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

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

Petitioner/ Plaintiff,

v.

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.

Respondents/ Defendants.

**PETITION FOR REVIEW &
COMPLAINT FOR DECLARATORY
& INJUNCTIVE RELIEF**

Case No.: 000500834

Judge Wubeck

Expedited Review Requested

Petitioner/ Plaintiff ("Plaintiff" hereinafter) the Ontario Court Driveway Association ("Driveway Association" hereinafter) by and through its attorneys, Joseph E. Tesch, Stephanie K. Matsumura and TESCH LAW OFFICES, P.C., pursuant to Utah Code Annotated §§ 10-9a-801, 78B-6-403 and Rule 65A of the Utah Rules of Civil Procedure, respectfully submits this

Memorandum in Support of the Petition for Review of Park City Municipal Corporation's Land Use Decision and Complaint for Declaratory and Injunctive Relief against Respondents/ Defendants ("Defendants" hereinafter) Park City Municipal Corporation ("Park City" hereinafter), Park City Council ("Park City Council" hereinafter), and Park City Fire Service District ("Fire District" hereinafter).

JURISDICTION AND VENUE

1. Jurisdiction is proper pursuant to Utah Code Ann. §§ 10-9a-801, 78A-5-102 and 78B-6-401. Plaintiff is requesting both a Petition for Review of Respondent's final decision regarding the Council's approval of a subdivision under the Land Management Code ("LMC") and is also requesting declaratory and injunctive relief regarding public use of a private driveway as will be specified below.

2. Venue is proper pursuant to Utah Code Ann. §78B-3-307.

PARTIES

3. Plaintiff Driveway Association is a non-profit association incorporated in Utah that was organized to maintain and improve the Ontario Court Driveway (also known as Ontario Court).

4. Respondent Park City is a Utah municipality.

5. Respondent Park City Council is a municipal legislative body.

6. Respondent Fire District a municipal special service district, a quasi-municipal entity.

GENERAL ALLEGATIONS

7. On November 6, 2008, the Park City Council approved the Marsac Avenue Affordable Housing Subdivision (“Marsac Subdivision” hereinafter) located at 100 Marsac Avenue, Park City, Utah.

8. As approved, however, the Marsac Subdivision proposes to utilize the Ontario Court Driveway (“Private Driveway” hereinafter) for an emergency vehicle access to platted Marsac Avenue. *See Planning Commission Staff Report dated July 9, 2008*, attached hereto as Exhibit A.

9. The Private Driveway, however, is a private driveway that has not been dedicated or established for public use. In particular, there is no easement that has been granted to or dedication of an emergency vehicle access way to Park City or the Fire District.

10. The Private Driveway is located in Block 52 Replat, which lot line adjustment was recorded on October 29, 2002. *See Block 52 Replat*, recorded on October 29, 2002 as Entry No. 636341, attached hereto as Exhibit B.

11. The Private Driveway is owned by the lot owners within Block 52 and Block 60 who created the Driveway Association in order to maintain and improve the Private Driveway. *See Declaration of Easements and Restrictive Covenants (“Declaration of Easement” hereinafter), Articles of Incorporation, and Bylaws for Ontario Court Driveway Association*, all recorded simultaneously on October 29, 2002 as Entry No. 636342, attached hereto as Exhibit C.

12. The Block 52 Replat and Declaration of Easements and Restrictive Covenants describe and provide the rights of access and specify the use of the Private Driveway. *See* Exhibit C.

13. The Declaration of Easement and Block 52 Replat, which were approved by Park City, specify that the Private Driveway was established as a thirty foot wide **private** driveway, public trail, and utility easement. *See Declaration of Easement*, attached hereto as Exhibit C.

14. Indeed, the recorded Declaration of Easement states that the Private Driveway was established as a “private driveway” for the “exclusive use” of the lot owners and their guests. *See Declaration of Easement*, attached hereto as Exhibit C.

15. The Private Driveway was subject to “a non-exclusive utility easement on, over, across, under and through [the Private Driveway] for the benefit of the [lot owners/ members of the Driveway Association] which non-exclusive utility easement shall entitle the owner of each to install, construct, maintain, repair and replace from time to time underground utility lines for the benefit of [Lots 3 and 4 of the IVERS’ REPLAT, Block 52-Parcel A, Block 52 Lot 1, Block 52 Lot 2, Block 52 Lot 3].” *See Declaration of Easements* at 2, attached hereto as Exhibit C.

16. The Driveway Association has and continues to maintain the Private Driveway at the Driveway Association’s expense. *See Declaration of Easements*, attached hereto as Exhibit C.

17. The Private Driveway was intended to remain a private driveway. *See Block 52 Replat*, attached hereto as Exhibit B.

18. The Private Driveway was an extension of a private driveway off of existing Ontario Avenue through the Ivers Replat (the neighboring property). *See Planning Commission Meeting Minutes for the "128-134 Ontario Avenue—Plat Amendment to Reconfigure and Improve 3 Lots" dated May 9, 2001 and May 23, 2001*, attached hereto as Exhibits D and E respectively.

19. As a condition to the approval of the Block 52 Replat, the Planning Commission required that a "private driveway easement" be executed in a form acceptable to the City Engineer and City Attorney as well as obtain a conditional use permit to construct the private driveway. *See Conditions of Approval contained in the Planning Commission Meeting Minutes of May 23, 2001* at page 22, attached hereto as Exhibit D.

20. In addition, the Proposed Driveway was to be dedicated as a "public pedestrian trail easement." *See Findings of Fact contained in the Planning Commission Meeting Minutes of May 23, 2001* at page 21, attached hereto as Exhibit D.

21. The Replat of Block 52 was approved on June 21, 2001. *See City Council Meeting Minutes dated June 21, 2001*, attached hereto as Exhibit F.

22. Thereafter, the Park City Council approved, acknowledged, and accepted the notes and descriptions of the Block 52 Replat that was officially recorded on August 22, 2002, including the thirty foot wide Private Driveway. *See Block 52 Replat*, attached hereto as Exhibit B.

23. Specifically, Plat Note 2 states:

The **30' Private Utility & Driveway**, Public Trail, and Non-Exclusive Public Utility Easement shall remain open for public trail access to the existing rail spur that runs South of the existing Ontario Avenue via the **Private Driveway**. (emphasis added).

24. Years after the recording of the Block 52 Replat, the Marsac Subdivision proposed to use the Private Driveway for emergency vehicle access to platted Marsac Avenue, even though the Private Driveway remains private and not for public use. *See Planning Commission Staff Report dated July 9, 2008* at 311, attached hereto as Exhibit A.

25. During the Master Planned Development application phase for the Marsac Subdivision, the Planning Commission inaccurately noted that the Private Driveway was a “private street with an easement for emergency vehicles” when in fact the Private Driveway was designated for the exclusive use of the members of the Driveway Association and their guests.

26. Even though the members of the Driveway Association objected the Marsac Subdivision’s use of the Private Driveway as an access for emergency vehicles or fire services on several occasions, on November 6, 2008, the Park City Council approved the Marsac Subdivision subject to the Findings of Facts, Conclusions of Law, and Conditions of Approval. *See November 6, 2008 City Council Staff Report*, attached hereto as Exhibit G; *see Minutes from Park City Council Meeting on November 6, 2008*, attached hereto as Exhibit H; *see also Minutes from City Council Meeting of October 2, 2008*, attached hereto as Exhibit I; and the *Minutes from the Planning Commission Meeting of October 22, 2008*, attached hereto as Exhibit J; *see also, Letter to Park City Council dated October 2, 2008*, attached hereto as Exhibit K.

27. The Marsac Subdivision was approved based upon the Staff Report that characterized the Private Driveway as a “private street,” and upon the Staff Report’s statement that the “[c]ity asserts right to provide emergency access to all properties within Park City.” *See City Council Staff Report* at page 136, attached hereto as Exhibit H.

28. However, the Private Driveway remains private driveway for the exclusive use of lot owners and their guests. *See Declaration of Easements*, attached hereto as Exhibit C.

29. Even Park City Attorney Mark Harrington emphasized that, “the intent of the [Private Driveway] easement is to provide improved services to Ontario Court not 100 Marsac Avenue Project which has been misunderstood.” *See City Council Meeting Minutes of October 2, 2008*, attached hereto as Exhibit H.

30. Nevertheless on November 6, 2008, the Park City Council approved the Marsac Subdivision by way of enacting Ordinance Number 08-46 without obtaining access rights from the Driveway Association to utilize the Private Driveway as an “emergency vehicle” access or otherwise. *See Ordinance No. 08-46*, attached hereto as Exhibit L.

31. Park City has adopted the 2006 Edition of the International Fire Code as the Fire Code of Park City. *See Section 11-9-1 of the Park City Code*.

32. Pursuant to Section 503.1.2 of the International Fire Code, a fire code official may require more than one fire apparatus access road. *See Section 503.1.2 of the International Fire Code*, attached hereto as Exhibit M.

33. In addition, under the International Fire Code, dead end access roads must meet certain turnaround requirements. *See Appendix D of the International Fire Code*, attached hereto as Exhibit N. Specifically, dead end access roads between 151-500 feet in length require either a hammerhead, “Y” or cu-de-sac turnaround. *See id.*

34. The proposed access road to the Marsac Development is approximately 400 feet long and thus is required to meet the turnaround specifications. *See City Council Staff Report dated November 6, 2008* at page 132, attached hereto as Exhibit G.

35. Under the restrictions of the International Fire Code (and the Park City Fire Code), the Marsac Development is required to have more than one “emergency vehicle access” thus necessitating the use of the Private Driveway for either secondary access or turnaround purposes.

36. Under the Park City LMC, subdivisions must meet all Fire District requirements. *See Section 15-7.3-1 of the Park City Code.*

37. The application for the Marsac Subdivision was completed on August 28, 2008 and thirteen days later on September 10, 2008 the Planning Commission held a public hearing on the proposed subdivision and subsequently approved the subdivision. *See City Council Staff Report dated November 6, 2008*, attached hereto as Exhibit H.

38. The Park City LMC requires a fourteen (14) day notice period prior to a Planning Commission hearing on a proposed subdivision. *See Park City Land Management Code §§ 15-1-10, 15-1-12, and 15-1-21.*

39. Therefore, the notice timeline was in violation of the LMC and the Planning Commission's decision was void and the Park City Council's approval of the Marsac Subdivision was void.

FIRST CLAIM FOR RELIEF
(Preliminary and Permanent Injunctive Relief against Defendants)

40. Plaintiff re-alleges and incorporates by reference each of the allegations of Paragraphs 1 through 39 as set forth above.

41. To prevent violation of existing property rights, this Court should issue preliminary and permanent injunctive relief ordering that the Defendants are enjoined from approving the Marsac Subdivision on the basis that the Marsac Subdivision may utilize the Private Driveway in order meet the emergency vehicle and Fire District access requirements of the LMC.

42. Plaintiff will suffer irreparable harm unless the injunction issues resulting in a violation of existing private property rights established in the Declaration of Easements and Block 52 Replat.

43. The threatened injury to Plaintiff outweighs whatever damage the proposed injunction may cause Defendants.

44. Based upon all of the facts and causes of action set forth herein, Plaintiff is entitled to a preliminary and permanent injunction prohibiting the Park City Council from approving the Marsac Subdivision based upon the use of the Private Driveway as emergency vehicle access in order to meet the emergency vehicle and Fire District access requirements.

45. The injunction, if issued, will not be adverse to the public interest.

46. There is a substantial likelihood that the Plaintiff will prevail on the merits of its underlying claim and this case further presents serious issues on the merits which are the subject of this Petition/ Complaint.

SECOND CLAIM FOR RELIEF
(Declaratory Relief against Defendants—Use of Private Driveway in Violation of the Declaration of Easements and Block 52 Replat)

47. Plaintiff re-alleges and incorporates by reference each of the allegations of Paragraphs 1 through 46 as set forth above.

48. This is a claim for declaratory relief brought under the provision of Utah Code Ann. § 78B-6-401 et seq.

49. An actual dispute exists between Plaintiff and Defendants.

50. There is no adequate remedy to resolve this dispute other than a declaration by this Court finding that the Private Driveway is a private driveway for the exclusive use of the members of the Driveway Association and the Park City Council may not approve the Marsac Subdivision based upon its use of the Private Driveway as emergency vehicle access, including Fire District access.

51. The Court's determination of the preceding issues will serve a useful purpose in that it will assist in resolving this controversy.

THIRD CLAIM FOR RELIEF
(Declaratory Relief Against Defendants—Improper Notice of Planning Commission Meeting)

52. Plaintiff re-alleges and incorporates by reference each of the allegations of Paragraphs 1 through 51 as set forth above.

53. On August 28, 2008 the Marsac Subdivision completed its subdivision application.

54. On September 10, 2008, thirteen days later, the Planning Commission held a public hearing on the proposed subdivision and approved the subdivision.

55. The Park City LMC requires a fourteen (14) day notice period prior to the Planning Commission hearing on a proposed subdivision.

56. Therefore, the notice timeline for the Planning Commission hearing on the Marsac Subdivision, and the Planning Commission's approval of the decision, is void for improper notice.

57. Consequently, the Park City Council's approval of the Marsac Subdivision is also void.

58. The Court's determination of the preceding issue will serve as a useful purpose in that it will assist in resolving this controversy.

FOURTH CLAIM FOR RELIEF
(Unconstitutional Takings—Inverse Condemnation)

59. Plaintiff re-alleges and incorporates by reference each of the allegations of Paragraphs 1 through 58 as set forth above.

60. The Private Driveway was intended and designed to be a private driveway for the exclusive use of the members of the Driveway Association and their guests, and the Park City

Council may not approve the Marsac Subdivision based upon its use of the Private Driveway as emergency vehicle access, including Fire District access.

61. The Private Driveway has a non-exclusive utility easement for the members of the Driveway Association and there is a public pedestrian trail easement over the Private Driveway; however, there is no other easement to utilize the Private Driveway for emergency vehicle access, including Fire District access.

62. Neither the Marsac Development nor the Fire District nor Park City has obtained access rights from the Driveway Association to utilize the Private Driveway as emergency vehicle access or otherwise.

63. The Marsac Development, Park City, and/ or the Fire District are without authority to use the Private Driveway as emergency vehicle access or any other type of access until such rights have been granted.

64. The Council's finding and decision that the Marsac Subdivision may use the Private Driveway for emergency vehicle access constitutes an unconstitutional taking as neither the Marsac Subdivision, nor Park City, nor the Fire District have any right to utilize the Private Driveway for emergency vehicle access, including Fire District access.

65. The use of the Private Driveway as an emergency vehicle access will reduce the value of the property within Block 52 Replat.

66. In addition, under Utah law, the Council's decision to approve the Marsac Subdivision on the basis that the Private Driveway may be used for emergency vehicle and fire service access meets the criteria for an inverse condemnation claim.

67. Consequently, Park City, the Park City Council, and the Fire District should be required to compensate the members of the Driveway Association for the value of the claimed easement in the amount of money that the Marsac Subdivision or Park City or Fire District would have to spend to obtain alternative access necessary to meet the emergency vehicle and Fire District access requirements.

FIFTH CLAIM FOR RELIEF
(Review of Council's Approval of the Marsac Subdivision)

68. Plaintiff re-alleges and incorporates by reference each of the allegations of Paragraphs 1 through 67 as set forth above.

69. Pursuant to Section 10-9a-801 of the Utah Code Annotated, Plaintiff is adversely affected by the Council's decision to approve the Marsac Subdivision that utilizes the Private Driveway as emergency vehicle access when no access rights have been granted to the Marsac Subdivision.

70. Plaintiff is entitled to review of the Council's decision approving the Marsac Development since they were adversely affected by the Council's decision.

71. The Marsac Subdivision, Park City, and the Fire District have not been granted any right to utilize the Private Driveway as an emergency vehicle access or otherwise.

72. Proper emergency vehicle access is required for the Marsac Subdivision pursuant to Sections 15-1-10 and 15-7.3-1 of the Park City Land Management Code and Section 11-9-1 of the Park City Code.

73. The proposed access road to the Marsac Subdivision is approximately 400 feet long and therefore is required to meet the turnaround requirements of the International Fire Code.

74. In addition, under the International Fire Code, fire officials may require subdivisions to have additional fire apparatus access roads.

75. The Marsac Subdivision was approved on November 6, 2008 on the basis that the Marsac Subdivision could utilize the Private Driveway for emergency vehicle and Fire District access and therefore met the emergency vehicle and Fire District access requirements under the LMC.

76. The Park City Council's approval of the Marsac Subdivision, and its decision that the Marsac Subdivision met the emergency vehicle and Fire District access requirements under the LMC, is arbitrary, capricious, and illegal since it is based upon the Council's conclusion that Marsac Subdivision could use the Private Driveway for emergency vehicle and fire service access.

77. As a result, the Marsac Subdivision fails to meet the required criteria for approval and the Council's approval is void.

78. Accordingly, the Defendants and the Marsac Subdivision have not been granted any right to utilize the Private Driveway, the Park City Council's approval of the Marsac Subdivision is arbitrary, capricious, and contrary to Utah law, and therefore void.

SIXTH CLAIM FOR RELIEF
(Private Attorney General)

79. Plaintiff re-alleges and incorporates by reference each of the allegations of Paragraphs 1 through 78 as set forth above.

80. Plaintiff has initiated this action against Defendants for violation of and willful disregard of the Park City LMC, existing property rights, and Utah law.

81. On numerous occasions Plaintiff has objected to the use of the Private Driveway as emergency vehicle and Fire District access for the Marsac Subdivision.

82. Despite Plaintiff's objections, Defendants have willfully disregarded the applicable ordinances and existing property rights.

83. Plaintiff has no pecuniary interest in the litigation since they only seek to maintain its existing property rights.

84. The injunctive and declaratory relief sought herein is premised on the enforcement of existing property rights, Utah law, and the Park City LMC.

85. This action constitutes an extraordinary case where Plaintiff is required to bring this action in order to force Park City, the Park City Council, and the Fire District to abide by its own rules and laws.

86. The Park City Council's approval of the Marsac Subdivision based upon the determination that the Marsac Subdivision may use the Private Driveway, in order to meet emergency vehicle and Fire District access requirements, when no easement or right to utilize the Private Driveway has been granted, constitutes a willful disregard of Utah law.

87. Plaintiff seeks enforcement of the Park City LMC and property rights under Utah law.

88. Accordingly, the Court should grant attorney's fees under the private attorney general doctrine.

PRAYER FOR RELIEF

Wherefore the Driveway Association prays for judgment against Park City, Park City Council, and the Fire District on each of the foregoing causes of action and for all available additional relief as follows:

FIRST CLAIM FOR RELIEF (Preliminary and Permanent Injunction against

Defendants): For preliminary and permanent injunction in favor of Plaintiff ordering and declaring that:

- a. Defendants, its agents, and servants and all persons acting under, in concert with, or for them, are enjoined from utilizing the Private Driveway as the basis of meeting the emergency vehicle and Fire District access requirements of the LMC for all properties in Park City (except Block 52 Replat), including but not limited

to the Marsac Subdivision and prohibited from approving the Marsac Subdivision based upon the use of the Private Driveway.

- b. The Driveway Association will suffer irreparable harm unless the injunction issues resulting in a violation of the Driveway Association's existing property rights and exclusive right to use the Private Driveway.
- c. The threatened injury to Plaintiff outweighs whatever damage the proposed injunction may cause Defendants.
- d. The injunction, if issued, will not be adverse to the public interest.
- e. There is a substantial likelihood that Plaintiff will prevail on the merits of their underlying claim.
- f. Based upon all of the facts and causes of action set forth herein, Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendants from utilizing the Private Driveway in order to meet the emergency vehicle and Fire District access requirements of the LMC, and prohibiting Park City and the Park City Council from approving the Marsac Subdivision based upon the use of the Private Driveway as an emergency vehicle access, including Fire District access.
- g. For an award of reasonable costs and attorney's fees relating to this action, including recovery of attorney's fees under the private attorney general doctrine, and;
- h. Other relief as the Court deems equitable and just.

SECOND CLAIM FOR RELIEF (Declaratory Relief against Defendants): For judgment in favor of Plaintiff declaring and ordering that:

- a. The Private Driveway is a private driveway and is private property for the exclusive use of the members of the Driveway Association and their guests.
- b. There is no easement to utilize the Private Driveway for emergency vehicle access, including Fire District access.
- c. Park City and the Park City Council are prohibited from approving the Marsac Subdivision based upon its proposed use of the Private Driveway as an emergency vehicle access, including Fire District access.
- d. For an award of reasonable costs and attorney's fees relating to this action, including recovery of attorney's fees under the private attorney general doctrine, and
- e. For such other and further relief as the Court deems just and proper.

THIRD CLAIM FOR RELIEF (Declaratory Relief against Defendants—Improper Notice of Planning Commission Meeting): For declaratory relief in favor of Plaintiff declaring and ordering that:

- a. The application for the Marsac Subdivision was completed on August 28, 2008; the Planning Commission held a public hearing on the proposed subdivision and approved the subdivision thirteen (13) days later.
- b. The Park City LMC requires a fourteen (14) day notice period prior to the Planning Commission's hearing on a proposed subdivision.

- c. The notice timeline for the Marsac Subdivision hearing before the Planning Commission and the Planning Commission's approval of the decision is void for improper notice.
- d. Accordingly, the Park City Council's approval of the Marsac Subdivision is also void.
- e. For an award of reasonable costs and attorney's fees relating to this action, including recovery of attorney's fees under the private attorney general doctrine, and
- f. For such other and further relief as the Court deems just and proper.

FOURTH CLAIM FOR RELIEF (Unconstitutional Takings—Inverse Condemnation):

For judgment in favor of Plaintiff declaring and ordering that:

- a. Defendants' decision that the Private Driveway may be utilized as emergency vehicle access, including Fire District access, constitutes an unconstitutional takings by inverse condemnation since neither Park City nor the Fire District has any right to utilize the Private Driveway for emergency vehicle access, including Fire District access.
- b. Under Utah law, the Council's approval of the Marsac Subdivision on the basis that the Private Driveway may be used as emergency vehicle access, including Fire District access, meets the criteria for an inverse condemnation claim.
- c. Park City, the Park City Council, and the Fire District are required to compensate the members of the Driveway Association for the value of the claimed easement in the amount of money that the Marsac Subdivision or Park City or the Fire District would

have to spend to obtain alternative access necessary to meet the emergency vehicle and Fire District access requirements.

- d. For an award of reasonable costs and attorney's fees relating to this action, including recovery of attorney's fees under the private attorney general doctrine, and;
- e. Other relief as the Court deems equitable and just.

FIFTH CLAIM FOR RELIEF (Review of the Council's Approval of the Marsac

Development): For judgment in favor of Plaintiff declaring and ordering that:

- a. Plaintiff is adversely affected by the Council's decision to approve the Marsac Subdivision that utilizes the Private Driveway as emergency vehicle access, including Fire District access.
- b. The Marsac Subdivision, Park City, and the Fire District have not been granted any right to utilize the Private Driveway as emergency vehicle access or otherwise.
- c. The proposed access to the Marsac Subdivision is approximately 400 feet long and is therefore required, under Utah law, to meet the Fire District requirements, including turnaround requirements and additional accesses that may be required.
- d. Emergency vehicle access is required for the Marsac Subdivision pursuant to Sections 15-1-10 and 15-7.3-1 of the Park City Land Management Code and Section 11-9-1 of the Park City Code.
- e. The Marsac Subdivision, Park City, or the Fire District has not been granted any right to utilize the Private Driveway for emergency vehicle access or otherwise and therefore,

approval of the Marsac Subdivision is arbitrary, capricious, and illegal and contrary to Utah law.

- f. The Park City Council's approval of the Marsac Subdivision is void.
- g. For an award of reasonable costs and attorney's fees relating to this action, including recovery of attorney's fees under the private attorney general doctrine, and;
- h. Other relief as the Court deems equitable and just.

SIXTH CLAIM FOR RELIEF (Private Attorney General): For equitable relief in favor of the Plaintiff ordering and declaring that:

- a. Plaintiff is entitled to attorney's fees under the private attorney general doctrine.
- b. Plaintiff initiated this action against Defendants for violation of and willful disregard of existing law and private property rights, including but not limited to the Park City LMC.
- c. Plaintiff has no pecuniary interest in the litigation since they only seek to maintain its existing property rights.
- d. Plaintiff was required to bring this action in order to force Park City, the Park City Council, and the Fire District to abide by its own rules and Utah law.
- e. The Park City Council's approval of the Marsac Subdivision premised upon the decision that the Marsac Subdivision may use the Private Driveway to meet emergency vehicle and Fire District access requirements when no rights to utilize the Private Driveway have been granted constitutes a willful disregard of Utah law.

- f. Consequently, Plaintiff are awarded attorney's fees under the private attorney general doctrine; and
- g. Other relief as the Court deems equitable and just.

AS TO EACH CLAIM FOR RELIEF, Plaintiff pray for reasonable attorneys' fees, costs and prejudgment interest as allowed by law; and such other and further relief as this Court determines is required to do equity and justice under the circumstances.

RESPECTFULLY SUBMITTED this 9th day of December, 2008.

TESCH LAW OFFICES, P.C.



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