
**WOODLAND HILLS CITY BUILDING CODE APPEAL BOARD
(IRC BOARD OF APPEALS)**

**THE CITY'S ADMINISTRATION,
INTERPRETATION, AND
ENFORCEMENT OF
THE INTERNATIONAL RESIDENTIAL
CODE AND INTERNATIONAL
BUILDING CODE**

**AND
THE CITY'S FAILURE TO INSPECT
AND ENFORCE COMPLIANCE WITH
CONSTRUCTION PLANS APPROVED
AS PART OF THE CITY'S ISSUANCE
OF A BUILDING PERMIT OR TO
REQUIRE COMPLETE AMENDMENT
OF SUBMITTED AMENDED PLANS TO
FULLY COMPLY WITH THE
STRUCTURE AS BUILT AND
REQUIRE SUCH AMENDED PLANS TO
FULLY COMPLY WITH
INTERNATIONAL RESIDENTIAL
CODE REQUIREMENTS AND
APPLICABLE STATE CODES AND
AMENDMENTS.**

APPEAL



paid july 20th #381

The appellants, Dr. Tannin Fuja and Megan Fuja, hereby submit this Appeal on July 22, 2020. Said appeal is made to the Board of Appeals, established by International Residential Code, section R112 (IRC Section R112 Board of Appeals). IRC Code R105.4 states: "The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any **violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.** The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data." Given these stated IRC provisions and requirements, this appeal addresses violations of both the IRC/IBC and City Ordinances and Land Use Regulations in view of establishing the violations of construction at 1115 S. Woodland Hills Dr., Woodland Hills, UT. Therefore, all violations of both the IRC

Code and City Ordinances must be fully addressed in this appeal and are included in order to present a more complete understanding of the interrelated issues at hand.

I. ISSUES BEING APPEALED

This is an appeal of the City's acceptance of amended building plans submitted to the City regarding construction of a residence by John and Jennifer Adams at 1115 South Woodland Hills Drive, Woodland Hills, Utah. Such amended building plans contain errors and violations relating to (1) the 2015 International Residential Code and the International Building Code; (2) the City's Development and Construction Standards (the "Development Standards"); (3) Chapter 02.32 (Hillside Site Development), of the City's Development and Construction Standards; (4) the City's Subdivision Ordinance, section 109.07 (Hillside Development); and (5) the City's Zoning Ordinances. For purposes of this amended appeal, the International Residential Code and the International Building Code shall be referred to herein as the "IRC" and "IBC"; the City's Development and Construction Standards, Chapter 02.32 (Hillside Site Development) shall be referred to as the "Hillside Development Standards"; and the City's Subdivision Ordinance, section 109.07 shall be referred to as the "Subdivision Ordinance."

In addition, the Fugas challenge the City's failure to inspect and enforce compliance of the amended plans submitted for approval as compared with the structure as actually built at 1115 South Woodland Hills Drive, Woodland Hills, Utah. The amended plans were provided to the Fugas on the afternoon of July 20, 2020 and do not match the home as currently constructed by the Adams or meet specific requirements specified in the building permit packet or the Zoning Ordinance as mandatory for a final site plan.

On July 13, 2020, the City received amended plans for construction at 1115 S. Woodland Hills Drive from John and Jennifer Adams. On July 20, 2020, when Megan Fuja asked to see all submitted plans for the property at the city building, she was told that no new plans had been submitted and was shown only the plans previously obtained through GRAMA requests. Around 4:20 PM that same day, the amended plans which had been submitted a week earlier were sent to the Fugas via email from the City Recorder. As shown in the forwarded email chain, it is apparent that this amended plan information was available to the Adams on July 7, 2020, two days before an appeal hearing with the Board of Adjustment of the City of Woodland Hills regarding this property, but such amended plans were withheld from being submitted until after such hearing. It is clear that this submission does constitute a new land use approval and that such approval must meet the requirements of the City Zoning Ordinances, the City Development and Construction Standards and the IRC/IBC Codes and State Amendments. The amended plans as submitted not only do not comply with the structure as currently built but also do not in many instances meet the necessary codes, ordinances and mandatory land use regulations. And, since the original plans did not comply with the codes and the Adams have not complied with the building permit issued, according to both LUDMA and IRC State Codes, the Adams' original building permit is invalid. The amended documents do not meet the State Codes, City Zoning Ordinances and the Development and Construction Standards, and as such the Fugas appeal the

land use decision approving such amended construction documents based upon known engineering, structural, and geotechnical issues that lead to **irreparable harm** to the Fugas.

1. Submitted Plans Contain Known Errors and Omissions.

- a. Existing Elevation Contours are either omitted or incorrectly added.** While EG site point marks on the north and south side lot lines of the property were changed by about 6-10 feet in the amended site plan in order to correct errors in the previously approved site plan, the existing contours were not corrected on the amended site plan to make such changes consistent with actual survey data recorded against the property. On the far south side of the Adams' property on their amended site plan, the correct existing grade contours at 5971 and 5972 have been deleted and incorrect existing grade contours at 5969, 5968, 5967, 5966, 5965, 5964, 5963 and 5962 have been added. This makes the existing grade at this portion of the property appear to decrease by a total of 8 feet when in reality it actually increases by 2 feet. On the far north side of the Adams' property on their amended site plan, existing grade contours at 5939, 5938, 5937 and 5936 have been deleted. No existing grade contour lines exist in that section of the amended plans; however, the stamped and recorded Level of Focus topographical survey conducted for the Adams by Mr. Dave Hunt in 2017 clearly shows these existing grade contours. This omission makes it appear that the ground levels off at this point of the property when it actually decreases in elevation by as much as 4 feet over this area. These contours must be added for the site plan to be correct.
- b. BFF and FFE appear to be incorrect and should be independently measured and confirmed by a third party to establish the correct elevation of the basement floor and main floor.** The BFF is incorrectly shown at 5948.10, the same as in the previously submitted plans. However, it is clear that the elevation of the basement floor was changed as the foundation walls were all increased in height from 9 feet to either 13 feet or 10-11 feet. The 13 foot wall was necessitated by an elevation error of 2 feet in the original site plan below the front north corner of the residence along with an increase of around 2 feet in the overall elevation of the home as compared to the original plans. Most (if not all) of the foundation walls were built taller than the approved construction documents demonstrate, as can be shown through photographic evidence. These measures should be verified by direct measurement by an independent third party.
- c. 30% or greater slopes (unbuildable areas) are not clearly marked on the amended site plan, but do exist in multiple areas of the property.** The building permit packet makes clear that the site plan must show the following: "Location and size of all subsurface and surface water drainage facilities, existing and proposed; and any established floodplain areas, bodies of water or **other 'unbuildable areas' (30% grade or greater)** if present on the site." This requirement is further emphasized in Zoning Ordinance Chapter 121.04 (O) which states that a final site plan must contain: "The location and size of all subsurface and surface water drainage facilities, existing and proposed; and any established floodplain areas, bodies of water or other **unbuildable areas** if present on the site." It is further explained in the City's Hillside Development Standards that not only is a 30% or greater slope unbuildable, but "Any area within a Subdivision which has a slope of thirty-five (35%) or greater shall

remain un-graded.” This actually means that not only can a person not build on such an area, but they cannot even change the grade of such area. Such areas need to be marked on the plans and the plans must be updated to eliminate grading of areas with a 35% or greater existing grade slope (prior to any grading) and eliminate construction on areas of 30% or greater existing grade slope (prior to any grading). This portion of the Hillside Development Standards clearly applies to “any lot” and does not contain any variance mechanism written into the standard. All areas of 30% slope or greater must be marked and plans need to be adjusted accordingly.

- d. **The FG points called out at the front of the home are unachievable given the departures from the previously approved plans.** Such finish grade elevations would clearly result in a finished grade that would exceed the height of the cement foundation walls and would put dirt directly up against the wood and windows. This would not be structurally sound nor meet state codes. These finished grade points need to be revised and made to conform to the structure as built. Then, the plans need to be checked for conformity with the City Zoning Ordinances, the City Development and Construction Standards and the Utah State Building Codes and Amendments (IRC/IBC).
- e. **All FG points around the structure should be revised to meet the new elevations of the BFF and the FFE upon independent verification.** Given photographic evidence that the foundation walls are routinely taller than specified in the originally approved plans, the elevation levels of the finished grade points should be reevaluated and resubmitted.
- f. **The swale detail on the north side property line is not shown in the amended site plan.** As previously stated, Zoning Ordinance Chapter 121.04 (O) requires that the site plan must show: **“The location and size of all subsurface and surface water drainage facilities, existing and proposed; and any established floodplain areas, bodies of water or other unbuildable areas if present on the site.”** The swale and any other water drainage facilities must be detailed in the amended plans. Such detail is not currently included.
- g. **No storm water drainage plan calculations are shown as required by both the Development and Construction Standards and the Zoning Ordinance 121.10.C.** The City’s Development and Construction Standards, Chapter 02.08.080. Drainage, states: “Homeowners shall provide on-site facilities, piping and appurtenances to convey 80% of a 100 year storm event to an on-site facility, unless otherwise approved by the City Engineer. Design of on-site storm facilities shall be the responsibility of the homeowners’ Engineer. **The design of the on-site storm facilities shall be shown on and submitted with the Site Plan. No building permit will be allowed before approval of said facilities.** (Ordinance. 2006-12)” In Chapter 02.32.030.C9, it reads: “Surface water runoff drainage shall be designed and installed to prevent both on-site flooding and erosion. Such drainage design shall channel water runoff away from cut and fill slopes and away from all buildings.” The Zoning Ordinance 121.10.C reads: “All surface water drainage plans shall provide assurances that storm drainage will not negatively impact adjacent properties.” All of these clearly show that not only does the site plan need to specifically address surface water runoff and drainage, but calculations should be required showing how the plan is

justified by the numbers. These calculations need to be clearly shown on the amended site plan.

2. The Adams New Plans Do Not Fully Demonstrate the Significant Departures From Approved Construction Plans as Documented Below.

- a. There are significant changes in the stepping of the footings on the front, back, and North sides of the Adams' home which directly conflict with the stated finished grade elevations shown on the amended site plan.** At the front of the residence, on the previously approved plans, all 8 feet of footing stepping was completed within the pop-out portion of the home at the far north end of the residence and the front north corner of the main portion of the residence. As built, there is an approximate 2.5 foot step in the pop-out portion at the north end of the residence, an approximate 2 foot step at the front north corner of the main portion of the residence, an approximate 4 foot step just north of the front door, an approximate 4 foot step just south of the front door, and an approximate 5.5 foot step at the far south side of the front of the home where the garage meets the main residence, for an approximate total of 18 feet of footing stepping as compared with the original 8 feet specified. At the back of the residence, on the previously approved plans, a 4.5 foot step was shown where the pop-out portion of the residence met with the main portion of the house and another 3.5 foot step was shown at the back retaining wall for a total of 8 feet. As built, there are more than 2 steps. There is an approximate 5 foot step midway along the back wall of the pop-out portion of the residence, an approximate 2.5 foot step at the back north corner of the main section of the residence and an approximate 3.5 foot step by the retaining wall at the back of the home for a total of at least 11 feet of stepping as compared with the 8 feet specified. It should also be noted that it is unclear if there may be more footing stepping that occurs to the south of the retaining wall at the back of the residence. On the north side of the residence, no stepping of the footings was specified, and none has been noted on any amended plans thus far, but an approximate 2.5 foot step was inserted midway along that side. These are significant changes, especially when one considers the following statements made by the Building Inspector in his written notes and in the document signed by Jennifer Adams on the day that the Adams' building permit was issued. First, on June 25, 2019: "All steps in ftg [footing] and fnd [foundation] are to occur where specified by engineer of record." Second, on July 3, 2019 (signed on July 5, 2019), "Plans show full height foundation walls and specified locations for steps. Any deviation to the approved plans shall be approved by the engineer of record, prior to inspection. Please give all details adequate attention." No changes specified by the engineer of record address foundation or footing stepping changes and the amended plans submitted to the City on July 13, 2020 include finished grade elevations which directly conflict with the departures from the footing and foundation stepping as shown on the originally approved building plans. These departures and

errors present significant structural and safety issues that lead to irreparable harm to the Fujas if left unaddressed.

- b. **There is photographic evidence that there are significant changes in the heights of many (if not all) of the foundation walls which directly conflict with the stated finished grade elevations shown on the amended site plan.** Such height changes require investigation to ensure the safety of the structure. This has not been documented. The only documented change in foundation wall height occurs at the front north corner of the north wall of the pop-out portion of the residence and structural engineers have submitted documentation to the City stating that the horizontal reinforcement specified in that documented change does not comply with the IRC/IBC and UT State Amendments. All other height changes are undocumented and need to not only be amended but verified for correctness and structural safety and stability given the overall scope of the departures. The front north side of the pop-out portion of the foundation wall of the residence around to the north front corner of the main portion of the house was specified as 9 feet, but appears to be approximately 11 feet tall. The front north section of the foundation wall of the main portion of the residence was specified as 9 feet but appears to be approximately 10 feet. The front middle section of the foundation wall of the main portion of the residence was specified as 9 feet but appears to be approximately 10 feet tall. The front south section of the foundation walls of the main section of the home was specified at 9 feet but appears to be approximately 10 feet tall as built. The garage foundation was specified as 38 inches tall but appears to be approximately 5 feet tall as built. On the east side of the north foundation wall, the amended plans from August of 2019 show 13 feet in foundation wall height. The as built height is close though may be slightly higher, especially as the Adams added a section of cement after the fact to make the height match up with the wall heights on either side. On the west side of the north foundation wall, the approved plans specify a height of 9 feet, but the foundation wall appears to be approximately 11 feet tall as built. The back pop-out portion of the foundation wall on the north end of the residence was originally specified at 38 inches tall. Instead, this section appears to be approximately 11 feet tall at the north end and 7 feet tall at the south end of the pop-out and around the corner to the north end of the back main section of the house. Along the back north section of the main portion of the residence, a 38 inch tall foundation wall is specified, but instead an approximately 5 foot tall foundation wall appears to have been built. As for the retaining wall, it is specified as a 9 foot retaining wall, but appears to be built as an approximately 10 foot retaining wall. On the south side of the retaining wall and the foundation wall forming the north side of the garage, it is specified as a 9 foot foundation wall but appears to be built as an approximately 10 foot foundation wall instead. Even a 10% change in foundation wall height can make a big difference in the structural stability and the footing size or rebar reinforcement required to make a building structurally

sound. Some of these changes amount to an approximate 247% increase in foundation wall height from that specified in the plans. This is significant and requires a thorough investigation consisting of an independent third party measuring of the actual foundation wall heights and performing verification testing such as ground penetrating radar to ensure that the proper rebar amounts were used and that the foundation is stable and structurally sound. Also, all footing sizes should be checked for conformity with IRC Codes and State Amendments. Then, if found to be structurally stable, the finished grade elevations on the amended site plan submitted to the City on July 13, 2020 must be amended to reflect achievable finished grade elevations based upon the structure as actually built. The City should also require the Adams to submit an amended footing plan that matches the structure as built and perform a proper review to ensure that the structure as built can still meet City Zoning Ordinances, State Building Codes, and City Development and Construction Standards.

- c. **There is photographic evidence that the footings that are shown connecting the foundation to the front porch columns in the originally approved footing plan were not poured.** The Fugas have photographic evidence that the footings specified in the footing plans of the originally approved construction documents were not poured and are not connecting the front porch columns to the main structure. This area should be excavated to verify compliance. This could result in the front porch breaking away from the main house structure over time. This should be documented in the amended plans and reviewed for Code compliance and should be a consideration in the establishment of proper finished grade elevations, as shown on the amended site plan.
 - d. **Photographic evidence shows that there is less horizontal rebar in sections of the foundation walls than specified in the previously approved plans.** Where 7 horizontal #4 wall rebar are called for in a 9 foot tall section of the foundation wall at the front of the home, photographic evidence reveals only 6 rebar sections. This affects the structural stability of the entire home and could suggest other areas may also be out of compliance. This is a UT State Building Code Compliance issue and should be immediately investigated.
3. **The Amended Plans Violate IRC UT State Building Codes and Amendments and Render the Approved Amended Site Plan and Previously Approved Site Plan Invalid.**
- a. **The foundation walls and footings as designed do not meet code, and as built appear to be taller and even less in compliance with UT State Building Codes in the 2015 IRC and UT amendments.** The foundation heights and specified rebar and footing sizes shown in the previously approved but significantly departed from Building Plans have been found to not comply with IRC Code and UT State Amendments. The additional foundation height discrepancies described earlier in this appeal document may further exacerbate these findings and render larger sections of

the foundation walls out of compliance with such Code. This must be remedied for the safety of all involved. Safety issues unresolved constitute an **irreparable harm**.

- b. **IRC code requirements cannot be waived.**
- c. **Safety issues have been raised by CKR Engineering's Mr. Conrad Guymon, a professional structural engineer licensed in the State of Utah.** The following are his observations based upon both the Adams' original approved building plans and the amendment submitted in August of 2019.
 - i. "The soil properties used for design are significantly non-conservative. It is our opinion that the retaining wall design provides an insufficient factor of safety, particularly against sliding."
 - ii. "It is our opinion that the foundation plan provided is lacking a level of detail that should be present for a hillside project."
 - iii. "The front and right elevations show 9' tall foundation walls that do not have top edge support. Absent the top edge support, the construction shown does not meet the conditions of the Amendment. Without top edge support, these walls should properly be designed as free-standing retaining walls. No analysis was provided for these walls."
 - iv. "The project drawings show a 10" x 20" continuous footing. This footing size is too small to stabilize a free-standing retaining wall of this height. As shown on the project drawings, the stability of these walls is suspect."
 - v. "The height of the foundation wall on the northeast side of the house was increased to 13' during construction. This height increase was addressed in the letter from Gilson Engineering to John Adams on August 8, 2019. The wall vertical reinforcing was changed to #4 bars at 8" o.c. The horizontal reinforcing was specified as (7) #4 horizontal bars, which is the same as the 9' wall originally shown. The horizontal reinforcing does not meet minimum requirements of ACI 318."
 - vi. "Given the documented height increase and lack of top edge support, the wall design does not meet the conditions of the Utah State Amendment for residential construction. "
 - vii. "The 10" x 20" footing size shown is inadequate to provide stability against the soil load on this foundation wall."
 - viii. "The horizontal reinforcement specified is below minimum requirements of ACI 318."
- d. It appeared that layered compaction was not required by the Building Inspector in the fill material placed within the Adam's foundation walls, despite this being a mandatory requirement. Also, the material appeared to still contain large branches and organic material, along with snow and significant moisture. The Adams filled their foundation under very wet and snowy conditions in December and January despite the recommendations of EarthTec Engineering in their Excavation

Observation to only fill in dry conditions. Significant safety issues can result from such inadequate care in preparing and compacting Fill Materials leading to safety concerns with **irreparable harm**.

- i. "IRC Section R506 Concrete Floors (On Ground) - R506.1 General: Concrete slab-on-ground floors shall be designed and constructed in accordance with the provisions of this section or ACI 332. Floors shall be a minimum 31/2 inches (89 mm) thick (for expansive soils, see Section R403.1.8). The specified compressive strength of concrete shall be as set forth in Section R402.2. R506.2 Site Preparation: **The area within the foundation walls shall have all vegetation, top soil and foreign material removed.** R506.2.1 Fill: **Fill material shall be free of vegetation and foreign material. The fill shall be compacted to ensure uniform support of the slab, and except where approved, the fill depths shall not exceed 24 inches (610 mm) for clean sand or gravel and 8 inches (203 mm) for earth.** R506.2.2 Base: A 4-inch-thick (102 mm) base course consisting of clean graded sand, gravel, crushed stone, crushed concrete or crushed blast-furnace slag passing a 2-inch (51 mm) sieve shall be placed on the prepared subgrade where the slab is below grade."
- ii. Can documentation be shown to verify that the large organic material seen in photographs was taken out of the fill material and that the material was appropriately prepared for fill beneath the basement concrete floor?
- iii. Material did not appear to be added in layers and routinely compacted between each addition with layers of not greater than 8 inches. What documentation can be shown to substantiate compliance with the IRC Codes?
- e. In addition to all of these concerns expressed by licensed engineers in the State of Utah, the Fujas have reason to believe that other portions of the **foundation walls were increased in height without documentation** (per photographic evidence cited previously).
- f. **Additionally, the entire stepping design of the foundation walls was significantly altered as compared with that approved, without any authorization for such alteration from the engineer of record, Gilson Engineering, who stated in his testimony in court in November of 2019 that he had never performed a site visit.**
- g. **IRC stipulates that any modifications to the Code as stated cannot modify structural requirements.** "R104.10 Modifications: Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that **such modification does not lessen health, life and fire**

- safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.”
- h. **The Adams’ permit is not valid based on either the previously approved plans or the amended plans as submitted as they both violate provisions of the IRC and City Zoning Ordinances.** “R105.4 Validity of Permit: The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. **Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.** The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.”
- i. **The actions of the Adams Invalidating their Building Permit requires the City to either suspend or revoke the Building Permit until the Adams can remedy their site plan errors, code violations and ordinance violations, as specified in the IRC.** “R105.6 Suspension or Revocation: The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.”
- j. **The submission of the Amended Construction Documents constitutes a new land use decision and as such can be appealed.** IRC Code States: “R106.4 Amended Construction Documents: Work shall be installed in accordance with the approved construction documents, and **any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval** as an amended set of construction documents.” Any changes made during construction must be resubmitted for approval. Such approval constitutes a new land use decision that can be challenged in accordance with LUDMA and Local Ordinances. **As such, the Fugas herein exercise their appeal rights based upon the newly amended documents and also require that all other construction documents be amended to match the construction as actually being built.**
- k. **The City should immediately require the Adams to provide documentation and testing data that demonstrate compliance with the mandatory building codes of Utah (IRC/IBC) and the Zoning Ordinances and Development and Construction Standards of the City.** It is also necessary for the Adams to document the actual dimensions and specifications for the construction that has already been completed in the building of the residence and demonstrate compliance or devise a plan to alter the structure to bring it into compliance, as the building permit has now been rendered invalid by violation of Utah State Building Code (IRC) and Woodland Hills

Ordinances and by the bad faith inaccuracies of the originally submitted plans and the departures from such approved plans.

- l. 2015 IRC states that when there is question as to whether the code has been complied with, it is appropriate to require the builder to perform tests to confirm such compliance.** IRC 2015 R104.11.1 Tests states: "Where there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records."
- m. The Fujas request verification of compliance with the IRC Codes and related UT Amendments and verification of compliance between submitted building plans and actual construction be independently verified to ensure the safety of such structure and the neighboring properties that could be affected by wall failure and wall sliding or slope failure.** There is no option to waive requirements of the UT State Building Code or to grant exceptions to its requirements. Also, there is no timeframe for appeal written into the IRC. Additionally, safety must be the first concern of all decisions. A lack of enforcement of structural building codes constitutes an irreparable harm for the Fujas as it endangers their home, safety and property.
- 4. The Amended Plans Violate City Zoning Ordinances and Development and Construction Standards.**

 - a. The concrete buttress walls detailed on the sheet marked C.101 (with a file name of C.102) and shown on the newly amended Final Site Plan (C.101) appear to violate the 15 foot side yard setback at the rear corner of the driveway and proposed buttress wall.** According to the notes of the Building Inspector in review of the originally submitted site plan, no concrete retaining walls are allowed within the setback. Please ensure that no portion of the buttress walls fall within the setback.
 - b. Many areas of the amended plans appear to build in areas with greater than 30% slope (Unbuildable Areas).** In accordance with Zoning Ordinance Chapter 121.04 (O) and the building permit packet requirements as previously detailed, areas with a greater than 30% slope are unbuildable areas. These areas need to be marked and must not be built upon. As such, the porch must be moved so as not to build over a greater than 30% slope. Other areas must be examined for compliance with this Ordinance and for compliance with the building permit process. This requirement is widely accepted as a safety requirement to mitigate geotechnical hazards. It therefore

- constitutes an irreparable harm to the Fugas to allow the Adams to violate this ordinance and thereby decrease the safety of the Fuja's home and property.
- c. The Development Standards are "supplementary to the Subdivision Ordinance of the City of Woodland Hills." *See* Development Standards, 02.02.10 (General). Therefore, the Development Standards govern the use or development of land and are a land use regulation as that term is defined by Utah Code Ann. §10-9a-103(32). **The Development Standards, however, apply to more than just the development of subdivisions by sub-dividers and according to their own terms "provide general requirements for improvements to be built by the developer, sub-divider, owner or contractor for all types of construction." *See* Development Standards, 02.02.10 (General).**
 - d. **The Adams must submit a Certified Report to the City Engineer through the Building Inspector according to the Hillside Development Standards.** The Hillside Development Standards state that "[i]t shall be unlawful for the owner, developer, or any contractor or other person to excavate, grade, level, or build upon any lot or property within the City when the average slope of the lot exceeds twenty (20) percent...before such person has submitted to the chief building official a certified report from a qualified civil engineer licensed in the State of Utah containing the information set forth in the following section [02.32.30 Certified Report Specifications]." *See* Development Standards 02.32.30 (Certified Report Required). A slope analysis, performed in 2002, by LEI, the City's Engineer, confirms that the Adams' lot average slope is in excess of a 20% average grade and that the lot contains areas of slope greater than 30% and therefore presents unique geotechnical hazards which must be considered in all construction and grading activities on the lot. **With the submission of an amended site plan with significant changes in existing grade elevations, such a Certified Report is required.**
 - e. **The Certified Report must by law be reviewed by the City Engineer, not a designee.** The Hillside Site Development Standards require that "[n]o grading shall take place on a hillside area until the proposed method of handling the problems [identified in the required certified report from a qualified engineer] shall be submitted to and approved by the City Engineer." *See* Development Standards, 02.32.20(C). Additionally, state law requires that the City Engineer must be a professional engineer licensed and registered with the State of Utah (UT State Code 10.3.902).
 - f. **The Adams must comply on the amended site plan with the eleven separate standards specified in 02.32.030 of the City's Development and Construction Standards.** The Hillside Development Standards next require that the "Owner, Developer, or Contractor shall comply with..." eleven separate standards that are included in the Development Standards, 02.32.20(C).

- g. **These requirements for development in hillside areas are also included in the City's Subdivision Ordinance, section 109.07 Hillside Development.** The requirements of the Subdivision Ordinance, like the requirements of the Hillside Development Standards, must be correctly administered, interpreted, and enforced by the City in the approval of this newly amended site plan containing altered EG points and existing grade contours.
- h. **The Fujas would be adversely and uniquely affected by the City's failure to correctly interpret, apply, and enforce the mandatory provisions of the Hillside Development Standards and the Subdivision Ordinance as the Fujas own the home immediately below the Adams' home and would suffer the immediate consequence of geotechnical hazard such as slope erosion, flooding, and other problems that the Hillside Development Standards are designed to mitigate or prevent which constitute irreparable harm for the Fujas.**
- i. **Multiple sections of the amended site plan appear to disturb areas with greater than 35% slope which "shall remain un-graded." (Development and Construction Standards Chapter 02.32.030 .C1)** For example, on the south side of the amended plan wherein a buttress wall is being proposed, there are sections of 35% slope or greater. The amended site plan proposes that these portions be graded to achieve a 2:1 slope. These areas cannot be graded. The 2:1 slope cannot be achieved, and so a taller buttress wall would necessarily be required. **This will result in the need for a taller buttress wall and will present new structural and geotechnical hazards and considerations which must be addressed.** Once these areas are marked, they must be left as is and not graded or disturbed. Grading an area that is by law mandated to remain ungraded constitutes an irreparable harm to the downhill neighbor. As such, any areas with greater than 35% slope shall not be graded without creating an irreparable harm for the Fujas.
- j. **The site plan shows grading of nearly all of the "area of such slope" and violates the Hillside Site Development Standard:** "Any area within a Subdivision which has a percent slope between twenty (20%) and thirty-four (34%) may be graded: provided, however, the grading area shall be less than one half of the area of such slope." (Development and Construction Standards Chapter 02.32.030.C2) The City of Orem and the City of Elk Ridge both include very similar language in their hillside slope ordinances. The City of Orem rendered this common understanding of the common language also contained in our City's Hillside Development Standard: "You are only allowed to disturb, grade, impact, 50% of the slope area on your lot where the average slope is greater than 20% but less than 35%..., 50% of the contours of that sloped area that has an average slope between 20% and 35%." Almost the entire property at 1115 S. Woodland Hills Drive has a slope greater than 20% and 5 separate signed and stamped engineering reports have been submitted to the City demonstrating that, per the calculation detailed in the City's Hillside Development

Standard, the average slope of the lot is in excess of a 23% grade. The 2002 Slope Analysis of the Thousand Oaks Subdivision performed by LEI confirms that the lot should have been flagged to receive extra care in the approval process. Thus, as the contours on the Adam's property run east to west, they should only be able to grade half of the contour lines. The proposed extreme grading on the amended plans presents geotechnical hazards and yields significant safety issues for neighboring properties. Allowing the grading of such slopes also constitutes an **irreparable harm** to the Fugas, whose property is downhill from the Adams' property and who stand to be affected by the loss or disturbance of such slopes, the loss of vegetation holding that ground in place, and the illegal placement of a building on portions of a property that cannot legally be graded.

- k. **The fill slope at the north side of the amended site plan for the Adams' lot violates the fill slope standard of the Hillside Site Development section of the City Development and Construction Standards.** It reads: "Fill slopes shall be no steeper than two feet horizontal to one foot vertical (2:1) and shall be designed with an acceptable erosion control system. An erosion control system is generally composed of a combination of long-term non-degradable erosion mat, structural geo-grid and/or geo-textile. These materials can be used alone or in combination." Currently, the plans show a nearly 10 foot drop in elevation between the finish grade at the northeast corner of the home and the corresponding EG at the side lot line 15 feet away. This would constitute a 1.5:1 grade which is not allowed. The finished grade elevations in this area must be brought into compliance with the Hillside Site Development standards that are widely acknowledged to contribute to the safety of slopes in hillside site construction such as this.
- l. **The amended plans disturb the 5 foot area at each side lot line required to remain undisturbed and at natural grade by the Hillside Development Standards in the Development and Construction Standards Chapter 02.32.030.C6.** This regulation states: "Tops or toes of slopes shall be set back from property boundaries a minimum distance of five (5) feet. (Excluding Roads)." The amended plans on both the north side where there is already a 1.5:1 slope shown and on the south side where there is currently a 2:1 slope shown do not respect this 5 foot minimum boundary. The Standard is clear that no top or toe of a slope can occur within 5 feet of the property line. The amended site plan must be revised to meet this mandatory land use requirement.
- m. **The amended plans show grass within areas with a slope of 35% or greater that cannot be graded nor have natural vegetation removed.** This is in violation of Hillside Development Standard Chapter 02.32.030.C8: "Natural vegetation **shall** remain in areas where grading is not permitted. The City may require additional landscaping in areas which were graded in order to supplement the natural vegetation and to prevent erosion and slope failures." It is mandatory that these areas remain

natural. Grass cannot be added to these areas, and the natural vegetation (including trees) cannot be removed as shown in the amended plans.

5. **Good Faith Arguments put forth by the Adams are not applicable to the administration of the Ordinances and the application of the IRC State Building Codes and Amendments and City Development and Construction Standards and cannot possibly apply to the Adams' actions in this situation.**

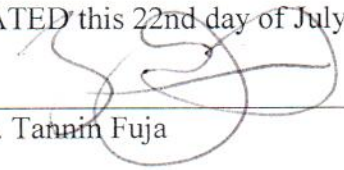
- a. The Adams' original plans have errors in the existing elevation contours and the existing grade points marked that render their site plan in error, and they have been aware of such errors since July of 2019 but are only now seeking to amend their plans.
- b. As such, their reliance on their building permit and plans is not "in good faith."
- c. Taken directly from the UT Property Rights Ombudsman's website, regarding good faith and zoning estoppel: "It is also necessary that the reliance be "in good faith," meaning that a property owner has an obligation to inquire about a proposed land development or use. **Also, if the property owner knows that the representation is wrong or incomplete, reliance is not in good faith. Finally, if the use or development requires specific approval (like a conditional use permit or a subdivision plat), making substantial changes without obtaining those approvals would not be good faith reliance.**" The significant elevation differences between the original plans submitted by the Adams (approved by the City in 2019) and the amended plans submitted to the City by the Adams on July 13, 2020 are very significant. Such a significant difference should have been clear to Mr. Adams (a professional builder) every day he was on site. Additionally, the Adams were aware of the 6 foot error in their existing elevation markings at the north side of their property since July of 2019 but chose to do nothing to correct their plans until July of 2020. The representations in the originally submitted site plans were wrong and incomplete and these errors were known by Mr. Adams and are only now addressed in July 2020. **These actions are not in good faith.**
- d. **The Adams' significant departures from their approved plans are not good faith actions.** If the Adams had acted in good faith, they would have had the stepping and height changes submitted to the city for approval prior to construction or immediately thereafter as they knew this was a departure from their approved plans. Instead they have repeatedly represented or allowed to be represented in their behalf (even under Oath) that they were fully compliant with their approved construction documents. **These are not good faith actions.**

II. IDENTITY OF APPELLANT

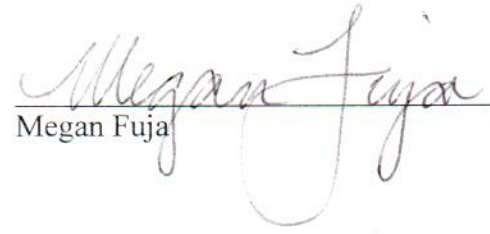
The Appellants are residents of the City of Woodland Hills and owners of real property immediately adjacent to the residential lot on which the City has erroneously approved the amended construction documents submitted to the City on July 13, 2020 and is erroneously applying various statutes of the City Zoning Ordinance, City Development and Construction Standards and IRC/IBC Utah State Building Codes and Amendments. The appellants are:

Dr. Tannin and Megan Fuja
1005 Woodland Hills Drive
Woodland Hills, Utah 84653

DATED this 22nd day of July 2020.



Dr. Tannin Fuja



Megan Fuja