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8 IN THE SUPERIOR COURT OF
9 THE STATE OF WASHINGTON FOR YAKIMA COUNTY

10 PRESERVE DOWNTOWN PARKING, an
11 unincorporated association, MICHAEL
12 SNYDER, KATHI MERCY, and BRUCE
SMITH,

13 Plaintiffs,

14 vs.

15 CITY OF YAKIMA, a Washington municipal
corporation,

16 Defendant.

No.

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF

17
18 **INTRODUCTION**

19 In 1974, the City of Yakima ("City") engaged a consultant to conduct a study to make
20 recommendations to revive the City's moribund downtown. The City's consultant recommended
21 that the City acquire downtown property, identified as Lot 2 in the consultant's report, demolish
22 the existing structures on Lot 2, and develop it into a surface parking area to attract the public to
23 downtown businesses. The City's consultant also recommended that the City finance the
24 purchase and development of this parking area by the creation of a Local Improvement District,
25 by which specially benefited downtown property owners would be assessed charges
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1 commensurate with the amount by which their property values would be increased by the
2 presence of this parking area.

3 The City adopted the recommendation of its consultant by enacting Ordinance No. 1720
4 (“Ordinance”).¹ Ordinance No. 1720 created a local improvement district (“LID”). The LID
5 was created for the purpose, among others, of paying for the “acquisition and construction of
6 parking facilities and other improvements...” The LID assessed downtown property owners for
7 the cost of acquiring, constructing, and maintaining this parking area.
8

9 Section 1 of the Ordinance sets forth the purposes and limitations of the funds to be
10 generated by the creation of the LID: The acquisition and installation of off-street parking
11 facilities, street lights, signals, plazas, landscaping with irrigation, and other improvements, all in
12 accordance with the City consultant’s recommendation. As to Lot 2, the consultant’s plans
13 identify the allowed use of Lot 2 as exclusively for parking. The only plazas identified are to the
14 northwest of Lot 2, in the former 2nd Street right of way located between Lot 2 and E. Yakima.
15 The Ordinance provides no authority to use Lot 2 for a public plaza. Indeed, it prohibits such a
16 use of Lot 2.
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19 In exchange, then, for charging downtown property owners for the cost of acquiring and
20 developing Lot 2 for public parking, the Ordinance committed the City to maintain the use of Lot
21 2 for parking in perpetuity. These downtown property owners paid for the acquisition and
22 development of Lot 2 for parking. The City in exchange promised that the parking on Lot 2
23 would not be removed.
24

25
26 ¹ The City also enacted Ordinance No. 1719, which established a parking and business improvement area (“PBIA”) within the downtown, which imposed charges for ongoing maintenance of the parking areas acquired and
27 constructed pursuant to Ordinance No. 1720. Plaintiffs in this Complaint do not challenge Ordinance No. 1719 at
28 this time.

1 Notwithstanding this explicit commitment, in 2013 the City conceived a notion to remove
2 the parking from Lot 2 and to replace it with a public plaza (“Central Plaza Proposal”). The
3 initiation of that conception and its planning since that time seems to have taken place without
4 any awareness of, or despite, the promises the City had made when it adopted the Ordinance and
5 assessed the downtown property owners for the cost of acquiring and developing Lot 2.
6

7 Since 2013, on information and belief, the City has spent over \$1.3 million in public
8 funds to pursue its unlawful Central Plaza Proposal. Among other planning steps taken by the
9 City, it has contracted to prepare design and construction documents for the plaza and has
10 approved in concept the expenditure of \$3 million in public funding for the proposal.
11

12 Plaintiffs include downtown property owners whose predecessors in interest were
13 assessed and paid charges pursuant to the Ordinance to acquire and develop Lot 2 for public
14 parking. Plaintiffs’ businesses remain dependent for their continued viability on the presence of
15 that parking.
16

17 Concerned that the Central Plaza Proposal was generating irreversible, though clearly
18 unlawful, momentum, Plaintiffs submitted a letter to the Yakima City Council on February 7,
19 2018. A copy is attached as Exhibit A to this Complaint. This letter thoroughly reviewed the
20 history of the Ordinance, the commitments made by the City to downtown property owners, the
21 use limitations set forth in the Ordinance to preserve Lot 2 for public parking in perpetuity, and
22 provided legal authority making it clear that changing the use of Lot 2 from parking to plaza
23 would be clearly unlawful.
24

25 Since the date that letter was submitted to the City, Plaintiffs have not received any
26 response. The City has provided no factual or legal justification for the Proposal. Plaintiffs do
27 know that after the City received the letter, the City Council met in executive session with its
28

1 attorneys. Following that executive session, one of the Councilmembers moved to abandon the
2 Central Plaza Proposal. That motion failed by a 4-3 vote.

3 It appears, then, that the City has no present intention of explaining itself or of providing
4 any legal justification for the Central Plaza Proposal. Plaintiffs hope and trust that the City may
5 ultimately abandon the Proposal, but in the meantime, due to the City Council's recent 4-3 vote
6 and the City's failure to respond to Plaintiffs' letter, the City has left Plaintiffs with no
7 alternative but to initiate this action.
8

9 Accordingly, Plaintiffs respectfully ask the Court for a declaration of their rights under
10 the Ordinance and a preliminary and final injunction prohibiting the City from proceeding with
11 its ill-conceived Central Plaza Proposal.
12

13 **COMPLAINT**

14 Plaintiffs allege as follows:
15

16 **I. PARTIES**

17 1.1 Plaintiffs. Preserve Downtown Parking ("PDP") is an unincorporated
18 association that includes downtown property owners who are and will be adversely affected by
19 the City's proposal to replace Lot 2's surface parking area with a public plaza. PDP authorized
20 legal counsel to send to the City the letter attached as Exhibit A. Plaintiff Michael Snyder owns
21 property at 202 East Yakima Avenue. The rental income from his property is based on his
22 tenant's sales. Removal of parking from Lot 2 will significantly reduce those sales and adversely
23 impact his rental income. His predecessor-in-interest as owner of 202 East Yakima Avenue, was
24 assessed, and paid, charges pursuant to the Ordinance. Plaintiff Kathi Mercy owns property at
25 202 East Chestnut Avenue. Removal of parking from Lot 2 will result in the potential failure of
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Ms. Mercy's tenant and the loss of Ms. Mercy's rental income. Her predecessor-in-interest, as owner of 202 East Chestnut Avenue, was assessed and paid, charges pursuant to the Ordinance. Plaintiff Bruce Smith is a downtown property owner and is an advocate for preserving public parking on Lot 2.

1.2 Defendant. Defendant City of Yakima ("City") is a Washington municipal corporation. It is the proponent of the Central Plaza Proposal.

II. VENUE

2.1 Venue. Venue in Yakima County is proper pursuant to RCW 4.12.020 and 4.12.025, because the cause of action arose in Yakima County, Plaintiffs reside and do business in Yakima County, and the City is located in Yakima County.

III. FACTS

3.1 The Central Plaza Proposal. The Central Plaza Proposal is to demolish an existing surface parking lot containing 196 parking spaces on Lot 2 (approximately 2.14 acres) in downtown Yakima. The acquisition of Lot 2 and the development of the existing parking area were authorized by the Ordinance and paid for by the levy of LID assessments imposed upon downtown property owners. The legal justification for the imposition of these assessments was that the downtown property owners responsible for paying the assessments would receive a corresponding financial benefit due to the creation of the additional parking authorized to be created by the Ordinance.

3.2 Description of Central Plaza Proposal. The Central Plaza Proposal, if approved and implemented, will replace most of the existing parking lot with a mini-plaza, a larger central plaza, a covered pavilion, a stage for public performances, public restroom facilities, a mechanical/storage room, a water feature and splash area, landscaping, and public art. None of

1 these proposed uses was authorized by the Ordinance. None of these proposed uses was the
2 basis of the imposition of the LID assessments imposed against downtown property owners.

3 3.3 **The Jacobson Report.** In 1974, the City commissioned N.G. Jacobson &
4 Associates to prepare a CBD Parking and General Improvement Program report. It proposed on-
5 and off-street parking improvements and general improvements for the CBD that were intended
6 to revitalize the downtown (“Jacobson Report”). A true and correct copy of the Jacobson Report
7 is attached to this Complaint as Exhibit B.
8

9 3.4 **Lot 2.** With respect to Lot 2, it proposed that it be paved, lighted, and
10 landscaped, with an estimated cost of \$1,407,825 (including also, the cost of planning, property
11 acquisition, and building demolition), and financed by “L.I.D. financing.” At p. 2 of Transmittal
12 Letter. The justification for creating additional parking on Lot 2 was that “the increased use of
13 the automobile has created traffic congestion in the streets of Yakima and has overloaded
14 available parking in the CBD.” Jacobson Report at p. 1. The Jacobson Report “recommends a
15 scheme to provide sufficient parking to relieve the parking problem in the CBD.” Ibid.
16

17 3.5 **Parking Deficiencies and Proposed Improvements.** The Jacobson Report
18 conducted an analysis of parking deficiencies in the downtown. It found an overall deficiency of
19 1,171 parking stalls, which “indicated that there was a considerable parking problem.” Jacobson
20 Report at p 6. After careful analysis, the Jacobson Report concluded that “improvements should
21 best be made at Parking Lots 1 and 2 as shown on Plate 1, adding that “these two lots provide an
22 additional 398 off-street parking stalls in the area.” The Jacobson Report acknowledged that
23 “Parking Lots 1 and 2 require the demolition of buildings” that contain commercial uses that
24 themselves generate a parking demand of 237 parking stalls. At pp. 6-7. The “location and
25 kinds of improvements proposed” are shown on Plate 1. At pp. 7-8. Plate 1 shows that all of Lot
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1 2 is designated for parking. None of Lot 2 is designated for anything other than parking. Two
2 small plazas are proposed to be placed in the former South 2nd Street right of way immediately
3 to the northwest of Lot 2. These small plazas, however do not in any way encroach upon the Lot
4 2 parking area.

5
6 **3.6 Purpose of Acquisition and Development of Lot 2.** The Jacobson Report
7 unambiguously states the purpose of the acquisition and development of Lot 2: “The intent of
8 proposed off-street parking improvements is to provide convenient parking in pleasing
9 surroundings with trees to provide shade for people and cars.” At p. 10. There is not the
10 slightest suggestion that any use other than parking is anticipated in Lot 2. The Jacobson Report
11 describes the work that must be done to improve Lot 2 to provide surface parking: “The
12 demolition of existing buildings, the filling of basements, asphalt paving, drainage, trees and
13 landscaping with irrigation, safe levels of lighting, and such miscellaneous items as signing.”
14 Ibid. Again, there is no indication that any non-parking related improvements are proposed.

15
16 **3.8 Financing of Proposal.** The Jacobson Report acknowledges that the acquisition
17 and development of “off-street parking improvements need funding by L.I.D. improvement
18 bonds...” At p. 11. As for the 2nd Street parking improvements, which include Lot 2, the
19 Jacobson Report states that “only those properties that receive benefit from the improvements are
20 assessed,” and that “the total amount of benefit a property... receives from the proposed 2nd
21 Street parking improvements is proportional to the amount of benefit received...” At p. 13. In
22 other words, the sole rationale for requiring property owners to pay the assessments imposed by
23 the L.I.D. was the benefit to be received from the provision of nearby additional parking. Plate 2
24 is entitled “Yakima C.B.D. Parking Improvements.” At p. 16. It shows all of Lot 2 as “Proposed
25 Parking Improvements.” No portion whatsoever of Lot 2 is identified as anything other than
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1 parking. Plate 2 sets forth “Assessments in Dollars per Square Foot.” The closer the downtown
2 property is to the “Parking Improvements,” the greater the amount of the assessment per square
3 foot. Ibid.

4 3.9 **Sole Exception to Parking Use Limitation.** The Jacobson Report
5
6 Recommendations allow for only one exception to the parking use limitation imposed on Lot 2.
7 It reads as follows: “Propose that the air rights over Parking Lot 2 be made available for a future
8 convention center providing grade level parking is still available underneath the building.” At p.
9 21. It should be noted that this recommendation provides no suggestion that parking on Lot 2
10 may be replaced with a public plaza, whether replacement parking is provided or not. The
11 Parking Improvements recommended by the Jacobson Report, along with the recommended
12 means to finance them, is set forth at p. 25: “Design and install the 398-stall Parking Lot 2.
13 Finance the \$1,407,825 cost of Parking Lot 2 improvements with L.I.D. improvement bonds by
14 assessing the cost against benefited property owners.” Again, the sole justification stated for
15 assessing the cost of these improvements against property owners is that they will be “benefited”
16 by the design and installation of the 398-stall Parking Lot.
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19 3.10 **The Ordinance.** The recommendations set forth in the Jacobson Report were
20 formally adopted by the Yakima City Council by Ordinance No. 1720, enacted a mere six
21 months after its receipt of the Report.² Ordinance No. 1720 created a local improvement district
22 (“LID”). See attached Exhibit C. The Ordinance was formed for the purpose of paying for the
23 “acquisition and construction of parking facilities and other improvements [including parking
24 Lot 2]...”
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27 ² See Footnote 1, pertaining to Ordinance No. 1719, creating a PBIA. Ordinance No. 1719 is not challenged at this
28 time.

1 3.11 **Purposes and Limitations of the Ordinance.** Section 1 of the Ordinance set
2 forth the purposes and limitations of the funds to be generated by the creation of the LID: “The
3 acquisition and installation of off-street parking facilities, street lights, signals, plazas,
4 landscaping with irrigation, and other improvements, **all as set forth in preliminary plans**
5 **therefor (sic), prepared by N.G. Jacobson & Associates,** and now on file with the city”
6 (emphasis added). As stated above, the N.G. Jacobson plans identify the allowed use of Lot 2 as
7 exclusively for parking. The only plazas identified are to the northwest of Lot 2, in the former
8 2nd Street right of way located between Lot 2 and East Yakima. The Ordinance provides no
9 authority to use Lot 2 for the Central Plaza Proposal. Indeed, it prohibits such a use of Lot 2. In
10 case there is any question as to whether the City intended for the Jacobson Report
11 recommendations to govern the development and use of Lot 2, Section 2 of the Ordinance
12 provides an unambiguous answer: “The preliminary plans and specifications for the
13 improvements described in Section 1 above as [set forth in the Jacobson Report]... are hereby
14 adopted and approved.”

15 3.12 **Sole Exception to Ordinance’s Parking Use Limitation.** The Ordinance does
16 allow one, but only one, exception. This exception was also recommended by the Jacobson
17 Report at p. 21. Section 1 of the Ordinance states: “It shall be a part of the plan for such parking
18 facilities that the city may in the future **construct buildings** for public use, including use as a
19 convention center... **in the air space above the parking lot** designated Parking Lot 2 in such
20 preliminary plans, so long as the capacity of such lot for parking is not thereby substantially
21 diminished or equivalent parking is provided in the immediate area” (emphasis added). Section
22 1 is unambiguous. The surface parking lot on Lot 2, paid for by the LID, must remain
23 unencumbered as set forth in the preliminary plans described in the Jacobson Report. Those
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1 uses, as described above, do not allow plazas to be placed in Lot 2. The only exception is “to
2 **construct buildings**,” “including use as a convention center, **in the air space above the**
3 **parking lot** designated as Parking Lot 2 in [the Jacobson Report]” (emphasis added). The
4 Central Plaza Proposal is not a “convention center,” is not a “building,” and is certainly not
5 going to be constructed “in the air space above” Parking Lot 2.
6

7 3.13 **Centennial Center Corporation v. City of Yakima.** The legal question raised by
8 the Central Plaza Proposal was addressed, and resolved against the City, by a prior ruling of the
9 Yakima County Superior Court, in the case of *Centennial Center Corporation v. City of Yakima*,
10 No. 92-2-00464-9. A copy of this decision is attached as Exhibit D. In that case, the City
11 entered into a license agreement with Morrier Building, Inc. which allowed Morrier to withdraw
12 five of the parking spaces that had been constructed pursuant to the Ordinance to use for non-
13 public purposes. The Court invalidated the license agreement on two independent grounds. The
14 first was that the license agreement violated state law by allowing a portion of Parking Lot 2,
15 acquired and constructed for public purposes, to be used by Morrier exclusively for a private
16 purpose. The second independent ground, directly on point as to the facts of this case, was that
17 the license agreement violated the terms of the Ordinance. The court held that “it is absolutely
18 clear that [the Ordinance] intended to preserve **Parking Lot 2...**” (emphasis added). At p. 6.
19 The only exception set forth in the Ordinance that would allow another use on Parking Lot 2 is
20 “if a public convention center was eventually built in the air space above parking Lot 2.” Ibid.
21 The Court ruled that “the **preservation of this parking area is a special benefit entitlement**
22 and is partial justification for the assessments levied to property owners located within the
23 LID...” (emphasis added). Ibid. The only exception from the established parking lot uses is the
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1 “limited and specific use” for the air space above Parking Lot 2. Any encroachment “must
2 conform to the intent of the [Ordinance] that the Lot 2 parking area be preserved.” At p. 7.

3 3.14 **Construction of Central Plaza Proposal.** It has been reported that the
4 construction of the Central Plaza Proposal, and the elimination of public parking from Lot 2,
5 may occur as soon as the summer of 2018.
6

7 3.15 **Financing in Place.** It has been reported that the financing for the Central Plaza
8 Proposal is in place, and that all that remains before commencement of construction is receipt of
9 the direction to proceed from the City Council.
10

11 **IV. FIRST CAUSE OF ACTION: DECLARATORY RELIEF**

12 4.1 The Ordinance guarantees to the specially benefited properties that were assessed,
13 and paid, the LID charges for the acquisition and development of Lot 2, that Lot 2 will remain in
14 use as public parking in perpetuity.

15 4.2 The Central Plaza Proposal purports to change the use of Lot 2 from public
16 parking to public plaza, in violation of the Ordinance.
17

18 4.3 The Central Plaza Proposal violates the vested rights of Plaintiffs.

19 4.4 The Central Plaza Proposal constitutes a breach of contract.

20 4.5 The Central Plaza Proposal constitutes a taking or damaging of Plaintiffs’
21 property rights in violation of Wash. Const. Art. I, Section 16.

22 4.6 The Central Plaza Proposal constitutes a deprivation of Plaintiffs’ property
23 without due process of law under Wash. Const. Art. I, Section 3. It is unduly oppressive and
24 defeats Plaintiffs’ reasonable expectation as to the rightful use of their property.
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26 4.7 This controversy is ripe for judicial determination. The issues raised are primarily
27 legal. They do not require further factual development. Furthermore, failure to declare the rights
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1 of the parties immediately will result in hardship and may even render the case moot before it
2 may be adjudicated. It has been reported that construction of the Proposal may commence in the
3 summer of 2018, and that all necessary financing is in place.

4 4.8 Pursuant to chapter 7.24 RCW, the Plaintiffs are entitled to have the court review
5 the controversy between it and the City and to declare the rights, status, and other legal relations
6 of the Plaintiffs.
7

8 4.3 The Plaintiffs hereby petition this court for a Declaratory Judgment pursuant to
9 Chapter 7.24 RCW that the Central Plaza Proposal is in violation of the Washington
10 Constitution, statutory law, and Plaintiffs' contract and property rights, and is accordingly
11 invalid.
12

13 **V. SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF**

14 5.1 Pursuant to chapter 7.24 RCW and RCW 7.24.080, the Plaintiffs are entitled to a
15 preliminary and permanent injunction enjoining implementation of the Central Plaza Proposal.
16

17 **VI. PRAYER FOR RELIEF**

18 WHEREFORE, the Plaintiffs pray for the following relief:

19 6.1 That this Court issue judgment in favor of the Plaintiffs, declaring that the Central
20 Plaza Proposal violates their rights and may not be implemented.

21 6.2 That this Court issue a preliminary and permanent injunction enjoining
22 implementation of the Central Plaza Proposal.

23 6.2 That this Court award reasonable costs and attorney fees incurred in this action.

24 6.3 That this Court grant permission to amend this complaint to conform to the proof.
25

26 6.4 That this Court award the Plaintiffs such other and further relief as may be just
27 and equitable.
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1
2 DATED this 3rd day of April, 2018 in Seattle, Washington.
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4 McCULLOUGH HILL LEARY, P.S.
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8 G. Richard Hill, WSBA #8806
9 *Attorney for Plaintiffs*
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EXHIBIT A

McCULLOUGH HILL LEARY, PS

February 8, 2018

VIA EMAIL

Yakima City Council
129 N. 2nd Street
Yakima, WA 98901

Re: Yakima Central Plaza

Dear City Councilmembers:

This is written on behalf of Preserve Downtown Parking (“PDP”). PDP is an association of Yakima citizens concerned about the unlawful elimination of downtown parking that has been proposed by advocates of what has been termed the Yakima Central Plaza Proposal (“Central Plaza Proposal”). As established in this letter, the Central Plaza Proposal is unlawful because it violates the terms and conditions of City of Yakima (“City”) Ordinances 1719 and 1720 (“Ordinances”); with the R.L. Jacobson and Associates report dated September 1974 (“Jacobson Report”) which defines and limits the scope of improvements authorized by the Ordinances; with the holding, never appealed by the City, in *Centennial Center Corporation v. City of Yakima*, Yakima County Superior Court No. 92-2-00464-9; and with the explicit requirements of state law set forth in RCW 35.87A.

The Central Plaza Proposal. The Central Plaza Proposal is to demolish an existing surface parking lot containing 196 parking spaces on Lot 2 (approximately 2.14 acres) in downtown Yakima. The acquisition of the property and the development of the existing parking lot were authorized by the Ordinances and paid for by the levy of LID and PBIA assessments imposed upon downtown property owners. The legal justification for the imposition of these assessments was that the downtown property owners responsible for paying the assessments would receive a corresponding financial benefit due to the creation of the additional parking authorized to be created by the Ordinances.

The Central Plaza Proposal, if approved and implemented, will replace most of the existing parking lot with a mini-plaza, a larger central plaza, a covered pavilion, a stage for public performances, public restroom facilities, a mechanical/storage room, a water feature and splash area, landscaping, and public art. None of these proposed uses was authorized by the Ordinances. None of these proposed uses was the basis of the imposition of the LID assessments imposed against downtown property owners.

The Jacobson Report. In 1974, the City commissioned N.G. Jacobson & Associates to prepare a Central Business District (“CBD”) Parking and General Improvement Program report. It proposed on- and off-street parking improvements and general improvements for the CBD that

were intended to revitalize the downtown (“Jacobsen Report”). A true and correct copy of the Jacobson Report is attached as Exhibit A.

With respect to Parking Lot 2, it proposed that it be paved, lighted, and landscaped, with an estimated cost of \$1,407,825, and financed by “L.I.D. financing.” At p. 2 of Transmittal Letter.

The justification for creating additional parking at Parking Lot 2 was that “the increased use of the automobile has created traffic congestion in the streets of Yakima and has overloaded available parking in the CBD.” Jacobsen Report at p. 1. The Jacobson Report “recommends a scheme to provide sufficient parking to relieve the parking problem in the CBD.” Ibid.

The Jacobson Report conducted an analysis of parking deficiencies in the downtown. It found an overall deficiency of 1,171 parking stalls, which “indicated that there was a considerable parking problem.” Jacobsen Report at p 6.

After careful analysis, the Jacobsen Report concluded that “improvements should best be made at Parking Lots 1 and 2 as shown on Plate 1”, adding that “these two lots provide an additional 398 off-street parking stalls in the area.” The Jacobsen Report acknowledged that “Parking Lots 1 and 2 require the demolition of buildings” that contain commercial uses that themselves generate a parking demand of 237 parking stalls. At pp. 6-7.

The “location and kinds of improvements proposed” are shown on Plate 1. At pp. 7-8. Plate 1 shows that all of Lot 2 is designated for parking. None of Lot 2 is designated for anything other than parking. Two small plazas are proposed to be placed in the former S. 2nd Street right of way immediately to the northwest of Lot 2. These small plazas however, do not in any way encroach upon the Lot 2 parking area.

The Jacobson Report unambiguously states the purpose of the acquisition and development of Lot 2: “The intent of proposed off-street parking improvements is to provide convenient parking in pleasing surroundings with trees to provide shade for people and cars.” At p. 10. There is not the slightest suggestion that any use other than parking is anticipated in Lot 2.

The Jacobson Report describes the work that must be done to improve Lot 2 to provide surface parking: “The demolition of existing buildings, the filling of basements, asphalt paving, drainage, trees and landscaping with irrigation, safe levels of lighting, and such miscellaneous items as signing.” Ibid. Again, there is no indication that any non-parking related improvements are proposed.

The Jacobson Report acknowledges that the acquisition and development of “off-street parking improvements need funding by L.I.D. improvement bonds...” At p. 11.

As for the 2nd Street parking improvements, which include Lot 2, the Jacobson Report states that “only those properties that receive benefit from the improvements are assessed,” and that “the total amount of benefit a property... receives from the proposed 2nd Street parking improvements is proportional to the amount of benefit received...” At p. 13. In other words, the sole rationale for

requiring property owners to pay the assessments imposed by the L.I.D. was the benefit to be received from the provision of nearby additional parking.

Plate 2 is entitled “Yakima C.B.D. Parking Improvements.” At p. 16. It shows all of Lot 2 as “Proposed Parking Improvements.” No portion whatsoever of Lot 2 is identified as anything other than parking. Plate 2 sets forth “Assessments in Dollars per Square Foot.” The closer the downtown property is to the “Parking Improvements,” the greater the amount of the assessment per square foot. Ibid.

The Jacobson Report Recommendations allow for only one exception to the parking use limitation imposed on Lot 2. It reads as follows: “Propose that the air rights over Parking Lot 2 be made available for a future convention center providing grade level parking is still available underneath the building.” At p. 21. It should be noted that this recommendation provides no suggestion that parking on Lot 2 may be replaced with a public plaza, whether or not replacement parking is provided.

The Parking Improvements recommended by the Jacobson Report, along with the recommended means to finance them, is set forth at p. 25: “Design and install the 398-stall Parking Lot 2. Finance the \$1,407,825 cost of Parking Lot 2 improvements with L.I.D. improvement bonds by assessing the cost against benefited property owners.” Again, the sole justification stated for assessing the cost of these improvements against property owners is that they will be “benefited” by the design and installation of the 398-stall Parking Lot.

The Ordinances. The recommendations set forth in the Jacobson Report were formally adopted by the Yakima City Council by Ordinances No. 1719 and 1720, adopted a mere six months after its receipt of the Report.

Ordinance 1719 established a parking and business improvement area (“PBIA”) within the downtown. See attached Exhibit B. Ordinance No 1720 created a local improvement district (“LID”). See attached Exhibit C. Both the PBIA and the LID were created for the purpose, among others, of paying for the “acquisition and construction of parking facilities and other improvements [including parking Lot 2]...”

Section 1 of both Ordinances set forth the purposes and limitations of the funds to be generated by the creation of the PBIA and the LID: “The acquisition and installation of off-street parking facilities, street lights, signals, plazas, landscaping with irrigation, and other improvements, **all as set forth in preliminary plans therefor (sic), prepared by N.G. Jacobson & Associates,** and now on file with the city” (emphasis added). As stated above, the N.G. Jacobson plans identify the allowed use of Lot 2 as exclusively for parking. The only plazas identified are to the northwest of Lot 2, in the former 2nd Street right of way located between Lot 2 and E. Yakima. The Ordinances provide no authority to use Lot 2 for the Central Plaza Proposal. Indeed, they prohibit such a use of Lot 2.

In case there is any question as to whether the City intended for the Jacobson Report recommendations to govern the development and use of Lot 2, Section 2 of Ordinance 1720

provides an unambiguous answer: “The preliminary plans and specifications for the improvements described in Section 1 above as [set forth in the Jacobson Report] ... are hereby adopted and approved.”

The City cannot now back-track on its commitments to the property owners who paid costly assessments over a period of twenty years, in exchange for the City’s commitment that all of Lot 2 was to be devoted exclusively to off-street parking.

The Ordinances do allow one, but only one, exception. This exception was also recommended by the Jacobson Report at p. 21. Section 1 of both Ordinances states: “It shall be a part of the plan for such parking facilities that the city may in the future **construct buildings** for public use, including use as a convention center... **in the air space above the parking lot** designated Parking Lot 2 in such preliminary plans, so long as the capacity of such lot for parking is not thereby substantially diminished or equivalent parking is provided in the immediate area” (emphasis added).

Section 1 is unambiguous. The surface parking lot on Lot 2, paid for by the PBIA and the LID, must remain unencumbered, as set forth in the preliminary plans described in the Jacobson Report. Those uses, as described above, do not allow plazas to be placed in Lot 2. The only exception is “**to construct buildings,**” “including use as a convention center, **in the air space above the parking lot** designated as Parking Lot 2 in [the Jacobson Report]” (emphasis added). No reasonable person could conclude that the replacement of the parking lot provided on Lot 2 with the Central Plaza Proposal, is in any way authorized by the one exception contained in the Ordinances. The Central Plaza Proposal is not a “convention center,” is not a “building,” and is certainly not going to be constructed “in the air space above” Parking Lot 2.

In this light, there is no doubt that the Central Plaza Proposal is wholly inconsistent with, and in violation of, the Ordinances.

Centennial Center Corporation v. City of Yakima. The legal question raised by the Central Plaza Proposal has already been resolved – against the City -- by a prior ruling of the Yakima County Superior Court, in the case of *Centennial Center Corporation v. City of Yakima*, No. 92-2-00464-9. A copy of this decision is attached as Exhibit D.

In that case, the City entered into a license agreement with Morrier Building, Inc. which allowed Morrier to withdraw five of the parking spaces that had been constructed pursuant to the Ordinances to use for non-public purposes.

The Court invalidated the license agreement on two independent grounds. The first was that the Ordinances violated state law by allowing a portion of Parking Lot 2, acquired and constructed for public purposes, to be used by Morrier exclusively for a private purpose.

The second independent ground, directly on point as to the fact of this case, was that the license agreement violated the terms of the City’s own Ordinances. The court held that “it is absolutely clear that both ordinances intended to preserve **Parking Lot 2...**” (emphasis added). At

p. 6. The only exception set forth in the Ordinances that would allow another use on Parking Lot 2 is “if a public convention center was eventually built in the air space above parking Lot 2.” Ibid.

The Court emphasized that “the **preservation of this parking area is a special benefit entitlement** and is partial justification for the assessments levied to property owners located within the LID and the PBIA” (emphasis added). Ibid. The only exception from the established parking lot uses is the “limited and specific use” for the air space above Parking Lot 2. Any encroachment “must conform to the intent of the Ordinances that the Lot 2 parking area be preserved.” At p. 7.

The Court cites RCW 35.97A.110 and emphasizes that while the legislative authority of a municipality has discretion “as to how the revenue obtained from special assessments is used,” that discretion is “subject to the scope of the stated purposes.” Ibid.

Conclusion. In this case, there is no doubt as to the stated purposes of the Ordinances, which specifically adopted the plans set forth in the Jacobson Report. That Report designates Lot 2 exclusively for off-street parking use. The Ordinances assessed downtown property owners significant financial assessments for that limited purpose. It is far too late now for the City to renege on its commitments as set forth in the Ordinances.

In the event the City chooses to proceed, nonetheless, with the Central Plaza Proposal, PDP will have no alternative other than to challenge its validity in Superior Court, just as the property owner did in the *Centennial Center* case. PDP anticipates that if an appeal is filed, the result will be the same – the City’s action will be invalidated.

Sincerely,



G. Richard Hill

Enclosures

cc: Cliff Moore, Yakima City Manager

EXHIBIT B

YAKIMA, WASHINGTON

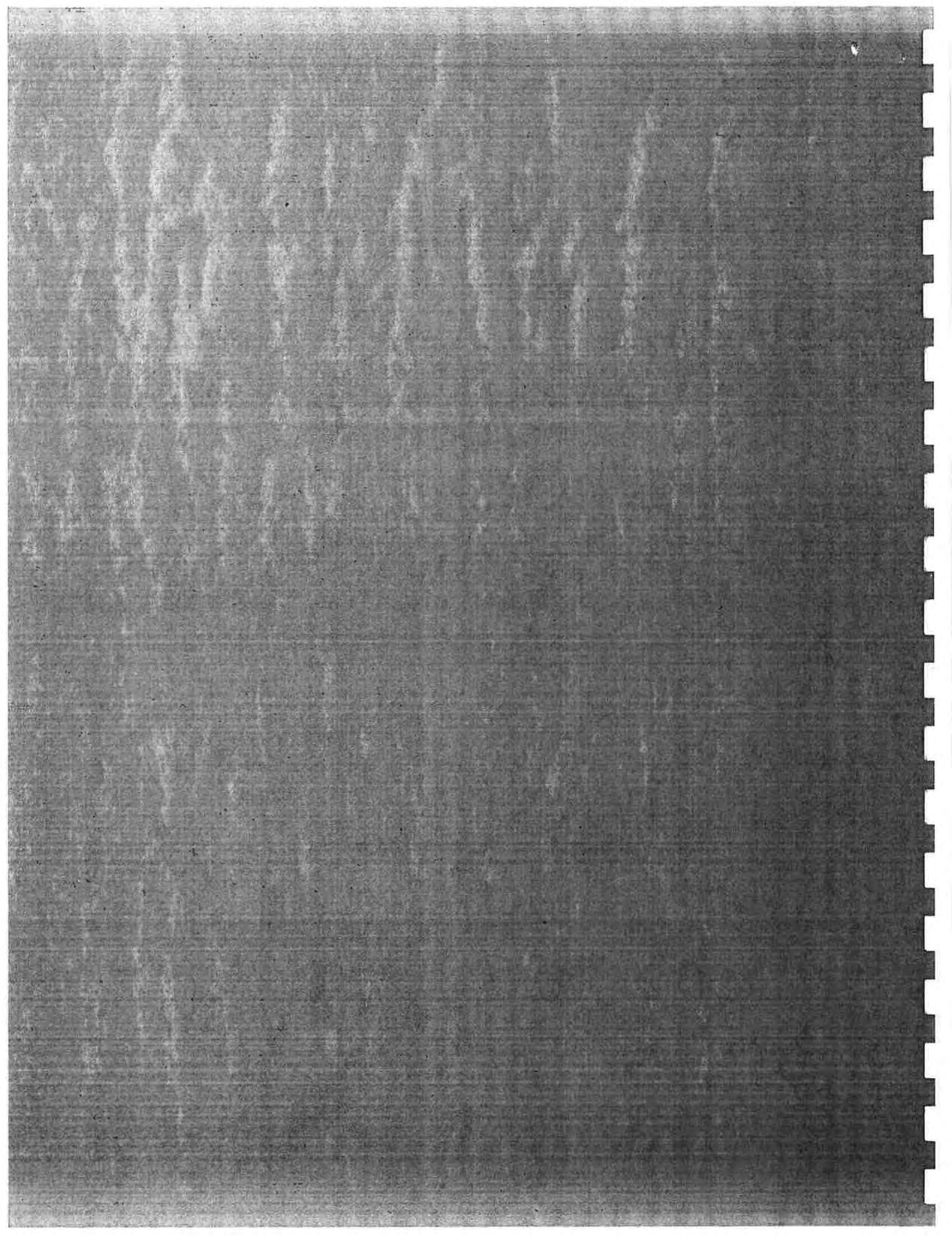
C.B.D. PARKING & GENERAL IMPROVEMENTS PROGRAM SUMMARY

- PARKING ANALYSIS
- PARKING & GENERAL IMPROVEMENTS
- BUDGET COST ESTIMATES
- FINANCING
- PRELIMINARY ASSESSMENT ROLL
- PARKING OPERATION

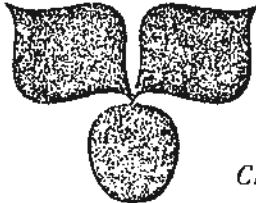


N. G. Jacobson & Associates, Inc.
Consulting Engineers

April 1974



CITY OF YAKIMA



Office of the Mayor

CITY HALL, YAKIMA, WASHINGTON 98901

Phone: (509) 248-2620

April 25, 1974

Dear Property Owner:

We are pleased to announce that the proposed Central Business District Improvements Report is now completed and ready for review. Please find enclosed a summary of that report.

Two informational meetings are scheduled for presentation of the full report on --

Tuesday, May 7, 1974 - 10:00 a.m.

and

Wednesday, May 8, 1974 - 7:30 p.m.

Both meetings will be held in the Capitol Theatre at 19 South Third Street in Yakima.

The purpose of the meetings is to familiarize you with the proposed project, answer your questions, and receive suggestions for changes or improvements to the plans.

Sincerely,

BERT BROAD
Mayor

LEE SEMON, JR., Chairman
Downtown Advisory
Redevelopment Commission

Yakima, Washington
CBD Parking
& General Improvement Program

April, 1974

CITY COUNCIL

Bert Broad	Mayor
Wray Brown	Charles Rich
Betty Edmundson	Don Schussler
W. K. "Pete" Moore	Bill Whitaker

DOWNTOWN ADVISORY REDEVELOPMENT COMMITTEE (DARC)

Lee Semon, Jr.	Chairman
Gus Williams	1st Vice Chairman
Mike Mercy	2nd Vice Chairman
Bruce Beaudoin	Cliff Miller
Adolph Frank	Al Pruett
Vern Halversen	Hans Skov
Thomas Hargis, Jr., AIA	Richard Tweten
Herb Hill	Ed Wissman

CITY STAFF

Craig McMicken	City Manager
Jay Otto	Director of Community Development
Richard Hill	Principal Planner
D. Larry Wright	Associate Planner (CBD Project Coordinator)

PRINCIPAL CONSULTANT

N. G. Jacobson & Associates, Inc.	Consulting Engineers Seattle, Washington
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ARCHITECTURAL CONSULTANT

Doudna-Williams, AIA	Architects Yakima, Washington
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URBAN DESIGN CONSULTANT

Henry Steinhardt, AIA	Architect/Urban Designer Mercer Island, Washington
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N. G. JACOBSON & ASSOCIATES, INC.
CONSULTING ENGINEERS

414 Skinner Building ■ Seattle, Washington 98101
Phone: (Area Code 206) 624-7863

April 24, 1974

City of Yakima
City Hall
Yakima, Washington 98901

Attn: Mr. Craig McMicken, City Manager

Gentlemen:

RE: CBD Parking and General Improvement Program

We are pleased to submit our report on the CBD Parking and General Improvement Program which proposed on- and off-street parking improvements and general improvements for the CBD that in our opinion will help revitalize the downtown. This concludes the work that was authorized in your November 2, 1973, letter and modified in your April 4, 1974, letter.

We would like to thank the DARC Committee and the City staff for the considerable amount of time, effort, inputs, and cooperation which everyone gave to make this report possible. We would especially like to thank Mr. Lee Semon, Jr., Chairman, and the other members of the DARC Committee, who attended many meetings in order that we could present our ideas and could receive the benefit of their recommendations as to what they felt was best for the improvement of the CBD. Mr. Craig McMicken, Mr. Jay Otto, and Mr. D. Larry Wright were among the many people on the City staff who gave us a very considerable amount of help and gathered much of the data on which this study was based.

Foster and Marshall, Inc., financial consultant for the City of Yakima, was consulted for current bond interest rates. Mr. Richard Thorgrimson and Mr. Forrest Walls of the firm Preston, Thorgrimson, Ellis, Holman & Fletcher, the City of Yakima bond counsel, have reviewed the proposed assessment program.

Our recommendations include the implementation of the following capital improvements:

General CBD Improvements	
Street trees, intersection treatments	\$ 673,750
General Alley Improvements	
Paving, canopies, lighting	646,250
Off-Street Parking Improvements	
Parking Lot 1 - paved, lighted, landscaped	652,000
Parking Lot 2 - paved, lighted, landscaped	1,407,825
Parking Lot 3 - lighted, landscaped	<u>191,875</u>
Total Improvements for L.I.D. Financing	\$3,571,700
General CBD Improvements Proposed for Municipal Funding	
Street lights and signalization, plazas, waste receptacles, bus shelters	<u>467,500</u>
Total Improvements Proposed	\$4,039,200

Property owners within the proposed CBD Local Improvement District will benefit considerably from the proposed improvements. The general improvements will answer many of the needs of the CBD and will enhance its appearance for both customers and employees; today there is insufficient parking to meet present needs. The proposed improvements closely follow and largely implement the CBD plan that was adopted by the Yakima City Council in 1967.

Unlimited free customer parking under a centralized parking management is recommended for the enforcement of the parking program and the control of paid monthly parking. City management of CBD on- and off-street parking under this centralized parking program will help relieve many of the present parking and business problems in the downtown. It is recommended that the operating cost of this program be paid for by downtown businesses using an annual levy.

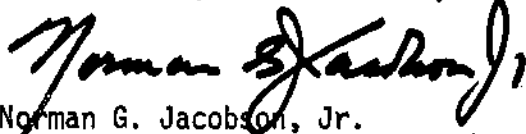
April 24, 1974

Philip Keightly, who is project manager for this study, and I will be happy to give further assistance to the City of Yakima as needed for explanation and implementation of the proposed program and in the final design of the improvements.

We have enjoyed doing the work in developing this program and look forward to seeing its implementation in the near future.

Very truly yours,

N. G. JACOBSON & ASSOCIATES, INC.

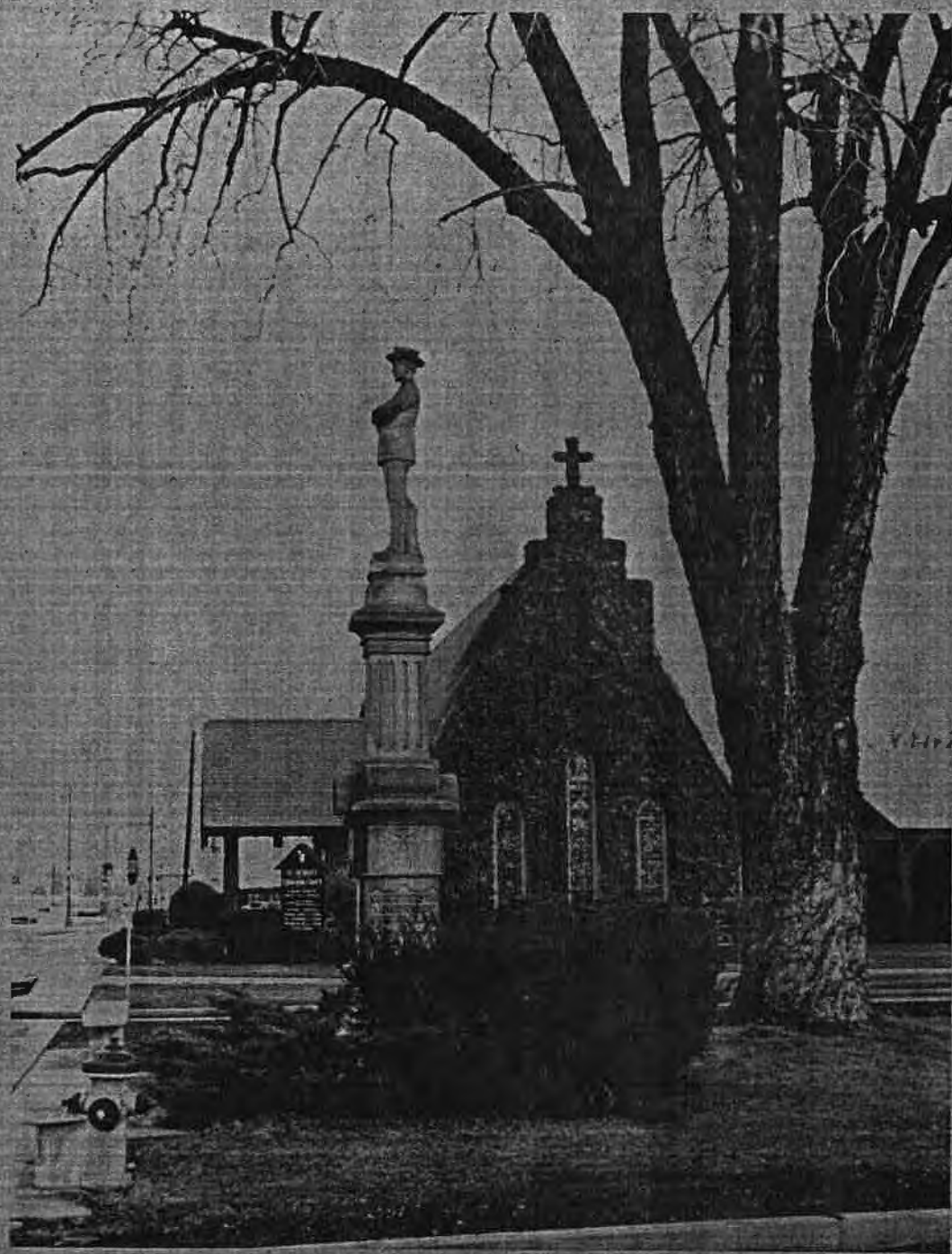
A handwritten signature in black ink, reading "Norman G. Jacobson, Jr.", written over the typed name.

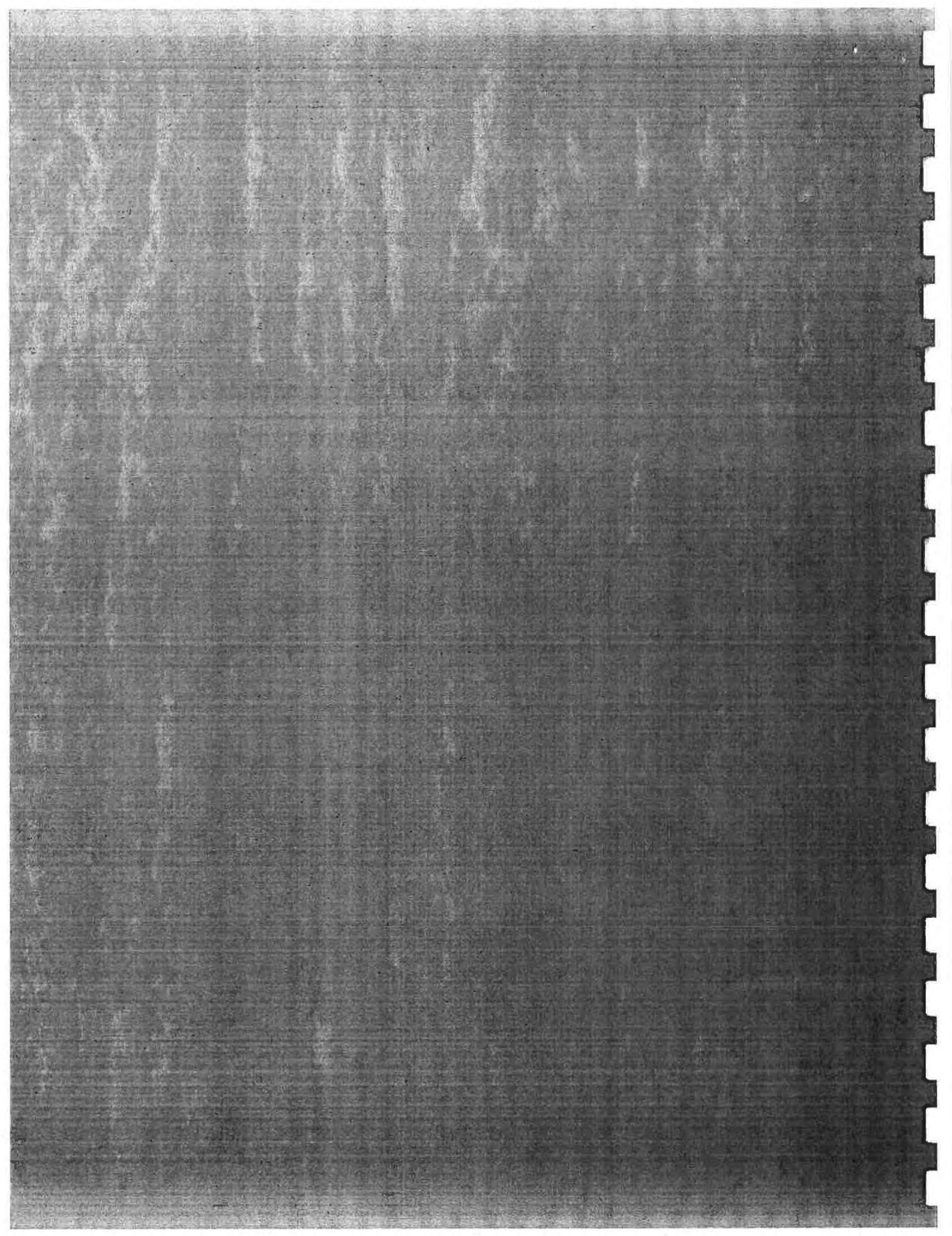
Norman G. Jacobson, Jr.
President

NGJ:sh
Enclosures

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I SUMMARY

INTRODUCTION

The Yakima CBD serves a large market area that is mostly without public transportation. The automobile is, therefore, the dominant means of transportation and is likely to be in the near future. The increased use of the automobile has created traffic congestion in the streets of Yakima and has overloaded available parking in the CBD.

The City arterial street plan presently being implemented will solve much of the traffic congestion problem. However, it is not until the plan to route traffic on Yakima Avenue around the CBD is implemented that the CBD will be able to change from its present automobile domination to become a pedestrian oriented area.

This study recommends a scheme to provide sufficient parking to relieve the parking problem in the CBD. It also recommends other improvements that are needed to create a more attractive and vital downtown and to help reverse the trend of businesses moving out of the CBD.

The CBD should have a visual identity and distinctive character of its own. This can be done by having a uniformity of street trees, new lighting, street furniture, and signing throughout the CBD. The trees will also add color and shade to the sidewalks and visually reduce the width of the streets. The physical width of the streets needs to be reduced at intersections for pedestrian safety by designing

YAKIMA AVENUE



The heavy through traffic on Yakima Avenue bisects the CBD, reduces pedestrian safety, takes away possible on-street parking, and does little to encourage drivers to get out of their cars and become customers of CBD businesses.



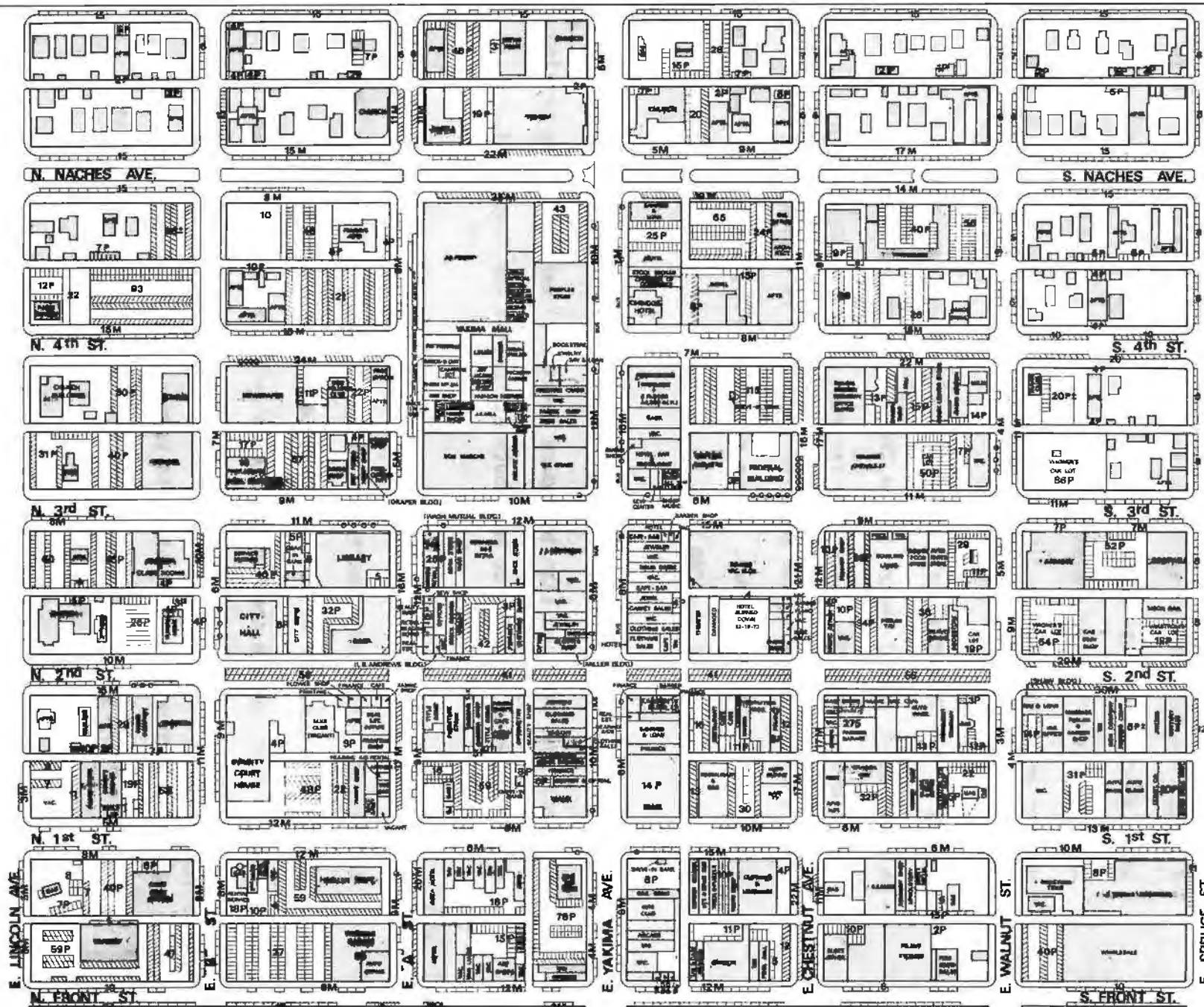
intersection treatments which will also help make the CBD more pedestrian oriented.

A pedestrian circulation system is needed that incorporates the alleyways, which at present appear cluttered, dingy, and dirty. These alleys provide an exciting potential for use as bright, colorful, covered pedestrian walkways connecting parking areas to other parts of the CBD.

Plazas on 2nd Street on both sides of Yakima Avenue are needed to give a focal point in the center of the CBD. These should be places that people enjoy being in, where they can meet friends, watch children play, sit on benches in the shade of trees, and be a place for such events as outdoor art shows. These plazas will highlight the intended pedestrian nature of the CBD.

New off-street parking lots should have plenty of trees to give shade to people and cars and also to reduce the visual expanse of the parking areas. Parking lots can be made both attractive and functional.

Drivers who enter the CBD should be quickly directed to areas with sufficient parking near where they want to go. People can only become a client or customer of CBD businesses once they are out of their cars. Once on foot, people need to be able to walk safely, quickly, and comfortably to their destination. This can be achieved by having pleasing surroundings with shade in summer, shelter in winter, and adequate light at nighttime. People must also feel free to stroll



LEGEND	
12	NUMBER OF PARKING SPACES
P	PRIVATE PARKING
M	METERED PARKING
•	1/2 HOUR METER (ALL OTHERS 2-4 HR.)



around and to chat with friends when they are not in a hurry. The creation of a stimulating visual and physical environment in the CBD can be achieved by careful architectural and landscaping design.

These key elements are needed to achieve a more vital CBD and to encourage people to return to conduct their business, shop or visit restaurants and places of entertainment. This report recommends capital improvements that incorporate these key elements and a method of financing to carry them out. It is intended to be the foundation of a practical action plan that is needed to implement the proposed improvements, which closely follows and in fact implements the CBD plan adopted by the Yakima City Council in 1967.

Throughout the development of the proposed improvements, the consultant met with DARC Committee members and City staff to discuss and modify proposed improvements to best meet the needs of the public, businesses, property owners, and the City. General consensus was reached on what should be proposed. The report and its conclusions have, therefore, in general been agreed upon by DARC Committee members and the City staff.

Analysis

The parking needs of the CBD derived have been based on a comprehensive analysis of downtown parking with each block analyzed separately. The surplus or deficiency of parking in the downtown was first calculated and then divided up so that this surplus or deficiency for customer and employee parking could be analyzed separately in each block. Parking that is presently available is shown on Drawing 1.

An overall deficiency of 1,171 parking stalls was found for the CBD. This indicated that there was a considerable parking problem. The blocks on either side of Yakima Avenue between 1st and 4th Streets have the greatest deficiencies of parking in the downtown with the greatest single deficiency in Block 50. Some surplus parking was found in the north, east, and south corners of the CBD.

The extent of the problem was best identified by looking at the customer and employee parking requirements. It was found that 149 employee parking stalls were required in the whole CBD area with the greatest need for employee parking near the center of the CBD itself. There was a customer deficiency of 583 stalls in the CBD. This deficiency was almost entirely caused by the blocks on Yakima Avenue between 1st and 4th Streets. There is, therefore, a need for a total of 732 stalls in the center of the CBD.

After careful analysis of areas in the downtown that may be available for off-street parking improvements, it was concluded that improvements should best be made at Parking Lots 1 and 2 as shown on Plate 1. These two lots provide an additional 398 off-street parking stalls in the area. This, together with 87 on-street parking stalls provided by center street or diagonal parking, give a total of 485 additional parking stalls in the CBD.

Since Parking Lots 1 and 2 require the demolition of buildings, the parking demand decreases by the amount of parking demand that those buildings generated. This parking demand, based upon full utilization of these buildings, amounts to 237 parking stalls; this gives a net

increase of 237 stalls in the CBD. The total number of additional parking stalls made available by proposed parking improvements is 722 stalls. Because only 732 stalls are required to correct existing parking deficiencies, it appears that the proposed parking will be almost sufficient to meet present parking needs.

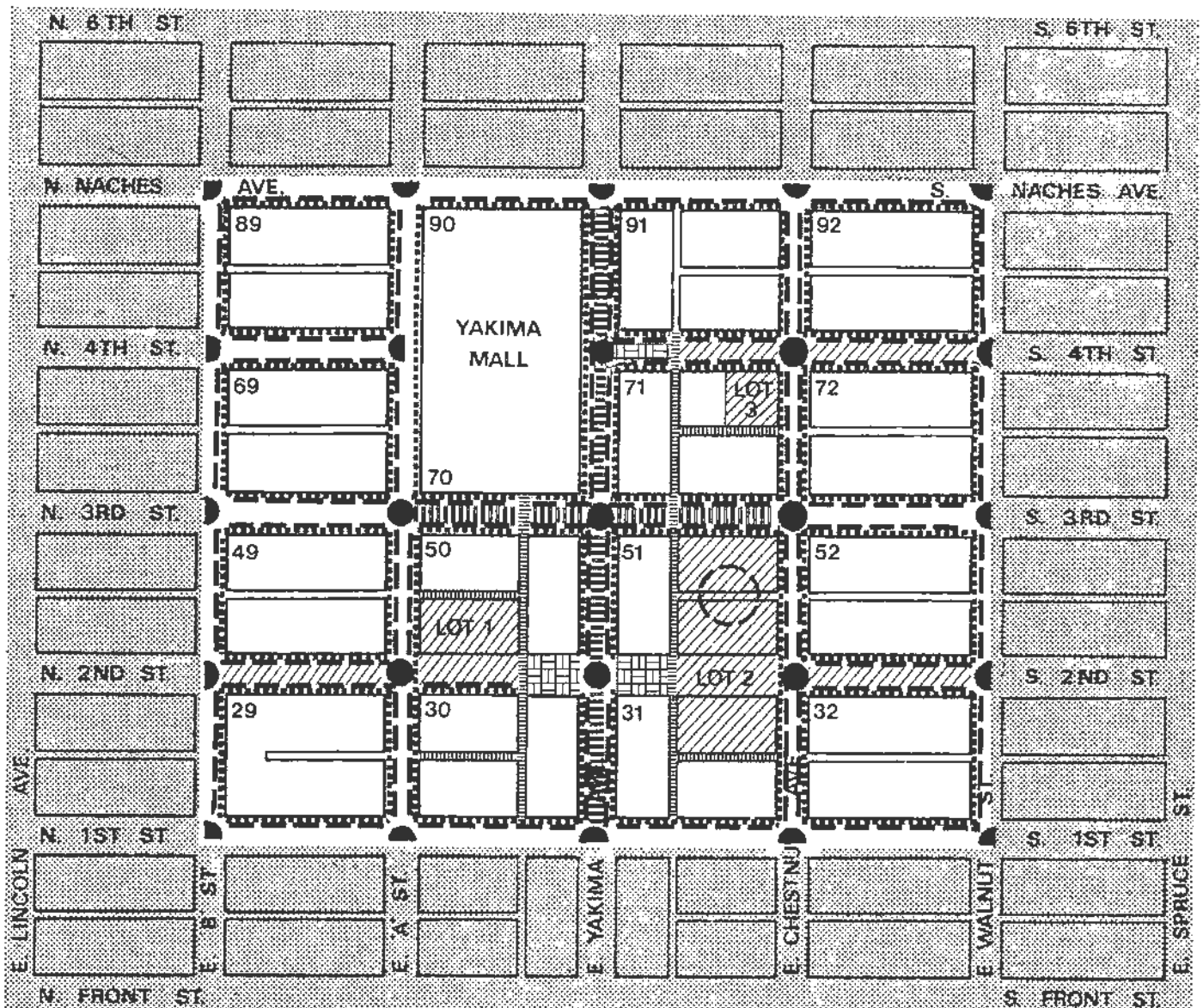
This additional parking was divided such that there will be 148 employee stalls and 574 customer stalls added to the downtown. This means that the improved parking lots with the present distribution will have about 25% of their spaces taken up by monthly employee parking, which provides for expansion of short-term customer parking in the future.

Proposed Improvements

Plate 1 shows the location and kinds of improvements proposed.

The estimated \$673,750 in general CBD improvements to be financed by L.I.D. improvements bonds include the planting of street trees in all sidewalks in the CBD, the placement of irrigation to all street trees, major street furniture, signing, and intersection treatments that use pedestrian -textured paving at intersections and crosswalks and such techniques as changing the location of corner curbs or placing pedestrian islands to reduce the width of the streets that the pedestrian has to cross so as to improve pedestrian safety.

The \$467,500 in general CBD improvements for municipal funding include new street lights and traffic signalization, the 2nd Street plazas on

**LEGEND**

- INTERSECTIONS
- PLAZA
- PARKING
- LIGHTING
- TREES

89 BLOCK NO

ALLEYS

E. YAKIMA AVE.

3rd STREET

 SITE FOR FUTURE CONVENTION
CENTER ABOVE PARKING

200 0 400
scale feet

YAKIMA C. B. D. PARKING IMPROVEMENTS**YAKIMA C.B.D. PROPOSED
IMPROVEMENTS**

PLATE

1

both sides of Yakima Avenue, waste receptacles that are now required by recent legislation, and bus shelters on Yakima Avenue. The design of the lighting needs to be used to help establish the unique character of the downtown. The undergrounding of street light wiring should be done at the same time as the placement of irrigation lines for street trees to save cost. The plazas include pedestrian-textured paving, trees, planters, irrigation, and various items of street furniture and are intended to be designed so that they become a focal point of the downtown.

The \$646,250 cost of general alley improvements in Blocks 30, 31, 50, 51, and 71 are for financing by L.I.D. improvement bonds by assessing the improvement costs to all property owners in these blocks. The improvements include pedestrian-textured paving, lighting, canopies for shade in summer and protection from rain and snow in winter, general improvements and some improvements to the appearance of overhead utilities. These improvements will make the alleys colorful, bright, cheerful and safe places to walk in and could encourage business to put in alley entrances to their stores or even establish businesses that only face the alleys.

The general alley improvements include \$155,000 to improve alley utilities; the estimated additional cost to underground all alley utilities is \$670,000. Alley utility undergrounding is recommended if property owners abutting alley improvements wish to pay for these improvements. These costs have not been included in proposed assessments in the CBD.

The intent of proposed off-street parking improvements is to provide convenient parking in pleasing surroundings with trees to provide shade for people and cars. The improvements proposed are intended to minimize costs and maximize the benefits from them.

Parking Lots 1 and 2 contain 161 and 398 parking stalls respectively. Their locations are shown on Plate 1. They both require the demolition of existing buildings, the filling of basements, asphalt paving, drainage, trees and landscaping with irrigation, safe levels of lighting, and such miscellaneous items as signing. Parking Lot 3 contains 52 parking stalls and only requires minor portions of these improvements as it is an existing paved parking lot; the improvements primarily are for landscaping, trees, and associated installation costs.

The estimated cost of Parking Lot 1 is \$652,000 which includes \$195,250 in construction costs and \$456,750 for property acquisitions. The estimated cost of Parking Lot 2 is \$1,407,825 which includes \$474,375 in construction costs and \$933,450 for property acquisitions. The estimated cost of Parking Lot 3 is \$191,875 which includes \$34,375 in construction costs and \$157,500 for property acquisition. The cost per stall of lots 1, 2, and 3 is \$4,050, \$3,537, and \$3,690 respectively.

Financing

The most suitable method of financing the proposed improvements was found to be through the use of Washington State Pedestrian Mall legislation under Chapter 35.71. This law has already been used to put in

the center-street diagonal parking on 2nd Street; the two-hour free parking and this method of parking appears to have been well received by customers and businesses.

This law allows the change of the CBD from a vehicle-dominated area to the pedestrian use of the streets. It also allows the formation of L.I.D.'s under Title 35 legislation to finance improvements. Municipal funding for improvements can include general obligation bonds, general fund, and other available monies.

The \$467,500 in general CBD improvements for street lights and traffic signalization, plazas, waste receptacles, and bus shelters are for municipal funding.

The \$3,571,700 in improvements for general CBD improvements, general alley improvements, and off-street parking improvements need funding by L.I.D. improvement bonds, which are likely to be sold at about a 7-1/4 percent interest rate for a 20-year period.

Assessment

The assessment method used is one that spreads the various proposed improvement costs to property owners in the assessment district in accordance with the benefits they receive from these various improvements. The best method to do this was found to be to develop five separate assessment rolls for each kind of improvement and distribute the costs of an improvement only to those properties which benefited by that particular improvement. All assessment costs were distributed on these five assessment rolls in accordance with the property area of the assessable parcels of land within the assessment district. Four of these separate assessment rolls were then combined into a Summary Assessment Roll for the total CBD improvements proposed.

Assessment Roll 1 is for general CBD improvements in the amount of \$673,750. These improvements include street trees with irrigation and intersection improvements and are proposed for the whole of the CBD. Since all properties benefit equally from the improvements, the costs are distributed equally to all assessable properties based on their square footage of property area. These assessments are \$0.41 per square foot.

Assessment Roll 2A is for general alley improvements in the amount of \$646,250. These improvements are proposed for Blocks 30,31, 50, 51, and 71. The costs of these improvements are distributed equally to all assessable properties with these blocks. The assessments are \$1.76 per square foot of property area.

Assessment Roll 2B is for the undergrounding of alley utilities in the same blocks as Assessment Roll 2A. The \$670,000 cost for these improvements and the \$1.83 per square foot assessment cost is not included in the summary assessment roll as these improvements are not recommended for construction at this time.

Assessment Roll 3 is for the 2nd Street parking improvements in the amount of \$2,059,825. In order that only those properties that receive benefit from the improvements are assessed, the assessment district for this assessment roll only included the blocks on both sides of 2nd Street and properties generally facing the improvements. The total amount of benefit a property within the assessment district for Assessment Roll 3 receives from the proposed 2nd Street parking improvements is proportional to the amount of benefit received from each of three significant kinds of benefit. Property assessments are based on these three benefits, which are general benefits, distance benefits, and parking benefits. The costs associated with these three benefits are distributed separately to the assessable properties in this assessment district as follows:

GENERAL BENEFITS are assessed at one-third of the total 2nd Street parking improvement costs which is \$686,609. Since the general benefits are received equally by all properties, all assessable properties within this assessment district are equally assessed general benefit costs.

DISTANCE BENEFITS are assessed one-third of the total 2nd Street parking improvement costs which is \$686,608. The amount of benefit received by a property bears a direct relation to the distance the property is from the proposed parking improvements. The distance benefits received by properties is obtained by using 100, 67, and 33 percent distant benefit zones. The square footage obtained by multiplying the property area square footage by the distance percentage zone of the property is used to distribute the distance benefits cost to all properties within this assessment district.

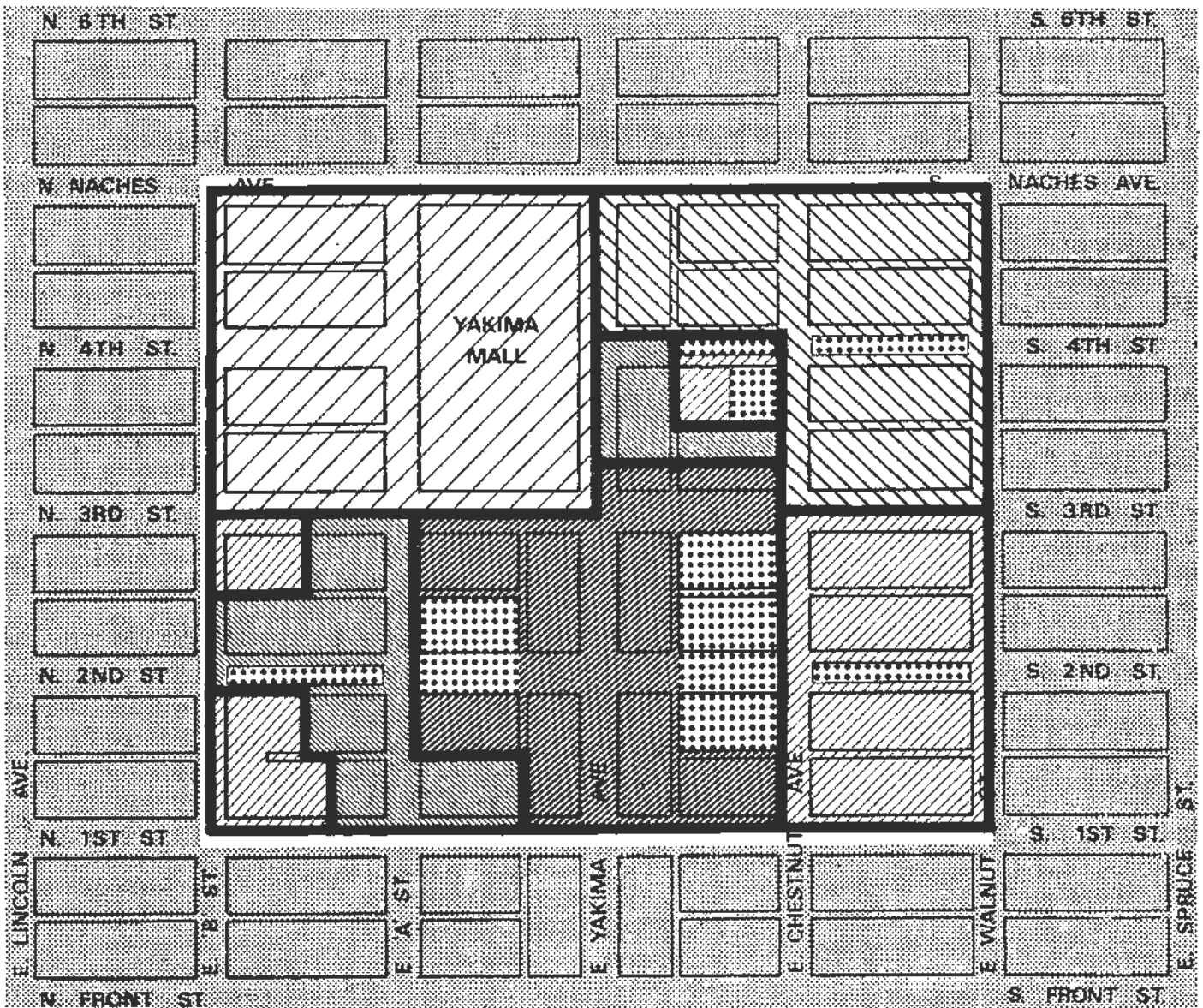
PARKING BENEFITS were assessed at one-third of the total 2nd Street parking improvement costs which is \$686,608. These are benefits received by a parcel of property from the parking added by the improvements. If a parcel has no off-street parking, it will receive a large amount of benefit from the parking improvements and vice versa. The amount of parking benefit is obtained by using 100, 67, and 33 percent parking benefit zones. Credit is given for existing off-street parking by deducting 300 square feet for each off-street parking stall provided from the total property square footage; the remaining square footage was multiplied by the parking benefit percent zone to give the actual square footage assessed for parking improvements. Parking benefit costs were distributed to all properties in proportion to these resulting square footages.

Assessment Roll 4 is for the 4th Street parking improvements in the amount of \$191,875. Only those properties that receive benefit from

these improvements are assessed. The assessment district for Assessment Roll 4 is, therefore, limited to the blocks on both sides of South 4th Street from East Yakima Avenue to East Walnut Street. The method of assessment is identical to Assessment Roll 3.

Assessment Roll 5 is for the purchase of the Yakima Mall Parking Garage using a purchase price of \$2.9 million. The costs are distributed to properties in Blocks 70 and 90 as these are the only properties that would receive significant benefit from the purchase of the Garage. The method of assessment used is the same as for Assessment Roll 3. The \$9.45 per square foot assessment cost for People's Store and \$11.45 per square foot assessment cost for other Mall properties was felt to be unreasonable for the benefits obtained. Therefore, the Yakima Mall Garage purchase is not included in the Summary Assessment Roll and is not recommended for purchase at this time unless the property owners should wish to make the purchase.

The Summary Assessment Roll is the sum of the total assessment costs for each piece of property or parcels of property on Assessment Rolls 1, 2A, 3, and 4. The total estimated cost of all improvements that are distributed to properties within the CBD is \$3,571,700. See Plate 2 for the approximate total assessment in dollars per square foot of property area in the CBD.



LEGEND



0.41	\$/SQ. FT.
0.42 — 1.49	\$/SQ. FT.
1.50 — 2.99	\$/SQ. FT.
3.00 — 4.49	\$/SQ. FT.
4.50 — 6.18	\$/SQ. FT.
PROPOSED PARKING IMPROVEMENTS	
ASSESSMENT DISTRICT BOUNDARY	



NOTE:

THESE ASSESSMENT COST ZONES ARE ONLY APPROX.. SEE ASSESSMENT ROLL FOR ACTUAL ASSESSMENTS IN \$/SQ. FT.. THE SQ. FT. USED IS THE ASSESSABLE PROPERTY AREA WITHIN THE ASSESSMENT DISTRICT.

YAKIMA C. B. D. PARKING IMPROVEMENTS

ASSESSMENTS IN DOLLARS PER SQUARE FOOT

PLATE

2

Operations

All-day free parking for clients and customers of downtown businesses, two-hour free parking for employees, and carefully regulated monthly parking in off-street parking lots is proposed for the downtown using centralized parking management.

Parking checkers would record the license plate number, location, time, and date of all cars that park for more than two hours in the downtown; this data would be processed and fed into the City's computer, which would summarize the number of times a particular license plate number was noted over a predetermined period of time. If for example, a car with a particular license plate was found to park for more than two hours every day in the downtown, it is most unlikely this person would be a shopper. On the second violation, a fine of up to about \$25 could be cited against the owner of this particular vehicle.

The rates for monthly parking in downtown lots could vary from about \$5 to \$15 per month depending upon location, with higher rates in the most central locations. The number of monthly parkers allowed in these lots could also be varied to adapt to changes in their use by customers and employees and also to allow more customer parking at Christmas. The City should manage as many private off-street parking lots as possible for the property owners under some lease agreement to improve control over downtown parking.

A new City Council appointed "pedestrian mall organization" or the existing DARC Committee should be directed to establish and recommend the basic procedures and guidelines for the centralized parking management. A City staff person should be appointed to manage downtown parking and

to supervise a private parking operator who employs the parking checkers.

It is estimated that the monthly operating costs of the centralized parking management would be about \$13,800. This does not include the lease of off-street parking lots. However, these lease costs would be largely offset by the revenues from monthly parking fees.

A levy is being assessed at present for downtown parking enforcement based on the number of employees that are employed by downtown businesses. Using this same method, the levy for the operating costs of the centralized parking management would be \$45.25 per year per employee.

RECOMMENDATIONS

Analysis

1. Every effort should be made to more fully utilize the Yakima Mall Parking Garage. Actively promote monthly parking. Devise programs to promote the use of the garage. Encourage the Mall to offer free parking to its customers in conformity with the proposed CBD plan for municipal parking.
2. Parking is badly needed on either side of Yakima Avenue between 1st and 4th Streets, especially in Block 50, to relieve the large deficiency of parking spaces in this area.
3. It is necessary to preserve the parking behind the Capitol Theater and beside the Pacific National Bank on 1st Street as these two lots are both in blocks that already have a considerable deficiency in parking spaces. If in the future these two parking lots are being considered for uses other than parking, they should be purchased so as to preserve them for parking.
4. The City of Yakima should consider the removal of approximately 29 meters near the intersection of East Lincoln Avenue and North Front Street, and approximately 27 meters outside the core area on South Naches Avenue and East Walnut Street near their intersection. These meters are under-utilized. The parking spaces could be made available for all day parking without harming nearby businesses.
5. Consider restricting the all-day parking of approximately 27 on-street parking stalls near the YWCA because of the considerable deficiency in the area. This parking restriction could be achieved by including the area in the proposed centralized management of CBD parking.

TRAFFIC/PEDESTRIAN CONFLICTS



Yakima Avenue and 3rd Street have heavy traffic and, like all CBD streets, are wide. This reduces pedestrian safety and discourages people from crossing streets and from walking around the CBD to shop or conduct business. Intersection treatments are needed to increase pedestrian safety and to encourage people to leave their cars and walk around the CBD in comfort and in pleasing surroundings.



General CBD Improvements

1. The CBD should be designated as the area bounded by Naches Avenue, East Walnut Street, 1st Street, and East "A" Street.
2. Develop an attractive environment with a unifying theme that gives the CBD a visual identity and a distinctive character of its own. When people drive near the CBD they should be able to say, "Oh, there is our downtown." Do this by establishing uniform design standards for all CBD street trees, street furniture, lighting, and signing. Develop a signing ordinance for the CBD.
3. Complete the city arterial plan as soon as possible so that CBD traffic on Yakima Avenue can be considerably reduced by encouraging traffic to circulate around the CBD.
4. Design systems for CBD traffic circulation and for signing and routing that enables drivers entering the CBD to be quickly directed to parking areas within it.
5. Design a pedestrian circulation system that includes the use of alleys to allow people to move freely, safely, and conveniently from parking areas to their destination in the CBD. Develop special intersection treatments to make pedestrian crossings safer.
6. Study vehicle and pedestrian circulation elements and movements data to propose integrated traffic and pedestrian circulation systems that minimize points of automobile traffic and pedestrian conflict. Change the CBD from being vehicle dominated to a pedestrian oriented area.
7. Propose that the air rights over Parking Lot 2 be made available for a future convention center providing grade level parking is still available underneath the building.

WHAT CAN BE DONE TO THE CBD



Naches Avenue is a splendid example of how trees add great beauty to a street.



Alleys presently appear cluttered, dingy and dirty and do not invite pedestrians to use them. The alleys offer the CBD an exciting potential for use as bright, colorful pedestrian covered walkways, joining parking areas to businesses, adjacent alleys, and to distant blocks.

8. Finance the installation of street trees and intersection improvements with \$673,750 in L.I.D. improvement bonds. All assessable properties within the CBD should be equally assessed \$0.41 per square foot of property area for the cost of these improvements since all properties receive equal benefit from them.
9. Municipally fund the \$467,500 in proposed improvements for new street lights and traffic signalization, plazas, waste receptacles and bus shelters on Yakima Avenue. Underground street light wires by using the same trench as that used to install the irrigation for street trees.
10. Finance the \$646,250 in proposed general alley improvements for pedestrian-textured paving, canopies, lighting, general and utility improvements using L.I.D. improvement bonds. The cost of alley improvements should be equally assessed to all properties that abut on these improvements.
11. Develop an ordinance to restrict deliveries in improved alleys in the CBD to early morning and evening hours so that pedestrians may move freely and safely in them during the day.
12. The undergrounding of overhead utilities is only recommended for inclusion in proposed improvements if property owners abutting the alley improvements should agree to spend the \$670,000 that is over and above the cost of general alley improvements to do this work.
13. Bus ridership and an enlarged public transportation system should be encouraged so that fewer people will drive downtown and more valuable downtown parking spaces will be available. The use of such programs as allowing stores to sell discounted books of bus tickets to encourage ridership is recommended.

YAKIMA MALL GARAGE



The Yakima Mall Parking Garage has about 1200 off-street parking stalls. The parking analysis showed that this facility was about the correct size to accommodate the parking needs of businesses in the Mall block and was, therefore, of no great benefit to surrounding properties.

Parking Improvements

1. Design and install the 161-stall Parking Lot 1. See Plate 2 for the location of proposed parking lots. The total estimated cost of Parking Lot 1 improvements is \$652,000; finance the cost of these improvements with L.I.D. improvements bonds by assessing benefited properties.
2. Design and install the 398-stall Parking Lot 2. Finance the \$1,407,825 cost of Parking Lot 2 improvements with L.I.D. improvement bonds by assessing the cost against benefited property owners.
3. Design and install the 52-car Parking Lot 3 improvements. Finance the \$191,875 cost for Parking Lot 3 improvements with L.I.D. improvement bonds by assessing the costs against benefited property owners.
4. Design and complete Center Street parking improvements for 2nd Street. Design and install Center Street parking improvements on South 4th street from Yakima Avenue to East Walnut Street.
5. Carry out careful analyses of Yakima Avenue and 3rd Street and then design special treatments to best suit both the long- and short-range objectives for the use of these heavily traveled streets.
6. Since it appears from the parking analysis that the parking needs of businesses within the Yakima Mall block should be approximately equal to the parking supply within the block, there will be no significant benefit derived by surrounding properties from the parking provided by the Yakima Mall Garage. The purchase of the Yakima Mall Garage, therefore, must be assessed against properties within the Yakima Mall block as these are the only properties that

receive significant benefit from the purchase. If a \$2.9 million purchase cost is used, the assessment for the properties in the Mall block would be approximately \$11 per square foot of property area. The purchase of the Yakima Mall Garage is only recommended if property owners within the Yakima Mall block should petition the City Council for the purchase at an agreed price with the Mall Corporation.

Financing

1. Washington State Pedestrian Mall legislation in Chapter 35.71 should be used to change the CBD from an automobile-dominated area into a pedestrian-oriented area. This will allow Center Street parking. Second Street has already been designated as a pedestrian mall under this legislation when the existing Center Street parking was carried out.
2. Finance \$3,571,700 of proposed improvements by using L.I.D. improvement bonds for 20 years. This is comprised of \$673,750 for general CBD improvements that include street trees with irrigation and intersection treatments, \$646,250 for general alley improvements, and \$2,251,700 for proposed off-street parking improvements.
3. Municipally fund \$467,500 in general CBD improvements under the Pedestrian Mall legislation which allows the use of such financing methods as general obligation bonds, and general fund and other available monies.
4. Distribute L.I.D. assessment costs to all assessable properties in the CBD in accordance with the amount of benefit received by these properties from proposed improvements as recommended in this report.

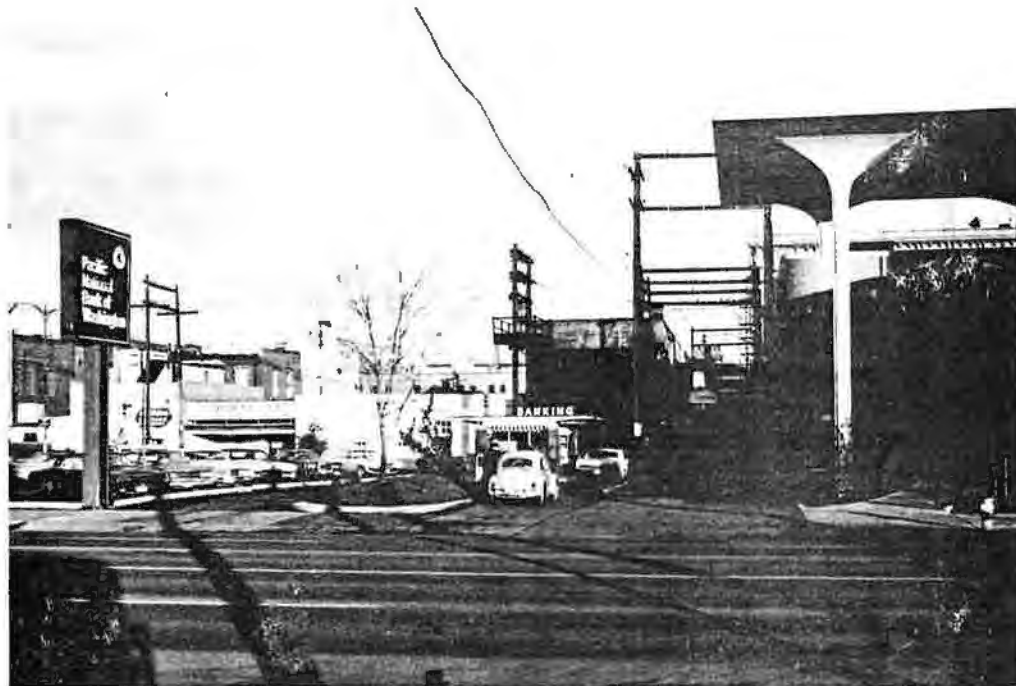
Operations

1. Direct a new "pedestrian mall organization" or use existing DARC Committee to establish and recommend basic operating procedures and guidelines for the centralized management of all on- and off-street parking in the downtown.
2. Institute a parking program goal that offers unlimited free parking for the customers and clients of downtown businesses; two hours free parking to employees, employers, residents, and hotel and motel guests; and provides paid monthly parking with rates that increase from \$5 to \$15 depending on how near the parking is to the center of the CBD. Use fines of about \$25 for parking offenders who have already received a warning for their first offense.
3. Use a City staff person to manage the operations program and to supervise the parking operator who employs the parking checkers.
4. Finance the parking operation program using an annual levy against businesses in the downtown and distribute costs in proportion to the number of employees that each business employs. This method of levy is presently being used in the CBD to pay for parking enforcement costs in the area.
5. The City should attempt to control as much off-street parking in the downtown as possible. This may require the need to enter lease agreements with property owners in order to manage their parking lots.
6. Implement the operating program proposed even if the capital improvements proposed in this report are not carried out.

IMPROVING THE CBD



On 3rd Street there is the historical Capital Theater and the Federal Building, both of which are Yakima landmarks. Trees in front of the Federal Building add beauty. Some treatment is needed to reduce the apparent width of this and other CBD streets, to add shade from the sun for pedestrians and cars, and to give safe but attractive lighting at night.



Some businesses are already using architectural effects and landscaping to enhance their buildings and parking areas. The overhead wires in the alleys spoil the effect.

Implementation

1. Proceed with the legal steps required to complete the L.I.D. financing recommended and resolve the method of funding improvements that are recommended for municipal funding.
2. Direct the new "pedestrian mall organization" or the existing DARC Committee to carry out Recommendation 1 under Operations.
3. Select an architectural-engineering design team to formulate a practical action plan that would include the integrated design of CBD, vehicular, and pedestrian circulation plans; establish architectural design standards for CBD street trees, street furniture, lighting, and signing to give the CBD a distinctive character of its own; draft an amenity program to locate plantings, street furniture, lighting, canopies, etc.; carry out parking planning all the way through to preliminary design; and make cost estimates of proposed improvements.
4. Carry the action plan into final design and construct the proposed improvements.

EXHIBIT C

ORDINANCE NO. 1720

AN ORDINANCE of the City of Yakima, Washington, providing for the improvement of a downtown area of the city by the acquisition, construction and installation of off-street parking facilities, improvements to pedestrian spaces, and general improvements to such area, and by doing all other work required in connection with such improvements, all pursuant to Resolution No. D-3199 of the City passed and approved October 21, 1974; creating a local improvement district therefor, providing for the payment of a portion of the cost of said improvements by special assessments upon the property in said District, providing for the creation of Local Improvement District No. 1001 Fund and for the issuance and sale of local improvement district warrants and notes or bonds.

WHEREAS, on October 21, 1974, the Council of the City of Yakima, Washington, adopted its Resolution No. D-3199 declaring its intention to order the improvement of a certain area within the city generally known as the downtown area by the acquisition, construction and installation of off-street parking facilities, improvements to pedestrian spaces, and general improvements, and by doing all work required in connection therewith; and

WHEREAS, said resolution was duly published in the manner required by law and notice of said hearing was also duly given by mailing as required by law; and

WHEREAS, said hearing was held on November 12, 1974, as provided in said notice, various oral statements for and against the improvements were made and certain written protests were filed and after discussion of said improvements and due consideration thereof the Council has determined to order the construction and installation of the improvements hereinafter more particularly described and to create a local improvement district therefor;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Yakima, Washington, as follows:

Section 1. The property within the city described in Exhibit A, attached hereto and incorporated by reference herein, shall be improved by the acquisition and installation of off-street parking facilities, street lights, signals, plazas, landscaping with irrigation, and intersection improvements, complete with all necessary and desirable appurtenances and facilities, all as set forth in preliminary plans therefor, prepared by N. G. Jacobson & Associates, and now on file with the city. It shall be a part of the plan for such parking facilities that the city may in the future construct buildings for public use, including use as a convention center, in the air space above the parking lot designated Parking Lot 2 in such preliminary plans, so long as the capacity of such lot for parking is not thereby substantially diminished or equivalent parking is provided in the immediate area.

Section 2. The preliminary plans and specifications for the improvements described in Section 1 above as prepared by N. G. Jacobson & Associates and contained in the report of said firm dated September, 1974, now on file with the city, are hereby adopted and approved.

Section 3. There is hereby established a local improvement district of the city to be known as "Local Improvement District No. 1001" which said district shall include all the property described in Exhibit A, attached hereto.

Section 4. The City of Yakima will bear approximately 40% of the entire cost of the improvements and the remainder of the cost of said improvements shall be borne by and assessed against the property within Local Improvement District No. 1001 specially benefited by said improvements.

Section 5. There is hereby created a fund of the city to be known as "Local Improvement District No. 1001 Fund"

into which fund there shall be paid all of the assessments collected in said district as and when directed by the ordinance confirming said assessments and the assessment roll therefor.

Interim revenue warrants bearing interest at a rate of not to exceed the maximum rate permitted by law shall be drawn upon said fund based upon estimates of the City Engineer and shall be sold to such person, firm or corporation or to such other funds of the city as may hereafter be provided by resolution of the City Council and in the manner provided by such resolution to furnish moneys for the payment of the costs incidental thereto as same shall be incurred. The proceeds of sale of such interim revenue warrants shall be deposited in said fund and cash warrants drawn thereon in payment of such costs.

Upon completion of the improvements and after the expiration of the 30-day assessment prepayment period, installment notes or bonds of said local improvement district bearing interest at a rate of not to exceed the maximum rate permitted by law and payable at such time or times as are hereafter fixed by ordinance shall be issued for the redemption of the outstanding revenue warrants and shall be payable both principal and interest by the collection of special assessments to be levied and assessed upon the property within the district payable with interest at a rate not to exceed the maximum rate permitted by law, all as provided by law and ordinances of the city. If bonds are issued they shall be in the denomination of \$5,000 each, except for Bond No. 1, the denomination of which shall be hereafter provided by ordinance of the City Council.

Section 6. This ordinance shall become effective 30 days from and after its passage, approval and publication.

PASSED by the Council of the City of Yakima and
approved by its Mayor at a regular meeting of said Council held
this 12th day of November, 1974.

CITY OF YAKIMA, WASHINGTON

By

Bert Broad

Mayor

ATTEST:

Iris Litzenberger
City Clerk

EXHIBIT A

Beginning at the intersection of the centerline of South First Street and the centerline of East Walnut Street, thence northerly along the centerline of First Street to the centerline of the east-west alley in Block 10, The Town of North Yakima (now Yakima) recorded in Volume "E" of plats, page 1, records of Yakima County, Washington; thence westerly along the centerline of said alley to the centerline of the north-south alley in said Block 10, thence northerly along said centerline to the centerline of East "A" Street; thence easterly along the centerline of "A" Street to the centerline of North First Street; thence northerly along the centerline of First Street to the centerline of East "B" Street; thence easterly along the centerline of "B" Street to the centerline of North Naches Avenue; thence southerly along the centerline of Naches Avenue to the centerline of East Walnut Street; thence westerly along the centerline of Walnut Street to the centerline of South First Street, the point of beginning.

I, IRIS LITZENBERGER, the duly qualified and acting City Clerk of the City of Yakima, Washington, DO HEREBY CERTIFY that the foregoing ordinance is a true and correct copy of Ordinance No. 1720 of said city, duly adopted by its Council and approved by its Mayor at a regular meeting of said Council held on the 12th day of November, 1974.

Iris Litzenberger
City Clerk

EXHIBIT D

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CENTENNIAL CENTER
CORPORATION, a Washington
corporation,

Plaintiff,

vs.

CITY OF YAKIMA, a Washington
municipal corporation; and
MORRIER BUILDING, INC., a
Washington corporation,

Defendants.

NO. 92-2-00464-9

COURT'S RULING GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

FACTS

This case concerns the validity of a license agreement between the City of Yakima (City) and Morrier Building, Inc. (Morrier). In that agreement the City has pledged public property to the use of a private corporation, Morrier. Specifically Morrier will be allowed the use of 5 parking spaces (320 square feet) in parking lot #2 for a refuse container and a grease depository. In return, Morrier is to pay an annual license fee, re-line parking lot #2 so that 10 additional

3.

1 vehicles can be parked in the lot, and resurface the existing sidewalk.

2 Plaintiff, Centennial Center Corporation (Centennial) claims that
3 the license agreement is illegal because the city lacks constitutional
4 and statutory authority to enter into such an agreement and that the
5 agreement violates city ordinances which created the Parking and
6 Business Improvement Area (PBIA) AND Local Improvement District (LID)
7 1001. Centennial seeks declaratory and injunctive relief.

8 The City and Morrier argue that the agreement is valid, that
9 Centennial lacks standing to bring suit and that injunctive relief is
10 inappropriate.

11
12 ISSUES

13 The issues presented in the parties' cross-motions for summary
14 judgment are as follows:

15 1. Whether Centennial has standing to challenge the license
16 agreement;

17 2. Whether the City, by entering into the license agreement with
18 Morrier, has exceeded its authority under the state constitution and/or
19 state statutes;

20 3. Whether the license agreement is prohibited by or in violation
21 of the City ordinances which created the Parking and Business
22 Improvement Area and the Local Improvement District; and

23 4. Whether there is an adequate remedy at law so as to preclude
24 injunctive relief.

25 //

DISCUSSION

1. Does Centennial have standing to challenge the license agreement?

Centennial owns property within LID 1001 and has paid assessments for the city-owned and operated parking facilities over a number of years in an amount exceeding \$100,000.00. Centennial's annual principal assessment is \$4,705.14. Centennial is specially benefitted by the LID which provides, preserves and maintains city-owned property for parking.

In as much as the license agreement reduces the area available for parking in lot #2 by 320 square feet Centennial's benefit is effected. Reduction of the area available for parking in the LID constitutes injury in fact. The fact that the license agreement provides that Morrier reline the parking lot to allow for 10 additional spaces does not mitigate the fact that actual property available for parking will be lost. Accordingly, Centennial has standing to bring suit in this case.

2. Has the City exceeded its authority under the state constitution and/or state statutes?

The license agreement is a contract between the City and a private party for the exclusive use of public property acquired, developed and maintained by Local Improvement District assessments and Parking and Business Improvement Area funds. Centennial asserts that the agreement is an unlawful exercise of municipal authority. The authority of a municipality to govern its constituency is derived from the state constitution, state statutes and municipal charters and ordinances.

Article VII Section 9 of the Washington Constitution gives the

1 state legislature the authority to grant power to municipalities so they
2 may pay for local improvements by use of special assessments. The local
3 improvements must be for corporate purposes, which is to say that they
4 must be for the benefit of the public.

5 The legislature has exercised its authority through the passage of
6 Title 35.43 et seq of the Revised Code of Washington. These statutes
7 enable municipalities to levy special assessments for local improvements
8 and to create Local Improvement Districts. Additionally, RCW 35.87A et
9 seq enable municipalities to establish Parking and Business Improvement
10 Areas created, developed and maintained by special levies.

11 The City of Yakima established a Local Improvement District and a
12 Parking and Business Improvement Area through passage of City Ordinances
13 1719 and 1720. The property in parking lot #2 which is the subject of
14 the license agreement and this law suit, was acquired, developed and
15 maintained to some extent by funds obtained through the special
16 assessments authorized by the statutes cited above.

17 Although generally, the City may have broad powers in managing its
18 affairs it is still limited in its actions by the authority given to it
19 by the legislature. In this case the specific constraints imposed by
20 statutes concerning LIDs and PBIAs are controlling over the City's
21 general managerial authority.

22 The Court must conclude that the Legislature has authority to allow
23 municipalities to create Local Improvement Districts if they are created
24 for the public good. It only seems logical that these areas, so long as
25 funds are assessed to maintain them, must also be dedicated to the

1 public good. The legislature has not granted municipalities the right
2 to assess special levies in a LID or PBIA to benefit the private sector.

3 Because the license agreement removes a portion of the dedicated
4 property from the public domain and commits it to exclusive private use,
5 the City's actions are without constitutional and statutory authority.

6 3. Does the license agreement violate local legislative
7 enactments authorizing the Local Improvement District and the Parking
8 and Business Improvement Area?

9 In addition to that authority derived from the constitution and
10 state statutes, municipalities are empowered by their own legislative
11 enactments or ordinances. City Ordinance No. 1719 passed November 12,
12 1974, created a Parking and Business Improvement Area Fund. The
13 assessments authorized by this ordinance are used to acquire, construct
14 and install parking facilities and to decorate public places within a
15 specifically designated area. The ordinance states:

16 Said parking facilities and other
17 improvements shall be complete
18 with all necessary appurtenances
19 and facilities and the city shall
20 acquire such lands, buildings, and
21 interests therein as shall be
22 necessary.

23 It shall be a part of the plan
24 for such parking facilities, that
25 the city may in the future construct
buildings for public use, including
use as a convention center, in the
air space above the parking lot
designated Parking Lot 2 in such
preliminary² plans, so long as the
capacity of such lot for parking is
not thereby substantially diminished
or equivalent parking is provided in
the immediate area.

1 City Ordinance No.1720 also passed on November 12, 1974, authorized
2 the creation of a Local Improvement District Fund. The
3 assessments authorized by the ordinance were to be used to improve a
4 specially designated area through the acquisition and installation of
5 off-street parking facilities, street lights, signals, plazas,
6 landscaping with irrigation, and all necessary and desirable
7 appurtenances and facilities. The ordinance states:

8
9 It shall be a part of the plan
10 for such parking facilities that
11 the city may in the future construct
12 buildings for public use, including
13 use as a convention center, in the
14 air space above the parking lot
15 designated Parking Lot 2 in such
16 preliminary plans, so long as the
17 capacity of such lot for parking
18 is not thereby substantially
19 diminished or equivalent parking is
20 provided in the immediate area.

21 It is absolutely clear that both ordinances intended to preserve
22 Parking lot 2 for public use. It is also clear that the ordinances
23 intended to protect against any encroachment on this property including
24 that which might conceivably occur if a public convention center was
25 eventually built in the air space above Parking Lot 2.

21 The preservation of this parking area is a special benefit
22 entitlement and is partial justification for the assessments levied to
23 property owners located within the LID and the PBIA. The
24 City's license agreement with Morrier encroaches upon Parking Lot 2. The
25 intended use for the property affected will benefit a private entity,

1 not the public. The fact that the license agreement provides for
2 compensation to the City for the use of this property does not alter the
3 fact that a portion of the parking lot area will be removed from the
4 public domain. The fact that Morrier is required to restripe the lot to
5 add parking spaces does not compensate for the lost area. Although the
6 ordinances envision a future use for the air space above Parking Lot 2
7 and a potential for some encroachment on the lot as a result thereof,
8 this limited and specific use for the public good must conform to the
9 intent of the ordinances that parking area be preserved.

10 RCW 35.87A.110 gives the legislative authority of a municipality
11 discretion as to how the revenue obtained from special assessments is
12 used subject to the scope of the stated purposes. This statute also
13 allows a municipality to contract with a separate entity for the purpose
14 of administering the operation of a parking and business improvement
15 area provided, "That such administration must comply with all applicable
16 provisions of law including this chapter, with all county, city, or town
17 resolutions and ordinances, and with all regulations lawfully imposed
18 by the state auditor or other state agencies." (emphasis added) Based
19 upon the language contained in both ordinances evidencing a clear
20 mandate to preserve the area in Parking Lot 2 for public use the Court
21 finds that the license agreement violates both ordinances.

22 4. Is injunctive relief appropriate in this case?

23 A party seeking an injunction must establish that he has a clear
24 legal or equitable right, that he has a well-grounded fear of
25 immediate invasion of that right by the one against whom the injunction

1 is sought, and that the acts complained of are either resulting in or
2 will result in actual and substantial injury to him. National Grange
3 of Order of Patrons of Husbandry v. O'Sullivan Grange , No. 1136, 35
4 Wash.App. 444.

5 Centennial has established that it has a clear legal and equitable
6 right to the special benefit entitlements created by both city
7 ordinances. The license agreement invades these rights by the unlawful
8 diversion of an area of Parking Lot 2 for private use.

9 The loss of the use of this area to the public is an actual and
10 substantial injury to the Plaintiff as well as the other property owners
11 in the LID and the PBIA.

12 Given the unique nature of the property in question there is no
13 adequate remedy at law. Damages cannot compensate for the lost space.

14 Accordingly, for these reasons, injunctive relief is appropriate in
15 this case.

17 CONCLUSION

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19 For the forgoing reasons the court concludes that Centennial has
20 standing, the City does not have the authority to divert this particular
21 property from public to private use as proposed by the license agreement
22 and that injunctive relief is appropriate.

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1 Plaintiff's motion for summary judgment is granted. Defendant's
2 motion for summary judgment is denied.

3 DATED this 8th day of May, 1992.

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7 Susan L. Hahn, Judge
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