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Park City Municipal Corporation

FILED BY *P*

**IN THE THIRD JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH**

THE ONTARIO COURT DRIVEWAY
ASSOCIATION, a Utah non-profit Corporation,

Plaintiff,

vs.

PARK CITY MUNICIPAL CORPORATION,
a Utah Municipal Corporation, and PARK CITY
COUNCIL, in its capacity as the Park City
Council, PARK CITY FIRE SERVICE DISTRICT,
a Utah Special Service District.
Defendants.

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)
) **ANSWER OF DEFENDANT**
) **PARK CITY MUNICIPAL**
) **CORPORATION**
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) Civil No.: 080500834

) Judge Bruce Lubeck
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Defendants, Park City Municipal Corporation and Park City Council, (hereinafter collectively referred to as "Defendants" or "Park City"), by and through its counsel of record, Polly Samuels McLean, hereby submit the following Answer to Plaintiff's Complaint as follows:

VENUE

1. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.

2. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.

PARTIES

3. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
4. Park City Municipal Corporation admits that it is a municipal corporation formed under the laws of the State of Utah and located in Park City, Summit County, Utah.
5. Park City Council admits that it is a municipal legislative body.
6. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.

GENERAL ALLEGATIONS

7. Park City generally admits the allegations in this paragraph.
8. Park City generally denies the allegations in this paragraph. Park City responds that the Ordinance 08-46 approved by City Council approving the Marsac Avenue Affordable Housing Subdivision speaks for itself.
9. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.
10. Park City generally denies the allegations in this paragraph. Park City

- responds that the Block 52 Replat speaks for itself.
11. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
 12. The allegations in this paragraph constitute a legal conclusion to which no response is required and further that Easement 00636342 speaks for itself. Therefore, Park City denies the allegations contained in this paragraph.
 13. Park City generally denies the allegations in this paragraph. Park City denies that it approved Easement 00636342 and further responds that the Easement 00636342 speaks for itself.
 14. Park City generally denies the allegations in this paragraph. Park City responds that Easement 00636342 speaks for itself.
 15. Park City generally denies the allegations in this paragraph. Park City responds that Easement 00636342 speaks for itself.
 16. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
 17. Park City generally denies the allegations in this paragraph. Park City responds that the Block 52 Replat speaks for itself.
 18. Park City generally denies the allegations in this paragraph. Park City generally responds that the Block 52 Replat and the Ivers Replat speak for themselves.
 19. Park City generally denies the allegations in this paragraph. Park City

- responds that the positive recommendation for the 128-134 Ontario Plan Amendment by the Planning Commission speaks for itself.
20. Park City generally denies the allegations in this paragraph. Park City responds that the positive recommendation for the 128-134 Ontario Plan Amendment by the Planning Commission speaks for itself.
21. Park City generally denies the allegations in this paragraph. Park City responds that the Ordinance approved by Council for the Block 52 Replat speaks for itself.
22. Park City generally denies the allegations in this paragraph. Park City responds that the Block 52 Replat speaks for itself.
23. Park City generally denies the allegations in this paragraph. Park City responds that the Block 52 Replat speaks for itself.
24. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.
25. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.
26. Park City generally denies the allegations in this paragraph. Park City responds that the approved Ordinance for the Marsac Avenue Affordable Housing subdivision and associated minutes and submittals speak for

- themselves.
27. As to the first part of this paragraph, they constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph. As to the second part of this paragraph, Park City generally denies the allegations in this part of the paragraph. Park City responds that the November 6, 2008 City Council Staff Report speaks for itself.
28. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.
29. Park City generally denies the allegations in this paragraph. Park City responds that the City Council Meeting Minutes of October 2, 2008 speak for themselves.
30. Park City generally denies the allegations in this paragraph. Park City responds that Ordinance No. 08-46 speaks for itself.
31. Park City generally denies the allegations in this paragraph. Park City responds that the Park City Municipal Code speaks for itself.
32. Park City generally denies the allegations in this paragraph. Park City responds that the International Fire Code Speaks for itself.
33. Park City generally denies the allegations in this paragraph. Park City responds that the International Fire Code Speaks for itself.

34. Park City generally denies the allegations in this paragraph. Park City responds that the Marsac Affordable Housing Subdivision Plat speaks for itself.
35. The allegations in this paragraph constitute a legal conclusion to which no response is required. Therefore, Park City denies the allegations contained in this paragraph.
36. Park City generally denies the allegations in this paragraph. Park City responds that the Park City Land Management Code speaks for itself.
37. Park City generally denies the allegations in this paragraph. Park City responds that the City Council Staff Report speaks for itself.
38. Park City generally denies the allegations in this paragraph. Park City responds that the Park City Land Management Code speaks for itself.
39. Park City denies the allegations in this paragraph.

FIRST CLAIM FOR RELIEF

40. In response to Paragraph No. 40 of the Complaint, Park City incorporates herein by reference each and every admission, denial and affirmative allegation made in response to the allegations set forth in Paragraphs 1 through 39 of the Complaint.
41. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
42. The allegations in this paragraph constitute a legal conclusion to which no

- response is necessary. Therefore, Park City denies the allegation.
43. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
44. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
45. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
46. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

SECOND CLAIM FOR RELIEF

47. In response to Paragraph No. 47 of the Complaint, Park City incorporates herein by reference each and every admission, denial and affirmative allegation made in response to the allegations set forth in Paragraphs 1 through 46 of the Complaint.
48. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information
49. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
50. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
51. The allegations in this paragraph constitute a legal conclusion to which no

response is necessary. Therefore, Park City denies the allegation.

THIRD CLAIM FOR RELIEF

52. In response to Paragraph No. 52 of the Complaint, Park City incorporates herein by reference each and every admission, denial and affirmative allegation made in response to the allegations set forth in Paragraphs 1 through 51 of the Complaint.
53. Park City generally denies the allegations in this paragraph. Park City responds that the November 6, 2008 City Council Staff Report speaks for itself.
54. Park City generally denies the allegations in this paragraph. Park City responds that the September 10, 2008 Planning Commission Meeting Minutes speak for themselves.
55. Park City generally denies the allegations in this paragraph. Park City responds that the Land Management Code speaks for itself.
56. Park City denies the allegations in this paragraph.
57. Park City denies the allegations in this paragraph.
58. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

FOURTH CLAIM FOR RELIEF

59. In response to Paragraph No. 59 of the Complaint, Park City incorporates herein by reference each and every admission, denial and affirmative

allegation made in response to the allegations set forth in Paragraphs 1 through 53 of the Complaint.

60. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
61. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
62. Park City denies the allegations in this paragraph as to Defendant Park City.
63. Park City denies the allegations in this paragraph as to Defendant Park City.
64. Park City denies the allegations in this paragraph as to Defendant Park City.
65. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
66. Park City denies the allegations in this paragraph.
67. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

FIFTH CLAIM FOR RELIEF

68. In response to Paragraph No. 68 of the Complaint, Park City incorporates herein by reference each and every admission, denial and affirmative allegation made in response to the allegations set forth in Paragraphs 1

through 67 of the Complaint.

69. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

70. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

71. Park City denies the allegations in this paragraph as to Defendant Park City.

72. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

73. Park City generally denies the allegations in this paragraph. Park City responds that the Marsac Affordable Housing Subdivision Plat speaks for itself.

74. Park City generally denies the allegations in this paragraph. Park City responds that the International Fire Code Speaks for itself.

75. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

76. Park City denies the allegations in this paragraph.

77. Park City denies the allegations in this paragraph.

78. Park City denies the allegations in this paragraph.

SIXTH CLAIM FOR RELIEF

79. In response to Paragraph No. 79 of the Complaint, Park City incorporates

herein by reference each and every admission, denial and affirmative allegation made in response to the allegations set forth in Paragraphs 1 through 78 of the Complaint.

80. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
81. Park City responds that the Planning Commission and City Council records speak for themselves.
82. Park City denies the allegations in this paragraph.
83. This paragraph directly conflicts with the allegations in paragraph 65. Park City generally denies the allegations in this paragraph of the Complaint for lack of knowledge or sufficient information.
84. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
85. Park City denies the allegations in this paragraph.
86. Park City denies the allegations in this paragraph.
87. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.
88. The allegations in this paragraph constitute a legal conclusion to which no response is necessary. Therefore, Park City denies the allegation.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted as a matter of law and therefore should be dismissed under Rule 12(b)(6) of the Utah Rules of Civil Procedure.

SECOND AFFIRMATIVE DEFENSE

Park City affirmatively alleges that one or more of the Plaintiffs' claims may be barred by the doctrines of waiver, estoppel or laches.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's lack of standing.

FOURTH AFFIRMATIVE DEFENSE

Park City affirmatively alleges that the City Council's decision was not arbitrary, capricious, or illegal.

FIFTH AFFIRMATIVE DEFENSE

Park City incorporates by reference the affirmative defenses asserted by each and every defendant in this action.

SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because a necessary party, to wit, the Park City Mines Corporation, owner of the Marsac Affordable Housing Subdivision was not joined in this action.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint may be barred, in whole or in part, by Plaintiffs' failure to mitigate their damages, the existence of which Park City expressly denies.

EIGHTH AFFIRMATIVE DEFENSE

Defendants Park City Municipal Corporation and Park City Council have immunity and/or qualified immunity to the causes of action alleged in the Complaint pursuant to the Governmental Immunity Act of Utah, UCA §§ 63-30d-101 through 63-30d-904.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by third persons not under the control of Park City and for whom Park City are not responsible.

TENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable statute of limitations

ELEVENTH AFFIRMATIVE DEFENSE

The City specifically denies violating any constitutional, statutory, or common law right or privilege of Petitioner.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because the allegations in the Complaint are not ripe for resolution by this Court.

THIRTEENTH AFFIRMATIVE DEFENSE

As a separate defense, Park City denies each and every allegation of the Complaint not expressly admitted herein.

FOURTEENTH AFFIRMATIVE DEFENSE

As a separate defense, Park City is entitled to receive its reasonable attorney fees pursuant to *Utah Code Ann.* §78-27-56(1) because this action is without merit and was not asserted in good faith.

FIFTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred on the ground that the Court lacks subject matter jurisdiction.

SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the provisions of *Utah Code Ann.* §78-27-37, et seq.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because Plaintiffs have suffered no loss of use, physical damage or actual diminution in value of their property.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because there is no case or controversy.

PRAYER FOR RELIEF

WHEREFORE, Park City prays that the Complaint be dismissed with prejudice and that Plaintiff take nothing thereby; that Park City be awarded attorneys' fees and costs as provided by law, and such other further relief as to the court deems proper under the circumstances.

DATED this 21st day of January, 2009.



Polly Samuels McLean
Attorney for Defendant
Park City Municipal Corporation

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 21st day of Jan., 2009, I mailed by first class mail, postage pre-paid, a true and correct copy of Defendant Park City Municipal Corporation's

Answer to:

Joe Tesch
Attorney for Plaintiff
Tesch Law Offices
314 Main Street, Suite 200
Park City, UT 84060

Paul Colton
Attorney for Defendant Park City Fire District
Wrona Law Offices
1816 Prospector Ave, Ste 100
Park City, UT 84060


