

**IRWIN, MYKLEBUST, SAVAGE & BROWN, P.S.**

KENNETH B. MYKLEBUST  
DAVID W. SAVAGE\*†  
KELLY N. BROWN\*  
JANE T. VON FRANK\*\*  
COLLEEN A. HARRINGTON\*  
ROBERT W. REMBERT\*  
G. HOWARD UTZMAN\*  
LL.M. NYU (Tax)

ATTORNEYS AT LAW  
1230 SE BISHOP BOULEVARD  
P.O. BOX 604  
PULLMAN, WASHINGTON 99163-0604  
TELEPHONE: 509/332-3502  
FACSIMILE: 509/332-6565  
www.imsblaw.com

CLAUDE K. IRWIN  
1912 - 2005

e-mail: rembert@imsblaw.com

May 2, 2006

\* ALSO ADMITTED IN IDAHO  
\*\* ALSO ADMITTED IN MASSACHUSETTS  
† ALSO ADMITTED IN MONTANA

The Honorable Dennis P. Hession  
Mayor of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**BY FACSIMILE AND U.S. MAIL:**  
509.625.6217

Dear Mayor Hession:

Jo Ellen Savage's family has followed with concern the continuing inquiry into the cause of her tragic death on April 8, 2006, at the River Park Square parking garage. On their behalf, I wrote to you on April 25, 2006, expressing their desire that the City close the garage or, at a minimum, those exterior portions protected by the spandrels. While we have not had a response to the letter, we have followed your public comments.

At this point, we understand that Spokane's legal counsel has advised that the City has the requisite police power to close a private structure which poses a material peril to the public's health, safety and/or welfare.<sup>1</sup> With this ground for your initial reluctance to act removed, we are dismayed to learn from your public remarks that you now refuse to act on the ground that there is inadequate evidence for such action.

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<sup>1</sup> The Spokane Municipal Code provides ample authority for this action.

Title 10, entitled Regulation of Activities, provides in Section 10.08.030 as follows:

A. No person may do an act, omit to act, engage in a course of activity, or create or maintain a condition which unreasonably:

1. interferes with the comfort, solitude, health, or safety of others. . . .

Title 17F, entitled Construction Standards, provides in Section 17F.070.380 that a property owner has a duty to:

- A. maintain [a] building in a sound structural condition.

Based upon the information which has emerged, we believe that the River Park Square garage poses a public hazard and that it should be closed until appropriate repairs are made to it.

Since my last communication, we have secured a copy of the report prepared by Walker Parking Consultants/Engineers, Inc., which the City commissioned on April 9, 1996. As it stated, "the purpose of the investigation was to observe the general condition of the parking facility, suggest necessary repair and maintenance actions, and provide cost estimates for the required restoration work."

The Walker report chronicles the repairs made to the garage prior to 1996, noting that "[a]pproximately ten years ago, a major repair project was undertaken . . ."

Observing ". . . there have been no repairs undertaken in the past two or three years," the Walker report proposed three repair options, A through C, with option C involving the most extensive work. Walker recommended option C, saying:

Structural repairs to the floor slabs and precast facade panels are recommended, as are miscellaneous non-structural and serviceability items. Three options are presented for deck waterproofing following repairs. Option C, which includes a traffic-bearing waterproof membrane system at a total estimated project cost of \$1,420,000 is the recommended approach.

As you know from the N.G. Jacobson & Associates, Inc., report of October 4, 2002, prepared for the benefit of the City, Mr. Jacobson found that ". . . many of the most important option C work items recommended in the Walker Condition Appraisal Report were not performed on the original (Circa 1974) parking structure."

Walker's repair recommendations were based upon extensive site inspections and technical testing and include the following findings:

- Floor slabs—Supported level floor slabs are exhibiting a substantial amount of cracking.

[The cracking] is related to the deflections of the slabs under loading. Interestingly, the design slab thickness of 5" is well below the recommended minimum for its span length as prescribed in the ACI 318-71 building code requirements in effect at the time of construction. Increased cracking and deflections would be the expected result, and this is what we observed. Driving the ramps, there is a noticeable "roller coaster" effect.

- Facade—The north and south facades consist of precast concrete panels with an exposed aggregate exterior face. The panels are fabricated to a "curved L"

shape, with the bottom leg of the "L" bolted to the floor and edge beam, and the vertical leg forming the guard wall.

On many of the panels, the top surface of this bottom leg is exhibiting scaling. This scaling is a result of freeze-thaw cycles acting on the concrete, and probably indicates less-than-desirable durability characteristics of the precast concrete. In some cases, it appeared that the concrete was not properly consolidated, leaving multiple air pockets at the surface.

In addition to the surface degradation, there were some locations where corrosion of embedded steel has occurred, causing cracking and spalling of the precast concrete. Where this occurs in the vicinity of the connection hardware holding the panel in place, the stability of the panel can be compromised. There were no situations noted requiring immediate action, however it would be prudent to inspect these panels at least twice annually to prevent ongoing deterioration from creating a hazardous condition.

In addition to twice-annual panel inspections, Walker recommended:

All panels exhibiting cracking and/or spalling in the vicinity of the connections to the structural frame need to be repaired. Those which have not progressed so far as to threaten the immediate stability of the panels may be temporarily supported and patched and or epoxy injected. It is possible that certain panels may need to be removed and replaced, depending on the extent of corrosion damage at the time repairs are implemented.

Despite this recommendation, Mr. Jacobson found that "[m]any precast spandrel panels are in poor physical condition with scaling and delaminations present." He also observed that the original portion of the structure in which Ms. Savage was attempting to park was, in 2002, "... in poor condition."

Though the City's legal department has concluded that it is within the City's power to close this structure until the necessary repairs are made, we understand that you are not yet satisfied that there is sufficient evidence that the condition of the garage and the retaining walls (spandrels), in particular, present a hazard to the public's health, safety and welfare.

While we appreciate the City's obligation to act on the basis of the best possible information so as to not unfairly compromise a private property owner's interests, we believe the evidence compels the closure we requested on April 25, 2006.

- Jo Ellen Savage died on April 8, 2006, as a result of the collapse of the retaining wall which allowed her vehicle to fall five stories out of the garage.

- As determined by the police department of the City of Spokane, the contact of Ms. Savage's 1996 Subaru Legacy Outback wagon with the spandrel which collapsed occurred at low speed, a speed consistent with parking.
- Consistent with the foregoing and contrary to the initial speculative remarks reported in the media, David McLaughlin, the only eyewitness who stood next to the Subaru as this tragedy unfolded, has stated under oath:

. . . Ms. Savage was traveling pretty slow. As she turned into the parking space, she slowed further and inched forward as if preparing to stop as she reached the curb. When the Subaru reached the curb, however, its front wheels went up onto the horizontal curb piece of the retaining wall rather than stopping at it.

My thought was that Ms. Savage was going to have minor fender damage when the right side of her Subaru contacted the vertical portion of the retaining wall. I did not believe the Subaru had enough speed or momentum to cause significant damage either to the vehicle or the retaining wall. When the Subaru bumped into the vertical portion of the retaining wall, however, it gave way breaking and bending outward, pulling the Subaru with it out of the garage. As the Subaru was pulled out of the garage and tipped over the broken edge, its rear wheels were slowly lifted off the ground and the right rear wheel was slowly turning. . . . The Subaru continued to rotate forward out of the garage until it fell over the edge through the opening created by the collapse of the retaining wall; as it did so, there was a loud scraping and screeching as the underside of the car scraped over the broken edge of the retaining wall. At no time, however, did I hear any other vehicle noises such as skidding, screeching tires or significant engine noise such as revving prior to the Subaru contacting the retaining wall.

- The 1996 Walker assessment and N.G. Jacobson & Associates, Inc.'s evaluations, prepared in 2002 and 2003, have consistently apprised the City and the owners of the garage of its poor condition and the increasing peril caused by the failure to act on their repair and maintenance recommendations.

Because this tragedy was the result of a low speed, imminently foreseeable event which occurred in a garage which is in need of, but has not undergone, the substantial repairs recommended more than ten years ago, we believe the responsible exercise of discretion requires the closure of this structure.

Mayor Hession  
May 2, 2006  
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We trust the proof you await need not come in the form of yet another death.

Yours very truly,

IRWIN MYKLEBUST SAVAGE & BROWN, P.S.



Robert W. Rembert

RWR:bm

cc: City Council President Joe Shogan (email at: [jshogan@spokanecity.org](mailto:jshogan@spokanecity.org))  
Council Member Bob Apple (email at: [bapple@spokanecity.org](mailto:bapple@spokanecity.org))  
Council Member Rob Crow (email at: [Rcrow@spokanecity.org](mailto:Rcrow@spokanecity.org))  
Council Member Al French (email at: [aFrench@spokanecity.org](mailto:aFrench@spokanecity.org))  
Council Member Nancy McLaughlin (email at: [nmclaughlin@spokanecity.org](mailto:nmclaughlin@spokanecity.org))  
Council Member Brad Stark (email at: [Bstark@spokanecity.org](mailto:Bstark@spokanecity.org))  
Council Member Mary Verner (email at: [mverner@spokancity.org](mailto:mverner@spokancity.org))

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