# SECOND JUDICIAL DISTRICT COURT
## COUNTY OF CARBON, STATE OF WYOMING

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| THE GOVERNING BODY, OF THE TOWN OF SARATOGA, WYOMING, a Wyoming Municipal Corporation,<br><br>Plaintiff,<br><br>-vs.-<br><br>RANDY W. STEVENS, RANDY W. STEVENS LIVING TRUST, by and through its Trustee, Randy W. Stevens and QUALITY LANDSCAPE & NURSERY, INC.,<br><br>Defendants. | Civil Action No. CV-09-284 |



## ORDER GRANTING MOTION TO ALTER AND AMEND

**THIS MATTER** came before the Court on *Defendants' Motion to Alter and Amend Court's Findings of Fact, Conclusions of Law and Order Entered on January 27, 2012*, filed on February 9, 2012. The Town of Saratoga failed to respond to this motion. Having considered the motion, and being fully advised in the premises, the Court finds and orders as follows:

1. On January 27, 2012, this Court entered its *Court's Findings of Fact, Conclusions of Law and Order* in which it addressed *Plaintiff's Motion for Order of Default; for Sanctions and Damages,* dated September 11, 2011, and *Defendants' Motion for Order of Default; For Sanctions and Damages*, dated September 28, 2011 and November 29, 2011 filed herein.

2. On February 9, 2012, Defendants' filed their *Defendants' Motion to Alter and Amend Court's Findings of Fact, Conclusions of Law and Order Entered on January 27, 2012*, asserting that this Court erred in said *Order*. More specifically, Defendants assert that:

    a. Paragraph 28 of the Findings of Fact contains a legal error in that the Town of Saratoga's New Plan does not comply, in fact, with Section 3314.3 of the 1997 Uniform Building Code; and
    b. Paragraphs 33 of the Findings of Fact and Paragraph 5 on the Conclusions of Law contain legal errors in the Court's statements and conclusion that the Town's defaults of the *Consent Decree* were *de minimis* and, therefore, Defendants are not entitled to attorneys' fees.

3. In sum, Defendants ask this Court to amend those findings of fact and conclusions of law to correct these erroneous findings.

4. Defendants further ask this Court to require the Town to reconstruct the alleyway in a manner that conforms to the 1997 Uniform Building Code and to award

Defendants their attorneys' fees and costs incurred in bringing their *Defendants' Motion for Order of Default.*

5. As noted previously, the Town failed to respond to *Defendants' Motion to Alter and Amend Court's Findings of Fact, Conclusions of Law and Order Entered on January 27, 2012.*

6. Based upon the pleadings and record properly before it, this Court concludes that:
   a. Although the Town's New Plan did not comply, in fact, with Section 3314.3 of the 1997 Uniform Building Code, the Town has expressed its acceptance of the Plan and has waived any ability to complain about a UBC Code violation in the future. Further, the Town is legally responsible for any issues that may arise, now or in the future, regarding Defendants' use of their Property, if affected by a failure to comply with Section 3314.3 of the 1997 Uniform Building Code;
   b. However, the Court will not require the Town to reconstruct the alleyway in a manner that conforms to the 1997 Uniform Building Code;
   c. Although the Court believes the Town's defaults of the *Consent Decree* to be relatively minor in nature, Defendants are correct that the *Consent Decree* allows for the recovery of attorney's fees even for these defaults; and
   d. Defendants have set forth good cause upon which to grant, in part, their *Defendants' Motion to Alter and Amend Court's Findings of Fact, Conclusions of Law and Order Entered on January 27, 2012* through the award of attorneys' fees incurred by Defendants in bringing *Defendants' Motion for Order of Default; For Sanctions and Damages.* Defendants shall provide the Town and this Court will a detailed itemization of the attorneys' fees sought within fifteen (15) days of the date of this *Order.* The Town shall either file its' acceptance of or its' objection to said attorneys' fees within fifteen (15) days thereafter. If the Town again fails to respond the Court will assume the Town agrees with the attorneys' fees requested.
   e. The Court further awards Defendants their costs of $13,051.41, as reflected in *Defendants' Bill of Costs and Attorney Fees*, filed February 9, 2012.

**WHEREFORE** this Court order that *Defendants' Motion to Alter and Amend Court's Findings of Fact, Conclusions of Law and Order Entered on January 27, 2012* be and hereby is **GRANTED** in part and **DENIED** in part.

**SO ORDERED** this 5th day of March 2012.

Judge Wade E. Waldrip
District Court Judge

Copies to:
Peggy Trent, Counsel for Town of Saratoga
Don Riske, Counsel for Defendants