

Council Meeting of April 27, 2016

Agenda Item No. 8e

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Discussion and possible action regarding drive approach located at 8137 Pheasant Run Circle

**BACK GROUND:**

Claim from homeowner to city on January 20, 2016 in part (for complete text, please see attached) stated:

Within a day of them [the street Pheasant Run Circle] being finished or curb/pre-sidewalk between the road and the driveway began to sink. Richard Smolik came on 11/3/15 and looked at the issue. Richard came back mid-November and noticed it had sunk more. In December he thought it could be fixed. We were then notified that we needed to contact Risk management. I spoke to Jared Smith on 1/20/16 and was advised to complete this form.

Response from the City to Lynette Mickelsen in part (for complete text, please see attached) states:

Public Works Department neither placed any equipment on, nor drove onto your driveway during the course of repaving the roadway. The city believes that the underlying cause of the damage to your driveway was inadequate compaction to the soil below the driveway.

I, Dirk Burton Property is located at 8137 Pheasant Run Circle., meet with Dan and looked at this driveway approach on Saturday February 20<sup>th</sup>. Complaint about the driveway approach against the gutter has settled due to the repaving work just months prior. The owners, Dan & Lynette Mickelsen, reported this issue to the city and received the following letter in return. On February 22<sup>nd</sup>, I sent an email to Mark Palish and Justin Stoker to visit the site with me and make a determination for repair.

Justin responded with:

I've looked at the property and it appears that the concrete damage is located in the drive approach of the resident's driveway.

In the City Code 8-5-2B it says "Notwithstanding the provisions of this subsection, the adjacent property owner will be responsible for all materials and labor costs for the repair or replacement of defective concrete within the property owner's driveway (whether such be sidewalk, curb, gutter or drive approach)."

To do our best to follow city code, we currently don't service driveways. Please let me know if the direction is any different.

Justin Stoker

The owner requested the city make repairs by stating the concrete separate was caused by the repaving which recently was performed. The city denied his claim. I looked at this and did not see evidence of the repaving causing this problem. I suppose it is possible the dirt was not sufficiently compacted and vibrations from the repaving caused more settling. However, as an electrician, I cannot confirm. It is obviously a hazard that exists as this is about a 4-inch drop. (See photo.) The city has dropped off a cone to provide protection to unsuspecting persons.

Regardless of the cause, this driveway approach is on city property and needs to be repaired. I think it unwise to wait until someone gets hurt.

Dirk Burton

3-19-2016 I received the following email from Lynette:

Richard from West Jordan street department came over in November and looked at the area we've been talking about. We were out of town, he said he would come back and meet with me when we got back in town. Richard came back and met with me and noticed that the cement had settled even more. He mentioned that the "vibration" of the road re-surfacing equipment "our street had been re-surfacing" could have caused the ground to settle. Within a few days Richard called to tell me he was planning on coming over the next day, weather permitting, and raise up the cement. He called back a short time later and cancelled. I don't know what happened but now the procedure to raise the cement was cancelled. Richard saw that there was a problem and scheduled the area to be fixed. I believe with his experience he was trying to do the right thing. After contacting you and you coming over, Timothy Peters and Richard came over to look at the area. I believe Mr. Peters said the same thing about the re-surfacing equipment could have caused the ground to settle. I have lived in West Jordan for almost 12 years and I find this experience very interesting. I would like to thank Richard for all his help and time trying to do the right things right. You ask me what the city is to do about this? I think the city should follow Richards example.

Lynette Mickelsen

In an email to me, Mark said:

I met with Justin, Tim and Richard and have the following to report:

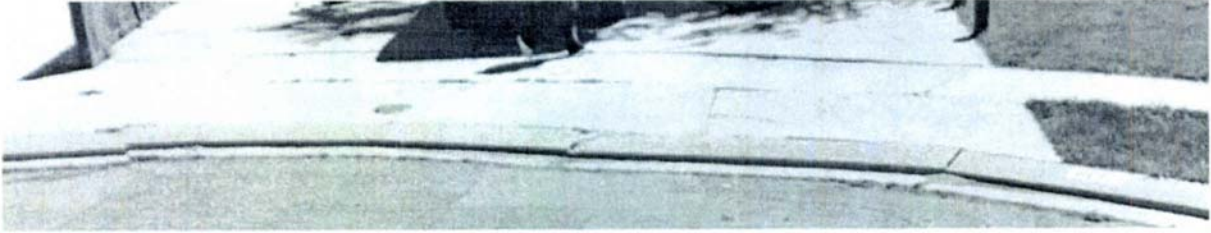
- Justin had obtained a aerial photograph of this property that indicated the damage pre-dated the paving we recently did.
- When Tim and Richard were on site, they had looked at the cracked concrete and it did not appear to be a recently damaged piece of concrete. It looked weathered and contained old looking debris.
- The front yard of the property has a general settlement problem. The front stairs to the house are settled, etc.
- Staff indicates they did not say the things the homeowner claim they said regarding 'possible damage from City paving operations', nor anything close.

From my perspective, this is not damage caused by City operations but has instead occurred prior to our paving of the street. Please let me know if there is anything else you want us to do in this regard.

Mark

Morning Dirk, last Tuesday Jared Smith and David Brickey came over and looked at my drive way area

3-29-16



Google Image prior to road being repaved

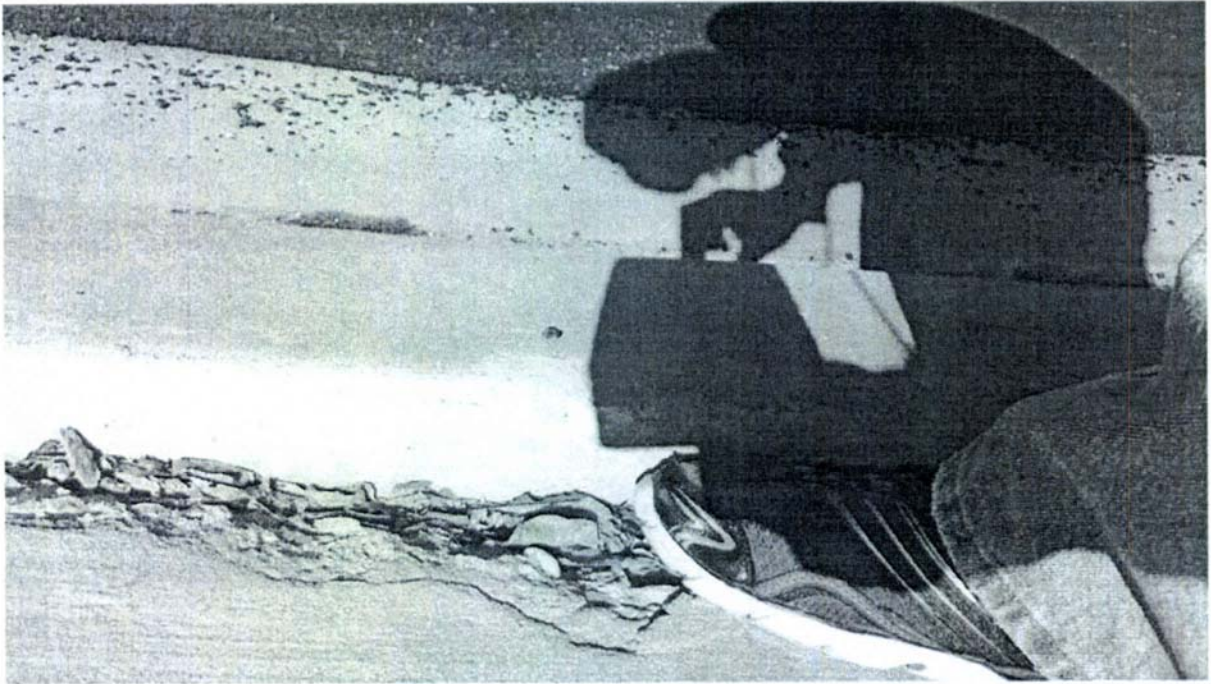


Photo by home owner

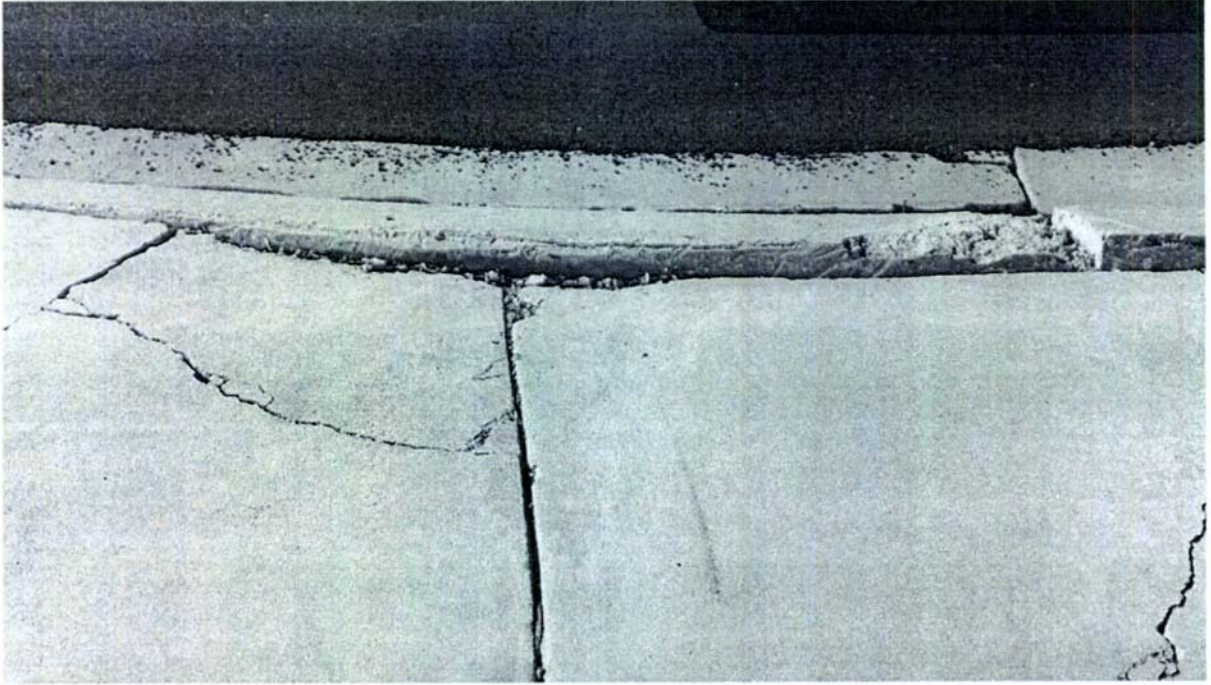



Photo by Dirk Burton

 <p><b>WEST JORDAN</b> UTAH</p>	<p style="text-align: center;"><b>RECEIVED BY CITY CLERKS OFFICE</b></p> <p style="text-align: center;"><b>Notice of Claim Form</b> JAN 20 2016</p> <p style="text-align: center;">City of West Jordan, Utah Telephone: 801-569-5140</p> <p style="text-align: center;">440 10/11 By <i>CM</i></p> <p style="text-align: center;"><b>PLEASE COMPLETE ONE NOTICE FOR EACH CLAIMANT</b> (Use additional sheets if needed)</p>
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<b>Claimant Information (Last Name)</b>		<b>(First Name)</b>	<b>Date of Birth (MM/DD/YYYY)</b>
Mickelsen		Dan and Lynnette	
<b>Best Phone to Reach</b>	<b>Other phone</b>		<b>Other phone</b>
Dan 801.	Lynnette- 801. ....		
<b>Address, City, State, Zip</b>			
8137 South Pheasant Run Circle, West Jordan, Utah 84088			
<b>Location of Incident</b>			
8137 South Pheasant Run Circle, West Jordan, Utah 84088			
<b>Date of Incident</b>		<b>Time of Incident</b>	
October/November		NA	
<b>Vehicle Information, if applicable (year, make, model)</b>		<b>Registered Owner (if other then Claimant)</b>	
NA		NA	
<b>City Employee Involved (if known)</b>	<b>Police Case # (if known)</b>	<b>Law Enforcement Agency</b>	
NA	NA	NA	
Is this loss covered by insurance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If yes, company or Agent name _____ Phone# _____			
<b>Brief Statement of facts:</b>			
<p>Our neighborhood roads were resurfaced and within a day of them being finished our curb/pre-sidewalk between the road and the driveway began to sink. To date it has sunk 5-6 plus inches. Richard Smolik came on 11/3/2015 and looked at the issue. We were out of town and he called while he was at our home. We agreed to have him come back when we returned. Richard came back out mid-November and noticed it had sunk more. The home is not a new construction so we feel the land had settled properly. He said he would see what could be done. We contacted him in December and he thought that it could be fixed. We were then notified that we needed to contact Risk management. I spoke to Jared Smith on 1/20/16 and was advised to complete this form and they would look into it.</p>			

**Important!!!** This information is provided as a courtesy to the residents of the City of West Jordan and is not intended to be a substitute for legal advice. You are responsible for compliance with the current requirements of the Utah Governmental Immunity Act, if applicable. The City of West Jordan makes no warranty as to the correctness or completeness of this information. This information is not to be construed as a waiver of any provision of the Utah Governmental Immunity Act § 63G-7-401

I did request a caution cone to alleviate any driving on it, we had left our recycle can on it to help. A cone was delivered on the afternoon of 1/20/16. Thank you for your assistance and consideration in this matter. Dan and Lynnette Mickelsen

**Nature of the claim asserted:**

NA

**Injuries Incurred:**

NA

**Witnesses to the incident**

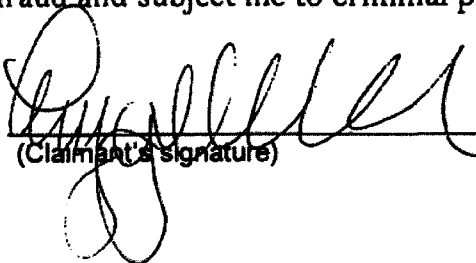
Name	Address	Telephone

**VERIFICATION**

**READ BEFORE SIGNING:**

I certify, under penalty of perjury, that the foregoing statements are true to the best of my knowledge and belief. I understand that my filing of a materially false statement may constitute fraud and subject me to criminal prosecution.

1-20-16  
(Date Signed)

  
(Claimant's signature)

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Mark Palesh  
City Manager  
Jared Smith  
Risk Manager



Telephone: (801) 569-5140  
Facsimile: (801) 569-5149

**Office of the City Manager**

Second Floor, City Hall  
8000 South Redwood Road  
West Jordan, Utah 84088

January 26, 2016

Mrs. Lynette Mickelsen  
8137 South Pheasant Run Circle  
West Jordan, Utah 84088

Re: Notice of Claim

Dear Mrs. Mickelsen:

This letter is in response to the notice of claim the City of West Jordan received from you on January 20, 2015 wherein you claim that the City was the cause of the damage to your driveway.

I have had extensive conversations with our Public Works Department, including Richard Smolik, all of whom conveyed to me that in the course of performing work in the roadway adjacent to your home, they neither placed any equipment on, nor drove onto your driveway during the course of repaving the roadway. The City performs roadwork on a normal basis in multiple neighborhoods every year and Departmental policy prevents employees from driving onto homeowner property. There is no evidence of negligence in the actions of City employees in this case, and the City believes that the underlying cause of the damage to your driveway was inadequate compaction to the soil below the driveway.

For the reasons set forth above, the City respectfully denies your claim. If you have any further evidence that would provide additional support of your claim, please let me know and the City will be happy to revisit its decision in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Jared Smith", with a long horizontal flourish extending to the right.

Jared Smith  
West Jordan City Risk Manager



## David Brickey

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**From:** Jared Smith  
**Sent:** Tuesday, March 29, 2016 3:45 PM  
**To:** David Brickey  
**Subject:** Mickelsen claim (driveway apron)

David,

As we have discussed regarding the damage to Mr. and Mrs. Mickelsen's driveway apron or approach, I must reaffirm my conclusion that the City should not be responsible to pay for the damaged driveway. I reach this conclusion based on the following:

1<sup>st</sup>- The City code clearly states that the *"property owner will be responsible for all materials and labor costs for the repair or replacement of defective concrete within the property owner's driveway (whether such be sidewalk, curb, gutter or drive approach)."* (City Code section 8-5-2(B)).

The City has a general concern of safety on the sidewalk for the public and has allowed for the City to partially fund sidewalk repair to address these safety concerns. However, the City cannot be responsible for individual property damage or disrepair when there is not a public safety concern.

2<sup>nd</sup>- Google images show similar damage to the driveway from 2011 as what is currently there. There is no evidence that the work done on the street by the City was the cause of the damage nor made the damage worse. Absent of evidence of the City causing or increasing the damage, there is no justification to pay for the repair of the driveway. Our Public Works Department employees state that they do similar work on numerous streets throughout the City on a regular basis and have never been shown to cause the damage asserted by the Mickelsens. The milling machine doesn't utilize a downward force to break up the asphalt, but is more of a grinding mechanism. Further, the Mickelsen's home and the surrounding homes all show similar signs of settlement on their properties. Our engineer states that water and freezing cycles can compact clay soils. This when coupled with the water cycle, likely caused the increased settlement. Lastly, our engineer also pointed out something curious about this cul-de-sac. From this Google image, it appears that the homes all have road cuts, indicating that the contractor that built the home, was also required to move or place the water meter. Disturbing the soil to place the meter could have diminished the compaction of the soil below the sidewalk.



3<sup>rd</sup>- I am aware of any City code that currently allows for the expenditure of funds to make repairs on private property when there is not a safety issue, code violation, City negligence or action of negligence from the City.

Though I stand by the professional opinions of those who I have consulted on this case, as a sign of good faith on this matter, I offer the Mickelsen's a chance to prove their case. Since they recently moved in, if they can provide the City with documentation from their home appraiser or inspector that can show that the damage to the driveway has significantly declined since they moved in or any other type of evidence to show the same, I will encourage the City to revisit the matter as a risk issue. Please let me know if you would like to discuss this matter further,

Respectfully,

*Jared Smith*  
*West Jordan City Risk Manager*  
801-569-5147