

RESOLUTION NUMBER 05-044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AND MUTUAL RELEASE AGREEMENT RESOLVING A PENDING JUDICIAL REVIEW ACTION AND A PENDING LAWSUIT FILED AGAINST THE CITY BY RICHARD AND SUNNI GADSBY.

WHEREAS, Richard and Leslie (Sunni) Gadsby, husband and wife (collectively, "Gadsbys"), initiated a judicial review proceeding relative to a City zoning decision on or about August 24, 2004 ("Judicial Review"), by filing a Petition for Judicial Review in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine (Case No. CV-2004-815), naming the City as Respondent; and

WHEREAS, Gadsbys initiated a lawsuit on or about October 28, 2004 ("Claim"), by filing a Complaint for Declaratory Relief in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine (Case No. CV-04-1061), naming City as Defendant; and


WHEREAS, Gadsbys offered to enter a Settlement Agreement and Mutual Release resolving both the Judicial Review and the Claim; and

WHEREAS, the City finds that resolving the Judicial Review and the Claim by entering such Settlement Agreement and Mutual Release shall further the best interests of the City and that such settlement and release is authorized by Idaho law.


NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, that the City Council hereby authorizes the Mayor to execute a Settlement And Mutual Release Agreement resolving a pending judicial review action and a pending lawsuit filed against the City by Richard and Sunni Gadsby.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 16th day of May, 2005.

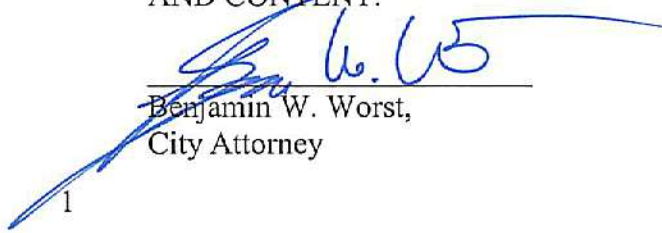
CITY OF KETCHUM,
An Idaho Municipal Corporation


EDWARD SIMON, Mayor

ATTEST:


Sandra E. Cady, CMC
Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst,
City Attorney

THE CITY OF KETCHIKAN
ALASKA
OFFICE OF THE CITY CLERK
1000 1/2 STREET
KETCHIKAN, ALASKA 99901

NOTICE OF PUBLIC HEARING
The City of Ketchikan is hereby giving notice that it will hold a public hearing on the proposed amendments to the City Charter on the 15th day of May, 1994, at 7:00 P.M. in the City Council Chamber, 1000 1/2 Street, Ketchikan, Alaska.

The amendments are as follows:
1. To amend Article I, Section 1, to read: "The City of Ketchikan is a municipal corporation created by the State of Alaska, and its powers shall be limited to those granted by the State of Alaska."

2. To amend Article II, Section 1, to read: "The City of Ketchikan shall have the right to acquire, hold, manage, lease, convey, and dispose of real and personal property, and to incur and pay debts and obligations, and to sue and be sued."

3. To amend Article III, Section 1, to read: "The City of Ketchikan shall have the right to levy and collect taxes, and to borrow money, and to issue bonds, and to incur and pay debts and obligations, and to sue and be sued."

4. To amend Article IV, Section 1, to read: "The City of Ketchikan shall have the right to enter into contracts, and to incur and pay debts and obligations, and to sue and be sued."

5. To amend Article V, Section 1, to read: "The City of Ketchikan shall have the right to acquire, hold, manage, lease, convey, and dispose of real and personal property, and to incur and pay debts and obligations, and to sue and be sued."

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CITY CLERK



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CITY CLERK

COPY

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE is made and entered into this 4th day of May, 2005, by and between **RICHARD GADSBY and LESLIE (SUNNI) GADSBY**, husband and wife (hereinafter collectively referred to as "GADSBYS"), and **CITY OF KETCHUM, IDAHO**, a municipal corporation (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, Gadsbys initiated a judicial review proceeding relative to a City zoning decision on or about August 24, 2004 ("Judicial Review"), by filing a Petition for Judicial Review in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine (Case No. CV-2004-815), naming City as Respondent; and

WHEREAS, Gadsbys initiated a lawsuit on or about October 28, 2004 ("Claim"), by filing a Complaint for Declaratory Relief in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine (Case No. CV-04-1061), naming City as Defendant; and

WHEREAS, the parties desire to resolve the Judicial Review and Claim on the terms and conditions hereinafter set forth; and

WHEREAS, each of the parties further desires to give a complete release to the other party of any dispute or difference which the parties may have with the other in any way arising out of, or in connection with the Judicial Review and Claim;

NOW, THEREFORE, in consideration of their mutual promises and their forbearance from further pursuing the Judicial Review and/or Claim, or otherwise seeking to enforce any respective claims, the parties hereto agree, for themselves their successors and assigns, as follows:

1. On or before October 1, 2005, Gadsbys agree to implement and complete the patio modification plan depicted on Exhibit "A" attached hereto and incorporated herein by this reference, for lowering portions of the deck on the Gadsby property which is described in the Judicial Review and Claim. The letter from Woody Bryant dated April 8, 2005, and the attached photograph are part of Exhibit "A". Gadsbys also agree to implement and complete the landscaping plan depicted on Exhibit "A". The City acknowledges and agrees that both of said plans are acceptable and agreed to by the City. The vegetation recommendations and "tiered" approach to vegetation placement as described in the letter from the City Arborist to the City Attorney dated March 24, 2005, will be generally incorporated into the Gadsby landscaping plan.

2. With the execution of this release, the Gadsbys and City agree that the Judicial Review and Claim shall be dismissed with prejudice by Stipulation, and each party shall bear their respective costs and attorneys' fees associated therewith. Additionally, the City agrees to withdraw and dismiss its enforcement letter against the Gadsbys dated October 10, 2003.

3. The parties herein release and fully, absolutely and forever discharge the other, individually and collectively, their heirs, executors, agents, employees, representatives, successors, insurers, indemnitors and assigns, and any person or persons acting for, by or through them and any other person, corporation or entity liable or who might be claimed to be liable, of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, bonds, guarantees, warranties, costs, expenses, losses, liens, actions and causes of action of each and every kind, nature and description, whether now known or unknown, suspected or unsuspected, which any of them might have, own or hold, or at any time heretofore ever had, owned or held, or could hereafter have, own or hold, based upon, related to or by reason of any contract (express, implied in fact or implied in defect (latent or patent), lien (mechanics or otherwise), stock notice, order, judgment, liability, matter, cause, fact, thing, act or omission (negligent or otherwise), whatever occurring or existing now or at any time prior to the effective date hereof, related in any way to the Judicial Review and/or Claim in any manner whatsoever.

4. It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that it is not to be construed as an admission of liability on the part of either party hereto, and that the parties deny liability therefor and intend merely to buy their peace.

5. It is the intention of the parties that in executing this Agreement it shall be effective as a full and final accord and satisfaction and release of each and every released matter.

6. Each party hereby represents and warrants to the other that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm, corporation, trust or association whomsoever not a party herein, any released matter, or any part or portions thereof. Each party shall indemnify and hold harmless the other from and against any claim, demand, debt, liability, account, reckoning, obligation, bond, guaranty, warranty, cost, expense, loss, lien, action or cause of action, including, but not limited to, the payment of attorney's fees and costs actually incurred in the lawsuit, whether or not litigation be commenced, or any fees and costs incurred, based on, in connection with or arising out of any such transfer or assignment, or purported or claimed assignment or transfer.

7. The execution of this Agreement and the releases contained herein effect the settlement of all claims among the parties. Nothing contained herein shall be construed as an admission of any type of liability whatsoever by any party hereto or any other person.

8. Each party shall pay their respective attorney's fees and costs incurred in this matter with respect to the Claim and the settlement thereof.

9. Each of the parties hereto agrees to promptly execute such other and further documents as may be reasonably required by the other to carry out the purpose and intent of this Agreement.

10. This Agreement constitutes the entire agreement and understanding concerning the subject matter between the parties and supercedes and replaces all prior discussions. The parties acknowledge that no party, nor any agent or attorney of any party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, concerning or relating to the subject matter hereof, to induce any party to execute this Agreement, and acknowledges that no

party shall execute this instrument in reliance on any such promise, representation or warranty not contained herein. This instrument may be amended only by an agreement in writing signed by the parties to be charged therewith, and no provision of this Agreement may be waived or modified, except by an instrument in writing signed by all parties.

11. Each party to this Agreement acknowledges that it has been represented by, and consulted with, independent legal counsel of its own choice throughout all negotiations that preceded execution of this Agreement, and that it has executed this Agreement after consulting with such legal counsel. Each party acknowledges that it is not relying on any representation, statement, or warranty of any other party, or their counsel or representative, as to the effect or intent of this Agreement or any provision thereof.

12. The mutual general releases contained herein shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the parties hereto.

13. Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees and costs, as may be determined by any court of competent jurisdiction wherein such action is brought, including attorney's fees and costs on appeal.

14. This Release Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together will constitute one and the same instrument. Facsimile signatures will be deemed an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be executed on the day and year first above written.

"GADSBYS"


RICHARD GADSBY


LESLIE (SUNNI) GADSBY

"CITY"
CITY OF KETCHUM, IDAHO

By: 

Edward Simon
Its: MAYOR

STATE OF IDAHO)

ss.

County of Blaine)

On this 14th day of ^{May} ~~April~~, 2005, before me, a Notary Public for said County and State, personally appeared EDWARD SIMON, known or identified to me, to be the Mayor of the City of Ketchum, Idaho, that executed the said instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Jane Jacobus
NOTARY PUBLIC FOR IDAHO
Residing at Bellevue Idaho
My commission expires 11-12-05

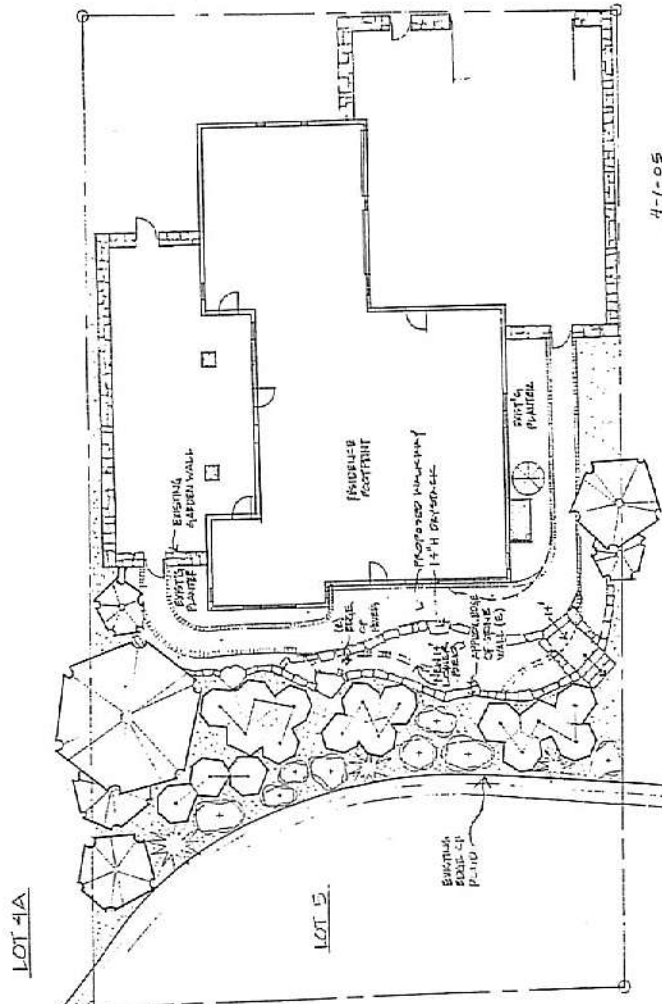
Exhib. b.d. A 2 of 3

BACKWAY BLVD.

4-1-05
 EXHIBIT A
 PAGE 2 OF 3



1 LANDSCAPE PLAN 1/8" = 1'-0"



- KEY TO SYMBOLS
- EXISTING EVERGREEN
 - EXISTING DECIDUOUS
 - NATIVE SHRUB
 - NATIVE GRASS
 - QUANTITY CONSTANT, VARIABLE, OR PLANTING AREA
 - NATURAL AREAS

WRIGHT, BRYANT & JOHNSON INC AIA

4-08-2005

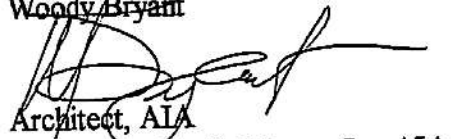
Dick and Sunni Gadsby

Dear Dick and Sunni:

The patio modification plans for your residence are attached to this letter. The plan document is our best approximation of the existing location of the stone wall based upon our measurements, and was not prepared by a surveyor. Because the wall is made of natural boulders which necessarily vary in size and shape, I believe that the stone masons will be able to work within a tolerance of plus or minus 3 inches for height, since they will have to select which stones to remove and/or replace.

Yours truly,

Woody Bryant



Architect, AIA

Wright, Bryant & Johnson Inc AIA

411 E. 5th St. Second Floor

Ketchum, Id 83340

Fax: 208-726-8413

Phone: 208-726-4434

woody@wbjarchitects.com

EXHIBIT A

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