

CASE NO. PLNAPP2026-00626

**MEMORANDUM DECISION
SALT LAKE CITY LAND USE APPEALS HEARING OFFICER**

**APPEAL OF ADMINISTRATIVE DECISION
CASE NO. PLNAPP2026-00626
APPELLANT: SCOTT ENGLISH ON BEHALF OF GPWT, LLC
PROPERTY OWNER: GPWT, LLC
PROPERTY ADDRESS: 852 SOUTH WEST TEMPLE**

**PUBLIC HEARING HELD OCTOBER 15, 2026
DECISION ISSUED OCTOBER 22, 2026**

On October 15, 2026, a public hearing was held on this matter. John Quinn, owner of GPWT, LLC, and Scott English of Cornerstone Residential, the property manager for the Subject Property, appeared on behalf of the property owner GPWT, LLC (collectively, the “Appellant”). During the hearing, Mr. Quinn provided direct testimony and Mr. English provided brief additional comments. Nick Rush, Salt Lake City Legal Investigator, Daniel Echeverria, Salt Lake City Zoning Administrator, and Katherine Pasker, Senior City Attorney, appeared on behalf of Salt Lake City (the “City”). Mr. Rush and Ms. Pasker presented on behalf of the City.

After reviewing the evidence submitted, testimony provided, and arguments presented, the following findings of fact and conclusions of law are adopted:

FINDINGS OF FACT

1. GPWT, LLC (the “Property Owner”) owns certain real property located at approximately 852 South West Temple, Salt Lake City, Utah, more particularly described as Salt Lake County Parcel No. 15-12-276-030-0000 (the “Subject Property”).

2. The Subject Property contains a ten-unit multifamily dwelling and is located within Salt Lake City’s MU-5 Mixed-Use District.

3. A black iron, vertical-picket fence that exceeds six feet in height (the “Fence”) extends east to west across the front of the Subject Property, approximately five feet behind the sidewalk, between the front lot line and the front building line of the facade of the principal structure that contains the primary entrance.

4. The Fence was constructed by a prior owner of the Subject Property. Aerial imagery reflects that the Fence was installed sometime after May 2019 and before July 2021, likely in 2020.

5. When the Fence was constructed, the Subject Property was zoned FB-UN2, which imposed no minimum front yard setback. Under the ordinance then in effect, a fence up to six feet in height could have been located along the front lot line, subject to obtaining the required building permit.

6. At the time the Fence was constructed, Salt Lake City Code Section 21A.40.120.C required that a building permit be obtained prior to the construction of any fence.

7. No building permit was ever applied for or issued for the Fence. Appellant does not dispute that the Fence was erected without a permit.

8. In September 2021, the zoning applicable to the Subject Property changed. Under the current code, a fence or wall located between the front lot line and the front building line of the facade of the principal structure that contains the primary entrance may not exceed four feet in height. Salt Lake City Code § 21A.40.120.E.1.a.

9. On March 6, 2025, Civil Enforcement cited the prior owner for the over-height Fence. The prior owner applied for a variance to keep the Fence (PLNZAD2025-00845). The variance was denied on January 12, 2026.

10. Since May 18, 2021, the Property Owner has owned the properties abutting the Subject Property to the north and south. On December 3, 2025, notice of the public hearing on the prior owner's variance application was mailed to the Property Owner, and notice of the hearing was posted at the Subject Property on December 8, 2025.

11. The Property Owner purchased the Subject Property on April 16, 2026. At the hearing, Appellant acknowledged that it knew the Fence was an issue when it went under contract to purchase the Subject Property.

12. On May 21, 2026, Civil Enforcement issued a warning letter to the Property Owner. On June 9, 2026, Civil Enforcement met with Appellant and advised that the Fence could not

exceed four feet in height. The Subject Property was reinspected on July 2 and July 8, 2026, and remained out of compliance.

13. On July 15, 2026, Civil Enforcement mailed and posted a Notice and Order citing the Fence as a violation of Salt Lake City Code Section 21A.40.120.E.1.a (the “Notice and Order”). Appellant timely appealed the Notice and Order on July 24, 2026.

14. No application has been submitted to the City requesting a determination that the Fence is a legal noncomplying structure, and the City has not made any such determination.

15. Appellant asserts that the Fence serves an important security function for the residents of the Subject Property, and requests additional time before the Fence is reduced in height.

CONCLUSIONS OF LAW

1. The appeals hearing officer is the City’s designated appeal authority for appeals of administrative decisions, including a Notice and Order issued in a zoning enforcement action. Salt Lake City Code §§ 21A.06.040, 21A.20.030.H. The appeals hearing officer reviews the decision de novo, and the Appellant bears the burden of proving that the decision appealed was incorrect. Salt Lake City Code § 21A.16.030.I.1, J.

2. The decision before the appeals hearing officer is the Notice and Order issued by Civil Enforcement. A determination of whether the Fence is a legal noncomplying structure is made through a separate application process, no such application has been submitted, and that determination is not properly before the appeals hearing officer in this appeal.

3. To the extent Appellant relies on noncomplying status as a defense to the Notice and Order, Appellant has not provided any legal argument or authority to counter the City’s determination that the Fence was not “legally established” at the time the zoning changed. Accordingly, the Fence does not qualify as a legal noncomplying structure.

4. *Harper v. Summit County*, 2001 UT 10, 26 P.3d 193, does not permit the Fence to be legalized by the subsequent issuance of a building permit, because the Fence is not a proper candidate for a building permit under the code now in effect and was not legally established before

the zoning changed. *Harper* does not address whether a subsequent building permit may correct a failure to obtain a building permit after a property's zoning has changed.

5. A change in ownership does not relieve the current owner of the obligation to correct an existing zoning violation.

6. Appellant had actual and constructive notice of the violation before purchasing the Subject Property, and Appellant has not articulated any equitable basis to avoid enforcement.

7. The asserted security benefits of the Fence are not relevant to whether Civil Enforcement correctly applied the City Code, and the appeals hearing officer does not have discretion to extend compliance deadlines or delay enforcement on that basis.

8. Appellant has failed to meet its burden of proving that Civil Enforcement erred in issuing the Notice and Order.

DISCUSSION

Standard of Review

This is an appeal of an administrative decision pertaining to the enforcement of Salt Lake City's zoning code, found in Title 21A of the Salt Lake City Code. With respect to zoning enforcement actions, the City Code provides that "[t]he responsible party shall have the right to contest the notice and order at an administrative hearing in accordance with Chapter 21A.16." Salt Lake City Code § 21A.20.030.H. An appeal must identify "the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error." Salt Lake City Code § 21A.16.030.A. The appeals hearing officer reviews the decision de novo. Salt Lake City Code § 21A.16.030.I.1. It is the Appellant's burden to prove that the decision appealed was incorrect. Salt Lake City Code § 21A.16.030.J.

At the outset of the hearing, the parties were advised that in some matters the appeals hearing officer has discretion, while in others the appeals hearing officer is bound to apply the plain language of the City Code and applicable law, and the parties were invited to identify any area in which they contend the appeals hearing officer has discretion. Appellant candidly

acknowledged that it was not aware of any such discretion and was not seeking to parse the language of the code, but rather was asking for relief on a reasonableness basis.

Civil Enforcement determined that the Fence, which is located between the front lot line and the front building line of the facade of the principal structure that contains the primary entrance, exceeds the four-foot maximum height permitted by Section 21A.40.120.E.1.a. Appellant does not dispute the location or height of the Fence. Instead, Appellant contends that the Notice and Order cannot be sustained based on the timing of the Fence's construction, the subsequent change in ownership, and the unresolved question of whether the Fence should be considered a legal noncomplying structure. Appellant also asserts that the Fence serves an important security function. Each issue is addressed in turn.

The Appeal Is Limited to the Civil Enforcement Decision; Noncomplying Status Is Determined Through a Separate Application

The decision before the appeals hearing officer is the Notice and Order issued by Civil Enforcement. The question presented is whether Civil Enforcement erred in determining that the Fence violates Section 21A.40.120.E.1.a and in issuing the Notice and Order. Appellant's appeal, however, rests in large part on what Appellant describes as "the unresolved question of whether the fence should be considered a legal nonconforming structure."

The City Code defines a "noncomplying structure" as "[b]uildings, structures or property improvements which were legally established on the effective date of any amendment to this title or [are] recognized to be in legal existence according to the provisions of Chapter 21A.38." Salt Lake City Code § 21A.62. As the City explained at the hearing, a property owner seeking to have a structure recognized as a legal noncomplying structure must file an application with the City and obtain a determination through that separate process. No such application has been filed, and the City has not made any determination that the Fence is a legal noncomplying structure. Nor is there anything in the City's own records—such as an issued building permit—reflecting that the City has recognized the Fence as being in legal existence.

Because a determination of noncomplying status is a separate application process, and no decision on such an application has been made, whether the Fence is a legal noncomplying structure is not a decision properly before the appeals hearing officer in this appeal. The appeals

hearing officer is asked to decide a civil enforcement appeal, and the scope of this decision is limited accordingly.

Appellant Has Not Established That the Fence Is a Legal Noncomplying Structure

Even if noncomplying status could be raised as a defense in this enforcement appeal, Appellant has not carried its burden. Appellant did not provide any legal argument or authority to counter the City's determination that the Fence was not "legally established" at the time the zoning changed, and accordingly the Fence does not qualify as a legal noncomplying structure.

The record establishes, and Appellant does not dispute, that the Fence was constructed sometime between May 2019 and July 2021, likely in 2020, while the Subject Property was zoned FB-UN2. Under the ordinance then in effect, a fence up to six feet in height could have been located along the front lot line, but only if the required building permit was obtained. Section 21A.40.120.C required that a building permit be obtained prior to the construction of any fence, and that requirement was in effect well before the Fence was constructed. No permit was ever applied for or issued. At the hearing, Appellant conceded that the Fence was erected without a permit, stating that there is no opposing position it could take on that point.

A noncomplying structure must have been "legally established on the effective date of any amendment" to the zoning code. Salt Lake City Code § 21A.62. Because the Fence was constructed without the required building permit, it was not legally established when the zoning applicable to the Subject Property changed in September 2021. The passage of time alone does not convert an unlawfully constructed structure into a legally established one. Appellant offered no evidence, argument, or authority to the contrary. Accordingly, the Fence does not satisfy the plain language requirements of the City Code and does not qualify as a legal noncomplying structure.

Harper v. Summit County Does Not Permit the Fence to Be Legalized by a Subsequent Building Permit

Appellant indicated at the hearing that it would be willing to pay for a permit if that were an option. The City cited *Harper v. Summit County*, 2001 UT 10, 26 P.3d 193, for the proposition that a building permit issued after construction may cure a violation for failing to obtain a permit before construction began, but contends that such a cure is no longer available here. The appeals

hearing officer has considered *Harper*, and in particular paragraph 24 of that decision, which provides:

Although we have found no Utah case law construing a zoning ordinance such as section 1.9, we conclude that if a building or structure is found to be an authorized use in the zone, otherwise complies with the provisions of the code, and would have been a proper candidate for a building permit had one been sought before construction began, violation of section 1.9 can be remedied by the subsequent issuance of a valid building permit.

Id. ¶ 24. *Harper* clearly establishes that a subsequent permit may be a remedy for the failure to properly obtain a permit when the failure to obtain the permit is the deficiency. In *Harper*, the only violation at issue was that construction had proceeded without the building permit required by the county’s development code, and a building permit was later issued for the facility. The Utah Supreme Court concluded that, if the facility was properly characterized as a permitted use in the zone, the later-issued permit remedied the violation. *Id.* ¶¶ 22–25.

That is not the deficiency in this case. Here, the deficiency is not merely that the Fence lacked a permit. The deficiency is that the Fence did not have a permit, was therefore not legally established, and thus cannot satisfy the plain language requirements of the City Code for a legal noncomplying structure. The conditions identified in paragraph 24 of *Harper* are also not met. Under the code now in effect, a fence exceeding four feet in height is not permitted in the Fence’s location. The Fence therefore does not “otherwise compl[y] with the provisions of the code,” and it is not a “proper candidate for a building permit.” A building permit sought today would be evaluated under the current code and could not authorize a fence exceeding four feet in this location. As the City acknowledged, the violation could have been cured by obtaining a permit before the zoning changed in September 2021, but it cannot be cured now simply by obtaining a building permit.

Further, *Harper* does not address whether a building permit may be obtained for a nonconforming structure which was not legally established. Nothing in *Harper* suggests that a permit issued after an intervening zoning amendment may relate back to establish that a structure was “legally established on the effective date” of that amendment. Accordingly, *Harper* does not

alter the conclusion that the Fence does not qualify as a legal noncomplying structure and remains in violation of Section 21A.40.120.E.1.a.

A Change in Ownership Does Not Relieve the Property Owner of Responsibility for the Existing Violation

Appellant notes that it did not construct the Fence and has owned the Subject Property for only a short time. Nothing in the City Code relieves a new property owner of the obligation to correct an existing violation merely because the owner did not create it. Section 21A.20.030 permits enforcement against the property owner whenever any provision of Title 21A is violated and requires the responsible party to correct the violation and request a compliance inspection. Those obligations properly rest with the current owner, who controls the Subject Property and has the present ability to bring it into compliance. It would be impracticable to require a former owner, who no longer holds any interest in the Subject Property, to make material alterations to it. Further, as the City noted, a contrary rule would allow unlawful construction to escape enforcement upon the conveyance of the property and would place the onus on the City to compel correction of every violation before a property is sold. There is no legal support for such a result.

Appellant Had Notice of the Violation Before Purchasing the Subject Property

The record reflects that the Property Owner owns the apartment buildings immediately to the north and south of the Subject Property. Notice of the public hearing on the prior owner's variance application, which identified the Fence as noncompliant, was mailed to the Property Owner on December 3, 2025, was posted at the Subject Property, and was posted on the Utah Public Notice website. Mr. Quinn testified that he did not personally see the mailed notice, but he also candidly acknowledged that he knew the Fence was an issue when he went under contract to purchase the Subject Property. Zoning ordinances remain enforceable when a property owner purchases with knowledge of a zoning issue. *See Chambers v. Smithfield City*, 714 P.2d 1133, 1136 (Utah 1986). Appellant purchased the Subject Property with notice of the noncompliant Fence and has not articulated any equitable theory under which it should be permitted to keep the Fence notwithstanding the violation. Any failure by the prior owner to disclose the pending enforcement matter is a private matter between Appellant and the prior owner.

The Security Benefits of the Fence Do Not Establish Error in the Notice and Order

The appeals hearing officer appreciates Appellant's sincere concern for the safety and quiet enjoyment of its residents, and Appellant's testimony regarding the costs it has incurred addressing trespass at its adjacent property. However, the utility of the Fence to the Property Owner is not relevant to whether Civil Enforcement correctly applied the City Code in issuing the Notice and Order. The prior owner's variance application raised similar security concerns, and that application was denied. Moreover, as Appellant acknowledged, the harms it fears have not occurred at the Subject Property, and Appellant provided no evidence that a four-foot fence, together with other security measures such as gates, keypads, cameras, or security personnel, could not provide comparable protection.

Appellant ultimately asked for additional time—potentially a year—before reducing the height of the Fence, and represented that it intends to bring the Fence into compliance. The appeals hearing officer does not have discretion under the City Code to set alternative compliance timelines or to delay enforcement on the basis of the Fence's utility. Appellant is encouraged to discuss any compliance schedule directly with the City.

Accordingly, based on the evidence in the record, Appellant has failed to meet its burden of proving that Civil Enforcement erred in issuing the Notice and Order.

DECISION

For the foregoing reasons, the appeal is DENIED and the Notice and Order issued by Civil Enforcement on July 15, 2026, is UPHELD. The Fence must be reduced to a height not exceeding four feet, relocated behind the front building line of the facade of the principal structure that contains the primary entrance, or removed.

This decision may be appealed to the Third District Court within 30 days of the date of this decision.

Dated this 22 day of October 2026



Clayton H. Preece
Appeals Hearing Officer