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CITY OF WOODLAND HILLS BOARD OF ADJUSTMENT

**IN THE MATTER OF THE FUJAS'
APPEALS
TO THE BOARD OF ADJUSTMENT
ON THE CITY OF WOODLAND
HILLS OF
ADMINISTRATION AND
INTERPRETATION OF ITS ZONING
ORDINANCES.**

CITY POSITION PAPER

Pursuant to the notice of a hearing of the Board of Adjustment (“**Board**”) on the Fugas’ various appeals, the City of Woodland Hills (“**City**”), through its counsel, hereby submits this Position Paper. This Position Paper is in response to the Requested Combined Appeal submitted on November 17, 2020 (“**Requested Combined Appeal**”), attached as **Exhibit A**, and the appeal submitted on November 4, 2020 (“**November 4, 2020 Appeal**”), attached as **Exhibit B** (collectively, “**Fuja Appeals**”). The purpose of this Position Paper is to clarify which of the many issues raised by the Fugas are properly before the Board and which are not. Additionally, this Position Paper is to demonstrate that the Fugas cannot prove that there has been a violation of the administration and interpretation of the City’s zoning standards. The City also reminds the Board that the burden of proof of an error being made is squarely on the Fugas’ to prove.¹

The Board is more properly a “Land Use Appeal Authority” under what is known as the Municipal Land Use Development and Management Act (“**MLUDMA**”).² The powers and duties of a Land Use Appeal Authority are found in the Utah Code Annotated Part 7, Sections 10-9a-701 to 708. The Board only has authority “to hear and decide:

(a) *requests for variances from the terms of the land use ordinances;*

¹ See Zoning Ordinance 127.06(3).

² The MLUDMA is codified in Utah Code Ann. § 10-9a-101 *et seq.*

- (b) *appeals from decisions applying the land use ordinances; and*
- (c) *appeals from a fee charged in accordance with Section 10-9a-510.*"³

Neither (a) variances nor (c) appeals of fees are relevant to the Fuja Appeals. Only (b), appeals from decisions applying the land use ordinances by the City's "Land Use Authority" are relevant.⁴ MLUDMA and the City's Zoning Ordinances ("**Zoning Ordinances**") define a "Land Use Authority" as:

- (a) *a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or*
- (b) *if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.*"⁵

Only a very small subset of the Fuja Appeals, relate to the interpretation of "land use ordinances," found in Zoning Ordinances Chapter 121.10(C) and Chapter 121.04(O), are properly appealed to the Board. The Fuja Appeals contain many issues, which are not from decisions of a land use authority interpreting land use ordinances. Also under the Zoning Ordinances, the Board solely has the authority to review decisions interpreting or applying the Zoning Ordinances.⁶ Likewise, the Board may not review decisions under any other of the City's ordinances or city standards.⁷

After review of the contents of the Fuja Appeals, the Board cannot not review any of the issues or decisions in the November 4, 2020 Appeal and can only review the small portion of the issues in the Requested Combined Appeal that discusses Zoning Ordinances Chapter 121.10(C) (Surface Water Drainage) and Chapter 121.04(O) (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).

A. The Board Cannot Review Issues in the November 4, 2020 Appeal Which are all Pending Before the Fourth District Court

All of the issues in the November 4, 2020 Appeal were previously included in the Fugas' Petition for Review ("**Petition**") currently pending in the Fourth District Court.⁸ The Petition is

³ Utah Code Ann. § 10-9a-701(1).

⁴ Utah Code Ann. § 10-9a-103(29).

⁵ Utah Code Ann. § 10-9a-103(29).

⁶ Zoning Ordinances Chapter 127.06(4).

⁷ See Zoning Ordinances Chapter 127.06(4).

⁸ Dr. Tannin J. Fuja and Megan Fuja, Petitioners, vs. City of Woodland Hills, a body politic, City of Woodland Hills Building Inspector, and City of Woodland Hills Board of Adjustment, respondents is filed in the Fourth Judicial District Court in and for Utah County, Case No. 200401123, Judge Darold

attached as **Exhibit C**. The issues in the November 4, 2020 Appeal were previously considered and acted on by the Board, which is demonstrated in the contents of the Petition. In the Petition, the Fujas state that they “made a timely and specific challenge of the Building Inspector’s interpretation of the Zoning Ordinances, Chapters 109.04, 109.05, 103.09, 103.27, and 103.67 concerning building height.”⁹ The Fujas then state that the Board considered their appeal and that “[t]he Board’s final decision was issued on July 14, 2020 ...”¹⁰ Lastly, the Fujas state that they have “met all administrative conditions precedent to seeking judicial review of the decisions of the City, the Building Inspector, and the Board.”¹¹

As the Fujas state in their Petition for Review, their appeal of decisions under Zoning Ordinances 109.04 and 109.05 were previously reviewed by the Board. Thus the doctrine of *res judicata* applies and the Fujas may not raise these issues a second time. The doctrine of “*res judicata*” refers generally to the preclusive effects of judgments previously entered.¹² The Utah courts have long held that the doctrine of *res judicata* applies to administrative adjudications and can be used to enforce the decision of administrative agencies.¹³

The Board is an administrative quasi-judicial body that has been set up to review decisions of the Land Use Authority under the City’s Zoning Ordinances.¹⁴ As the Board has heard and acted on the Fujas’ November 4, 2020 Appeal under Zoning Ordinances 109.04 and 109.05¹⁵ and the doctrine of *res judicata* applies, the Board cannot reconsider issues ruled upon but raised again in the November 4, 2020 Appeal.

B. The Board May Only Review Several Issues in the Requested Combined Appeal Addressing Zoning Ordinances Chapter 121.10(C) and Chapter 121.04(O)

The Board may review several issues in the Requested Combined Appeal. There are two separate requirements for an appeal to be properly before and heard by the Board: (1) the decision appealed must have been made by the “Land Use Authority” under both LUDMA and the Zoning Ordinances and (2) under Zoning Ordinances Chapter 127.06(4), “only zoning decisions applying

McDade. This case requests a review of six Zoning Ordinances (109.04, 109.05, 102.05, 103.09, 103.27, and 103.67). None of the six Zoning Ordinances appear in the Requested Combined appeal, but Zoning Ordinances 109.04 and 109.05 appear in the Appeal to the Board submitted on November 4, 2020.

⁹ Ex. C, Petition for Review ¶ 8 (submitted on August 8, 2020).

¹⁰ Ex. C, Petition for Review ¶¶ 11-12 (submitted on August 8, 2020).

¹¹ Ex. C, Petition for Review ¶ 13 (submitted on August 8, 2020).

¹² See *D.U. Co. v. Jenkins*, 2009 UT App 195, ¶ 14, 216 P.3d 360, 365 (citations omitted.)

¹³ See *Career Serv. Review Bd. v. Utah Dep’t of Corr.*, 942 P.2d 933, 938 (Utah 1997) (citations omitted.)

¹⁴ See Zoning Ordinances Chapter 127.01 *et seq.*

¹⁵ See Ex. C, Petition for Review ¶¶ 11-12 (submitted on August 8, 2020).

a Zoning Ordinance may be appealed to and reviewed by the Board.” Due to these two requirements the Board can only review the issues of the Requested Combined Appeal that discuss Zoning Ordinances Chapter 121.10(C) and Chapter 121.04(O).

(1) the Decision Appealed must have been made by the “Land Use Authority” under both LUDMA and the Zoning Ordinances.

The first requirement is that the decision appealed must have been made by the “Land Use Authority” under both LUDMA and the Zoning Ordinances. LUDMA defines a “Land Use Authority” as:

- (a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or*
- (b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body. A “Land Use Application” is defined as an application that is:*
 - (i) required by a municipality; and*
 - (ii) submitted by a land use applicant to obtain a land use decision; and*
- (b) does not mean an application to enact, amend, or repeal a land use regulation.¹⁶*

Accordingly, the Board may only hear appeals from decisions by a Land Use Authority. If the decision is not made by a Land Use Authority, it cannot be appealed to the Board. Utah Code Ann. § 10-9a-707(1)(a) states that as the Appeal Authority, the Board, shall determine the correctness of a Land Use Authority's interpretation and application of the plain meaning of the land use regulations.¹⁷

LUDMA definitions are consistent with Zoning Ordinances in Ch, 127.06(4), which identifies the City's land use ordinances as “Zoning Ordinances,” which thus excludes other city standards or ordinances from being land use ordinances. Consequently, the Board does not have the authority to review decisions under ordinances other than the Zoning Ordinances.

In order to determine which of the issues in the Requested Combined Appeal are decisions made by a Land Use Authority we will review the person or entity who made a decision on the issues presented in the Requested Combined Appeal:¹⁸ (i) Development & Construction Standards;

¹⁶ Utah Code Ann. § 10-9a-103(29).

¹⁷ See *Colosimo v. Gateway Cmty. Church*, 2018 UT 26, ¶ 46, 424 P.3d 866, 882 (“Indeed, we have held that ‘[t]he best evidence of the legislature's intent is the plain language of the statute itself.’ When looking at the plain language, ‘[w]e presume that the legislature used each word advisedly,’ and deem ‘all omissions to be purposeful.’ We therefore begin our analysis with the language of the Ordinance.”)

¹⁸ Even though the Fugas’ have organized the Requested Combined Appeal in sections (A, B, & C), many of their issues go over the interpretation of the same city ordinances, due to the sections overlapping, instead of going through the sections we will go through the Requested Combined Appeal by issue.

(ii) Chapter 2.32 (Hillside Site Development); (iii) Subdivision Ordinance, section 109.07 (Hillside Development); (iv) International Residential Code; and (v) International Building Code.

(i) Development & Construction Standards

While the City's Development and Construction Standards ("**Development & Construction Standards**") do not expressly provide for their administration, the City Engineer, who is not a Land Use Authority appears to be the main administrator of the Development & Construction Standards.¹⁹ There are limited references to certain decisions made by the Planning Commission. Even though, a "Land Use Authority" may play a small role in the Development & Construction Standards for the reasons set forth below, the Board does not have the authority to review these issues as set forth in Zoning Ordinances Chapter 127.06(4).

(ii) Chapter 2.32 (Hillside Site Development)

In the current Development & Construction Standards Chapter 2.14 is titled "Hillside Site Development" however, in the older version Development & Construction Standards Chapter 2.32 was titled "Hillside Site Development."²⁰ Regardless, there appears to be no role for the Planning Commission or any other "Land Use Authority" in interpreting or applying the Hillside Site Development Standards. As there is no role for the Planning Commission or any other "Land Use Authority" in interpreting or applying the Hillside Site Development Standards the Board does not have the authority to interpret the Hillside Site Development standards.

(iii) Subdivision Ordinance, section 109.07 (Hillside Development)

The Planning Commission and other "Land Use Authorities" do play a role in the administration of the City's Subdivision Ordinances. Even though, a land use authority may play a small role in the City's Subdivision Ordinances for the reasons set forth below, the Board does not have the authority to review these issues as set forth in Zoning Ordinances Chapter 127.06(4).

(iv) International Residential Code

The Fugas purport that City adopted the International Residential Code in 2007, However the State of Utah subsequently adopted the International Residential Code of 2015 ("**IRC**") for the entire state.²¹ The IRC supplements the building and construction standards found in the International Building Code for construction of one and two family dwellings. The IRC is administered by the Building Official.²² The Building Official is not a Land Use Authority and the

¹⁹ See Woodland Hills' Development and Construction Standards on the Woodland Hills' website <https://www.woodlandhills-ut.gov/wp-content/uploads/2020/07/Woodland-Hills-City-Development-Construction-Standards.pdf>

²⁰ See *id.*

²¹ See Utah Code Ann. § 15A-2-103(1)(b).

²² See IRC Section R103.1.

IRC has its own appeal provisions.²³ Appeals under the IRC are required to be heard by a Board of Appeals with technical expertise.²⁴ As a state adopted code the requirement of appeals being heard by the Board of Appeals, preempts any City contrary ordinance or city standard. Thus, decisions by the Building Official under the IRC must be heard by the Board of Appeals and so there is no role for the Board.²⁵

(v) International Building Code

The City adopted the International Building Code (“**IBC**”) in City Code 5-1-101 (Building Code).²⁶ City Code 5-1-101 (Building Code) is not part of the Zoning Ordinances but is part of the City Code and more importantly state law.²⁷ Under its own terms, which are state law, the IBC is administered by the “Building Official.”²⁸ Even though the Zoning Ordinance provides for the appeal of decisions by the Building Inspector of the Zoning Ordinance to the Board,²⁹ appeals of interpretation or application of the IBC by the building official are only to the “Board of Appeals”.³⁰ The Fujas challenge the Building Official’s decision to accept the amended building plans of the Adams’ home (“**Subject Property**”). The Building Official is not a Land Use Authority and the IBC has its own appeal provisions.³¹ The IBC requires appeals to the IBC to be to a board comprised of individuals with technical expertise.³² As a state adopted code the requirement of appeals being heard by the Board of Appeals, preempts any City contrary City Ordinance. Thus decisions by the Building Official under the IBC must be heard by the Board of Appeals and so there is no role for the Board.³³

²³ See IRC Section R112.

²⁴ See IRC Section R112.3.

²⁵ See IRC Section R112.

²⁶ See City Code 5-1-101. It is also adopted under state law. See Utah Code Ann. § 15A-2-103(1)(a).

²⁷ See Zoning Ordinances Chapters 101-131; City Code 5-1-101 and Utah Code Ann. § 15A-2-103(1)(a).

²⁸ See IBC Section 104 generally.

²⁹ Zoning Ordinances Chapter 127.06(1).

³⁰ See IBC Section 113.1.

³¹ See IBC Section 113.

³² See IBC Section 113.3.

³³ See IBC Section 113.

(2) Under Zoning Ordinances Chapter 127.06(4), “only zoning decisions applying a Zoning Ordinance may be appealed to and reviewed by the Board.”

The second requirement for an appeal to the Board is that the issue being appealed must be a Land Use Decision. Under Zoning Ordinances Chapter 127.06(4), “only zoning decisions applying a Zoning Ordinance may be appealed to and reviewed by the Board.” Although, there is no definition of “Zoning Ordinance” in the Zoning Ordinances or any of the City’s other ordinances, the City has clearly titled the Zoning Ordinances as “Zoning Ordinances.”³⁴ Additionally, the Zoning Ordinances and chapters 101-131 of the Zoning Ordinances are the only chapters in any of the City’s ordinances or city standards that have the designation of Zoning Ordinances.³⁵

In order to determine which of the issues in the Fuja Appeals can be heard by the Board we will review the issues presented in the Requested Combined Appeal:³⁶ (i) Development & Construction Standards; (ii) Chapter 2.32 (Hillside Site Development); (iii) Subdivision Ordinance, section 109.07 (Hillside Development); (iv) International Residential Code; (v) International Building Code; and (vi) Zoning Ordinances.

(i) Development and Construction Standards

The City’s Development & Construction Standards are not part of the Zoning Ordinances but are a separate ordinance section in the City’s ordinances and city standards.³⁷ Given that the Development & Construction Standards are not Zoning Ordinances, the Board does not have the authority to review the Development & Construction Standards as set forth in Zoning Ordinances Chapter 127.06(4).

(ii) Chapter 2.32 (Hillside Site Development)

In the current Development & Construction Standards Chapter 2.14 is titled “Hillside Site Development” however, in the older version Development & Construction Standards Chapter 2.32 was titled “Hillside Site Development.”³⁸ Additionally, there is no chapter in the Zoning

³⁴ See the Zoning Ordinances on the Woodland Hills’ website at <https://www.woodlandhills-ut.gov/city-code>.

³⁵ See the Zoning Ordinances and other ordinances or city standards on the Woodland Hills’ website at <https://www.woodlandhills-ut.gov/city-code>; see also Utah Code Ann. § 10-9a-701(1)(b).

³⁶ Even though the Fugas’ have organized the Requested Combined Appeal in sections (A, B, & C), many of their appeals go over the interpretation of the same city ordinances, due to the sections overlapping, instead of going through the sections we will go through the Requested Combined Appeal by issue.

³⁷ See Development and Construction Standards are not in the Zoning Ordinance section of the Woodland Hills’ website <https://www.woodlandhills-ut.gov/city-code>; <https://www.woodlandhills-ut.gov/wp-content/uploads/2020/07/Woodland-Hills-City-Development-Construction-Standards.pdf>.

³⁸ See Woodland Hills’ Development and Construction Standards <https://www.woodlandhills-ut.gov/wp-content/uploads/2020/07/Woodland-Hills-City-Development-Construction-Standards.pdf>

Ordinances that entail “Hillside Site Development.”³⁹ As Chapter 2.14 or Chapter 2.32 of the Development & Construction Standards are not in the Zoning Ordinances, but are a separate city standard,⁴⁰ the Board does not have the authority to review Hillside Site Development as set forth in Zoning Ordinances Chapter 127.06(4).

(iii) the City Subdivision Ordinance, section 109.07 (Hillside Development).

The City’s Subdivision Ordinance section 109.07 (Hillside Development) is not part of the Zoning Ordinances but are a separate city standard.⁴¹ Given that Subdivision Ordinance, section 109.07 (Hillside Development) is not in the City’s Zoning Ordinances, the Board does not have the authority to review these issues as set forth in Zoning Ordinances Chapter 127.06(4).

(iv) International Residential Code

As explained above, the IRC was adopted in the in 2007 and adopted by the state of Utah in 2015.⁴² It is clear that the City did not adopt the International Residential Code in the Zoning Ordinances.⁴³ As the IRC was not adopted in the Zoning Ordinances, the Board does not have the authority to review the IRC issues, as set forth in Zoning Ordinances Chapter 127.06(4).

(v) International Building Code

As explained above, the City adopted the IBC was adopted the International Building Code in City Code 5-1-101 (Building Code)⁴⁴ and more importantly was codified in Utah state law.⁴⁵ City Code 5-1-101 (Building Code) is not part of the Zoning Ordinances but is part of the City Code.⁴⁶ Given that the IBC is part of the City Code and not part of the Zoning Ordinances, the Board does not have the authority to review these issues, as set forth in Zoning Ordinances Chapter 127.06(4).

³⁹ See Zoning Ordinances Chapters 101-131.

⁴⁰ See the Zoning Ordinances and other ordinances or city standards on the Woodland Hills’ website at <https://www.woodlandhills-ut.gov/city-code>.

⁴¹ See the Zoning Ordinances and other ordinances or city standards on the Woodland Hills’ website at <https://www.woodlandhills-ut.gov/city-code>.

⁴² See Utah Code Ann. § 15A-2-103(1)(b).

⁴³ See Zoning Ordinances Chapters 101-131.

⁴⁴ See City Code 5-1-101. It is also adopted under state law. See Utah Code Ann. § 15A-2-103(a).

⁴⁵ See Utah Code Ann. § 15A-2-103(1)(a).

⁴⁶ See Zoning Ordinances Chapters 101-131; City Code 5-1-101.

Also, Board does not have the authority to review building code issues as set forth in Zoning Ordinances Chapter 127.06(4) and the IBC. The challenge to the 4-way inspection, an inspection of Framing, Electrical, Plumbing, and HVAC, is clearly a building code inspection by the building official and only appealable to a Board of Appeals.⁴⁷

(vi) Zoning Ordinances

The Fugas state that the amended plans for the Subject property do not meet the Zoning Ordinances, and mention two Zoning Ordinances specifically in “Details of Issues Being Appealed” for section C: (1) Zoning Ordinances Chapter 121.10(C) (Surface Water Drainage); (2) Zoning Ordinances Chapter 121.04(O) (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.). Besides these two ordinances, the Fugas do not mention any other specific Zoning Ordinance in the Requested Combined Appeal. Specifically, the Fugas state that the amended plans for the Subject Property do not meet the standards set forth by the Zoning Ordinances.

The Board has the authority to review the interpretation of both (1) Zoning Ordinances Chapter 121.10(C) and (2) Zoning Ordinances Chapter 121.04(O), as well as the decision to pass the amended plan of the Subject Property and the decision or determination that was made for both (1) Zoning Ordinances Chapter 121.10(C) and (2) Zoning Ordinances Chapter 121.04(O). Only zoning decisions applying a Zoning Ordinance may be appealed to the Board.⁴⁸ The Board may only consider this part of the Fuja Appeals that relates to the interpretation of a Zoning Ordinances Chapter 121.10(C) and Chapter 121.04(O).⁴⁹

C. Zoning Ordinances Chapter 121.10(C) and Chapter 121.04(O)

As explained above, there are only two issues that the Board has authority to review. These are found in the portions of the Requested Combined Appeal that challenge Zoning Ordinances 121.04(O) and 121.10(C).

Zoning Ordinance 121.04(O) states:

Each final site plan submitted shall contain the following information, unless specifically waived by the Planning Commission, in whole or in part:

(O) 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.

⁴⁷ A board of appeals would be able to review the 4-way inspection if the Fugas had standing to appeal the 4-way inspection. It is not of our legal opinion that the Fugas have the required standing.

⁴⁸ Zoning Ordinances Chapter 127.06(4).

⁴⁹ Zoning Ordinances Chapter 127.06(4).

Zoning Ordinance 121.04(O) is mentioned twice in the Requested Combined appeal, but it is always mentioned in conjunction of the City's Hillside Development Standards and the building permit packet requirements, both of which are not Zoning Ordinances as explained above. The Board can only address the portions of the Requested Combined Appeal that mention the Zoning Ordinance 121.04(O) on its own.

When arguing that Zoning Ordinance 121.04(O) was not interpreted correctly, the Fujas state. "areas with a greater than 30% slope are unbuildable areas"⁵⁰ and that "these areas need to be marked and must not be built upon."⁵¹ A plain reading of the Zoning Ordinance 121.04(O), which is how these ordinances must be examined,⁵² demonstrates that the word there is no specific percentile given for what is an unbuildable area.⁵³ As there is no specific percentile required by the ordinance, the Fujas' challenge of Zoning Ordinance 121.04(O) is unfounded and should be denied by the Board.

The Fujas also never explain when the decision interpreting 121.04(O) was made or who made the decision. The Fujas needed to appeal to the Board "within 45 days of an order, requirement, decision or determination by the Planning Commission, Building Inspector or Zoning Enforcement Officer."⁵⁴ The Board cannot hear the Fujas arguments unless, their appeal meets these requirements.⁵⁵

Additionally, Zoning Ordinance 121.10(C) states:

The following standards shall be utilized by the Planning Commission in the review of all site plans. These standards are intended to provide a frame of reference for the applicant in the preparation of the site plans as well as for the reviewing authority in making a judgment concerning them. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention, or innovation.

(C) Surface Water Drainage: All surface water drainage plans shall provide assurances that storm drainage will not negatively impact adjacent properties.

⁵⁰ See Requested Combined Appeal at 22.

⁵¹ See Requested Combined Appeal at 22.

⁵² See *Colosimo v. Gateway Cmty. Church*, 2018 UT 26, ¶ 46, 424 P.3d 866, 882 ("Indeed, we have held that '[t]he best evidence of the legislature's intent is the plain language of the statute itself.' When looking at the plain language, '[w]e presume that the legislature used each word advisedly,' and deem 'all omissions to be purposeful.' We therefore begin our analysis with the language of the Ordinance."

⁵³ See Zoning Ordinances Chapter 124.01(O).

⁵⁴ See Zoning Ordinances Chapter 124.01(O).

⁵⁵ See *id.*

When arguing that Zoning Ordinance 121.10(C) was not interpreted correctly, the Fugas state, “[n]o storm water drainage plan calculations are shown” and “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”⁵⁶ and that “[t]hese calculations need to be clearly shown on the amended site plan.”⁵⁷ A plain reading of the Zoning Ordinance 121.10(C), which is how these ordinances must be examined,⁵⁸ demonstrates that the word “calculation” or the need for any calculations is not required.⁵⁹ As no calculation is required, the Fugas’ challenge of Zoning Ordinance 12.10(C) is unfounded and should be denied by the Board.

More importantly, the Fugas never explain when the decision interpreting 121.04(O) was made or who made the decision. The Fugas needed to appeal to the Board “within 45 days of an order, requirement, decision or determination by the Planning Commission, Building Inspector or Zoning Enforcement Officer.”⁶⁰ The Board cannot hear the Fuja Appeals if their appeals fail to meet these requirements.⁶¹

Conclusion

As explained in this Position Paper, only two of the Fuja Appeal meet the requirement of being a land use decision made by a land use authority. However, unless the Fugas are able to demonstrate that the appeal of Zoning Ordinance 121.04(O) and Zoning Ordinance 121.10(C) were timely, i.e., within 45 days of a decision by the land use authority the appeals are untimely. The Fuja Appeals do not meet the requirements of the scope of what the Board can review the Board should refuse to consider the Fuja Appeals.

⁵⁶ See Requested Combined Appeal at 15-16.

⁵⁷ See Requested Combined Appeal at 16.

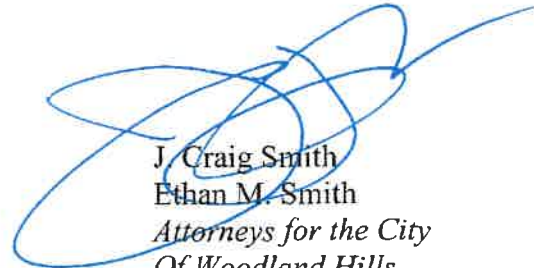
⁵⁸ See *Colosimo v. Gateway Cmty. Church*, 2018 UT 26, ¶ 46, 424 P.3d 866, 882 (“Indeed, we have held that ‘[t]he best evidence of the legislature’s intent is the plain language of the statute itself.’ When looking at the plain language, ‘[w]e presume that the legislature used each word advisedly,’ and deem ‘all omissions to be purposeful.’ We therefore begin our analysis with the language of the Ordinance.”)

⁵⁹ See Zoning Ordinances Chapter 121.10(C).

⁶⁰ See Zoning Ordinances Chapter 124.01(O).

⁶¹ See *id.*

Sincerely,
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EXHIBIT A

Requested Combined Appeal

**WOODLAND HILLS CITY BOARD OF ADJUSTMENT//BOARD OF APPEALS
APPEAL AUTHORITY**

**THE CITY'S ADMINISTRATION, INTERPRETATION, &
ENFORCEMENT OF THE DEVELOPMENT &
CONSTRUCTION STANDARDS; THE SUBDIVISION
ORDINANCE SECTION 109.07 (HILLSIDE
DEVELOPMENT); &
THE CITY'S FAILURE TO INSPECT & ENFORCE
COMPLIANCE WITH CONSTRUCTION PLANS
APPROVED AS PART OF THE CITY'S ISSUANCE OF A
BUILDING PERMIT.**

AND/OR

**THE CITY'S ADMINISTRATION, INTERPRETATION, &
ENFORCEMENT OF CITY ZONING ORDINANCES;
CITY DEVELOPMENT & CONSTRUCTION
STANDARDS; THE SUBDIVISION ORDINANCE
SECTION 109.07 (HILLSIDE DEVELOPMENT); &
THE CITY'S FAILURE TO INSPECT & 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 &
REQUIRE SUCH AMENDED PLANS TO FULLY
COMPLY WITH THE ABOVE MENTIONED
MANDATORY LAND USE REGULATIONS.**

AND/OR

**THE CITY'S FAILURE TO INSPECT & 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 &
REQUIRE SUCH AMENDED PLANS TO FULLY
COMPLY WITH MANDATORY LAND USE
REGULATIONS AS PART OF PASSING THE 4-WAY
INSPECTION.**

**REQUESTED
COMBINED
APPEAL**

The appellants, Dr. Tannin Fuja and Megan Fuja, hereby submit this Combined Appeal at the request of the City of Woodland Hills Board of Adjustment/Board of Appeals (Variance Board) on November 17, 2020 containing information and issues previously presented to the City in separate appeals on June 22, 2020, July 22, 2020, August 27, 2020 and September 21, 2020 for

which the city still has not held a hearing for any of these appeals. Said timely appeal is made to the Board of Adjustment/City Appeal Authority:

- (1) for the interpretation of the Woodland Hills Development and Construction Standards and the Subdivision Ordinance Hillside Site Development Section;
- (2) for the interpretation of the Woodland Hills Zoning Ordinances, Development and Construction Standards and Hillside Development sections of the Subdivision Ordinance as applied to the City's land use decision accepting (or not denying) amended plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah; and/or
- (3) in response to the land use decision passing construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah in the Building Inspector's 4-Way Inspection.

This appeal document will also contain information pertaining to the interrelation between the City Codes and the International Residential Codes (IRC) also adopted directly by the City of Woodland Hills in 2007 and by the State of Utah with amendments also adopted by the State of Utah and are included herein as reference and context in order to render a more complete understanding of the appeal at hand.

The appellants were made aware via electronic communication from the City Recorder on November 5, 2020 that the city had approved amended plans submitted for construction at 1115 S. Woodland Hills Drive on or after July 13, 2020 which the Fugas originally appealed but which may or may not have been revised in the interim. The city has refused to provide the appellants with the approved amended construction documents bearing a city stamp of approval or a date of approval to verify when and which documents were approved. Since July 12, 2020 the appellants have made weekly requests of the city regarding the approval of the amended plans. The city repeatedly confirmed in writing and orally with witnesses present that the plans had not been approved. November 5, 2020 was the first date that the city acknowledged approval of the amended plans, given that the city had allowed inspection of work contained only in the amended plans and not found in the originally approved plans. The appellants hereby appeal the approval of those amended plans and the inspection of the work contained in those amended plans.

I. ISSUES BEING APPEALED

A. Interpretation of the Woodland Hills Development and Construction Standards and the Subdivision Ordinance Hillside Site Development Section

This is an amended appeal of the City's administration, interpretation, application, and enforcement of (1) the City's Development and Construction Standards (the "Development Standards"); (2) Chapter 02.32 (Hillside Site Development), a supplement to the City's Subdivision Ordinance; and (3) the City's Subdivision Ordinance, section 109.07 (Hillside Development). For purposes of this amended appeal, the International Residential Code and the International Building Code shall be referred to herein as the "IRC/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 with construction drawings that were approved as part of the City's issuance of a building permit to

John and Jennifer Adams for their construction of a residence at 1115 South Woodland Hills Drive, Woodland Hills, Utah. These construction drawings were provided to the Fugas as part of the City's exhaustive GRAMA response and do not match the home as currently constructed by the Adams in significant aspects affecting compliance with ordinances and state building codes (IRC/IBC) that establish safe building standards.

On or about March 12, 2020, the Fugas, through their legal counsel, sent a letter to the City of Woodland Hills, through the City's legal counsel, David Church. The letter raised issues regarding the City's administration and interpretation of the Hillside Development Standards to the home under construction by the Adams. At approximately the same time that this letter was sent by the Fugas, they also filed a request under the Government Records Access and Management Act ("GRAMA"). That request was fulfilled by the City on June 11, 2020 and the information contained in that GRAMA response confirmed the City's failure to correctly interpret and enforce the Hillside Development Standards and the Subdivision Ordinance as against the Adams' construction project and property. The City's GRAMA response also confirmed the City's failure to require compliance with the building plans that were submitted by the Adams and approved by the City as part of the Adams' application for and the City's issuance of a building permit on July 5, 2019.

B. Interpretation of the Woodland Hills Zoning Ordinances, Development and Construction Standards and Hillside Development sections of the Subdivision Ordinance as applied to the City's land use decision accepting amended plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah

This is an appeal of the City's acceptance (or lack of rejection) of amended building plans submitted to the City on July 13, 2020 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 city reviewed those plans and communicated to the appellants that they were not approved or a form or revised version of the amended plans was not approved until they city gave material notice to the appellants on November 5, 2020 that the amended plans had been approved and that the city had allowed and accepted inspection of the work contained in the amended plans.

The amended plans as submitted or revised do 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 (or not denying) such amended construction documents based upon known engineering, structural, and geotechnical issues that lead to irreparable harm to the Fugas.

C. Land use decision passing construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah in the Building Inspector's 4-Way Inspection

This is an appeal of the City's land use decision passing a 4-Way Inspection on August 19, 2020 for construction of a residence by John and Jennifer Adams at 1115 South Woodland Hills Drive, Woodland Hills, Utah. The construction does not appear to comply with the approved building plans in the existing elevation contours, the height and stepping of the foundation walls, and the location and number of doors and windows. Many of these undocumented changes impact the ability of the structure to comply with (1) 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 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."

It is clear that a 4-Way Inspection does constitute a new land use decision and that such a decision must meet the requirements of the City Zoning Ordinances, the City Development and Construction Standards and the IRC/IBC Codes and State Amendments. As part of the 4-Way

Inspection Report, Sunrise Inspection notes "House built according to plans." This statement is very broad in its assertions and should be investigated as part of the notes generated from the inspection. Also, the approved 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 and they should not have passed the 4-Way Inspection. In addition, the City Recorder indicated that the City of Woodland Hills withheld secondary engineering reports related to the structural stability and engineering deficiencies from Sunrise Inspections, the 3rd party contracted to perform the 4-Way Inspection. While the city may not be required to share this information, it does seem that the information contained in those reports might better aid in identifying potential issues that could be encountered. Also, it appears that the city may not have included a letter generated by Michael Raymond, a member of the City Architectural Committee, to Wayne Frandsen, Chair of the City Planning Commission, in response to his request to evaluate the plans and construction ongoing at 1115 S. Woodland Hills Drive which details several of the departures from the approved plans in what has been constructed. The residence as constructed does not match the approved plans supplied in response to recent GRAMA requests and does not meet the State Codes, City Zoning Ordinances and the Development and Construction Standards, and as such the Fujas appeal the land use decision passing 1115 S. Woodland Hills Drive in the 4-Way Inspection on August 19, 2020 based upon known departures from the approved plans and known engineering, structural, and geotechnical issues that result from such departures that lead to irreparable harm to the Fujas.

II. DETAILS OF ISSUES BEING APPEALED

A. Development & Construction Standard Violations

1. Hillside Site Development

- i. 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 which govern the use or development of land 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).
- ii. 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) (emphasis added). A slope analysis, performed in 2002, by LEI, the City's Engineer, confirms that the Adams' lot exceeds the 20% average slope and is therefore subject to the additional requirements. From the

GRAMA response received from the City in June of 2020, it is clear that the Adams did not submit and the City did not require "a certified report from a qualified civil engineer" that contains the information required by Development Standards 02.32.30, as should have been required by the City according to their own slope survey from 2002.

- iii. The Hillside 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) (emphasis added). The GRAMA response in June of 2020 confirmed that the Adams never submitted a certified report and nothing was approved by the City Engineer prior to grading on the hillside areas of the Adams' lot.
- iv. 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). Based on the GRAMA response received in June of 2020, the City did not require compliance and the Adams have not complied with the eleven standards included in this part of the City's mandatory Hillside Development Standards.
- v. 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, have not been correctly administered, interpreted, or enforced by the City, and the Fujas have been adversely affected thereby.
- vi. The Fujas are 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 slope erosion, flooding, and other problems that the Hillside Development Standards are designed to mitigate or prevent.
- vii. The City has the responsibility to enforce mandatory provisions of its codes, including the mandatory provisions of the Hillside Development Standards and Subdivision Ordinances. The City has been provided with irrefutable and objective proof of violations of the Hillside Development Standards and Ordinances and yet has continued to fail in its responsibilities to enforce the same.
- viii. The Fujas submit the following additional information relevant to this issue:
 - a. Adams did not specify the 30% or greater slope areas on their site plan for their building permit packet as required by the permit, nor did they show correct existing elevations on the north and south sides of their property that would have correctly shown the steeper slopes in those areas.
 - b. Adams did not submit a certified engineering report for the building inspector to pass along to the city engineer, which is required by the Development and Construction Standards for ANY LOT with an average slope in excess of 20%.
 - c. Adams have not submitted plans that comply with the requirements of Chapter 02.32. Hillside Site Development of the city's Development and Construction Standards. 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 have yet to amend their plans to correctly show the existing grade contours.

d. As such, their reliance on their building permit and plans is not "in good faith."

e. 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."

f. As a result of changes in the stepping of the foundation walls at the front of the Adams' home, potential substantial changes to the finished grading at the front of the home must be made. Those changes are not shown on any current documents with the city and as such, the city cannot actually rely on the documents submitted to know what the final grading will be and how it will impact the neighboring properties. In fact, it becomes clear by looking at the placement of waterproofing material on the foundation walls that the Adams do not intend to bring the finished grade up to the levels indicated on their current approved plans. This is further illustrated by the building codes of the IRC on waterproofing the foundation walls. IRC R406.2 Concrete and Masonry Foundation Waterproofing: "In areas where a high water table or other severe soil-water conditions are known to exist, exterior foundation walls that retain earth and enclose interior spaces and floors below grade shall be waterproofed from the higher of (a) the top of the footing or (b) 6 inches (152 mm) below the top of the basement floor, to the finished grade." The Adams' lawyer has stated in a previous Board of Adjustment Appeal meeting that the Adams will put the dirt up to the levels indicated at the front of the home on their approved site plan; however, this would mean that the dirt would be sitting against the wood frame at the front of the home where the plans currently show cement foundation walls. The Fujas do not believe that this is sound construction and so believe that the grading must necessarily dramatically change in accordance with the foundation stepping changes.

g. The slope of the Adams' lot REQUIRES review by the city engineer as specified in 02.32.020 and 02.32.030C. Certified Report Required. This should now be required in order to confirm that the Adams' construction as built can comply with these Hillside Slope development standards. The Adams should be required to show on paper that their construction in violation of their approved plans can meet the required standards that have no mechanism for variance. Not requiring such compliance breaks our

City Zoning Ordinances and the State IRC codes and does not ultimately help the Adams nor protect the Fugas.

- h. Per the Northern Engineering Slope Analysis study, based on the original Topographical survey performed for the Adams by Dave Hunt of Level of Focus in 2017 which was subsequently stamped and filed with Utah County, there are multiple sections of the Adams' lot that have unbuildable slopes (>35% grade). Disturbing such slopes is illegal. The Adams' driveway and home sit over sections of the property that are not considered to be buildable. According to geotechnical engineer (Bill Turner) this is not safe for the downhill neighboring property.
- i. The Adams can only legally grade less than one half of the area of the greater than 20% slope on their lot. 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 contained in our City's 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%." Thus, as the contours on the Adam's property run east to west, they should only be able to cross half of the contour lines and would either need to build a home that faces the road but is narrow and deep or they would need to turn their current home 90 degrees to run parallel with the contours. Rather than complying with this requirement, the Adams have essentially crossed every conceivable contour line possible within their buildable area. This extreme grading yields significant safety issues for neighboring properties.
- j. Fill material used inside a structure being built on a lot with a slope exceeding 20% grade "shall be prepared and compacted as specified in the Construction Standards and Specifications for the City of Woodland Hills". These must be met, especially on a hillside slope where more significant safety issues exist and with such high foundation walls that are not engineered to comply with the IRC and UT State amendments per evaluation by structural engineers (Conrad Guymon and Matt Roblez).
- k. Given the incorrect existing elevations referenced on the site plan currently approved by the city (off by nearly 6 feet on the north side of the property and 10 feet on the south side), it is unclear if the Adams can meet the requirements of the Hillside Slope Development Standards. These standards do not have a variance mechanism. What will happen if the Adams complete their home but cannot meet the minimum safety standards established under this code? Why is the city not requiring the Adams to submit plans that show correct existing elevations and construction drawings showing what has actually been done and which comply with the ordinances, standards and building codes?
- ix. Hillside Slope Standards are widely regarded to contribute to the safety of property development. "When disturbed, steep slopes are highly susceptible to erosion, landslides, and subsidence, which—in addition to constraining

development and resource extraction—can endanger the public, degrade water quality, and damage structures. “ “Tools employed at the municipal level to regulate steep slopes include zoning ordinances and subdivision and land development ordinances (SALDO). This guide focuses on regulating steep slopes via a zoning ordinance, because this strategy generally is the most effective at ensuring that development respects the constraints and issues presented by these slopes.” “Supplemental Regulations - Some municipalities regulate steep slopes with supplemental regulations rather than using an overlay district. Where steep slopes are present, it requires development plans to include detailed information related to grading and erosion as well as sediment control. In practice, overlay districts and supplemental regulations have the same effect: they both augment the standards of base zoning districts. Successful implementation also requires easily understood administrative procedures and a commitment to enforcement. Once these standards are in place, it is crucial that municipal leaders enforce them.”(<https://conservationtools.org/guides/59-steep-slope-ordinance> Pennsylvania Land Trust Association).

- x. Despite numerous requests and attempts to obtain the original slope analysis for Thousand Oaks Subdivision dating back to March of 2020, the city did not turn over the slope analysis to the Fugas until June of 2020. As such, the Fugas did not have access to the data needed to refute the building inspector’s written statement on 3-18-2020 that: “Based on the original plat submittal there are no slopes that would create potential flows.”
- xi. Once the Fugas received access to the original slope analysis, they quickly appealed. This appeal is timely, as they were denied access to this “public” information prior to mid-June 2020 and the original appeal on slope was submitted on June 22, 2020.
- xii. In his letter on March 18, 2020, Corbett specifies that he “spoke with their engineer today and the Adams are already having him design retaining walls making this a moot point.” Why is the city allowing construction to continue for months without requiring the amended plans showing what is actually being constructed? When can we appeal such changes? What will happen if the Adams cannot actually comply with the section of the Development and Construction Standards that deals with Hillside Slope Development once they have already constructed their home? The city should require the Adams to amend their plans to bring them into compliance with both what is already constructed and the city’s zoning ordinances and State Building Codes prior to continuing. Such amendment of plans is necessary to ensure the safety of the construction and compliance with both City and State laws.

2. Development and Construction Standards Chapter 02.14. Earthwork.

- i. 02.14.010. General. This section defines the requirements for excavation and backfill for structures, construction requirements for embankments and fills and sub-grade preparation for pavements and other surface improvements.
- ii. 02.14.020. Sub-grade Soil. Sub-grade soil for all concrete structures, regardless of type or location, shall be firm, dense, thoroughly compacted and consolidated; shall be free from mud and muck; and shall be sufficiently stable to remain firm

and intact under the feet of the workmen engaged in sub-grade surfacing, laying reinforcing steel, and depositing concrete. Coarse gravel or crushed stone may be used for subsoil reinforcement if results are satisfactory to the City engineer or his/her designee. Such material shall be applied in layers, not exceeding 6 (six) inches in thickness, each layer being embedded in the subsoil by thorough tamping. All excess soil shall be removed to compensate for the displacement of the gravel or crushed stone and the finished elevation of any subsoil reinforced in this manner and shall not be above the specified sub-grade.

- iii. 02.14.030. Backfill around Structures. Backfill around structures shall be placed to the lines shown on the approved drawings, or as directed by the City engineer or his/her designee. After completion of foundation, footings and walls and other construction below the elevation of the final grades, and prior to backfilling, all forms shall be removed and the excavation shall be cleaned of all trash and debris. Material for backfilling shall consist of excavated material or borrow of sand, gravel, or other suitable material, and shall be placed in layers not exceeding eight (8) inches in un-compacted thickness. Each layer shall be compacted by hand or machine tampers or by other suitable equipment to a density equal to ninety-five (95) percent of maximum dry density as measured by AASHTO T180 Method C.
- iv. 02.14.040. Construction of Embankments and Fills. Unsuitable materials that occur in the foundation for embankments and fills shall be removed by clearing, stripping and/or grubbing. Where suitable materials occur, after stripping, the foundation shall be scarified to a depth of not less than six (6) inches, and the loosened material shall be moistened and compacted as hereinafter specified for each layer. All materials in embankments and fills shall be placed, moistened, and compacted as provided in the following paragraphs. When the embankment or fill exceeds the amount of excavation, sufficient additional material shall be obtained from borrow pits provided by the contractor. All material proposed to be imported shall be subject to the review and approval of the City engineer or his/her designee prior to starting of hauling operations. The materials used for embankment and fill construction shall be free from sod, grass, trash, rocks larger than six (6) inches in diameter and all other material unsuitable for construction of compacted fills. Grading of completed embankments and fills shall bring the surfaces to a smooth, uniform condition with final grades being within 0.1 foot of the design grade.
- v. 02.14.050. Compacting Earth Materials. The material shall be deposited in horizontal layers having a thickness of not more than 6 (six) inches after being compacted as hereinafter specified; provided, that when mechanical equipment is used for placing and compacting the material on a sloping foundation, the layers may be placed parallel to the foundations. The distribution of materials shall be such that the compacted material will be homogeneous and free from lenses, pockets, or other imperfections. Prior to and during compaction operations the material shall have the optimum moisture content required for the purpose of compaction and the moisture content shall be uniform throughout the layers, insofar as practical. Moistening of the material shall be performed at the site of excavation, but such moistening shall be supplemented, as required by sprinkling at the site of construction. If the moisture content is more than optimum for

compaction the compaction operations shall be delayed until such time as the material has dried to the optimum moisture content. When the material has been conditioned as hereinbefore specified, the backfill or embankment shall be compacted as follows:

- a. Under roadways and extending one foot beyond the proposed curb line the fill or embankment material shall be compacted to a density equal to not less than 95% of maximum dry density as measured by AASHTO T- 180, Method C or the modified proctor test ASTM D-1557.
- b. Under driveways the fill or embankment material (to at least one foot each side of the edge of the slab) shall be compacted to a density equal to not less than 95% of maximum dry density as measured by AASHTO T- 180, Method C or the modified proctor test ASTM D-1557.
- c. Other fills and embankments not listed above shall be compacted to a density equal to not less than 90% of maximum dry density as measured by AASHTO T-180, Method C or the modified proctor test ASTM D-1557.

vi. Was the testing performed as specified in the Development and Construction Standards? Was the fill material prepared as instructed? What evidence can the city provide that they are meeting any of the standards and regulations included herein? These Development and Construction Standards specify: "Policy 02. Development Standards. - Chapter 02.02. General Improvement Requirements. 02.02.010. General. The provisions of these Development Standards are supplementary to the Subdivision Ordinance of the City of Woodland Hills and provide general requirements for improvements to be built by the developer, subdivider, owner or contractor for all types of construction."

vii. In the EarthTec Engineering Excavation Observation dated July 26, 2019, the following recommendations are given. "Allowing the foundation soils to become wet at any time during the life of the structure could lead to adverse soil movement. Therefore, we recommend that these additional steps be taken to minimize the potential for surface water entering the soils below the foundation:

- a. "The contractor should take precautions to prevent significant wetting of the soil at the base of the excavation. Such precautions may include: grading to prevent runoff from entering the excavation, excavating during normally dry times of the year, covering the base of the excavation if significant rain or snow is forecast, backfill at the earliest possible date, frame floors and/or roof at the earliest possible date, other precautions that might become evident during construction."
- b. "Adequate compaction of foundation wall backfill should be provided i.e. a minimum of 90% ASTM D-1557. Water consolidation methods should not be used."

viii. Due to these observations, backfilling the large space inside the foundation walls should not have been performed in wet conditions during a blizzard. The dirt used should have been prepared by taking out all organic material which did not appear to be completed. Also, the compaction of foundation wall backfill should be verified according to the standards specified. The mandatory testing data should be required, as it directly impacts the safety of the very tall foundation

walls nearest the Fuja property which are most impacted by the compaction and fill conditions in question as they are the tallest foundation walls with the greatest unbalanced backfill height and have not been properly backfilled to cover them up to the frost line despite strict instructions to do so before inclement weather. They have actually remained largely exposed since they were poured which creates safety issues detailed by Bill Turner of CMT Engineering (a geotechnical engineer) in his letter to the City dated August 17, 2020. They are also believed to be structurally unsafe, as they do not meet the minimum structural standards required by Utah State Building Codes according to both Conrad Guymon and Matt Roblez (structural engineers).

B. Failure to Enforce Compliance with Approved Plans

1. The Fugas assert that the Adams are not following the plans that were approved by the City as part of the City's issuance of a building permit. In the GRAMA response provided in June of 2020, the Fugas were able to confirm that the plans that were originally submitted to the City by the Adams are not the plans that are being followed by the Adams in the construction of their home. Variations from the plans, including significant structural and aesthetic components, can be observed by comparing the Adams' home, as currently constructed, to the plans that the City provided as part of its GRAMA response. From the City's GRAMA response, which it claims to be exhaustive, there is no record that the Adams' sought for or obtained a variance from the Board of Adjustment or were granted some more informal waiver from the Building Inspector or Code Enforcement Officer. Indeed, there is no indication that the Adams have any permission from the City to deviate from their plans in any degree (excepting a few notes from their engineer in August of 2019), yet, there are significant deviations that are easily observable and not discussed in any way in that amendment above mentioned.
2. The Fugas submit the following additional information relevant to this issue:
 - i. The Adams have departed from their plans in both the stepping and the height of their foundation walls. We believe that they have increased the overall height of their home by elevating the basement floor to the top of their north foundation wall which height they increased by about 4 or more feet. The Fugas also believe that many of the foundation walls are actually closer to 10-11 feet tall where they are specified as 9 feet, and on the back area of the pop-out north section of the home the foundation walls are significantly taller than shown on the foundation and footing plans. None of these departures was depicted in the amendment sent by their engineer. These stepping and height changes dramatically affect the sloping of the finished grade, as the Adams cannot put dirt directly up against the wood and windows that are now in place where their plans show cement. Also, the addition of height to many of the foundation walls makes it unclear whether the footing used or the rebar called for in the plans will be sufficient to make the structure safe and compliant with State building codes. This is especially relevant given the note by Matt Roblez that "on page 5 of 10 of the structural calculations it calls for walls taller than 9-ft to be 10" walls, however in the construction documents, 10" walls are not specified." The City should require the Adams to verify by accepted engineering testing protocols that the footings, rebar, and wall

- width are sufficient to ensure the safety of the structure and compliance with IRC Code requirements that cannot be waived.
- ii. UT State Code and IRC Code requires that plans be amended to show what has actually been constructed, and that departures must still fully comply with State building codes and local ordinances. The Adams should be required to demonstrate that they can comply with both the ordinances and the UT building codes on paper prior to being allowed to proceed.
 - iii. If the Adams are allowed to proceed and after construction is completed it is discovered that they cannot comply, how will this be resolved? There is no built-in legal mechanism for granting a variance or waiver from any provisions of the UT State Building Code or from the City Development and Construction Standards. They must be strictly applied for the safety of the homeowner and the neighboring properties.
 - iv. IRC 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."
 - v. Thus, the Adams' permit is not valid as it does not currently comply with either the Utah State building code or the City of Woodland Hills Zoning Ordinances. Additionally, the Building Official should require that the construction documents be corrected, as there are known errors in the existing elevation contours and existing grade points of 5.74 to 10 feet. Those are not small errors and greatly impact the Adams' ability to meet drainage and slope requirements.
 - vi. 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."
 - vii. The above section of the IRC makes it clear that ANY changes made during construction SHALL be resubmitted for approval. Also, no mechanism for variance or waiver is provided for any of the provisions of the IRC. This makes it even more critical that those changes be resubmitted for approval as soon as possible so that errors or safety issues can be resolved.
3. The Fujas request that the City meet these mandatory code provisions of the IRC and require the Adams to resubmit their complete amended set of construction documents (which Gilson Engineering has, according to Corbett Stephens, been working on since March) for approval before continuing any further with construction. This is the only way to ensure that the Adams will be able to meet the code given the errors in their approved construction documents and their significant departures from the approved construction plans.

C. Submitted Plans Contain Known Errors and Omissions

1. 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 submitted July 13, 2020 in order to correct errors in the previously approved site plan, the existing contours were not corrected on the same 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.
2. 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 appears that the elevation of the basement floor was changed as the foundation walls were increased in height from 9 feet to either 13 feet or 10-11 feet at the front and north sides of the residence and from 38 inches to about 5 feet under the garage. 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 originally approved 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.
3. Windows have been added and moved in multiple areas of the structure without documentation. On the northeast side of the structure, 2 windows have been added in the "basement" area where the approved plans call for cement but instead the area is framed. In the back of the structure, on the northwest side, 2 windows have been added that were not called for in the approved or amended plans. Additionally, multiple windows and a doorway have been moved or changed at the rear of the structure without requiring that the plans be amended to reflect the changes. These changes should have required a note specifically from the engineer of record regarding the specific additions of windows and framing in areas shown to be cement on the approved plans and additions and changes to windows and doors in the rear of the structure, but there are no such amendments on file with the city nor had any permissions of the sort been documented by the City prior to the 4-Way Inspection being completed.
4. 30% or greater slopes (unbuildable areas) are not clearly marked on either the amended or originally approved 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.

5. The Finished Grade 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 constitute sound construction 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).
6. All Finished Grade 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.
7. 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.

D. Construction Plans Do Not Fully Demonstrate Significant Departures from Approved Construction Plans

1. 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 Fugas if left unaddressed.
2. 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, rebar reinforcement, or wall width required to make a building structurally safe. 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.

3. 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 damage to the residence's structure over time. As was stated by Conrad Guymon of CKR Engineers and confirmed by Matt Roblez of McNeil Engineering (both structural engineers), "No documentation for the change in support for the front porch slab and columns supporting the roof framing was supplied." 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.

4. Photographic evidence suggests that there may be 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 shows only 6 rebar sections. This could affect the structural stability of the entire home and could suggest other areas of the foundation may also be out of compliance. This is a UT State Building Code Compliance issue and should be immediately investigated.

E. Submitted Amended Plans Violate IRC-UT Stake Building Codes & Amendments Rendering Previously Approved Construction Documents Invalid

1. 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 by licensed professional engineers 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.
2. IRC code requirements cannot be waived.
3. Safety issues have been raised by CKR Engineering's Mr. Conrad Guymon and confirmed by McNeil Engineering's Mr. Matt Roblez and CKR Engineering's Chad Kohler, all professional structural engineers licensed in the State of Utah. The following are their 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."
4. 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 (per photographic documentation). 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 3 1/2 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 and the City's Development and Construction Standards requirements for fill compaction?

5. 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).
6. 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.
7. 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."
8. 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."
9. The actions of the Adams Invalidating their Building Permit authorize 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."
10. 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 Fujas herein exercise their appeal rights based upon the newly amended documents and also request that all other construction documents be amended to match the construction as actually being built.

11. The passing of a 4-Way Inspection 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 Fujas herein exercise their appeal rights based upon construction at 1115 S. Woodland Hills Drive passing its 4-Way Inspection despite the framing not matching the approved plans or amendments and also require that all other construction documents be amended to match the construction as actually being built.
12. 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.
13. 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."
14. 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, 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.

F. Amended Plans Violate City Zoning Ordinances & Development and Construction Standards

1. 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, even buried beneath the ground.
2. 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 Fujas to allow the Adams to violate this ordinance and thereby decrease the safety of the Fuja's home and property.
 3. 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).
 4. 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.
 5. 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).
 6. 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).

7. 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.
8. 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 any geotechnical hazards 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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.

G. Lack of Good Faith by City and Builder

1. Good faith arguments put forth by the Adams and/or the City are not applicable to the administration of the city's mandatory land use regulations, development and construction standards, city ordinances and the application of the IRC State Building Codes and Amendments do not apply.
2. 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.
3. As such, the Adams' reliance on their building permit and plans is not "in good faith."
4. 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.

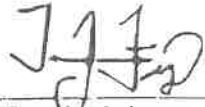
5. The Adams' significant departures from their approved plans are not good faith actions. If the Adams had acted in good faith, they would have had the stepping and height changes submitted to the city for approval prior to construction or immediately thereafter as they knew this was a departure from 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.

III. IDENTITY OF APPELLANTS

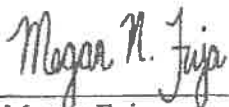
The Appellants are residents of the City of Woodland Hills and owners of real property immediately adjacent to the residential lot on which the City has erroneously (1) interpreted the Woodland Hills Development and Construction Standards and the Subdivision Ordinance Hillside Site Development Section; (2) interpreted the Woodland Hills Zoning Ordinances, Development and Construction Standards and Hillside Development sections of the Subdivision Ordinance as applied to the City's land use decision accepting or not denying amended plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah; and (3) passed a 4-Way Inspection at 1115 S. Woodland Hills Drive, Woodland Hills, Utah erroneously applying various statutes of the City Zoning Ordinance, City Development and Construction Standards and IRC/IBC City of Woodland Hills and Utah State Building Codes and Amendments. The appellants are:

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

DATED this 17th day of November 2020 being an amendment to the appeals made June 22, 2020, July 22, 2020, August 27, 2020 and September 21, 2020 for which the city still has not held a hearing of appeal.



Dr. Tannin Fuja



Megan Fuja

EXHIBIT B

November 4, 2020 Appeal

WOODLAND HILLS CITY APPEAL AUTHORITY/BOARD OF ADJUSTMENT

THE CITY'S ADMINISTRATION, INTERPRETATION & ENFORCEMENT OF THE CITY'S ZONING ORDINANCES §109.04 & §109.05 USING METRICS, METHODS AND APPURTENANCES NOT REFLECTED IN APPROVED CONSTRUCTION PLANS AND FAILING TO DISCLOSE THIS INFORMATION IN A TIMELY WAY TO AN ADVERSELY AFFECTED PARTY

AND/OR

THE CITY'S FAILURE TO INSPECT, ENFORCE & REQUIRE SUBMISSION OF CONSTRUCTION PLANS SHOWING THE MATERIAL FEATURES AND APPURTENANCES USED BY THE CITY IN DETERMINING & ASSERTING COMPLIANCE WITH CITY ZONING ORDINANCES §109.04 & §109.05

AND/OR

THE CITY'S FAILURE TO REQUIRE CONSTRUCTION TO COMPLY WITH APPROVED BUILDING PLANS CONSISTENT WITH MANDATORY LAND USE REGULATIONS OF THE CITY OF WOODLAND HILLS AND THE STATE OF UTAH.

APPEAL

The appellants, Dr. Tannin Fuja and Megan Fuja, hereby submit this Appeal to the City of Woodland Hills Appeal Authority/Board of Adjustment/Board of Appeals (Variance Board) on November 4, 2020 which shall be received as a timely appeal as a result of the City's willful misconduct in withholding important material information used and held by the City related to mandatory land use regulations contained in the City's zoning ordinances §109.04 and §109.05 and not producing this material to an adversely affected party until October 29, 2020.

Said appeal is made to the City Appeal Authority/Board of Adjustment (1) for the correction of interpretation and enforcement of City zoning ordinances §109.04 and §109.05; (2) for the City's land use decision to not require amended plans for construction being built by John and Jennifer Adams at 1115 S. Woodland Hills Drive, Woodland Hills, Utah that reflect material data and appurtenances used in erroneously demonstrating "compliance" with City zoning ordinances §109.04 and §109.05 and the concomitant obstruction for public inspection or appeal; and/or (3) allowing construction to occur that is not reflected in any approved construction plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah which the City relied upon in erroneously asserting "compliance" with City zoning ordinances §109.04 and §109.05.

I. ISSUES BEING APPEALED

A. Interpretation and enforcement of City ordinances §109.04 and §109.05 and willfully withholding and refusing to provide material information in a timely way regarding aspects of the interpretations and enforcement of City zoning ordinances §109.04 and §109.05.

On or about October 29, 2020, the Fugas received critical and material documentation regarding the City's interpretation and enforcement of City zoning ordinances §109.04 and §109.05 as it relates to construction at 1115 South Woodland Hills Drive, Woodland Hills, Utah. This material information was previously willfully withheld by the City from the Fugas. The Fugas have made numerous requests to the City both in writing, in-person with witnesses present and through filed requests under the Government Records Access and Management Act ("GRAMA") to provide any and all information related to the construction at 1115 South Woodland Hills Drive, Woodland Hills, Utah. The City repeatedly misrepresented to the Fugas that they had provided all relevant information in the possession of the City. This was incorrect. Finally, on or about October 29, 2020, in response to the most recent GRAMA request made by the Fugas in September 2020, the City produced material evidence and documentation that clearly shows the City's improper interpretation and enforcement of City zoning ordinances §109.04 and §109.05. This material information should have been provided to the Fugas in advance of their hearing with the City Appeal Authority in July 2020.

B. Interpretation and lack of enforcement of mandatory City and State land use regulations in making a land use decision to not require amended plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah that reflect material data and appurtenances used by the City in determining and asserting compliance with City zoning ordinances §109.04 and §109.05 and the concomitant obstruction for public inspection or appeal.

This is an appeal of the City's interpretation and lack of enforcement of the City and State mandatory land use regulations requiring that construction conform to submitted and approved construction documents used to obtain a building permit. The material information willfully withheld by the City from the Fugas demonstrates that the City's assessment and assertion of compliance with City zoning ordinances §109.04 and §109.05 relies upon data, features and appurtenances not found on any of the construction documents approved by the City.

In addition, the Fugas challenge the City's failure to require the submission or approval of any amended plans reflecting the data and appurtenances the City relied upon in asserting compliance with City zoning ordinances §109.04 and §109.05. The lack of amended plans reflecting these features coupled with the City's willfull withholding of material information regarding the enforcement and interpretation of City zoning ordinances §109.04 and §109.05 makes the Fuja's appeal both relevant and timely.

C. Land use decision allowing construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah that does not comply with any construction documents approved by the City or available for public inspection in violation of mandatory city and state land use regulations.

This is an appeal of the City's improper land use decision regarding mandatory City and State land use regulations in allowing construction at 1115 S. Woodland Hills Drive that does not conform to any construction documents submitted to and approved by the City. The original construction drawings were provided to the Fugas as part of the City's exhaustive GRAMA response and do not match the home as currently constructed by the Adams in significant aspects affecting compliance with ordinances and state building codes that establish safe building standards. Additionally, the City, in asserting compliance with City zoning ordinances §109.04 and §109.05, accepted data and representations that are not found in any of the originally approved construction documents or any amended document approved by the City.

The City has willfully failed to require compliance with the building plans that were submitted by the Adams and approved by the City as part of the Adams' application for and the City's issuance of a building permit on July 5, 2019. Additionally, the City has repeatedly and willfully obstructed the Fugas ability to access public records to verify the City's assertions of compliance with City zoning ordinances §109.04 and §109.05, including repeatedly making false and misleading statements regarding the existence of critical information held by the City showing erroneous compliance with City zoning ordinances §109.04 and §109.05. The City's obstruction and willful misconduct, coupled with the fact that the features the City and the Adam's relied upon in asserting compliance with City zoning ordinances §109.04 and §109.05 are not found in any construction documents submitted to and approved by the City, make the Fuja's appeal both relevant and timely.

The Adams and the City have demonstrated a lack of good faith. The City has willfully withheld information from the Fugas, an adversely affected party. The Fugas made regular requests in writing, in-person with witnesses present, and through form GRAMA requests for the City to release all information related to the Adams construction. The City made repeated representations (both in writing and verbally) that the no additional information existed. This was a false representation. Only in response to the most recent GRAMA request did the City provide the Fugas copies of material information used by the City in interpreting "compliance" with City zoning ordinances §109.04 and §109.05. The Adams' and the City's reliance on their building permit and documentation used to obtain that permit is not in good faith. Information released by the City now clearly shows that the City was aware that the construction documents and site plans originally submitted by the Adams were in error. The UT Property Rights Ombudsman's office has stated 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. The Adams and the City have clearly relied upon incomplete representations and construction documents in asserting compliance with City zoning ordinances §109.04 and §109.05. Finally, making substantial changes without obtaining those approvals would not be good faith reliance. Such approval was

never obtained by the Adams or granted by the City. The significant differences between the original plans submitted by the Adams (approved by the City in 2019) and what is being built (absent any City approval for the departures) are apparent. Both the Adams and the City rely upon the departures from the approved plans in asserting compliance with City zoning ordinances §109.04 and §109.05. Additionally, the Adams continue to build contrary to approved building plans and contrary to material assertions they have made previously to the City Appeal Authority. The City continues to allow construction at 1115 S. Woodland Hills Drive which is not reflected in any approved construction documents, and the City relies upon departures from the approved plans to assert compliance with City zoning ordinances §109.04 and §109.05.

These actions by the City and the Adams are not in good faith and it is believed represent willful misconduct and obstruction on the part of the City in withholding from an adversely affected party (as defined by Utah state law) critical information regarding compliance with City zoning ordinances 109.04 and 109.05.

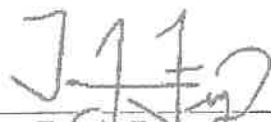
II. IDENTITY OF APPELLANT

The Appellants are Adversely Affected Parties as defined by Utah state law, being residents of the City of Woodland Hills and owners of real property immediately adjacent to and downhill from the residential lot on which the City has erroneously (1) interpreted and enforced City zoning ordinances §109.04 and §109.05; (2) made land use decisions to not require amended plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah that reflect material data and appurtenances used by the City in erroneously asserting "compliance" with City zoning ordinances §109.04 and §109.05 and the concomitant obstruction for public inspection or appeal; and/or (3) allowing construction to occur that is not reflected in any approved construction plans for construction at 1115 S. Woodland Hills Drive, Woodland Hills, Utah which the City relied upon in erroneously demonstrating "compliance" with City zoning ordinances §109.04 and §109.05.

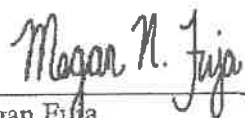
The appellants are:

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

DATED this 4th day of November 2020.



Dr. Tannin Fuja



Megan Fuja

EXHIBIT C

Petition for Review

REEVE LAW GROUP, P.C.

Richard H. Reeve (11291)

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Attorney for Petitioners

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR

UTAH COUNTY, PROVO DEPARTMENT, STATE OF UTAH

Dr. Tannin J. Fuja and Megan Fuja,

Petitioners,

vs.

CITY OF WOODLAND HILLS, a body
politic, CITY OF WOODLAND HILLS
BUILDING INSPECTOR, AND CITY OF
WOODLAND HILLS BOARD OF
ADJUSTMENT,

Respondents.

PETITION FOR REVIEW

Case No.

Honorable

COMES NOW the Petitioners, ("Petitioners"), by and through legal counsel and pursuant to *Utah Code Ann.* § 10-27a-101, *et seq.*, to petition the Court for a review of the interpretation, administration, and enforcement of the City's Zoning Ordinances, Chapters 109.04, 109.05, 103.05, 103.09, 103.27 and 103.67 by the City of Woodland Hills Building Inspector and City of Woodland Hills Board of Adjustment. Petitioners allege as follows:

I. THE PARTIES

1. Petitioners, Dr. Tannin J. Fuja and Megan Fuja, are individuals residing in Woodland Hills, Utah County. State of Utah.

2. The Petitioners herein allege that a residence under construction on the lot immediately adjoining their property (the “Non-compliant Residence”) is being constructed in violation of the Zoning Ordinances enacted by the City of Woodland Hills and that the City Building Inspector has failed to correctly interpret, administer, and enforce the Zoning Ordinances against the Non-compliant Residence.

3. Respondent, City of Woodland Hills (hereinafter referred to as the “City”), is a political subdivision of the State of Utah.

4. The City of Woodland Hills Building Inspector and Zoning Enforcement Officer (hereinafter referred to as “Building Inspector”), is an individual charged with, among other things, approving or denying building permits and building designs and inspecting construction activities for compliance with all mandatory land use regulations and with approved building permits and construction documents in accordance with the Woodland Hills Zoning Ordinances and Utah State Building Codes.

5. The Woodland Hills Board of Adjustment (hereinafter referred to as the “Board”), is an appointed city board responsible for, among other things, hearing and deciding appeals from zoning decisions of the Building Inspector. The Board is expressly intended to function as the “appeal authority” required by *Utah Code Ann.* § 10-9a-701(1).

II. JURISDICTION AND VENUE

6. This Court has jurisdiction to review the final decision of the City, Building Inspector, and Board, as complained of herein, pursuant to *Utah Code Ann.* § 10-9a-801.

7. Venue for this action is appropriate, pursuant to *Utah Code Ann.* § 78B-3-307.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Pursuant to the requirements of *Utah Code Ann.* § 10-9a-801, Petitioners made a

timely and specific challenge of the Building Inspector's interpretation of the City's Zoning Ordinances, Chapters 109.04, 109.05, 103.05, 103.09, 103.27 and 103.67 concerning building height (those portions of the City's Zoning Ordinances challenged herein shall be hereinafter referred to as the "Zoning Ordinances").

9. Petitioners' challenge to the Building Inspector's decision was made in accordance with the City of Woodland Hills' Ordinances regarding appeals.

10. Petitioners administratively appealed the Building Inspector's decision to the Board.

11. The Board, after considering Petitioners' appeal, declined the appeal by (i) erroneously identifying the land use decision at issue as the issuance of a building permit on July 5, 2019; (ii) determining that the decision to allow the developer to violate the building permit and deviate from the approved building plans in such a way as to violate the mandatory land use regulations regarding building height and maximum stories of a main structure was not a land use decision; and (iii) erroneously determining, based on attorney statements rather than written plans and documents, that the changes to the Non-compliant Residence did not cause the house as built to be any less compliant than the approved plans.

12. The Board's final decision was issued on July 14, 2020, and a copy is attached hereto as Exhibit "A" and incorporated herein by this reference.

13. Petitioners have met all administrative conditions precedent to seeking judicial review of the decisions of the City, the Building Inspector, and the Board.

IV. STANDARD OF REVIEW/LIMITATION OF ACTION

14. An appeal to the Board of Adjustment and, subsequently, to the District Court is *de novo*, requiring strict interpretation as written in the ordinance, without reliance upon intent or

interpretation unless the City has adopted an ordinance to the contrary.

15. The City of Woodland Hills has not adopted an ordinance modifying the above-stated standard of review.

16. Pursuant to *Utah Code Ann.* § 10-9a-701(4)(c), the City could, by ordinance, require an adversely-affected party to present every theory of relief that it can raise in the district court to the appeal authority.

17. The City of Woodland Hills has not adopted an ordinance requiring an adversely affected party to present every theory of relief that it can raise in the district court to the appeal authority.

18. The review of Petitioners' claims is a *de novo* review and Petitioners' available theories of relief are not limited to those presented to the Board.

V. GENERAL ALLEGATIONS.

19. Appellant asserts that the Building Inspector erred in his interpretation and application of the Zoning Ordinances when he (1) failed to require the builder of the Non-compliant Residence to comply with the approved building permit and approved building plans and (2) failed to require the deviations in construction to be submitted as amended plans and undergo an approval process to ensure compliance with the Zoning Ordinances.

20. On February 21, 2020, immediately following the erection of the first wall of the 3rd story of the Non-compliant Residence, the Petitioners, in a letter to the Building Inspector, notified the City that construction proceeding on the Non-compliant Residence was not in compliance with Zoning Ordinances related to building height and maximum number of stories.

21. The City never responded to the Petitioners' February 21, 2020 letter, and the Building Inspector failed to ensure that the Non-compliant Residence complied with the

approved plans and the Zoning Ordinances.

22. On February 28, 2020, the Petitioners sent a second letter to the City regarding violations of the Zoning Ordinances and, again, did not receive a response from the City or the Building Inspector.

23. On March 6, 2020, Petitioners delivered a signed and stamped engineering letter from Mr. Jeremy Draper and Mr. J. Nate Reeve, professional and licensed engineers in the State of Utah, to the City and the Building Inspector detailing numerous errors and violations regarding the site and building plans for the Non-compliant Residence and advising that "it is our opinion that revised plans should be submitted for review in conformance with the Woodland Hills city code and development standards and a Certified Report be prepared for the site."

24. On March 31, 2020, Petitioners filed an appeal to the Board.

25. Although the Zoning Ordinances specify that appeals should be scheduled within thirty (30) days of receipt of the appeal, Petitioners did not receive any communication from the City concerning scheduling the appeal hearing until June 2, 2020 despite numerous requests by Petitioners.

26. During the period of delay while Petitioners waited for action on their appeal to the Board, the City allowed the builder of the Non-compliant Residence to complete significant portions of the home making the situation more difficult to remedy.

27. On April 15, 2020, Mr. Kyle Spencer, a civil engineer licensed in the State of Utah, submitted a signed and stamped letter to LEI Engineering, the City Engineer for the City of Woodland Hills (the "City Engineer"), a copy of which was provided to the City, detailing both the departures from the plans and violations of provisions of City Code, including the Zoning Ordinances.

28. The City Engineer has not responded to Mr. Spencer's letter nor has the City Engineer confirmed that the Non-compliant Residence is in compliance with the Zoning Ordinances as concluded by the Building Inspector.

29. At Petitioners' request, additional engineering reports were generated and provided to the Board prior to the Board of Adjustment hearing held on July 9, 2020, including:

- a. On July 6, 2020, Mr. Conrad Guymon, a licensed structural engineer in the State of Utah, submitted a report to the City regarding structural issues presented by on-going construction on the Non-compliant Residence and advising the City to require compliance with the State Building Codes.
- b. Also on July 6, 2020, Mr. Kyle Spencer submitted another engineering letter encouraging the City to red-tag the construction and require it to come into compliance with the ordinances, standards, and building codes of both the City and the State.

30. On February 12, 2020, the Petitioners submitted a GRAMA request to the City.

31. Having received no response to the first GRAMA request, Petitioners resubmitted the request on March 27, 2020 with a few small additions and paid the up-front GRAMA fee required by the City on March 31, 2020.

32. The City did not provide an initial response to the GRAMA request until 107 days following the first request and did not provided a full response until June 18, 2020, 127 days following the initial GRAMA request.

33. At the same time that the City delayed its responses to the Petitioners' requests and letters, it provided responses to requests made by other parties without any significant delay

34. In addition, over this same period of time, it was clear that City officials were

active in their responsibilities but arbitrarily chose not to respond to Petitioners' claims, not to agree to meetings proposed by Petitioners, and not to take any action concerning construction on the Non-compliant Residence despite clear recommendations to do so from licensed engineers.

35. The City has not offered any proof that on-going construction on the Non-Compliant Residence complies with the Zoning Ordinances or that variances have been granted for portions of the construction that are non-compliant.

36. The City has instead arbitrarily allowed for continuance of construction activities on the Non-compliant Residence without offering any proof that such activities were compliant with either the approved plans or the Zoning Ordinances, despite letters from licensed engineers that indicated that the contrary was in fact true.

37. Zoning Ordinance 109.04 requires that "buildings shall be erected, altered, moved and maintained only in accordance with the areas, yard and building height regulations."

38. Zoning Ordinance 109.04(F) specifically provides that the "height of a main building permitted on a lot shall not exceed the number of stories as set forth in the schedule in Section 109.05."

39. The Non-Compliant Residence is zoned as part of the R1-2 PUD District which must comply with the R1-2 District requirements pertaining to building height.

40. According to the schedule set forth in Section 109.05 of the Zoning Ordinances for the R1-2 District, the "Height Max. Building (Stories)" is "2 or 35-ft".

41. The Petitioners have submitted to the City numerous engineering reports stamped and signed by engineering professionals licensed in the State of Utah that confirm that the Non-compliant Residence is not only in substantial violation of the Zoning Ordinances governing building height but is significantly non-compliant with the building plans submitted to the City in

both the height of the structure and the stepping of the foundation, which directly affects the builders' ability to comply with the maximum story requirements in the City's Zoning Ordinances and grade the property as indicated on the approved site plan.

42. According to Zoning Ordinance Section 103.09, building height is defined as "[t]he vertical distance to a maximum of 35 feet from the natural lowest point to ... the mean height level between eaves and ridge for gable, hip or gambrel roofs."

43. According to qualified engineers, the Non-compliant Residence is significantly taller than the maximum height allowed in the Zoning Ordinance.

44. Mr. Kyle Spencer, a professional engineer who is licensed and registered in the State of Utah, stated the following in a signed and stamped letter to the City on July 6, 2020 in preparation for the appeal hearing before the Board: "It is clear that the house exceeds the maximum building height by well over 10-ft given the departures from the approved plans."

45. The Non-compliant Residence does not comply with the mandatory two story maximum requirement of the Zoning Ordinance Section 109.05—this violation is the result of significant departures from the originally approved plans in the stepping pattern of the footing and foundation walls.

46. The City does not consider a basement as a story when determining building height.

47. Section 103.05 of the Zoning Ordinance defines a basement as "[t]he space of a building where the floor level is more than four (4) feet below the adjoining finished grade."

48. Section 103.27(B) of the Zoning Ordinance defines finished grade as "[t]he elevation of the finished surface of the ground adjoining the building after final grading and normal settlement at the front of the building."

49. On March 2, 2020, a letter was generated by Mr. Michael Raymond (a member of the City of Woodland Hills Architectural Committee) to Mr. Wayne Frandsen (Chair of the Planning Commission) in response to Mr. Frandsen's request for the Architectural Committee to review the construction ongoing on the Non-compliant Residence as compared with the plans submitted to and approved by the Architectural Committee as a required step in the Building Permit approval process.

50. The March 2, 2020 letter drafted by Mr. Raymond identifies that the originally approved plans were considered by the City's Architectural Committee to be essentially compliant with the 2-story requirement: "The exterior elevations shown on the set of [approved] plans indicate two stories on the Front Elevation (see photo shown), one story on the Left Elevation, two stories on the Right Elevation, and a combination of two and three stories on the Rear Elevation, for an average height of two stories around the perimeter, with the lone exception of the "walk-out" basement on the rear elevation. This design essentially complies with the Ordinance, with a minor deviation on the rear side, which has been allowed in many cases throughout the City."

51. Mr. Raymond, in his March 2, 2020 letter, continues to lay out how the deviations from the approved plans violate the 2-story requirement of the Building Height Zoning Ordinance by stating: "[b]ased on a site visit made today, however, it appears that the residence, as constructed, does not comply with the plans submitted. The front elevation of the structure now appears to be three stories in height, as shown on the photo below. It can be noted from the photo that the main entrance, located approximately in the middle of the front side and shown encircled in red, is now approximately 6 feet above finished grade, rather than on grade as originally shown on the plans. Also, a large window has been added to the right of the main

entrance on the basement level (as shown encircled in blue) – this was not shown at all on the original plans, but was ‘below grade’. The steps in the foundation wall are now far to the left of where shown on the original plans. If the original plans had shown the design as now constructed, it would have been classified as a ‘three story’ design and would not comply with City ordinances.”

52. It is clear from the definitions of basement and finished grade that the floor level must be more than four (4) feet below the ground level adjoining the building at the front of the building; thus, as stated by Mr. Raymond, the originally approved plans essentially complied with these requirements; however, the main structure as being built no longer complies.

53. Mr. Kyle Spencer, a licensed engineer in the State of Utah, stated in his most recent letter to the City dated July 6, 2020: “This [The Zoning Ordinance] clearly stipulates that the basement floor does not need to be more than 4-ft below the adjoining ground level at the back of the building but must be more than 4-ft below the adjoining ground level at the front of the building. As such, this is a three story structure and the most restrictive ordinances state that only two story residential dwellings are permitted. Therefore, the house as currently being constructed is in violation of the ordinances.”

54. In two distinct notes recorded by the Building Inspector prior to issuance of the Building Permit for the Non-compliant Residence and obtained through a GRAMA request to the City, Mr. Corbett Stephens (the Building Inspector) notes that any deviations from the approved foundation and footing plans must be approved by the engineer of record.

55. According to the City of Woodland Hills, per multiple responses to GRAMA requests, there are no written records of any approval to deviate from the approved stepping plans.

56. The Woodland Hills Zoning Ordinance specifically provides in Section 121.08 that deviations from approved site plans “shall be noted on the Site Plan and bear the signature of the Zoning Enforcement Officer. No changes are to be considered as a waiver of conditions or covenants, and all rights to enforce such conditions or covenants against any changes permitted by this Ordinance expressly reserved.”

57. In the letter from Mr. Kyle Spencer to the City dated July 6, 2020, he states: “The construction at [the Non-compliant Residence] clearly departs from the approved plans used to obtain the building permit. The design front view elevation is not consistent with the house being constructed. The foundation backfill line is not consistent in many areas. Step foundation walls are not consistent with the Gilson Plan which shows steps only on the North pop-out portion of the house – no window from basement floor to the front. The right elevation also shows the majority of the elevation view for basement as formed concrete... Significant departures in both the stepping of the foundation and the height of many of the foundation walls should have required approval and submission of amended plans per Woodland Hills City Zoning Ordinances (121.08 and 125.08(D)) and Corbett Stephens’ own notes on both June 25, 2019 (“all steps in fig & fnd are to occur where specified by engineer of record.”) and July 3, 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.”), which document was signed by Jennifer Adams on July 5, 2019. These changes further complicate the grading, slope and drainage requirements at the north end of the property within a very limited setback space of which the 5 feet nearest the property line cannot contain either a top or a toe of a slope per the Woodland Hills Development and Construction Standards, as this lot has over a 20% overall slope. As you can see, all of these

factors work together to make these changes problematic in many ways for both the builder, engineers, and the neighboring properties.”

58. The Woodland Hills Zoning Ordinance states in Section 105.01 that “[i]n case any building or part thereof is used, erected, altered or occupied contrary to the provisions of this Ordinance or other City law, such building shall be declared a nuisance and may be required to be-vacated, to[rn] down, or abated by any legal means and shall not be used or occupied until it has been brought into conformance.”

59. The City is acting illegally by not enforcing the mandatory land use provisions of the City in either requiring that the Builder comply with the Ordinances, comply with their approved building plans, or amend the approved building plans to show what has been constructed and how what has been constructed complies with the mandatory land use regulations for the City of Woodland Hills.

60. The City has arbitrarily chosen not to stop construction of the Non-compliant Residence and require submission of amended plans reflecting what is being built for review of compliance with mandatory land use regulations as is required by both the City Zoning Ordinance (Sections 121.08 and 125.08(D)) and the State Adopted IRC codes (IRC Sections R105.4, R105.6, and R106.4).

61. The City’s allowance of significant deviation from approved plans, while communicating in formal letters that the builder was following the approved plans, without requiring the submission of amended plans, delayed or entirely eliminated the Petitioners’ opportunity to appeal such decision.

62. It is clear through City staff and City Official communications that the Building Inspector had not been applying the Building Height Ordinances as written and that the City

believed that the Architectural Committee was responsible for ensuring compliance with those portions of the Zoning Ordinances; however, upon receipt of the letter from the Architectural Committee (the committee responsible for approval of a site plan prior to the Building Inspector's final approval per the building permit packet), the Building Inspector arbitrarily failed to apply the mandatory land use regulations, ordinances, and standards to the building as being built despite the statement by a member of the Architectural Committee that "[i]f the original plans had shown the design as now constructed, it would have been classified as a 'three story' design and would not comply with City ordinances."

63. There is no written evidence of compliance reviews of the construction on the Non-compliant Residence that were performed by the City beyond that rendered by Mr. Raymond which clearly states that, as constructed, the residence would be considered a 3-story structure and not compliant with the Ordinances; however, the Building Inspector gives no written response to counter that claim and has not offered any evidence other than his personal opinion to the contrary.

64. Petitioners, as an adversely affected party, appealed to the Board the Building Inspector's failure to apply and enforce the Zoning Ordinances after receiving notice of plan deviations and violations of the Zoning Ordinance from the Petitioners, licensed engineers, City officials, and City staff.

65. In their appeal, Petitioners asserted that despite receiving notice that the Non-compliant Residence was out of compliance with the Zoning Ordinances regarding building height, the Building Inspector failed to enforce the City's mandatory land use ordinances.

FIRST CLAIM FOR RELIEF
DECISION OF THE BUILDING INSPECTOR AND BOARD WAS ARBITRARY AND
CAPRICIOUS

66. Petitioners hereby incorporate by reference each and every allegation set forth above as though fully set forth herein.

67. The Building Inspector acted arbitrarily and capriciously in not applying the Zoning Ordinances concerning building height to the Non-compliant Residence without requiring the submission of amended written documentation, let alone substantial evidence, and by an erroneous application of the Zoning Ordinances.

68. The Board acted arbitrarily and capriciously in deciding that the Petitioners' appeal was untimely by tying the appeal time line to a decision that was based upon the issuance of the original building permit which relied upon building plans not currently being followed by the builder of the Non-compliant Residence.

69. The decisions have irreparably damaged Petitioners in the following manner:

- a. The height of the Non-compliant Residence, as actually constructed, significantly reduces the privacy and safety of the Petitioners' home and yard which was a main consideration in the Petitioners' decision to move to Woodland Hills;
- b. The height of the Non-compliant Residence, as actually constructed, deprives Petitioners of sunlight necessary to allow for melting of snow on their south rooflines during the winter which helps to reduce ice damming and the significant damage that can result from such ice damming; and
- c. The changes in the slopes of the property on which the Non-compliant Residence is constructed, necessitated by deviations to the stepping and heights of the foundation walls, make it impossible to safely meet grading, slope and drainage

requirements at the north end of the property bordering the Petitioners' lot,
increasing flooding, erosion and landslide risks.

WHEREFORE, the Petitioners PRAY FOR RELIEF AS FOLLOWS:

1. A Declaration from this Court that the various decisions, determinations, and interpretations of the City, Building Inspector, and/or Board complained of herein above were, and are, arbitrary and capricious and/or illegal.
2. That the decision of the Building Inspector not to enforce the Zoning Ordinance Building Height mandatory land use regulations, as upheld by the Board of Adjustments, be declared null and void.
3. That the Petitioners be granted any other and further relief as the Court deems just, proper, and appropriate.

DATED this 8th day of August, 2020.

Richard H. Reeve
Attorney for Petitioners