



Appendix I – Section 4(f) Technical Memorandum



Section 4(f) Technical Memo

Kansas City Streetcar Main Street Extension

January 4, 2019

Contents

_Toc530556594

1. Introduction.....	1-1
2. Section 4(f) Use Definitions	2-1
2.1. Permanent Incorporation or Easement.....	2-1
2.2. Constructive Use.....	2-1
2.3. Temporary Occupancy	2-1
2.4. <i>De minimis</i> Impact Finding.....	2-1
3. Section 4(f) Resources	3-1
3.1. Park Section 4(f) Resource.....	3-1
3.2. Section 4(f) Use Analysis	3-2
3.3. Summary of Section 4(f) Finding	3-5

Figures

Figure 1 Area of Trolley Track Trail shift south of 49 th St.	3-3
Figure 2 Area of Trolley Track Trail shift north of 51 st St	3-3
Figure 3 Proposed Improved Trail Connection at 49 th /Volker.....	3-4

1. Introduction

This technical memo provides documentation required to comply with the provisions of Section 4(f) of the United States Transportation Act of 1966 (here after referred to as “Section 4(f)”) and codified at 49 United States Code 303. The Kansas City Streetcar Main Street Extension is a transportation project that may receive federal funding through the Federal Transit Administration (FTA) and therefore, documentation of compliance with Section 4(f) is required.

Section 4(f) protects publicly owned lands of a park, recreation area or wildlife/waterfowl refuge or land of a historical site of national, state or local significance, as determined by the federal, state or local agency with jurisdiction over the resource.

The FTA may not approve the use of a Section 4(f) resource unless:

- There is no feasible and prudent avoidance alternative to the use of land from the resource.
- The action includes all possible planning to minimize harm to the property resulting from such use.

Parks, recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites are protected under Section 4(f) if certain criteria are met. These criteria are:

- It must be publicly owned
- It must be open to the public
- Its major purpose must be for park, recreation, or refuge activities
- It must be significant as a park, recreation area, or refuge
- It must be eligible for or listed on the National Register of Historic Places (NRHP) (for historic sites only)

This Section 4(f) technical memorandum does the following:

- Defines how Section 4(f) is determined
- Describes the Section 4(f) resources near the Streetcar Main Street Extension project
- Discusses the project elements that would “use” the 4(f) resource
- Identifies mitigation measures

2. Section 4(f) Use Definitions

Section 4(f) prohibits the “use” of eligible Section 4(f) resources for transportation purposes. The term “use” is defined in the sections below.

2.1. Permanent Incorporation or Easement

A permanent use of a Section 4(f) resource occurs when a property is permanently incorporated into a proposed transportation facility. Permanent use may occur as a result of a partial or full acquisition or a permanent easement allowing access onto the property for maintenance or other transportation-related purposes.

2.2. Constructive Use

A constructive use occurs when there is no permanent incorporation of land from the resource but the project’s proximity results in impacts that substantially impair the protected activities, features, or attributes that qualify the property for protection under Section 4(f).

2.3. Temporary Occupancy

Temporary use of a Section 4(f) resource may trigger the application of Section 4(f). Criteria must be met to determine that a temporary occupancy does not rise to the level of use for the purposes of Section 4(f). The criteria include: duration of use is temporary for a portion of the time to construct the project; scope of the occupancy is minor; no permanent adverse physical impacts or interference with activities, features, or attributes occur at the property; it is restored to the same or better condition; and there is documented agreement from the agency with jurisdiction over the property regarding the criteria.

2.4. *De minimis* Impact Finding

Restrictions of Section 4(f) do not apply to projects that have only a *de minimis* impact on the resource protected by Section 4(f). A *de minimis* finding can apply to parks or historic sites; however for the Streetcar Extension project, no historic sites would be impacted and so are not discussed for the remainder of this technical memorandum.

For parks, recreational areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that would not adversely affect the activities, features, or attributes qualifying the property for protection under Section 4(f). To qualify for a *de minimis* finding, the following criteria must be met:

- There must be public notice and an opportunity for public review and comment concerning the effects on the protected activities, features, or attributes of the Section 4(f) resource. This requirement can be satisfied in conjunction with other public involvement procedures, such as a comment period provided on a National Environmental Policy Act (NEPA) document.
- The lead U.S. DOT agency (FTA for this project) must inform the official with jurisdiction over the Section 4(f) resource of its intent to make a *de minimis* impact finding. Following an opportunity for public review and comment, the official must concur in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection.

3. Section 4(f) Resources

3.1. Park Section 4(f) Resource

3.1.1 Harry Wiggins Trolley Track Trail

The Harry Wiggins Trolley Track Trail (Trolley Track Trail) is a recreational facility about six miles in length extending from approximately 49th Street and Brookside Boulevard to 85th Street and Prospect Avenue in Kansas City, MO. The Trolley Track Trail is located in the Country Club Right-of-way (ROW), the site of the city's last streetcar line (the Dodson Industrial Line). The trail is named after the late Senator Wiggins who sponsored the Kansas City Area Transportation Authority's (KCATA's) tax legislation and was converted to a trail in the late 1990s. The trail is used by walkers, runners, and bicyclists. Its surface is compacted, crushed limestone for much of its length but is asphalt in some areas where flooding is prone to occur.



Trolley Track Trail Entrance/Exit at 49th Street

3.1.2 Parks and Boulevard System

The Kansas City Parks and Recreation Department (KCPRD) maintains control over parks within the project area. Parks present in the corridor include:

- Memorial Hill (Liberty Memorial) – Pershing & Main St (49.96 acres)
- Murray Davis Park – 40th & Main St (0.09 acre)
- Mill Creek Park – JC Nichols Parkway from 43rd St to Ward Parkway (11.43 acres)
- Brush Creek Greenway – Adjacent to Brush Creek from Brookside Blvd to the Blue River (285.85 acres)
- Washington Square Park – Pershing & Grand Blvd (4.74 acres)

KCPRD maintains control over not only parks but certain boulevards and city streets as part of the overall Parks & Boulevards System. In addition there are several boulevards/parkways that traverse the Main Street corridor and one within a portion of the corridor (i.e., Brookside Boulevard). While not technically parks, these facilities fall under the jurisdiction of the KCPRD and require consideration/coordination with the KCPRD. These boulevards and parkways include:

- Linwood Boulevard
- Armour Boulevard

- Emmanuel Cleaver II Boulevard
- Ward Parkway
- Volker Boulevard
- Brookside Boulevard – Main Street from Emmanuel Cleaver II Boulevard/W. 47th Street south to 51st Street and beyond.

3.1.3 Historic Resources

Along the project corridor, there are 10 sites listed on National Register of Historic Places (NRHP); 97 properties listed as contributing resources within a National Register Historic District; 15 properties listed as non-contributing resources within a National Register of Historic Places District; and one (1) National Historic Landmark site. These resources that are listed or eligible for listing in the NRHP are also considered Section 4(f) resources.

3.2. Section 4(f) Use Analysis

3.2.1 Harry Wiggins Trolley Track Trail

The Country Club ROW property, which houses the Trolley Track Trail, was purchased by the Kansas City Area Transportation Authority (KCATA) with the intent of reusing it for transit service. Additional detail about the purchase and use of the trail corridor is included in Appendix A. Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of railroad and rail transit lines, or elements thereof, that are in use or that were historically used for the transportation of goods or passengers. Since the Country Club ROW has been “reserved for the future transportation of good or passengers” the Country Club ROW and the Trolley Track Trail within, are considered eligible for this exemption.

However, the KCATA understands that the Trolley Track Trail is both a pedestrian and recreational resource that many stakeholders in the area want to remain intact. KCATA is committed to maintaining this resource. As such, the project team has taken measures to avoid impact to the trail to the extent practicable.

The proposed Main Street Extension would parallel the Trolley Track Trail south of Volker Boulevard within the Country Club ROW. At this time, permanent impacts to the trail are anticipated at two locations. Just south of 49th Street, an approximate 120' portion of the Trolley Track Trail would be shifted from its current location by 3.5' at its widest point (Figure 1). In addition, the trail would be shifted slightly to the north of 51st Street (Figure 2). The relocated portions are shown in pink in the referenced figures. Temporary closures and detours of the trail may result from construction of the streetcar alignment, but would be limited to the extent practicable to reduce impact to trail users. In locations that the physical trail would be reconstructed, it is intended to return the surface to the current pavement conditions.

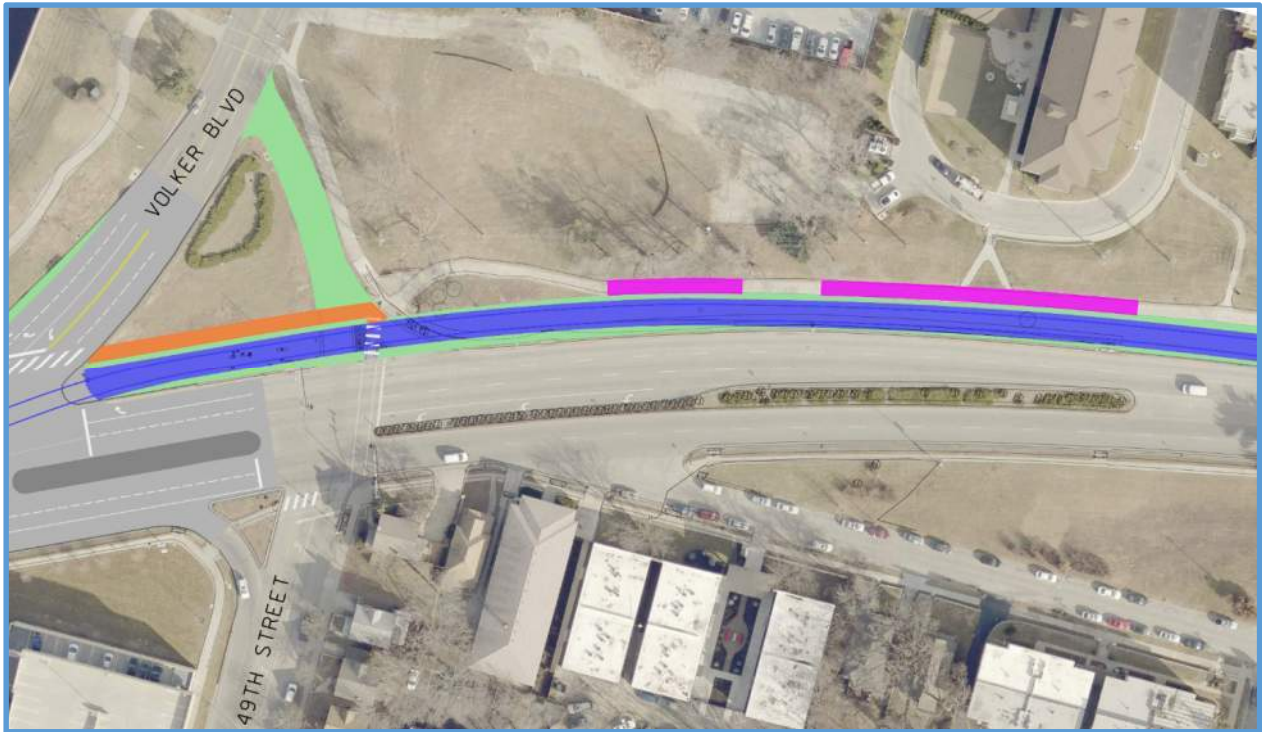


Figure 1. Area of Trolley Track Trail shift south of 49th Street (shown in pink)

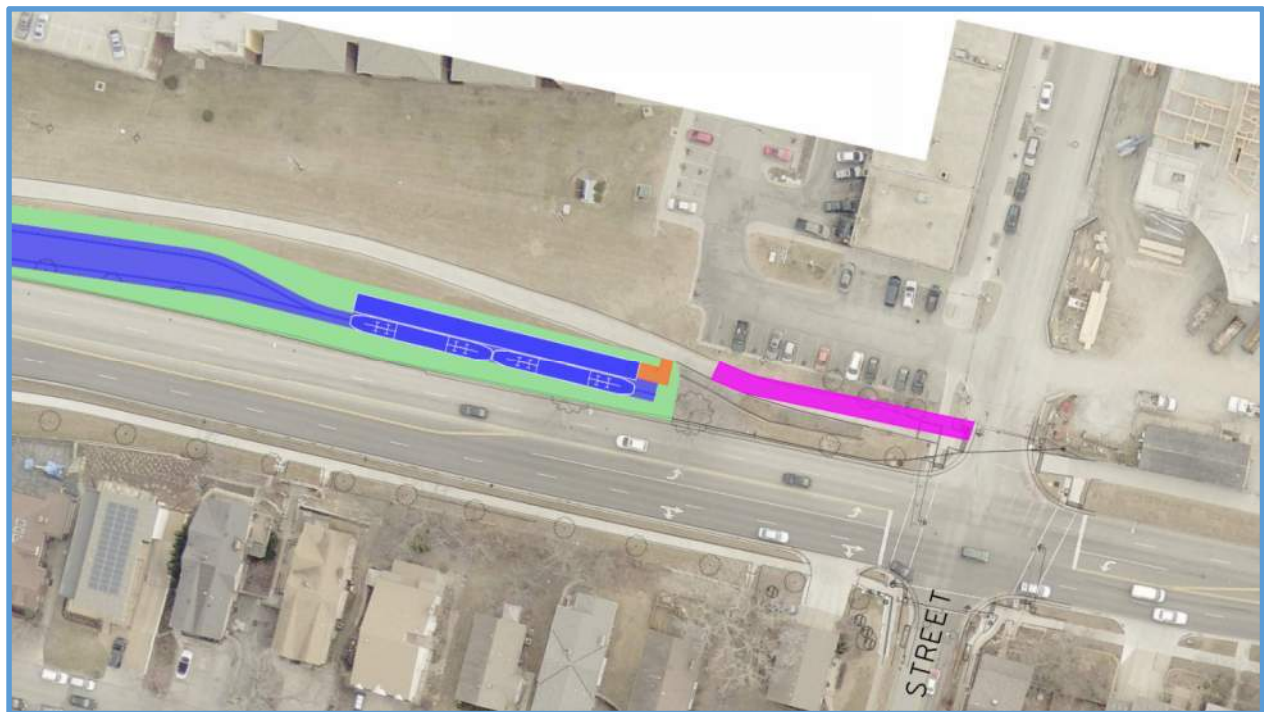


Figure 2. Area of Trolley Track Trail shift north of 51st Street (shown in pink)

In addition to minimizing impacts to the Trolley Track Trail and retaining it for recreational use, the Trolley Track Trail would be improved at its current terminus at 49th Street. Currently, trail users have to take an out-of-distance route to cross Volker Blvd and continue along Brookside Boulevard/Main Street to transition to the Brush Creek trail. As part of the streetcar extension project, a trail connection across 49th Street and Volker Blvd. would be constructed to create a shorter and more direct connection (Figure 3). Although during construction, a portion of the trail would be closed while this new connection is built, the impact would be temporary and would be limited to as little time as necessary to minimize impact to users of the trail.

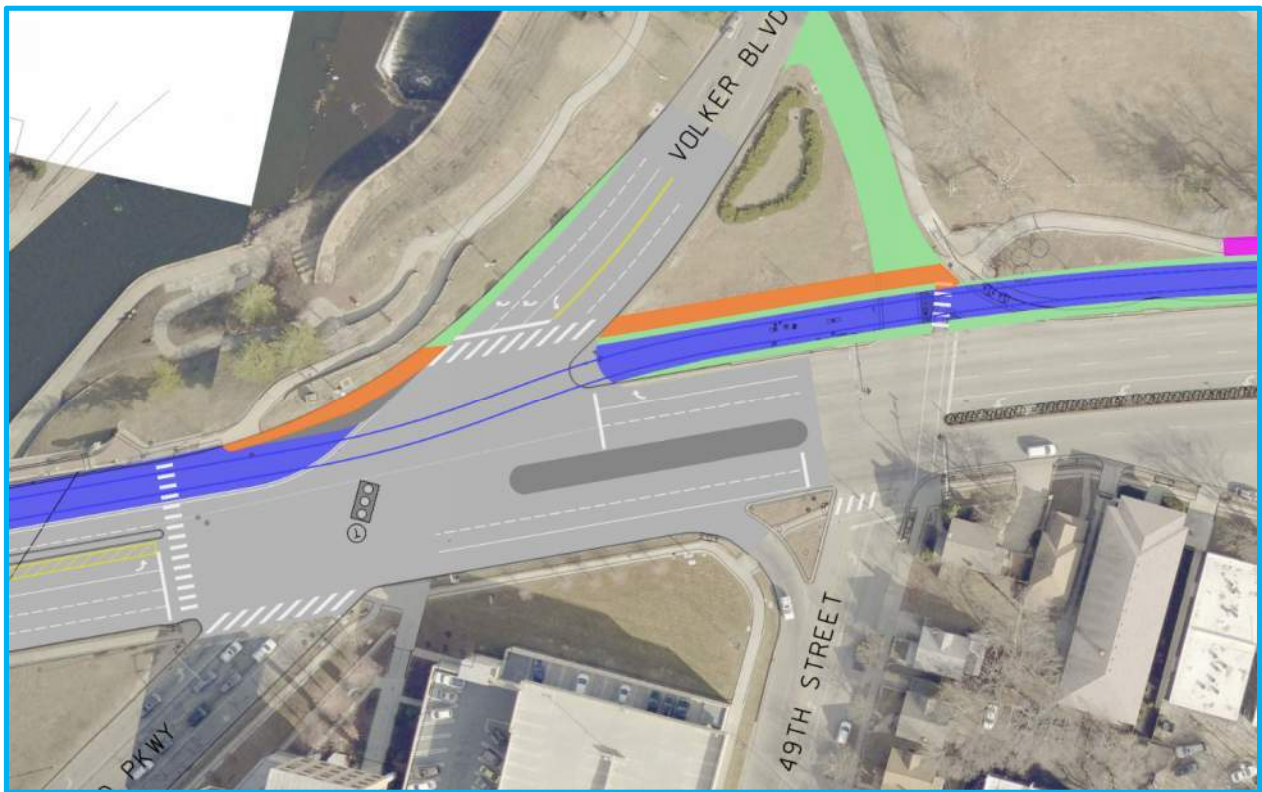


Figure 3. Proposed Improved Trail Connection at 49th/Volker (shown in orange).

The public has had opportunities to provide input on the proposed project and its impacts to the Trolley Track Trail. In a poll taken at the June 5, 2018 public meeting, the public overwhelmingly supported placement of the proposed Streetcar Main Street Extension alignment within the Country Club ROW as opposed to having it within the Brookside Boulevard roadway for this segment. Project representatives met with the South Plaza Neighborhood Association on November 9, 2018, in which they expressed their full support for the project and the use of the Country Club ROW. A letter of support for the project from the South Plaza Neighborhood appears in Appendix A.

3.2.2 Parks and Boulevard System

The Streetcar Main Street Extension would not impact any of the aforementioned parks, but would be constructed across the boulevards/parkways listed previously. The primary use of these streets is for transportation, not as a public park or recreation facility. Therefore, none of these streets nor associated right-of-way is considered a Section 4(f) resource. The Streetcar Main Street Extension would expand the transportation use of these street segments.

3.2.3 Historic Resources

The Streetcar Main Street Extension would not involve any conversion of land occupied by the aforementioned historic resources, or modify the features that make the resources eligible for listing in the NRHP. Furthermore, the Streetcar Main Street Extension would not result in visual or noise effects to these historic properties. **The SHPO concurred with the FTA's determination of 'no adverse effect' on historic properties (see Appendix A). <TBD>** Therefore, the Streetcar Main Street Extension would not result in any use of a Section 4(f) resource.

3.3. Summary of Section 4(f) Finding

The Federal Transit Administration, in consultation with KCATA, has determined that impacts to the Trolley Track Trail are exempt from Section 4(f) under Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)). Furthermore, there would be no negative impacts to the function and attributes of the Trolley Track Trail as a result of the Streetcar Main Street Extension project. Minimization of the impact to the Trolley Track Trail would include limiting the amount of time needed to close the trail for reconstruction to the extent practicable. Additionally, separation (whether geometric or physical) between the streetcar and the Trolley Track Trail will be considered as the project moves into final design.



Appendix A – Correspondence



JERRY RIFFEL
ATTORNEY AT LAW
PARTNER
DIRECT: 816.460.5712

MAIN: 816.292.2000
FAX: 816.292.2001
JRIFFEL@LATHROPGAGE.COM
LATHROPGAGE.COM

2345 GRAND BOULEVARD, SUITE 2200
KANSAS CITY, MO 64108

December 18, 2018

Mr. Robbie Makinen
President and Chief Executive Officer
Kansas City Area Transportation Authority
1200 East 18th Street
Kansas City, Missouri 64108

Re: Country Club Right of Way Transit Corridor

Mr. Makinen:

You have asked me to review the transportation uses in the Country Club Right of Way Corridor ("CCROW Transit Corridor"). In particular, I have focused below on the use of the CCROW for transit purposes between 43rd Street on the north and 51st Street on the south.

The current title holder of the CCROW is the KCATA. The KCATA acquired the CCROW Transit Corridor in fee simple interest under Agreement dated October 27, 1981, with the Kansas City Service Freight Operation in consideration of \$1,500,000. KCATA acquired its interest in fee by Quit Claim Deed recorded in the office of the Jackson County, Missouri, Recorder of Deeds in 1981. KCATA is a political subdivision and bi-state public agency created by an interstate compact between Missouri and Kansas, and approved by the United States Congress. KCATA is a body corporate and political subdivision of the states of Missouri and Kansas. Since it acquired the CCROW Transit Corridor, KCATA constructed the Harry Wiggins Trolley Track Trail as a transportation facility for pedestrians, runners and bicycle use along the entire 6-mile CCROW from Volker Boulevard on the north to 85th Street and Prospect Avenue on the south. KCATA maintains the trail and related transit improvements by providing trash removal, mowing utilities and general upkeep and capital investment.

The Northern terminus of the property is at Westport Road. Between Westport Road and the terminus at 85th and Prospect, the KCATA built and operates a series of transportation projects that include roadways, transit stations, park and ride lots, parking facilities, bus stops, bus station turn arounds, bicycle repair stations, and bus operator rest area and bathroom facilities. Several of these transit facilities were constructed in partnership with the City of Kansas City, Missouri.

The "Contract for Sale of Railroad Right of Way" was negotiated with the Ashley family which formerly operated a Railroad on the property. The KCATA acquired the Ashley property after a number of years of negotiations and failed attempts. The KCATA partnered on the venture with the City and utilized transportation related City revenue for the acquisition. The property was acquired to construct future transportation improvements, remove blight and preserve the CCROW Transit Corridor in partnership with the surrounding neighborhoods.

The Agreement has one condition and contingency which is central to the purpose of acquisition as follows:

"It is an express condition of the sale, and buyer's obligation to pay the portion of the purchase price to be placed in escrow that sellers have and do transfer title to the right of way for railroad purposes and that such title is adequate for buyer's purpose of developing and operating a light rail mass transportation system."

At the time of the purchase, the Ashleys' property was subject to 32 licenses and easements with third parties, many of which uses were transportation related. These licenses and easements are for a term and related to parking facilities. The purpose of the Agreement is clear from the following section of the Purchase Agreement:

"The parties agree that Buyer may terminate any license for parking assigned here under during the term of the escrow if buyer requires the termination of such a license for the actual development of a light rail mass transportation system."

The KCATA also required that the seller deliver a title "adequate to permit the KCATA to operate a light rail mass transportation system."

The CCROW Transit Corridor begins at 43rd Street and terminates at 85th and Prospect. The KCATA property between Westport Road and 43rd is only 50 feet in width. It is divided into two segments called Westport North and Westport South. Westport North is held by the City under an easement from the KCATA reserving the KCATA's fee interest and is used as a parking and road facility by the City of Kansas City. Westport South is a parking facility leased to an adjoining office building owner and the rent is used to maintain the transit facilities in the remainder of the Corridor.

Beginning at 43rd Street, the CCROW Transit Corridor is 100 feet in width, which extends on the easterly side of Mill Creek Park through the American Century office complex. Where the KCATA property adjoins American Century and extending to the intersection of Main Street and 47th, the CCROW Transit Corridor has a LRT easement on the east 50 feet of the CCROW and a parking facility on the west 50 feet of the property which is leased to American Century.

The Corridor at 47th Street, extends diagonally connecting the intersection of 47th and Main to the intersection of Volker and Brookside Boulevard. The westerly 15 feet of the property (approximately) was conveyed by easement to the City and made possible the construction in the early 1990s of the Brookside connector connecting Brookside Boulevard and Main. The remainder of the KCATA property to Volker is maintained and operated by the KCATA subject to its transit objectives and also serves as a surface parking lot leased to the Winstead's Restaurant on 47th. The revenues from the parking facility are used to maintain the transportation improvements on the property.

As stated above, the KCATA's bicycle and pedestrian transportation facility begins on Volker Boulevard and extends to the south on the 100-foot CCROW. At 51st Street, the KCATA partnered with the Van Trust Company which developed the University Whole Foods and private housing mixed use development project. The easterly 50 feet of the property at this location is leased to the Van Trust Company for parking purposes. The westerly 50 feet continues in KCATA ownership and has been reserved for the bicycle and pedestrian facility and for future transit.

The existing Lease with a private owner on the north side of 51st was executed by the KCATA in 2012. This is the general area identified for the proposed streetcar transit station at the southern terminus of the project-a use originally contemplated for the KCATA property. The leasehold income here again is used to maintain transit improvements in the CCROW Transit Corridor. Accordingly, the Lease contains language that dates back to the original contract with the Ashley's in 1981. It reads as follows:

"In the event that lessor determines to construct a fixed rail or other transportation improvement on the premises, this Agreement shall terminate upon the KCATA providing Lessee 90 days' notice as provided in this Agreement."

Similar language allowing termination upon notice from the KCATA when the property is needed for transportation improvements is included in KCATA leases throughout the CCROW Transit Corridor. In the only notable exception the remainder of the KCATA property is reserved for transit purposes.

If I can be of further assistance in identifying the transit purposes of the KCATA utilizing the CCROW Transit Corridor, please advise.

Best regards,

Lathrop Gage LLP

By: 
Jerry Riffel

From: Keith Spare [mailto:keithspare@aol.com]

Sent: Friday, November 9, 2018 9:22 AM

To: tgerend@kcstreetcar.org

Cc: cliffcauty@live.com; donna.kerr@ssa.gov; jap64112@aol.com; francie416@gmail.com; wardsharonm@gmail.com; mhogerty47@gmail.com

Subject: Street car

I am writing you to express the support of South Plaza Neighborhood for the current streetcar street plans.

We like the straight route across Brush Creek leaving both the north and south tracks off Brookside with a buffer and fencing between the jogging trail and the streetcar. Please be sure to remove any egress across Brookside at 50th

The allowance for the Trolley Track Trail to cross with the Street car across Volker is superb and will greatly enhance safety with an improved pedestrian crossing signal across from Ward Parkway and Brookside.

As you consider those changes this is the perfect time to return to two way traffic between Main and Brookside which South Plaza has been advocating for over a decade. (Take a look at the one-way north of Brush Creek as well.)

We want to also express our support of extending available parking north of the Colonial Shops parking north of 51st. This could and should be done as soon as possible and when needed down the road provide a staging area.

The removal of the right hand turn off Brookside to Volker reconfigured will allow increased vehicle and pedestrian crossing safety access the worst intersection we are aware of.

Again thank you for all your team's efforts and we appreciate much of the data you have and will gather can be used for the much needed comprehensive traffic study of the Midtown park area.

Keith