IN THE UTAH COURT OF APPEALS

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Jay Peterson, Plaintiff and Appellant, v. Provo City, et al., Defendants and Appellees.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20010319-CA F I L E D (December 19, 2002) 2002 UT App 430

Fourth District, Provo Department
The Honorable Anthony W. Schofield

Attorneys: Jay Peterson, Provo, Appellant Pro Se
David C. Dixon, Gary L. Gregerson, and Gary A. McGinn, Provo, for Appellees

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Before Judges Billings, Bench, and Greenwood.

GREENWOOD, Judge:

Jay Peterson appeals from the district court's order affirming the Provo administrative court's finding that he violated Provo City Code § 14.10.080 (2001)[1] by having an illegal accessory building on his property. We affirm.

Peterson argues that his due process rights were violated because he did not receive adequate notice that Provo City (the City) would claim that his violation of section 14.10.080 included the failure to obtain required building permits. "[W]here notice is ambiguous or inadequate to inform a party of the nature of the proceedings against him or not given sufficiently in advance of the proceeding to permit preparation, a party is deprived of due process." Nelson v. Jacobsen, 669 P.2d 1207, 1212 (Utah 1983). The City posted a "Notice of Violation" on Peterson's door that included the municipal code section violated, a description of the violation, and the corrections required to bring the property into compliance. The

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[1]Because there have not been any substantial changes to this section of the code, for convenience we cite to the current version.

notice read, in relevant part, "[r]emove the [s]torage units from the R-1 zone, or comply with the [b]uilding [c]odes and comply with the zoning requirements." Section 14.10.080 requires an accessory building to "[c]omply with the latest adopted edition of the Uniform Building Code." Provo City Code § 14.10.080(5)(c). In addition, the City argued during the administrative hearing that Peterson was in violation of section 14.10.080, in part, because he had failed to obtain the necessary building permits for his storage units.[2] Therefore, we conclude that Peterson had adequate notice that his violation under section 14.10.080 included his failure to obtain building permits for the storage units on his property.

Next, Peterson argues that he cannot be held in violation of the City's code based on hearsay evidence that he did not possess a building permit. "The strict rules of evidence and procedure that apply in a courtroom, . . . need not apply in an administrative hearing. Hearsay and other forms of evidence that might be inadmissible in a court of law may be considered during an administrative hearing." Tolman v. Salt Lake County Attorney, 818 P.2d 23, 28 (Utah Ct. App. 1991). During the hearing, the City argued that Peterson did not obtain a building permit as required under the City's code. The City based its argument on the absence of building permits on file with the City's building permit records office.

The hearing officer then allowed Peterson thirty days to obtain the required building permits. The hearing officer's finding that Peterson failed to obtain the necessary building permits was not based solely on hearsay evidence that one did not exist, but also on Peterson's inability to produce proof of the permits after being given a reasonable time to do so. Therefore, no error exists.

Finally, Peterson argues that his due process rights were violated because the hearing officer was biased based on his employment with the City. "Where a party to an adversarial proceeding can demonstrate actual impermissible bias or an unacceptable risk of an impermissible bias on the part of a decision maker, the decision maker must be disqualified." V-1 Oil Co. v. Department of Envtl. Quality, 939 P.2d 1192, 1197

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[2]The district court agreed with Peterson that the building permit violation was raised belatedly in the administrative hearing but found that Peterson had nevertheless been given adequate notice of this violation. However, in reviewing the administrative hearing transcript, we found references to the City's allegation that Peterson did not possess the necessary building permits throughout the hearing.

(Utah 1997). Where an agency employee does not take part in a particular case as an investigator or advocate, the risk of "the will to win" bias is minimal. Id. at 1203. There is no evidence that the hearing officer served in any investigative or adversarial role in regard to this case. Further, there is no indication in the record of actual bias. Thus, Peterson's due process rights were not violated.[3]

Therefore, we affirm.[4]

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Pamela T. Greenwood, Judge

WE CONCUR:

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Judith M. Billings,
Associate Presiding Judge

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Russell W. Bench, Judge

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[3]Peterson also argues that this court should determine that double jeopardy would be violated should the City attempt in the future to pursue a motion for a trial de novo. However,

> this court will not issue advisory opinions or examine a controversy that has not yet sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto. Where there exists no more than a difference of opinion regarding the hypothetical application of a piece of legislation to a situation in which the parties might, at some future time, find themselves, the question is unripe for adjudication.

State v. Ortiz, 1999 UT 84,¶3, 987 P.2d 39 (quotations and citations omitted).

[4]We share the trial court's concern about "hostility between Mr. Peterson and the city inspector, not all of which should be laid at Mr. Peterson's doorstep," and the imposition of a $100 administrative fee.