

HAZ2026-02466/PLNAPP2026-00553
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Supplemental Brief in Appeal of Decision HAZ2026-02466/PLNAPP2026-00553¹

Authority of Appeals Hearing Officer

In our Request for Initial Determination/Appeal, filed on June 28, 2026, we raised questions regarding the appeal procedure, and whether the Appeals Hearing Officer had authority to hear this matter under Salt Lake City Code Chapter 21A.16, which limits appeals to administrative decisions by the zoning administrator, historic landmark commission or planning commission. Based on the City's response to a recent request we made pursuant to the Government Records and Management Act ("GRAMA"), we now withdraw our previous concerns.

In response to our GRAMA request, the City provided us with a copy of an email June 18, 2026, from Daniel Echeverria, Planning Manager/Zoning Administrator to various City employees, providing instructions for the issuance of the Orders. *See* Exhibit BB (hereinafter referred to as "Decision"). The Decision stated, "when [Orders] need to be issued for the weeds in both the park strip and parcel 29, please issue it to the abutting property owner only – the Renteria's. Please do not issue it to the condos/HOA." Based on Exhibit BB, we acknowledge the Orders were issued pursuant to "an administrative decision of the zoning administrator" under Chapter 21A.16 and we recognize the authority of the Appeals Hearing Officer to adjudicate this matter.

Standard of Review

The standard of review applicable to the Decision and Orders is *de novo*, meaning the "hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below." Salt Lake City Code 21A.16.030.I.

The Decision and Orders are not valid if they are arbitrary and capricious, meaning they are not supported by substantial evidence, or illegal, meaning they are contrary to law, conflict with an existing authority, or are based on an incorrect interpretation of the municipal ordinances.

Supplemental Argument

- I. Substantial Evidence Demonstrates Harvard Park's Permit Conditions Created a Maintenance Obligation that Runs with the Land and Remains Binding Today

¹ Please see our Request for Initial Determination/Appeal, filed on June 28, 2026, for all defined terms and exhibit references in this document.

The documents in Case No. 319-B illuminate why the Maintenance Area was included in Harvard Park's approved landscape and irrigation plans even after the project owner sold the Maintenance Area to our predecessor-in-title, and, furthermore, why the HOA continues to be responsible for the maintenance of the Maintenance Area today. Evidence in the record shows that the City expected the Maintenance Area to always be part of the Harvard Park project as a "cohesive development," and the developer/owner's sale of the Maintenance Area, which carved up the overall project area, was contrary to the original permit. To address the City's concerns about development project land being sold, during the proceedings in Case No. 319-B, the Board of Adjustment reinforced its requirement that Harvard Park maintain the Maintenance Area as part of the "cohesive development." The City also required that the HOA's covenants be consistent with the permit conditions, and the City even went so far as to receive and approve the HOA's original CC&Rs. *See* Exhibit I (City Recorder stamp "Approved" on page 1 of the CC&Rs).

The permit conditions requiring approval of a final plan, including a landscaping plan, are recorded in Salt Lake County and abstracted against all the land in the "cohesive development," including the Maintenance Area. Additionally, the City-approved CC&R's, which memorialize the HOA's perpetual maintenance obligation, are recorded in Salt Lake County. Accordingly, the HOA's the obligation to maintain the Maintenance Area is an obligation that runs with the land, regardless of the owner of the Maintenance Area.

Because the HOA has a perpetual obligation to maintain the Maintenance Area, it is the HOA, and not us, who is the responsible party under the applicable municipal ordinances for weed abatement, landscaping, and snow removal. The City's issuance of the Decision and Orders was illegal because it arbitrarily and capriciously overrules Case No. 319-B and the existing permit conditions. Therefore, not only should the City reverse the Orders, but going forward, it should ensure that the HOA maintains the Maintenance Area consistent with all other land encompassed by the approved landscape and irrigation plans. Such perpetual maintenance includes removing the weeds, planting new sod, watering and mowing the grass and removing all snow on the sidewalk.

A. The Permit Conditions with the Landscape Obligation were Recorded and Include the Maintenance Area

Recorded evidence shows that all owners within our chain of title took title to the Maintenance Area subject to the knowledge that the Maintenance Area would be part of the landscaping plan approved by the City in connection with Harvard Park's development permit. The Board of Adjustment originally approved the Harvard Park development project during proceedings held on September 2, 1986, the Findings and Order, Report of which is dated September 15, 1986. *See* Exhibit C where the Findings and Order is part of the Case No. 319-B case file; *see also* Exhibit C-5 attached hereto which is the Findings and Order only. Those proceedings and the permit's approval is memorialized in the Abstract of Findings and Order ("Abstract"), which is dated October 20, 1986, and specifically states that the permit for the development project is approved subject to the condition that the "Committee of the Board [grant] approval of the final plan including the landscaping plan." *See* Exhibit C where the Abstract is part of the Case No. 319-B case file; *see also* Exhibit C-6 attached hereto which is the Abstract only. The Abstract was recorded in Salt Lake County on October 20, 1986, as Entry No. 4334603, Book 5829, Page 2374.

The recording of the Abstract on October 20, 1986, with the Maintenance Area included in the legal description of all land in the development project is critical because it shows that, starting with David E. Pack, all owners in the chain of title for the Maintenance Area knew that the Maintenance Area would be encompassed within the approved landscape plan for Harvard Park. *See* Utah Code Ann. § 57-3-102(1) (each document shall, from the time of recording with the appropriate county recorder, impart notice to all persons of their contents). The legal descriptions in the documents themselves and the dates the documents are recorded is proof of this point.

First, evidence that the legal description of the Maintenance Area is included in the Abstract's description of all the land within the Harvard Park development is based on Lloyd's deed to the Harvard Park Corporation (Exhibit G) and Lloyd's deed to David E. Pack (Exhibit H). The legal description in the Abstract mirrors the entire first part of the description in Exhibit G, meaning the entire Harvard Park development. But the legal description in Exhibit G goes on to except from the overall description a smaller parcel, which is the land Lloyd subsequently conveyed to David E. Pack. *See* Exhibit H. Analyzing the legal description in the Abstract, Exhibit G, and Exhibit H, shows that the Abstract describes all of the project development land, the deed from Lloyd to Harvard Park describes all of the development land minus a small portion of the land (the Maintenance Area), and the deed from Lloyd to Pack conveys the small portion of the land previously excluded (Maintenance Area).

Second, the recording dates of the Abstract, Exhibit G, and Exhibit H, demonstrate that Pack and all subsequent owners in our chain of title for the Maintenance Area took title to the Maintenance Area with the knowledge that the land would be included in the final approved landscape plan for the development. As noted above, the Abstract was recorded on October 20, 1986, and Lloyd conveyed the Maintenance Area to David E. Pack on October 30, 1986. *See* Exhibit H. This means that Pack acquired the Maintenance Area after the Abstract documenting the permit conditions that applied to the Maintenance Area was recorded, so that when Pack acquired the Maintenance Area, he knew the land he was acquiring was going to be included in the landscape plan for Harvard Park's development. *See* Utah Code Ann. § 57-3-102(1).

B. The Original Permit Conditions were Reinforced after the Maintenance Area was Sold

The conclusions above regarding the HOA's perpetual maintenance obligation are reinforced and significantly bolstered by additional proceedings in Case No. 319-B, which took place on August 17, 1987, and are memorialized in the Findings and Order, Report of the Commission dated August 31, 1987, (herein after "Report"). *See* Exhibit C where the Report is included as part of the Case No. 319-B case file; *see also* Exhibit C-7 attached hereto which is the Report only. The Report documents the second time the Harvard Park developer, Proswood, appealed decisions regarding its permit to the Board of Adjustment. Specifically, Proswood sought approval for (1) two homes being constructed in locations contrary to the approved plans; (2) construction of a masonry fence that did not contain the approved "jogs"; (3) the proposal to use vegetation instead of the staff-recommended fence to mitigate safety issues on a steep area of the property; and (4) approval of the sale of the Maintenance Area to the abutting landowner (David E. Pack).

The key statements in the Report start in the middle of the second paragraph, "Mr. Hafey also stated that the applicant *would like to sell the triangular property to the north to the abutting*

property owners.” See Exhibit C-7 (emphasis added). The triangular property Mr. Hafey described is the Maintenance Area. *See* replacement Exhibits C-3 and C-4 attached hereto, which are the approved landscape and irrigation plans showing that the only triangular-shaped area on Harvard Park’s plans abutting other property owners to the north is the Maintenance Area. This request to sell is significant because while the Board of Adjustment was presented with the information as if it was a prospective request, the record discloses that Lloyd had already sold the Maintenance Area to David E. Pack. *See* Exhibit H.

The second to last sentence of the same paragraph in the Report goes on to state that the Board “was concerned that none of the land be sold from the project.” The Report also states that the “Board felt that the Petitioner [Proswood] should provide an explanation for why they created this hardship for themselves.” The Board ultimately approved all modifications to the development permit, stating,

IT IS THEREFORE ORDERED that the modification be granted provided:

1. ***None of the land is sold off so long as this is part of a cohesive development*** however the petitioner is given a strong reprimand for not coming before the Board and explaining the problem before the buildings were constructed.
2. If a fence is necessary to solve the safety problems on the area of the property where the grade change occurred, the applicant or the owners of the project will have to install a fence.
3. The fence is subject to Committee approval.

Provided these restrictions are complied with, the decision of the Building Inspector is reversed and said office directed to issue the required permits . . . provided the construction plans show conformity . . .; ***and provided such reduction or addition does not conflict with any private covenants or easements which may be attached to or apply to the property***, all conditions of the Board to be fully complied with

See Exhibit C-7 (emphasis added).

Reading the Report’s discussion of the sale of the Maintenance Area in the context of the entire case, including the recorded Abstract, *see* Exhibit C-6; the Planning Director’s 1986 letter, *see* Exhibit C-1; the approved landscape and irrigation plans, *see* Exhibits C-3 and C-4; the adoption of the maintenance obligation in the CC&Rs, *see* Exhibit I; as well as the HOA’s actual maintenance of the Maintenance Area for almost 40 years, it is clear that the City imposed a perpetual maintenance obligation on Harvard Park with the approval of its development permit.

Based on Mr. Hafey's statement in the Report that the applicant "would like to sell" the Maintenance Area to the abutting landowner, Harvard Park's predecessors clearly did not have the City's pre-approval to carve out the Maintenance Area from the entire development project. Nevertheless, the Board of Adjustment approved all requested changes to the permit, including the sale, based on the condition that Harvard Park maintain a "cohesive development," and that its covenants be consistent with this obligation.

Proof of the existence of the perpetual permit condition was in fact memorialized in the original CC&Rs, and this fact provides evidence that the HOA knew it had to ensure that despite its sale of the Maintenance Area to David E. Pack, the "reduction" in the overall land in the project could "not conflict with any private covenants . . . which may be attached to or apply to the property." The Board of Adjustment's use of the term "may be attached to or apply to the property" here is significant because it implies that it is not just current CC&Rs that must conform to the permit conditions, but any covenants that may apply in the future.

Consistent with the permit requirements, as noted previously, the HOA adopted CC&Rs shortly after the Report and specifically ratified the permit condition by stating:

- the HOA "shall maintain or cause to be maintained the landscaped area including the park strip (area between the back of curb and the property line) to Laird Drive *as outlined in the Salt Lake City Board of Adjustment Case No. 319-B and the final landscaping plan approved by the Board.*" (Page 6, paragraph V.1.c.);
- any "modifications to the approved Plan are subject to the review and approval of the Board of Adjustment." (Page 21, paragraph 9).

See Exhibit I (emphasis added).

It is imperative to note here that the CC&Rs were submitted to the City and stamped "Approved" on September 29, 1987. The stamp of approval indicates that both the City and the HOA understood that the HOA had the obligation to ensure its CC&Rs complied with its permit conditions, and when it gave its approval, the City confirmed that the CC&Rs, in their original form, did not violate the terms of the permit. Although the HOA has recently amended its CC&Rs to remove these obligations, its ability to do so and not be in violation of the permit conditions is questionable. But, more importantly, the fact remains that the original CC&Rs provide conclusive evidence that the City established an ongoing maintenance obligation with its permit conditions in 1987, and the HOA cannot simply erase these conditions by amending its CC&Rs.

C. The Clear Weight of the Evidence Establishes the HOA is the Responsible Party to Whom the Orders Should be Issued

The weight of the evidence in this case shows that the Decision and the Orders are arbitrary and capricious and should be reversed because, pursuant to Harvard Park's permit conditions, the HOA is the party responsible for all maintenance of the Maintenance Area. The evidence in support of this conclusion is as follows:

- (1) The original permit conditions requiring approval of the landscape were recorded in Salt Lake County and specifically included the Maintenance Area in the legal description, *see* Exhibit C-6;
- (2) The then-Planning Director required the developer to include the Maintenance Area in the landscape and irrigation plans, *see* Exhibit C-1;
- (3) The developer immediately submitted landscape and irrigation plans that complied with the Planning Director's letter, with no objection, *see* Exhibit C;
- (4) The approved irrigation plan showed that the sprinklers for the Maintenance Area would be connected to Harvard Park's overall irrigation system, even though David E. Pack, and not the Harvard Park Corporation, was the owner of the Maintenance Area, *see* Exhibit C-4;
- (5) The landscape and irrigation plans were stamped approved by the Committee of the Board, as required by the permit; *see* Exhibits C-3 and C-4.
- (6) The developer sought the Board of Adjustment's approval to sell the Maintenance Area to David E. Pack, after it had already done so, and the Board approved the sale subject to the requirement that the area remain a "cohesive development" and that the CC&Rs not conflict with the permit conditions; *see* Exhibit C-7;
- (7) The HOA adopted CC&Rs that memorialized the maintenance obligation as to the Maintenance Area, describing the area to which the obligation applied by specifically referencing Case No. 319-B and the approved landscape plan, *see* Exhibit I;
- (8) The City stamped the CC&Rs "Approved," demonstrating that it found them to be consistent with the permit requirements, *see* Exhibit I;
- (9) The CC&Rs were recorded, putting all purchasers of homes within the Harvard Park development on notice of the perpetual maintenance obligation that was imposed as part of Case No. 319-B and the approved landscape plan, *see* Exhibit I;
- (10) The developer/HOA installed an irrigation system for the entire "cohesive development" that included the Maintenance Area after it had sold the Maintenance Area to David E. Pack, *see* Exhibit H, Exhibit C-4, and Exhibit C-7;
- (11) The HOA maintained the Maintenance Area for almost 40 years consistent with its permit conditions, *see* Exhibit O and Q documenting Stephanie's first-hand experience with the property since 1991;
- (12) The current Planning Director issued the HOA a letter documenting the permit obligations created by Case No. 319-B as to the parking strip, *see* Exhibit D.

Based on the foregoing, substantial evidence shows that Harvard Park's permit created a perpetual maintenance obligation as to the Maintenance Area and it is illegal for the City to contradict the permit conditions by issuing the Decision and Orders. Nevertheless, we are aware that we must also marshal all evidence that is contrary to our conclusions. Unfortunately, since July 2025, when we first wrote to the City Attorney, seeking the City's help to avoid the precise situation we find ourselves in today, we have not been provided with any evidence to support the City's Decision and Orders.

Through our GRAMA requests, we are aware that the City exchanged email correspondence and met with the HOA earlier this year. *See* Exhibit DD. The correspondence we obtained indicates that the HOA may have shared "new information" with the City. *See* Exhibit DD. However, if this

information includes evidence contrary to our case, we are unable to marshal it because, as of the date of this filing, it has not been provided to us.

Additionally, we note that recent internal email correspondence of the City suggests that enforcement action against the HOA should be delayed, but portions of that email are redacted, and there is no evidence we could glean from the unredacted portion to support the City's Decision and Orders. *See* Exhibit EE. We note that while the City sent the HOA a notice and order for weed abatement for the park strip, *see* Exhibit FF; the City immediately withdrew that notice and order, stating in an email to the HOA that after "an administrative review," the HOA's weeds notice and order is retracted. *See* Exhibit GG. We filed a GRAMA request specifically seeking information about the "administrative review;" however, the response we received was a heavily redacted email that provides no evidence supporting the City's Decision and Orders. *See* Exhibit HH.

Based on the foregoing, we submit that there is no evidence, let alone substantial evidence that justifies the Decision and the Orders. Absent any basis for its actions, it is illegal for the City to overrule Case No. 319-B, the permit conditions, the approved landscape and irrigation plans, and hold us liable for the perpetual obligations the City previously imposed on the HOA.

II. The HOA's Perpetual Permit Conditions Cannot Be Overridden by the City's General Ordinances

The City may attempt to support its Decision and Orders by asserting that since we are the owners of the Maintenance Area, we are responsible for weed abatement under Chapter 9.16, and we are also responsible for the overall landscaping of the Maintenance Area pursuant to Chapter 21A.48. Due to the existence of Harvard Park's perpetual permit obligations, which squarely address those obligations, this argument must be rejected. The enforcement mechanisms for violations of both Title 9 Health and Safety and Title 21A Zoning in the municipal code authorize the City to cite the responsible party for violations and do not strictly limit liability to only the property owner. *See* Salt Lake City Code 21A.20.030.A ("the civil enforcement officer may provide a . . . notice to the property owner *and any other person determined to be responsible for such violation*") (emphasis added); *see also* Salt Lake City Code 2.75.140 ("An administrative citation may be issued to *any responsible person.*") (emphasis added).

The City's general health and safety, landscaping, and other ordinances cannot silently repeal or override the specific, final permit conditions imposed on a particular development. Case No. 319-B is a site-specific land use decision that expressly conditioned Harvard Park's development approval on the Maintenance Area remaining part of the "cohesive development" and being perpetually landscaped and irrigated according to the approved plans. Harvard Park's permit conditions attached to its entire development, including the Maintenance Area, regardless of the owner that held bare legal title at a given moment. While the City has broad police power, that power does not extend to contradicting its own permit conditions.

That the City cannot invoke its general ordinances to override existing permit conditions is a central tenet of MLUDMA that applies here in two ways. First, MLUDMA prohibits the City from imposing on the holder of an issued permit a requirement that is not expressed in the permit itself. *See* Utah Code Ann. § 10-20-902. While we are not the permit holder in this instance, the

underlying premise that a municipality binds itself to the terms of its issued permit, is equally applicable to our situation. *See Keith v. Mountain Resorts Dev., L.L.C.*, 2014 UT 32, 337 P.3d 213 (the vested rights doctrine addresses the point at which development rights vest so that subsequent ordinances cannot be retroactively applied). Second, MLUDMA establishes that a court shall presume that a final land-use decision of a land use authority is valid unless it is shown to be arbitrary/capricious or illegal through a timely appeal. *See Utah Code Ann. § 10-20-1109*. Any attempt by the City today to apply its general code provisions to override permit conditions that were imposed, never appealed, and complied with for almost 40 years constitutes an illegal retroactive application of the ordinances to a long-vested land use decision.

Importantly, there is nothing in Chapter 9 or Chapter 21A of the Salt Lake City Ordinances that purports to override site-specific development conditions, and the City itself did not treat any current municipal ordinance as controlling on September 24, 2025, when the Planning Director issued the letter concluding the HOA was obligated to maintain the park strip pursuant to the conditions of its permit in Case No. 319-B. *See Exhibit D*. This is consistent with well-settled Utah canons of construction. Where a specific provision and a general provision address the same subject, the specific provision controls. *See Hall v. Utah State Dep't of Corr.*, 2001 UT 34, 24 P.3d 958.

The rationale behind the canon that the specific governs the general “because the legislative mind is presumed to have stated its intent when it focused on that particular issue;” *Madsen v. Brown*, 701 P.2d 1086, 1089 (Utah 1985); is particularly relevant here. In this case, the Board of Adjustment was specifically focused on the developer and Harvard Park’s unique circumstances, particularly the disclosed plan to sell the Maintenance Area, when it imposed the “cohesive development” condition in Case No. 319-B. In contrast, the provisions of the municipal code regarding weed abatement and general landscaping were never drafted with Harvard Park’s particular history in mind.

Finally, relying upon the general ordinances, while ignoring Harvard Park’s specific permit conditions arbitrarily confuses ownership with maintenance responsibility. Case No. 319-B’s condition was not framed as a covenant applying only to the original parcel held by Lloyd, but rather it was framed as an obligation burdening the entire development project. This is evidenced by the Abstract, which describes all the development land, including the Maintenance Area, *see Exhibit C-6*; as well as the Board of Adjustment’s requirements that “none of the land is sold off so long as this is part of a cohesive development.” *See Exhibit C-7*. The Board of Adjustment’s concern, as reflected in the Report, was precisely that carving off a portion of the Maintenance Area to an abutting owner would fragment the cohesive development it had approved, which is exactly what happened here. The permit condition was adopted to address the fact that title to the Maintenance Area would not track maintenance responsibility. It is preposterous for the HOA, as the successor to the developer, to try to use the very transaction that the Board of Adjustment accommodated with the permit condition as a justification to disregard that condition today.

III. The HOA's Obligation to Maintain the Maintenance Area Did Not Violate Public Policy Then and It Does Not Violate Public Policy Now

Since we are unclear about the City's basis for issuing the Decision and Orders, we must speculate regarding the justification for its actions. One possible reason is that the City is concerned that the obligation for the HOA to maintain land that it does not own is contrary to public policy. The City may be especially cognizant of the Utah Legislature's recent enactment of section 10-20-604 as part of the Municipal Land Use, Development, and Management Act ("MLUDMA"). *See* Utah Code Ann. §§ 10-20-101 *et seq.* Under section 10-20-604, the City may not require an HOA to maintain and be responsible for a public access amenity unless the public access amenity is adjacent to the private property, such as park strips and sidewalks, or the HOA agrees to maintain or be responsible for the public access amenity in perpetuity in a covenant or other agreement with the City.

While that statute was passed in 2025 and is wholly inapplicable here since it was not made retroactive by the Legislature, *see* Utah Code Ann. § 68-3-3; the public policy behind the statute could be a reasonable concern for the City. The policy behind section 10-20-604 seems focused on preventing municipalities from unfairly burdening HOAs with financial obligations and other maintenance responsibilities for public parks, trails, or other lands the HOAs do not own. The City could take the position that this policy justification weighs strongly here since this is a situation where the HOA must maintain an adjoining landowner's property. However, based on the distinctive situation surrounding Harvard Park's permit approval in this case, requiring the HOA to maintain the Maintenance Area is in no way contrary to the public policy concerns that section 10-20-604 was enacted to guard against.

As set forth above, this is not a situation where the City overreached and through its permit conditions extracted unreasonable commitments from the HOA. Here, the City always intended the Maintenance Area to be part of the Harvard Park development, and it was the HOA's predecessor who created the split ownership situation in 1986 that today looks like it creates an extra burden on the HOA. Had Harvard Park been kept a "cohesive development," as the original permit intended, there would be no question as to the HOA's maintenance obligations. However, because Lloyd sold the Maintenance Area to David E. Pack, the developer had to seek a modification to its permit, and the Board of Adjustment accommodated the unapproved sale by establishing maintenance obligations that are separate from ownership here. The HOA cannot simultaneously enjoy the benefits of its development permit and then argue that it should be relieved of some of its burdens when its predecessor's conduct, rather than the conduct of the City, was what created the unique situation in the first instance.

Second, while the Report clearly demonstrates that the HOA's maintenance obligation is a permit condition, it can also be seen as a voluntary agreement by Harvard Park to ensure that the further permit modifications it sought were granted. Through that lens, such an agreement would certainly satisfy the spirit of section 10-20-604, if not the exact requirements of the statute. If section 10-20-604 had retroactive application it would prohibit the City from requiring the HOA to maintain and be responsible for the Maintenance Area (arguably a public access amenity since it is wholly outside our yard and only used by the public), unless the HOA agreed to such maintenance "in perpetuity in a covenant, . . . development agreement, or other agreement" with the City. Utah

Code Ann. § 10-20-604(b) (emphasis added). In other words, the HOA could have entered into a voluntary agreement with the City to take on maintenance obligations for the Maintenance Area.

The HOA certainly appears to have done so here. The HOA included in its CC&Rs an obligation that it would “maintain or cause to be maintained” the “landscaped area” as outlined in “Case No. 319-B and the final landscaping plan approved by the Board,” and the HOA submitted its CC&Rs to Salt Lake City for its review and approval. Moreover, a provision in the CC&Rs related to the architecture of homes states that “modifications to the approved Plan are subject to the review and approval of the Board of Adjustment.” To the extent the HOA argues that the CC&Rs are simply a private contract that it is free to amend, equitable estoppel would prevent the HOA from denying it had a maintenance agreement with the City. “Equitable estoppel reflects circumstances where it is not fair for a party to represent facts to be one way to get the other to agree, and then change positions later to the other's detriment.” *Youngblood v. Auto-Owners Ins. Co.*, 2007 UT 28, ¶ 15, 158 P.3d 1088.

There is no need to focus too intently on the specific requirements of section 10-20-604 since that statute clearly had no application in 1986/87. *See* Utah Code Ann. § 68-3-3 (a statute is not retroactive unless the provision is expressly declared to be retroactive). Regardless, based on the specific circumstances of Case No. 319-B, the City should have no underlying public policy concerns in enforcing permit conditions and requiring the HOA to maintain the Maintenance Area today. There is nothing about the existing permit or the current enforcement of its provisions that is contrary to law today.

IV. The City Should Reject Outright Any Challenge by the HOA as Time-barred

The HOA has elected to participate in these proceedings as “an adversely affected party.” Such status is specifically recognized under MLUDMA, which defines the term as “a person other than a land use applicant who owns real property adjoining the property that is the subject of a land use . . . land use decision . . .” *See* Utah Code Ann. § 10-20-102(2). However, whether the current version of MLUDMA or its predecessor in effect in 1986/87 is applicable, that statute plainly bars any attempt by the HOA today to challenge the conditions of its permit issued almost 40 years ago.

Under current law, any challenge by the HOA cannot be heard since section 10-20-1109(6) states that “a challenge to a land use decision is barred unless the challenge is filed within 30 days after the land use decision is final.” The same is true under the provisions of the statute that preceded today’s MLUDMA, *see* Utah Code Ann. § 10-9-15 (1986), and the provisions of the Salt Lake Municipal Code in effect in 1986, *see* Sec. 51-3-10 of the Revised Ordinances of Salt Lake City, June 16, 1986, Bill No. 41. Under the law at the time, the HOA had to challenge its permit conditions and Case No. 319-B within 30 days of the decision. As of today, this appeal period has run more than 14,000 times.

Since the governing law both now and then bars any challenge to a decision of the Board of Adjustment brought after 30 days, Harvard Park’s permit obligations established in Case No. 319-B are final and unappealable. *See Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Utah Ct. App. 1997). This jurisdictional bar to any challenge of the permit conditions applies regardless of how the HOA tries to characterize its appeal today. *See Green v. Brown*, 2014 UT App 155, 330 P.3d

737 (the limitations period for challenging land use decisions applies, regardless of whether the challenge goes to the substance of the decision or the authority of the governmental entity to render the decision, and a challenge cannot be made outside that limitations period); *see also Foutz v. City of South Jordan*, 2004 UT 75, 100 P.3d 1171 (an attempted workaround of the appeal deadline by re-characterizing the land-use decision as an ongoing code violation was rejected as time-barred). Accordingly, the Appeals Hearing Officer should reject any challenge to the HOA's permit obligations arising from Case No. 319-B as flatly time-barred.

V. Our Detrimental Reliance on the Recorded Permit Conditions Estops the City from Shifting the Maintenance Obligations for the Maintenance Area to Us Today

As we argued in our Request for Initial Determination/Appeal, given the fact that we took title to the Maintenance Area in reliance upon the recorded perpetual permit conditions that obligated Harvard Park to maintain the Maintenance Area, the City is now estopped from shifting that maintenance burden to us. In making the equitable estoppel argument in our Request we demonstrated how the elements of the doctrine are satisfied in this case. We recognize, however, that satisfying those elements alone is not sufficient since “the usual rules of estoppel do not apply against the government” *Monarrez v. Utah Dep't of Transp.*, 2016 UT 10, ¶ 35, 368 P.3d 846. Our burden requires us to demonstrate that equitable estoppel is necessary to “prevent manifest injustice,” and we must show that “the exercise of governmental powers will not be impaired as a result.” *Id.*

In this case, a manifest injustice would clearly occur if the City arbitrarily and capriciously re-writes its own permit conditions after those conditions were recorded in the Abstract, *see* Exhibit C-6; memorialized in recorded CC&Rs that the City itself approved, *see* Exhibit I; and complied with by the HOA for almost 40 years. Having understood the permit conditions from Stephanie's personal experience with the property since 1991, we would not have purchased our home, installed our sprinkler system in the current location, or re-built our fence in the current location without reliance upon the HOA's permit obligations with respect to the Maintenance Area. If the City overrules Case No. 319-B now and holds us responsible for all future maintenance obligations, we will incur tremendous expenses associated with connecting our sprinkler system under the sidewalk to the parking strip, moving our fence, replanting the sod, and incurring watering and snow removal costs going forward.²

Furthermore, as we demonstrated in section II above, applying the doctrine of equitable estoppel here will have no negative effect on the City's ability to effectuate its governmental powers. Since the permit conditions establish the HOA's perpetual maintenance obligations, the City can fully exercise its governmental authority under the current municipal code by citing the HOA as the “person determined to be responsible” or the “responsible party” for any violations. There is nothing about the fact that the HOA's obligation stems from a permit rather than the code itself that impairs the City's implementation of its governmental powers. The City may cite the HOA

² We note that the unfairness of the perpetual maintenance costs is an argument that the HOA is likely to make. However, a claim of “manifest injustice” cannot apply to their situation since every homeowner within the Harvard Park development who purchased their home before the HOA amended its CC&Rs took ownership subject to the knowledge that their HOA was required to pay for the maintenance of the Maintenance Area by virtue of that obligation being memorialized in the recorded CC&Rs. *See* Exhibit I.

for the failure to follow the approved landscape and irrigation plans as to the Maintenance Area in precisely the same manner as is applicable to all other areas encompassed by the landscape and irrigation plans and owned by the HOA.

As a final point, with respect to the applicability of the doctrine of equitable estoppel, while we firmly believe this doctrine applies to the entire Maintenance Area, we nevertheless submit that, at a minimum, it must be applied to the parking strip. This is based on the Planning Director's letter dated September 24, 2025. *See* Exhibit D. That letter constitutes a written determination issued by the Planning Director in his official capacity, following a documented dispute between the parties, which was subsequently acted upon by the City when it opened a civil enforcement case against the HOA in January 2026. *See* Exhibit S. The City cannot treat its own written determination as authoritative enough to trigger an enforcement action against the HOA, upon which we relied in not addressing the weed abatement issue, and then deny us the relief granted by that determination by acting inconsistent with its own representation. *See R.O.A. Gen. v. Salt Lake City*, 2025 UT App 122, ¶ 45 (estoppel was warranted because there were very clear, well-substantiated representations by the city that were directly contradicted by those its subsequent actions). That is precisely the case here, where the Planning Director issued the letter on September 24, 2025, and then arbitrarily reversed itself when it issued Order No. 2.

Request for Field Trip

We respectfully request that the Appeals Hearing Officer conduct a field trip to view the Maintenance Area. To understand the descriptions of the area used in the Planning Director's letter dated December 10, 1986, the descriptions of where sod and irrigation must be located on the ground based on the landscaping and irrigation plans, and to appreciate the description of the triangular property used in the Report, viewing the lands on the ground is imperative. A view on the ground will also enable the Appeals Hearing Officer to observe first-hand how the Maintenance Area is a quasi-public space, rather than a part of our useable yard, and is not functionally any different than any other land currently owned by the HOA along 2100 East and included in the approved landscape and irrigation plans.

Request to Leave the Record Open Following the Hearing for Rebuttal Arguments

As a final matter, we respectfully request that, following the hearing on August 20, 2026, the Appeals Hearing Officer leave the record open to allow us to submit a rebuttal argument. *See* Salt Lake City Appeals Hearing Officer Policies and Procedures, dated May 21, 2024, at G.1 As we have argued throughout this brief and our Request for Initial Determination/Appeal, we have not been privy to the evidence that may support the City's Decision and the Orders. While we have tried to anticipate and rebut any of the HOA's arguments due on August 6, 2026, as well as the position the City may take in its Staff Report due on August 14, 2026, with a limited window to research those arguments and without the ability to respond in writing, we are concerned that our ability to be heard in a meaningful manner could be impaired. *See id.* at E.1.a.-d.

Conclusion

When the Harvard Park development was permitted, approved, and built in 1986/87, the City required Harvard Park to make commitments to the City and to the community that the HOA would maintain the entire project development area, including the Maintenance Area, in perpetuity. Since the HOA first wrote to us in March of 2025, apparently oblivious to the maintenance language in its own CC&Rs, as well as the conditions arising from the approval of its development permit in Case No. 319-B, it has attempted to divorce itself from the perpetual obligation that runs with the “cohesive development.”

As we have demonstrated here, there is no evidence that would justify holding us rather than the HOA responsible for the maintenance of the Maintenance Area. Accordingly, the Decision and the Orders were arbitrarily and capriciously issued and should be reversed. The City should require the HOA to comply with Harvard Park’s development permit conditions, which created the perpetual maintenance obligations, and which remain binding today. This means the City should look to the HOA to remove the weeds, re-plant the sod since the HOA let the grass die when it stopped watering, remove the snow from the sidewalk in the winter, and most importantly, to re-start mowing and watering the entire Maintenance Area.