

Case No. 69259-3-I

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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THE CITY OF FERNDALE,

Defendant / Appellant

v.

ARTUR ROJSZA,

Plaintiff / Respondent

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APPELLANT'S OPENING BRIEF

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## **I. INTRODUCTION.**

In 2002, the Rojszas purchased a single-family house near the Ferndale city center. Between 2005 to 2009, they continuously remodeled the house without a building permit.

The City's concerted enforcement efforts (which ranged from attempts to work cooperatively with the Rojszas to the issuance of criminal citations) eventually resulted in the Rojszas' submission of a building permit application in 2010. At this time, the Rojszas proposed to add a "clock tower," as well as a new addition to the south on the single-family home.<sup>1</sup>

Once the building permit WAS issued, the Rojszas illegally deviated from the approved plans/permit by expanding the southern addition. The City issued a Stop Work Order, but in an attempt to work cooperatively with the Rojszas, the City did not require the Rojszas to submit an application for a new building permit. Instead, the parties agreed that the violations could be corrected if the Rojszas submitted updated plans which covered the work already performed and any work proposed in the future.

Because the City was again attempting to work cooperatively with the Rojszas during the year after issuance of the July 29, 2010 Stop Work

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<sup>1</sup> Pictures of the structure in various stages of construction are attached hereto as Attachment M.

Order, it did not issue an unequivocal statement that a new building permit would be required for the unauthorized construction until June 16, 2011, when another story was illegally added to the clock tower. In this June 16, 2011 letter to the Rojszas, the City determined that the existing permit was revoked, and that a new building permit would be required for the illegal construction. There was a 10 day deadline for filing an administrative appeal of such determinations, but no appeal was filed.

Concerned about the aesthetics of this unsightly, unfinished structure located in the highly visible city center, the City sent an e-mail to the Rojszas, explaining that their new building permit would include a condition that they post a bond for the installation of the siding. On September 7, 2011, the City informed the Rojszas in an e-mail that the amount of this bond would be \$30,000. Although the Rojszas submitted the necessary information to the City for the new building permit application, they never picked it up when notified that it was ready to issue.

Instead, on September 16, 2011, the Rojszas filed an administrative appeal to the Hearing Examiner, challenging the City's determinations regarding the validity of the existing building permit, that a new building permit would be required, and the City's authority to condition the future building permit on the Rojszas' posting of a bond. They argued that the

appeal was timely because it was filed within 10 days after the City's September 7, 2011 e-mail, which described the bond amount.

After a hearing on the merits, the Hearing Examiner ruled that the appeal was untimely. However, he carefully addressed every one of the Rojszas' appeal issues in his Decision, ultimately ruling in favor of the City.

The Rojszas filed an appeal of this decision to the superior court under LUPA, adding a constitutional claim that was never raised at the administrative level. Ultimately, the superior court reversed the Hearing Examiner without findings, in an order which omitted any reference to the constitutional claim. The City appealed to this Court.

## II. ASSIGNMENTS OF ERROR.<sup>2</sup>

1. The trial court erred by entering an Order<sup>3</sup> reversing the Hearing Examiner's decision that the Rojszas' administrative appeal was untimely filed.

*Issue Pertaining to Assignment of Error 1.* Because the City: (1) sent a letter to the Rojszas on May 11, 2011 determining that the Rojszas'

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<sup>2</sup> The City has followed the Court of Appeals Rules of Procedure in the drafting of the Assignments of Error and Issues Pertaining to Assignments of Error. However, the City notes that "on appeal, the party who filed the LUPA petition bears the burden of establishing one of the errors set forth in RCW 36.70C.130(1), even if that party prevailed on its LUPA claim at superior court." *Quality Rock Prods., Inc. v. Thurston County*, 139 Wn. App. 125, 134, 159 P.3d 1 (2007). The Rojszas, not the City, have the burden of proof. The Hearing Examiner found the administrative appeal to be untimely filed, and the Rojszas have the burden to show that it was timely filed.

<sup>3</sup> The Order on LUPA Hearing on the Merits dated August 3, 2012, CP 1453.

building permit expired; (2) sent another letter on June 16, 2011 determining the building permit had expired or was revoked, and requiring that the Rojszas apply for a new building permit for their unauthorized construction; and (3) sent an e-mail on August 19, 2011 detailing the amount of the bond to be included in a condition in a permit that never issued, was the Rojszas' appeal on September 16, 2011 timely filed (given that the deadline for filing an appeal under Ferndale Municipal Code 14.11.070(B) was ten days after the determination being appealed)?

Did the Rojszas' untimely appeal result in a failure to exhaust their administrative remedies and deprive them of standing in the LUPA appeal?

Was the City's planned imposition of a bond on a future building permit (that never issued), a "final land use decision" appealable under LUPA?

2. The trial court erred by entering an Order<sup>4</sup> which reversed the Hearing Examiner's decision only "to the extent it was challenged and as outlined in this Order."

*Issues Pertaining to Assignment of Error 2.* If the City had the authority under International Residential Code 105.6 to revoke the building permit for construction that deviated from the constructed

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<sup>4</sup> *Id.*

approved under the permit, did the Hearing Examiner correctly rule that the Rojszas had to obtain a new building permit?

If the City had the authority to require that the Rojszas obtain a new building permit, did the Hearing Examiner correctly rule as moot the issue whether the original permit “automatically expired” for lack of inspections?

3. The trial court erred by reversing the Hearing Examiner’s determination that the City had no authority to impose a bond on the Rojszas’ new building permit.

*Issues Pertaining to Assignment of Error 3.* If the Rojszas never picked up their new building permit when the City notified them that it was ready to issue, is there a “final land use decision” that is appealable administratively or judicially under RCW 36.70C.030(1) to allow a challenge to the bond permit condition?

Does FMC 18.12.090(C), which specifically allows the City to require a property owner to post a bond as a condition of a building permit, give the City authority to require that a property owner, who has been engaged in construction of an unsightly structure for over ten years (and has argued that their grandchildren may be working on the same

structure<sup>5</sup>), post a bond on a building permit to ensure the timely installation of siding on their unsightly clock tower structure, in order to ameliorate its aesthetic impacts on the City center?

4. The trial court erred by entering an order which only addresses “reversal” of the Hearing Examiner’s decision, and did not address the constitutional issues argued by the Rojszas for the first time in the LUPA appeal.

*Issues Pertaining to Assignment of Error 4.* Can the trial court’s Order, which reversed the Hearing Examiner’s decision “to the extent it was challenged by Petitioner and as outlined in this Order”<sup>6</sup> be interpreted to mean that the trial court made an affirmative finding that the City violated the Rojszas’ constitutional rights?

Did the City violate the Rojszas’ “Procedural Due Process rights when the Hearing Examiner refused to hear the merits of the appeal on grounds of untimeliness,”<sup>7</sup> if both the administrative record and the Hearing Examiner’s decision demonstrate that the Examiner held a full hearing on the merits on every one of their appeal issues?

Did the trial court have jurisdiction under LUPA to determine whether the City violated the Rojszas’ “Procedural Due Process rights” if

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<sup>5</sup> Verbatim Report of Proceedings from July 31, 2012 court hearing, pp. 17-19.

<sup>6</sup> CP 1465.

<sup>7</sup> CP 1257, Brief of Appellants, line 2-3, p. 23.

the Rojszas failed to exhaust their administrative remedies (because the Examiner determined that the June 16, 2011 letter was a final, appealable decision which was not timely appealed), and the Rojszas raised their as-applied constitutional issues for the first time in the LUPA appeal?

Did the trial court err by not dismissing the Rojszas' argument that the June 16, 2011 letter "was not reasonably calculated under the circumstances to apprise the Rojszas that their failure to act would cause them to forever lose rights," given that the "rights" they claim to have lost are simply the ability to continue illegal behavior without adverse consequences (such as the payment of building permit and plan check fees for City review of construction not authorized by any permit, the cost of posting bonds rather than abating nuisance conditions, and the Rojszas' fear that they may have to demolish illegal construction they choose to perform without permits)?

### III. STATEMENT OF THE CASE<sup>8</sup>

#### A. Legislative Background.<sup>9</sup>

As required by RCW 19.27.031(b), the City adopted the International Residential Code as part of its Building Code.<sup>10</sup> Under that Code:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure . . . or to cause such work to be done, **shall first make application to the building official and obtain the required permit.**<sup>11</sup>

The City building official is authorized to require the submission of construction plans, showing the proposed work, as part of the building permit application.<sup>12</sup> Once the building official issues a permit, he/she stamps the construction plans as “approved.”<sup>13</sup> The owner cannot deviate from the approved plans during construction without additional approval:

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.<sup>14</sup>

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<sup>8</sup> The certified administrative record of over 1,000 pages was numbered for purposes of the Hearing Examiner appeal. Different numbers were assigned the pages for purposes of the Clerk’s Papers. For convenience, the City has used the numbering on the pages in the administrative record and provided copies of all referenced documents.

<sup>9</sup> The International Residential Code appears in AR 1-22 which begins at CP 152; *see also*, Ferndale Municipal Code 15.04.020.

<sup>10</sup> In this case, the 2009 edition of the International Residential Code is applicable.

<sup>11</sup> R105.1, emphasis added.

<sup>12</sup> R106.1. Additional requirements are included in FMC Section 18.12.080.

<sup>13</sup> R106.3.1.

<sup>14</sup> R106.4.

The owner is required to notify the building official when he/she is ready for an inspection/approval of each portion of the work.<sup>15</sup> The trigger for an inspection of each stage of the work is described in R109.1 through 1.5, which ends with a final inspection.<sup>16</sup> It is the duty of the permit holder to notify the building official that the work is ready for inspection, and to provide access to and means for inspection of the work.<sup>17</sup>

The owner cannot perform work beyond the point indicated in each successive inspection without first obtaining the approval of the building official.<sup>18</sup> After the building official makes the inspection, he/she notifies the owner that the portion of the construction is satisfactory as complete, or the official informs the owner where the construction fails to comply with the code.<sup>19</sup> Any sections that do not comply must be corrected and that portion of the work shall not be covered or concealed until authorized by the building official. *Id.*

As the process is explained by the Washington courts:

Issuance of a building permit does not implicitly imply that the plans submitted are in compliance with all applicable codes. Nor do periodic building code inspections implicitly imply that the construction is in compliance with all applicable codes. Building permits and building code

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<sup>15</sup> R109.1.

<sup>16</sup> R109.6.

<sup>17</sup> R109.3.

<sup>18</sup> R109.4.

<sup>19</sup> R109.4.

inspections only authorize construction to proceed; they do not guarantee that all provisions of all applicable codes have been complied with.<sup>20</sup>

Therefore, while the City's approval of a building permit and plans authorized the Rojszas' construction to proceed, the Rojszas had the duty to ensure that the project met all code requirements, including the requirement that construction take place consistent with the approved permit.<sup>21</sup>

The Ferndale building code was amended with the following provision relating to permit expiration:

. . . B. If the work described in any building permit has commenced but there has been no construction activity for a period of 180 days, as evidenced by a failure to call for necessary inspections, said permit shall expire, and automatically become void.

C. The Building Official may send written notice of expiration to the persons affected together with notice that work as described in the expired permit shall not proceed unless and until a new building permit has been obtained. Such new permit may be based on the original application or on a new application. **The new permit may include limitations on time allowed for substantial completion of the work, and provisions for a reasonable performance bond to ensure completion within the time set.**<sup>22</sup>

The City Building Code makes it unlawful for any person "to erect, construct, alter, extend, repair, move, remove or demolish" any "building,

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<sup>20</sup> *Taylor v. Stevens County*, 111 Wn.2d 159, 167, 759 P.2d 447 (1988).

<sup>21</sup> *Heller Bldg. LLC v. City of Bellevue*, 147 Wash. App. 46, 62, 194 P.3d 264 (2008).

<sup>22</sup> Ferndale Municipal Code, Section 18.12.090; AR Ex. 1-21, which begins at CP 152, emphasis added.

structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.”<sup>23</sup> In addition, the Building Official also may suspend or revoke a building permit “whenever 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.”<sup>24</sup> The deadline for filing an administrative appeal for any order of the building official/zoning administrator (such a decisions under the above-listed provisions) is 10 calendar days of such order, permit, decision or determination.<sup>25</sup>

**B. Factual Background.**

Once Artur and Margaret Rojsza purchased the single-family home located at 2147 Main Street, Ferndale, Washington, they planned to remodel it with a “clock tower” and other improvements.<sup>26</sup> Mr. Rojsza has worked as a contractor in four different countries, and therefore knew or should have known that building permits were required for the planned remodel.<sup>27</sup>

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<sup>23</sup> R113.1.

<sup>24</sup> R105.6, emphasis added; *see*, Ex. R, p. 2.

<sup>25</sup> Ferndale Municipal Code Section 18.12.200, AR 2 Ex. 10; 14.11.070, AR 4-2

<sup>26</sup> CP 152-907; Ex. 2-2, Declaration of Artur Rojsza, 11-10-10, Attachment A, hereto.

The property is zoned “City Center” and the parties agree that the house is a legally established non-conforming use. CP 1324.

<sup>27</sup> *Id.*, Att. A.

Even so, the Rojszas worked for over four years on the structure without a permit.<sup>28</sup> On September 18, 2009, the City issued a Notice of Violation to the Rojszas for their failure to obtain the required permits.<sup>29</sup> This failed to elicit a response from the Rojszas, and so three months later, the City issued a criminal citation for the code violation.<sup>30</sup>

Thereafter, the parties met to discuss the citation, and the City proposed that corrective action would consist of the following: the Rojszas would hire a structural engineer to inspect areas of the structure that were constructed without a permit, and then they would submit a building permit application (which would include building plans stamped approved by the structural engineer).<sup>31</sup> The City further proposed that after issuance of the building permit, the Rojszas would construct all work identified in the building permit within 180 days, or the City would continue to prosecute the citation.<sup>32</sup> The Rojszas specifically agreed (through their attorney) that they would submit a building permit for the structural modifications, and that if the building permit required additional

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<sup>28</sup> *Id.*, the Rojszas claim to have “begun the process of attempting to obtain a building permit” in 2005, but no building permit application was submitted until 2010. They admit that they “undertook a significant remodel of their home which required a building permit,” that “started in 2005,” and that they didn’t obtain a permit until years later. CP 1324.

<sup>29</sup> CP 152-907; Ex. 2-2, p. 437, Attachment B, hereto.

<sup>30</sup> CP 152-907; Ex. 2-2, p. 287, Attachment C, hereto.

<sup>31</sup> CP 152-907; Ex. 2-2, p. 179-180, Attachment D, hereto. This is a partial description of the agreement between the parties.

<sup>32</sup> *Id.*, Attachment D, p. 180.

work to comply with the City's building code, that the Rojszas would perform such work within 180 days.<sup>33</sup> Subsequently, they submitted a building permit application for the work and the City issued the permit on April 9, 2010.<sup>34</sup>

The City soon learned that the Rojszas had constructed a southern addition to the house in excess of the height shown on the approved plans.<sup>35</sup> On July 29, 2010, the City issued a Stop Work Order to the Rojszas, based on "deviations from the construction permitted under the building permit issued on April 9, 2010."<sup>36</sup>

On August 5, 2010, the City lifted the Stop Work Order and the Rojszas were allowed to re-start construction work, subject to a number of conditions.<sup>37</sup> One condition required the Rojszas to submit revised structural and architectural drawings and plans for the work they performed that was not within the scope of the issued building permit.<sup>38</sup> The City specifically warned the Rojszas that "work will not be approved to recommence on unpermitted portions of the southern addition until the

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<sup>33</sup> CP 152-907; Ex 2-2, p. 181-182, Attachment E, hereto.

<sup>34</sup> CP 152-907; Ex. 2-2, p. 414.

<sup>35</sup> CP 152-907; Ex. 2-2, p. 349, Attachment F.

<sup>36</sup> *Id.* A copy of the Stop Work Order, the letter dated July 29, 2010 and a photo of the structure which accompanied the Stop Work Order are attached hereto as Exhibit F, and appear in the administrative record as AR 5-2.

<sup>37</sup> CP 152-907; Ex. 2-2 p. 340, Attachment G. This letter is undated.

<sup>38</sup> *Id.*

revised plans are reviewed and approved by the City.”<sup>39</sup> The deadline for the Rojszas to submit revised drawings/plans showing the work that was not included in the approved permit to the City was August 20, 2010.<sup>40</sup> In addition, the City required the Rojszas to submit revised structural plans (for any other work) to the City for approval at least two weeks prior to a required inspection.<sup>41</sup>

On August 5, 2010, the City representatives met with Ryan Long, the Rojszas’ structural engineer, to discuss the conditions established by the City for removal of the Stop Work Order.<sup>42</sup> Mr. Long confirmed that “as we discussed and agreed upon yesterday, [the Rojszas] will provide complete architectural and structural drawings at least 2 weeks prior to any framing inspections, including a periodic inspection.”<sup>43</sup> So that there was no miscommunication, the City confirmed this agreement with Art Rojsza.<sup>44</sup>

On November 2, 2010, the Rojszas asked the City for an extension of up to 180 days to complete the work, in order to “to satisfy conditions of the agreement.”<sup>45</sup> The request was granted by the City, after

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<sup>39</sup> *Id.*, Attachment G, Condition No. 2, p. 1.

<sup>40</sup> *Id.*, Attachment G, Condition No. 2, p. 1

<sup>41</sup> *Id.*, Attachment G, Condition No. 1, p. 1.

<sup>42</sup> CP 152-907; Ex. 2-2, p. 322, Attachment H hereto.

<sup>43</sup> *Id.*

<sup>44</sup> CP 152-907; Ex. 2-2, p. 320, Attachment I hereto.

<sup>45</sup> CP 152-907; Ex. 2-2, p. 302, Attachment J hereto.

confirmation from Mr. Rojsza that he intended to “have all structural interior and exterior work done in the next 180 days.”<sup>46</sup>

On November 3, 2010, the Rojszas called the City for an inspection, but they still hadn’t satisfied the condition of the Stop Work Order by sending plans and structural drawings to the City for the unpermitted permit revisions, at least two weeks prior to the requested inspection date.<sup>47</sup> The City inspector notified the Rojszas of this deficiency and postponed the inspection.<sup>48</sup> (Without accurate drawings, the City would have been forced to do plan review in the field on a development that potentially required full engineering analysis. By refusing to provide sufficient information to conduct an inspection, the Rojszas placed the City inspector in an extremely challenging position.)

On March 11, 2011, the City sent a letter to the Rojszas, reminding them that their 180 day extension for the completion of the interior/exterior work would expire on May 1, 2011.<sup>49</sup> In this letter, the City described the work that was still incomplete, such as installation of permanent siding in place on the building, including paint/stain, removal of construction vehicles and construction debris.<sup>50</sup> The unsightly

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<sup>46</sup> *Id.*

<sup>47</sup> CP 152-907; Ex. 2-2, p. 293, Attachment K hereto.

<sup>48</sup> *Id.* It appears that the Rojszas did not receive this e-mail. *See*, CP 33.

<sup>49</sup> CP 152-907; Ex. 2-2, p. 274, Attachment L hereto.

<sup>50</sup> *Id.*

condition of the property is shown in the photos in the administrative record.<sup>51</sup>

In response, Art Rojsza argued that he had called for an inspection in November of 2010, thereby “fulfilling our part of the agreement.”<sup>52</sup> The City disagreed, reminding him that the Rojszas failed to comply with the agreement because they were also required to send their new structural drawings to the City, and that this had to occur at least two weeks prior to the date of the requested inspection.<sup>53</sup> Because the Rojszas still hadn’t sent in the information, no inspection could be scheduled.

On May 5, 2011, Art Rojsza informed the City that “we have not completed the design modifications of our new additions yet.”<sup>54</sup> In this e-mail, Mr. Rojsza also announced that he considered “the legal agreement to bring into compliance the existing structure, which my attorney negotiated with the prosecutor, is complete and has been since November when we called for a city inspection.”<sup>55</sup>

The City disagreed, and contended that the Rojszas had continued to work on the project without periodic inspections by either their

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<sup>51</sup> CP 152-907; Ex. C, Dec. of Art Rojsza, pp. 1-97. Pages 55, 57, 79 and 97 are included in Attachment M hereto.

<sup>52</sup> CP 152-907; Ex. 2-2, p. 259, Attachment N hereto.

<sup>53</sup> *Id.*

<sup>54</sup> CP 152-907; Ex. 2-2, p. 245, Attachment O hereto.

<sup>55</sup> *Id.*

structural engineer or the City.<sup>56</sup> Further, the City pointed out that even though the Rojszas had called for an inspection, they still refused to submit the structural drawings, architectural drawings and report from the Rojszas' structural engineer to the City.<sup>57</sup> The City repeatedly insisted that this information be submitted at least two weeks prior to any request for an inspection.<sup>58</sup>

On May 11, 2011, the City's Community Development Director/Building Official sent a letter to Art Rojsza determining that, due to lack of inspections, the building permit for the structure had expired.<sup>59</sup> Again, the City noted that even though the Rojszas had requested an inspection, the Rojszas failed to provide the necessary structural information at least two weeks prior to the requested inspection date.<sup>60</sup>

On June 16, 2011, the City's Community Development Director/Building Official sent an "Order to Comply" to Art Rojsza, in which he determined that as a result of such continued illegal construction (including the construction of another story on the clock tower), as well as the Rojszas' failure to submit the information necessary for the City to perform an inspection, that the Building Official was exercising his

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<sup>56</sup> CP 152-907; Ex. 2-2, p. 236, Attachment P hereto.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> CP 152-907; Ex. 2-2, p. 190; Attachment Q.

<sup>60</sup> *Id.*, Sec. XII, p. 13.

authority under IRC Section R105.6 to revoke an existing permit for the violation.<sup>61</sup>

The City has determined that you have illegally added to and altered the structure of your building without a permit therefor. You have also built the structure in a manner not reflected by the approved permit. As a result, as the Building Official of the City of Ferndale, I have determined that it now appears that the permit was issued on the basis of incorrect, inaccurate and incomplete information.<sup>62</sup>

In order to correct the violations and avoid the imposition of penalties, the Rojszas were also required to submit the following materials by July 18, 2011:

- Completed building permit application
- Structural, architectural, and stamped engineering plans accurately showing the new addition to the clock tower
- Structural observation by your structural engineer reviewing the entire structure. . . .<sup>63</sup>

In the Order to Comply, the City clearly stated that this was the last opportunity that the Rojszas would have to work cooperatively with the City, without facing financial or criminal penalties.<sup>64</sup>

On June 28, 2011, the Rojszas' attorney, Mark Lackey, wrote an e-mail to the City, acknowledging the City's requirement for a structural

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<sup>61</sup> CP 152-907; Ex. 1, 1-20; Attachment R hereto.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*, p. 3.

<sup>64</sup> *Id.*, *see*, Hearing Examiner's decision, CP 36.

inspection of the building, now scheduled for July 1, 2011.<sup>65</sup> After the inspection, the City sent a letter to Mr. Lackey, stating that the inspection confirmed the City's determination that certain portions of the building had been constructed without a permit, in violation of the Ferndale Municipal Code.<sup>66</sup> A deadline of August 5, 2011 was established for the Rojszas to submit full engineering calculations and drawings of the structure to the City.<sup>67</sup>

On August 8, 2011, because the Rojszas failed to comply with the June 16, 2011 letter, the City issued a criminal citation to them for "failure to apply for a building permit for alteration to a structure (deviation from plans)."<sup>68</sup>

On August 19, 2011, the City sent an e-mail to the Rojszas' attorney Lackey, notifying him that the City would be requiring that the Rojszas submit a performance bond as a condition of the new building permit to ensure completion of the exterior siding within the previously-established deadline.<sup>69</sup> By August 26, 2011, the Rojszas still had not

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<sup>65</sup> E-mail from Mark Lackey to Jori Burnett and others dated June 28, 2011, which was corrected by an e-mail on June 19, 2011, both of which are AR 165 (to appellant's papers).

<sup>66</sup> CP 152-907; Ex. 1, p. 156, Attachment S hereto.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*, Ex. 2-110, Attachment T hereto.

<sup>69</sup> CP 152-907; Ex. 1, p. 103, Attachment U hereto.

submitted the required application information or the structural plans, and the City issued another citation for this violation.<sup>70</sup>

On August 30, 2011, the Rojszas submitted new engineering drawings to the City.<sup>71</sup> As the City noted in an e-mail to the Rojsza's attorney Lackey:

One thing that was missing from the application was an estimate of the cost of the work, including an estimate to complete the exterior siding for the purpose of determining an appropriate bond/Assignment of Savings amount.<sup>72</sup>

On September 7, 2011, the City reviewed the drawings and building permit application, and notified the Rojszas' attorney that the new building permit was ready to issue.<sup>73</sup> In this e-mail, the City informed the Rojszas' attorney that "we will require that an assignment of funds or bond for no less than \$30,000 be submitted . . . [for the purpose of allowing] the City to utilize those funds to hire a contractor and for that contractor to finish the exterior siding of the building."<sup>74</sup> The Rojszas didn't pick up the building permit and it never issued.<sup>75</sup>

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<sup>70</sup> CP 152-907; Ex. 1, p. 77, Attachment U hereto. A summary of the facts leading up to the citation, as drafted by the City Community Development Director/Building Official is included in this Attachment (pages 107, 108 and 109 of the AR).

<sup>71</sup> CP 152-907; Ex. 1, p. 59, Attachment V hereto.

<sup>72</sup> *Id.*

<sup>73</sup> CP 152-907; Ex. 1, p. 47, Attachment W hereto.

<sup>74</sup> *Id.*

<sup>75</sup> The Rojszas now assert that they "never applied for a new permit, but instead, submitted amended plans and engineering calculations on their old permit . . ." CP 1327.

Instead, on September 16, 2011, the Rojszas filed an appeal to the City's Hearing Examiner, claiming that the appeal was timely filed within 10 days of the September 7, 2011 e-mail.<sup>76</sup> "In their administrative appeal, the Rojszas challenged two determinations by the City: (1) that the existing building permit expired allowing the City to require the Rojszas to apply for a new building permit; and (2) that the City could require the Rojszas to post a bond of \$30,000 as a condition of that new permit."<sup>77</sup>

On September 28, 2011, the Building Official told the Rojszas' attorney that:

[T]her needs to be a new permit regardless of whether the previous permit expired or not . . . [T]he new permit is ready to be picked up. **If the Rojszas complete their siding, they would not need to do the bond/[Assignment of Security].** . . . The intent of the bond was and is to get the work done. If they can come up with another way to actually do it, and not just say that it will be done, **I will be the first one to forget the bond requirement.** . . .<sup>78</sup>

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<sup>76</sup> CP 152. The Examiner thought the Rojszas' decision to file an appeal was "mysterious," given that they could have resolved the problem by picking up their building permit (it was ready to issue). The costs involved with the LUPA appeal certainly have exceeded the cost of the new building permit and or a bond. The answer to this question may lie in the Rojszas' attorney's oral argument, as he appeared to erroneously believe that the original building permit was vested to the codes in place at the time of issuance, and would allow the Rojszas' grandchildren to continue working on the structure, regardless of whether their work was identified in any previously approved permit. Verbatim Report of Proceedings, July 31, 2012, pp. 17-19.

<sup>77</sup> CP 1335, line 6-8. This is the Rojszas' characterization of their appeal issues from their LUPA brief.

<sup>78</sup> CP 152-907, Ex. 2-2, p. 24; Attachment X hereto, emphasis added.

After a public hearing, the Hearing Examiner held that the appeal was untimely because FMC 14.11.070(B) requires that appeals of administrative determinations must be filed within 10 calendar days from the date of the decision being appealed.<sup>79</sup> In order to arrive at this conclusion, he specifically addressed the question “at what point was an appealable Decision or Determination made?”<sup>80</sup>

[I]n a letter sent to the Appellant, dated June 16, 2011, the Building Official made in writing and notified the Appellants of his Decision that a new permit was required. This letter clearly stated that new building permit applications were required and directs the Appellants to comply with a number of steps in order to correct building code violations relating to construction work on the building at 2147 Main Street. The stated requirement for a new building permit was clear and unequivocal in this letter. At this point, the Building Official’s Order to Comply was clearly a Decision or Determination, and, therefore, appealable to the Hearing Examiner.<sup>81</sup>

He also “conclude[d] that the appeal of the requirement for a bond or Assignment of Savings to accompany a new building permit, based on the authority of FMC 18.12.090, was not filed in a timely manner and must be dismissed for that reason.”<sup>82</sup>

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<sup>79</sup> CP 47-49; page 25 of Hearing Examiner’s Decision.

<sup>80</sup> CP 50.

<sup>81</sup> CP 50.

<sup>82</sup> CP 47; page 23 of the Hearing Examiner’s Decision.

Even if the appeal had been timely filed, the Examiner found that “the assertion that no new permit is required is without merit.”<sup>83</sup>

Both the International Residential Code, incorporated into Title 15 of the Ferndale Municipal Code, and FMC 18.12.070 require a building permit prior to any construction work. Since the Appellant has done substantial construction work outside of the permit issued, over a two-year period, the City is entitled to require the Appellant to apply for a new building permit.

As with the requirement for a new building permit and a Performance Bond, the Appellants’ attempt to appeal the Building Official’s Determination that their building permit expired was not filed in a timely manner and, therefore, is not properly before the Hearing Examiner, and should be dismissed as not being a timely Appeal.<sup>84</sup>

He also addressed the Rojszas’ remaining arguments on the merits:

[T]here is ample evidence that the Appellants have been unable or unwilling to comply with the requirement to obtain a building permit; to ensure that construction done is within the scope of the permit; and to complete the work within a reasonable length of time. The construction work mostly done without permits, has been on-going in excess of two-years. The building sits within the downtown area of Ferndale, on Main Street, in an unfinished and unsightly condition. A decision to require a bond in this case is clearly within the discretion of the Building Official, is not clearly erroneous, and should be upheld.<sup>85</sup>

On March 6, 2012, the Rojszas appealed the Hearing Examiner’s Decision under the Land Use Petition Act (LUPA), adding a new claim

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> CP 49-50, page 28 of the Hearing Examiner’s Decision.

that the City violated their Due Process rights.<sup>86</sup> After a hearing on the merits on July 31, 2012, the trial court entered an Order reversing the Hearing Examiner, failing to even address the constitutional claim(s).<sup>87</sup>

### III. ARGUMENT

**A. Standard of Review.** When reviewing a superior court's decision under the Land Use Petition Act (LUPA), chapter 36.70C RCW, the Court of Appeals stands in the shoes of the superior court, reviewing the ruling below on the administrative record.<sup>88</sup> On appeal, the party who filed the LUPA petition bears the burden of establishing one of the errors set forth in RCW 36.70C.130(1), even if that party prevailed on its LUPA claim at superior court.<sup>89</sup> Under LUPA, RCW 36.70C.130(1)(a)-(f) provides six different grounds for a petitioner to challenge a local land use decision. (Only the grounds alleged by the Rojszas are identified here.) This court may grant relief from a land use decision if the party seeking relief establishes any one of the following standards:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

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<sup>86</sup> CP 4. The LUPA Petition also includes a Complaint for Declaratory Judgment, which has not yet been addressed by the trial court. The damage claims in the Complaint were voluntarily dismissed on 5/24/12. CP 1321.

<sup>87</sup> CP 1464.

<sup>88</sup> *City of Federal Way v. Town and County Real Estate LLC*, 161 Wn. App. 17, 36, 252 P.3d 382 (2011).

<sup>89</sup> *Quality Rock Prods., Inc. v. Thurston County*, 139 Wn. App. 125, 134, 159 P.3d 1 (2007).

- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts; . . .
- (f) The land use decision violates the constitutional rights of the party seeking relief.<sup>90</sup>

RCW 36.70C.130(1)(a), (b), (e) and (f) address questions of law and receive de novo review.<sup>91</sup> RCW 36.70C.130(1)(c) concerns a factual determination and is reviewed under the clearly erroneous standard.<sup>92</sup> “In order to conclude that substantial evidence supports the factual findings, there must be a sufficient quantity of evidence in the record to persuade a reasonable person that the declared premise is true.”<sup>93</sup> “In addition, [the court] reviews the evidence and any reasonable inferences in the light most favorable to the party that prevailed in the highest forum exercising fact-finding authority.”<sup>94</sup> “On factual questions, the reviewing court cannot substitute its interpretation of the facts for the agency’s interpretation or reweigh the evidence.”<sup>95</sup>

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<sup>90</sup> RCW 36.70C.130(1).

<sup>91</sup> *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006).

<sup>92</sup> *Id.*

<sup>93</sup> *Isla Verde Intern. Holdings, Inc. v. City of Camus*, 146 Wn.2d 740, 751, 49 P.3d 867 (2002).

<sup>94</sup> *Boehm v. City of Vancouver*, 111 Wash. App. 711, 717, 49 P.3d 137 (2002).

<sup>95</sup> *Van Sant v. City of Everett*, 69 Wn. App. 641, 650, 849 P.2d 1276 (1993).

Here, the Rojszas filed the LUPA petition, and the City prevailed before the Examiner. The Examiner was the “highest forum exercising fact-finding authority.” As a result, the Rojszas still bear the burden to demonstrate that they are entitled to relief under RCW 36.70C.130. The Court must review the evidence and/or any reasonable inferences in the light most favorable to the City.<sup>96</sup>

**B. The Hearing Examiner correctly determined that the Rojszas untimely filed their administrative appeal, and the trial court should have dismissed the LUPA appeal for lack of jurisdiction.**

- 1) The administrative appeal deadline expired within 10 days after the June 16, 2011 letter, based on the Rojszas’ challenges to the validity of the original building permit and the City’s requirement for a new building permit.

On September 16, 2011, the Rojszas filed their appeal of the City’s June 16, 2011 decision to revoke/suspend their building permit, and to require a new building permit. This appeal was filed well past the ten calendar day deadline established in Ferndale Municipal Code Section 14.11.070(B).<sup>97</sup> A comparison of each of their appeal issues in their

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<sup>96</sup> In the LUPA Petition, the Rojszas alleged that the Examiner failed to follow the proper procedures because the “County Council, as Board of Appeals” was the appropriate body to hear this building code appeal.”<sup>96</sup> However, this argument was not included in the application for an appeal to the Hearing Examiner, and was never briefed or argued before the superior court. CP 42. Similarly, the Rojszas assert that the City’s code is preempted by some unidentified state law, common law or administrative code. This argument was not included in the application for an appeal to the Hearing Examiner, and was never briefed or argued before the superior court. As a result, neither should be considered by this Court.

<sup>97</sup> Under Ferndale Municipal Code Section 14.11.070(B):

appeal statement (set forth below in *italics*), with the date of the corresponding City determination (**set forth below in bold**) demonstrates that the Rojszas' September 16, 2011 appeal of each issue was untimely:

*1) Under [sic] Section 19.12.090(C) shall be interpreted so that calling for inspections is not the only way to evidence construction activity. Other evidence shall be considered when determining if there has been construction activity under section 19.12.090(C) of the code.*<sup>98</sup>

**This argument was abandoned in the LUPA appeal.<sup>99</sup> Even so, the City sent the Rojszas a letter dated May 11, 2011 which “determined that, due to lack of inspections, your building permit has expired.<sup>100</sup> While the Examiner did not find the May 11, 2011 letter to be a final, appealable decision, he did find that the June 16, 2011 letter requiring a new building permit was a final appealable decision.**

*2) The Permit is and has been valid since issuance.*<sup>101</sup>

**The City sent a letter on June 16, 2011 determining that the Rojszas' building permit was “issued on the basis of incorrect, inaccurate and incomplete information,” which is the trigger for suspension or revocation of the building permit under R105.6. In addition, the City required that the Rojszas submit a new building permit application on or before a date certain.<sup>102</sup> Citations**

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Every appeal to the Hearing Examiner of an administrative interpretation or administrative permit decision shall be filed in writing with the Planning and Building Director within 10 calendar days from the date of the interpretation or decision regarding the matter being appealed.

<sup>98</sup> See, CP 42, for the Examiner's listing of appeal issues.

<sup>99</sup> CP 11-15.

<sup>100</sup> A copy of this May 11, 2011 letter is attached as Attachment Q.

<sup>101</sup> CP 42.

<sup>102</sup> A copy of this June 16, 2011 letter is attached as Attachment R.

were issued by the City on August 18, 2011 and August 26, 2011 to the Rojszas for their “failure to apply for a building permit for alterations to a structure.”

3) *The City is prohibited from requiring Appellant to apply for a new permit.*<sup>103</sup>

**On June 16, 2011, the City required that the Rojszas submit “a complete building permit application” to the City for the remodel on their home, and warned that “If you fail to comply with any of these requirements, the City will issue you citation(s) . . .”**<sup>104</sup>

**On August 18, 2011, the City issued a criminal citation to the Rojszas, for “failure to apply for a building permit for the alterations to a structure (deviation from plans).”**<sup>105</sup>

**On August 28, 2011, the City issued a criminal citation to the Rojszas, for failure to apply for a building permit for alterations to a structure (deviation from plans).**<sup>106</sup>

4) *The City is prohibited from requiring Appellant from posting and [sic] performance bond or its equivalent under [sic] for the Permit.*<sup>107</sup>

**The City first informed the Rojszas that the City would require a “reasonable performance bond to ensure completion” of the exterior siding of the structure and removal of all construction-related materials on the site on August 19, 2011.**<sup>108</sup> **No building permit with this condition ever issued.**

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<sup>103</sup> CP 42.

<sup>104</sup> A copy of this June 16, 2011 Order to Comply is attached as Attachment R.

<sup>105</sup> Attachment T hereto.

<sup>106</sup> Attachment U hereto.

<sup>107</sup> CP 42.

<sup>108</sup> A copy of this August 19, 2011 e-mail is attached hereto as Exhibit U.

Based on the appeal issues identified by the Rojszas, the Hearing Examiner's conclusion that the June 16, 2011 was a final, appealable, administrative decision is well supported by the administrative record:

The City's ongoing attempts to work cooperatively with the Appellant was the reason no unequivocal statement to the Appellant that a new building was required was made until the letter from the Building Official, Jori Burnett, to the Appellant, Artur Rojsza, on June 16, 2011. This letter and Order to Comply clearly notified the Appellants that there were building code violations consisting of ongoing construction outside the approved building permit and plans set, and, amongst other things, directed the Appellant to submit new building permit applications no later than July 18, 2011. This letter included notifying the Appellant that the City would be filing criminal charges in the Ferndale Municipal Court if the required submittals, which included a completed building permit application, were not submitted by July 18, 2011.

The Determination on June 16, 2011 that a new building permit was required was an appealable Determination by the Building Official. The Appellant's Right to Appeal the requirement for a new building permit expired 10 days after the date the Appellants were given notice of the City's requirement, on or about June 26, 2011. . . . The Appellant did not appeal the requirement for a new building permit in a timely manner and the appeal of the requirement for a new building permit should be denied for this reason.<sup>109</sup>

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<sup>109</sup> CP 47-49.

- 2) The Rojszas’ appeal of the City’s proposed imposition of a bond condition on a building permit that never issued was premature, and because there was no “final land use decision” imposing the bond, the trial court erred by not dismissing the related LUPA appeal.

The Examiner correctly determined that the Rojszas untimely filed their administrative appeal based on the September 7, 2011 e-mail which stated the City’s plan to impose a bond condition on the future building permit.<sup>110</sup> The trial court erred by not dismissing this claim because it does not meet the definition of a “land use decision,” reviewable under LUPA.

LUPA provides the “exclusive means of judicial review of land use decisions.”<sup>111</sup> LUPA defines a “land use decision: as:

a final determination by a local jurisdiction’s body or officer with the highest level of authority to make the determination, including those with authority to hear appeals on:

- (a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, . . .<sup>112</sup>

For a superior court to have the authority to conduct a LUPA review of a local government’s land use decision, the appeal must be from a final

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<sup>110</sup> The Examiner ruled on the untimeliness of this claim at CP 50 and on the merits in CP 51. (Pages 27 and 28 of the Decision.)

<sup>111</sup> RCW 36.70C.030(1).

<sup>112</sup> RCW 36.70C.020(1).

governmental decision.<sup>113</sup> “In the context of applying LUPA, our Supreme Court has explained that ‘[a] final decision’ is ‘[o]ne which leaves nothing open to further dispute and which sets at rest [the] cause of action between parties.’”<sup>114</sup>

In this case, the City never issued the building permit with the bond condition, and so there has been no final decision on the bond that is appealable. The Rojszas claim that their appeal is based on the September 7, 2011 e-mail from the City Building Official to the Rojszas’ attorney Lackey, but this argument was only made to support an argument that the appeal was filed within 10 days of some City “determination.” The September 7, 2011 e-mail from the Building Official does not include any new determination, and only describes what the City plans to do, *if the building permit issues*:

We are . . . ready to issue [the new building permit], although we will need some time to make copies . . . As per my previous e-mails, this permit must be picked up within ten business days. . . . We will require that an assignment of funds or bond for no less than \$30,000 be submitted as well, in addition to language authorizing the City to utilize those funds to hire a contractor and for that contractor to finish the exterior siding of the building. Finally, we will require that the exterior be finished within six weeks of issuance.<sup>115</sup>

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<sup>113</sup> *Chelan County v. Nykreim*, 146 Wash.2d 904, 938, 52 P.3d 1 (2002).

<sup>114</sup> *Stientjes Family Trust v. Thurston County*, 152 Wash. App. 616, 622, 217 P.3d 379 (2009).

<sup>115</sup> Attachment W hereto.

In order to appeal the City's authority to impose a condition on a building permit, the building permit with the condition must issue. Here, the record demonstrates that the City might have considered other alternatives to issuing a bond with this condition – the Building Official told the Rojszas' attorney that he was willing to consider other alternatives to the bond.<sup>116</sup> The Building Official's email describing a condition that he *was simply considering or planned* to impose on a building permit that never issued is not a "land use decision" appealable under LUPA.

**C. The Rojszas failed to exhaust administrative remedies and therefore lack standing to file a LUPA appeal.**

Because the appeal was untimely filed, the Rojszas failed to exhaust their administrative remedies for purposes of filing a LUPA appeal, and the trial court erred by not dismissing it with prejudice.<sup>117</sup> Under LUPA, "[a] party must exhaust all available administrative remedies before the superior court can grant relief."<sup>118</sup>

Here, the Rojszas have sought to avoid the exhaustion requirement by asserting that the Examiner erred in determining that the June 16, 2011 letter is a final appealable decision. They argue that the June 16, 2011 letter does not use the word "final decision," and therefore it "do[es] not

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<sup>116</sup> Attachment X hereto. The Building Official states: "if the Rojszas complete their siding, they would not need to do the bond/[Assignment of Security]."

<sup>117</sup> RCW 36.70C.060(2)(d).

<sup>118</sup> *Harrington v. Spokane County*, 128 Wash. App. 202, 209, 114 P.3d 1233 (2005).

inform a reasonable person that [it] contains a final decision, which, if not appealed within 10 days, all rights to challenge are waived.”<sup>119</sup> According to the Rojszas, they timely filed an appeal of the City’s September 7, 2011 e-mail, which stated that the City would require a \$30,000 bond as a condition of the Rojszas’ new building permit.

To address this issue, the Court first must consider whether the Examiner correctly ruled that the June 16, 2011 letter met the legal standard for a final decision:

No exhaustion of administrative remedies requirement without issuance of a final, appealable order. An agency’s letter does not constitute a final order unless the letter clearly fixes a legal relationship as a consummation of the administrative process. The letter must be clearly understandable as a final determination of rights, and doubts as to the finality of such communications must be resolved in favor of the citizen.<sup>120</sup>

Applying these standards to the language of the Building Official’s June 16, 2011 letter, the Court can easily find that it was a final, appealable decision, and that the September 16, 2011 appeal was untimely. Here is some of the pertinent language from the June 16, 2011 letter:

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<sup>119</sup> CP 1345.

<sup>120</sup> *WCHS, Inc. v. City of Lynnwood*, 120 Wn. App. 668, 679, 86 P.3d 1169 (2004); *see also, Heller LLC v. City of Bellevue*, 147 Wash. App. 46, 56, 194 P.3d 264 (2008) (court held that the city’s letter sent as a follow-up to a Stop Work Order was a final, appealable decision “because it was a final determination by the officer with the highest authority to make the decision,” it included “the code-mandated reasons for the decision and conditions for resuming work, and “because the city intended the letter rather than the stop work order to be a final determination”).

Due to continued violations of the Ferndale Municipal Code and the International Residential Code, you must now comply with the requirements set forth in this letter. Failure to comply with these requirements by the dates identified will result in immediate citations and penalties.

You are required to schedule an inspection with the City . . . Following that inspection, you shall provide the City with all necessary information, including building permit applications . . . within ten business days of the inspection . . .

. . . [I]n 2010 you received a building permit to correct previously existing violations. . . . The City reviewed that permit (10001.RR) based on the structural information provided and subsequently issued it. Soon after issuance, you illegally deviated from the plans without consulting the City.

You have now illegally altered your plans again, by adding an additional story to the clock tower structure. This is a violation of not only the Ferndale Municipal Code, but the International Residential Code as well.

To be clear: you are currently in violation of several code sections and the City has the ability to cite you for these violations immediately. However, the City is providing you with a reasonable grace period . . . If you do not meet this deadline, the City will have no choice but to cite you for continued failure to comply. This represents the last opportunity you and the City will have to work cooperatively to resolve this ongoing and continuous violation without financial or criminal penalties. . . .

The City has determined that you have illegally added to and altered the structure of your building without a permit therefor. You have also built the structure in a manner not reflected by the approved permit. As a result, I have determined that it now appears that the permit was issued on the basis of incorrect, inaccurate and incomplete information.

As per the Ferndale Municipal Code, you will be considered guilty of the following penalties unless you correct the violation: . . .

This letter serves notice, based on these provisions of the Ferndale Municipal Code and the International Residential Code, that you have violated both regulations. . . .

Recognizing that it will take some time to prepare information and plans based on the structural observation, the City will require that you submit the following by July 18, 2011: -- **Completed building permit application.** . . .

If you fail to comply with any of these requirements, the City will issue you citations, including a fine of \$500 per day per violation and a date to appear in the Ferndale Municipal Court.

It is also important to note that after this letter was sent to the Rojszas, the City issued two citations to them (one on August 18, 2011 and another on August 26, 2011) clearly stating the violation as: “Failure to apply for a building permit for alterations to a structure (deviation from plans).”<sup>121</sup> The Rojszas’ argument (that they didn’t have notice until September 7, 2011 that the City would be requiring them to obtain a new building permit), is contradicted by substantial evidence in the administrative record.

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<sup>121</sup> Attachments T and U hereto.

**D. The Hearing Examiner correctly determined that the Building Official had the authority to require the Rojszas to obtain a new building permit because of their illegal construction.**

After the Examiner determined that the appeal was untimely filed, he addressed each of their appeal issues on the merits. He ruled that: “Since the Appellant has done substantial construction work outside of the permit issued, over a two year period, the City is entitled to require the Appellant to apply for a new building permit.”<sup>122</sup>

This determination is supported by the City’s code -- a property owner is required to obtain a building permit *prior to commencing construction*.<sup>123</sup> The property owner may not deviate from the approved plans during construction.<sup>124</sup> The property owner is required to obtain inspections of the work at specified intervals, and he cannot perform work beyond the point indicated in each successive inspection without approval from the building official.<sup>125</sup> Furthermore, the Building Official may revoke a building permit “whenever 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 the provisions of this code.”<sup>126</sup>

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<sup>122</sup> CP 48

<sup>123</sup> R105.1, cited in Section IV (A).

<sup>124</sup> R106.4, cited in Section IV (A).

<sup>125</sup> R109.4.

<sup>126</sup> R105.6.

The Rojszas admit that they were engaged in remodeling their house for over five years before they finally were forced to submit an application for a building permit.<sup>127</sup> Once they obtained this permit, they continued to construct a southern addition to the house in excess of the height shown on the approved plans. Later, they added another story to the clock tower. Significantly, the Rojszas have never challenged any decision by the City that they repeatedly engaged in illegal construction, and after obtaining the building permit in 2010, they continued this pattern.

In addition, the Rojszas specifically agreed that they would submit plans for approval to the City at least two weeks prior to any scheduled inspection. The City insisted on this arrangement so that the inspector was not required to review plans for alterations in the field, for this massive remodel of a structure, with markedly non-traditional and complex structural additions. As the record shows, the Rojszas refused to submit the plans, and continued to deviate from the approved building permit.

In an extremely similar case, the Washington court held that these circumstances allow a city to revoke a building permit.<sup>128</sup> In *Heller*, the City of Bellevue issued a stop work order to the property owner/developer,

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<sup>127</sup> CP 1324, which states: “Starting in 2005, the Rojszas undertook a significant remodel of their home which required obtaining a building permit from the City. They final obtained that permit in 2009.” The building permit actually issued on April 9, 2010.

<sup>128</sup> *Heller Building, LLC v. City of Bellevue*, 147 Wash. App. 46, 194 P.3d 264 (2008).

informing it that the building permit had been revoked because the work did not conform to the issued permit. The *Heller* court ruled that “while the City’s approval of the revised plans authorized construction to proceed, it was always the [developer’s] duty to ensure that its project met all code requirements . . .”<sup>129</sup> Once the *Heller* court determined that there was substantial evidence in the record to support the conclusion that work on the project exceeded the scope of the issued permit, the court affirmed the City’s revocation of the building permit.<sup>130</sup>

In the instant case, the Hearing Examiner determined that the Rojszas have “continually done work without a building permit or outside the work approved by a building permit since at least late 2009.”<sup>131</sup> Once the Rojszas obtained a building permit in 2010, the Examiner found that they still performed “additional work outside the scope of the permit, and not supported by plans submitted to and reviewed by the City.”<sup>132</sup> He found “ample evidence that the [Rojszas] have been unable or unwilling to comply with the requirement to obtain a building permit; to ensure the construction done is within the scope of the permit; and to complete the

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<sup>129</sup> 147 Wash. App. at 61.

<sup>130</sup> *Id.* at 62.

<sup>131</sup> CP 47.

<sup>132</sup> CP 47.

work within a reasonable length of time.”<sup>133</sup> As a result, the trial court erred by reversing the Hearing Examiner’s decision.

**E. The trial court erred by not dismissing the Rojszas’ constitutional claim(s), which was raised for the first time on appeal.**

In the LUPA appeal before the superior court, the Rojszas argued for the first time, that “City of Ferndale violated the Rojszas’ Procedural Due Process rights when the Hearing Examiner refused to hear the merits of the appeal on grounds of untimeliness.”<sup>134</sup> The trial court erred by simply failing to review the Examiner’s decision, which shows that he carefully addressed each of the Rojszas’ appeal issues, both the issues filed on September 16, 2011 and others that were untimely raised during the hearing. Significantly, the Rojszas do not identify any appeal issue that was not addressed in the Hearing Examiner’s decision.

The Rojszas have also stated another constitutional claim that was not raised before the Examiner:

The question here is whether the ‘notices’ of decision that the Hearing Examiner found to put the Rojszas on notice of the accrual of their appeal rights was ‘reasonably calculated under all circumstances’ to apprise the Rojszas that their failure to act would cause them to forever lose rights.<sup>135</sup>

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<sup>133</sup> CP 50.

<sup>134</sup> CP 1347, line 2-3.

<sup>135</sup> CP 1347, line 11-15.

Neither of these constitutional claims address the facial validity of any City ordinance, and are “as-applied” constitutional challenges.

The Washington courts have held that a party must show that it has exhausted administrative remedies in order to show that it has standing to raise an “as-applied” constitutional issue in a LUPA appeal.<sup>136</sup> In *Harrington*, a property owner appealed a number of actions taken by the County, including the County’s letters refusing to approve a conventional sewage system and refusing to consider an aerobic treatment unit because they were inconsistent with the County’s shoreline master program.<sup>137</sup> The *Harrington* court found that Mr. Harrington failed to exhaust his administrative remedies and lacked standing under LUPA because he never filed any administrative appeals of the County’s adverse actions.<sup>138</sup>

The court explained the policies behind the exhaustion doctrine:

The court will not intervene where an exclusive administrative remedy is provided. This exhaustion of remedies doctrine is based on a number of legal policies. It avoids premature interruption of the administrative process, provides for full development of the facts, and allows the exercise of agency expertise. The doctrine also protects the autonomy of administrative agencies by giving them the opportunity to correct their own errors. It discourages litigants from ignoring administrative procedures by resort to the courts. Finally, we in the judicial branch essentially recognize the agency’s expertise.<sup>139</sup>

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<sup>136</sup> *Harrington v. Spokane County*, 128 Wash. App. 202, 210, 114 P.3d 1233 (2005).

<sup>137</sup> *Harrington*, 128 Wash. App. at 207-08.

<sup>138</sup> *Id.*, at 208.

<sup>139</sup> *Id.*, at 209-10, citations omitted.

Mr. Harrington argued that he was not required to exhaust his administrative remedies because he was asserting constitutional claims. While the court agreed that administrative agencies “may not pass on the facial constitutionality of the statutes they administer,” it noted that Mr. Harrington didn’t raise a facial challenge<sup>140</sup> The court dismissed his LUPA appeal, holding that a property owner was required to exhaust his administrative remedies by filing an administrative appeal before filing a LUPA appeal raising a constitutional claim, *if the claim was based on the agency’s compliance with the law and its constitutionality as applied to him.*<sup>141</sup> This is because “administrative review is, . . . required to develop the facts necessary to adjudicate [an] ‘as applied’ constitutional challenge.”<sup>142</sup>

Similarly, the Rojszas are asserting an “as-applied” constitutional challenge because they are claiming that the June 16, 2011 letter “was not reasonably calculated *under the circumstances* to apprise the Rojszas that their failure to act would cause them to forever lose rights.”<sup>143</sup> Because they failed to file a timely administrative appeal which included their constitutional claims, the Rojszas had no standing to raise them in the

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<sup>140</sup> *Id.*, at 210.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> CP 1347.

LUPA appeal. The trial court erred by failing to enter an order dismissing the constitutional claims with prejudice.

F. **If the trial court's Order can be interpreted to mean that the City violated the Rojszas Due Process rights, it is erroneous.**

The trial court's Order doesn't address the Rojszas' constitutional arguments at all, and this alone warrants dismissal of such claims.<sup>144</sup> If this Court does not dismiss them outright for this reason, and the reasons stated above, the claims must first be identified. After falsely stating that the Examiner "refused to hear the merits of the appeal on grounds of untimeliness," the Rojszas argue that the "notices of decision that the Hearing Examiner found to put the Rojszas on notice of the accrual of their appeal rights" violated Due Process because they were "not reasonably calculated under all the circumstances to apprise the Rojszas that their failure to act would cause them to forever lose rights."<sup>145</sup>

The U.S. Supreme Court has held that:

**Though the procedures may vary according to the interest at stake**, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."<sup>146</sup>

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<sup>144</sup> CP 1464. The Order states that "the Hearing Examiner's decision of February 15, 2012 is hereby REVERSED to the extent it was challenged by Petitioner and as outlined in this Order." CP 1465. Nothing in the Order addressed the constitutional claim(s).

<sup>145</sup> CP 1347, line 12-16.

<sup>146</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), emphasis added.

To determine whether existing procedures are adequate to protect the interest at stake, a court must consider the following three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.<sup>147</sup>

With regard to the private interest element, the Rojszas claim that they “clearly face monetary penalties if they are not able to assert their rights.”<sup>148</sup> These “penalties” are: (1) the cost of a \$30,000 bond; (2) additional permit fees; (3) costs relating to “orders to demolish or remove portions [of their house] for failure to comply with a new permit or bonding requirement.”<sup>149</sup> However, as shown above, the Rojszas never picked up their building permit, and there is no permit which includes the bond condition. The administrative record demonstrates that the City might not have included this condition on the permit, even though the City was concerned about the unsightly condition of the property. The Building Official stated that he was willing to waive the bond requirement

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<sup>147</sup> *Mathews* 424 U.S. at 335.

<sup>148</sup> CP 1348, line 3.

<sup>149</sup> CP 1348, line 10-13.

if the Rojszas would simply do what all other homeowners are required to do – install siding on the house.<sup>150</sup>

With regard to the Rojszas' complaint that they would have to pay additional permit fees, this is the consequence of their choice to remodel their house in stages, instead of submitting a building permit application to the City which encompasses the entire scope of work. No authority has been submitted by the Rojszas at any level to indicate that a property owner can get one building permit for a proposed remodel, and deviate from the permit without obtaining any additional permits or paying additional permit fees. Obviously, the City incurs additional expense that must be reimbursed when the property owner deviates from the approved permit, and the City must review new plans for work that was not shown on the original building permit.

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<sup>150</sup> The City notified the Rojszas on March 11, 2011 of the nuisance condition of the property, which included lack of “permanent siding in-place on the building to protect the structural components, including paint and/or stain” (Attachment L); on May 11, 2011, the City notified the Rojszas that it would not dismiss a previously issued citation “until all exterior non-structural elements are in place, including, but not limited to: siding, exterior painting, landscaping and general site cleanup” which had to be done by November 10, 2011 (Attachment Q); On August 19, 2011, the City notified the Rojszas' attorney Lackey that “the City will apply a time limitation for substantial completion of the work, including all structural work included in the permit, the exterior siding of the structure and the removal of all construction-related materials on the site. We will also require that the Rojszas submit a reasonable performance bond to ensure completion within the time limit set” (Attachment U); on September 28, 2011, the City notified the Rojszas' attorney that “if the Rojszas complete their siding, they would not need to do the bond/[Assignment of Security]. . . . The intent of the bond was and is to get the work done. If they can come up with another way to actually do it, and not just say that it will be done, I will be the first one to forget the bond requirement.” (Attachment X).

The Court should also disregard the Rojszas' argument that they will incur additional expense if they are required to demolish or remove portions of their house. The purpose of obtaining a building permit *prior* to commencing construction is so that the City can review the plans for code compliance and prevent the property owner from completing nonconforming construction, so there is no unnecessary demolition. Here, the Rojszas unreasonably complain that they might incur additional costs because they made an unwise business decision to illegally construct without the required permit.

With regard to the next criterion (risk of erroneous deprivation through the procedures used), the Rojszas argued that such deprivation was "conclusively proven" because the Examiner "substantively ruled in their favor, but threw out the appeal due to the timeliness issue."<sup>151</sup> This is false. While the Examiner did find that the original building permit had not "automatically expired" due to lack of inspections, he also said that this issue was "moot since, thereafter, the City appropriately notified the [Rojszas] of the Building Official's Decision that a new building permit would be required."<sup>152</sup> The Rojszas didn't bother to appeal this decision (that a new building permit would be required), even after the City issued

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<sup>151</sup> CP 1349

<sup>152</sup> CP 49.

two criminal citations for their “failure to apply for a building permit for alterations to a structure.”<sup>153</sup>

As to the final criterion, the “government interest” here is compliance with building standards, which “serve the important interests of protecting public safety, protecting property values and preventing declining neighborhoods.”<sup>154</sup> All of these interests are implicated in this case.

In sum, there has been no violation of Due Process because the Rojszas were provided with an opportunity to be heard at a meaningful time, even though they filed an untimely appeal. The City’s decisions adequately apprised the Rojszas of the City’s enforcement efforts, but the Rojszas didn’t timely appeal any of the determinations included in their appeal statement. In fact, they still do not dispute the City’s determination that their construction illegally deviated from the issued permit. When they finally filed an appeal (of the bond amount, apparently), the Examiner gave them a full hearing on the merits as to all of their appeal issues. There is no support, legal or factual, for the Rojszas’ constitutional claims.

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<sup>153</sup> Attachments T and U.

<sup>154</sup> *Post v. City of Tacoma*, 167 Wash.2d 300, 314, 217 P.3d 1179 (2009).

**G. The Hearing Examiner correctly determined that FMC Section 18.12.090(C) authorized the Building Official to require a bond for the installation of the siding.**

Under FMC Section 18.12.090(C), after the Building Official determines that a building permit has expired:

The Building Official may send written notice of expiration to the persons affected together with notice that work as described in the expired permit shall not proceed unless and until a new building permit has been obtained. . . . The new permit may include limitations on time allowed for substantial completion of the work, and provisions for a reasonable performance bond to ensure completion within the time limit set.

The Rojszas argue that because the Hearing Examiner concluded that the original building permit did not expire, the City could not impose a bond as a condition on the Rojszas' new building permit. Again, this is too narrow a reading of the Examiner's Decision, in which he determined that the Rojszas' original building permit did not "automatically expire" under FMC Section 18.12.090(B) for lack of the necessary inspections. The Examiner found that the City correctly required a new building permit because the Rojszas deviated from the plans in the original building permit. He further agreed that the City had the authority to impose the bond requirement on the new permit.<sup>155</sup>

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<sup>155</sup> CP 50-51.

Finally, it should be noted that this issue has been prematurely appealed. The Rojszas filed an appeal rather than picking up the building permit with this bond condition. Because the building permit with the bond condition never issued, there is no final land use decision on the building permit, and the trial court erred by not dismissing it.

### **CONCLUSION**

For all of the above reasons, the Court of Appeals should reverse the trial court and reinstate the Hearing Examiner's decision.

Dated this 4th day of February, 2013.

Respectfully submitted,



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Carol A. Morris, WSBA #19241

Attorney for Appellant/ Respondent  
City of Ferndale

# ATTACHMENT A

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**HEARING EXAMINER FOR FERNDAL, WASHINGTON**

<p>In Re:</p> <p>ARTUR and MARGARET ROJSZA,</p> <p style="text-align: center;">Appellants.</p>	<p>NO. APL 11001.APP</p> <p>DECLARATION OF ARTUR ROJSZA</p> <p>HEARING EXAMINER MICHAEL BOBBINK</p>
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I, ARTUR ROJSZA, do hereby declare and state as follows:

1. I am over 18 years of age, competent to testify as a witness, and all facts stated herein are based upon my personal knowledge and/or belief.

2. My wife, Margaret Rojsza and I purchased real property commonly known as 2147 Main Street, Ferndale, Washington (the "Property") on September 6, 2002.

3. My wife and I have resided at the Property since purchase of the Property.

4. I am currently a general contractor and co-owner of Artus Construction Company. I have been a contractor in four different countries since 1983. Artus Construction Company was formed and began operation in 1998. Shortly thereafter, my wife and I purchased Artus Construction Company. Artus Construction Company is licensed, bonded and insured. This license, bond and

*Ex 2-2*

1 insurance qualify Artus Construction Company as a prime contractor on public  
2 projects.

3 5. In 2005, my wife and I began the process of attempting to obtain a  
4 building permit for remodeling the building located on the Property.  
5

6 6. My wife and I have always had a dream of building a structure in  
7 our community that is architecturally beautiful and interesting. To accomplish our  
8 goal, in 2008, we began planning to incorporate a clock tower as part of our  
9 remodel of the Property.

10 7. All of the correspondence with the City of Ferndale relating to  
11 obtaining building permits and remodel of the building is attached to this  
12 Declaration as Exhibit "A".  
13

14 8. On April 9, 2010, my wife and I received approved plans for  
15 remodel of the building, attached to this Declaration as Exhibit "B".

16 9. Upon issuance of the building permit, my wife and I began  
17 construction on the building.

18 10. My wife and I have been consistently working towards completion  
19 of the remodel of the building pursuant to the building permit.  
20

21 11. Photos of the progress of work performed on the building are  
22 attached Exhibit "C".  
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1 I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE  
2 LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE  
3 AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
4

5 SIGNED this 10 day of November, 2011, at Bellingham, Washington.

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8 ARTUR ROJSZA  
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10 N:\WP\MAL\Clients\Rojzsa, Art & Margaret\2147 Main St\Dec of Art Rojsza 2011 11-9.doc  
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# ATTACHMENT B



# PLANNING and BUILDING DEPARTMENT

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

September 18, 2009

## NOTICE OF VIOLATION

2147 Main Street

Artur and Margaret Rojsza  
PMB 638  
250 H Street  
Blaine, WA 98230

Subject: Notice of Violation pursuant to IBC Section 113, IRC Section R113, and FMC Section 15.04 for residence and other structures located at 2147 Main Street, Ferndale, WA 98248

Dear Mr. & Mrs. Rojsza:

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Pursuant to the 2006 International Building Code, Section 113, Violations, the International Residential Code, Section R113, Violations, and Ferndale Municipal Code Section 15.04, this letter is a formal **Notice of Violation** for the erection, construction, alteration, extension, repair and moving of a building or structure in violation of the provisions of the International Building Code, the International Residential Code and the Ferndale Municipal Code.

City staff has observed the property from Main Street and from adjacent properties and has documented changes to the structure including but not limited to changes in the elevation of the structure, a new foundation has been added, changes to the roof-line of the structure including the addition of dormers to the east and west sides of the roof, changes to the windows have

Notice of Violation

Artur and Margaret Rojsza

September 18, 2009

Page 2 of 3

been noted, and new stairs have been added to the south side of the home. All of the aforementioned work as well as other ongoing remodeling efforts have/are occurring without appropriate building permits as required by the International Building and Residential Codes, as adopted by the City of Ferndale at FMC 15.04.

The International Residential Code provides as follows:

**Section R105.1 Required.** "Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit."

**Section R105.2 Work exempt from permit.** "...Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction."

The City is giving you until September 28, 2009, which is 10 days from the date of this letter, to meet with Community development staff to develop the following:

1) A written, City-approved timeline for submitting applications for building permits. These permits shall cover all unpermitted construction that has taken place since you owned the house as well as include construction work currently taking place on buildings or structures located on the property.

2) A written, City-approved strategy on how you plan to bring your home and property into compliance.

Notice of Violation

Artur and Margaret Rojsza

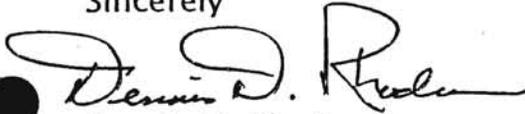
September 18, 2009

Page 3 of 3

If we do not hear from you by September 28, 2009, which is ten days from the date of this letter, the City will proceed with an official enforcement action pursuant to the International Building Code Section 113, the International Residential Code Section R113 and Ferndale Municipal Code 15.04.190.

If you have any questions or concerns, don't hesitate to contact me at 360-384-4006, or by email at [dennisrhodes@cityofferndale.org](mailto:dennisrhodes@cityofferndale.org).

Sincerely



Dennis D. Rhodes

Community Development Director

cc: Gary Jensen, Mayor  
Greg Young, City Administrator

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Richard Langabeer, City Attorney  
Craig Bryant, Building Inspector  
Jerry Shiner, Code Enforcement/Plans Review

# ATTACHMENT C

CRIMINAL  TRAFFIC  NON-TRAFFIC

C 34504

IN THE  DISTRICT  MUNICIPAL COURT OF  FERNDALE, WASHINGTON  
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT  WHATCOM COUNTY  
 COUNTY OF WHATCOM  
 CITY/TOWN OF FERNDALE  WA037021J MUN  
L.E.A. ORI #: WA0370400 COURT ORI #:  WA037013J DIS

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO.	STATE	EXPIRES	ID NO. (SSN # CV)
NAME: LAST <b>ROJSZA</b>	FIRST <b>ARTUR</b>	MIDDLE	
ADDRESS <b>2147 MAIN STREET</b>			<input type="checkbox"/> IF NEW ADDRESS
CITY <b>FERNDALE</b>	STATE <b>WA</b>	ZIP CODE <b>98248</b>	EMPLOYER
RACE <b>W</b>	SEX <b>M</b>	DATE OF BIRTH <b>4-27-1966</b>	HEIGHT <b>6 FT</b>
WEIGHT <b>190</b>	EYES <b>BLU</b>	HAIR <b>BRN</b>	RESIDENTIAL PHONE NO.
VIOLATION DATE MONTH <b>12</b> DAY <b>11</b> YEAR <b>2009</b>	TIME <b>1200</b>	<input type="checkbox"/> INTERPRETER LANG: _____	
AT LOCATION <b>2147 MAIN STREET FERNDALE WA 98248</b>			CITY / COUNTY OF <b>whatcom</b>

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YR.	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO.	STATE	EXPIRES	TR. YR.	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TR. YR.
OWNER/COMPANY IF OTHER THAN DRIVER		ADDRESS		CITY		STATE	ZIP CODE
ACCIDENT NO	BAC READING	COMMERCIAL VEHICLE <input type="checkbox"/> YES <input type="checkbox"/> NO	HAZARD PLACARD <input type="checkbox"/> YES <input type="checkbox"/> NO	EXEMPT VEHICLE <input type="checkbox"/> YES <input type="checkbox"/> NO	FARM <input type="checkbox"/>	FIRE <input type="checkbox"/>	OTHER <input type="checkbox"/>

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

1. VIOLATION/STATUTE CODE  DV

**FERNDALE MUNICIPAL CODE SECTION 15.64**

**INTERNATIONAL BUILDING CODE SECTION 113**

**INTERNATIONAL RESIDENTIAL CODE SECTION R113**

2. VIOLATION/STATUTE CODE  DV

**Did not comply with NOTICE of Violation ISSUED September 18, 2009.**

APPEARANCE DATE	MO.	DY.	YR.	TIME	A.M.	RELATED #	P.M.	MANDATORY <input checked="" type="checkbox"/>	BAIL U.S. FUNDS \$	DATE ISSUED <b>12-11-2009</b>	
WITHOUT ADMITTING HAVING COMMITTED EACH OF THE ABOVE OFFENSE(S), I PROMISE TO APPEAR AS DIRECTED ON THIS NOTICE.								I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S), AND MY REPORT WRITTEN ON THE BACK OF THIS DOCUMENT IS TRUE AND CORRECT.			
<b>X SUMMONS</b>								OFFICER <b>Jerry Shiner</b>			
DEFENDANT'S SIGNATURE								OFFICER			

ABSTRACT OF JUDGMENT	COMPLAINT / CITATION							
	CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FND/JUDG DATE
1	G	NG	G NG D BF	\$	\$	\$	\$	ABS. MLD TO OLY
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OTHER COSTS \$							WITH	DAYS SUSP.
RECOMMENDED NONEXTENSION OF SUSPENSION				LICENSE SUR-RENDER DATE	TOTAL COSTS \$	CREDIT/TIME SVD		

# ATTACHMENT D

LAW OFFICE OF  
DAVID A. NELSON, P.S.

301 Prospect Street  
Bellingham, WA 98225  
E-mail: nelsonlaw@openaccess.org

Telephone: (360)676-1459

FAX: (360)676-1135

February 8, 2010

Murphy Evans  
Attorney at Law  
230 E. Champion St.  
Bellingham, WA 98225

Re: Ferndale v. Rojsza, C-34504

Dear Mr. Evans,

I have discussed this case with the administrators of the City of Ferndale. There is general agreement that the goal here is not to punish Mr. Rojsza for past perceived "bad actions". The goal is to have Mr. Rojsza acknowledge that he must honor local law and code requirements regarding his construction projects. We want Mr. Rojsza to come into compliance with the city's building code. The City has described in detail what it wants from Mr. Rojsza:

Mr. Rojsza must retain the services of a professional Structural Engineer licensed in the State of Washington. That engineer shall conduct a structural observation of the existing facility and shall inspect the existing condition of the structure, including and specific to any alterations made to the structure without a valid building permit. These alterations include modifications to the roofline and the establishment of bay windows and dormers which were also built without a permit. Within 30 days of this agreement, the applicant (Mr. Rojsza or his representative) shall submit to the City an application for building permit which includes not only a structural observation stamped and signed by a professional Structural Engineer, but which also includes complete building plans for any and all work proposed to be completed on the structure. Mr. Rojsza shall also submit a copy of the structural engineer's report.

Upon application submittal, the City shall determine if the application is complete, subject to the permit application requirements described in the City of Ferndale building permit application and this settlement agreement. If the applicant is unable to provide the City with a complete application, including a structural observation

Page 2  
February 8, 2010  
Letter: Murphy Evans

of the existing structure, the City shall pursue legal action against Mr. Rojsza for non-compliance. However, if the application is submitted to the City within the timeframe described above, and if the application is deemed complete as described above, then the City shall delay prosecution, as follows:

Following acceptance of a complete application, the City shall review the application. If, during the review of the complete application the City determines that additional information is required, the applicant shall provide the information to the City within thirty days. If no additional information is required, the City will prepare the building permit for issuance within twenty-eight days of application submittal. The City will then inform Mr. Rojsza that the permit review is complete, that the building permit is ready to be issued, and the total cost of all fees owing to the City.

Within ten days of the City completing review of the permit and notifying the applicant of its status and total fees owing, the applicant shall purchase the building permit and pay all remaining fees. If the applicant does not purchase the building permit and pay all fees within ten days of notification, the City shall then enforce prosecution.

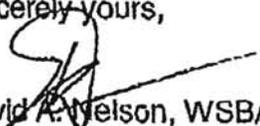
If the applicant purchases the building permit within ten days as stipulated above, then the applicant shall then be required to complete all work described by the building permit within 180 days of permit issuance. This requirement shall be enforced through this settlement agreement, as provided by the Ferndale Municipal Code 8.08.120 (B) – Voluntary Correction Agreement – and independent of the International Residential Code. Completion of work shall mean a final inspection signed by the City of Ferndale Building Inspector and/or the City of Ferndale Community Development Director. If said work is not completed within 180 days of building permit issuance, the City of Ferndale shall continue the prosecution.

Of course Mr. Rojsza will need to submit a Waiver of Speedy Trial to cover the timeline of this agreement. I would suggest a waiver of 300 days.

The 180 day timeline for any construction work to be done on the property is flexible with the City. If Mr. Rojsza needs additional time to complete the required work, he may negotiate additional time with the City of Ferndale Community Development Director.

I hope that this describes an acceptable settlement of this matter. Please contact me with any questions.

Sincerely yours,

  
David A. Nelson, WSBA 16185  
Ferndale Prosecutor

# ATTACHMENT E

Brownlie  Evans Wolf & Lee  
ATTORNEYS AT LAW

[murphy@brownlieevans.com](mailto:murphy@brownlieevans.com)

**ER 408 Settlement Communication**

Via Fax (676-1135) and Regular Mail

February 19, 2010

David Nelson  
301 Prospect Street  
Bellingham, WA 98225

Re: Ferndale v. Rojsza, C-34504

Dear Dave:

I write in response to your February 8 letter. Since receiving the September 18, 2009, Notice of Violation, Rojsza and his representatives have had numerous meetings with city officials to resolve the building permit issues outlined in that notice. Rojsza remains committed to resolving those issues. To that end, he has already hired a structural engineer and is prepared to submit a stamped engineer's report and building permit application for any modifications that were made to the building by Rojsza without a valid building permit. Rojsza proposes the following resolution of the Notice of Violation and pending criminal charge:

1. Rojsza will sign a speedy trial waiver waiving speedy trial for C-34504 for a period of 300 days.
2. On or before March 17, Rojsza will submit a building permit application for any structural modifications that were made to the 2147 Main Street property by Rojsza without a necessary building permit. The application will include a stamped structural engineer's report certifying that the modifications comply with Ferndale Building Code standards and/or specifying what structural work is required to bring those modifications in compliance with Ferndale Building Code standards.
3. The city will determine if the application is complete subject to the permit application requirements as described in the City of Ferndale Building Code and in this agreement. The city will notify Rojsza of any shortcoming in the application, and Rojsza will have thirty (30) days of such notice to bring the permit application into compliance. If Rojsza fails to bring the permit application into compliance with the city's notice within the time allowed, the city will be free to pursue its enforcement action under C-34504.
4. If no additional information is required, the City will prepare the building permit for issuance within twenty-eight (28) days of the application submittal. When its permit review is complete, the City will notify Rojsza of the total cost of the permit fees. These fees shall be calculated according to the city's normal permit fee schedule and will not include

Brownlie Evans Wolf & Lee, LLP | 230 E. Champion St., Bellingham, Washington 98225 | P 360 676.0306 F 360 676 8058

FEB-19-2010 01:04PM From: 360 676 8058

TO: DAVID A NELSON

Page: 002 R=952

P. 47

TO: 360 676 8058

3606761135

FROM: DAVID A NELSON

181

Dave Nelson  
 February 19, 2010  
 Page 2

- penalties. Rojsza will purchase the building permit within ten (10) days of being notified by the city that the permit is ready to be issued. If Rojsza fails to purchase the permit within the 10 day notice period, the city will be free to pursue its enforcement action under C-34504.
5. If the building permit requires no additional structural work, the City of Ferndale will dismiss C-34504 with prejudice within five (5) business days of the issuance of the building permit.
  6. If the building permit requires additional structural work to comply with the Ferndale Building Code, Rojsza will perform such work within 180 days of the permit's issuance. Upon completion of this work, Rojsza will arrange for inspection by a building inspector. Any deficiencies in the inspection report will be remedied by Rojsza within thirty (30) days of Rojsza's receipt of the inspection report. If Rojsza fails to remedy the deficiencies within 30 days of receipt of the inspection report, the city will be free to pursue its enforcement action under C-34504.
  7. The city will dismiss with prejudice C-34504 within five (5) business days of inspection approval of the permitted work.

Please let me know if you have questions about this proposal. If you agree with the proposal, please send me a letter or email confirming that the city agrees with these proposed terms.

Unrelated to the Notice of Violation, Rojsza does have plans for other improvements to the 2147 Main Street property. Rojsza and his representatives have had discussions with various city officials regarding those other plans. Rojsza will continue to have discussions with city officials as those other plans develop. Because those other plans are unrelated to C-34504 and the Notice of Violation, they should not be made a part of this agreement.

Enclosed with this letter is a copy of the Agreed Order of Continuance re-scheduling the pretrial hearing for C-34504 to February 26 at 10 a.m. I will arrange to have the agreed order filed with the court by close of business on Monday. Thank you for agreeing to reschedule the hearing.

Sincerely,

Brownlie Evans Wolf & Lee, LLP

  
 Murphy Evans  
 w/Encl.

# ATTACHMENT F



# COMMUNITY DEVELOPMENT DEPARTMENT

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

July 29, 2010

Art Rojsza  
2147 Main Street  
Ferndale, WA 98248

Notice of Violation

Dear Mr. Rojsza,

City officials have determined that you have exceeded the scope of work authorized in Permit 10001.RR, and are thus in violation of the International Residential Code (IRC R106.31, R106.4) and Ferndale Municipal Code (FMC 15.04.190,), a misdemeanor for which the penalty is \$250.00 per day. The specific deviation from the approved plans consists of a southern addition to the house in excess of the height of the approved plans.

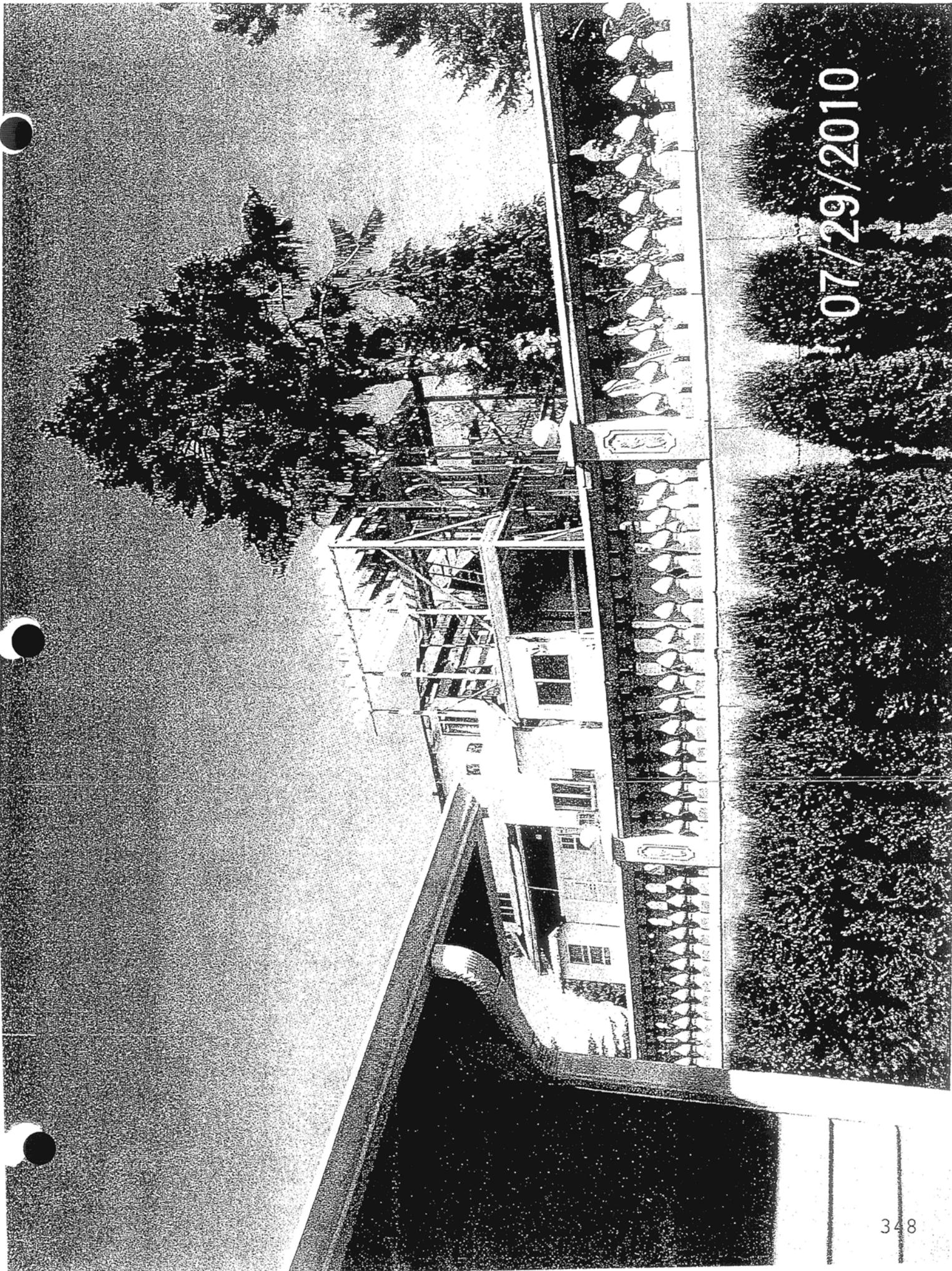
Pursuant to the attached Stop Work Order, you must immediately cease and desist all work on your structure. You must provide the City with engineered drawings demonstrating that the proposed expansion/revision is structurally sound by August 13, 2010. An appointment will be required for submittal of these documents. As per the Ferndale Municipal Code, an investigation fee for work initiated without a valid permit will be added to your permit fees. Once permits have been received and approved, the Stop Work Order will be removed and you may proceed with construction.

Please be advised that should you choose to continue any work on your structure prior to the removal of the Stop Work Order, you shall be guilty of violating a Stop Work Order, and subject to an additional \$1,000 fine per day.

Jori Burnett  
Community Development Director

- CC: Gary Jensen
- Greg Young
- Michael Knapp
- Richard Langabeer
- David Nelson
- Jerry Shiner

17.24 19.07  
17.20 17.36  
18.68



07/29/2010

# ATTACHMENT G



# COMMUNITY DEVELOPMENT DEPARTMENT

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

Art and Margaret Rojsza  
2147 Main Street  
Ferndale, WA 98248

Re: Stop Work Order – 10001.RR

Dear Art and Margaret,

I am pleased to write this letter authorizing the conditional removal of the Stop Work Order which was placed at your residence on Thursday, July 29, 2010. City Staff have met with your structural engineer Ryan Long, and based on his recommendations, we have concluded that you may resume the previously approved portions of your house remodel, subject to the following restrictions:

1. You may shore up the structural addition on the south side of your residence in order to prevent safety hazards. Any additional work on unpermitted elements of the structure is prohibited until such time that revised drawings are submitted and reviewed by the City of Ferndale. The City requires a minimum of two weeks to review revised structural plans prior to requests for inspection.

I must remind you that work done without a valid building permit is subject to increased permit fees, including an investigation fee. This letter does not authorize any additional work on the unpermitted portion of your structure other than what is essential for safety shoring. If such work is indeed completed, we may require that it be removed. In addition, any work done without a permit, including completing the unpermitted portions of the southern addition, is at your own risk. If the unpermitted structural additions cannot be approved, it shall be your responsibility to remove those additions at your own expense.

2. As indicated in (1), above, you shall be required to schedule an appointment with Marci Wightman to resubmit revised structural drawings to the City by August 20, 2010. The revised drawings must include all alterations to the original approved drawings. Work will not be approved to recommence on unpermitted portions of the southern addition until the revised plans are reviewed and approved by the City.

3. The City understands that during the construction process, redesign and reconfiguration of approved plans may be necessary. However, if you should determine that further deviation from the plans is necessary or desirable, please

contact either Craig Bryant, Jerry Shiner, or me to discuss your options, prior to initiating the change. Alternatively, you should maintain contact with Mr. Long, who will contact the City if such changes are imminent. Proactive communication such as this may prevent future stop work actions in the future.

4. Due to the complex nature of your remodel, the City shall request a structural observation prior to final inspection. The City has informed Mr. Long of this requirement, and he has indicated that he is comfortable performing such an observation.

If you have any further questions, please do not hesitate to ask. You can contact me at 685-2367.

Thank you for your cooperation,

Jori Burnett  
Community Development Director

CC: Gary Jensen  
Greg Young  
Richard Langabeer  
Michael Knapp  
Craig Bryant  
Ryan Long

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# ATTACHMENT H

## Jori Burnett

---

**From:** Jori Burnett  
**Sent:** Friday, August 06, 2010 10:45 AM  
**To:** Craig Bryant  
**Subject:** FW: submittal date

See below

---

**From:** Ryan Long [mailto:ryan@jonesengineers.us]  
**Sent:** Friday, August 06, 2010 10:34 AM  
**To:** Jori Burnett  
**Subject:** RE: submittal date

Sounds good to me.

Ryan Long, PE  
Jones Engineers, Inc.  
P: (360) 733-8888 x207  
F: (360) 671-6666  
[www.jonesengineers.us](http://www.jonesengineers.us)

---

**From:** Jori Burnett [mailto:JoriBurnett@cityofferndale.org]  
**Sent:** Friday, August 06, 2010 10:43 AM  
**To:** ryan@jonesengineers.us  
**Subject:** RE: submittal date

Ryan – the last inspection took place on May 17, 2010. Therefore, the next inspection would need to occur on or before November 13. So we're talking plans in on or before Halloween, basically. We can deal with that, if you're comfortable with it.

---

**From:** Ryan Long [mailto:ryan@jonesengineers.us]  
**Sent:** Friday, August 06, 2010 10:17 AM  
**To:** Jori Burnett  
**Subject:** RE: submittal date

Jori,

As we discussed and agreed upon yesterday, we will provide complete architectural and structural drawings at least 2 weeks prior to any framing inspections, including a periodic inspection. Art is not one to want more inspections than necessary and is not likely to try to draw out the process by having periodic inspections. Art is wanting to move forward and complete the process in a timely manner. Rather than make some arbitrary date for a submittal, I would propose to leave the standard timeline in place, like everyone else gets. We are not asking for special treatment, only to be treated like everyone else. I am not sure as to the exact dates that the permit was issued, but Art is already under a timeline to need an inspection and if allowed to continue, will meet that deadline.

We all agree that the owner/contractor is responsible for all shoring and construction practices and a letter from me stating that all elements are safe would only apply to a time when I have inspected and would not be able to be applied in the future time and only serves to drag this process out.

Thank you for your time and feel free to call if you would like to discuss further.

Ryan Long, PE  
Jones Engineers, Inc.  
(360) 733-8888 x207  
(360) 671-6666  
[www.jonesengineers.us](http://www.jonesengineers.us)

---

**From:** Jori Burnett [mailto:JoriBurnett@cityofferndale.org]  
**Sent:** Friday, August 06, 2010 8:36 AM  
**To:** ryan@jonesengineers.us; Craig Bryant  
**Subject:** submittal date

Good morning, Ryan. I understand your concern about an August 20<sup>th</sup> deadline for submittal, and I am comfortable changing that. However, we have concerns that without a submittal date for the revised plans, and with the understanding that a building permit can remain active for a nearly unlimited period of time provided that periodic inspections take place, it is conceivable that plans would not need to be submitted for many months. During which time a structure that has not been reviewed by the City remains in place. I'm open to alternative suggestions from you – a revised submittal date, a letter from you stating that the unpermitted elements are safe, etc. Please let me know your perspective, and we can work on putting something together that will work for the Rojsza's without providing special treatment.

*Jori C Burnett*  
*Community Development Director, City of Ferndale*  
*PO Box 936 Ferndale, WA 98248*  
*360/685-2367*

# ATTACHMENT I

## Jori Burnett

---

**From:** Jori Burnett  
**Sent:** Friday, August 06, 2010 10:57 AM  
**To:** Art Rojsza; Craig Bryant  
**Subject:** RE: Conditional Release of Stop Work Order

Art,

Thank you for your comments. We have discussed the matter with Ryan Long, and have agreed that plans must be submitted at least two weeks prior to the next inspection. The last inspection occurred on May 17, 2010, so the next inspection must occur no later than November 13, 2010 (180 days). In order for the City to review the plans for your revisions, we will require that they be submitted at least two weeks prior to the inspection. Therefore, the plans must be submitted by the end of October.

Thanks - Jori

---

**From:** Art Rojsza [mailto:artus@comcast.net]  
**Sent:** Friday, August 06, 2010 10:20 AM  
**To:** Jori Burnett; Craig Bryant  
**Subject:** Re: Conditional Release of Stop Work Order

Jori,

I feel it inappropriate that you give me permission to do work that does not yet require any of your input.

We had secured a permit, were making progress, and wrongfully received a stop work order last week. I would like an apology from the city for this event. I am disappointed with the lack of professionalism and unpredictable intentions I see from your department.

A conditional release of the permit does not inspire my confidence in your department. To place conditions upon me after wrongfully issuing me a stop work order, rather than removing the stop work order, demonstrates a lack of understanding from both you and your agents. It demonstrates that you do not understand the extent to which you may act should I fail to meet the conditions of the city-property owner relationship, and worse it demonstrates that members of your department have either no reservation to exceed the scope of their power, or else they do not care that your department does so.

Because of the wrongful stop work order your department has issued we incurred water damage to a number of items we were not able to protect because of the stop work order. Your department also exposed my family to the temporary conditions of this structure, and as we both know temporary structures are never as safe as completed structures. Your department prevented this progress for a number of days.

I thought it was made clear to me that I would finally have a city that was interested in the completion of my projects, a partner I could rely upon. However, a pattern has emerged where I attempt to do something to improve my properties, and the city stands in conflict to this end. I am growing tired of this pattern.

I am not comfortable accepting the arbitrary terms you have placed upon my project. You should be familiar with the customs and procedures of the general permit process, when we have our own licensed structural consultant, and our own designer we retained throughout the project.

I await the city's apology for the inconvenience and damages your actions have caused.

I await your full retraction of this wrongful stop work order.

Art Rojsza

----- Original Message -----

**From:** Jon Burnett

**To:** [artus@comcast.net](mailto:artus@comcast.net) ; Craig Bryant

**Sent:** Thursday, August 05, 2010 3:25 PM

**Subject:** Conditional Release of Stop Work Order

Good afternoon, Art. Craig Bryant and I visited your property this afternoon to remove (one of) the Stop Work Orders that were placed there this week. There did not appear to be anyone home, and we didn't leave a copy of the letter, though we can drop it off if you would like. Please see the attached electronic version identifying the conditions of the release of the stop work order, allowing you to shore up the southern addition and to proceed with your remodel with some limitations until plans for the southern addition are submitted, reviewed, and issued. We met with your engineer this morning, and he is aware of the contents of this letter, and the requirements for permitting the remainder of the southern addition.

And as I indicated in my letter, if you have questions or concerns, please feel free to call me at 685-2367. I would very much like to work with you in order to avoid future delays in your project. Best wishes - Jori

## Jori Burnett

---

**From:** Jori Burnett  
**Sent:** Wednesday, October 27, 2010 3:50 PM  
**To:** ryan@jonesengineers.us; Gary Jensen; Greg Young  
**Subject:** Rojsza

Ryan – If Artur and Margaret Rojsza were able to provide the City with a reasonable “date certain” for the completion of the structural elements of their project at 2147 Main Street, the City could be supportive of a one-time extension to the 180 day work completion as specified in their original agreement. However, in order to support such an extension, the City would request that the Rojsza’s do not expand the scope of their proposal further. In other words, if the Rojsza’s do not feel that they can complete their work by November 2010 as originally agreed, they should identify a reasonable date, not to exceed 180 days from the original agreement. The City would anticipate that all required inspections occur within this 180 day period, and that all major structural elements would also be completed.

*Jori C Burnett*  
*Community Development Director, City of Ferndale*  
*PO Box 936 Ferndale, WA 98248*  
*360/685-2367*

# ATTACHMENT J

## Jori Burnett

---

**From:** Art Rojsza <artus@comcast.net>  
**Sent:** Tuesday, November 02, 2010 4:32 PM  
**To:** Jori Burnett  
**Subject:** Re: Citation No. C34504, Ferndale Municipal Court- City of Ferndale vs. Artur Rojsza

It is intend of ours to have all structural interior and exterior work done in the next 180 days.

Art

----- Original Message -----

**From:** Jori Burnett  
**To:** Art Rojsza  
**Sent:** Tuesday, November 02, 2010 3:06 PM  
**Subject:** RE: Citation No. C34504, Ferndale Municipal Court- City of Ferndale vs. Artur Rojsza

Art – can you clarify your email a bit for me – will all structural elements of your proposal be completed within 180 days? Do you believe that within 180 days, the exterior will be completed and you will only be doing interior work?

---

**From:** Art Rojsza [mailto:artus@comcast.net]  
**Sent:** Tuesday, November 02, 2010 2:45 PM  
**To:** Jori Burnett  
**Subject:** Citation No. C34504, Ferndale Municipal Court- City of Ferndale vs. Artur Rojsza

Mr. Burnett,

As per our conversation we I would like to request an extension of time to satisfy conditions of the agreement (completion of “none conforming” structural work) between the City and myself in above case for up to 180 days.

We feel we need extra time due to a general economic climate in the Country, existing conditions, structural or otherwise (destructing construction activities in neighborhood directly effecting our schedule, desire modifications to original plans and simultaneous work on conforming/ new part of our project, proven more effective approach).

Thank you for your consideration,

Artur Rojsza

P.S.

I have a scheduled court appear on 11-5-10 @ 10 am in Ferndale Municipal Court in above case.

Please let me know on the status of this request, so I can plan accordingly.

## Jori Burnett

---

**From:** Jori Burnett  
**Sent:** Tuesday, November 02, 2010 3:06 PM  
**To:** Art Rojsza  
**Subject:** RE: Citation No. C34504, Ferndale Municipal Court- City of Ferndale vs. Artur Rojsza

Art – can you clarify your email a bit for me – will all structural elements of your proposal be completed within 180 days? Do you believe that within 180 days, the exterior will be completed and you will only be doing interior work?

---

**From:** Art Rojsza [mailto:artus@comcast.net]  
**Sent:** Tuesday, November 02, 2010 2:45 PM  
**To:** Jori Burnett  
**Subject:** Citation No. C34504, Ferndale Municipal Court- City of Ferndale vs. Artur Rojsza

Mr. Burnett,

As per our conversation we I would like to request an extension of time to satisfy conditions of the agreement (completion of “none conforming” structural work) between the City and myself in above case for up to 180 days.

We feel we need extra time due to a general economic climate in the Country, existing conditions, structural or otherwise (destructing construction activities in neighborhood directly effecting our schedule, desire modifications to original plans and simultaneous work on conforming/ new part of our project, proven more effective approach).

Thank you for your consideration,

Artur Rojsza

P.S.

I have a scheduled court appear on 11-5-10 @ 10 am in Ferndale Municipal Court in above case.

Please let me know on the status of this request, so I can plan accordingly.

# ATTACHMENT K

**Craig Bryant**

---

**From:** Jori Burnett  
**Sent:** Thursday, November 04, 2010 10:04 AM  
**To:** Craig Bryant  
**Subject:** RE: Inspection request for 2147 Main Street  
Sounds good

Sent from my Android phone using TouchDown ([www.nitrodesk.com](http://www.nitrodesk.com))

-----Original Message-----

**From:** Craig Bryant [CraigBryant@cityofferndale.org]  
**Received:** 11/4/10 9:30 AM  
**To:** ARTUS@COMCAST.NET [ARTUS@COMCAST.NET]  
**CC:** Jori Burnett [JoriBurnett@cityofferndale.org]; Craig Bryant [CraigBryant@cityofferndale.org]  
**Subject:** Inspection request for 2147 Main Street

Good Morning Margaret, The following is in response to your request for inspection at your house at 2147 Main Street. I tried to contact Ryan Long your engineer on 11/3/10 and was informed that he was out of town until Monday the 8<sup>th</sup>. I understand that Ryan has been out to do some on-site inspections and has generated a list of deficiencies that require correction or completion. We should probably postpone your inspection until Monday or Tuesday after I have had a chance to talk to Ryan Long regarding his list of items so I am not reproducing or misinterpreting his list. Also as a reminder, at this time the City still does not have any revised plans for the foundations on the north and the west, as the original plans showed the foundations being replaced and there are also revisions to the rear upper roof that have not been received. Contact me on Monday after I have communicated with Ryan and then we can see where he stands on his list. I hope this is not too much of an inconvenience for your project and look forward to hearing from you on Monday

---

Craig Bryant, CBI  
Building Inspector  
PO Box 936  
Ferndale, WA 98248  
360-384-4006 ext. 206

# ATTACHMENT L

# PLANNING and BUILDING DEPARTMENT

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

March 11, 2011

Artur and Margaret Rojsza  
PMB 638  
250 H Street  
Blaine, WA 98230  
+  
2147 Main Street  
Ferndale, WA 98248

**Re: 180 Day Compliance – 2147 Main Street**

Dear Mr. & Mrs. Rojsza:

I am sending you this letter as a reminder of the ensuing expiration of your 180-day extension to complete all structural and interior/exterior work on your residence at 2147 Main Street. The extension granted you a deadline of May 1, 2011 to complete the exterior on the proposal. Please keep in mind that the proposal is not limited solely by the building permit; it includes what the City would consider to be completion of the overall building and building site. In an email sent November 2, 2010, Mr. Rojsza indicated that his intent was to finish all work by the end of the deadline. While the deadline is approximately a month and a half away, the City is sending you this letter to re-emphasize what needs to be completed by May 1, 2011.

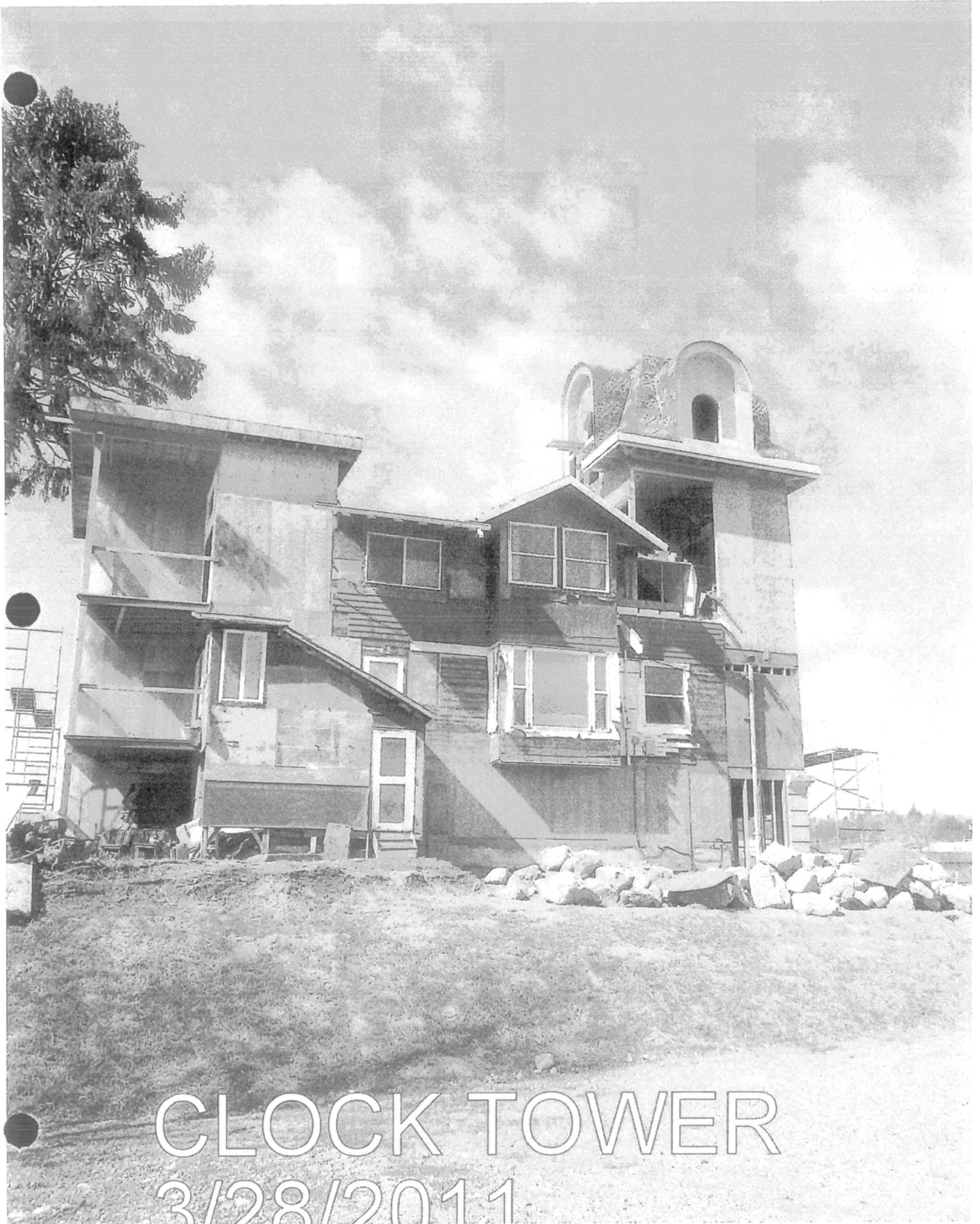
The scope of improvements required to be completed by May 1 includes:

- Removal of all construction-related materials from within view from Main Street and all adjacent properties;
- Removal of all construction vehicles from within view from Main Street and all adjacent properties;
- Permanent siding in-place on the building to protect the structural components, including paint and/or stain; and
- All windows and doors in place.

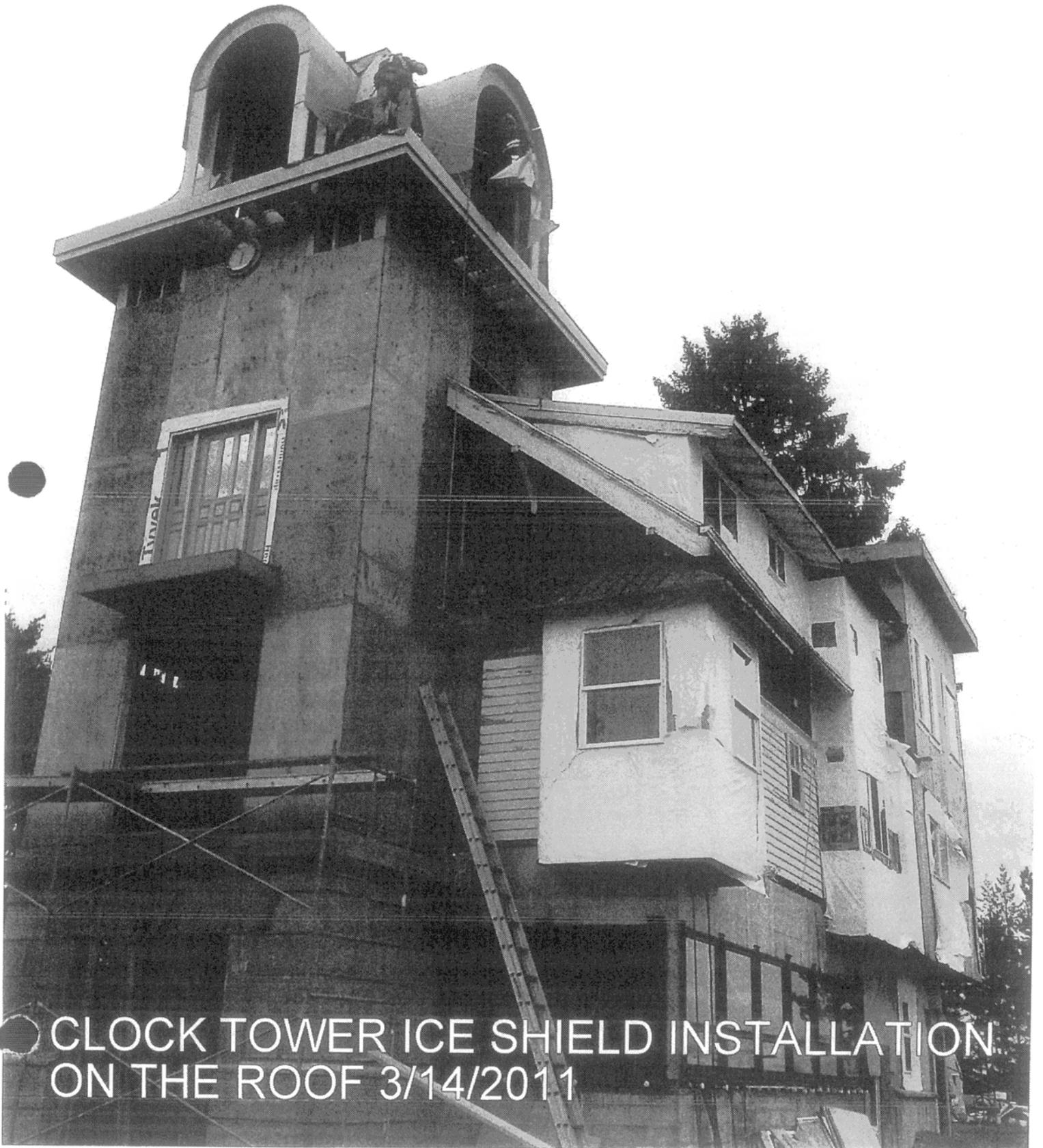
The City hopes to see the full completion of your project by May 1, 2011. The City believes that the remaining 50 days of your 180-day extension should be adequate time to complete your project. If it is not finished by that date, the structure will be in violation of both the Building Code and the City's Nuisance Ordinance – which will require the City to commence with official enforcement action consisting of a daily fine of \$250 for each day that the structure is out of compliance.

If you have any questions, don't hesitate to call me at 360-685-2368, or email me at [ryanmorrison@cityofferndale.org](mailto:ryanmorrison@cityofferndale.org).

# ATTACHMENT M



CLOCK TOWER  
3/28/2011



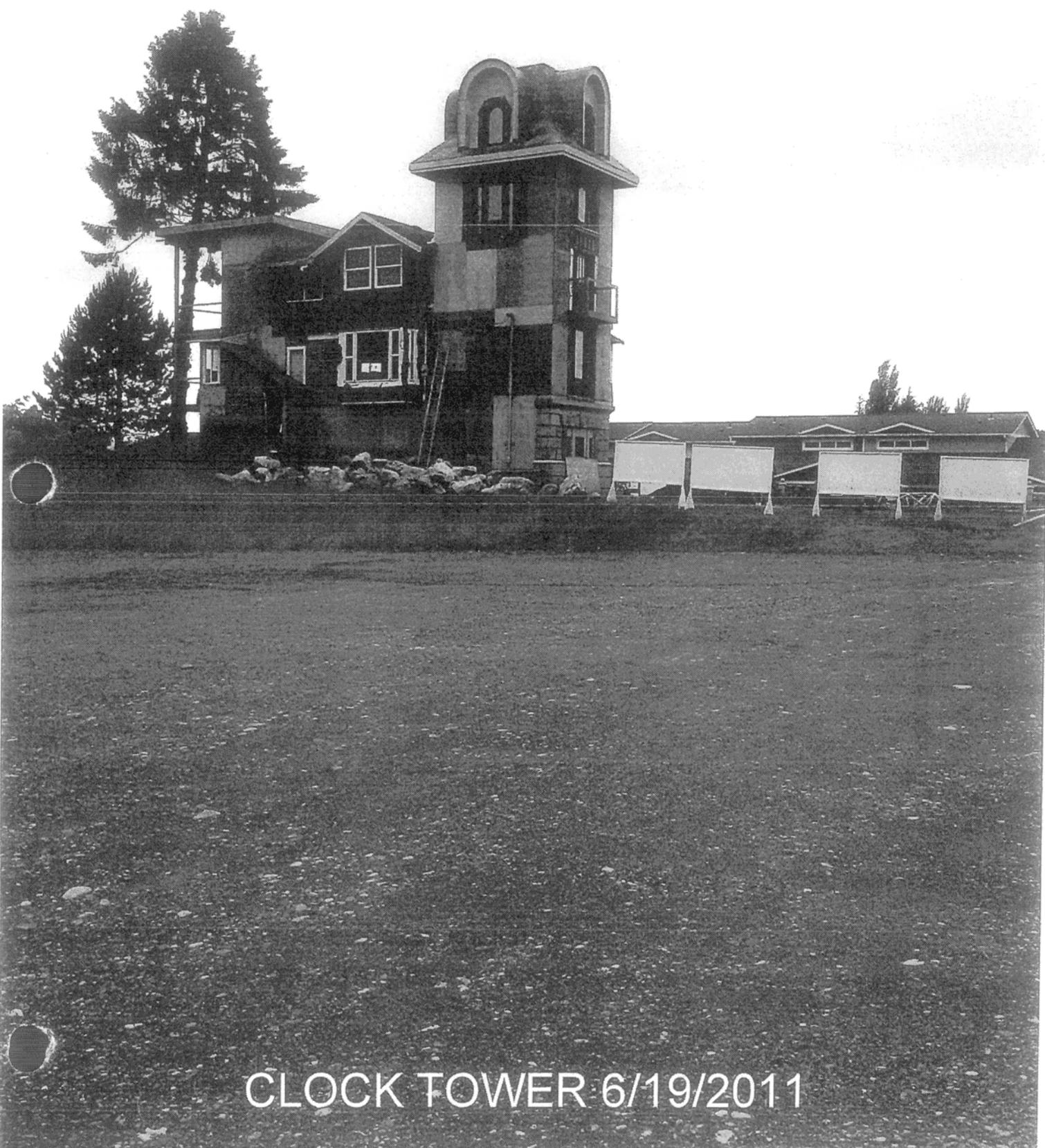
CLOCK TOWER ICE SHIELD INSTALLATION  
ON THE ROOF 3/14/2011



CLOCK TOWER WORK IN PROGRESS  
3/14/2011



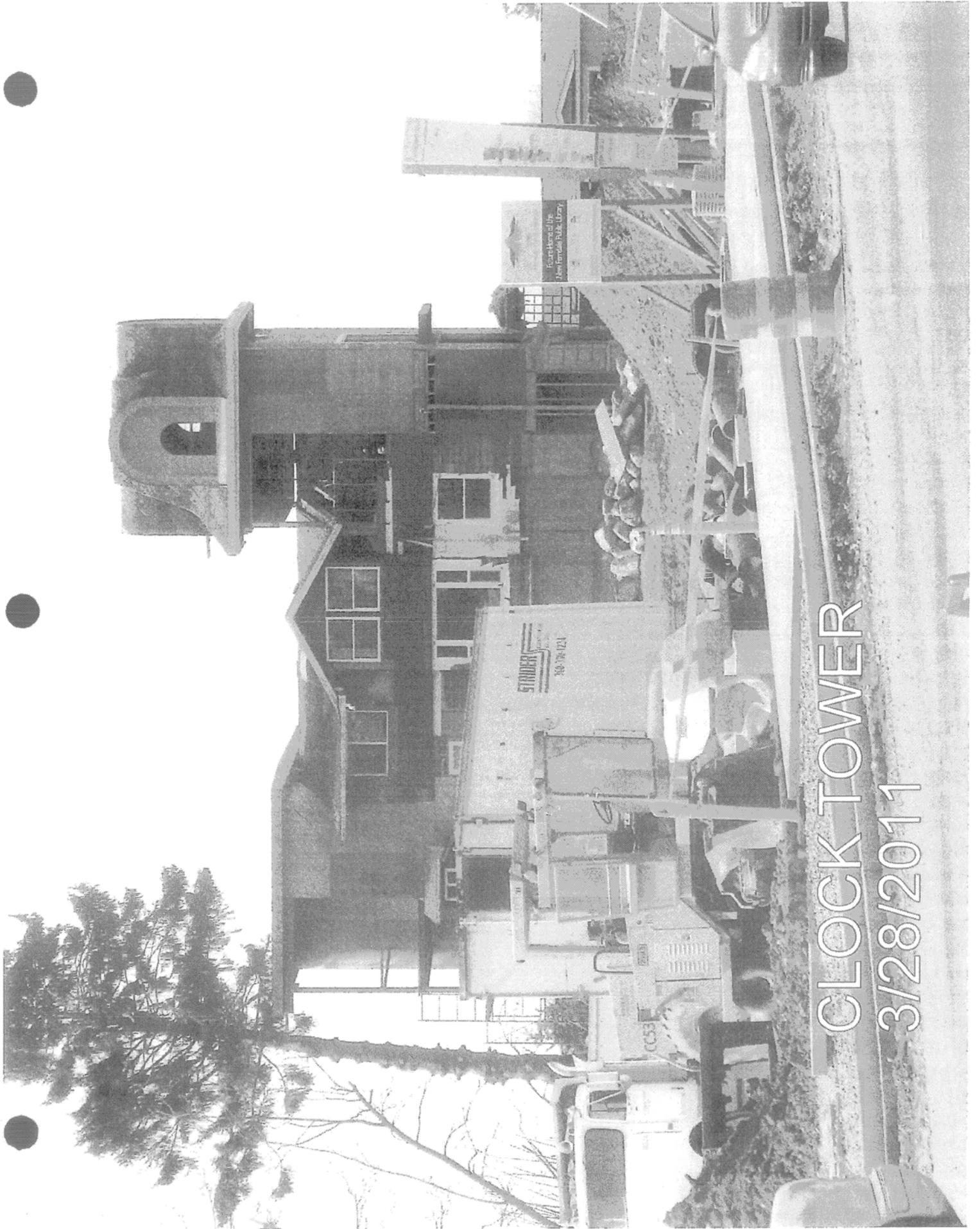
CLOCK TOWER DETAIL WORK ON  
WINDOWS, DOORS AND SIDING 6/19/2011



CLOCK TOWER 6/19/2011



CLOCK TOWER DETAIL WORK ON  
WINDOWS, DOORS AND SIDING 6/19/2011



CLOCK TOWER  
3/28/2011



DOORS BEING INSTALLED

592011<sup>79</sup>



CLOCK TOWER CUSTOM FABRICATION  
OF PANEL 5/10/2011

# ATTACHMENT N

**Jori Burnett**

---

**From:** Jori Burnett  
**Sent:** Thursday, April 28, 2011 8:23 AM  
**To:** 'Art Rojsza'; Craig Bryant  
**Subject:** RE: building in general

Art – in order to request an inspection, per our agreement you must submit new structural drawings to the City at least two weeks prior to an inspection. That way, the inspector is not going out without knowledge of what is existing, what has changed, and what the engineer has observed. We would prefer that the engineer also be out there or do a prior structural observation. If Ryan has been doing structural inspections/observations, we need to know that those are occurring, or at the very least receive documentations that they have occurred.

By your email, it sounds as if you are ready for an inspection, so please work with Craig to determine the documents he needs from the engineer, and then we can get him out there.

---

**From:** Art Rojsza [mailto:artus@comcast.net]  
**Sent:** Tuesday, April 26, 2011 5:25 PM  
**To:** Jori Burnett  
**Subject:** Re: building in general

Exterior structural part of “none conforming” part of our project has been completed some time ago, as per our agreement with the City.

We have called for structural inspection in November, our structural engineer has performed the inspection, has generated his short structural (exterior and interior) punch list, we have corrected those deficiencies, we have called for city inspection short after, inspector didn't show up.

---

Our agreement with the city has been specifically referring to structural improvements to existing, non conforming part of our project, and I believe we have fulfilled our part of agreement in November.

Rest of the project, not a part of our specific agreement, falls under regular construction procedures, governing permitted projects, and we are trying to follow its requirements.

We have received two letters from Ryan some time ago.

In those, it appears Ryan has confused various aspects of our two projects, but I didn't have a time to clarify those with him yet.

Soon we will.

Our tower is now in preparation for an exterior finishes, most of which will be a combination of custom woodwork, lead, stain glass double pain, insulated, in custom wooden frames, as a windows,

Custom doors, corbels and custom cast in forms concrete decorative ornaments.

We are fabricating those elements now, creating forms and casts we will use at our exterior.

Exterior will have very little of non- custom elements in it- if any standard used, those will be incorporate in the custom transitions.

To fabricate and carve just four corbels for our tower (not completed yet) took me longer, than to most would take to re-side entire good size house.

We still like those corbels, as well, as other custom stuff, we play with in the process, and have no regrets about the time and effort; it takes to carve them out.

Despite an prolong destruction and inconvenience, Main Street city project cost us in our life's and our performance , we are satisfied with our progress and moving forward with fulfilling our dreams to one day have clock tower completed to our high standards and satisfaction.

Many will than enjoy a results, hopefully for generations to come.

So I hope, it helps a bid, and thanks for asking about the progress on our little dream...

Art

----- Original Message -----

**From:** Jon Burnett

**To:** Art Rojsza (artus@comcast.net)

**Sent:** Tuesday, April 26, 2011 4:25 PM

**Subject:** building in general

Hi again Art. Can you give me an update on the building in general – as you know, we have stated previously that the building, including siding, should be complete by mid-May, and you've clearly been working hard on it. Are you still on schedule?

# ATTACHMENT O

## Jori Burnett

---

**From:** Art Rojsza <artus@comcast.net>  
**Sent:** Thursday, May 05, 2011 3:39 PM  
**To:** Jori Burnett  
**Subject:** Re: 2147 Main Street, Ferndale, permit no 10001RR

Jori,

We have not completed the design modifications of our new additions yet.

It is a creative process of tests, errors, corrections and visualization, in order to achieve a desired result.

When final concept will be developed, all those changes will be submitted, finally engineered, accepted and signed off by our licensed structural engineer, then ready for city inspection.

Meanwhile, since last November we have been ready for city inspection of an existing structure. The changes are unrelated to bringing to compliance the original structure.

The structural part of the project that needs to be in compliance is done, has been performed as structurally design and supervised by professional engineer, we hired to do so with no changes.

Bringing the structure into compliance, as per the court agreement, and completion of the clock tower addition are two separate, independent issues of our construction process. The legal agreement to bring into compliance the existing structure, which my attorney negotiated with the prosecutor, is complete and has been since November when we called for the city inspection.

We are going to call for an inspection for Monday then, and perhaps some of this confusement can be clarified before.

Thank you for your reply.

Art Rojsza

---

**From:** Jori Burnett  
**Sent:** Thursday, May 05, 2011 2:45 PM  
**To:** Art Rojsza ; Craig Bryant ; Gary Jensen  
**Cc:** margaretrojsza@gmail.com  
**Subject:** RE: 2147 Main Street, Ferndale, permit no 10001RR

Art – thank you for your email. As you have been previously informed and as is shown on your permits, the process for anyone requesting inspections is calling 384-4219. Your email cannot be considered a request for an inspection. Please call that number two weeks after you submit engineered plans reflecting the current condition of the structure.

---

**From:** Art Rojsza [mailto:artus@comcast.net]  
**Sent:** Thursday, May 05, 2011 2:09 PM  
**To:** Jori Burnett  
**Cc:** margaretrojsza@gmail.com  
**Subject:** 2147 Main Street, Ferndale, permit no 10001RR

Hi Jori,

As per our latest email exchanges from Apr 26/2011, I would like to finalized our "non compliance" part of renovation part of our project, covered by an agreement between City and myself we entered in to in Ferndale Municipal Court.

I like to get a building inspection by the City inspector for that part, as per requirements of agreement.

As noted earlier in email exchanges, I feel, we have fulfilled our obligations in regards to that agreement by:

- employing structural engineer,
- obtaining city permit,
- brought existing structure to compliance,
- requested structural inspection by Ryan Long of Jones Engineers- on 10/26/2010,
- corrected minor deficiencies, as per structural engineer directives,
- called for structural inspection by City of Ferndale's building inspector on 11/03/2010.

Since City inspector hasn't show and inspection has been requested- factor beyond my control, I would like to again request this inspection in order to put our court case to rest.

Please let me know, if our structural engineer needs to be present, or his report will be sufficient.

If another inspection by Ryan Long is desired, I think Monday or Tuesday could work, subject of conformation with Ryan's schedule.

Please advise,

Thanks,

Art

# ATTACHMENT P

  
**Jori Burnett**

---

**From:** Jori Burnett  
**Sent:** Monday, May 09, 2011 3:05 PM  
**To:** 'Art Rojsza'; Craig Bryant; Gary Jensen; Greg Young; Jerry Shiner  
**Cc:** margaretrojsza@gmail.com  
**Subject:** RE: 2147 Main Street, Ferndale, permit no 10001RR

Art – We have consulted with the City's Prosecuting Attorney and have reviewed our building permit records associated with your residence (Permit 10001RR). As you are aware, the building permit is subject to a settlement agreement you entered into with the City on February 19, 2010.

As per the agreement, you were required to take out a building permit for work that was out of compliance with the Ferndale Municipal Code, and you did that. However, in that permit you also sought to include the clock tower on the northern portion of the structure. The inclusion of the clock tower was your choice, and as per your agreement, all work had to be complete within 180 days (plus an additional 180 day extension).

While you have continued to work on this project, you have done so without periodic inspections by your structural engineer or the City. The only way for the City to confirm that work has been completed (and that it is safe/ built to code/ built to plan) is to perform various inspections and/or to rely on observations and review by the structural engineer. It is now our understanding that the structural engineer has not observed the structure for at least six months, during which time a large addition has been built without any inspections or oversight. As these inspections have not taken place, and as since the deadline for adherence to the settlement agreement has passed, the Prosecuting Attorney and City staff agree that the City has no other legitimate option but to pursue its enforcement action under C-34504. Here, we must make very clear that the only way for the City to confirm that work on the permit was completed is through a final inspection. The City cannot rely on observations from the public right of way, or from statements by you that the building is built to plan, the City cannot inspect a building that should be reviewed in concert with a structural engineer. No final inspection has occurred. The settlement deadline passed in February 2011.

As per the building permit itself, more than 180 days has passed since your last inspection. We understand by your emails that you feel that you requested an inspection. However, due to the non-prescriptive method that you have elected to build this structure, the City had notified you that inspections would occur two weeks after structural drawings, architectural drawings, and a report from your structural engineer was submitted to the City. The last inspection that took place was October 18, 2010. The next legitimate request for an inspection was last week, seven months after the last inspection, and that request did not include any structural engineering or reports.

While the City will pursue action under C-34504, I wish to personally encourage you to re-engage Ryan Long in a contract, and to have him perform a complete structural analysis of your building. His conclusions can then be provided to the City at least two weeks in advance of an inspection, pursuant of course to the conclusion of the City's legal action. The City does not anticipate performing inspections prior to receiving such information from your structural engineer.

- Jori

---

**From:** Art Rojsza [mailto:artus@comcast.net]  
**Sent:** Thursday, May 05, 2011 2:09 PM  
**To:** Jori Burnett  
**Cc:** margaretrojsza@gmail.com  
**Subject:** 2147 Main Street, Ferndale, permit no 10001RR

ori,

As per our latest email exchanges from Apr 26/2011, I would like to finalized our "non compliance" part of renovation part of our project, covered by an agreement between City and myself we entered in to in Ferndale Municipal Court.

I like to get a building inspection by the City inspector for that part, as per requirements of agreement.

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Since City inspector hasn't show and inspection has been requested- factor beyond my control, I would like to again request this inspection in order to put our court case to rest.

Please let me know, if our structural engineer needs to be present, or his report will be sufficient.

If another inspection by Ryan Long is desired, I think Monday or Tuesday could work, subject of conformation with Ryan's schedule.

Please advise,

Thanks,



# ATTACHMENT Q



## COMMUNITY DEVELOPMENT DEPARTMENT

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

May 11, 2011

Artur Rojsza  
2147 Main Street  
Ferndale, WA 98248

RE: Potential Settlement Agreement

Dear Mr. Rojsza,

This letter is intended to inform you of the current status of your building permit (Permit 10001.RR), as well as providing you and your attorneys with direction related to a potential settlement agreement associated with pending legal matters (Ferndale v Rojsza, C-34504).

The City has determined that, due to lack of inspections, your building permit has expired. The last inspection occurred on October 18, 2010, and more than 180 days has passed since that date.

You have indicated that you had attempted to request an inspection previously. However, pursuant to an August 6, 2010 email (attached), the City informed you that it would require structural plans detailing any revisions you have made at least two weeks prior to the next inspections. The purpose of this requirement was to provide the inspector with some ability to understand what was being inspected. Throughout this process, you have indicated that the structure was subject to changes as construction occurred. We have never received these modified structural plans.

Recognizing that non-prescriptive structural changes can occur with the review and approval of a structural engineer, the City determined that it was possible to rely on the ongoing review of the structural engineer to guide the process. This is out of the ordinary for residential developments, but can be allowed pursuant to the International Residential Code.

You have stated that you requested an inspection in November 2010. However, you again did not provide structural drawings prior to this request, as per the City's permit requirements. Additionally, the request for inspection was not made pursuant to the requirements of your building permit, by calling the building permit hotline. As the holder of a building permit, you are responsible for not only requesting inspections, but ensuring that those inspections occur. The City has no other way of confirming that work has been completed.

Based upon your email correspondence dated May 9, 2011 (also attached), it appears that you interpreted the settlement agreement differently than the City. The City has attached an

email sent March 15, 2010, which was then verbally communicated to both yourself and your structural engineer. In this email, I stated "the applicants need to be reminded that there are two distinct processes going on here: one is compliance, and the other is the new addition. The compliance issues need to be resolved as soon as possible." The City has been clear in stating its concerns that building permits which included both compliance-related issues and new additions would tie the two elements together, preventing the resolution of one without the completion of the other.

In your May 9 email, you repeated your assertion that the compliance issues would be completed separately from the building permit. That is not the case, and that is not what the agreement states:

Condition 2 of the settlement agreement states that you would "submit a building permit application for any structural modifications that were made to the 2147 Main Street property by Rojsza without a necessary building permit." You did that. However, you also expanded the permit to include a clock tower and a new addition on the rear of the structure. By that action, you tied all subsequent conditions in the agreement referring to the building permit to the whole of that building permit.

The City reviewed the project and determined that the application was complete, pursuant to Conditions 3 and 4 of the agreement. You then purchased the permit pursuant to Condition 4.

Condition 5 of the settlement agreement states that "if the building permit requires no additional structural work, the City of Ferndale will dismiss C-34504 with prejudice." By including additions to the existing residence in the building permit, the permit clearly required additional structural work.

Condition 6 states that any additional structural work shall be completed within 180 days of the permit's issuance. As stated previously in this letter, the only way for the City to confirm that this work was completed was through an onsite inspection, accompanied by structural observations/ plans from the structural engineer. Even though your structural engineer has determined that the elements of the structure that were previously built without a permit are now in conformance, that determination does not allow you to disregard the remainder of the agreement.

As per Condition 6, work associated with the building permit must be performed within 180 days of issuance. This 180 day period has passed and the City granted you a 180 day extension which has also since expired. The City has not been provided with documentation necessary to perform an inspection, and no legitimate request for an inspection was submitted to the City until May 2011, following the expiration of the building permit. In addition, the City has contacted your structural engineer, who has stated that he has not been in contact with you since November 2010.

Over the last six months, work has clearly continued on your project, as evidenced by the clock tower at the front of the structure. Yet the City has not been provided with the information necessary to conduct an adequate inspection beyond the initial foundation inspection which took place in October 2010.

The City has sought to provide you with as much leniency as possible. To this end the City has allowed you to work with your structural engineer, Ryan Long, to ensure that your construction was, if not built to the exact prescriptive standards of the International Residential Code, at least safe. However, it now appears that you have failed to keep the structural engineer involved in the project and have disregarded the timelines and requirement for inspections.

It is not the responsibility of the City to ensure that developments meet required deadlines, or that inspections occur. That is very clearly the role of the permit holder - you.

Based on these factors, the City cannot dismiss C-34504: the building has not yet been inspected to be complete, and the City cannot rely on the approved drawings (which no longer reflect the majority of actual construction) to guide the inspection.

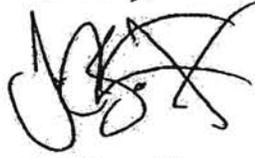
The City's interest extends to the point of ensuring that the project is safe, that it is complete, and that it does not present a lasting nuisance to nearby residents. We have worked with you in the past but the city did not anticipate that you would extend this project past the initial 180 days, past the subsequent 180 days and that, as of this writing, is still not completed.

To bring what we consider to be final closure to this ordeal and to avoid costly and lengthily litigation, the City proposes the following:

- A penalty of \$500 shall be paid by you due for failure to comply with the intent of the agreement and to compensate the City for ongoing legal and administrative expenses.
- The City will delay further enforcement action under C-34504 for a period of no more than 180 days, provided that *all* of the following occur:
  - o At or prior to June 1, 2011, your structural engineer shall conduct a structural observation of the entire structure, including all elements proposed by the building permit or built subsequent to that permit's issuance.
  - o Within ten days of this structural observation, a report, architectural and engineered plans from the structural engineer will be submitted to the City, unless there are structural deficiencies identified in the report which require modification.

- o If structural modifications are required, they must be made by July 1, 2011, and a new structural report and plans must be submitted to the City.
- o An inspection will be requested at the time of submittal of the structural observation report, following the inspection request guidelines, and will occur not less than two weeks following the submittal of the structural report.
- o The City inspector shall conduct an inspection, in the presence of your structural engineer. The City inspector and structural engineer shall determine if future inspections are necessary.
- o If future inspections are necessary, these inspections must also be requested at least two weeks prior to the inspection date, and must be accompanied by a structural report and revised engineering and architectural plans, unless a letter in writing is submitted by the structural engineer stating that previous plans submitted to the City remain current.
- o The City will not dismiss C-34504 until a final inspection has been completed by the City on all elements of the building permitted or constructed following the issuance of building permit 10001.RR. Such completion shall be evidenced by the initials and date of the City of Ferndale building inspector on the Final Inspection check off on the City-supplied inspection sheet associated with 10001.RR.
- o In addition to total structural completion of the building, the City will not dismiss C-34504 until all exterior non-structural elements are in place, including but not limited to; siding, exterior painting, landscaping, and general site cleanup. These elements must be in place no later than November 10, 2011. This requirement shall not be delayed due to elements such as carvings and other ornamentation that you desire to manufacture and install. Such optional elements may be put in place at a later date or in concert with the other items listed above, but it shall be no defense on your part that the such work requires more time. Completion of these non-structural elements shall be determined by my signature on the City-supplied inspection sheet associated with 10001.RR, and a memorandum on City of Ferndale letterhead addressed to David Nelson, the City of Ferndale's prosecuting attorney.
- o Following the strict adherence to all of these conditions, the City will dismiss C-34504 with prejudice.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jori Burnett', written over a horizontal line.

Jori Burnett  
Community Development Director

Cc: Gary Jensen  
Greg Young  
David Nelson  
Richard Langabeer  
Ryan Morrison  
Craig Bryant  
Jerry Shiner

Att: Referenced correspondence

# ATTACHMENT R



# COMMUNITY DEVELOPMENT DEPARTMENT

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

June 16, 2011

Artur Rojsza  
2147 Main Street  
Ferndale, WA 98248

RE: 2147 Main Street violations

Dear Mr. Rojsza,

In an effort to ensure that the City's regulations are met, that minimum life safety standards are adhered to, and that you are provided with appropriate notice to come into compliance, the City is transmitting this letter to you. In addition to your home address, this letter is also being hand delivered to 2147 Main Street, and copies are being sent to you via email. Additional letters are being sent to your attorney and your Blaine address.

Due to continued violations of the Ferndale Municipal Code and the International Residential Code, you must now comply with the requirements set forth in this letter. Failure to comply with these requirements by the dates identified will result in immediate citations and penalties. The City has determined that these requirements are reasonable, in order to resolve at least two outstanding building violations related to your building at 2147 Main Street in Ferndaie:

1. You have deviated from your approved plans by adding an additional story to your clock tower and raising the height of that structure beyond what was previously allowed; and
2. You have failed to provide information necessary for City inspectors to conduct an inspection, resulting in the failure to have the structure inspected in a timely manner, and an overall lack of inspections for more than 180 days.

You are required to schedule an inspection with the City of Ferndale and your structural engineer, and that inspection must take place by Friday, July 1<sup>st</sup> 2011 (ten business days from tomorrow). Following this inspection, you shall provide the City with all necessary information, including building permit applications and accurate structural, engineered, and architectural plans within ten business days of the inspection, no later than July 18, 2011. The City will then review these application materials with your structural engineer, and if deemed to be complete and accurate will make the building permit available to you for issuance.

As you will recall, in 2010 you received a building permit to correct previously existing violations. At that time, you also proposed expanding the structure to include a clock tower, as well as an addition on the rear (south) of your building. The City reviewed that permit (10001.RR) based on the structural information provided and subsequently issued it.

Soon after issuance, you illegally deviated from the plans without consulting the City by expanding the southern addition. The City placed a stop work order on your project, but agreed to lift that stop work order provided that you submitted information that the structure built to that point was properly engineered, and with the expectation that you would provide the City with information necessary to approve the work, including structural observations. You have never provided these structural observations to the City, and have thus not received an inspection to review the work that has apparently now been completed.

You have now illegally altered your plans again, by adding an additional story to the clock tower structure. This is a violation of not only the Ferndale Municipal Code, but the International Residential Code as well. The additional level has not been reviewed or authorized by the City of Ferndale, nor has it been reviewed by your engineer. The City has confirmed with your structural engineer that he has not reviewed the deviations from the original drawings, and has not visited the site since Fall 2010.

It is the City's sole intent and purpose to ensure that your work is and will be safe. The entire effort on the part of the City has been to seek assurance that these minimum standards will be met. You have been unwilling to provide the City with the information necessary to complete inspections or reviews, and have continued to deviate from the plans that have been provided to the City, all in violation of both the Ferndale Municipal Code and the International Residential Code.

To be clear: you are currently in violation of several code sections, and the City has the ability to cite you for these violations immediately. However, the City is providing you with a reasonable grace period, allowing you to prepare necessary information for application submittal. This grace period is a concession on the part of the City, in an effort to treat you as fairly as possible and to provide you with sufficient time to prepare an accurate application submittal without additional penalty. If you do not meet this deadline, the City will have no choice but to cite you for continued failure to comply. This represents the last opportunity you and the City have to work cooperatively to resolve this ongoing and continuous violation without financial or criminal penalties.

In the past, it has not been possible for the City to work with you. Unless the City is allowed to conduct a structural observation with your engineer, unless the City receives the information necessary to complete its reviews, and provided that you then cooperate fully with the City during subsequent reviews and inspections, the City will be forced to cite you with further penalties.

As per the Ferndale Municipal Code:

***18.12.070 Building permits required.***

*It is unlawful to erect, move, add to or structurally alter a building or other structure without a permit therefor. No building permit shall be issued except in conformity with the provisions of this title*

As per the International Residential Code:

***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.*

The International Residential Code further states:

***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.*

The City has determined that you have illegally added to and altered the structure of your building without a permit therefor. You have also built the structure in a manner not reflected by the approved permit. As a result, as the Building Official of the City of Ferndale, I have determined that it now appears that the permit was issued on the basis of incorrect, inaccurate, and incomplete information.

As per the Ferndale Municipal Code, you will be considered guilty of the following penalties unless you correct the violation:

***18.12.290 Violation – Penalty.***

*Any person, firm, corporation, association, other entity or agent thereof who violates the provisions of this title or fails to comply with any of the requirements of this title or of terms of any permits issued pursuant to this title shall be guilty of a misdemeanor punishable by a fine of not more than \$500.00 or by imprisonment in the City Jail Facility for not more than 90 days, or both. Each day such violation continues shall be considered a separate offense.*

This letter serves notice, based on these provisions of the Ferndale Municipal Code and the International Residential Code, that you have violated both regulations.

The City will work cooperatively with your structural engineer, following the structural observation which will take place on or before July 1, to identify those elements that are unpermitted and/or which require additional review.

Recognizing that it will take some time to prepare information and plans based on the structural observation, the City will require that you submit the following by July 18, 2011:

- Completed building permit application
- Structural, architectural, and stamped engineered plans accurately showing the new addition to the clock tower
- Structural observation by your structural engineer reviewing the entire existing structure. While a previous observation was apparently conducted by your structural engineer, the City has never received a report detailing those findings. If your engineer believes that those original findings still apply, he/she may submit a stamped letter to that effect, and attach it to the original report.

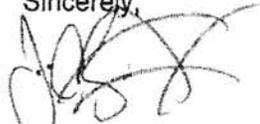
- Confirmation that all necessary electrical permits have been received through the Washington State Department of Labor and Industries

If you fail to comply with any of these requirements, the City will issue you citation(s), including a fine of \$500 per day per violation and a date to appear in the Ferndale Municipal Court. Please note that compliance with one element of this order shall not in any way provide you with additional time to satisfy other elements. Failure to comply with all elements will result in additional citations. The City will reserve the right to amend this list, subject to the results of the structural observation.

Please note that pursuant to the City of Ferndale adopted Unified Fee Schedule, you will be assessed an additional investigation fee equal to and in addition to the amount of the permit fee for working without a permit.

Please call Marci Wightman at 384-4006 to schedule an appointment to submit your revised building drawings.

Sincerely,



Jeri Burnett

Community Development Director

CC: Gary Jensen  
Greg Young  
Richard Langabeer  
David Nelson

# ATTACHMENT S



## CITY OF FERNDALE

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 384-4006

July 7, 2011

Mark Lackey  
900 Dupont Street  
Bellingham, WA 98225

RE: 10001.RR – 2147 Main Street

Dear Mr. Lackey:

Thank you for taking the time to work with the City regarding existing structural violations at 2147 Main Street. Based upon a structural observation conducted on Friday July 1, 2011, there are clearly elements of the building that have been constructed without a permit, thus violating the Ferndale Municipal Code.

The City requires that additional information and plans must be prepared before building permits are issued and recognizes that the preparation of such materials will take time; however the City must require that such information is prepared as rapidly as possible in order for the Rojsza's to regain compliance and to avoid citation.

Based on a structural observation conducted at the Rojsza residence on Friday, July 1<sup>st</sup>, the City has identified a schedule for compliance. ~~The City will not cite~~ the Rojsza's for the existing violations, provided that the following timeline is met:

1. Mr. Rojsza indicated that he would be able to provide architectural drawings to Mr. Ryan Long by this Friday, July 8<sup>th</sup>. Mr. Rojsza shall provide the City with a copy of such drawings by 5pm July 8<sup>th</sup> in order to demonstrate compliance.
2. Mr. Long indicated that, due to other responsibilities he will be unable to provide the City with full engineering calculations and drawings until early August. The City will require this information be submitted by 5pm August 5<sup>th</sup>.
3. Mr. Long indicated that additional exterior siding work should not continue until such time as a sheeting inspection is completed. The City requests additional clarification on this issue before establishing a deadline: can a sheeting inspection occur before the submittal of engineering calculations?

4. Mr. Rojsza indicated that it will take three weeks of dedicated labor to complete his siding work. The City will provide Mr. Rojsza with twenty-one days after the date of the sheeting inspection to complete said work.

As you are aware, the City has worked for a very long time with Mr. Rojsza on this matter. With this said, we are no longer in a position to continue to defer prosecution on the existing and continuing building code violations. If the architectural plans are not submitted to the City on or before the July 8<sup>th</sup> deadline, we will begin to issue citations. Additionally, should the engineering plans not be submitted by the August 5 deadline, the City will begin to issue citations.

The City has a duty to enforce building code violations and the ability of the City to defer prosecution will not continue. The City shall not extend the timelines contained in this letter.

This timeline will take the process up to the point of submittal of plans to the City for review, and is based on verbal comments made by Mr. Rojsza and Mr. Long during the structural observation of July 1. We feel that this is a fair timeline that will provide the Rojsza's with the time necessary to complete required work without delay or citation.

Thank you for your prompt response to this matter.

Sincerely,



Jori Burnett  
Community Development Director

CC: Richard Langabeer  
Chris Farnham  
David Nelson  
Gary Jensen  
Greg Young  
Ryan Morrison  
Sam Taylor  
Mark Lackey

**Erin Johnsen**

---

**From:** Mark Lackey  
**Sent:** Friday, July 08, 2011 4:52 PM  
**To:** Jori Burnett  
**Subject:** RE: schedule for submittal of required information  
**Attachments:** 2011 07-08 Architectural Plans.pdf

Jori:

Attached please find the updated architectural plans for 2147 Main Street. Ryan Long will now begin his process of updating the structural plans. Please let me know if you have any questions or concerns.

Mark A. Lackey

Belcher Swanson Law Firm, P.L.L.C.  
900 Dupont Street  
Bellingham, WA 98225

Phone : 360-734-6390  
Fax: 360-671-0753

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**From:** Jori Burnett [<mailto:JoriBurnett@cityofferndale.org>]  
**Sent:** Thursday, July 07, 2011 8:08 AM  
**To:** Mark Lackey  
**Subject:** schedule for submittal of required information

Good morning, Mark. Attached is a letter outlining the City's requirements for the submittal of information, based upon the inspection that was conducted last week. Please let me know if you have any questions. As the letter states, the inspection revealed that elements of the structure have deviated from the permits that were submitted to the City, and that citations could be issued immediately for such deviations. Rather than proceed on that track, we have provided a reasonable timeline for the submittal of documents. The City can no longer accept delays on the completion of this project. Failure to meet each of these deadlines will result in citations.

Jori Burnett  
Community Development Director, City of Ferndale  
360/685-2367  
2095 Main Street  
Ferndale, WA 98248



# ATTACHMENT T

**CRIMINAL**  **TRAFFIC**  **NON-TRAFFIC**

**C 41036**

IN THE  DISTRICT  MUNICIPAL COURT OF  
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT  
 COUNTY OF WHATCOM  
 CITY/TOWN OF FERNDALE

FERNDALE, WASHINGTON  
 WHATCOM COUNTY  
 WA037021J MUN  
 WA037013J DIS

L.E.A. ORI #: WA0370400

COURT ORI #:

**THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON**

DRIVER'S LICENSE NO. ROSSZA 37437		STATE	EXPIRES	PHOTO I.D. MATCHED <input type="checkbox"/> YES <input type="checkbox"/> NO	
NAME: LAST ROSSZA	FIRST ARJA	MIDDLE	COL <input type="checkbox"/> YES <input type="checkbox"/> NO		
ADDRESS 2147 MAIN STREET <input type="checkbox"/> IF NEW ADDRESS					
CITY FERNDALE	STATE WA	ZIP CODE 98243	EMPLOYER	LOCATION	
DATE OF BIRTH 4/27/1963	RACE W	SEX M	HEIGHT 6-00	WEIGHT 190	HAIR BRN
RESIDENTIAL PHONE NO. ( )	CELL/PAGER NO. ( )	WORK PHONE NO. ( )			
VIOLATION DATE ON OR ABOUT 8/18/11	MONTH 8	DAY 18	YEAR 11	TIME 24 HOUR	<input type="checkbox"/> INTERPRETER NEEDED LANG:
AT LOCATION 2147 MAIN STREET M.P. CITY/COUNTY OF					

**DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND**

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YR.	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO.	STATE	EXPIRES	TR. YR.	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TR. YR.
OWNER/COMPANY IF OTHER THAN DRIVER							
ADDRESS CITY STATE ZIP CODE							
ACCIDENT NO NR R I F	BAC READING	CMV <input type="checkbox"/> YES <input type="checkbox"/> NO	16+ <input type="checkbox"/> YES <input type="checkbox"/> NO	HAZMAT <input type="checkbox"/> YES <input type="checkbox"/> NO	EXEMPT VEHICLE	FARM <input type="checkbox"/> FARM <input type="checkbox"/> R.V.	FIRE <input type="checkbox"/> FIRE <input type="checkbox"/> OTHER

**DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES**

#1 VIOLATION/STATUTE CODE EMV, 12.070	<input type="checkbox"/> DV
FAILURE TO APPLY FOR A BUILDING PERMIT FOR ALTERATIONS TO A STRUCTURE (DENIATION FROM PLANS)	
#2 VIOLATION/STATUTE CODE	<input type="checkbox"/> DV

MANDATORY COURT APPEARANCE OR  BAIL FORFEITURE IN U.S. \$

APPEARANCE DATE	MO.	DY.	YR.	TIME	A.M. P.M.	RELATED #	DATE ISSUED 2/13/2011
-----------------	-----	-----	-----	------	--------------	-----------	--------------------------

- Served on Violator
- Sent to Court for Mailing
- Referred to Prosecutor

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S).

OFFICER: *[Signature]*  
 OFFICER:

**COMPLAINT / CITATION**

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
1	G	NG	G NG D BF	\$	\$	\$	ABS. MLD TO OLY
2	G	NG	G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$							WITH DAYS SUP.

STRICT OF JUDGMENT

C 41036

Jori Burnett

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**From:** Jori Burnett  
**Sent:** Friday, August 19, 2011 10:38 AM  
**To:** David A. Nelson <nelsonlaw@openaccess.org> (nelsonlaw@openaccess.org)  
**Subject:** 2147 Main Street  
**Attachments:** Jori report - deviation from building permit.docx

Good morning. Property owners at 2147 Main Street failed to submit complete engineered drawings by a 5pm Wednesday, August 17 deadline (no submittal occurred). The drawings were intended to reflect deviations from permits that were received in 2010, most notably an expanded "clock tower" on the north face of the structure. As a result, the City has cited the property owner and will continue to do so until the plans are submitted.

I have attached a summary of the events that have led up to this. There is also voluminous correspondence related to this issue, as you know.

Jori Burnett  
Community Development Director, City of Ferndale  
360/685-2367  
2095 Main Street  
Ferndale, WA 98248

On Thursday, August 18, 2011 the City of Ferndale issued a criminal citation to Artur Rojsza for failure to obtain a building permit at his residence, 2147 Main Street in Ferndale. The citation was issued to Mr. Rojsza following the expiration of a deadline to submit full engineered drawings to the City describing work that has commenced which deviates from a building permit issued in 2010 (10001.RR).

During the first six months of 2011, the City observed that structural changes had occurred at the residence beyond that which was permitted by 10001.RR. Specifically, City staff observed that the northern addition to the house (the "clock tower") was taller than what was shown on approved plans.

On July 1, 2011, Craig Bryant, Mr. Rojsza's engineer Ryan Long, his attorney Mark Lackey and I met with Mr. Rojsza and his wife, Margaret to conduct a walk-through of the building. The purpose of the walk through was to identify what, if any work had deviated from the original plans. During the course of this walkthrough several deviations were identified, the most significant of which appeared to be an increase in the height of the clock tower. All parties, including Mr. Rojsza, acknowledged that the construction had deviated from the approved plans (work was done without a permit).

Following this walkthrough, the City negotiated with Mr. Long and Mr. Lackey (representing Mr. Rojsza) to determine an appropriate timeline to regain compliance without further penalty. In a July 14, 2011 email string involving Mr. Long, Mr. Lackey and myself, Mr. Long stated

"As a clarification for the deadline to receive my engineering calculations and drawings. My schedule is booked out through the first week of August. The earliest that I will be able to look at this project would be Monday August 8<sup>th</sup>. I should be able to have something completed by the end of that week which would be the 12<sup>th</sup>, but would prefer a couple of extra days to complete."

I responded by stating

"Based upon your email, it is appropriate to require that the full engineering and related permit amendment information be submitted by no later than Wednesday, August 17<sup>th</sup>. This should provide you with a couple of extra days, and would allow the Rojszas to prepare any other information necessary for the permit submittal."

No application materials were submitted on August 17<sup>th</sup>. On August 18, I contacted Mr. Long and Mr. Lackey via phone and left a voice mail message with each. Mr. Long responded to my voice mail and indicated that he had forgotten that the deadline was August 17<sup>th</sup>, and had been under the mistaken impression that it was the week of August 22<sup>nd</sup>. He stated that he was prepared to conduct a final inspection of the property on August 22<sup>nd</sup>, and would be able to submit the documents that week.

I emailed Mr. Lackey, Mr. Long, and Mr. Rojsza on August 18' reminding them that the deadline had passed and pointing out that the responsibility to adhere to the deadline was theirs. I also indicated that the process had necessarily moved into a penalty phase, as the deadline was imposed based on information provided by Mr. Lackey and Mr. Long in consultation with Mr. Rojsza. Mr. Lackey indicated that he understood that the City had taken this position, that Mr. Long would make every effort to submit applications as soon as possible, that he had spoken with Mr. Rojsza, and that he hoped that the

City would consider some leniency if the applications were submitted quickly. I indicated that while the City could take into account a rapid submittal, the fact that the deadline had passed could not be ignored.

# ATTACHMENT U

**Erin Johnsen**

---

**From:** Jori Burnett <JoriBurnett@cityofferndale.org>  
**Sent:** Friday, August 19, 2011 12:20 PM  
**To:** Mark Lackey; Greg Young; Langabeer & Tull, P.S. (info@langabeertull.com)  
**Subject:** 2147 Main Street

Good afternoon, Mark. In an effort to resolve issues related to the unfinished structure at 2147 Main Street, pursuant to FMC 18.12.090 the City will apply a time limitation for substantial completion of the work, including all structural work included in the permit, the exterior siding of the structure and the removal of all construction-related materials on the site. We will also require that the Rojsza's submit a reasonable performance bond to ensure completion within the time limit set.

Mr. Rojsza had previously indicated that he would be able to complete the work (including exterior siding) within three weeks of receiving permits. Therefore, we would expect to receive a bond amount equal to 150% of the valuation the City determines on the building permit, prior to issuance (the City requires bonds at 150% of the estimated cost, as per code). We will expect to call that bond if the work is not completed (and inspected by either Ryan Long and/or the City inspector, to the City's satisfaction) within six weeks of permit issuance. This will provide an additional three weeks in addition to Mr. Rojsza's earlier estimate, and would take the timeline into October and the start of bad weather. If the Rojsza's are able to complete the work ahead of the deadline, the City would be able to release the bond.

Our sole intent is to ensure that the building and its exterior are completed and that the property ceases to look like a construction zone. We have been unable to get to that point using the normal permitting process. We will not require that the bond be in place until the permit is ready to issue (as we cannot identify the bond amount until we have reviewed the permit). However, we will require that the bond is in place and that the permit is issued within ten business days of the permit being ready to issue.

Please let me know if you have any questions. - Jori

Below is the text of the code section that I referenced above:

**18.12.090 Building permits – Expiration.**

A. If the work described in any building permit has not commenced within 180 days from the date of issuance thereof, said permit shall expire and be null and void.

B. If the work described in any building permit has commenced but there has been no construction activity for a period of 180 days, as evidenced by a failure to call for necessary inspections, said permit shall expire, and automatically become null and void.

C. The Building Official may send written notice of expiration to the persons affected together with notice that work as described in the expired permit shall not proceed unless and until a new building permit has been obtained. Such new permit may be based on the original application or on a new application. The new permit may include limitations on time allowed for substantial completion of the work, and provisions for a reasonable performance bond to ensure completion within the time limit set. (Ord. 1400 § 2, 2006)

Jori Burnett  
Community Development Director, City of Ferndale  
360/685-2367

**CRIMINAL**  **TRAFFIC**  **NON-TRAFFIC** **C 41037**

IN THE  DISTRICT  MUNICIPAL COURT OF  
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT  
 COUNTY OF WHATCOM  
 CITY/TOWN OF FERNDALE

FERNDALE, WASHINGTON  
 WHATCOM COUNTY  
 WA037021J MUN  
 WA037013J DIS

L.E.A. ORI #: WA0370400 COURT ORI #:

**THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON**

DRIVER'S LICENSE NO. ROJSA 37437 STATE \_\_\_\_\_ EXPIRES \_\_\_\_\_ PHOTO I.D. MATCHED  YES  NO

NAME: LAST ROJSA FIRST ARTUR MIDDLE \_\_\_\_\_ COL  YES  NO

ADDRESS 2147 MAIN STREET  IF NEW ADDRESS

CITY FERNDALE STATE WA ZIP CODE 98248 EMPLOYER \_\_\_\_\_ LOCATION \_\_\_\_\_

DATE OF BIRTH 4/27/1963 RACE LU SEX MA HEIGHT 6-00 WEIGHT 190 EYES BRO HAIR BRO

RESIDENTIAL PHONE NO. \_\_\_\_\_ CELL/PAGER NO. \_\_\_\_\_ WORK PHONE NO. \_\_\_\_\_

VIOLATION DATE MONTH 3/16/11 DAY 2 YEAR 11 TIME \_\_\_\_\_  INTERPRETER NEEDED  
 ON OR ABOUT \_\_\_\_\_ 24 HOUR LANG: \_\_\_\_\_

AT LOCATION 2147 MAIN STREET M.P. \_\_\_\_\_ CITY/COUNTY OF FERNDALE / WASHINGTON

**DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND**

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YR.	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO.	STATE	EXPIRES	TR. YR.	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TR. YR.

OWNER/COMPANY IF OTHER THAN DRIVER \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

ACCIDENT  BAC  CMV  YES  NO  16+  YES  NO  HAZMAT  YES  NO  EXEMPT  FARM  FIRE  NO NR R I F READING  NO  PASS  NO  VEHICLE  R.V.  OTHER

**DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES**

#1 VIOLATION/STATUTE CODE EMC 18.12.070  DV

#2 VIOLATION/STATUTE CODE ALTERATIONS TO A STRUCTURE (VIOLATION FROM PLANS)  DV (X5) (WEEKDAYS ONLY)

MANDATORY COURT APPEARANCE OR  BAIL FORFEITURE IN U.S. \$

APPEARANCE DATE	MO.	DY.	YR.	TIME	A.M.	RELATED #	DATE ISSUED
							<u>3/26/11</u>

Served on Violator  
 Sent to Court for Mailing  
 Referred to Prosecutor

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S).

OFFICER [Signature]  
 OFFICER \_\_\_\_\_

**COMPLAINT / CITATION**

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
1	G	NG	G NG D BF	\$	\$	\$	ABS. MLD TO OLY
2	G	NG	G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$							WITH _____ DAYS SUP.

STRICT OF JUDGMENT

**C 41037**

**Erin Johnsen**

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**From:** Ryan Long <ryan@jonesengineers.us>  
**Sent:** Thursday, August 25, 2011 11:30 PM  
**To:** 'Art Rojsza'  
**Cc:** 'Jori Burnett'; Mark Lackey  
**Subject:** Revised Engineering for 2147 Main Street  
**Attachments:** Artus-Main\_Street-Struc-Rev3.pdf; Artus-Main\_Street-Struc\_Calcs-Rev3.pdf

Art,

I have completed the revisions to the plans and calculations and they are ready to be submitted to the city for their review. I have attached the plans and calculations for your use and will have a signed set of originals also available to be picked up to be delivered to the city.

Jori, How many sets of these plans do you need for your review or is the electronic copy enough? I did do a sheathing and framing inspection earlier this week, but due to the number of changes to the plans, I felt that a punch list would be un-necessary since I was going to be issuing a completely revised set of plans that will render the older plans irrelevant.

Ryan Long, PE  
Jones Engineers, Inc.  
P: (360) 733-8888 x207  
F: (360) 671-6666  
[www.jonesengineers.us](http://www.jonesengineers.us)

# ATTACHMENT V

**Erin Johnsen**

---

**From:** Jori Burnett <JoriBurnett@cityofferndale.org>  
**Sent:** Wednesday, August 31, 2011 8:23 AM  
**To:** Mark Lackey; Jerry Shiner  
**Subject:** submittal - 2147 Main Street

Mark – yesterday afternoon, Melissa Rojsza submitted engineered drawings to the City, and we have begun the review of those drawings. We will be utilizing the application form that was submitted with 10001.RR, which appears to be fairly consistent with the current application submittal.

One thing that was missing from the application was an estimate of the cost of the work, including an estimate to complete the exterior siding for the purpose of determining an appropriate bond/Assignment of Savings amount. Do you know if the Rojsza's have such an estimate? If they are prepared to submit an estimate, please remember that it must include not only the cost of materials, but labor as well. I realize that the Rojsza's are anticipating doing the work themselves and that this would bring the labor costs down very significantly. However, in the event that the Rojsza's are unable or unwilling to complete the work in the six-week time frame after issuance, the City would be required to pay fair market value for both materials and labor in order to complete the work. Thus, the cost estimate should include both time and materials.

Thank you, Mark and please extend our thanks to the Rojsza's for submitting the application materials. We hope to be able to complete our review shortly.

Jori Burnett  
Community Development Director, City of Ferndale  
360/685-2367  
105 Main Street  
Ferndale, WA 98248

**Erin Johnsen**

---

**From:** Mark Lackey  
**Sent:** Thursday, September 01, 2011 1:29 PM  
**To:** Jori Burnett; ryan@jonesengineers.us  
**Subject:** RE: 2147 Main

Jori,

I do not know exactly when the Rojsza's are going to be back from Eastern Washington. I am out of the office today but I will give them a call tomorrow to determine their schedule. Also, I will speak to them about an estimate for completion of the work and bonding. Let me know if you have any other questions or concerns.

Mark A. Lackey

Belcher Swanson Law Firm, P.L.L.C.  
900 Dupont Street  
Bellingham, WA 98225

Phone : 360-734-6390

Fax: 360-671-0753

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**From:** Jori Burnett [<mailto:JoriBurnett@cityofferndale.org>]  
**Sent:** Thursday, September 01, 2011 11:41 AM  
**To:** ryan@jonesengineers.us; Mark Lackey  
**Subject:** RE: 2147 Main

Thank you, Ryan. And thanks for the work on preparing the plans – Jerry has indicated that there are few, if any issues, and that he has spoken to you on much of them.

It is our understanding that we will rely on you for structural inspections – is that yours as well?

Mark – about a month ago, you indicated that the Rojsza's were going to assume the risks that Ryan refers to and would commence on the exterior improvements quickly. Though quickly may be a relative term, do you know when the Rojsza's are expecting to be back from Eastern Washington to begin?

I hope that I'm not naïve in saying that I think we're making a lot of progress on this project. Thanks again for all of your work, both of you.

---

**From:** Ryan Long [<mailto:ryan@jonesengineers.us>]  
**Sent:** Thursday, September 01, 2011 11:20 AM  
**To:** Jori Burnett; 'Mark Lackey'  
**Subject:** RE: 2147 Main

Jori,

Erin Johnsen

---

**From:** Jori Burnett <JoriBurnett@cityofferndale.org>  
**Sent:** Thursday, September 01, 2011 1:30 PM  
**To:** Mark Lackey; ryan@jonesengineers.us  
**Subject:** RE: 2147 Main

Thanks, Mark. When you get back tomorrow, we have a couple of other things to consider:

First, we only received one set of architectural plans. In order for Jerry to transfer his notes, we will need a second set.

Second, we've estimated that the cost of putting vinyl siding up on the project would likely be in the \$15,000 range. Is this consistent with Mr. Rojsza's estimate?

---

**From:** Mark Lackey [<mailto:mark@belcherswanson.com>]  
**Sent:** Thursday, September 01, 2011 1:29 PM  
**To:** Jori Burnett; [ryan@jonesengineers.us](mailto:ryan@jonesengineers.us)  
**Subject:** RE: 2147 Main

Jori,

I do not know exactly when the Rojsza's are going to be back from Eastern Washington. I am out of the office today but I will give them a call tomorrow to determine their schedule. Also, I will speak to them about an estimate for completion of the work and bonding. Let me know if you have any other questions or concerns.

Mark A. Lackey

Belcher Swanson Law Firm, P.L.L.C.  
900 Dupont Street  
Bellingham, WA 98225

Phone : 360-734-6390  
Fax: 360-671-0753

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---

**From:** Jori Burnett [<mailto:JoriBurnett@cityofferndale.org>]  
**Sent:** Thursday, September 01, 2011 11:41 AM  
**To:** [ryan@jonesengineers.us](mailto:ryan@jonesengineers.us); Mark Lackey  
**Subject:** RE: 2147 Main

Thank you, Ryan. And thanks for the work on preparing the plans – Jerry has indicated that there are few, if any issues, and that he has spoken to you on much of them.

It is our understanding that we will rely on you for structural inspections – is that yours as well?

Mark – about a month ago, you indicated that the Rojsza's were going to assume the risks that Ryan refers to and would commence on the exterior improvements quickly. Though quickly may be a relative term, do you know when the Rojsza's are expecting to be back from Eastern Washington to begin?

Hope that I'm not naïve in saying that I think we're making a lot of progress on this project. Thanks again for all of your work, both of you.

---

**From:** Ryan Long [<mailto:ryan@jonesengineers.us>]  
**Sent:** Thursday, September 01, 2011 11:20 AM  
**To:** Jori Burnett; 'Mark Lackey'  
**Subject:** RE: 2147 Main

Jori,

The Rojsza's have no risk in finishing their sheathing & nailing as long as it meets the specifications in the new plans, which are very close in nature to the old plans. When I did my inspections last week all of the shearwall sheathing has been started and looked good, but none of the shearwalls were 100% complete and ready for siding. For the most part everything that has been done to date has exceeded the minimum standards shown in my plans, there was just quite a bit that had not been done yet. Anything that they cover now without inspections will either need to be removed to inspect or added to the inside face of the wall.

Ryan Long, PE  
Jones Engineers, Inc.  
P: (360) 733-8888 x207  
F: (360) 671-6666  
[www.jonesengineers.us](http://www.jonesengineers.us)

---

**From:** Jori Burnett [<mailto:JoriBurnett@cityofferndale.org>]  
**Sent:** Wednesday, August 31, 2011 3:33 PM  
**To:** Mark Lackey ([mark@belcherswanson.com](mailto:mark@belcherswanson.com)); [ryan@jonesengineers.us](mailto:ryan@jonesengineers.us)  
**Subject:** 2147 Main

Hi Mark and Ryan – thank you for getting the engineered drawings to the City. We are reviewing them and expect to be able to issue them relatively quickly – possibly within the next 24 hours, contingent on having a bond/AOS in place. A question for you – what risks, if any do the Rojsza's have in starting their sheathing/siding at this point, prior to permit issuance? Have the Rojsza's given any indication as to when they will start on the exterior work?

Jori Burnett  
Community Development Director, City of Ferndale  
360/685-2367  
2095 Main Street  
Ferndale, WA 98248

# ATTACHMENT W

**Erin Johnsen**

---

**From:** Jori Burnett <JoriBurnett@cityofferndale.org>  
**Sent:** Wednesday, September 07, 2011 5:01 PM  
**To:** Mark Lackey  
**Subject:** FW: 2147 Main St building fees

Mark – as promised, we have finished our review. We are therefore ready to issue, although we will need some time to make copies/ transfer notes if that is what you choose to do. As per my previous emails, this permit must be picked up within ten business days. Therefore, this permit must be picked up by 5pm Wednesday September 21<sup>st</sup>. We will require that an assignment of funds or bond for no less than \$30,000 be submitted as well, in addition to language authorizing the City to utilize those funds to hire a contractor and for that contractor to finish the exterior siding of the building. Finally, we will require that the exterior be finished within six weeks of issuance.

We hope that you and your clients recognize that the City has made a good-faith effort to complete these reviews, to recognize the scope of work that has already taken place, to work within your client’s stated time frames, and more. At this point, the City’s job is more or less completed – the City has done what it promised. Now it is Mr. Rojsza’s turn.

Below are the fees for the permit and the methodology that was used.

---

**From:** Jerry Shiner  
**Sent:** Wednesday, September 07, 2011 12:07 PM  
**To:** Jerry Shiner  
**Cc:** Jori Burnett; Marci Wightman  
**Subject:** 2147 Main St building fees

Since the project is not a total rebuild I am deducting 80% of the valuation cost because most of the structure is there. I will charge full fees for the uncovered decks and the tower as they are new.

I will also charge an investigation fees for work being done without a building permit, as it had been expired by several months.

Main floor	1481 sq. ft. x 103.39 =	<del>\$ 153,120.59</del>	x 20%	=	<del>\$30,624.11</del>
Upper floor	1410 sq. ft. x 103.39 =	145,779.90	x 20%	=	29,155.98
Tower	225 sq. ft. x 103.39 =				23,262.75
Basement	943 sq. ft. x 103.39 =	97,496.77	x 20%	=	19,499.35
Uncovered decks	203 sq. ft. x 13.21 =				2,681.63
		Valuation total	=	\$ 105,223.82	

Building permit	\$1027.35
Plan Check	667.78
Plumbing fee	63.00
Investigation fee	1027.35
Archive fee	10.00
State fee	4.50
<b>Total fees</b>	<b>\$ 2799.98</b>

These should be the total fees for the above subject project as of 9/7/2011.

Jerry Shiner

# ATTACHMENT X

## Erin Johnsen

---

**From:** Jori Burnett <JoriBurnett@cityofferndale.org>  
**Sent:** Wednesday, September 28, 2011 3:52 PM  
**To:** Mark Lackey; Ryan Morrison  
**Subject:** RE: Rojsza's public notice

Mark – from the City's perspective, there needs to be a new permit regardless of whether the previous permit was expired or not – there are so many changes (however minor) that for record keeping purposes we would need to keep the paperwork separate. There should not be any dollar change between the two permits (whether it was the previous permit or the new) – in fact, if it were on the previous permit the costs might actually be higher because we are having to re-review something that we already reviewed, as per the code.

Basically, from the standpoint of saving everyone time and money – the new permit is ready to be picked up. If the Rojsza's complete their siding, they would not need to do the bond/AOS. The City is not restricting them from doing that siding without the permit, and Ryan Long has said that they could complete the siding if they wished. The risk to the City of course is that the Rojsza's would say that they would complete the siding, and then not complete it, and the City will be in the same position it is now, but a month or two down the road. The upside would be if the Rojsza's actually do complete the siding, pick up the permit, and then we go from there.

Mark – feel free to convey this to the Rojsza's – I don't know how to stand on my head, but if I felt that it would actually get the project done/ siding on, I'd learn how. The intent of the bond was and is to get the work done. If they can come up with another way to actually do it, and not just say that it will be done, I will be the first one to forget the bond requirement. If, however, there is not progress – we're back where we started.

Why don't we do this: we schedule the appeal for November. That gives the Rojsza's some time moving forward to get the work done before they start needing to pay for public notices and the Hearing Examiner hourly fees. If they can get the work done, the Hearing Examiner deposit may be able to be refunded in full and we can go ahead and issue the permit/ the appeal is no longer necessary.

---

**From:** Mark Lackey [mailto:mark@belcherswanson.com]  
**Sent:** Wednesday, September 28, 2011 3:14 PM  
**To:** Ryan Morrison  
**Cc:** Jori Burnett  
**Subject:** RE: Rojsza's public notice

Ryan,

Just to clarify, are you saying that the City will deem the existing permit as valid and there will be no bonding requirement if the Rojsza's finish the siding? I want to make sure that I can explain this to them appropriately.

Mark A. Lackey

Belcher Swanson Law Firm, P.L.L.C.  
900 Dupont Street  
Bellingham, WA 98225

Phone : 360-734-6390  
Fax: 360-671-0753

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2  
3 IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR WHATCOM COUNTY

4 ARTUR and MARGARET ROJSZA,  
husband and wife,

5 Respondents,

6 vs.

7 CITY OF FERNDALE, a Washington  
8 municipal corporation,

9 Appellant.  
10

COURT OF APPEALS  
No. 69259-3-1

SUPERIOR COURT  
No. 12-2-00582-2

DECLARATION OF SERVICE

11 CAROL A. MORRIS, declares as follows:

12 1. I am the attorney for the appellant City of Ferndale in the above-captioned  
13 action. I am over the age of eighteen and competent to make this declaration.  
14

15 2. On February 4, 2013, I placed the City's Opening Brief in the U.S. Mail, first  
16 class, postage pre-paid, to the Court of Appeals, and also sent the same document to opposing  
17 counsel, addressed as follows:

18 Peter R. Dworkin  
19 Belcher/Swanson  
20 900 DuPont Street  
Bellingham, WA 98225

21 I declare that the above is true and correct under penalty of perjury under the laws of the  
22 State of Washington.  
23  
24  
25

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 FEB -5 PM 1:20

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Date and Place of Signing: Seabeck WA 2/4/13

  
\_\_\_\_\_  
CAROL A. MORRIS