

1990

J. Val Roberts and Verle Roberts v. Centerville City, et al. : Brief in Opposition to Certiorari

Utah Supreme Court

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J. Val Roberts; Attorney for Petitioners.

Jody K. Burnett; Daniel D. Hill; Snow, Christensen & Martineau; Attorneys for Respondents.

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THE SUPREME COURT OF THE STATE OF UTAH

J. VAL ROBERTS and VERLE
ROBERTS,

900319

Plaintiffs,

Case No. _____

vs.

CENTERVILLE CITY, et al.,

(Court of Appeals
No. 900160-CA)

Defendants.

DEFENDANTS/RESPONDENTS' BRIEF IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI OF PLAINTIFFS

JODY K BURNETT (A0499)
DANIEL D. HILL (A5202)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

Attorneys for Defendants/Respondents

J. VAL ROBERTS (A2772)
Post Office Box 666
Centerville City, Utah 84014
Telephone: (801) 295-9003

Attorney for Plaintiffs/Petitioners

FILED

JUL 30 1990

Clerk, Supreme Court, Utah

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JODY K BURNETT (A0499)
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10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

Attorneys for Defendants/Respondents

J. VAL ROBERTS (A2772)
Post Office Box 666
Centerville City, Utah 84014
Telephone: (801) 295-9003

Attorney for Plaintiffs/Petitioners

LIST OF ALL PARTIES

The parties in this litigation are set forth in the Roberts' Petition.

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QUESTIONS PRESENTED FOR REVIEW

1. Have the Roberts, as petitioners, presented issues justifying review by writ of certiorari?
2. Are the issues which were not presented to the trial court and are raised for the first time on appeal untimely, not properly before this Court and therefore deemed to have been waived?

DECISION OF THE COURT OF APPEALS

The decision of the Utah Court of Appeals which is the subject of this Petition was filed on May 2, 1990 and a copy is attached to Roberts' Petition as Appendix "A."

JURISDICTION

The basis for this court's jurisdiction is set forth in Roberts' Petition.

CONTROLLING PROVISIONS

1. Rule 43(4), Rules of the Utah Supreme Court:

Review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor wholly measuring the court's discretion, indicates the character of reasons that will be considered:

(4) When the Court of Appeals has decided an **important** question of municipal, state, or federal law which has not been, but should be, settled by this court.

2. Salt Lake County v. Carlston, 111 Utah Adv. Rep. 55, 56 and 57 n. 5 (Utah Ct. App. 1989).

Issues not raised in the trial court in a timely fashion are deemed waived, precluding this court from considering their merits on appeal.

STATEMENT OF THE CASE

This case involves the Roberts' use of their agriculturally zoned property, on which they reside in Centerville City, Utah, to store approximately thirty junked or inoperable motor vehicles. Pursuant to its ordinances which prohibit such use of property within the City limits, Centerville City pursued civil and criminal avenues of relief in its efforts to obtain ordinance compliance and removal of the motor vehicles.

Petitioners refuse and still refuse to remove the junked or inoperable motor vehicles from their property claiming the vehicles constitute a prior nonconforming use exempting them from Centerville's ordinances.¹ (Petition, at 4). Twelve years before petitioners even purchased their property, however, Centerville Ordinances precluded the storage of junked, inoperable or partially dismantled motor vehicles. (Petition,

¹In the district court and Court of Appeals, petitioners also asserted the storage of junked or inoperable motor vehicles constituted a valid agricultural accessory use to their residence in an agricultural zone. (Petition, Appendix "A" at 2.) Both courts denied the claim as a matter of law and petitioners do not raise the issue in their petition for a writ of certiorari.

Appendix "D" at 6).² Such storage is still prohibited to this date.

Using the same flawed nonconforming use argument, the Roberts filed a complaint to enjoin the City's use of criminal prosecutions to obtain removal of the dismantled and inoperable motor vehicles. (Petition, Appendix "A" at 1).

While that case was pending, the Roberts submitted to Centerville's zoning administrator an affidavit declaring the use of their property for junked vehicle storage to be a valid prior nonconforming use. The zoning administrator disagreed. Petitioners appealed to the City's Board of Adjustment which affirmed the decision since City ordinances precluded Roberts' use twelve years before they purchased the property. (Petition, Appendix "A" at 1-2). In a separate complaint, petitioners appealed the Board's decision pursuant to Utah Code Ann. § 10-9-15 as arbitrary and capricious.³ That complaint was subsequently amended, adding allegations that Roberts' use of

²In 1952, Centerville City defined "junk yard" as "the use of any lot . . . for the storage, keeping or abandonment of junk, including . . . the dismantling, demolition or abandonment of automobiles, or other vehicles . . . or parts thereof." (Petition, Appendix "D" at 2). Junk yards are not a permitted use in the zone in which Petitioners' property is located. (Id. at 6).

³Utah Code Ann. § 10-9-15 provides in part:

The city or any person aggrieved by any decision of the Board of Adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction.

their property constituted a valid prior nonconforming use and the Board lacked jurisdiction to determine whether a nonconforming use existed. (Petition, Appendix "A" at 2).

The Roberts then amended their original complaint to enjoin further criminal enforcement by adding the same nonconforming use argument as a basis for a declaratory judgment.

Because both complaints centered on whether petitioners possessed a valid prior nonconforming use, the parties stipulated to their consolidation. (Petition, Appendix "A" at 2). Petitioners then filed a "Second Amended Complaint" in the consolidated action setting forth, for purposes of this Petition, only three issues: whether the Roberts possessed a nonconforming use, whether the Board of Adjustment acted arbitrarily in denying petitioners' request for recognition of a nonconforming use, and whether the board lacked jurisdiction to determine the existence of a nonconforming use. (Petition, Appendix "A" at 2).

Together with an Answer to the Second Amended Complaint, respondents filed a counterclaim requesting a judicial declaration that Roberts' use of their property did not constitute a nonconforming use and an injunction mandating removal of the vehicles. Simultaneously, respondents moved to dismiss the Second Amended Complaint and for summary judgment on the counterclaim. After complete briefing and a hearing on December 13, 1989, the district court granted respondents' motions in full ruling that a nonconforming use did not exist, the "Board of

Adjustment had authority to act and [its] decision was reasonable" and ordered immediate removal of the vehicles. (Petition, Appendix "A" at 3).

Just prior to petitioners' notice of appeal, their counsel of record withdrew. One of the petitioners, J. Val Roberts, an attorney himself, then filed the notice of appeal and docketing statement pro se. (Exhs. 1 & 2 to this Brief). The issues raised on appeal, however, far exceeded those pursued before the district court. For example, petitioners asserted for the first time denial of access to the courts, a claim under recent amendments to the Horseless Carriage Act, facial challenges to Centerville's ordinances, as well as allegations of equal protection violations, a "selective prosecution" claim, improper ordinance enforcement motives, violation of the Junk Yard Control Act and the separation of powers doctrine. (Exhibit 2 to this Brief).

Because most of the issues on appeal were not raised in the trial court and thus waived, and it is frivolous to assert a prior nonconforming use exists when the use was prohibited twelve years prior to purchase of the property, respondents moved for summary affirmance pursuant to Rule 10(a)(2), Rules of the Utah Supreme Court. The motion was fully briefed and assigned to the Court of Appeals which granted it on May 2, 1990. (Petition, Appendix "A"). It is from that decision which petitioners seek a writ of certiorari.

The Court of Appeals held that "even construing the facts in the light most favorable to [petitioners] we can identify no genuine factual dispute about the use of the property." (Petition, Appendix "A" at 5). "It is undisputed that [petitioners] purchased their property after the enactment of the zoning ordinance and thus cannot claim a prior nonconforming use." Id.⁴

The Roberts now petition this court pursuant to Rules 42-48, Rules of the Utah Supreme Court, for a writ of certiorari to the Court of Appeals. They allege their petition "raises important constitutional questions under both the Utah and the United States Constitutions." (Petition, at 7.) Those important constitutional questions are whether the court of appeals erred in affirming the trial court's grant of summary judgment in spite of (1) the nineteen year old newspaper article referencing another district court decision which petitioners provided the Court of Appeals but not the district court, (Petition, Exhibit

⁴The Court of Appeals also affirmed the district court's finding that as a matter of law petitioners did not possess a valid agricultural accessory use either. Again this issue is not raised in the petition. Nonetheless, it is undisputed in the record that an accessory use did not exist. To be a permissible accessory use, the storage of inoperable motor vehicles must be customarily incidental to the "main use" of the property which must be agricultural. The record indicates the main use petitioners make of their property is residential. In addition, petitioners keep a few "cattle, pigs and chicken," (Petition, at 17), but the "keeping or raising of domestic animals and fowl" is excluded from the ordinance's definition of agriculture. (Petition, Appendix "D" at 1).

"F") and (2) the April 23, 1990 enactment of statutes providing for the issuance of "optional certificates of title" for "collector motor vehicles." (Petition, Exhibit "E.") The third important constitutional question is whether the Court of Appeals erred by "failing to recognize," even though it was not raised in the trial court, the alleged improper motives of respondents in enforcing their ordinances. The fourth question asserts the Court of Appeals should have required the trial court to interrogate counsel regarding allegedly disputed facts, none of which are material, even though the trial court rendered its decision as a matter of law based on undisputed facts.

ARGUMENT

PETITIONERS HAVE FAILED TO IDENTIFY ANY SPECIAL REASONS OR IMPORTANT QUESTIONS OF LAW WHICH WOULD JUSTIFY THE EXERCISE OF THIS COURT'S DISCRETION IN REVIEWING THE DECISION OF THE COURT OF APPEALS BY A WRIT OF CERTIORARI.

Rule 43, Rules of the Utah Supreme Court, allows review of a judicial decision "only when there are special and important reasons therefor." One such reason, which petitioners here advance, is "when the Court of Appeals has decided an important question of municipal, state or federal law which has not, but should be, settled by this Court." A review of the record below, however, establishes that this case fails to present any "special or important" questions of law which should be decided by this court.

First, the Court of Appeals did not decide "an important question of municipal, state or federal law." It merely affirmed the trial court's grant of summary judgment to respondents. The Roberts premised their entire case in the trial court on the existence of a nonconforming use or an agricultural accessory use. The district court record indicates there were no disputed issues of material fact and judgment on those issues as a matter of law was warranted. The Roberts purchased their property after the ordinances in question were enacted and the main use of their property is residential, not agricultural.

Second, any other issues presented to the Court of Appeals or this Court are raised for the first time and are therefore impermissible bases of review. "It is axiomatic that . . . issues not raised in the trial court in a timely fashion are deemed waived, precluding this court from considering their merits on appeal." Salt Lake County v. Carlston, 111 Utah Adv. Rep. 55, 56 and 57 n.5 (Utah Ct. App. 1989); Berger v. Minnesota Mutual Life Ins. Co., 723 P.2d 388, 392 (Utah 1986).

Orderly procedure, whose proper purpose is the final settlement of controversies, requires that a party must present his entire case and his theory or theories to the trial court; and having done so, he cannot thereafter change to some different theory and thus attempt to keep in motion a merry-go-round of litigation.

Simpson v. General Motors Corp., 470 P.2d 399, 401 (Utah 1970).

In petitioners' first question, they assert the trial court and the Court of Appeals decisions are in direct conflict with a

1971 district court decision. The alleged decision and the newspaper article referencing the decision, even if properly portrayed by petitioners, were never raised until consideration by the Court of Appeals.

The second question presented by petitioners claims several statutes with an effective date of April 23, 1990 and no reference to being retroactive, permit, "by implication," petitioners to store any number of collectable motor vehicles they like on their property without government regulation. Again assuming petitioners' characterization of the statutes to be accurate, the argument was not made, and cannot be made because of the effective date, to the district court or the Court of Appeals.⁵

Petitioners' third question proposed for review is whether the Court of Appeals improperly failed to recognize respondents' alleged improper motives in enforcing Centerville's zoning ordinances. The Court of Appeals did not decide the issue because it was not presented to the trial court. (Petitioners, Appendix "A" at 3).

The fourth issue purporting to justify a writ of certiorari is the failure of the Court of Appeals to require the trial court

⁵Petitioners' second question also asserts that federal takings and equal protection laws are implicated in this matter. A federal takings claim was initiated in one of Roberts' original complaints dated January 13, 1988. That complaint was subsequently amended on October 4, 1989 and the takings claim was dropped and never resurrected. None of the complaints have ever raised an equal protection claim.

to interrogate counsel regarding any possible issues of fact, even though it decided the case as a matter of law and on undisputed facts. Not only was this issue not raised before the trial court, but it was not presented to the Court of Appeals either.

Finally, none of the issues raised in the petition are meritorious. The 1971 district court decision relied on by the Roberts exists only in the form of a newspaper article which distinguishes itself from the present matter. The automobile collector in the article purchased his property and began storing vehicles in 1941, sixteen years prior to the effective date of the zoning ordinances enforced against him. (Petition, Appendix "F"). The Roberts began their collecting after the zoning ordinances in question took effect.

The 1990 statutes relied on by petitioners also fail to support their claims. Utah Code Ann. §§ 41-1-195-198 only provide that collector motor vehicles may be titled in a form different than other motor vehicles. They do not, as argued by the Roberts, allow collectors to store any number of motor vehicles on their property without government regulation. A municipality's police power allows it to regulate the use to which real property within its limits is put. Utah Code Ann. § 10-9-1.

It is also irrelevant that the trial court did not inquire of trial counsel whether any facts were in dispute. It was undisputed that petitioners purchased their property after the

storage of inoperable motor vehicles was prohibited in Centerville, and the main use of Roberts' property was residential. As a matter of law then, petitioners did not possess a nonconforming use or an agricultural accessory use. Furthermore, petitioners did not file a 56(f) affidavit with the district court stating the need for additional discovery.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the Petition for a Writ of Certiorari be denied.

DATED this 30th day of July, 1990.

SNOW, CHRISTENSEN & MARTINEAU

By Jody K. Burnett
Jody K. Burnett
Daniel D. Hill
Attorneys for Respondents


DDH318

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 1990, I caused four true and correct copies of the foregoing to be served by first-class mail, postage prepaid, on counsel for plaintiffs as follows:

J. Val Roberts, Pro Se
P. O. Box 666
Centerville, UT 84014

DATED this 30th day of July, 1990.



Jody K Burnett
Snow, Christensen & Martineau
Attorneys for Defendants/Respondents
Centerville City

COPY

J. Val Roberts G2772
Attorney Pro Se and
Attorney for Plaintiff, Verle Roberts
P. O. Box 666
Centerville, Utah 84014
Telephone (801) 295-9003

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
IN AND FOR WEBER COUNTY, STATE OF UTAH

J. VAL ROBERTS and	:	
VERLE ROBERTS,	:	
	:	NOTICE OF APPEAL
Plaintiffs,	:	
	:	
vs.	:	
	:	
CENTERVILLE CITY, CENTERVILLE	:	
CITY BOARD OF ADJUSTMENT, and	:	
NANCY H. GROLL, Chairman of	:	
the Centerville City Board of	:	
Adjustment, WILLIAM WINGO, NORM	:	
WRIGHT, FRED NELSON, and DALE	:	
REES, members of the Centerville	:	Civil No. <u>89-0903165</u>
City Board of Adjustment,	:	
	:	The Honorable David Roth
Defendants.	:	

COMES NOW J. VAL ROBERTS, attorney at law, and gives notice, in accordance with Rule 3d of the Rules of the Utah Supreme Court, that he, appearing as a pro se Plaintiff/Appellant and as counsel for his wife, VERLE ROBERTS, Co-Plaintiff and Appellant, does appeal from the final order of the HONORABLE DAVID ROTH entered January 2, 1990, granting Defendants, the CITY OF CENTERVILLE, UTAH'S Motion for Summary Judgment and dismissing the Plaintiffs' action against the Defendants for an unlawful taking of real property in connection with Plaintiffs' prior existing, nonconforming use and from the final order affirming a like action of the BOARD OF ADJUSTMENT'S alleged right to determine a

nonconforming use thereby denying Plaintiffs access to judicial review by evidentiary hearing and permitting the Defendants to take a portion of Plaintiffs' real property without compensation in violation of the Constitution of the State of Utah and the Fifth Amendment of the U. S. Constitution.

The Court's final order granting Defendants summary judgment places the Weber County Division of the Second District Court in direct conflict with an 18-year-old decision of the Davis County Division of the Second District Court which established a nonconforming use in circumstances squarely on all fours with the facts in the case at bar.

Dated this 26th day of January, 1990.

J. VAL ROBERTS
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL, postage prepaid, this 26th day of January, 1990, to the following: Jody Burnett and Daniel D. Hill, Attorneys for Defendants, P. O. Box 45000, Salt Lake City, Utah 84145.

J. VAL ROBERTS
Attorney at Law

J. Val Roberts G2772
Attorney Pro Se and
Attorney for Plaintiff, Verle Roberts
P. O. Box 666
Centerville, Utah 84014
Telephone (801) 295-9003

FEB 15 1990

Clerk, Supreme Court Utah

UTAH SUPREME COURT

J. VAL ROBERTS and	:	
VERLE ROBERTS,	:	
	:	DOCKETING STATEMENT
Plaintiffs,	:	
	:	
vs.	:	
	:	
CENTERVILLE CITY, CENTERVILLE	:	
CITY BOARD OF ADJUSTMENT, and	:	
NANCY H. GROLL, Chairman of	:	Case No. -----
the Centerville City Board of	:	
Adjustment, WILLIAM WINGO, NORM	:	
WRIGHT, FRED NELSON, and DALE	:	
REES, members of the Centerville	:	Civil No. <u>89-0903165</u>
City Board of Adjustment,	:	
	:	
Defendants.	:	

COMES NOW, J. VAL ROBERTS, Attorney at Law, acting pro se and as counsel for Coappellant, VERLE ROBERTS, and hereby files a docketing statement in accordance with Rule 9(a) of the Rules of the Utah Supreme Court.

1. The date of the order appealed from is January 2, 1990, wherein the HONORABLE DAVID E. ROTH, a Judge of the District Court of the Second Judicial District in and for Weber County, State of Utah, granted summary judgment dismissing the Plaintiffs' action against the Defendants for the unlawful taking of real property in connection with the Plaintiffs' prior existing, nonconforming use and from a parallel order for summary judgment against the Plaintiffs and in favor of the Defendant, BOARD OF ADJUSTMENT,

affirming the Defendant Board's alleged right to determine the existence or nonexistence of the Plaintiffs' nonconforming use which, as construed, has denied the Plaintiffs the right to have a court of law determine whether or not the City ordinance grants the BOARD OF ADJUSTMENT the authority to determine, by hearing, the existence or nonexistence of any nonconforming use within the confines of CENTERVILLE CITY by administrative review or whether the ordinance does not, in fact, limit the authority of the BOARD OF ADJUSTMENT to receiving property owners' affidavits of nonconforming use and, thereafter, recommending to the City Council which of the claims received by the BOARD should be litigated in the District Court. As applied, the summary judgment decision of the HONORABLE DAVID E. ROTH denies the Plaintiffs access to the District Courts of the State ^{and taking} on substantial property issues and has permitted the Defendant, BOARD OF ADJUSTMENT, to acquire certain substantial property rights of the Plaintiffs without paying compensation in violation of the Constitution of the State of Utah and the Fifth Amendment of the United States Constitution.

2. The Order granting summary judgment from which the Plaintiffs appeal places the Weber County Division of the Second District Court in the position of having a diametrically opposed conflict with a decision which has been the law in the Second District regarding inoperable, partially dismantled, and rusty automobiles owned by a private collector for more than EIGHTEEN (18) years, JUDGE THORNLEY K. SWAN of the Davis County Division of the Second District having rendered a decision against the CITY

OF FARMINGTON, UTAH, and in favor of MELVIN HELD, SR. regarding the alleged violation by MR. HELD of a FARMINGTON CITY ordinance enacted at substantially the same time and form as the CENTERVILLE CITY ordinance complained of in the case at bar and purporting to modify the rights of the defendant/collector to store antique, rusted, partially dismantled automobiles which were no longer manufactured and which the defendant in the FARMINGTON CITY case brought onto the property at a time when it was zoned agricultural and did not specifically provide for the storing of "THREE (3)" antique automobiles as an accessory use to its agricultural classification. In refusing to take evidence and entering a summary judgment order in favor of the Defendants, the Court has relied upon a case from the State of Colorado, there being no such cases in Utah, and has, thereby, substantially changed the legal precedent relied on by Plaintiffs for EIGHTEEN (18) years in assembling their private collection of automobiles, established a conflict between two divisions of the same district court on identical facts, and abused its discretion by not conducting a hearing on the issues of fact that exist.

3. The Plaintiffs in the case at bar have detrimentally relied upon the law as it has existed in the southern portion of the Second Judicial District since first taking note of the newspaper accounts of JUDGE THORNLEY K. SWAN on August 16, 1971, and subsequent there unto in that the Plaintiffs have assembled some 30 collector's automobiles having a value in their restored condition in excess of \$250,000.00 and will be deprived of

substantial property rights unless the District Court is reversed. (See Exhibit "A," newspaper article.) (NOTE also additional newspaper articles citing the ruling by JUDGE THORNLEY K. SWAN of the Second District Court will be supplied as an additional exhibit to this Docketing Statement.)

4. The Lower Court's abuse of discretion in granting the Defendants summary judgment has, as to the Plaintiffs in the case at bar, denied them the rights and benefits conferred upon other citizens of the State of Utah under the Utah Horseless Carriage Act, Section 41-21-1 UCA 1954 as amended 1975 and will, if not reversed by this Honorable Court, deny the Plaintiffs the right to continue to store a 1941 Ford flathead V-8 pickup truck and a 1954 flathead V-8 one-ton truck on their property until such time as the Plaintiffs shall render the same operation. The full text of the Statute invalidated as to the Plaintiffs by the Court's summary judgment order is set out hereafter:

41-21-1. "Utah Horseless Carriage" defined.

"Any motor vehicle which is thirty years or older, from the current year, primarily a collector's item, and used for participation in club activities, exhibitions, tours, parades, occasional transportation, and similar uses, but which is not for general daily transportation, shall, for the purposes of this act, be known as a "Utah Horseless Carriage."

41-21-2. "Registration-fees-Affidavit--Affidavit--Certificate--License plates.

"(1) In lieu of the annual registration fees levied in Section 41-1-127, the registration fees for any "Utah Horseless Carriage" shall be \$10,

but no annual renewal of registration shall be required."***

5. The ordinance of CENTERVILLE CITY which is complained of in this appeal in its several versions which forbid the storage of inoperable or partially dismantled or rusty motor vehicles, whether for a period in excess of SEVEN (7) day or in excess of THIRTY (30) days, is unconstitutionally restrictive and over broad as it has been applied to the Plaintiffs in the case at bar. It cannot be seriously maintained by the Defendants, by the District Court Judge in the Lower Court, or by any mature person remotely familiar with the construction, operation, or maintenance of either horseless carriages, antique cars, or classic automobiles such as the Plaintiffs' THREE (3) Karman Ghias that the same either can or should be stored and maintained in totally operational and rust free condition for the THIRTY (30) years required by Section 41-21-1 UCA 1953 as amended 1975 while they are waiting to qualify with the 30-year provision of the Statute even if the large quantities of road salt common in Utah during the winter months were not used in Centerville.

6. The ordinance, as applied, not only negates the Statute but sets conditions which cannot be complied with in the year-to-year ownership of the majority of foreign-made motor vehicles when parts must be shipped from Germany or Japan; and the same is unconstitutionally vague and over broad in its application to Plaintiffs.

7. According to the published deposition of RANDY RANDALL, CENTERVILLE CITY had never enforced its ordinance prohibiting the

storage of rusted, inoperable, or partially dismantled vehicles against any of the citizens of the City until he was directed by the then City Council to initiate investigation and prosecution of the Plaintiffs in the case at bar by criminal action beginning in 1984 and being ongoing to the present, the Plaintiff, VERLE ROBERTS, having been found guilty of violation of the ordinance by a Circuit Court Judge and subjected to a fine of \$100.00 notwithstanding the sworn testimony that she owned none of the vehicles individually or jointly with the Plaintiff, J. VAL ROBERTS, and that she was incapable of criminal intent. So far as is known to the Plaintiff/appellants in the case at bar, during the ensuing SIX (6) years from the initiation of their prosecution to the present, no other person in the confines of CENTERVILLE CITY has been subjected to criminal sanctions for the storage of rusted, inoperable, or partially dismantled vehicles notwithstanding the judicial confession of CAFL F. ALLEN, JR., at the Appellant, VERLE ROBERTS'S, criminal trial that he had at that date, and had maintained for the previous THREE (3) years, an inoperable and partially dismantled Honda motor vehicle on his property which property abuts the Plaintiff/Appellants' property to the north. This Honorable Court should not only remand the Plaintiff/Appellants' civil action for a full evidentiary hearing, it should issue an injunction against the CITY as to the automobiles presently stored on the Plaintiff/Appellants' property and any further prosecution by criminal action until this matter shall be resolved on its merits.

8. In order for a city zoning ordinance to be a valid means of limiting or extinguishing a nonconforming use, there must be some zone or location within the city which, by definition, permits the prior activity to be lawfully conducted. The published deposition of RANDY RANDALL states that there is no place in the City of Centerville where MR. ROBERTS may store his private collection of rusted, inoperable, or partially dismantled motor vehicles. The ordinance is, therefore, an unconstitutional taking of private property rights without compensation, and the ordinance is not constitutionally enforceable against any resident of the City in any of its prior or present forms.

9. The actions of the Defendants in the case at bar constitute a de facto repeal of all of the ordinances dealing with the storage of partially dismantled, rusted, or inoperable vehicles within the confines of the CITY OF CENTERVILLE as well as selective prosecution by the CITY of the Plaintiff/Appellants herein which, as applied, denies the Plaintiffs equal protection of the law guaranteed under both the United States and the Utah Constitutions; and this Honorable Court should not only vacate the District Court's permanent injunction and order on appeal, but should grant the Plaintiffs summary judgment against the Defendants as to the Plaintiffs' nonconforming use and the de facto repeal of the offending CITY ordinances. The Plaintiffs' private collection of qualified horseless carriages and classic automobiles, while not a junkyard, constitutes the storage of inoperable and rusted motor vehicles within the view, as well as

being within the boundaries of the distances prescribed by the State of Utah's Junkyard Control Statute as set out in Section 27-12-137 of the Utah Code Annotated 1953 as amended 1965 and 27-12-137.3(3) of the Utah Code Annotated 1953 as amended 1967.

(3) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated, for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts."

If it is necessary or desirable to screen such rusted and inoperable motor vehicles from public view, the authority to do so is granted to a city having such a facility within its corporate limits provided the city enacts a valid ordinance which is uniform in its application to all similarly situated citizens. It could even regulate the maintenance of an existing storage area such as that owned by the Plaintiff/Appellants in the case at bar for years prior to the existence of such an ordinance. A myriad of Federal case law cited in ALR FOURTH establishes beyond dispute that a city must decide to either pay compensation to property owners if it chooses to enforce its ordinance or decline to enforce the ordinance all together. It must necessarily follow, then, that even if the Lower Court's erroneous summary judgment ruling is allowed to stand, it was an error by the Lower Court not to conduct an evidentiary hearing on the value of the Plaintiff/Appellants' rights to exercise the incorporeal hereditaments of their fee simple whether or not the same was ever an accessory use in an agricultural zone, particularly where the published deposition of the City Zoning Administrator states that

no other citizens of the City of Centerville have had their rights to maintain inoperable, rusted, or partially dismantled motor vehicles on their land infringed upon by the enforcement of the ordinance against them at any time in the past, present, or future.

10. Plaintiff/Appellant, J. VAL ROBERTS, is informed and does believe that had the Lower Court conducted an evidentiary hearing, it would have determined that one of the several reasons why the CITY OF CENTERVILLE seeks to regulate no other property owner's maintenance of inoperable or partially dismantled automobiles on either their agricultural or residential property is that no other property owners have a collection of automobiles as substantial as that of the Plaintiff/Appellants on land that lies within less than 400 feet of a major access to Interstate Highway 15; and that both the enactment and the enforcement of the more recent ordinances limiting an individual's right to maintain rusted, inoperable, or partially dismantled vehicles on their property to a period not in excess of 30 days was solicited or suggested or encouraged by officials of District II of the Utah State Department of Transportation so as to avoid the application of the Federal Rules providing for screening of such storage areas. The District Court Judge's failure to take evidence on the major issues going to the bona fides of the CITY'S actions are a substantial abuse of discretion which can be verified by the testimony given by JAMES G. PARRISH at the hearing conducted by the CENTERVILLE BOARD OF ADJUSTMENT which was made a part of the

record in the District Court. In that testimony, the former Justice of the Peace stated, "If the Roberts's are in violation, so am I because I've had that old stationwagon out in my field for years; and it is inoperable as well as rusty."

11. The CITY OF CENTERVILLE is left with an ordinance which it may apply to the storage of rusted or inoperable motor vehicles which are kept at distances from freeway accesses which are greater than those prescribed by the applicable State Statute. The State of Utah has exercised its jurisdiction and has funded the screening of rusted and inoperable motor vehicles in Richfield, Utah, through the application of Federal grants specifically designated for this purpose. The Plaintiff/Appellants in the case at bar have been denied, by the actions of the CITY OF CENTERVILLE, the protections of the State of Utah's Junkyard Control Act as well as the monetary benefits and physical improvements to the land which the Plaintiff/Appellants are using to store the Appellant, J. VAL ROBERTS'S, private collection of rusted and inoperable motor vehicles on the land owned jointly by the Plaintiff/Appellants in fee simple thereby unconstitutionally differentiating between the Plaintiff/Appellant, J. VAL ROBERTS, and a similarly situated citizen of Richfield, Utah, upon whose land the State has built a 12-foot high screening fence using Federal grants during the time that the case at bar has been working its way through the Justice of the Peace, Circuit, and District Courts. Inasmuch as district court judges, like ordinary citizens, are presumed to know the

Statutes of the State, it must be concluded that the HONORABLE DAVID E. ROTH, erred and exceeded his discretion in granting summary judgment to the Defendants in the case at bar when he refused to resolve these and other issues of fact as well as the application of the Junkyard Control Act. The decision of the Lower Court should be reversed.

12. The initiation of the prosecution of the Plaintiff/Appellants in the case at bar by the Defendant, CITY OF CENTERVILLE, beginning in approximately 1984 coincides more than coincidentally with Plaintiff/Appellant, J. VAL ROBERTS'S, refusal to donate to the CITY OF CENTERVILLE a portion of land four feet wide by 100 feet long upon which the Defendant CITY sought to place a public sidewalk under a State Department of Transportation Highway Public Safety Grant, the terms of which specifically precluded the Defendant, CITY OF CENTERVILLE, from applying any of the funds to the purchase of the additional four feet of right-of-way necessary to install the sidewalk and required retaining walls. Defendant, CITY OF CENTERVILLE'S City Manager, DAVID HALE, stated in the presence of both of the Plaintiff/Appellants and the Centerville City Attorney, KEITH M. STAHL, that the City had never purchased right-of-way from citizens when making public improvements, that MARILYN SHERIFF and other citizens were very angry that the Plaintiff/Appellants in the case at bar along with FIVE (5) of the Plaintiff/Appellants' neighbors would receive benefits valued in thousands of dollars which SHERIFF and others had been required to pay for as part of

an improvement district on the opposite side of State Highway 106 utilizing right-of-way already owned by the State of Utah. HALE also stated that the City Council did not want to start a precedent of purchasing private property for public use in such situations. Neither did the Council want to upset MARILYN SHERIFF and others by purchasing land from the Plaintiff/Appellants in the case at bar. The ongoing attack by the Defendant, CITY OF CENTERVILLE, against Plaintiff/Appellants as individuals, as a married couple, and the involvement of the Plaintiff/Appellants' minor children by the officials of the City as guided by the suggestions of the District II Office of the State Department of Transportation and carried on to the present date by criminal information signed by the current Justice of the Peace of the City of Centerville, who was a member of the City Council that directed Zoning Administrator RANDY RANDALL to investigate and follow up on the earlier prosecution, not only violates the Plaintiff/Appellants' rights to equal protection of the law, renders the ordinance unenforceable as applied, but is also a denial of the separation of powers doctrine as addressed by REX E. LEE, former Solicitor General of the United States and former Dean of the B.Y.U. Law School, in Chapter 4 of his book, A Lawyer Looks at the Constitution, published by the B.Y.U. Press and copyrighted in 1981. A copy of the most recent criminal information issued by the former City Council member against the Plaintiff/Appellant, J. VAL ROBERTS, is attached to this Docketing Statement as Exhibit "B."

13. Defendant, CITY OF CENTERVILLE, seeks to cause Plaintiff/Appellant, J. VAL ROBERTS, to forfeit his accumulation of horseless carriages, antique automobiles, and classic cars as punishment for failure to cooperate in a sidewalk safety improvement project on State Road 106. The Defendant, CITY OF CENTERVILLE, has consulted with and been guided by suggestions from officials within District II of the State Department of Transportation. The issues of fact raised here would have been fully addressed in an evidentiary hearing in the District Court but for the Court's failure to enter a proper ruling denying the Defendant CITY'S motion for summary judgment, and this Honorable Court should remand the matter for such hearing as a part of its order.

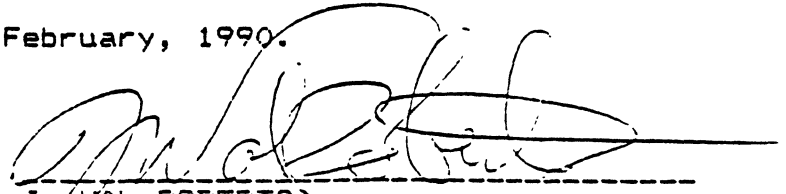
14. On at least THREE (3) prior occasions when Plaintiff/Appellant, J. VAL ROBERTS, has resisted donating land to the City or has represented clients against powerful departments of State Government or influential individuals, whether in administrative hearings or juvenile court, some governmental or quasi governmental agency such as LEE FORD of the Utah Attorney General's Office, the Utah State Bar in the person of its former Bar Counsel, now the HONORABLE PAMELA T. GREENWOOD, has initiated such things as letters from the District Engineer threatening prosecution for maintaining a visual obstruction on a public highway or an uninvestigated and unfounded Bar Association complaint which, after Plaintiff/Appellant retained eminent legal counsel, was dismissed as being unfounded, are more than sufficient reasons why the unfavorable reflection on the fair and

impartial administration of justice, the negative connotation which could be drawn from the actions of the Plaintiff/Appellant's professional association as well as the investigative skill and/or discretion of a sitting judge of the Appellate Court why this Honorable Court should place this matter under seal, should conduct any future hearings in camera, and should not exercise its discretion to transfer the matter to the Utah Court of Appeals.

15. Until such time as the Plaintiff/Appellant, J. VAL ROBERTS, can secure from his former counsel, BRIAN M. BARNARD, the exhibits which will support the allegations of the previous paragraph as to himself, the Plaintiff/Appellant, J. VAL ROBERTS, offers the following observations from current events. He is informed and does believe that other lawyers and judges whose actions have incurred the displeasure of persons with financial or political influence have, likewise, been subjected to complaints and other forms of intimidation; but he knows of no other person whose wife has been drawn into the attempt to limit his representation via criminal prosecution and the attempted destruction of the Plaintiff/Appellants' marriage as in the case at bar. The unfounded complaint against SENATOR LORIN PACE for his vigorous representation in the Larsen bankruptcy and the unrefuted public comments of the HONORABLE DAVID S. YOUNG, a Judge of the Third Judicial District, to the effect that he had been threatened by other judges, legislators, and unspecified persons for his ruling on attorney's fees in the State Thrift case are only two (2) of the more recent examples which would justify the Utah

Supreme Court in retaining jurisdiction of this matter and in placing the entire file under seal and conducting hearings on motions which may hereafter be filed in camera. Such is the request of the Plaintiff/Appellant, J. VAL ROBERTS.

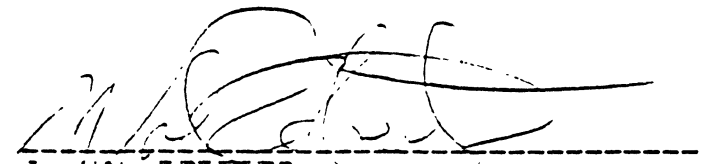
Dated this 15th day of February, 1990.



J. VAL ROBERTS
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing DOCKETING STATEMENT, postage prepaid, this _____ day of _____, 1990, to the following: Jody Burnett and Daniel D. Hill, Attorneys for Defendants, P. O. Box 45000, Salt Lake City, Utah 84145.



J. VAL ROBERTS
Attorney at Law

Town Orders Removal Of Antique Autos

By WANDA LUND

Deseret News Staff Writer

FARMINGTON — A man who has been collecting antique automobiles since 1939 has been ordered to rid himself of the old vehicles before Aug. 28.

He is Melville B. Held Sr., 66, 547 N. Main, who has collected 22 Model A Fords and numerous other old automobiles. He keeps 20 of his Model A's on his Farmington property, a 1 1/4 acre lot.

When he first came to Farmington in 1941 he had already collected a 1923 Essex, a 1923 Packard Phaeton and a 1934 DeSoto Airflow, and he has added to this collection over the years.

"I've been notified by letter that I must get rid of the obsolete vehicles I have or I will be fined or put in jail," he said. "I won't pay a fine I will let them put me in jail."

"If I have to, I will get enough licenses to put on that whole string of cars," he said. "I am going to keep my Model A's."

He said he has a special

fondness for the cars and never wants to sell them "as long as I have enough to eat." "When I get hungry, I'll sell them," he said.

He was told in a form letter that Farmington City has had

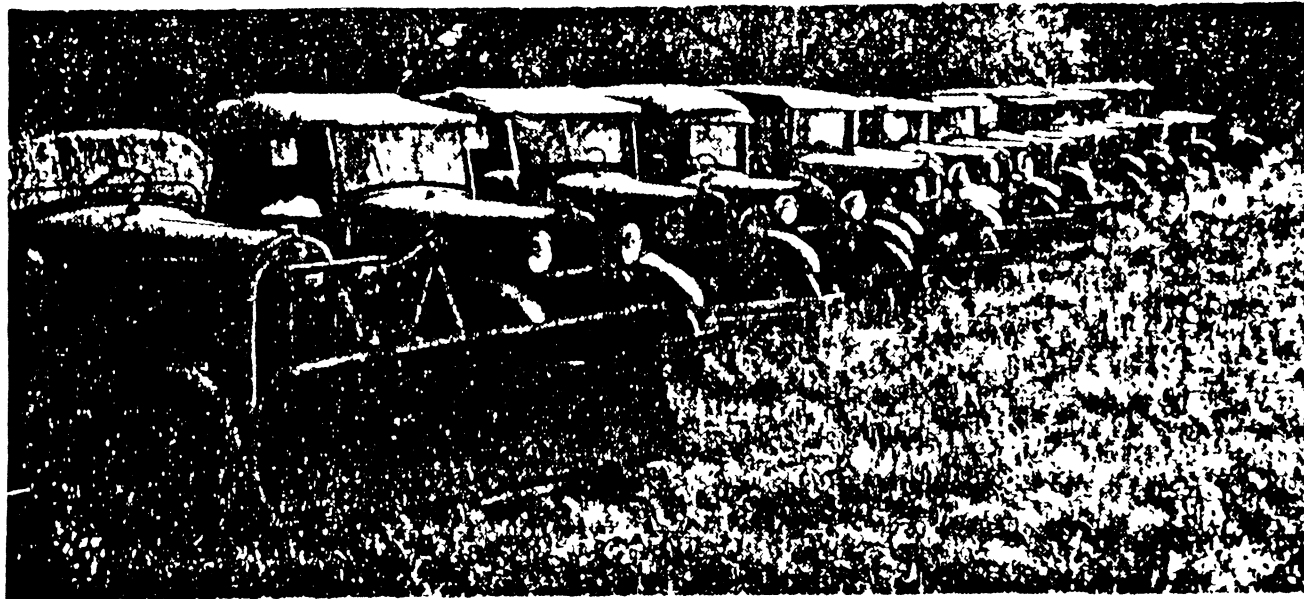
a zoning ordinance since December, 1957, and that he would have to get rid of his obsolete cars.

"This ordinance was adopted for the express purpose of insuring that the community

would grow in an orderly fashion and that the beauty and desirability of Farmington would be constantly improved," the letter said in part.

Held retained an attorney to

represent his interests. In a letter to Jay Johnson, city zoning administrator, the attorney, Bill Thomas Peters, said the Held family had moved onto the property November 15, 1941 with three



An eyesore? Farmington says so, and has ordered owner to remove cars.

cars and had continue to require other vehicles then.

"The ordinance seeks to enforce age. Held was not passed years and one month time that Mr. Held commenced using his land in a manner above described," wrote.

"Under the law, opinion that Mr. Held's nonconforming use, but nonconforming use is described as the use of a building that existed when the zoning ordinance became effective and continued to exist at that time.

"The action you take against Mr. Held has been held to be a violation of constitutional rights protected by the United States Constitution and certain provisions of the Constitution of the State of Utah."

He said zoning ordinances must permit the continued use of nonconforming use at the time the ordinance was enacted.

FEB - 8 1990

Exhibit "B"

THEODORE E. KANELL (1768)
HANSON, EPPERSON & SMITH
Attorney for Plaintiff
4 Triad Center, Suite 500
P.O. Box 2970
Salt Lake City, Utah 84110-2970
Telephone: (801) 363-7611

IN THE JUSTICE'S COURT IN AND FOR CENTERVILLE CITY

DAVIS COUNTY, STATE OF UTAH

CENTERVILLE CITY,	:	INFORMATION
	:	
	:	
Plaintiff,	:	
vs.	:	
	:	
J. VAL ROBERTS	:	
499 North Main	:	
Centerville, Utah 84014	:	
	:	Criminal No.: 89-0668
Defendants.	:	


On this 1st day of February, 1990, before me, Jerald L. Jensen, Justice of the Peace within and for Centerville City, Davis County, State of Utah, personally appeared Randy Randall who being duly sworn by me, on his oath, complains and says that the Defendant, J. Val Roberts on the 29th day of June, 1987, and every day thereafter until December 31, 1988 at Centerville City, Davis County, Utah did commit the offenses of violating Section 10-354 (as it amended 7-5-4) Code of Revised Ordinances of Centerville, 1985 Revision, as follows, to-wit:

That the said J. Val Roberts at the times mentioned above and at two locations within the boundary limits of Centerville City, 499 North Main (more particularly described as: Beginning at a point 406 feet North from the Southeast Corner of Lot 1, Block "B" Big Creek Plat, Centerville Townsite Survey and running thence North 89 feet; thence West 262.41 feet; thence South 89 feet; thence East 262.41 feet to the point of beginning) and 59 West 550 North (more particularly described as follows: All of Lot 27, Meadow Spring Subdivision, Plat "B", a subdivision of part of Section 7, Township 2 North, Range 1 East, Salt Lake Meridian), Centerville City did:

1. Park, store, leave, or permit parking, storing, or leaving any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative, rusted, junked, or partially dismantled condition whether attended or not for more than seven days, as more particularly described in Centerville City Code 10-354.

Each of the above violations occurred on every day during the period before mentioned on each parcel of property and each day of occurrence constitutes a separate violation for each parcel of property all contrary to the provisions of the Revised Ordinances aforesaid, in such cases made and provided, and against the peace and dignity of Centerville City.

Witness: Randy Randall, Kevin Taylor, Richard Leonard,
Carl Allen, Glen Crosby, John Toronto, and David Hales.


COMPLAINANT

SUBSCRIBED and SWORN to before me this 1st day of
February, 1990.

