



PROVO CITY CORPORATION
DEVELOPMENT SERVICES DEPARTMENT
Board of Adjustment Agenda
March 16, 2026

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT

The Provo City Board of Adjustment will hold a public hearing on Monday, March 16, 2026, at 5:00 p.m. Located at: Council Chambers 445 West Center Street. The items listed below will be discussed, and anyone interested is invited to participate and provide comment. Hearings can be viewed live and on-demand at: YouTube youtube.com/user/ProvoChannel17 and on Facebook facebook.com/provochannel17.

Public Hearing

- Item 1 ***CANCELLED***** John McCunniff requests an Appeal to the Board of Adjustment to dispute the occupancy listed in a Zone Verification Letter issued on February 3, 2026, for a property in the RC (Residential Conservation) Zone, located at 189 N 300 E. Joaquin Neighborhood. Abinadi Borja (801) 852-6421 aborja@provo.gov PLABA20260066

Preceding the public hearing, there will be a pre-meeting at 4:30 p.m. in the Provo Peak Conference Room, located at 445 West Center Street. The pre-meeting is open to the public; however, formal presentation of items, public comment, and actions will be reserved for the public hearing at 5:00 p.m. in the Municipal Council Chambers.

To send public comments to Board of Adjustment members, email them at dspublichearings@provo.gov. Please submit public comment emails before 3:00 PM the day of the hearing. Additional information can be found at provo.gov/publiccomments.

Copies of the agenda materials, public hearing procedure, and staff recommendations are available the week of the hearing at reasonable cost in the Development Services office between the hours of 7:00 a.m. and 6:00 p.m., Monday through Thursday. Agendas and staff recommendations are also generally available on the Provo City Development Services web site the week of the meeting at provo.gov/boardofadjustment.

Decisions of the Board of Adjustment may be appealed to the 4th District Court by filing a written appeal to the Court **within thirty (30) days after the filing of the decision of the Board of Adjustment** per the requirements of Section 14.05.050 of the Provo City Code.

Provo City will make reasonable accommodations for all citizens interested in participating in this meeting. If assistance is needed to allow participation at this meeting, please call the Development Services Department at (801) 852-6400 before 12:00 p.m. the day before the meeting to make arrangements.

By Order of the Provo City Board of Adjustment
Planning Secretary, (801) 852-6424



Board of Adjustment Appeal Staff Report Hearing Date: March 16, 2026

ITEM 1 John McCunniff requests an Appeal to the Board of Adjustment to dispute the occupancy listed in a Zone Verification Letter issued on February 3, 2026, for a property in the RC (Residential Conservation) Zone, located at 189 N 300 E. Joaquin Neighborhood. Abinadi Borja (801) 852-6421 aborja@provo.gov

Applicant: John McCunniff

Staff Coordinator: Abinadi Borja

Property Owner: MCCUNNIFF, JOHN M AND
02-28-2024 THE JOHN MCCUNNIFF LIVING
TRUST, Address: 189 N 300 E

Parcel ID#: 05:031:0014

Current Zone: RC (Residential Conservation
Zone)

Acreage: 0.25

Number of Properties: 1

Number of Lots: 1

Current Legal Use: Multi-family dwelling. There
are three (3) units.

POSSIBLE ACTIONS:

Section 14.05.040(8) of the Provo City Code
states:

In exercising its powers, the Board of Adjustment
may reverse or affirm, wholly or partly, or may
modify the order requirement, decisions, or
determination as ought to be made, and to that
end shall have all of the powers of the officer from
whom the appeal is taken. The concurring vote of
three (3) members of the Board shall be
necessary to reverse any order, requirement,
decision or determination of any such
administrative official, or agency or to decide in
favor of the appellant on any matter upon which it
is required to pass under any such section of the
Provo City Code, or to affect any variation in such
section of the Provo City Code.

Staff Recommendation: Based on the
findings of this staff report, Staff recommends
that the Board of Adjustment **deny the appeal of
the zone verification.**

Relevant History: The property was in the R4 zone
prior to the change into the RC zone back in 2002.

In January 2006, a code enforcement case was open for
health and safety requirements. It was found at the time
that the number of units being used on the property was
seven (7).

In February 2009, a code enforcement case was open
for health and safety requirements. The property was
still being used as seven (7) units. This case was taken
to district court and both the owners at the time and the
City reached an agreement. It was determined that four
(4) non-confirming units would be recognized under
permit #31850.

In October 2013, building permit number 31850 was
applied for. The agreement was made to propose a non-
conforming four (4) unit building with plans submitted
withing sixty (60) days. That was not completed. The
agreement stipulated that after sixty (60) days, the non-
conforming units would be reduced to three (3). Plans
were submitted for three (3) units, and the building
permit was issued.

In November 2015, staff initiated a Zone Verification
Letter recognizing the property as a multi-family dwelling
with three (3) units.

In February 2026, the applicant applied and received the
Zone Verification Letter recognizing the property as a
multi-family dwelling with three (3) units.

Neighborhood Issues: No issues have been
presented to staff.

Summary of Key Issues:

- The intent of a zone verification is to serve as a
legal document to state the recognized legal use
of the property.
- The property had seven (7) units that were in use.
This was confirmed by multiple code enforcement
cases.
- Enforcement of these cases lead to an agreement
between the owners and Provo City to recognize
the property as a multi-family dwelling with three
(3) units.

OVERVIEW

The applicant requests an appeal regarding the number of units listed in the Zone Verification Letter. The applicant believes that there should be four (4) units in the dwelling instead of the three (3) units that staff determined in the letter.

BACKGROUND

The property was in the R4 zone prior to the change into the RC zone back in 2002.

In 2004, a variance was applied for, denied and taken to district court. Provo City would recognize the seven (7) units at the time if the owners could provide nine (9) off-street parking spaces. The owners could not meet the nine (9) off-street parking spaces without the variance being approved. The variance was denied and the district court upheld the denial from the Board of Adjustments denial.

Between 2004-2009, multiple code enforcement cases were open for health and safety related complaints. In each instance, there were seven (7) units being occupied.

Between 2004-2015, after going through a variance, administrative hearing, board of adjustments, and district court, the owners at the time and Provo City reached an agreement through a building permit. This permit would allow the use of four (4) non-conforming units if plans were submitted within sixty (60) days from when the application was submitted. The owners agreed if the plans were not submitted on time, then the units would drop down to three (3) non-conforming units.

A building permit was issued in 2014 for the use of three (3) units.

A zone verification letter was initiated and completed by staff in 2015.

The applicant submitted and received a zone verification letter in February 2026.

ADDITIONAL INFORMATION FOUND AFTER THE ZONE VERIFICATION LETTER WAS ISSUED:

In 1955, the property was built as a one-family dwelling. Between 1969 and 1990, six units were added and building permits were issued: however, only one building permit was issued to add another unit, and that permit was for only one unit.

FINDINGS OF FACT

1. The property is in the RC zone.
2. The dwelling was built in 1955 as a one-family dwelling.
3. In 2004, a variance was applied for, denied, and appealed to district court. The district court upheld the decision of the board of adjustments.
4. In 2007, a code enforcement case was opened against the property. This resulted in a lack of a rental dwelling license. The license was applied for and denied for the use of the property. In 2009, an administrative hearing was held. The administrative hearing officer found, after both parties presented, that the use of the property is a two-family dwelling.
5. In 2009, a code enforcement case was opened for health and safety. In this case, an agreement was made between Provo City and the owners at the time to recognize four (4) non-conforming units after remodeling and allowing two (2) off-street parking spaces as non-conforming.
6. In September 2013, a settlement, covenants, and mutual release agreement was signed by both Kim Brown (owner of the property), Melissa Hathaway (owner of the property), and John Curtis (Provo City Mayor). In this agreement, the owners needed to submit plans within sixty (60) days of the execution of the agreement to keep four (4) non-conforming units on the property. Failure to do so would reduce the non-conforming unit number to three (3).

7. In October 2013, building permit number 31850 was applied for. It was issued in 2014. This building permit allowed the remodel for three (3) non-conforming units.
8. In 2015, staff initiated a Zone Verification Letter recognizing the property to be a multi-family dwelling with three (3) non-conforming units.
9. In 2026, the applicant applied and received a Zone Verification Letter that recognizes the property to be a multi-family dwelling with three (3) non-conforming units.
10. ADDITIONAL INFORMATION FOUND AFTER THE ZONE VERIFICATION LETTER WAS ISSUED.
11. From 1955 to 1968, the property was being used as a one-family dwelling.
12. From 1969 to 1984, the property was being used as a multi-family dwelling, four (4) units.
13. From 1985 to 1989, the property was being used as an apartment complex, six (6) units.
14. From 1990 until 2004, the property was being used as an apartment complex, seven (7) units. (Points 3 through 6 are from Polk & Cole records).
15. Building permit number 1603 issued in November 1967 allowed for an apartment. This allowed the property to be recognized as a two-family dwelling.

Currently the property has two parking spaces. Years ago, when the three units were recognized, five parking spaces would have been required but the city considered the property nonconforming as to parking. Today, seven parking spaces would be required for three units. To add a fourth unit to the property would exasperate what is already insufficient parking.

APPLICABLE ZONING CODES

Provo City Code Section 14.32.020 – Permitted Uses

CONCLUSIONS

The 2026 zone verification letter is accurate and justified based on the available records of the Development Services department. Staff recommend that the Board of Adjustment uphold the finding that the legal use of the property is for three dwelling units.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

14.05.050. Judicial Appeal.

(i) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.

ATTACHMENTS

1. Property Map
2. Building Permit 31850 Plans
3. Settlement, Covenants, And Mutual Release Agreement
4. Administrative Enforcement Order
5. Building Permit Explanation
6. 2015 Zone Verification Letter
7. February 2026 Zone Verification

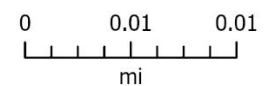
ATTACHMENT 1 – PROPERTY MAP

Provo City

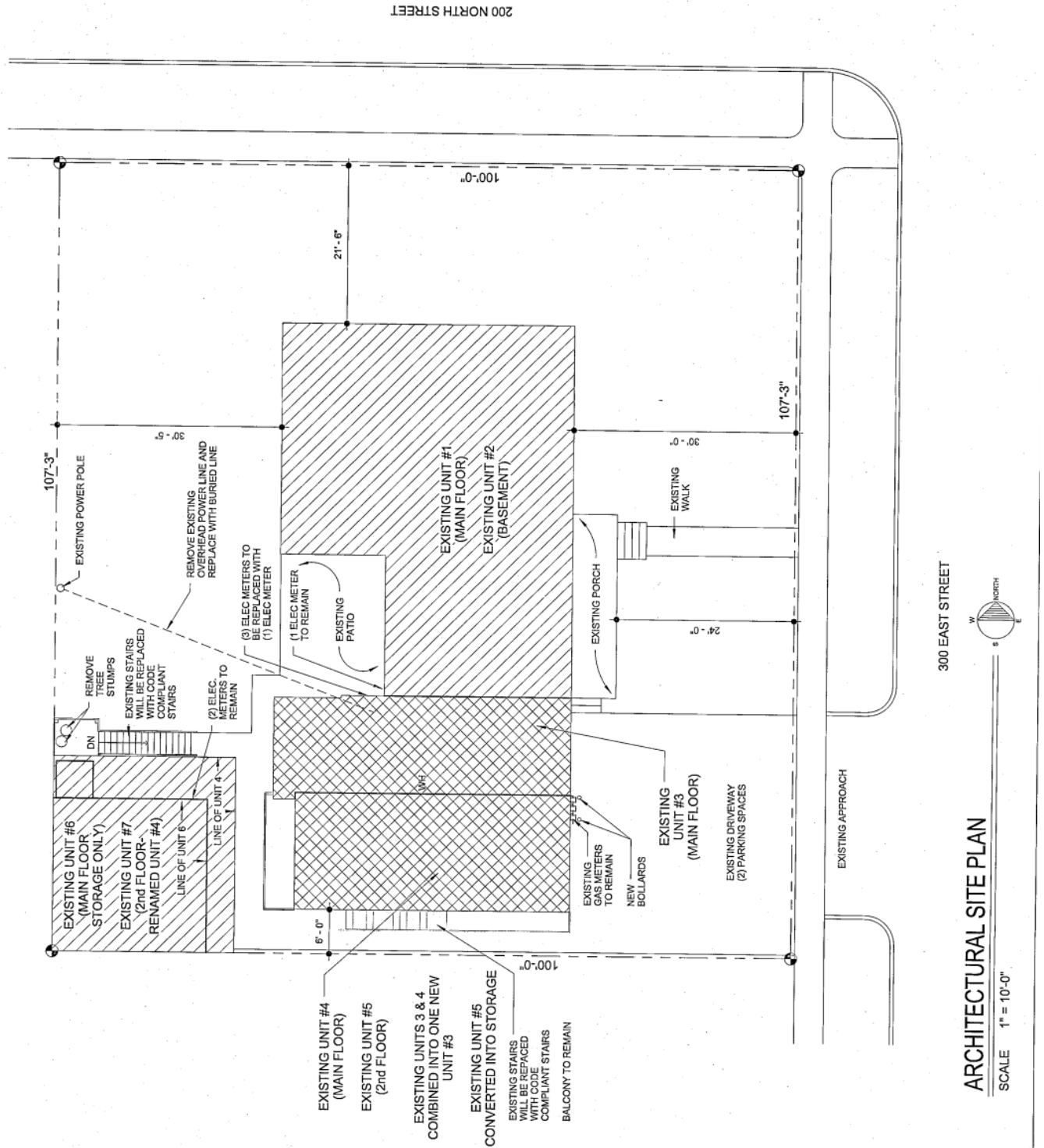


Date: 2/25/2026

This map is for graphical
representation only and not
for construction or defining
feature locations.



ATTACHMENT 2 – BUILDING PERMIT 31850 PLANS



SCALE 1/4" = 1'-0"



NEW UNIT #2 KITCHEN

SCALE 1/4" = 1'-0"



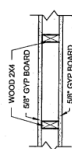
UNIT #4 - GROUND FLOOR PLAN

SCALE 1/4" = 1'-0"

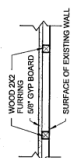


NEW UNIT #4 - 2nd FLOOR PLAN

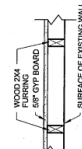
SCALE 1/4" = 1'-0"



WALL TYPE A



WALL TYPE B



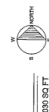
C WALL TYPE C
SCALE 1" = 1'-0"

over.

- NOTES:**
1. REPAIRS SHALL BE MADE TO CHIMNEY, ROOFS, WATER DAMAGED CEILING AND EXTERIOR SIDING OF BOTH BUILDINGS.
 2. EACH DWELLING UNIT SHALL HAVE ITS OWN PROPERLY VENTED FURNACE OF A SIZE ADEQUATE TO MAINTAIN 68 DEGREES F. WHEN THE OUTSIDE TEMPERATURE IS BELOW 60 DEGREES F.

ELECTRICAL NOTES

- ALL SWITCHES SHALL BE IN CONFORMANCE WITH THE 2011 NEC. THE ELECTRICAL PANEL CANNOT BE LOCATED WHERE A DOOR WILL OPEN OVER IT.



NEW UNIT #3 - MAIN FLOOR PLAN

 ALL COUNTERTOP OUTLETS/ RECEPTACLES IN KITCHEN MUST BE GFCI PROTECTED (EXCEPTION: A SINGLE DEDICATED RECEPTACLE

ATTACHMENT 3 – SETTLEMENT, COVENANTS, AND MUTUAL RELEASE AGREEMENT

ENT 84412:2013 PG 1 of 8
JEFFERY SMITH
UTAH COUNTY RECORDER
2013 Sep 04 11:17 am FEE 0.00 BY EQ
RECORDED FOR PROVO CITY CORPORATION

SETTLEMENT, COVENANTS, AND MUTUAL RELEASE AGREEMENT

This Settlement Covenants, and Mutual Release Agreement is made and entered into as of this 28 day of August, 2013 (the "Agreement"), between A. Kim Brown ("Brown"), as an Individual, and Melissa Hathaway ("Hathaway"), as an individual, and Provo City Corporation ("Provo" or "the City"):

WHEREAS, Brown and Hathaway filed a lawsuit in Fourth District Court, of Utah County, State of Utah, Case No. 090402968, naming Provo as a defendant and requesting claims for declaratory relief (the "Brown Lawsuit"); and,

WHEREAS, the Parties have previously disagreed on the number of rental units allowed on property owned by Brown and Hathaway and located at 189 North 300 East, Provo, Utah 84606 ("the Property"), Serial Number 05:031:0014, more specifically described as:

COM. AT NE COR OF BLK 31, PLAT B, PROVO CITY SURVEY;
S 6 ½ RODS; W 100 FEET N 6 ½ RODS; E 100 FT TO BEG.

and,

WHEREAS, both Parties desire to resolve all disputes regarding the number of legal nonconforming units allowed on the property (currently there are seven (7) units on the Property distributed through a main building and a smaller two story building located in the back southwest portion of the yard (the "Outbuilding")); and

WHEREAS, the Parties have mutually agreed to resolve their dispute amicably and expeditiously and relinquish any and all claims against each other on the terms and conditions specified herein,

NOW, THEREFORE, for such purposes and in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1. **Consideration:** Upon satisfactory completion of the terms and covenants of this Agreement, Brown and Hathaway release their claim of right to maintain seven (7) units on the Property and release any and all presently existing claims asserted or claims which could be asserted against Provo; in exchange, Provo shall agree that four (4) legal nonconforming units exist on the Property, and two (2) nonconforming parking spaces.
2. **Nonconforming Units:** The Parties agree that the number of legal nonconforming units allowed on the Property shall be four (4) units, provided Brown and Hathaway comply with paragraph 4, below. If Brown and Hathaway do not comply with Paragraph 4,



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below, the Parties agree that the number of legal nonconforming units allowed on the Property shall be reduced to three (3) units, in accordance with paragraph 5, below. These units (as described in the attached "Exhibit A"), will be distributed as follows:

- a. The current unit labeled by both parties as Unit 3, which previously served as a garage for the Property, will be converted along with Unit 4, into a three (3)-bedroom apartment.
- b. The current unit labeled by both parties as Unit 5 (which is a unit above current Unit 4), will cease operation as a separate rental dwelling unit, but can be used as a storage area, or a general-purpose room. A notice stating that current Unit 5/upper-level unit may not be used as a rental dwelling unit separate from current ground Unit 4 and describing the allowed use as described above shall be officially recorded on the Property. Only the kitchen elements compatible with the new use shall remain, and the gas or electric line capped, unless needed for the new permissible use.
- c. The current unit labeled by both parties as Unit 6, which is the ground unit in the Outbuilding will cease operation as a separate rental dwelling unit no later than six (6) months after the execution of this Agreement, in order to facilitate relocation of a tenant, but current Unit 6 can be used as a storage area, or a general purpose room. A notice stating that current Unit 6/ground-level unit may not be used as a rental dwelling unit separate from current upper Unit 7 and stating the allowed use as described above shall be officially recorded on the Property. Only the kitchen elements compatible with the new use shall remain, and the gas or electric line capped, unless needed for the new permissible use.
- d. All other Units shall remain at the same location with the current dimensions and shall require no substantive changes, except those required for health, safety or habitability as allowed by Utah Code § 10-8-85.5, or Utah Code § 10-9a-511(6), including, but not limited to the following:
 - i. If any of the gas meters remain in the parking area, bollards shall be installed to protect those meters.
 - ii. Power supplies, electric meters, and electrical panels shall be properly wired and grounded.

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- iii. Building code rise and run safety violations on exterior stairways to current Units 5 and 7 shall be corrected, or the stairways shall be replaced in compliance with applicable code standards.
- iv. Stumps at the foundation of current Unit 6 shall be removed.
- v. Damage to chimney of main building, current Units 1 and 2 shall be repaired.
- vi. Each dwelling unit shall have its own properly vented furnace or heat source and separate ventilation system, or other heating system that meets applicable code, such that when the temperature is below 60 degrees F. the heat source maintains 68 degrees F. three feet above the floor without the use of portable heaters. Furnaces shall not be housed in bedrooms.
- vii. Chimney/roof and water damage to the ceiling in current Unit 1 shall be repaired.
- viii. The kitchen in current Unit 2 shall be reconfigured such that the utility room containing the water heater and furnace is readily accessible.
- ix. Firewalls shall be installed wherever required by applicable fire code(s).

Notwithstanding the extent of the remodeling, the intent of the parties is to conform new construction to applicable codes, and to make safe any currently nonconforming elements which are unsafe, using the Utah Code, and where applicable, the International Building Code ("IBC"), and International Residential Code ("IRC"), as the standards for safety and construction. Nonconforming elements consistent with this Agreement, which present no health or safety risks, may remain.

- 3. **Legal Parking Spaces:** The Parties agree that two (2) legal nonconforming off-street parking spaces shall exist on the Property as follows:
 - a. The concrete pad/driveway in the front yard of the house will be considered to be two (2) nonconforming parking spaces.
 - b. This Agreement does not require off-street parking in addition to 3(a), above.
- 4. **Site Plan and Floor Plans:** Brown and Hathaway agree to submit within 60 days of the execution of this Agreement, site and floor plans prepared by a design professional according to the requirements set forth in Provo City brochures entitled "Site Plans" and "Residential Remodels, Additions, Basement Finishes, and Accessory Structures."

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- a. In section 107.1 in the IBC it states that the construction documents shall be prepared by a registered design professional. The architect's licensing act, Utah Code § 58-3a-304(1)(e), states that an unlicensed person can prepare plans or specifications for an existing building affecting an area not exceeding 3,000 square feet when structural elements of a building are not changed. Because the square footage of all the units on this project would be over the 3,000 square-foot mark, plans and specifications shall be prepared and signed by an architect.
 - b. The Parties agree to work with each other to ensure that the appropriate drawings are prepared and obtained. Provo City agrees that compliance with the brochures prepared by the City shall be sufficient as long as the site plan/floor plan is prepared in accordance with the requirements of applicable Utah law, IRC and IBC standards. Provo agrees to respond quickly and clearly to Mr. Brown or his architect if they need clarification or have questions regarding the detail to be contained in the drawings.
 - c. Plans submitted shall show existing units with existing utilities; proposed demolition, and location of proposed utilities, and how any existing gas lines or meters are to be terminated, and shall designate use of units no longer used as dwelling units (e.g., "storage")
5. **Failure to Submit Adequate Project Plans.** If Brown and Hathaway fail to submit plans compliant with 4, above, within sixty (60) days of the date of this Agreement, they hereby each agree to reduce the number of Units on the Property to 3, by no longer using current Units 3, 5, 6 and one other unit of their choice as rental dwelling units, which reduction shall be officially recorded.
6. **Building Permit:** Within 60 days of the execution of this Agreement, Brown and Hathaway shall apply for a building permit with the City for the remodel of the Property to conform to the terms and plans set forth herein.
- a. Application Procedure. The Parties agree that UTAH CODE ANN. 10-9a-509 shall apply to the building permit application. Brown and Hathaway shall within 30 days respond to any reasonable required changes/corrections from the City to the building permit application. Such required changes/corrections shall be made in writing and provided to the below listed address for Brown and Hathaway. City agrees that the building permit shall not be unreasonably withheld. In carrying out

the terms of this Agreement, Brown and Hathaway may avail themselves of appeal to the Court currently having jurisdiction of the Brown Lawsuit.

7. **Time for Completion of Remodel and Enforcement of Agreement:** Unless otherwise agreed by the Parties via a written agreement, Brown and Hathaway agree to complete the remodel of the Property within the six-month life of the building permit. The City will allow one extension not to exceed 90 days upon written request by the contractor, in the event that inclement or adverse weather conditions hamper construction, and provided that progress is being made on the project as a whole. If either party to this Agreement fails to abide by any term, covenant or provision of this Agreement, the Court with jurisdiction in the Brown Lawsuit shall have authority to enforce that term, covenant, or provision by means of a party requesting by affidavit for an Order to Show Cause, the Court holding a hearing on the matter, and ordering such relief as the Court deems appropriate in law and equity.
8. **Recording of Agreement and Completed Site Plan and Dismissal of the Brown Lawsuit:** Once the site plan/floor plans are approved by Provo, the building permit issued, and the renovations have been completed and inspected, the City shall notify the Court of record in the Brown Lawsuit and the case shall be dismissed with prejudice. The City shall also record with the Utah County Recorder's Office a notice that the case has been settled, and shall specify whether the Property has four (4) legal nonconforming units, or three (3), if the number of units is reduced as per paragraph 5, above, and that the nonconforming units are subject to Utah Code § 10-9a-511.
9. **Upon Dismissal of Case No. 090402968** pursuant to paragraph 8, above, the Parties stipulate the claims asserted in the Brown Lawsuit, including any and all claims that could have or should have been brought by either Party to date, are and shall be hereby forever released and discharged, subject only to the terms of this Agreement.
10. **Notices:** Any notices shall be sent by Provo City to Brown and Hathaway and their counsel at the following addresses, Brown and Hathaway shall be responsible to change this address with Provo if it changes:
 - a. 262 South Main Street, Springville UT 84663.
 - b. Jeffs & Jeffs, P.C., 90 N. 100 E. P.O. Box 888, Provo, UT 84603.
11. **Miscellaneous:** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns and shall be governed by, construed,

ENT 84412:2013 PG 6 of 8

and interpreted in accordance with the laws of the State of Utah. This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof and supersedes all previous contracts, correspondence, and documentation relating to the subject matter hereof. All prior negotiations, discussions, agreements, and understandings between the Parties are intended to be merged herein. This Agreement may be amended and supplemented only through a writing executed by all the Parties. This Agreement may be executed in any number of counterparts, each of which so executed and delivered shall be deemed to be an original. It is the intention of the Parties that the Court issue an Order which incorporates the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year set forth above.

Dated: 8-28, 2013.



Attest:

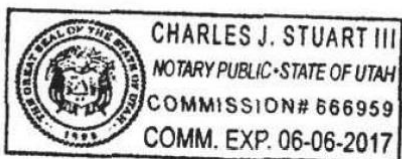

Provo City
By: John R. Curtis
Its: Mayor




Kim Brown, Owner of the Property

State of Utah)
)
) ss.
County of Utah)

On this 28 day of August, 2013, Kim Brown, who has proven his identity or who is known to me, personally appeared before me and acknowledged he signed this Agreement.



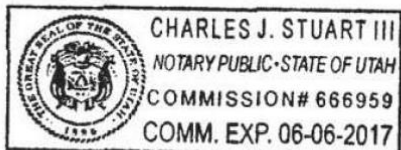
Notary Public,

Dated: 8-28-_____, 2013.

~~Melissa Hathaway, Owner of the Property~~

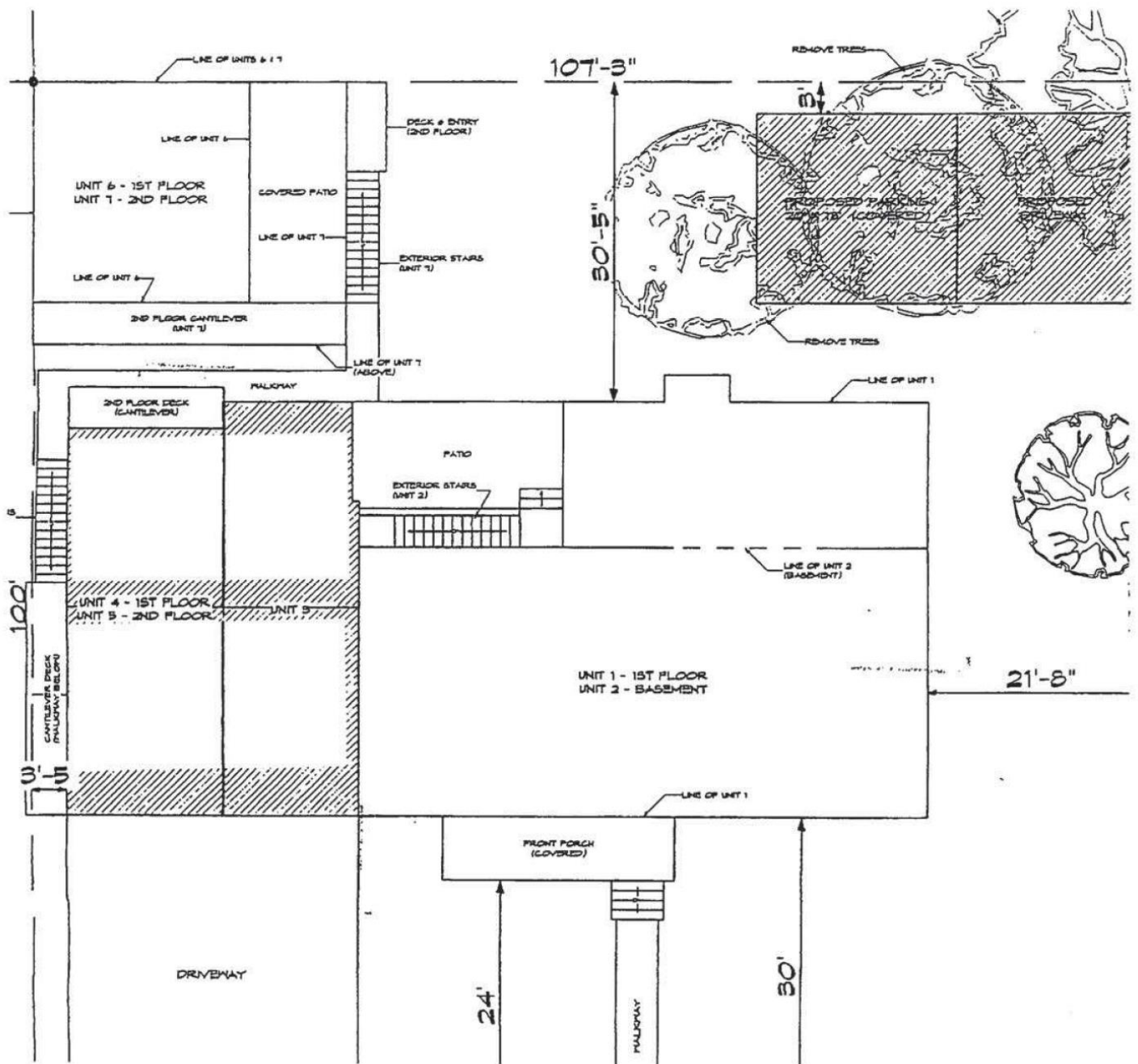
State of Utah)
) ss.
County of Utah)

On this 28 day of August, 2013, Melissa Hathaway, who has proven her identity or who is known to me, personally appeared before me and acknowledged she signed this Agreement.



Notary Public

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ATTACHMENT 4 – ADMINISTRATIVE ENFORCEMENT ORDER

ENT 17085:2009 PG 1 of 7
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2009 Feb 19 10:52 am FEE 0.00 BY SS
RECORDED FOR PROVO CITY CORPORATION

**IN THE ADMINISTRATIVE COURT OF PROVO CITY
COUNTY OF UTAH, STATE OF UTAH**

**ADMINISTRATIVE ENFORCEMENT ORDER
CASE NUMBER: 07-0468RDL
RESPONDENT: A. KIM BROWN AND MELISSA HATHAWAY**

**ADDRESS OF SUBJECT PROPERTY: 189 North 300 East, Provo, Utah
PARCEL NO. 05:031:0014**

LEGAL DESCRIPTION

COM. AT NE COR OF BLK 31, PLAT B, PROVO CITY SURVEY; S 6 1/2 RODS; W 100 FEET N 6 1/2 RODS; E 100 FT TO BEG.

Provo City Code Section 17.02.100 (2), states that if a property owner wishes to appeal this Order to District Court, such appeal must be filed within thirty (30) days after the Order is final. *"The petition shall be barred unless it is filed within thirty (30) days after the administrative enforcement order is final."*

The property owner is advised that as per Provo City Code 17.02.090 - Failure to Comply, *"It shall be unlawful for any responsible person to fail to comply with the terms and deadlines set forth in a final administrative enforcement order. A violation of this Section shall be a class B misdemeanor."*

I. SUMMARY

This case came on regularly for hearing before Christine M. Petersen, Administrative Hearing Officer for the City of Provo, at 2:00 p.m. on February 9, 2009, in the Provo City Justice Court Courtroom, 310 West Center Street, Provo, Utah. The purpose of the hearing was to allow the property owners, A. Kim Brown and Melissa Hathaway, to appeal the denial of their Provo City Rental Dwelling License, section 6.26 regarding Rental Dwellings.

Respondent A. Kim Brown attended the hearing. Provo City Planning Technician Carrie Walls was present and represented the City at the hearing.

The hearing was requested by Mr. Brown, who is one of the owners of the property. Mr. Brown objected to the denial of his Rental Dwelling License Application in a letter dated November 4, 2008, from Provo City Planning Technician Carrie Walls. The Rental Dwelling License Application was denied based on the property not meeting the required minimum health and safety requirements, and the existence of seven units where only two units are legally recognized by Provo City.

II. TESTIMONY PRESENTED

Carrie Walls testified that the property was previously owned by Mr. Kim Brown and Mrs. Hathaway's father, W. William Brown. The City has been working with Mr. Kim Brown and his father since 2004 regarding the Rental Dwelling License for this property.

Ms. Walls further testified that the property was built as a one-family dwelling in 1955. Between 1969 and 1990, six units were added and building permits were issued; however, only one building permit was issued to add another unit, and that permit was for only one unit. The previous zoning officers inspected the property for the Rental Dwelling License Application that W. William Brown applied for, and a correction letter was issued. Mr. Kim Brown, on behalf of his father, applied for a variance to the parking requirements in the corrections letter. The request went to the Board of Adjustment and the variance was denied. The Browns appealed the Board of Adjustment decision to the Fourth District Court. The Fourth District Court upheld the Board of Adjustment's decision to deny the variance.

Ms. Walls stated that since the Fourth District Court's decision, she has been working with Mr. Kim Brown to try to bring the property into compliance. Kim Brown and Melissa Hathaway have acquired the property and applied for their own Rental Dwelling License, since they are the current owners of the property.

Ms. Walls further testified that on January 15, 2008, she and Dan Stubbs inspected units one, three, four, six and seven. They weren't able to access units two and four that day. A corrections letter was issued to Kim Brown and Melissa Hathaway as a result of that inspection. At that time, the corrections letter (City Exhibit #22) listed the legal use of the property as a two-family dwelling with a maximum occupancy of one family or three singles per unit. Ms. Walls continued to explain that in order for the property to be recognized as a two-family dwelling, additional parking needs to be added. One and a quarter parking spaces per unit are required, making a total of three parking spaces required for two units. The corrections letter required the owners to submit plans for the corrections by March 17, 2008. On March 12, 2008, Ms. Walls extended the March 17, 2008 deadline to April 30, 2008 after a discussion with Mr. Brown regarding the acquisition of additional property in order to provide the required parking. The applicant submitted plans to the city by the new deadline date.

Ms. Walls continued her testimony that on July 3, 2008 and on August 19, 2008, she received

complaints regarding health and safety issues on the property. Ms. Walls inspected the property again on September 8, 2008. She was able to inspect unit one completely and determined that no corrections from the corrections letter had been made. She also saw mushrooms growing out of ceiling and walls of unit one because of moisture issues. Ms. Walls then tried to gain access to other units and found that unit two was flooded. No other units were inspected at that time. Christine Petersen asked if the flooding was a one-time incident, Ms. Walls stated that, as far as she knew, the flooding was a one-time incident.

Ms. Walls further testified that since there was no response to her correction letter, and because too much time had gone by, the Rental Dwelling License was denied. Specifically the Rental Dwelling License was denied because the property didn't meet health and safety requirements; and it was listed as seven units, where only two units are permitted. Mrs. Petersen asked for clarification regarding why the Rental Dwelling License was denied. Ms. Walls directed her to City Exhibit #24, where it states that the property does not meet the required minimum health and safety requirements, and the property is recognized as a two-family dwelling where seven units currently exist.

Ms. Walls stated that the Board of Adjustment Staff Report and Report of Action were included in the packet, as well as the Fourth District Court decision. These documents were included for information purposes.

Mr. A. Kim Brown testified that the property was originally owned by a trust, and that his father was a representative of the trust. Mr. Brown acted as his father's agent, and therefore the trust's representative, because his father was having health issues related to the letters he was receiving from the city, and the frustrations he had as a result of the entire process. Mr. Brown and Melissa Hathaway purchased the property from the trust in July 2007.

Mr. Brown said that all the electrical wiring requirements from the corrections letter were completed by the time Ms. Walls inspected the property on September 8, 2008. He also testified that the roof repairs were completed. He further stated that the flooding that day was from a pin-hole leak that burst one of the pipes in the concrete, and that it had been repaired. Mr. Brown testified that the other repairs weren't done because he and his sister weren't sure how many units were going to be recognized, and they didn't want to do repairs on units if they were going to have to remove them.

Mr. Brown stated that the parking was another difficult issue because they didn't know how many units were legal, and how many parking spaces they needed to provide. They had been told by Ms. Walls that they needed 1.25 parking spaces per unit, but they were told by previous zoning officers that they only need .5 space per occupant, or one space per unit. Mr. Brown stated that at the time of the hearing, they had four of five vehicles operating from the seven units, some tenants didn't have cars or phone lines. The original zoning officers recommended that they pave the rear yard in order to provide the required parking, but he and his family didn't pave because they wanted to maintain the landscaping.

Mr. Brown testified that he tried to purchase some property from the neighboring property

owner, but the neighbor didn't want to sell any of his property. Mr. Brown stated that the city had allowed the use of the property for a long time without requiring parking spaces.

Mrs. Petersen stated that some of the arguments Mr. Brown was making had already been resolved with the Board of Adjustment and Fourth District Court decisions, and that she didn't have jurisdiction over those aspects because the Fourth District Court had already made the decision. Mrs. Petersen emphasized that all she could decide on was the reason for the denial of the Rental Dwelling License.

Mrs. Petersen asked Mr. Brown why he thought their application shouldn't have been denied. Mr. Brown responded that he shouldn't have been denied because the City hasn't established how many units are legal, and there's no certainty how many units need to be removed.

Ms. Walls directed Mrs. Petersen to a letter she wrote to Mr. Brown and Mrs. Hathaway on September 10, 2007, City Exhibit #20. Ms. Walls pointed out that the letter explained all the building permits that had been issued and what they were issued for, it included Polk and Cole research, and talked about different requirements for parking. Ms. Walls also pointed out that the letter specifically stated that the property was recognized as a two-family dwelling, that was the City's determination as to what would be legally recognized. Ms. Walls clarified that the Board of Adjustment correction letter did say they *may* be recognized as seven units, however it's been so long since that letter was issued that the codes changed before they legally established the seven units. The City could only recognize it as a two-family dwelling at the time of the hearing.

Mrs. Petersen asked Mr. Brown if he disputed the City's representation on the building permits and why they were issued. Mr. Brown stated that the permits were "wink and nod" permits. He felt that the City allowed bedrooms to be created without interior access through the main home, as well as adding separate electric meters. He said that he believed the permits weren't issued for exactly what was being built, but that the City knew what was being built and didn't specify it on the paperwork.

Mrs. Petersen asked how many legal parking spaces the property had. Ms. Walls stated that there was one nonconforming parking space and that Mr. Brown would have to add the required parking before a Rental Dwelling License could be approved. Mr. Brown talked about possibly removing one or two units in order to provide parking. Mrs. Petersen asked if tenants had been parking on the street, since they didn't have parking spaces available. Mr. Brown said they usually park on the street, and that the apartments across the street from his property have similar parking issues. Mr. Brown said because it's a corner lot, it hasn't been a problem for the tenants to park on the street. Mr. Brown said he would be willing to pave the backyard to provide parking, even though he wouldn't be happy about that remedy. Mrs. Petersen stated that she didn't have the authority to make decisions on nonconforming status for parking requirements.

III. DOCUMENTS SUBMITTED

The following items were introduced and marked as Exhibits for this hearing:

<u>City Exhibit #1</u>	Memorandum Time Line of Events
<u>City Exhibit #2</u>	Utah County Online Real Property Owner Information
<u>City Exhibit #3</u>	Recorded Warranty Deed
<u>City Exhibit #4</u>	Recorded Quit Claim Deed
<u>City Exhibit #5</u>	Rental Dwelling License Application for A. Kim Brown & Melissa Hathaway
<u>City Exhibit #6</u>	Rental Dwelling License Application for Marilyn M. Brown Children's Trust
<u>City Exhibit #7</u>	Rental Dwelling License Application Response, September 20, 2004
<u>City Exhibit #8</u>	Provo City Board of Adjustment Staff Report, December 16, 2004
<u>City Exhibit #9</u>	Provo City Building Permit #C5502
<u>City Exhibit #10</u>	Provo City Building Permit #939
<u>City Exhibit #11</u>	Provo City Building Permit #970
<u>City Exhibit #12</u>	Provo City Building Permit #1603
<u>City Exhibit #13</u>	Provo City Building Permit #2673
<u>City Exhibit #14</u>	Provo City Building Permit #1348
<u>City Exhibit #15</u>	Provo City Board of Adjustment Report of Action, December 16, 2004
<u>City Exhibit #16</u>	Fourth District Court Memorandum Decision for Brown, Johnson and Brown vs. Provo City Municipal Corp. and Provo City Board of Adjustment, May 4, 2005
<u>City Exhibit #17</u>	Letter from Carrie Walls to Marilyn M. Brown Children's Trust, February 28, 2006
<u>City Exhibit #18</u>	Letter from Carrie Walls to Walter Brown c/o A. Kim Brown, March 20, 2006
<u>City Exhibit #19</u>	Letter from Carrie Walls to Walter Brown c/o A. Kim Brown, November 30, 2006
<u>City Exhibit #20</u>	Letter from Carrie Walls to A. Kim Brown and Melissa Hathaway, September 10, 2007
<u>City Exhibit #21</u>	Rental Dwelling License Application Response Corrections Letter, January 17, 2008
<u>City Exhibit #22</u>	Photos taken by Carrie Walls on September 8, 2008
<u>City Exhibit #23</u>	Letter from Carrie Walls to A. Kim Brown and Melissa Hathaway, November 4, 2008
<u>City Exhibit #24</u>	Provo City Code Excerpt, Section 6.26, Rental Dwellings
<u>City Exhibit #25</u>	Letter from A. Kim Brown to Provo City, November 17, 2008
<u>City Exhibit #26</u>	Notice of Hearing for Melissa Hathaway, January 13, 2009
<u>City Exhibit #27</u>	Certified Mail Receipt from Melissa Hathaway, signed January 20, 2009
<u>City Exhibit #28</u>	Notice of Hearing for A. Kim Brown, January 13, 2009
<u>City Exhibit #29</u>	Certified Mail Receipt for A. Kim Brown, signed January 26, 2009
<u>City Exhibit #30</u>	Research Checklist for Zoning, License #97991, Casefile #07-0468RDL
<u>City Exhibit #31</u>	Zone Verification Information for 189 North 300 East

City Exhibit #32 Polk & Cole Research for 189 North 300 East

IV. FINDINGS

The Hearing Officer finds the following:

1. The subject property is located at 189 North 300 East, Provo, Utah, 84606
2. City Exhibit #2 indicates that A. Kim Brown and Melissa Hathaway are listed as the owners of the subject property.
3. On October 15, 2007, the owners applied for a Rental Dwelling License for the property at 189 North 300 East.
4. The property was previously owned by William Brown, who is the father of A. Kim Brown and Melissa Hathaway.
5. William Brown applied for a Rental Dwelling License on May 20, 2004, and was issued a corrections letter response. William Brown applied for a variance to the parking requirements listed in the corrections letter. The variance was denied by the Board of Adjustment and the Fourth District Court upheld the Board of Adjustment's decision.
6. The legal use of the property is a two-family dwelling.
7. There are seven units being currently occupied.
8. The City has performed numerous inspections and issued more than one corrections letter. The owner has repaired the electrical wiring, however no other corrections have been made and the property currently does not meet the minimum health and safety requirements.

V. ORDER

1. The residence in question, located at 189 North 300 East, Provo, Utah, is a two-family dwelling and the additional five units must be removed.
2. The owner may apply for a Rental Dwelling License for the two units, however the property will still be subject to the parking and minimum health and safety requirements of the Provo City Code.
3. The owner is responsible for paying the \$100.00 Administrative Fee.

Provo City has the right to prosecute any violation of this Enforcement Order either criminally or civilly in District Court or Justice Court as per City Code 17.01.050.

February 19, 2009

Dated

Christine M. Petersen

Christine M. Petersen
Administrative Hearing Officer

STATE OF UTAH)
COUNTY OF UTAH) SS.

On this 19 day of February, 2009, personally appeared before me, Christine M. Petersen, the signer of the foregoing instrument who duly acknowledged to me that he/she executed the same.

NOTARY PUBLIC:

Karen Saluone



Residing in Utah County

Provo City Violation Enforcement Program
Phone: (801) 852-6436

330 West 100 South, Provo, Utah 84601
Facsimile: (801) 852-6417

ATTACHMENT 5 – BUILDING PERMIT EXPLANATION



Lewis K. Billings
Mayor

September 10, 2007

A. Kim Brown and Melissa Hathaway
c/o Brown Realty
555 South State Street
Suite 202
Orem, UT 84058

RE: **189 North 300 East, Provo, UT**

Dear Mr. Brown and Mrs. Hathaway:

Thank you, Kim, for meeting with me regarding your recently acquired property at **189 North 300 East, Provo, Utah**. In our meetings, you and I have been attempting to determine the number of units and the required number of parking spaces that can be recognized as legal by Provo City.

At this time, Provo City recognizes the property as a legal, two-family dwelling with one (1) nonconforming parking space. This determination is based upon the following research and documents:

- Building permit #C5502 issued July 1, 1955 for a single family dwelling.
- Building permit #A970 issued September 14, 1966 for the conversion of a 22 foot by 12 foot (one car) garage to a bedroom and a bath.
- Building permit #1603 issued November 17, 1967 for an apartment.
- County records show that the property is taxed as a two-family dwelling (duplex).

There are other building permits issued, as listed below. However, these building permits were not issued for additional dwelling units nor were there building permits issued for the conversion of these various structures into additional units.

- Building permit #A939 issued August 25, 1966 for storage.
- Building permit #2673 issued March 6, 1970 for a recreation room.
- Building permit #1348 issued April 15, 1975 for a second story on an auxiliary building.

The dwelling was used as a one-family dwelling from the time of construction until 1968. At that time, Provo City Code required one (1) space for the home. From 1969 until 1984, Polk and Cole records indicate that the property had four (4) units. For four (4) units to be legally recognized by Provo City five (5) parking spaces would have been required. From 1985 through 1989,

Office of
Community Development
www.provo.org/comdev
330 West 100 South
P.O. Box 1849
Provo, Utah 84603

(801) 852-6400
FAX: (801) 852-6417

Page 2

September 10, 2007

RE: **189 North 300 East, Provo, UT**

Polk and Cole records show that six (6) units were present. Provo City Code required 1.25 spaces per unit bringing the number of required parking spaces to eight (8) for six (6) units. In 1990, the number of units present became seven (7). Provo City Code still required 1.25 spaces per unit. Therefore, for a total of seven (7) dwelling units, Provo City would have required nine (9) parking spaces.

In order to legalize any additional units, Provo City will require that 1.25 legal, off-street parking spaces per unit be provided. The RC zone, which your property is located in, has minimum setbacks of twenty (20) feet for the front yard, twenty (20) feet for the side yard contiguous to the street and twenty (20) feet for the rear yard. Structures, such as stairways, balconies, door stoops, etc., may not encroach into a minimum side yard more than two (2) feet. Permissible lot coverage "on any lot or parcel occupied by a one-family dwelling, or occupied by any dwelling originally constructed as a one-family dwelling and converted for two-family ("duplex") or other multiple-family occupancy" is restricted to twenty-five (25) percent of a front yard, twenty-five (25) percent of a rear yard and no portion of at least one (1) side yard. Parking in the front yard or side yard contiguous to the street is not permitted except for that portion devoted to a driveway for access to a garage or carport. Tandem parking is permitted for one and two-family dwellings only.

As you have only recently acquired this property, please apply for a Rental Dwelling License no later than **September 27, 2007**. I have included an application for your convenience. Please contact Business License at (801)852-6532 to inquire regarding fees.

In conjunction with the Rental Dwelling License application, I would like to make arrangements to inspect all of the units as they currently exist. An inspection was done for the previous owner but the correction letter is dated September 2004 and since that time I have received complaints regarding health and safety conditions of several of the units.

If you wish to appeal this decision, you may do so by filing an appeal to the Provo City Board of Adjustment within 14 days of the date of this letter per Chapter 14.05 Provo City Code. For information on how to file an appeal, please call 801-852-6400.

Page 3

September 10, 2007

RE: **189 North 300 East, Provo, UT**

If you have any questions or concerns, please contact me at the telephone number or email address listed below.

Sincerely,

COMMUNITY DEVELOPMENT DEPARTMENT

A handwritten signature in cursive script that reads "Carrie Walls".

Carrie Walls
Sr. Planning Technician
(801)852-6441
Cwalls@provo.utah.gov

ATTACHMENT 6 – 2015 ZONE VERIFICATION LETTER



**COMMUNITY
DEVELOPMENT**
TEL 801 852 6400
330 W 100 S
PO BOX 1849
PROVO, UT 84603

November 12, 2015

Staff Initiated

Zone Verification Letter

Location: 189 N 300 East Units 1 – 3
Serial #: 05:031:0014
Casefile #: 15-0500ZV
Complex Name: Plumtree

The following information is based upon the completion of Building Permit #33349:

Legal Use of Property: Multi-family Dwelling – 3 units
Legal Occupancy: One family or 3 singles per unit
Legal Parking Spaces: The number of vehicles owned or operated from the premises must be restricted to the number of available legal parking spaces which is two (2) nonconforming spaces (Street side yard parking).
Current Zone: RC (Residential Conservation)
Year Built: about 1941

Rental Requirements:

If this property is being used as a rental, the owner must obtain a Provo City Rental Dwelling License and must comply with Chapter 6.26, Provo City Code or you may apply online at www.Provo.org. If you have questions regarding how to apply for a rental license, please call 801-852-7834.

Rebuild Status:

If this property is damaged or destroyed by fire, wind, tornado, earthquake, or other natural disaster or calamity, it may be restored to the legal use listed above so long as restoration is complete within one (1) year of the damage or destruction per Chapter 14.36, Provo City Code.

Appeals:

If you wish to appeal this decision, you may do so by filing an appeal to the Provo City Board of Adjustment within 14 days of the date of this letter per Chapter 14.05, Provo City Code. For information on how to file an appeal, please call 801-852-6400.

Respectfully,



Carrie Walls
Zoning Administrator
801-852-6406
Cwalls@provo.org

ATTACHMENT 7 – FEBRUARY 2026 ZONE VERIFICATION



**DEVELOPMENT
SERVICES**
TEL 801 852 6427
445 W CENTER ST
PROVO, UT 84601

Zone Verification Letter

February 03, 2026

John McCunniff
4652 Calle Del Greco
OCEANSIDE, CA 92056

Location: 189 N 300 E, Provo, UT 84606
Parcel # 05:031:0014
Casefile # PLZV20260034
Apt./Condo Name:

Dear Applicant:

In response to your request for Zone Verification, the following information is provided:

Current Zoning Classification: RC - RC: Residential Conservation

Year Built: 1955

Legal Use of Property: Multi-family dwelling - 3 units.

Legal Parking Spaces: The number of vehicles owned or operated from the premises cannot exceed the number of legal off-street parking spaces, which are two (2) non-conforming.

Legal Occupancy: One (1) family or three (3) singles per unit.

Rental Requirements:

If this property is being used as a rental, the owner must obtain a Provo City Rental Dwelling License and must comply with Chapter 6.26 Provo City Code, apply online at www.Provo.org. If you have questions regarding how to apply for a rental license call 801-852-7834.

Current Violations:

There are no known violations nor open code enforcement cases.

Rebuild Status:

If this property is damaged or destroyed by fire, wind, tornado, earthquake, or other natural disaster or calamity, it may be restored to the legal use listed above so long as

restoration is complete within one (1) year of the damage or destruction per Chapter 14.36 Provo City Code.

Appeals:

If you wish to appeal this decision, you may do so by filing an appeal to the Provo City Board of Adjustment within 14 days of the date of this letter per Chapter 14.05 Provo City Code. For information on how to file an appeal, please call 801-852-6400.

Special Provisions:

Respectfully,
Development Services

A handwritten signature in black ink, appearing to be 'Abinadi Borja', with a stylized, flowing script.

Abinadi Borja
Senior Code Compliance Officer
(801)852-6421
aborja@provo.gov