
plaintiffs.

Jody K. Burnett, Salt Lake City, for defendants.

RUSSON, Justice:

\*1 ¶ 1 This action arises from a land use decision  
made by Springville City, granting T. Roger Peay  
approval to develop a Planned Unit Development  
("P.U.D."). Plaintiffs, owners of property

neighboring the P.U.D., filed suit against the City  
challenging the P.U.D.'s approval. The district  
court granted summary judgment in favor of the  
City. We reverse the district court's grant of  
summary judgment and remand for further  
proceedings consistent with this opinion.

## FACTS

¶ 2 Roger Peay sought approval to develop a  
P.U.D. in the foothills of Springville, Utah. To  
obtain approval, Peay had to follow the procedure  
outlined in the Springville City ordinances. See  
Springville City Code §§ 11-4-304, 11-4-202. These  
ordinances require P.U.D. applicants to submit  
numerous documents regarding the proposed  
development. A process then commences in which  
first the city planning commission and then the city  
council review the development plans, with each  
entity imposing modifications and conditions, if  
necessary, on those plans. The council is authorized  
to grant final P.U.D. approval, which is evidenced  
by the adoption of an ordinance amending the City's  
zoning map.

¶ 3 On July 11, 1995, Peay appeared before the  
planning commission seeking sketch plan approval  
for a thirty-three-acre, forty-eight-lot P.U.D. called  
Powerhouse Mountain Estates. Between July of  
1995 and May of 1996, Peay attended five planning  
commission meetings and three city council  
meetings. At each meeting, Peay sought either  
sketch plan approval or preliminary approval for the  
P.U.D. On each occasion, the commission and the  
council imposed modifications on Peay's plans in  
order to meet the City's P.U.D. requirements.  
There was considerable public participation at these  
meetings, including input from those who are  
plaintiffs herein. Ultimately, the council rejected  
Peay's proposal.

¶ 4 On May 28, 1996, Peay started anew before the  
planning commission. In response to the previously  
expressed concerns of the council and the  
commission, the proposed P.U.D. now consisted of  
thirty-five lots, contained no "deep lots," provided  
for curbs and gutters on each side of the P.U.D.  
road and a sidewalk on the downhill side of the  
road, and provided for an entrance road forty-six  
feet wide and an interior road forty-one feet wide.  
The commission voted to give the P.U.D. sketch

plan approval and to recommend approval of the preliminary plan.

¶ 5 Thereafter, on July 16, 1996, Peay sought city council approval for the P.U.D. After extended public comment, the council voted four to one to give the P.U.D. preliminary approval subject to twenty-nine conditions. On September 10, 1996, Peay then appeared before the planning commission seeking final approval for the P.U.D., which was now called Stonebury Estates. The commission reviewed the twenty-nine conditions and, contrary to the city code, voted to send the matter to the council without a recommendation, positive or negative.

\*2 ¶ 6 In a letter to the city attorney dated September 19, 1996, Peay detailed the specific actions he had taken in response to the twenty-nine conditions. On September 30, 1996, the city attorney submitted to the mayor and the city council his review of Peay's compliance with the conditions. He opined that Peay had not complied with many aspects of the conditions and that final approval should therefore be withheld.

¶ 7 On October 1, 1996, Peay sought final approval from the council for what he called the "first phase" of the P.U.D., which consisted of seventeen of the thirty-five lots. After a detailed discussion of each of the conditions imposed, the council voted to meet with Peay for a work session, the purpose of which was to evaluate Peay's compliance with the conditions.

¶ 8 Prior to the work session, at the council's request, Peay responded in writing to the city attorney's concerns and conclusions regarding the twenty-nine conditions. Thereafter, with this information before it, the council concluded that sixteen conditions had been met entirely, seven conditions had been met partially or were ready to be met, and six conditions required council action. These six conditions were the focus of the work session.

¶ 9 On October 15, 1996, the council then voted to adopt nine additional conditions, which modified some of the previous twenty-nine conditions. Among other things, these additional conditions (1) allowed the thirty-five-lot P.U.D. to be developed in phases, (2) allowed four of the lots to have less than 20,000 square feet but not less than 17,000 square feet, (3)

required Peay to cover the highline ditch through the entire development, and (4) provided that the homeowners' association would own the spring protection area as a common area. Peay agreed to comply with all nine conditions. The council, however, did not refer these additional conditions to the commission for its review, recommendation, or approval, as mandated by the city code.

¶ 10 At a council meeting on November 5, 1996, Peay sought final approval for the seventeen lots comprising the first phase of the P.U.D. After more discussion of the conditions, the council voted to give the first phase "tentative final approval." Then, on November 11, 1996, the council adopted ordinance 19-96, which amended the City's zoning map and gave final approval to the first phase of the P.U.D. This ordinance specifically required compliance with "approved plans, plats, documents, conditions of approval and agreements." Peay ultimately complied with all the conditions imposed by the council.

¶ 11 Plaintiffs thereafter commenced this action against the City in district court, challenging the council's approval of the P.U.D. pursuant to Utah Code Ann. § 10-9-1001, which states:

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 with the district court within 30 days after the local decision is rendered.

\*3 The courts shall:

(a) presume that land use decisions and regulations are valid; and

(b) determine only whether or not the decision is arbitrary, capricious, or illegal.

Utah Code Ann. § 10-9-1001(2) & (3) (1996) (emphasis added).

¶ 12 Plaintiffs alleged that the City's approval of the P.U.D. was arbitrary, capricious, and illegal because the City failed to strictly follow its own ordinances, which, under the City's own code, were mandatory. Plaintiffs also alleged violations of state statutory requirements and of the state and federal constitutions. Plaintiffs sought declaratory and injunctive relief and monetary damages.

¶ 13 After conducting discovery, the City moved for summary judgment. The district court held that the City had substantially complied with the

ordinances governing approval of the P.U.D. and, on that basis, granted the City's motion for summary judgment. This appeal followed.

¶ 14 On appeal, plaintiffs argue that summary judgment was improper because the City's decision to approve the P.U.D. was arbitrary, capricious, and illegal. [FN1] According to plaintiffs, the decision was illegal because the City failed to comply strictly with several of the ordinances governing P.U.D. approval, many of which include the terms "shall" and "must." Plaintiffs emphasize that under the City's own statutory standard of interpretation, the "[w]ords 'shall' and 'must' are always mandatory." Springville City Code § 11-10-101(4). Plaintiffs claim that a number of such mandatory procedures outlined as subsections of City Code § 11-4-202 were not satisfied by the City, as well as several other mandatory requirements concerning P.U.D. improvements and documentation under City Code §§ 11-4-301 to -308.

¶ 15 In addition, plaintiffs contend that the City violated City Code § 11- 5-7(4), which states that the "Planning Commission shall not approve any preliminary plat for any subdivision" unless the irrigation company or persons entitled to use the irrigation ditches "certify that the drawing [showing the location of all irrigation ditches] is a true and accurate representation." (Emphasis added.) Plaintiffs argue that this ordinance was violated when such a certification had not been made prior to the commission's granting the P.U.D. preliminary approval or considering its final approval.

¶ 16 Plaintiffs further assert that the City ran afoul of City Code § 11-5- 9, which provides, "The Planning Commission shall review the final plat, final engineering drawings and documents, and shall act to approve the plan [or] disapprove the plan," and Utah Code Ann. § 10-9-204(5), which states, "The planning commission shall ... (5) recommend approval or denial of subdivision applications as provided in this chapter." (Emphasis added.) Plaintiffs argue that the commission violated this ordinance and statute when, after reviewing the plans submitted for final approval, it voted simply to send the matter to the council without a recommendation, either positive or negative. Plaintiffs contend that the lack of such a recommendation cannot be construed as an implicit

approval of the plans because certain amendments to those plans did not exist at the time and, after the amendments were made, the plans were not remanded to the commission for its review.

\*4 ¶ 17 Plaintiffs also argue that the City breached section 11-5-10 of its code, which states, "If modifications are required [by the city council], such modifications must be referred to the Planning Commission and be approved by the Commission." (Emphasis added.) Plaintiffs assert that this ordinance was violated when the additional nine conditions imposed by the council on October 15, 1996, were not sent to the commission for its review, recommendation, or approval.

¶ 18 In addition to these alleged violations, plaintiffs charge that the City violated certain provisions of state statutory law. They claim the City breached Utah Code Ann. §§ 10-9-703 and 10-9-707(2)(a) by, in essence, granting variances which, under these statutes, should have been decided by the board of adjustments. Plaintiffs also posit that the City allowed certain plats to be recorded in violation of both Utah Code Ann. § 10-9-811(1)(b) and some of the conditions of approval imposed on the P.U.D., such as the requirement of eliminating flag lots and tendering water rights. Plaintiffs further claim that the City breached Utah Code Ann. § 10-9-704(1)(a) by not allowing certain grievances to be presented to the board of adjustments.

¶ 19 Finally, plaintiffs contend that the City's decision to approve the P.U.D. was arbitrary and capricious because (1) it was illegal, on the grounds set forth above, and (2) it was not supported by substantial evidence because some of the required documents, which plaintiffs claim were mandatory for the decision making process, were not before the city council or planning commission when they made their respective decisions.

¶ 20 The City responds that its approval of the P.U.D. was not arbitrary, capricious, or illegal because it substantially complied with its ordinances in approving the P.U.D. According to the City, strict compliance with the ordinances was not necessary because the ordinances are procedural in nature and because less than complete compliance with such ordinances did not prejudice plaintiffs. The City emphasizes that the approval process for

the P.U.D. spanned more than a year, during which time Peay attended seven planning commission meetings and six city council meetings wherein various concerns were discussed, by both city officials and plaintiffs, and numerous conditions imposed. The City stresses that all of the requirements complained about by plaintiffs were eventually met or substantially satisfied.

¶ 21 The issue before us, therefore, is whether the City's approval of the P.U.D. was arbitrary, capricious, or illegal. [FN2]

#### STANDARD OF REVIEW

¶ 22 Summary judgment is appropriate only when there are no genuine issues of fact and the moving party is entitled to judgment as a matter of law. See Utah R. Civ. P. 56(c). In reviewing a grant of summary judgment, we do not defer to the legal conclusions of the district court, but review them for correctness. When reviewing a municipality's land use decision, our review is limited to determining "whether ... the decision is arbitrary, capricious, or illegal." Utah Code Ann. § 10-9-1001(3)(b) (1996).

#### ANALYSIS

\*5 ¶ 23 A municipality's land use decisions are entitled to a great deal of deference. See *Xanthos v. Board of Adjustment*, 685 P.2d 1032, 1034 (Utah 1984); *Triangle Oil, Inc. v. North Salt Lake Corp.*, 609 P.2d 1338, 1339-40 (Utah 1980); *Cottonwood Heights Citizen Ass'n v. Board of Comm'rs*, 593 P.2d 138, 140 (Utah 1979); *Naylor v. Salt Lake City Corp.*, 17 Utah 2d 300, 410 P.2d 764 (Utah 1965). Therefore, "the courts generally will not so interfere with the actions of a city council unless its action is outside of its authority or is so wholly discordant to reason and justice that its action must be deemed capricious and arbitrary and thus in violation of the complainant's rights." *Triangle Oil*, 609 P.2d at 1340. Indeed, the statute that forms the basis of this appeal requires the courts to "presume that land use decisions and regulations are valid." Utah Code Ann. § 10-9-1001(3)(a). However, this discretion is not completely unfettered, and the presumption is not absolute. If a municipality's land use decision is arbitrary, capricious, or illegal, it will not be upheld. See *id.* § 10-9-1001(3)(b).

¶ 24 In the present case, plaintiffs argue that the

City's decision to approve the P.U.D. was arbitrary and capricious. A municipality's land use decision is arbitrary and capricious if it is not supported by substantial evidence. See *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct.App.1995). In evaluating the City's decision under this standard, we review the evidence in the record to ensure that the City proceeded within the limits of fairness and acted in good faith. See *id.* We also determine whether, in light of the evidence before the City, a reasonable mind could reach the same conclusion as the City. See *id.*; see also 2 Young, *Anderson's American Law of Zoning* § 11.11, at 461 (4th ed.1996) (noting that when reviewing an ordinance that approves a P.U.D., courts determine whether there is support for the approval and whether the decision was reasonable). We do not, however, weigh the evidence anew or substitute our judgment for that of the municipality. See *Patterson*, 893 P.2d at 604; see also *Xanthos*, 685 P.2d at 1035.

¶ 25 In the case at bar, the undisputed facts demonstrate that the City's decision was not arbitrary or capricious but was the result of careful consideration and was supported by substantial evidence. Of significant import, consideration of the P.U.D. spanned nearly a year and a half and involved more than a dozen separate meetings wherein public input was heard, objections voiced, and modifications to the P.U.D. imposed. Although certain materials were not timely submitted, the majority of the required documentation was before the planning commission and the city council when the P.U.D. ultimately was approved. That documentation, as well as the other evidence before the commission and the council, supported approval of the P.U.D. Moreover, throughout the approval process and in an effort to meet the P.U.D. requirements, the city council required Peay to satisfy numerous conditions concerning the proposed development, all of which Peay eventually fulfilled. In short, the undisputed evidence reveals without question that substantial evidence supported the City's decision and that a reasonable person could have reached the same decision as the City. We conclude, therefore, that the City's decision to approve the P.U.D. was not arbitrary or capricious.

\*6 ¶ 26 This conclusion does not end our inquiry, however. Under Utah Code Ann. § 10-9-1001(3)(b), we must also determine whether the City's decision

was illegal. Plaintiffs argue convincingly that the City's decision to approve the P.U.D. was illegal because the City violated its own ordinances during the approval process. Plaintiffs highlight that compliance with the city ordinances at issue was, under the City's own legislatively enacted standard, mandatory. Plaintiffs point to Springville City ordinance 11-10-101, which states, "For purposes of this Title, certain words and terms are defined as follows: ... (4) Words 'shall' and 'must' are always mandatory." (Emphasis added.)

¶ 27 Title 11 of the Springville ordinances, entitled "Development Code," details the procedures and requirements for P.U.D. approval, including those that plaintiffs contend the City violated. Those procedures and requirements, as indicated in the ordinances quoted above, frequently are prefaced by the words "shall" and "must." Thus, according to the City's own rule of interpretation, compliance with the P.U.D. procedures and requirements containing these words was mandatory.

¶ 28 In its ruling granting summary judgment in favor of the City, the district court appeared to recognize the mandatory nature of the city ordinances but concluded nonetheless that substantial compliance with those ordinances was sufficient. In fact, one of the express legal principles upon which the district court premised its ruling was that "[t]he city's actions approving the PUD must be upheld if those actions are in substantial compliance with the city's ordinances."

¶ 29 The district court's use of the substantial compliance doctrine in the face of ordinances that are expressly mandatory was erroneous. While substantial compliance with matters in which a municipality has discretion may indeed suffice, it does not when the municipality itself has legislatively removed any such discretion. The fundamental consideration in interpreting legislation, whether at the state or local level, is legislative intent. See *Board of Educ. v. Salt Lake County*, 659 P.2d 1030, 1030 (Utah 1983). Application of the substantial compliance doctrine where the ordinances at issue are explicitly mandatory contravenes the unmistakable intent of those ordinances.

¶ 30 Municipal zoning authorities are bound by the terms and standards of applicable zoning ordinances

and are not at liberty to make land use decisions in derogation thereof. See *Thurston v. Cache County*, 626 P.2d 440, 444-45 (Utah 1981). The irony of the City's position on appeal is readily apparent: the City contends that it need only "substantially comply" with ordinances it has legislatively deemed to be mandatory. Stated simply, the City cannot "change the rules halfway through the game." *Brendle v. City of Draper*, 937 P.2d 1044, 1048 (Utah Ct.App.1997). The City was not entitled to disregard its mandatory ordinances. Because the City did not properly comply with the ordinances governing P.U.D. approval, we conclude that under Utah Code Ann. § 10-9-1001(3)(b), the City's decision approving the P.U.D. was illegal.

\*7 ¶ 31 The City's failure to pass the legality requirement of section 10-9-1001(3)(b), however, does not automatically entitle plaintiffs to the relief they request. Rather, plaintiffs must establish that they were prejudiced by the City's noncompliance with its ordinances or, in other words, how, if at all, the City's decision would have been different and what relief, if any, they are entitled to as a result. See, e.g., *Board of Ed. v. Salt Lake County*, 659 P.2d 1030, 1035 (Utah 1983) (noting that recovery for failure of county to follow mandatory statutory requirements required showing of prejudice from such failure); see also *Anderson's American Law of Zoning* § 11.24 (explaining that party challenging approval of P.U.D. must show "actual injury").

¶ 32 With respect to the City's alleged violations of state statutory requirements, namely, Utah Code Ann. §§ 10-9-204, 10-9-703, 10-9-704(1)(a), 10-9-707(2)(a), and 10-9-811(1)(b), as outlined herein, it appears that the district court summarily dismissed these claims without analysis. With the exception of the alleged violation of section 10-9-703, the district court articulated no basis for rejecting these claims, thus preventing us from reviewing the correctness of those rulings. As to section 10-9-703, the district court simply concluded that plaintiffs could not appeal the overall approval of the P.U.D. to the board of adjustments; this, however, overlooked the nature of plaintiffs' claims under that section, namely, that certain City actions apart from the final P.U.D. approval were appealable to the board of adjustments, i.e., the City's issuance of building permit 03675 and the recording of Plat 4. Thus, whether section 10-9-703 was violated, as well as the other enumerated

sections, must be addressed as part of the proceedings on remand.

### CONCLUSION

¶ 33 The district court's grant of summary judgment is therefore reversed, and this matter is remanded for further proceedings.

¶ 34 Chief Justice HOWE, Associate Chief Justice DURHAM, Justice STEWART, and Justice ZIMMERMAN concur in Justice RUSSON'S opinion.

FN1. We note our disapproval of plaintiffs' methods of circumventing the fifty-page limit for appellate briefs, see Utah R.App. P. 24(f). Plaintiffs' brief contains numerous, lengthy footnotes that set forth key arguments (the opening brief contains 104 footnotes, some of which consume up to three-fourths of a page). Also, plaintiffs' discussion of central points is cursory and incomplete, and many of their citations to the record are simply references to arguments made to the district court.

FN2. Plaintiffs also raise a panoply of constitutional issues. We do not address these issues because plaintiffs have failed to brief them adequately. See Utah R.App. P. 24(i) ("All briefs

under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial and scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court ....") and Utah R.App. P. 24(a)(9) ("The argument shall contain the contentions and reasons of the appellant with respect to the issues presented ... with citations to the authorities ... relied on."). Plaintiffs' brief on these issues is poorly organized, confusing, and difficult to follow. It is frequently difficult to determine exactly what assertions are being made and the substance of the accompanying arguments. We can certainly comprehend the district court's observation that "plaintiffs spent considerable effort wandering in fields of irrelevancy." Furthermore, many of plaintiffs' constitutional arguments are premised on the existence of constitutional liberty and property interests which plaintiffs fail to define and which are not supported by any authority. Their bald assertion that the interests are "self-evident" is insufficient. See also *State v. Carver*, 776 P.2d 886, 888 (Utah 1989) ("[T]his Court need not analyze and address in writing each and every argument, issue, or claim raised.... Rather, it is a maxim of appellate review that the nature and extent of an opinion rendered by an appellate court is largely discretionary with that court.").

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