

2003

Karen Golay, et al. v. Washington City Corporation and Wheeler Machinery Co. : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jeffrey N. Starkey; Bryan J. Pattison; Durham, Jones & Pinegar; Attorneys for Appellee; Joseph C. Rust; Attorneys for Intervenor .

Bruce R. Baird; Baird & Jones; Attorneys for Plaintiffs/Appellants.

Recommended Citation

Brief of Appellant, *Golay v. Washington City Corporation*, No. 20030528 (Utah Court of Appeals, 2003).
https://digitalcommons.law.byu.edu/byu_ca2/4415

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

KAREN GOLAY, <i>et al.</i> ,	:	
Plaintiffs and Appellants,	:	Case No. 20030528-CA
v.	:	
WASHINGTON CITY CORPORATION,	:	
Defendants and Appellees,	:	
WHEELER MACHINERY CO.	:	
Intervenor.	:	

BRIEF OF APPELLANT

APPEAL FROM THE FIFTH DISTRICT COURT

JEFFREY N. STARKEY, ESQ.
BRYAN J. PATTISON, ESQ.
DURHAM, JONES & PINEGAR
192 East 200 North, 3rd Floor
St. George, UT 84770

Attorneys for Defendant/Appellee

JOSEPH C. RUST, Esq.
KESLER & RUST
2000 Beneficial Life Tower
36 S State St
Salt Lake City, UT 84111

Attorneys for Intervenor

BRUCE R. BAIRD #0176
BAIRD & JONES, L.C.
299 South Main Street, Suite 1300
Salt Lake City, Utah 84111

Attorneys for the Plaintiffs/Appellants

FILED
UTAH APPELLATE COURTS
APR 01 2004

IN THE UTAH COURT OF APPEALS

KAREN GOLAY, <i>et al.</i> , Plaintiffs and Appellants,	:	
	:	Case No. 20030528-CA
v.	:	
WASHINGTON CITY CORPORATION,	:	
Defendants and Appellees,	:	
WHEELER MACHINERY CO.	:	
Intervenor.	:	

BRIEF OF APPELLANT

APPEAL FROM THE FIFTH DISTRICT COURT

JEFFREY N. STARKEY, ESQ.
BRYAN J. PATTISON, ESQ.
DURHAM, JONES & PINEGAR
192 East 200 North, 3rd Floor
St. George, UT 84770

Attorneys for Defendant/Appellee

JOSEPH C. RUST, Esq.
KESLER & RUST
2000 Beneficial Life Tower
36 S State St
Salt Lake City, UT 84111

Attorneys for Intervenor

BRUCE R. BAIRD #0176
BAIRD & JONES, L.C.
299 South Main Street, Suite 1300
Salt Lake City, Utah 84111

Attorneys for the Plaintiffs/Appellants

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
COMPLETE LIST OF PARTIES	iii
TABLE OF AUTHORITIES.....	iv
JUSIDITION OF THE COURT	1
STATEMENT OF THE ISSUES/STANDARD OF REVIEW	1
DETERMINATIVE STATUTORY PROVISIONS	2, I
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	5
ARGUMENT.....	7
CONCLUSION	12
ADDENDUM TABLE OF CONTENTS	I
ADDENDUM.....	II

COMPLETE LIST OF PARTIES

Plaintiffs: Karen Golay, Grace Blackburn, Eileen Blake, Brian Christiansen, Morgan Bingham, Dave Stark, ETC/TB Daycare, Inc., Gary Westfall, David Beagley, Washington - Ridgeview Associates, Terry Campbell, The Highlands Homeowners Association, Turtle Creek Homeowners Association

TABLE OF AUTHORITIES

Cases

<i>Bradley, et al. v. Payson City Corporation</i> , 2003 UT 16.....	5, 8
<i>Burkett v. Schwendiman</i> , 773 P.2d 42 (Utah 1989).....	10
<i>Carroll et. al. v. President and Commissioners of Princess Anne et. al.</i> , 393 U.S. 175 (1968)	11
<i>Ellis v. Swensen</i> , 2001 UT 101	11-12
<i>Southern Pacific Terminal Co. v. Interstate Commerce Commission, et. al.</i> , 219 U.S. 498 (1911)	12
<i>Springville Citizens, et al. v. City of Springville, et al.</i> , 1999 UT 25	1, 2, 5, 7
<i>State of Utah v. Fife</i> , 911 P.2d 989 (Utah App. 1996)	12

Statutes

§10-9-103(1)(c) and (2), <u>U.C.A.</u>	II
§10-9-407, <u>U.C.A.</u>	9, II
§10-9-704(2), <u>U.C.A.</u>	III
§10-9-708(1), (3)(a), and (7)(a), <u>U.C.A.</u>	III
§10-9-1001(1) and (2)(a), <u>U.C.A.</u>	III
§78-2-2(4) <u>U.C.A.</u>	1

Local Ordinances

Washington City Zoning Ordinance §3-6	4, IV
Washington City Zoning Ordinance §8-3	3, 7, 10, IV
Washington City Zoning Ordinance §8-6	9, 10, V

IN THE UTAH COURT OF APPEALS

KAREN GOLAY, <i>et al.</i> ,	:	
Plaintiffs and Appellants,	:	Case No. 20030528-CA
v.	:	
WASHINGTON CITY CORPORATION,	:	
Defendants and Appellees,	:	
WHEELER MACHINERY CO.	:	
Intervenor.	:	

JURISDICTION OF THE COURT

The Utah Supreme Court poured this case over to the Utah Court of Appeals on August 27, 2003. The Court of Appeals has jurisdiction pursuant to §78-2-2(4), Utah Code Ann.

STATEMENT OF THE ISSUES/STANDARD OF REVIEW

1. Was mailed notice to the public, including Plaintiffs/Appellants (the “Citizens”), of the Washington City Planning Commission (the “Commission”) hearing on a conditional use permit for Intervenor, Wheeler Machinery Company, (“Wheeler”) required? (R. 182-184.) This issue is a matter of law for which this Court grants no deference to the determinations of the District Court. *Springville Citizens, et al. v. City of Springville, et al.*, 1999 UT 25, ¶31.

2. Are the Citizens barred from appealing the illegal actions of the Planning Commission by the doctrine of “exhaustion” because they didn’t appeal a decision that they didn’t know about? (R. 181-182.) This issue is a matter of law for which this Court grants no deference to the determinations of the District Court. *Springville Citizens, et al. v. City of Springville, et al.*, 1999 UT 25, ¶31.

3. Is the controversy in this case still justiciable, or is it moot? (See Wheeler’s Memorandum in Support of Suggestion of Mootness filed with the Supreme Court.) This issue is a matter of law which was only raised at the appellate level, so there is no determination by the District Court for the Court of Appeals to review, and it is therefore a question of law. *Springville Citizens, et al. v. City of Springville, et al.*, 1999 UT 25, ¶31.

DETERMINATIVE STATUTORY PROVISIONS

All of the determinative statutory provisions are quoted in the Addendum.

STATEMENT OF THE CASE

In or around April, 2001, Wheeler acquired certain property within Washington City (the “City”) in order to construct and operate a commercial facility from which to sell, rent and service construction and earth-moving machinery and equipment. (R. 52.) In or around August, 2001, Wheeler applied to the City for a permit to construct and operate the facility as a conditional use in the zoning district where the property was located. (R. 52.) On September 11, 2001 the Commission held a public meeting and approved the conditional use

permit (“CUP”) with certain further conditions. (R. 52-53.) On September 20, 2001, certain neighboring property owners requested a re-hearing of the Commission’s decision because not all neighbors received the notice and because the Commission did not make requisite evidentiary findings. (R. 53.)

The Commission held the second hearing on November 7, 2001, and denied Wheeler’s CUP. (R. 53, 70.) On November 13, 2001, Wheeler appealed that decision to the City Council (the “Council”). (R. 70.) The Council held a public meeting on January 9, 2002, and affirmed the Commission’s denial. (R. 53-54, 71.) On January 11, 2002, Wheeler filed suit in the Fifth District Court, Civil No. 020500091, asking the Court to overturn the denial of the CUP (the “First Action”). (R. 54.) On August 12, 2002 the Court in the First Action issued a “Ruling on Motion for Summary Judgment” in Wheeler’s favor requiring the City to grant the CUP (the “First Ruling”). (R. 86-104.)

Pursuant to the First Ruling the Commission again considered Wheeler’s CUP on September 4, 2002 (the “Commission Hearing”). (R. 71, 126.) The record of the proceedings (the “Record”) contains a Notice that was posted the day prior to the September 4, 2002, hearing. (R. 71-72.) However the zoning ordinances of the City (the “Ordinances”) requires that “[n]otice . . . shall be mailed to all property owners . . . within a 300 foot radius of any property for which an action of the Planning Commission is being requested,” Chapter 8, § 8-3. (R. 126.)

Beyond any dispute, there was no notice of the Commission Hearing mailed to the residents within a 300 foot radius, including the Citizens, of Wheeler's property as required by the Ordinance. (R. 126, 136-137.) The Citizens had no knowledge of the Commission Hearing and thus didn't attend. (R. 126-127, 136-137.) Pursuant to the First Ruling, the Commission approved Wheeler's use with the imposition of certain conditions that were different than any previously recommended (the "Commission Decision"). (R. 165.)

Because the Citizens didn't know of the Commission Hearing or the Commission Decision the Citizens did not appeal the Commission Decision to the Council as they would have been entitled pursuant to the Ordinances. (R. 165.) The Council would have heard comments from the Citizens at the appeal of the Commission Decision and the Council could have imposed materially different conditions on Wheeler's proposed use than those adopted by the Commission Decision. (R. 166-167.)

On September 20, 2002 certain individuals (including many of the Citizens in this action) filed a Motion to Intervene and a Motion to Reconsider Summary Judgment in the First Action. (R. 165.) On November 5, 2002 the Motion to Intervene in the First Action was denied on the grounds that it was untimely, having been filed more than 30 days after the judgment was entered in the First Action, and finding no grounds to set aside that judgment under Rule 60(b), *Utah Rules of Civil Procedure*. (R. 118-122.)

Suspecting that their efforts to resuscitate the First Action might be unsuccessful, on October 3, 2002, within thirty days of the Commission Decision, the Citizens filed this action. (R. 2-3, and 165.) Wheeler was granted leave to intervene. (R. 40.) The parties filed cross-motions for summary judgment based on the record before the City. (R. 48-49.) The District Court heard argument, reviewed the record, and ruled from the bench granting the motions of Wheeler and the City and denying the motion of the Citizens. (R. 177.) That decision was memorialized in a Ruling and an Order both dated May 13, 2003 and both filed on May 19, 2003. (R. 175-185.)

SUMMARY OF THE ARGUMENT

The jurisprudence of the Supreme Court and this Court on the issue of a municipality's failure to follow its own rules and the consequences, or lack thereof, for such failure is less than clear to practitioners in this important area of local government law. In *Springville Citizens, et al. v. City of Springville, et al.*, 1999 UT 25, ¶ 30, the Supreme Court declared that a city is "not entitled to disregard its mandatory ordinances." In *Bradley, et al. v. Payson City Corporation*, 2003 UT 16, ¶23, the Court appeared to say that the rule in *Springville* is only true for legislative land use decisions, and the rule would not be applied in other "types of municipal land use decisions." Following the conflicting messages in these two cases, citizens and others involved in land use matters before local government bodies are unclear whether the local governments

have to follow their own rules and, if they do not, whether there are any available remedies.

The City and Wheeler argue that the notice Ordinances can be ignored on a “no harm no foul” basis. However, the notice ordinance must be followed in order for citizens in the City to have the right to appeal decisions of the Commission to the Council. In this case, it is apparent that if the Citizens had been afforded notice of the Commission’s pending determination they would have appealed to the Council seeking different conditions of approval for Wheeler’s CUP.

After this appeal was filed Wheeler asserted that the outcome of this appeal was moot. Wheeler’s Suggestion of Mootness makes the creative, albeit unprecedented, argument that because it has completed its facility the land it sits on is no longer vacant so the Court should ignore the fact that the land wasn’t vacant at the time the Commission wrongfully approved Wheeler’s project. A decision in this case will make a difference in the real world, and affect the rights of the litigants, so this controversy is not moot. If this Court reverses the District Court and remands this matter back to the City the Citizens can argue to the Council for the imposition of materially different conditions on Wheeler’s CUP.

ARGUMENT

POINT I

THE CITY FAILED TO FOLLOW ITS OWN RULES REGARDING NOTICE AND SHOULD BE REQUIRED TO DO SO

It is undisputed that no notice of the Commission Hearing was mailed to the neighboring property owners, including the Citizens, as required by the Ordinances. That failure is grounds for remand pursuant to *Springville Citizens, et al. v. City of Springville, et al.*, 1999 UT 25, ¶31. The City and Wheeler claim that the Citizens were not prejudiced by this lack of notice because the “administrative record” before the Commission was supposedly “closed” prior to the Commission Hearing. However, nothing in the Ordinances nor the First Ruling compels that conclusion.

The plain language of the Ordinance conclusively establishes the Citizen’s claim. “*Notice of Planning Commission meetings¹ shall be mailed to all property owners . . . within a 300 foot radius of any property for which an action of the Planning Commission is being requested.*” Washington City Zoning Ordinance, Chapter 8, §8-3 (emphasis added).² There is nothing in the Ordinance that distinguishes if the Commission will be hearing from the public, or not as to whether the public is entitled to notice. The Ordinance merely requires that if the

¹ Note that the Ordinances do not require notice for only public “hearings” but, instead, for the much more broad term of “meetings”.

² §3-6 of the Washington City Ordinances (regarding meetings of the Commission) also has the exact same language regarding and requiring notice.

Commission will be taking action on a matter that effects property owners within 300 feet of the subject of the Commission decision, property owners must be mailed a notice of the meeting. There is no question that during the September 4, 2002, meeting the Commission was going to take action on the Wheeler CUP. The Commission had been ordered to take action granting the CUP. Therefore, and ineluctably, those property owners within 300 feet of Wheeler's property were entitled to have been mailed notice of the Commission's hearing.

Moreover, even if the record concerning the CUP application had been closed, the Citizens could have asked the Commission at the Commission Hearing to reopen the record to hear testimony regarding what conditions to impose on the CUP. As the First Ruling makes clear, the vast bulk, if not the totality, of the record in the First Action was related to whether the CUP should be allowed at all and not to what conditions should be imposed if the use were allowed. Further, even if the record had been closed before the Commission Hearing, the Citizens would have had the requisite notice and the ability to appeal the Commission decision to the Council. The Citizens could have argued from the Commission record on an appeal to the Council for different conditions on Wheeler's use.³

³ The Citizens could also have contacted the Commission and Council members before the meeting to voice their concerns. After all, at this point Wheeler's CUP had been denied, so the Citizens had not had an opportunity to voice their comments to the legislative body regarding what restrictions should be placed on Wheeler if the CUP was granted. See, e.g. *Bradley, et al. v. Payson City Corporation* at ¶ 28, citing *Harmon City v. Draper City*, 2000 UT App 31 at ¶ 26.

POINT II

THE CITIZENS DID NOT FAIL TO EXHAUST THEIR ADMINISTRATIVE REMEDIES

As noted in Point I, above, if the Citizen's had known of the Commission Hearing and the Commission Decision they could have appealed to the Council within the ten days specified in the Ordinances. This short time clock is likely one reason why the City has a mandatory notice ordinance to be used in their CUP approval process.

It is more than ironic that the City ignored its own rules about mailed notice but now claims that the Citizen's didn't exhaust their administrative remedies by failing to appeal a decision they didn't know of. The applicability of the ten-day appeal rule outlined in §8-6 of the City Ordinances, and the appeal process detailed in the state code at §10-9-407(2), U.C.A., providing administrative remedies that should be exhausted before filing suit are logically contingent upon having had notice of the action from which an appeal would be taken.

POINT III

THE CITIZENS' CLAIMS ARE NOT MOOT

Wheeler's argument for the mootness of this case is creative but strange. It follows in sum: since we have completed construction of our building, and now the land our facility sits on is no longer vacant, our use is now a permitted use

instead of a conditional one. There is absolutely no state statutory law to support this argument. Nor do the City's own Ordinances support this conclusion.

Furthermore, Wheeler cites no case law to support its claim that during this appeal the use of the property has somehow morphed from a conditional use to a permitted use, and clearly, this is not the case. Wheeler was granted a CUP, with a number of conditions, on September 4, 2002. Wheeler developed its vacant piece of land, and just because the building is complete, Wheeler is not suddenly entitled to claim that it has a permitted use. The CUP granted by the City and the conditions attached thereto are still in full force and effect, and the Citizens merely want to be afforded the opportunity to seek additional restrictions on that CUP.

Wheeler cites one case in its Memorandum, *Burkett v. Schwendiman*, 773 P.2d 42, 44 (Utah 1989). However, unlike in *Burkett*, the judicial relief requested in this case can affect the rights of the Citizens. In *Burkett*, the municipality in question amended its Ordinances making the case unnecessary. Here the City has not changed the conditional use ordinance since the beginning of this litigation. The same Ordinance is still on the books.

If this Court reverses the District Court and remands this matter back to the City the Citizens can argue there for different conditions on Wheeler's CUP, such as restrictions on the hours of operation, noise limitations, etc. The Citizens have the right to voice their opinions to the Council, City Ordinance, §8-6, and the Council might impose some conditions that are necessary to protect the Citizens.

Even if this Court finds that the Citizens case is moot, this Court should still render a decision for other parties that might be affected by the City's Ordinances. Interested persons will be regularly affected by the City's interpretation of the plain language of §8-3 of its Ordinances.

The Ordinance states, “[n]otice of Planning Commission meetings shall be mailed to all property owners . . . within a 300 foot radius of any property for which an action of the Planning Commission is being requested.” Washington City Zoning Ordinance, Chapter 8, §8-3 (emphasis added). In the case at bar, that notice did not take place, and City denied the Citizens the “basic procedural right” of notice and due process. *Carroll et al. v. President and Commissioners of Princess Anne et al.*, 393 U.S. 175, 184 (1968).

The Court should decide this matter, even if it determines the case at bar is moot, based on the public importance exception. The Supreme Court of Utah defines the public importance exception to the mootness doctrine as follows:

The public interest exception to the mootness doctrine arises ‘when the case presents an issue that affects the public interest, is likely to recur, and because of the brief time that any one litigant is affected, is capable of evading review.’⁴ Because mootness is a matter of judicial policy, the ultimate determination of whether to address an issue that is technically moot rests in the decision of the court. Mootness is not solely a judicial

⁴ In this case, if the Court agrees with Wheeler that since construction is complete their use is now permitted instead of conditional, then other parties could face a similar problem. Any future party that applied for a CUP could circumvent the notice requirements, have a CUP granted, quickly complete construction in order to escape review and claim “too bad, now we are a permitted use and you have no recourse” in the Courts.

doctrine, but is founded in part on policy considerations . . . the question of mootness is one of convenience and judicial discretion.

Ellis v. Swensen, 2000 UT 101, ¶26 (citations omitted). Similarly, this Court has said that “[w]hether an appellate court ‘reaches the merits of a mooted issue in any particular case rest within [the court’s] discretion.’” *State of Utah v. Fife*, 911 P.2d 989, 991 (Utah App. 1996) (citation omitted).

One reason the City Ordinance requires mandatory notice to appropriate property owners is so that when the Commission is going to make a decision property owners have notice of that decision so they can appeal to the Council if they disagree. When decisions take place over multiple meetings, property owners need to have notice of each meeting so when a final decision is rendered they are not thwarted from their right to appeal, which is on a very short clock (ten working days) in the City. Since many municipalities in Utah likely have a similar notice requirement, the Court should decide the “question of law presented which might serve to guide the municipal body when again called to act in the matter.”

Southern Pacific Terminal Co. v. Interstate Commerce Commission et al., 219 U.S. 498, 516 (1911).


CONCLUSION

The City’s failure to give the Citizens notice of the Commission Hearing violated the City’s own Ordinance. This violation, in turn, prevented the Citizens from appealing the Commission Decision to the Council which could have

imposed materially different conditions on Wheeler's CUP. The issues in this case have not been mooted by Wheeler's completion of its building. The City Council can still impose conditions on the CUP beyond those now in effect. The Citizens' are entitled to have the decision of the Commission overturned.

DATED this 15th day of April, 2004.

BAIRD & JONES
Attorneys for Plaintiffs/Appellants



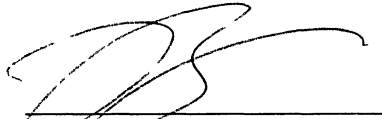
Bruce R. Baird

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April, 2004, I caused to be mailed, postage prepaid, by First Class Mail, a true and correct copy of the foregoing APPELLANT'S BRIEF to the following:

Joseph C. Rust, Esq.
KESLER & RUST
2000 Beneficial Life Tower
36 S State St
Salt Lake City, UT 84111

Jeffrey N. Starkey, Esq.
Bryan J. Pattison, Esq.
DURHAM JONES & PINEGAR
192 East 200 North, 3RD Floor
St. George, UT 84770



Bruce R. Baird

ADDENDUM TABLE OF CONTENTS

Statutes

§10-9-103(1)(c) and (2), <u>U.C.A.</u>	II
§10-9-407, <u>U.C.A.</u>	II
§10-9-704(2), <u>U.C.A.</u>	III
§10-9-708(1), (3)(a), and (7)(a), <u>U.C.A.</u>	III
§10-9-1001(1) and (2)(a), <u>U.C.A.</u>	III

Local Ordinances

Washington City Zoning Ordinance §3-6	IV
Washington City Zoning Ordinance §8-3	IV
Washington City Zoning Ordinance §8-6	V

DETERMINATIVE STATUTORY PROVISIONS

The following statutes are determinative of the issues presented by this appeal.

§10-9-103(1)(c) and (2), U.C.A.:

(1)(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(2)(a) A municipality meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) *A municipal legislative body may enact an ordinance establishing stricter notice requirements than those required by this Subsection (2).*

(c)(i) Proof that one of the two forms of notice authorized by this Subsection (2) was given is prima facie evidence that notice was properly given.

Emphasis added.

§10-9-407, U.C.A.:

(1) A zoning ordinance may contain provisions for conditional uses that may be allowed, allowed with conditions, or denied in designated zoning districts, based on compliance with standards and criteria set forth in the zoning ordinance for those uses.

(2) The board of adjustments has jurisdiction to decide appeals of the approval or denial of conditional use permits *unless the legislative body has enacted an ordinance designating the legislative body or another body as the appellate body for those appeals.*

Emphasis added.

§10-9-704(2), U.C.A.:

(2) The board of adjustment shall hear and decide appeals from planning commission decisions regarding conditional use permits unless the zoning ordinance designates the legislative body or another body to hear conditional use permit appeals.

§10-9-708(1), (3)(a), and (7)(a), U.C.A.:

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.

(3)(a) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.

(7)(a) The filing of a petition does not stay the decision of the board of adjustment.

§10-9-1001(1), (2)(a), and (3) U.C.A.:

(1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.

(2)(a) Any person adversely affected by any decision made in the exercise of or in violation 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*.

Emphasis added.

Washington City Zoning Ordinance §3-6:

The Planning Commission shall conduct regularly scheduled meetings which shall be properly advertised and open to the public. Notice of Planning Commission *meetings shall be mailed to all property owners appearing on the latest ownership plat in the Washington County Records Office within a 300 foot radius of any property for which an action of the Planning Commission is being requested.* It shall be the responsibility of the applicant for such action to provide the stamped, addressed envelopes necessary to provide such notice. All other costs involved with processing Planning Commission applications shall be the responsibility of the party or parties making such application.

Emphasis added.

Washington City Zoning Ordinance §8-3:

Application for a Conditional Use Permit shall be made by the property owner of a certified agent thereof at the Washington City Office on forms provided for that purpose twenty (2) working days prior to the regularly scheduled meeting of the Planning Commission at which the application is to be considered. *Notice of Planning Commission meetings shall be mailed to all property owners appearing on the latest ownership plat in the Washington County Records Office within a 300 foot radius of any property for which an action of the Planning Commission is being requested.* It shall be the responsibility of the applicant for such action to provide the stamped, addressed envelopes necessary to provide such notice.

Emphasis added.

Washington City Zoning Ordinance §8-6:

Any person shall have the right to appeal to the Washington City Council any decision rendered by the Planning Commission in relation to Conditional Use Permit decisions.

Appeals to the City Council are made by filing, in writing, the reasons for the appeals to the City Council within ten (10) working days following the date upon which the decision is made by the Planning Commission. After receiving said appeal, the City Council may reaffirm the Planning Commission decision or set a date for a public hearing.

(1) The City Council shall notify the Planning Commission of the date of said hearing at least seven (7) days preceding the date set for such hearing so that the Planning Commission may prepare to [sic] record for said hearing. (2) The City Council after proper review of the decision of the Commission and application of the standards listed in Section 8-5 above, may affirm, reverse, alter or remand any action taken by the Planning Commission.

Emphasis added.