



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

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Policy Analysis and Background (non-consent items only):

Sustainability Impact:

See Attachment 1

Financial Impact:

None OR Adequate funds exist in account:	There is no financial requirement from the city for this action
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Attachments:

1. Staff report from the December 16, 2024 City Council meeting
2. Right-of-Way Encroachment Agreement 25939



City of Ketchum

**Attachment 1:
Staff Report from the
December 16, 2024 City
Council Meeting**



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: December 16, 2024 Staff Member/Dept: Genoa Beiser, Zoning Technician
Planning & Building Department

Agenda Item: Recommendation to approve the Right-of-Way Encroachment Permit for the placement of driveway pavers only in the public right-of-way at 108 Gates Road and direct staff to draft the Encroachment Agreement, authorize the Mayor to sign the agreement, and require the applicant to remove the portion of the snowmelt system that encroaches into the right-of-way.

Recommended Motion:

Option #1—Staff recommends the following motion based on policy direction provided to staff on April 3, 2023 that the City Council will no longer approve Right-of-Way Encroachment Permits for residential snowmelt systems: “I move to approve the Right-of-Way Encroachment Permit for pavers at 108 Gates Road and direct staff to draft and authorize the Mayor to sign the associated Right-of-Way Encroachment Agreement and direct the applicant to remove the portion of the snowmelt system that encroaches into the right-of-way.”

Option #2—If City Council chooses to amend their policy direction to approve snowmelt systems for residential driveways encroaching in the public right-of-way, then the 108 Gates Road Right-of-Way Encroachment Permit may be approved with the following motion: “I move to approve the Right-of-Way Encroachment Permit for the snowmelt system and pavers located at 108 Gates Road and direct staff to draft and authorize the Mayor to sign the associated Right-of-Way Encroachment Agreement.”

Reasons for Recommendation:

- On October 8, 2024, the Community Service Officers observed work being conducted in the right-of-way at 108 Gates Road without a permit. Staff communicated that the work was to stop on October 9, 2024; however, staff’s directive was disregarded and the installation of a snowmelt system in the right of way was completed.
- The applicant is representing that the snowmelt system was pre-existing and was being replaced. However, city staff cannot determine whether the snowmelt system was pre-existing or newly installed, as staff was unable to find an existing encroachment agreement permitting a snowmelt system in the right-of-way for this property.
- On April 3, 2023, the City Council provided direction to staff that they would no longer approve Right-of-Way Encroachment Permits for residential snowmelt systems, unless the snowmelt system is required by the City Engineer, Fire Department, or Streets Department for nonconforming driveways.
- The driveway conforms to city standards and a snowmelt system is not recommended by the City Engineer, Fire Department, or Streets Department.

Policy Analysis and Background (non-consent items only):

During their meeting on April 3, 2023, the City Council provided direction to staff that they would no longer approve Right-of-Way Encroachment Permits for residential snowmelt systems, unless the snowmelt system is required by the City Engineer, Fire Department, or Streets Department for nonconforming driveways, such as steep driveways with grades that exceed 10% slope.

On October 8, 2024, the Community Service Officers observed work being conducted in the public right-of-way at 108 Gates Road without a permit. The work involved a snowmelt system in the right-of-way (see image below) and the representation by the applicant is that the snowmelt was being replaced, although staff can't confirm if it was pre-existing. On October 9, 2024, staff communicated to the applicant that the work needed to stop and informed them that snowmelt systems and pavers in the right-of-way require a Right-of-Way Encroachment Permit. Staff also indicated to the owner that due to council policy direction, snowmelt is not permitted within the right-of-way without approval by city council and that snowmelt is generally not permitted unless necessary for life safety or street maintenance reasons. Despite staff communicating that the work in the right-of-way must be paused, the applicant disregarded staff's directive and installed the snowmelt system without the proper permit or approval.



On October 22, 2024, the applicant submitted a Right-of-Way Encroachment Permit application. As shown in Attachment 2, the plans indicate the encroachment of a snowmelt system and pavers in the public right-of-way, as constructed. The plans indicate that the snowmelt system was existing, however, City staff cannot

determine whether the system was pre-existing or newly installed because staff was unable to find an approved encroachment agreement permitting a snowmelt system in the right-of-way for this property.

Based on the policy direction provided by the City Council on April 3, 2023, staff recommends that the City Council approve a Right-of-Way Encroachment Permit for driveway pavers only and direct the applicant to remove the portion of the snowmelt system that encroaches into the right-of-way (Motion Option #1) as the driveway conforms to city standards and snowmelt is not recommended by the City Engineer, Streets Department, or Fire Department. If the Council chooses to amend their policy direction to approve residential snowmelt systems encroaching in the public right-of-way, then the 108 Gates Road Right-of-Way Encroachment Permit may be approved (Motion Option #2).

Sustainability Impact:

None OR state impact here: The April 3, 2023, staff report for the policy discussion regarding snowmelt systems for residential driveways states that, “residential energy use is the largest contributor of greenhouse gas emissions in Ketchum accounting for 50% of total emissions.” The staff report provides average emissions in pounds of carbon dioxide emissions produced per driveway for different snow removal methods as follows:

- Snowmelt Systems: 1,606 pounds of CO2 emissions (1,079 vehicle miles traveled equivalent)
 - Snow Plowing: 115 pounds of CO2 emissions (77 vehicle miles traveled equivalent)
- Snow Blower: 76 pounds of CO2 emissions (51 vehicle miles traveled equivalent)

Financial Impact:

None OR Adequate funds exist in account:	There is no financial requirement from the city for this action
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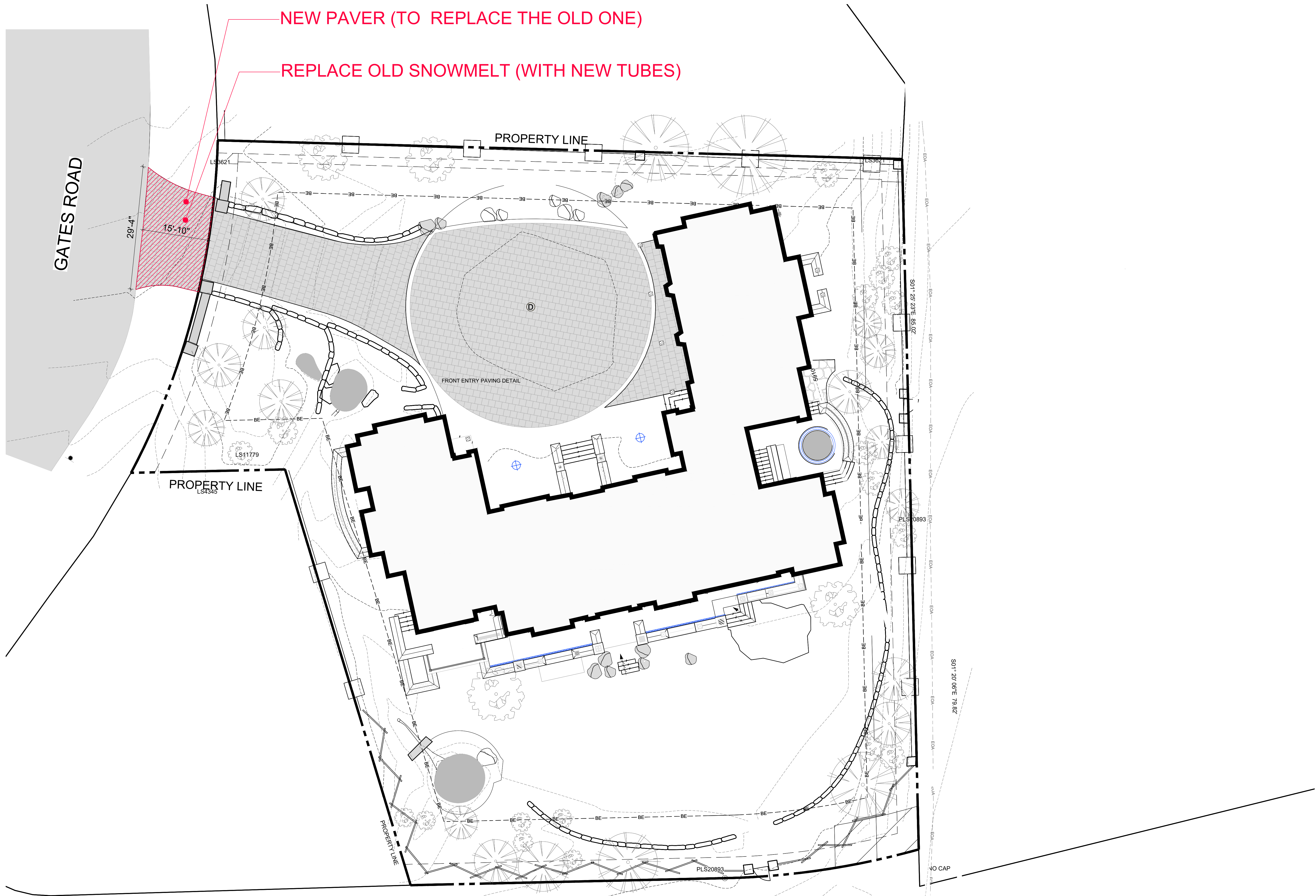
Attachments:

- | |
|---|
| 1. Unpermitted Right-of-Way Encroachment Plan, as Constructed |
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City of Ketchum

Attachment 1: Unpermitted Right-of-Way Encroachment Plan, as Constructed



GATES ROAD

NEW PAVER (TO REPLACE THE OLD ONE)

REPLACE OLD SNOWMELT (WITH NEW TUBES)

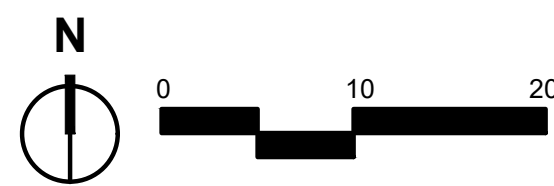
PROPERTY LINE

PROPERTY LINE

FRONT ENTRY PAVING DETAIL

NO CAP

PLS20893



LANDSCAPE DESIGN
MCGAVICK RESIDENCE
108 GATES ROAD, KETCHUM IDAHO

PRINCIPAL: **BY**
PROJECT MANAGER: **SP**
DRAWN BY: **SB**
ISSUE DATE: **10-22-2024**

ROW ENCROACHMENT

SHEET NO.

L1.0



City of Ketchum

Attachment 2:
Right-of-Way
Encroachment
Agreement 25939

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 25939

THIS AGREEMENT, made and entered into this ____ day of _____, 2024, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and _____, representing Dirty Foot Gang, LLC (collectively referred to as "Owner"), whose address is 4500 Gordon Drive Naples FL 34107.

RECITALS

WHEREAS, Owner wishes to permit placement of a paver driveway with snowmelt system within the right of way on 108 Gates Drive. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement;

WHEREAS, the Owner will restore the sidewalk, street, curb and gutter and any landscaping back to the original condition acceptable to the Streets and Facilities Director;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to install pavers and a snowmelt system within a driveway as identified in Exhibit "A" within the public right-of-way on Gates Road, until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed. Any modification to the improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.

3. Owner shall be responsible for restoring the sidewalk, curb and gutter and landscaping that is altered due to the installation and removal of the Improvements, to the satisfaction of the Director of Streets and Facilities.

4. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall

further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

5. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

6. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

7. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

8. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

9. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

10. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

11. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

12. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

CITY OF KETCHUM:

By: _____
Name: _____
Dirty Foot Gang, LLC

By: _____
Neil Bradshaw
Its: Mayor

STATE OF _____,)
County of _____,) ss.
County of _____,)

On this ____ day of _____, 202__, before me, the undersigned Notary Public in and for said State, personally appeared _____, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

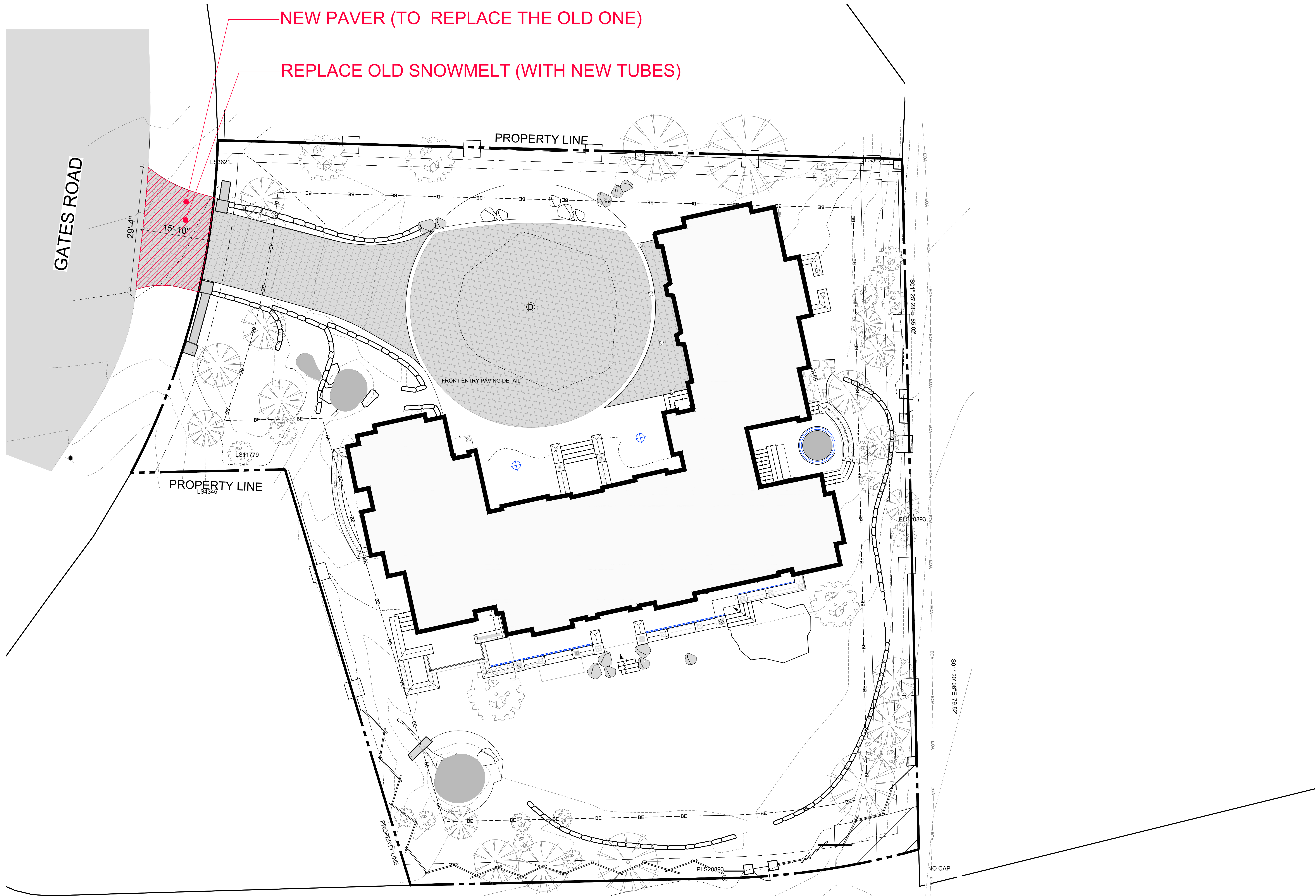
STATE OF IDAHO)
County of Blaine) ss.
County of Blaine)

On this ___ day of _____, 202__, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"



LANDSCAPE DESIGN
MCGAVICK RESIDENCE
108 GATES ROAD, KETCHUM IDAHO

PRINCIPAL: **BY**
PROJECT MANAGER: **SP**
DRAWN BY: **SB**
ISSUE DATE: **10-22-2024**

ROW ENCROACHMENT

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