



**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 25, 1997**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting in the Work Session Room, Main Level, at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, September 25, 1997.

A G E N D A

Work Session

- 4:30 p.m. Council questions and comments
5:00 p.m. Review of regular meeting

Regular Meeting

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

III COMMUNICATIONS FROM COUNCIL AND STAFF

IV WORK SESSION NOTES AND MINUTES OF MEETING OF SEPTEMBER 11, 1997

V PUBLIC HEARING

1. Ordinance approving the plat amendment at 222 Norfolk Avenue, consolidating Lot 24, 25, 26, 27, and the northerly half of Lot 28, in Block 31, located in the southeast quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah
2. Continuation of an Ordinance approving a record of survey, Arrowood Condominiums, at Gilt Edge Circle, Park City, Utah

VI CONSENT AGENDA

1. Ordinance approving the plat amendment at 222 Norfolk Avenue, consolidating Lot 24, 25, 26, 27, and the northerly half of Lot 28, in Block 31, located in the southeast quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah
2. Ordinance approving a condominium plat for the Summit Watch at Park City at 710-890 Main Street, located in the Northeast Quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah
3. Authorization for staff to proceed with a civil complaint against 740 Kearns Boulevard
4. Resolution declaring October as Breast Cancer Awareness Month in Park City, Utah

VII OLD BUSINESS

Ordinance approving a record of survey, Arrowood Condominiums, at Gilt Edge Circle, Park City, Utah

VIII NEW BUSINESS

1. Appeal of July 14, 1997 Historic District Commission's approval of a residential structure to be located at 615 Woodside Avenue
2. Public hearing on Ordinance approving the Parcel 2 - Amended Walter-Daniels Subdivision located at 615 Woodside Avenue, Park City, Utah
3. Ordinance approving the Parcel 2 - Amended Walter-Daniels Subdivision located at 615 Woodside Avenue, Park City, Utah

IX ADJOURNMENT

PARK CITY COUNCIL MEETING SUMMIT COUNTY, UTAH OCTOBER 2, 1997

PUBLIC NOTICE IS HEREBY GIVEN that the Park City Council will **not** hold its regularly scheduled meeting on Thursday, October 2, 1997.

Posted: 9/22/97



**PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
SEPTEMBER 25, 1997**

Present: Mayor Brad Olch; Council members, Hugh Daniels, Roger Harlan, Chuck Klingenstein; Shauna Kerr; and Paul Sincock

Toby Ross, City Manager; Eric DeHaan, City Engineer; Jerry Gibbs, Public Works Director; Myles Rademan, Public Affairs Director; Mark Harrington, Assistant City Attorney

1. **Council questions and comments.** Roger Harlan reported that he attended a sexually oriented business license meeting at the County last week and there will be a public hearing held soon on a County proposed ordinance. Paul Sincock understood the suggestion from Shauna Kerr on September 11 that the interagency task force look at interlocal agreements as opposed to a separate committee, and asked when this topic will be considered. Toby Ross reported that the interagency committee will meet in October and discuss this issue. Chuck Klingenstein urged staff to consider Rail-Trail crossing options at Bonanza as it continues to be a concern of his. Shauna Kerr suggested a stop sign for pedestrians and bikers because people have a false sense of security with a striped cross walk. Eric DeHaan pointed out that the Rail-Trail property doesn't go all the way to Bonanza and there is a Union Pacific Railroad parcel there. Ms. Kerr suggested a "rumble" strip and the Mayor recommended a flashing warning light. Jerry Gibbs discussed getting power to the area and that the City has attempted to use solar lights but those efforts were unsuccessful. Mr. Gibbs added that the long-term solution would be changing the vertical grade which would be part of a much larger transportation project. There was discussion about the striping of the crosswalk at Marsac Avenue and Deer Valley Drive. Chuck Klingenstein advised Council that there will be an INS information officer at the Library tomorrow at 6:30 p.m. and that the dedication of the reading garden will be at 3 p.m. on October 3. He added that he went to the Planning Commission meeting, specifically to hear the Sullivan Road access issue. The Planning Commission recommended limiting access as much as possible on Sullivan Road. However, access may be permitted if a proposal meets performance criteria including building volumetrics, historic preservation, landscaping improvements, increased building setbacks, preservation of the residential character of the neighborhood, decreased project densities, and front and back-yard setbacks. Saving significant trees was discussed by the Commission. Chuck Klingenstein felt it important that the Commission be advised of street standards before access is approved on Sullivan Road.

Shauna Kerr reported that Ken Bullock, Executive Director of the Utah League of Cities and Towns, has requested a letter of support from the Council for a new position on the Executive Board of SLOC. She felt that it would be in the best interest of the City to make sure that there is governmental representation and would personally like to see Mr. Bullock on the Board. Roger Harlan asked who else would be a viable candidate and it was explained that this position is one that Mr. Bullock is attempting to create. The Mayor explained that Mr. Bullock is seeking

approval from the Governor and the Mayor of Salt Lake and Ms. Kerr reiterated that this proposal is to ensure that governmental interests are represented. Appointments on the Executive Committee were explained by the Mayor. The City Manager explained that Mr. Bullock already sits on SLOC and the Mayor clarified that all Board members may attend Executive Committee meetings. Roger Harlan asked if Mr. Bullock would be effective in this position and Ms. Kerr felt he has a good understanding of the interests of cities. There was a consensus to send a letter supporting Mr. Bullock's nomination to the Governor and Mayor of Salt Lake.

Ms. Kerr referred to public criticism of using out-of-town consultants on the Old Town design charette. She noted that she was on vacation in the Bahamas last week, and believes that residents don't see flaws their towns. First impressions are very important and it is beneficial to have an outside perspective; she is supportive of having consultants take a look at Park City. Myles Rademan emphasized that local professionals are also being invited which was always the plan. Chuck Klingenstein pointed out that the City is seeking expertise in urban planning and downtown urban vitalization and renewal and local design professionals have been invited to participate.

Hugh Daniels was pleased to have the on-going paving projects completed. He relayed that he met the Director of the U. S. Virgin Island Bobsled Team who commented on what a great town Park City is which is nice to hear from visitors. Mr. Sincock stated that the Bonanza/Deer Valley Drive intersection is working well.

2. Review of the regular meeting.

Arrowood Condominiums. Mark Harrington reported that unfortunately the parties have not reached an arbitration agreement. However, the developer dismissed the access easement portion of the lawsuit and this is sufficient for Council to move forward with the condominium plat. There may be input from homeowners on this matter, but all of the attorneys for all parties understand the need to move forward. He emphasized that based on the Land Management Code and state code, staff's recommendation is for approval. There is an additional condition of approval addressing the access in the event something happens with regard to the validity of the access easement. He pointed out some minor corrections to the ordinance. Roger Harlan felt it unfortunate that the parties can't agree and Mark Harrington explained that they will have to resolve this because this is an addition to Queen Esther III and the CC&Rs must be executed by Queen Esther III in order for the plat to be recorded. Council's approval does not conclude the process. He emphasized that this is not a development approval but changing the type of ownership for the property.

Civil complaint against 740 Kearns Blvd. The Mayor disclosed that Neal Richardson, the owner, indicated to him that he may sell the property. Mayor Olch suggested approving authorization to file a civil complaint but postponing it for one week until Mr.

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Richardson's intent is clarified. Mark Harrington explained that staff will be sending an additional notice prior to proceeding with the complaint.

With no further questions or comments on the regular meeting, the work session adjourned. See regular meeting minutes.

Prepared by Janet M. Scott



**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 25, 1997**

I ROLL CALL

Mayor Brad Olch called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, September 25, 1997. Members in attendance were Brad Olch, Hugh Daniels, Roger Harlan, Shauna Kerr, Chuck Klingenstein, and Paul Sincock. Hugh Daniels later excused himself from the meeting (see New Business). Staff present were Toby Ross, City Manager; Mark Harrington, Assistant City Attorney; Kurt von Puttkammer, Planner; Meg Ryan, Planner; Pat Putt, Planning and Zoning Administrator; and Jodi Hoffman, City Attorney.

II PUBLIC INPUT

The Mayor invited the public to comment on any matter of City business not scheduled on the agenda.

Mike Andrews, City Council candidate, appreciated that copies of the budget and the transportation study have been made available at the library. He regretted that he did not take the time during the budget process to review it and will participate in the future. Mr. Andrews stated that the budget document states that there will be a "windfall" of \$1,107,691 from anticipated parking fines in the next two years. There will also be during that time \$770,000 worth of expenditures related to the meters and parking enforcement, so it is more of a \$300,000 "windfall". If \$770,000 were not spent, it could be available to hire 24 additional police officers or parking enforcement officers, or to create public affairs programs. He referred to seven capital improvement projects that were related to either transportation or Olympic projects which total \$32,326,653 with the income side at \$7 million in bonded indebtedness, \$9 million in anticipated federal funds, leaving \$16,326,653. He discussed an Olympic Legacy Project involving the widening and the surfacing of trails to provide access from Deer Valley all the way to Bear Hollow, but this proposal has never come before the Parks and Recreation Board. Mr. Andrews hoped that our legacy will not be a community strangled with an enormous debt after the Olympics. He added that the congressional committee slashed an enormous amount of federal highway funds, including Olympic funds, for Utah. He urged Council to take the necessary steps to make sure that there is broad base representation in the community to formulate our Olympic legacy. He warned on counting on Congress to throw money our way or that the citizens will support a \$9 million bond issue next year.

III COMMUNICATIONS FROM COUNCIL AND STAFF

Hugh Daniels stated that he will be attending the Utah Sports Advisory Committee and will report back to Council.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF SEPTEMBER 11, 1997

Hearing no errors or omissions, the Mayor requested a motion to approve. Shauna Kerr, "I move approval". Chuck Klingenstein seconded. Motion unanimously carried.

V PUBLIC HEARING

1. Ordinance approving the plat amendment at 222 Norfolk Avenue, consolidating Lot 24, 25, 26, 27, and the northerly half of Lot 28, in Block 31, located in the southeast quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah - See staff report. Kurt von Puttkammer explained that this is a proposal to combine four and a half lots into three and the reduction will be consistent with the HRL lot size. The front yard setbacks are in excess of the required ten feet. In response to a question from Roger Harlan, building will probably not commence until spring. Hugh Daniels stated that he appreciated the staff's and Planning Commission's work on this as he asked that it be remanded when it was earlier before Council. With no further questions or comments, the public hearing was closed.

2. Continuation of an Ordinance approving a record of survey, Arrowood Condominiums, at Gilt Edge Circle, Park City, Utah - See staff report and work session notes. Meg Ryan explained that this hearing was continued from Council's September 11 meeting. Mark Harrington relayed that there have been negotiations between the developer and the home owners associations and there has been a dismissal of the issue of the easement. There is no legal barrier now and the application complies with the Land Management Code and state law. He pointed out minor corrections to the conditions of approval and noted that these changes are acceptable to the applicant. There were no comments from the Council, and the Mayor invited the public to speak.

Keith Golan, 2534 Gilt Edge Circle, stated that the easement issue has not been dropped and his home owners association is still pursuing it. He doesn't understand how the property can be subdivided as it is part of Queen Esther III as it doesn't comply with LMC Section 1.22 (a) and (c) and Section 7.5 dealing with height. Mark Harrington explained that there is a reduction dated January 31, 1997 but height is not being reviewed here, but rather the change in ownership. Height isn't reviewed until the building plan review stage. Mark Harrington explained that there will be a signature line for Queen Esther III in the CC&Rs which satisfies the requirements of Section 1.22. Ms. Kerr explained to Mr. Golan that a new plat needs to be filed when there is an amendment to the subdivision. Mr. Golan felt that given how controversial this issue has been, that Council should sign last. Mr. Harrington explained that the owners' signatures are never obtained

before Council action, because there may be modifications to the conditions of approval, and would not recommend that Council divert from that practice. It may be that the plat is approved by the Council but sits in his office until the necessary signatures are obtained. Ms. Kerr explained that Council approval is subject to approval by the City Engineer and the City Attorney and in no case do plats come before Council with signatures on them. Mr. Harrington explained the history of the easement access and added that the motion to dismiss has not yet been signed by the judge, and staff will make sure that the order is signed before the plat is released. Elizabeth Shaffer, counsel for the applicant, clarified that there is no easement issue with regard to the current pending litigation and Mr. Golan's comments are inaccurate. She claimed that the maintenance association and others piled snow 50 feet high on the road in front of her client's property, resulting in no access. Donna Golan pointed out that the motion filed in court is without prejudice which means that the applicant can refile it. She objected to the home owners associations having to prove under Condition No. 8 that the easement is not valid. Legal proceedings are on-going and she suggested that one of them bring the Council the judicial order. Ms. Kerr clarified that there is a written document before the Council, proving the validity of the easement and allowing them to proceed. If, in fact, Ms. Golan's party can prove that this written easement is invalid, then that would change the situation. She continued that the reason the Council can proceed is because it has the written proof of an underlying easement. For Council to stay these proceedings, pending the opposition proving that the easement is either valid or invalid, is nonsensical since on its face, the easement document appears valid. Paul Sincock recognized the on-going legal proceedings, but pointed out that it is a civil matter. Ms. Golan insisted that if the motion is filed without prejudice, the issue is not over. It was emphasized that the conditions of approval would protect her since the applicant would be denied an occupancy permit or construction permits if the easement is proved to be invalid. Elizabeth Shaffer stated that the easement claim which has been dismissed without prejudice was not an easement claim on the recorded easement document. It is an irrevocable document that has to be filed in the court and the claim was more like a "blocking" claim because the snow was blocking the applicant's access at the time and the claim wasn't attacking a legal document. Ms. Shaffer continued that it is her understanding in talking with counsel from Queen Esther I that they are not including this in the lawsuit at this time.

John Tracy, applicant, asked staff to verify that his project does not exceed 28 feet. Planner Ryan responded that Mr. Tracy has not submitted the needed documentation required for her to verify that at this time. Franklin Drake, property owner in Queen Esther, understood that if the easement is invalid, the approval would be void. Mark Harrington explained that in that instance, development would be prohibited on the property until such access is provided which complies with the Uniform Building Code. Mr. Drake understood that there is an easement when all of the provisions are complied with; Mr. Harrington explained that this is being argued by the parties and this is an issue not before Council. The easement before Council is valid today on its face and Council will proceed. Elizabeth Shaffer reiterated that the question of the easement is not a part of the litigation at this time.

With no further comments or questions from the Council or the public, the public hearing was closed.

VI CONSENT AGENDA

Hugh Daniels, "I move approval of the Consent Agenda, Items 1 through 4, as amended". Roger Harlan seconded. Shauna Kerr asked how Breast Council Month will be promoted, and City Recorder Jan Scott relayed that she will pass additional information on to the press. Motion carried unanimously.

1. Ordinance approving the plat amendment at 222 Norfolk Avenue, consolidating Lot 24, 25, 26, 27, and the northerly half of Lot 28, in Block 31, located in the southeast quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah - See staff report.

2. Ordinance approving a condominium plat for the Summit Watch at Park City at 710-890 Main Street, located in the Northeast Quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah - See staff report.

3. Authorization for staff to proceed with a civil complaint against 740 Kearns Boulevard - See staff report and work session notes.

4. Resolution declaring October as Breast Cancer Awareness Month in Park City, Utah - Staff recommends approval.

VII OLD BUSINESS

Ordinance approving a record of survey, Arrowood Condominiums, at Gilt Edge Circle, Park City, Utah - Hugh Daniels, "I move approval of the Ordinance approving a record of survey, Arrowood Condominiums, at Gilt Edge Circle, Park City, Utah as the conditions were amended". Chuck Klingenstein seconded. Mr. Klingenstein stated that the application has met the intent and needs of the Land Management Code. He hoped that the parties will reach agreement and pointed out the remedies to the home owners associations of Condition No. 8. Motion carried unanimously.

VIII NEW BUSINESS

1. Appeal of July 14, 1997 Historic District Commission's approval of a residential structure to be located at 615 Woodside Avenue - Hugh Daniels disclosed that he was one of eleven stockholders at the Old Miners Lodge since 1983, but has no financial interest or ownership in the Old Miners Lodge and its holdings since 1994, after it was sold to the current owner. He stated that

he is an employee of the current owner and an officer of the company, but has no financial interest in any outcome or decisions made concerning this project. Mr. Daniels commented that over a year ago, he disclosed that he would not participate in any discussions or votes concerning this property and in the interim, he has not attended public meetings on this matter and will recuse himself from the New Business items on the agenda tonight. Mr. Daniels left the building.

Ms. Kerr pointed out that the items may be in the wrong order. Ms. Hoffman explained that the Historic District Commission was asked to consider the appropriateness of this specific design on a 50' x 75' lot. Ms. Hoffman explained that the plat amendment was an issue of concern at the Planning Commission level by the appellants and the order could be either way, but all of the arguments of the appeal will be discussed regardless of the order. Chuck Klingenstein pointed out that a proper resubdivision of the property had to take place as a part of the HDC conditions of approval.

Ms. Hoffman explained that an appeal is a quasi-judicial matter and the Council is acting as judges. The Council is here to apply law to fact, and not to substitute judgement for that of the HDC. The standard of review Council committed to in June is an error of law standard. She emphasized that there are 45 issues raised on appeal, and perhaps only 12 to 15 of those actually relate to matters within the purview of the HDC. Most refer to "violations" of the Historic District Design Standards, which are draft standards and have not been enacted. What the HDC applies is the Historic District Guidelines and she did not believe there are any objections to the Guidelines within the appeal. She cautioned to discount discussions beyond the parameters which is whether the HDC properly applied the Historic District Design Guidelines to this particular structure. Chuck Klingenstein emphasized that the standard of review is error of law based on the Historic District Guidelines. Ms. Hoffman explained that the Design Standards are used to guide an applicant into a proper design, but are not the law at this time and to say that the applicant violated a standard is not an allegation of an error of law.

Mayor Olch disclosed that he was approached by Mr. Sheinberg who asked him to attempt to negotiate a settlement between them and the appellee, but those efforts were unsuccessful and the appeal remains as is. Ms. Hoffman pointed out that the appellants are represented by Robert Wilde, Esq. and the applicant is represented by Tom Billings, Esq. Ms. Kerr assumed there would be no public input other than counsel, the applicant, and the appellants. Paul Sincock questioned the timing of the appeal hearing and the filing of the petition, and it was explained that the 30 day scheduling requirement was removed from the LMC. Ms. Hoffman explained that agreement was reached with regard to the date of the appeal hearing.

Pat Putt, Planning and Zoning Administrator, explained that the design application submitted by Jon Brinton for the Old Miners Lodge was presented to the HDC on July 14, 1997. The HDC reviewed a residential structure that was ultimately pending the approval of a subdivision plat. The structure was to be placed on a 50' x 75' lot in the HR-1 zone at 615 Woodside Avenue.

He explained that the proposal was for a 900 square foot residential unit and in addition to the residential component, there would be 1,000 square feet of garage, stairwell, and mechanical area. Mr. Putt added that the total building volume is about 1,900 square feet. The setback to the north is eight feet, the front yard setback is 12 feet, 10 feet from the side yard, and 18 feet from the adjacent Old Miners Lodge. The recently renovated historic Sheinberg residence is about 3,291 square feet and Mr. Putt didn't believe that figure reflected the garage area. The HDC found the project to comply with the LMC requirements for building height and met or exceeded the minimum setback requirements of the zone. Mr. Putt explained that there were three conditions of approval in addition to the standard conditions of approval, including a review of the landscaping plan, the facade of the garage, and staircase access to the building. He displayed a streetscape of the Old Miner's Lodge, the proposed structure, and the Sheinberg's residence.

Mr. Putt clarified that in the HR-1 and HRL zones, height is defined as the vertical distance from natural undisturbed grade or final grade at a point measured three feet out from the foundation wall to the highest point of a flat roof or to a deck line of a mansard roof or to the highest ridge of a hip or gabled roof. Through illustration of a rendering, Mr. Putt explained how this building was measured and at its highest point is calculated at 24 feet. However, in measuring the front facade elevation in a two-dimensional drawing, the building would measure 34 feet, but because of the sloping roof, the building is less than the minimum height requirements. During negotiations with the applicant there were concerns about the building being placed forward on the property and since that time and prior to HDC approval, the building has been shifted back from its original location by six feet and the dormer element was scaled back a bit. The HDC approval was also conditioned on subdivision approval from the City Council. Mr. Putt stated that originally or about a year and a half ago, this project went through an accessory building CUP process which can be accomplished on one lot. He explained that the reason he suggested to the applicant that he go through this process is because there is a detached garage with a living area above it which would prompt noticing of property owners within 300 feet and allow for a use restriction. This was approved in August 1996 and for several reasons, the applicant did not move forward and the conditional use permit expired in August 1997. The current proposal is for a separate stand-alone residence which is deed restricted to tie the caretaker use to the lodge as well as the parking in front of the garage. Ms. Kerr asked if there is also a deed restriction that the parcel not be sold separately. Ms. Hoffman indicated that it is not. Ms. Kerr felt that the use should be tied to a common ownership and the City Attorney felt this is the logical outcome, however, if there were separate ownership and it was still the caretakers unit for the Old Miners Lodge, requiring common ownership may not be a public interest. Mr. Kerr pointed out that if there was separate ownership, the parking would be more difficult to enforce.

Robert Wilde felt the standard of review issue needs to be discussed. He distributed a memo outlining the public policy issues and the state statues indicate that he is not looking at abusive discretion or a legal review, but rather they are looking at a fact review. Looking at the LMC, he comes to the same conclusion, particularly in consideration of the responsibilities of the

HDC. The Mayor interrupted Mr. Wilde to provide the Council with an opportunity to read the memorandum he just distributed. The Mayor requested an explanation of the memo from the City Attorney. Ms. Hoffman believed the first page and a half explains that the cases cited in this review were not apropos and often people cite cases for analogy not necessarily for precedent or controlling law. The second point is a citation to the Administrative Procedures Act which is not applied to municipal governments and his arguments have no bearing. She continued that thirdly, Mr. Wilde cites that the HDC is an administrative body and merely recommends action which is not true as in this instance the HDC is the final decision-maker on whether or not a particular design complies with the Historic District Guidelines. She added that when the Planning Commission recommends a plat amendment, it is a recommendation and only advisory. Ms. Hoffman explained that there were extensive discussions about the appropriateness of Council's standard of review in appellate matters over the last year. Council had the choice of de novo or an error of law review and this Council decided to use an error of law review and Mr. Wilde or the Sheinbergs would not be aware of that decision.

Robert Wilde noted that Council has merely decided to use an abusive discretion policy on a general basis but in exceptional cases to do otherwise, and suggested that Chapter 4 of the LMC indicates that this is one of those exceptional cases. Section 4.5 addresses permit issuance and project approval and that Community Development will generally deal with Historic District issues and in certain cases, the matter goes to the HDC. The HDC, then was acting as a surrogate for staff. Roger Harlan asked if his client requested HDC review and Mr. Wilde answered that he was not representing his client at that time and wasn't sure. Jill Sheinberg interjected that they were concerned about a condition of the conditional use permit. Jodi Hoffman explained that at the initial Planning Commission public hearing on the subdivision, both the Sheinbergs and their representatives made an argument that was persuasive to the Commission questioning how the HDC could approve a subdivision when it wasn't certain that the design proposed for the subdivision could actually work under the Design Guidelines. There was a stray from the usual process and the design went to the HDC first to make certain that this subdivision as proposed, could accommodate a historically sensitive design. Jill Sheinberg disputed Ms. Hoffman's statement and relayed that the reason it was suppose to go to HDC was because there was a condition of the conditional use permit. Ms. Kerr stated that this is "all water under the bridge" and suggested that the appeal move on and the Mayor indicated that only the attorneys can speak. Robert Wilde argued that Mr. Scott is present who is a design professional. He stated that he has been informed by legal staff that the HDC issue is narrow, but believed it is broader than suggested. The Historic District Standards indicate that the LMC pertains to all of the things involved and the Guidelines supplement other Park City ordinances and he couldn't understand that if the windows comply with the Historic District Standards that a building can be allowed that doesn't conform with the LMC. Mr. Wilde alleged the HDC erred because the building doesn't conform with the LMC. Staff indicates that it is not an accessory building and the definition in the LMC indicates that an accessory building has the same ownership and its use is incidental to the principle building of use; it's operated and maintained for the benefit and convenience of the employees, owners, or customers of the principle use. He continued that this

building has always been described as a caretaker's lodge and is owned by the same people and even though they don't call it an accessory building, it is an accessory building and is required to meet the provisions of the LMC and that it not exceed 800 square feet. The building can't be approved because it is an accessory building and is 100 square feet too large. Mr. Wilde pointed out that the proposal to have the buildings tied together until there is no longer a lodging use is not what is in the LMC and it fails to meet the design requirements in the Historic District because it is too big to be an accessory building. If the buildings are tied together, the parking requirements are not met.

Ms. Kerr emphasized that accessory apartment and accessory building are two separate definitions in the LMC. She added that a definition can describe several different things and one word can be used to describe several different things and several definitions can be arrived at to describe one word. She asked Mr. Wilde where he was going with his comments. Mr. Wilde responded that the distinction is that if this is an accessory building, the Code limits it to 800 square feet. Ms. Kerr argued that it also meets the definition requirements for a single family dwelling, as well. Mr. Wilde responded that this is where the caretaker or manager is going to live, and it is not a single family dwelling. Ms. Kerr interjected that it could meet the definition of a guest house which is an accessory building intended for the inhabitation by non-rent paying guests providing separate cooking and sleeping quarters and is maintained by the primary residence. Mr. Wilde countered the reason it would not apply is because the manager will occupy the building, not a non-paying guest. Mr. Kerr explained that what she is getting at is that there are several definitions with regard to different types of living quarters, particularly single family structures, and whether this is an accessory building or not is confusing the real issue. What the HDC was deciding was whether or not that structure in that location met these guidelines, and it doesn't matter what it is called; the HDC examines design and it is important to discuss the Historic District Guidelines and not necessarily the LMC. Jodi Hoffman emphasized that even if this is an accessory building, there is no square footage limitations on accessory *buildings*; there are square footage limitations on accessory *apartments*, which this is not. Ms. Kerr added that the Council enacted the accessory apartment provision which was intended to obtain affordable housing units of 800 square feet within other units, which is not what this project is intended to accomplish. Paul Sincock pointed out that if this was on one lot, it would be an accessory building, but with the proposed subdivision, this will be a separate parcel of ground, and the dwelling can be sold independent of the lodge and is its own building, and the accessory argument is not relevant, assuming the lot is subdivided.

Chuck Klingenstein stated that the HDC's mission was to review the design, which was at the request of the Sheinbergs and also granted by the Planning Commission. Mr. Klingenstein urged Mr. Wilde to focus on the HDC approval. Mr. Wilde admitted that he is not a design professional and asked that Mr. Scott be allowed to address Council. Tom Billings, counsel for Jon Brinton, objected to Mr. Scott's testimony as he understood that the ground rules were counsel only. Secondly, the legal standard of review is whether or not the HDC had before it facts upon which it could reasonably come to a decision and whether that decision was based upon facts before it or whether it used its discretion and acted arbitrarily, capriciously, or contrary to law. Therefore,

hearing anything from Mr. Scott would be inappropriate. Jodi Hoffman interjected that Mr. Scott could be beneficial in identifying which aspects of the Historic District Guidelines were violated in the HDC approval of this design. There has been substantial recitation on Design Standards, which are not law. Mr. Wilde argued that in all of the previous presentations, the designer was allowed to speak. The Mayor assured Mr. Billings that his objection is noted but allowed Mr. Scott to comment.

Quentin Scott, designer, believed that the objections have more to do with the Planning Commission application than the HDC issues. The only issue he suggested is the height of the structure at 31 feet, and the other issues deal with the Historic District Standards. There was discussion about the manner in which the building was measured by staff. Toby Ross emphasized that the HDC does not determine the height of buildings; height requirements are a part of the LMC and final plans are reviewed by staff. Pat Putt reiterated that based on the topography, the system of measurement, and the practice in applying those standards, the project complies with the height provision.

Tom Billings, counsel for the applicant, emphasized that Mr. Scott stated that there were very few issues and the only issue seemed to be height and Council has heard how staff measures height. To consider how Mr. Scott's view of how it should be measured since the City has been measuring a certain way for a number of years, would be an abuse of discretion. Things have to be done the same way all of the time. Mr. Billings stated that Mr. Wilde suggested that he overstated his case law, but believed that these cases are useful in how the Council should apply the standard of review. There are no cases, at least in Utah, about how the City reviews HDC decisions, however, he believed the City Attorney's comments to be correct. If there were no appeal, then Mr. Brinton could build his building as approved by the HDC, so its decision was final. Consequently, when there is a final order, the only avenue is to appeal to the appellate body and the court will not substitute its judgement for Council's judgement. The court will ask what facts were before the record; what facts did the HDC look at and how did it apply those facts. The HDC went through detailed analysis of the applicant's plans and applied all of the policies and standards of review of the Historic District Guidelines. The Council's job is to determine if the HDC applied its Design Guidelines in a proper way, which he believes it did, and urged the Council to deny the appeal.

Mr. Wilde discussed the de novo standard of review, and pointed out that many appellate bodies review appeals de novo and to suggest that Council can't review appeals de novo is not a correct statement. Mr. Sincok asked if Council's preference for a error of law review is outlined somewhere. Assistant City Attorney Mark Harrington indicated that staff will codify the standard of review practice which will be included in the forthcoming LMC amendments. Paul Sincok noted that he was concerned about the height issue, and is satisfied with the determination that the height complies with the LMC. He couldn't find any errors in judgement that the HDC made in approving the project. Chuck Klingenstein stated that he feels strongly about an error of law standard of review and restricting review to the Historic District Guidelines; he felt it appropriate

to make a motion. Jodi Hoffman added that the motion should include direction to her to memorialize the decision with findings of fact.

Shauna Kerr, "I move to deny the appeal and uphold the HDC decision". Chuck Klingenstein seconded and requested these proceedings be memorialized in conclusions of law and findings of fact for approval at the earliest opportunity. Paul Sincock added that there were many errors in the way this entire project proceeded from the beginning. It is unfortunate that it has resulted in such an adversarial relationship between neighbors. He continued that Council is not deliberating on the errors, but rather if the HDC acted responsibly within the law, based on the Design Guidelines. Motion unanimously carried.

2. Public hearing on Ordinance approving the Parcel 2 - Amended Walter-Daniels Subdivision located at 615 Woodside Avenue, Park City, Utah - Pat Putt explained this is an application to resubdivide the Walter-Daniels Parcel 2 shown on the exhibit. The property is just shy of 15,000 square feet and is located in the HR-1 zone at 615 Woodside Avenue. In 1995, the previous owner of the property along with adjacent property owners approached the City for a plat amendment and a subdivision to reconfigure the properties in the general neighborhood. The lodge sits on Parcel 2 and there is an exhibit in the meeting packet showing the configuration of the property before 1995. Mr. Putt continued that this property consisted of six platted 25' x 75' lots and an unplatted piece about the size of two lots, equivalent in area to eight Old Town lots. The purpose of the plat amendment and subdivision in that point in time was to clean up the interior lot lines as the lodge sat over several of those lines and to clean up the property ownership of the unplatted properties. He added that there was a desire by the property owner to develop a caretaker's residence and parking for the use of the lodge. The amendment and subdivision was approved by the Planning Commission in 1995. Mr. Putt explained that the reason the current application requests a subdivision in this particular manner is in order to accommodate the new residential structure that will still serve the original purpose of a caretaker's residential use in conjunction with the lodge. The proposal before Council is for two lots to be carved out. Lot 1, consisting of 11,153 square feet, will be the site of the historic Old Miner's Lodge of 7,000 square feet. Lot 2, consisting of 3,750 square feet, is for the new residential structure. The configurations of this plan comply or exceed the requirements of the HR-1 zone, requiring a minimum of 1,875 square feet. There is a goal of the City Council to achieve a lot and a half to two lot combinations, which this proposal does. Lot 2 would allow a total building area of a little less than 2,600 square feet, including living area and a garage and the proposed structure will be deed restricted to a maximum of 1,900 square feet. Ms. Kerr asked why it would be deed restricted. Mr. Putt explained that the applicant offered to restrict the size of the building to what was proposed originally in 1995. He continued that the floor area ratio for Lot 1 is about 5,600 square feet; the lodge is 7,000 square feet and the staff did not know the size of the lodge. Under the LMC, historic buildings are exempt from floor area ratio. In reviewing this subdivision, staff wanted to make sure that the lot area for the new structure and the lodge would meet the LMC requirements. Lot 1 greatly exceeds the 1,875 minimum lot area for the HR-1 zone. Mr. Putt pointed out that there are several historic houses that exceed the floor area ratio

for their lot size, but the exempt building is sitting on a lot that conforms with the LMC. Mr. Wilde has contested floor area exemption, and if that were so, every historic building in town would be in violation of a floor area ratio unless they were currently being added on, renovated or expanded. Staff's position remains that the lodge is exempt from the floor area ratio, but will comply with the floor area ratio. In response to a question from Ms. Kerr, Mr. Putt explained that when the lots were combined in 1995, the lodge sat on six lots. The setbacks for the resulting buildings, both the new and the old, meet or exceed the minimum setback requirements for the HR-1 zone. Snow release from the roof was examined early in the process. Mr. Putt described the Sheinberg's setback which is a foot less than the required setback from the common property line. The proposed building has a minimum setback of three feet and the proposed setback is six feet. The original roof form was one full gable and the applicant agreed to a redesign of the roof area to redirect the snow from the adjacent property. The Building Department was satisfied with the solution; if there are additional measures for snow release those will be considered during final review of the design.

Mr. Putt added that another concern raised in the Sheinberg's brief was that the legal notice for the Planning Commission's action on August 27 was done improperly. The requirements for the noticing is a courtesy mailed notice to adjacent property owners prior to the hearing. Since the first hearing in the spring, this project has gone through a series of continuances. In April when a decision was made to send it to HDC for design, a postponement was made in order to readvertise. He explained that this was readvertised in the paper, posted in the post offices, the site was posted, but a mailed notice was not done. Mr. Putt believed that the legal requirements were accomplished to the extent of the law and the fact that the Sheinbergs were present at the meeting waives their right to improper noticing in this case. It was indicated that they were also represented by counsel at that meeting. In response to a question from Chuck Klingenstein, Mr. Putt answered that staff may have duplicated courtesy mailings in the past, but did not in this case. There is also an allegation in the brief to the negative impacts of light, views and visibility as a result of this construction, and Mr. Putt believed this has been addressed in the design review. He reiterated that the conditional use permit has expired and is not a relevant point at this juncture nor is the expansion of the Old Miners Lodge which predates the bed and breakfast code. Mr. Putt discussed the HDC review and on August 27, the Planning Commission reviewed the HDC findings and forwarded a recommendation to the City Council to approve this application with the additional conditions of approval, involving restriction of the use, additional parking, and restriction on the maximum size of the structure.

Ms. Hoffman pointed out that many of the issues Mr. Putt described were raised in the appeal brief on the HDC decision. A lot of objections to this project are intermeshed. She emphasized that this is a subdivision review and typically there is not a design of structure available at this point, and snow shedding issues, etc. are not relevant to the subdivision. They are relevant to design, building permit issuance but not to subdivision. Ms. Hoffman continued that the use of an adjoining structure is not relevant to subdivision; subdivision is about whether or not the minimum lot size within the zone has been complied with and whether or not there are findings that

there is good cause and no material injury to any individual. With no questions from the Council, the Mayor invited the public to comment.

Tom Billings, counsel for Jon Brinton, explained that the reason he did not file additional information is because the planning staff report is very comprehensive and favorable. The points that the neighbors have raised have been adequately dealt with in Ms. Hoffman's brief. Mr. Billings emphasized that nothing is being done to the Old Miners Lodge; this is just a caretaker's cottage. There were many errors made, but this is the best solution for everyone, it's equitable, and within the LMC. He stated that subdivisions require discretionary approvals by the City and in utilizing discretion, Council needs to solicit public input, look at the LMC, and listen to the staff and Planning Commission. In approving the subdivision, Chairman Fred Jones was assured by staff that there was nothing they were being asked to do that was not absolutely within the four corners of the LMC. The purpose was to have a caretaker's cottage and a manager nearby to take care of the lodge. Errors were made, but it could have been a lot worse as the platted lots could have been developed. Mr. Billings believed Council needs to look at the context of the whole project and pointed out that Mr. Brinton was willing to tie the use of the lots and the parking. He was concerned about tying legal ownership because the caretaker may want to buy the residence and this restriction may create more problems and he would prefer to tie only the use of the building and the parking to the lodge. Mr. Billings added that Mr. Brinton was willing to decrease the size of the building from the allowable 2,600 square feet to 1,900 square feet. He distributed a photo of the Old Miners Lodge in 1983 and one today; a photo of the empty lot and the Sheinberg residence prior to its remodel; and a photo of the remodeled Sheinberg residence with new windows on the south side. Mr. Billings stated that Utah law does not recognize any special claim for light or view. He displayed a photo of the home which burned down on the proposed caretaker's site which was about a 4,500 square foot building; they are not asking for that. They are just asking for the right to use their land under the provisions of the LMC. As indicated by the staff, everything meets or exceeds the requirements found in the LMC and there is no reason why the Council should not approve the subdivision. Mr. Billings continued that the neighbors have suggested that nothing has been done to mitigate their concerns and if there is one statement that has been made today that is inaccurate, that is one of them. The building is now six feet further back than originally proposed, the roof has been altered significantly, and porch has been set back in order to accommodate light and view for the Sheinbergs. There is now off-street parking for the lodge and its guests, and the height has been lowered with is tied to snow release. The project is tied to the lodge which is not legally required and the size is limited to 1,900 square feet. Mr. Billings stated that there is clearly a public benefit of continuing the historic use of the Old Miners Lodge and the caretaker's cottage provides for low income housing. He added that the public is not materially harmed in any way. The neighbors are not materially harmed; there is a Utah case that states you can not listen to public clamor. The photos show that there is no material harm to what the Sheinbergs had before to what they have now and to what Mr. Brinton has offered to give them. They have no right to light or view, there is less impact now than if eight lots were developed, and the size and use of the building has been reduced. Mr. Billings submitted the photos as exhibits for the record.

Robert Wilde stated that in 1995, the proposal was to add parking and in 1996, there is a conditional use permit for a two car garage and one bedroom with specific requirements to comply with the LMC based on the size of the lot. That meant a ten foot side yard setback between the Sheinbergs, and the conditional use permit was granted because they promised to do those things. After that, the applicant could obtain a footings and foundation permit and began construction which was not within the ten foot setback. There was a stop work order in October and the applicants went to the HDC and the Planning Commission, and this is an incremental process of getting things by staking out a position and taking advantage of all of the positive elements and ignoring the negative elements and move on to the next issue. Mr. Wilde indicated that he has already addressed the issue of the accessory building and will incorporate his prior comments. He complained that the snow will still shed on the Sheinberg's property and believed there will be problems with violations of the parking requirements. Mr. Wilde stated that the LMC describes a bed and breakfast as two to eight units and pointed out that the lodge is advertised as ten units and this then is a hotel. Ms. Kerr felt this was addressed as it is a non-conforming use, and the business was in existence before the bed and breakfast provision was enacted in the LMC. She asked the relevance as it is an existing non-conforming use and the use is not changing. Mr. Wilde argued that the use in the lodge is changing because the rooms being used by the caretaker are now going to be used by guests. This is evidenced by the advertisement for sale as having 12 rooms, rather than the ten rooms which alters the use and changes the non-conforming use which is no longer grandfathered. Ms. Kerr insisted that the structure itself is not changing, the use isn't changing -- it's a bed and breakfast and a non-conforming use. Mr. Wilde responded that the subdivision allowing this non-conforming use is now expanded and by the definitions in the LMC, must comply with all of the requirements that pertain to the expanded use. Instead of ten parking places, there should be 12 and Mr. Wilde suggested that because of the loading and unloading of luggage and skis, there should be a turn-around. Paul Sincock noted that whether or not a manager happens to be living in the unit now is largely irrelevant as it is a matter of how the owners chose to manage the building. Ten years ago, all of the rooms may have been rented out to guests and the home that burned down may have been the manager's house. When Mr. Daniels moved out last summer, it didn't change the use of the lodge from a bed and breakfast to a hotel as the bed and breakfast was grandfathered. Jodi Hoffman stated that it is a legal non-conforming use and this structure has had ten bedrooms since the bed and breakfast provision in the LMC and it is somewhat vague in that the number of rooms in that zone for a bed and breakfast may be determined by the Planning Commission through a conditional use process based on parking issues. She continued that for historic structures, there are incentives for adaptive use. Ms. Hoffman advised that the Sheinbergs have raised a separate issue in another proceeding as to whether or not the use of the bed and breakfast has somehow lost its legal non-conforming status. This is an administrative determination at this time and not ripe for Council's review; it may come to the Council at some point. Ms. Hoffman emphasized that this issue does not relate to the subdivision. The caretaker can move out of the lodge at any time, whether the subdivision is approved or not. The Mayor requested that the Council not interrupt so the presentation can conclude. Robert Wilde referred to Section 12.1, non-conforming use, where the intention is to limit the enlargement or alteration which would increase the discrepancy between existing conditions and

the development standards provided in the LMC. He continued that if it is a non-conforming use at ten rented units, once it goes to 12, then the use is enlarged and the grandfathered use is lost.

He referred to the staff report about the reason for the single lot proposal being to accommodate a caretaker's unit and garage. He stated that under the LMC with it aggregated into a single lot, there is a ten foot side yard setback which solves many of the Sheinberg's problems. The applicants violated the LMC and then decided that is not what they really wanted. Initially the request was just for a garage. He continued that historic buildings are exempt from the floor area ratio requirements, until expansion. When the lot is subdivided, it is changing the rest of the lot and is not subject to the exemption. If you have an exempt non-conforming use on the floor area ratio, you are not entitled to increase that without the benefit of enlarging or expanding the use. Mr. Wilde stated that the Old Miners Lodge was mismeasured by some 50% and to suggest the building be closer to the Sheinbergs than entitled under the LMC doesn't "wash". Had the applicants not gone for the conditional use permit and agreed to the requirements, this project would have never gotten to this point. The fact that the Planning Department doesn't allow these folks to circumvent the Code, the staff report talked about the connection for so long as it remains a lodge and the Code is pretty clear that there is no time limit on that. Ms. Kerr interjected that the Mayor asked that the Council not interrupt, but asked what this has to do with subdivision. Mr. Wilde responded that it has to do with Mr. Brinton taking advantage of things before and wanting to change the rules. Ms. Kerr asked if he understood the standards for subdivision. Mr. Wilde responded for good cause and no material injury. He argued that there is no good cause as he choose not to follow the LMC and secondly, the Sheinberg's remodeled residence wasn't next to the burned down house and the situation is different today and they will be materially injured. They are entitled to rely upon the LMC. Mr. Harlan asked how the Sheinbergs will be materially injured by any structure. Mr. Wilde answered that the Sheinbergs have invested a substantial amount of money in renovating their house and the south facing windows will have a view of clapboard. Taking light and view away from them may rise to the level of material injury. Ms. Kerr stressed that that is the scenario anyone is in when there is lot next door without development; that is the risk anyone takes, in the Historic District particularly, where density is very close. Mr. Wilde added the risk that they don't take is that somebody is going to come in and say they are going to comply with the LMC and don't, and he again discussed the ten foot setback requirement. Ms. Kerr pointed out that the requirements for setbacks on any lot in Old Town, are less than ten feet.

Pat Putt explained that when he made the decision to move forward with issuing a footing and foundation permit, he did so with the understanding that a detached garage could go, at least in that location, six feet from the property line. That building could go as close as four feet from the property line and he read Chapter 8, "a detached garage may be located in a sideyard setback, provided said garage meets the requirements specified for the district and the requirements of the building and fire codes for the buildings in close proximity". Mr. Putt indicated that as long as the building met the minimum separation of six feet, it could be within four feet of the property line. Ms. Kerr noted that it couldn't because the Sheinberg's home is a foot off the common property

line. Mr. Putt explained that it was originally at five feet and due to some negotiations, it was moved an additional foot over. A detached garage does not need to be ten feet from a side yard property line on a lot that is 100 feet wide. Mr. Kerr commented that the Council would not be hearing the appeal if the project was for a garage which can be built at a five foot setback and could be the same height as a structure with little articulation. Mr. Wilde did not feel it would have been approved by the Planning Commission or the City Council; Ms. Kerr countered that there is no requirement that a garage be a certain height. Mr. Scott added that on a 50' wide lot, the owner is allowed five feet, but when it is 100', it's ten feet. Ms. Kerr noted that that is not true for a garage and wanted to present a reality check example as a garage could have been just as big and within four feet. Ms. Hoffman interjected that it is hard to say if a garage 27 feet high would have been approved by the HDC. It would comply with the LMC. Richard Sheinberg asked what type of vehicle would require a 27 foot garage; Ms. Kerr answered a motor home. The Mayor asked that Mr. Wilde wrap up his arguments as he has had the floor for 30 minutes.

Robert Wilde continued that Mr. Putt cites in his report that the purpose of the HR-1 district is to preserve present uses; the additional rental units are not present uses. He noted that he has addressed the issue on the floor area. The fact that he and the Sheinbergs were in attendance at the meeting, doesn't mean that the outcome would not have been different had the 300 foot mailing been done and other neighbors put on notice. The assertion that there is no expansion of the Old Miners Lodge is inaccurate because having more rental rooms clearly is an expansion. The City Manager stated that it is not a consideration of the subdivision. Mr. Wilde argued that the subdivision allows it.

Jon Brinton, applicant, stated that they have proceeded from the beginning with the intention of conducting their own business and building a manager's apartment. He always felt that this was a terrific project which provided for additional off-street parking, employee housing, reduced density from an allowable 2,600 square feet to 1,900, and have tied that density to use and term so it has protected the density in an attractive way. Mr. Brinton emphasized that they are providing open space and what Council didn't see is the back yard including the gazebo, landscaping and trees where a condominium or duplex could be built. There has been a lot of effort to protect a very nice area. Mr. Brinton added that he has some pictures of other recent structures in Old Town where light and view have been precluded because of the nature of the historic community which he will add as exhibits.

Richard Sheinberg, appellant, stated that they bought their house in 1995 and Jon Brinton was the owner of the Old Miners Lodge and Mr. Daniels presented the consolidated in November 1995 on behalf of the new owner. At the same time, they were considering the renovation of their house, adhering to the old footprint of the house, and obtained a building permit in January 1996. The plat was filed in December 1995. They were aware of the plans for a garage and the process went awry. Council has the discretionary power in considering the plat amendment and can ultimately impose conditions that make this liveable for everyone. He believes that the setback

should be ten feet and relied on this. He can accept the exception for a garage, but did not agree with Ms. Kerr that a garage could be 27 feet tall. Mr. Sheinberg stated that his concerns escalated when they realized the size of the accessory apartment. He referred to the rendering of the house, and pointed out that there is a double height garage, the deck is below the grade, which are against the rules. The reason the structure is so high is because he wants all of the living space above the grade of the hill. They tried very hard to get this resolved and unfortunately it hasn't been resolved and it forces them to ask the Council to look at the LMC. If the structure is lowered and their views are protected, something is accomplished for the community. He felt that the conditions of the conditional use permit had public interests in mind. The accessory structure should be kept in the proportion of an accessory apartment and reiterated the ten foot setback issue. He believed that light and view is part of the Council's discretion in approving or disapproving a subdivision application. He referred to Mr. Brinton's remarks before the Planning Commission about his concerns of loss view and light relating to an application next to the Imperial Hotel. Mr. Sheinberg emphasized that he and his wife have made this their home as opposed to a caretaker or manager accommodation and this should be taken into consideration.

Jill Sheinberg noted that the Planning Commission was urged to only look at the lot being created for the new structure, and she did not feel that is enough. The problems with the Old Town Lodge is that the LMC states that a bed and breakfast is two to eight rooms. The LMC is not vague and the lodge may be grandfathered to ten rooms, but not grandfathered to 12. The lodge will also be on a smaller lot. She stated that you can not keep a grandfathered clause going "as you keep chopping away". The Council has to look at two lots and the intensity of use on Woodside Avenue where parking is already a problem. By tying the off-street parking to the Old Miners Lodge does very little because the parking is four spaces in front of a two car garage. The four spaces intrude on the City's right-of-way. The LMC states that you may not count those spaces within the City right-of-way as parking spaces for the bed and breakfast, nor can they be tied to it because it's not off-street parking. Ms. Kerr commented that she had the same concern she did about the floor area ratio, but technically the lodge is grandfathered on how it sat historically which was on four lots which is 7,500 square feet. For the last two years, the new plat placed it on eight lots and now it will be on 11,153 square feet or six lots. Ms. Kerr emphasized that 11,000 square feet is certainly greater than 7,500 square feet so the floor area space has not been decreased. Ms. Sheinberg argued that you cannot grandfather use when lots are combined and Ms. Kerr emphasized that density has not been increased because when the lodge sat on 7,500 square feet, there were four unencumbered lots that could have been developed. Ms. Kerr understood Ms. Sheinberg's concern, but after she "did the math", was persuaded that it was appropriate. Ms. Sheinberg disagreed.

Jan Fisher-Rush, Old Town resident, expressed her confusion over the legal discussions. It seemed to her that with every point that the Sheinbergs brought up, there was always some way to avoid it or an argument from Council. She felt that Council has already made a decision that this project is going to go through. Ms. Fisher-Rush felt it is difficult for people going through the process to trust this governmental body, as there is a lot of maneuvering. She stated that

she knows the history of the project and it wasn't okay and that was tossed aside. There is a lot of leeway given here that is inappropriate and Council needs to consider some of the Sheinberg's complaints. The project is fine but needs adjustment and there is a verbal breach of contract which is not right. She referred to a comment made by Ms. Kerr regarding the Town Bridge appeal where Ms. Kerr brought up how can the people trust the Council when all of this maneuvering goes on for people that appear to belong. Mr. Klingenstein asked if her concerns regarded the appeal or public hearing on the subdivision and she acknowledged both.

Paul Sincock discussed placing the garage six feet rather than ten feet, although there is an exception to place it closer. He felt that this is an unfortunate series of events. There was an error in advising the property owner to combine all of the lots without first checking the square footage of the Old Miners Lodge. Once a plan was devised, he couldn't understand how the house was placed within six feet of the property when a 100' lot is clearly a ten foot setback. The owners obtained a footings and foundation permit and did not notify the neighbors, and the neighbors became very concerned as the structure ended up four feet closer to their house than it otherwise should have been. Mr. Sincock felt that the combination of errors was extremely unfortunate. If the owners moved the foundation by four feet, it would be extraordinarily expensive and the other strategy is a subdivision which would be in conformance. He stated that he does not fault the owners for that strategy to mitigate the situation as he believed the mistakes were innocently made. He didn't subscribe to the arguments about the Old Miners Lodge changing uses and the maximum number of rooms is not defined in the LMC in an historic structure. The question before Council is should this property be subdivided so it is in conformance with the LMC.

The Mayor closed the public hearing.

3. Ordinance approving the Parcel 2 - Amended Walter-Daniels Subdivision located at 615 Woodside Avenue, Park City, Utah - Roger Harlan commented that when he purchased his home in Prospector in 1987, he was surrounded by vacant lots, but realized that people would build. When he asked Mr. Wilde what the material harm is and he responded loss of light and view, Mr. Harlan believed in-fill development is a common community experience, and perhaps the Sheinbergs would have designed the south side of their house differently if they knew what was going to be built there. Material loss, however, has not been conclusively evidenced tonight to deny the subdivision.

Mr. Sincock continued that he regretted the circumstances and hoped people could learn from this experience. He didn't believe there is material harm in subdividing the property and it is a strategy in having the structure comply. If the house was moved four feet, Mr. Sincock did not believe it would be a significant difference for the Sheinbergs. The good clause concept is contextually based in the law and he could not find any reasons not to approve it. Mr. Sincock believed the City should apologize to Mr. Brinton and the Sheinbergs for any participation in the errors made.

Chuck Klingenstein clarified for Ms. Fisher-Rush that when he is hearing an appeal, he is acting as a judge and the Council acts as a court of law. There are legal discussions in a quasi-judicial matter. He added that the public hearing tonight was subject to using the LMC and there were different interpretations discussed, but he didn't believe the historic use of the lodge has gone away. He agreed with Mr. Sincock that errors have been made and are acknowledged in the Planning Commission minutes. He believed that an apology is in order and the Council needs to make this work for everyone. Mr. Klingenstein felt that with regard to good cause, it is reasonable to subdivide. With regard to material harm, Mr. Klingenstein stated that a lot of work has been done to compromise and arrive at a workable solution.

Ms. Kerr thanked Ms. Fisher-Rush for pointing out her remarks on the Town Lift discussion. She explained that what she was saying was that the public needs to rely on the finality of Council's decisions. It is unfortunate that mistakes were made, but part of the reason the pour was made was because of concerns to shore up the water or sewer line. Whether or not there is agreement on decisions made, this is where we are now. It would not have been her preference to approve a resubdivision and it is not the applicant's preference. She believed, however, that this is the best and most reasonable solution to a unfortunate situation. Her analogy to the 27 foot high garage is there is not requirement in the Code that limits the height of a garage. Her point was that a 27 foot structure six feet away from the Sheinberg's house will still obstruct their view. In Old Town there should be no expectation of privacy and right to light, air and space, because there are small lots which narrow setbacks. Unfortunately, when the Sheinbergs renovated their house, there were vacant properties next door. As long as there are vacant lots, people are going to build. She is sympathetic to the Sheinberg's situation, but could find no legal requirement that would prohibit her from approving the subdivision of the applicant. It is her desire to have the house ten feet away, but that is not the situation. Council has to make a decision on good cause and material harm, and the Council has an application for a subdivision that meets the requirements of the LMC, therefore she will move to approve it. Shauna Kerr, "I move to approve the Ordinance approving the Parcel 2 - Amended Water-Daniels Subdivision located at 615 Woodside Avenue, Park City, Utah". Pat Putt assured Ms. Kerr that this subdivision will be titled to distinguish this action from the prior subdivision. Chuck Klingenstein seconded. The Mayor stated that staff has worked very hard on this project. He apologized to the Sheinbergs for the unfortunate circumstances and suggested to Mr. Brinton that since the construction has not been completed, there may be an opportunity improve the situation that may be more acceptable to the Sheinbergs. Mr. Brinton agreed with the Mayor. Motion carried.

Hugh Daniels	Excused
Roger Harlan	Aye
Shauna Kerr	Aye
Chuck Klingenstein	Aye
Paul Sincock	Aye

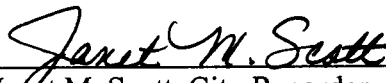
IX ADJOURNMENT

With no further business, the meeting of the City Council was adjourned.

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The meeting for which these minutes were prepared was noticed by posting 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott



Janet M. Scott, City Recorder





PARK CITY

1884

CITY COUNCIL STAFF REPORT

DATE: September 18, 1997 (September 25 meeting)
DEPARTMENT: Planning Department
AUTHOR: Kurt von Puttkammer, AIA *KVP*
TITLE: 222 Norfolk Avenue-Plat amendment
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS:

Staff requests the City Council conduct a public hearing, consider public input, and review the project within the context of the Land Management Code. Staff recommends the City Council adopt the ordinance approving a plat amendment as conditioned to consolidate Lots 24, 25, 26, 27, and the northerly half of Lot 28, in Block 31 of the amended Park City Survey into 3 new lots as the applicant has requested.

DESCRIPTION:

A. Topic

PROJECT STATISTICS

Applicant: Richard Gallacher for Hans R. Rehm and Stephen B. Shelton
Location: 222 Norfolk Avenue
Proposal: Plat amendment
Zoning: Historic Residential (HR-1)
Adjacent Land Uses: Residential
Project Planner: Kurt von Puttkammer, AIA

B. Background

The proposed project is located on Upper Norfolk Avenue and is surrounded by residential uses (Exhibit A). Currently, the project consists of four - 25' wide x 75' deep lots and a half lot which is 12'-6" wide x 75' deep. The applicant has submitted a request to replat the existing lots into three 37'-6" x 75'-0" lots (Exhibit B).

On February 27, 1997, the City Council reviewed the applicant's request and remanded the project to the Planning Commission. During the public hearing process, a neighbor of the project voiced concern about the impacts of probable parking configurations which may impede access to the north end of Upper Norfolk.

Since the City Council meeting, the concerned neighbors have met with Staff and the applicant to resolve the concerns. The concerns are centered on parking and the feasibility of access during winter months.

On May 14, 1997, the Planning Commission held a public hearing and discussed the project at work session. Commissioner Erickson provided staff direction to reach agreement between the applicant and the concerned neighbors. The Commission asked that Staff verify that edge of pavement in proximity to the Right-of-way. Verification of edge of asphalt was made and is approximately the westerly property line.

On May 28, 1997, the Planning Commission discussed the project and continued the project until the legal department could provide a opinion as to the buildablity of lots with inadequate access. On July 23, 1997, the project was scheduled to be heard by the Planning Commission and Staff requested the project be continued until the August 13 meeting to coordinate the final Staff report review with the legal department.

On August 13, 1997, the Planning Commission reviewed the Plat Amendment and forwarded a recommendation for approval to the City Council. On September 15, 1997, the Historic District Commission approved the design of the three single family homes.

No additional public input has been received after the Planning Commission meeting.

C. Analysis

The applicant, currently, owns 4.5 platted lots which would permit up to 4 single family dwellings, provided the structures meet the HR-1 and Historic District guidelines. The issue for discussion is whether or not the proposed application, which will result in only 3 single family residences, is consistent with the HR-1 lot criteria and Chapter 15, Subdivision standards. A determination of whether or not the proposal results in a project consistent with Chapter 15 will be based on the degree to which the applicant can successfully mitigate the impacts resulting from the proposed development.

Staff has evaluated the overall project against the Land Management Code, section 7.1, Historic Residential, HR-1 and determined the proposed lots comply with all requisite City codes. The minimum lot size in this zone is 25' x 75' and the proposed lots will be 37'-6" x 75'-0".

Structures developed on the lots created from this plat amendment will require Historic District Commission review and approval. The design review application was heard and approved by the Historic District Commission on September 15, 1997.

D. Department Review

The Community Development Department has reviewed this plat amendment request. The request was discussed at a Staff Review meeting on February 18, 1997. The City Engineer reviewed the proposed plat amendment prior to the Staff review. Maintaining or improving the existing circulation and parking conditions would be desirable to all departments.

The Community Development Department will request a Construction Mitigation Plan prior to approving building permits.

The Community Development Department has determined that some minor utility work will be required and the applicant will need to provide a financial security for these public improvements prior to building permit issuance.

This project was noticed to property owners within 300' of the affected property and all property owners within the affected subdivision plat on February 12, 1997.

ALTERNATIVES:

- A. Approve the Plat Amendment, thereby, allowing the 4½ parcels to be combined into three parcels.
- B. Deny the Plat Amendment, thereby, retaining the original parcel configuration.
- C. Continue the item for further discussion and input.

SIGNIFICANT IMPACTS:

This proposed amendment will result in a reduction of density from 4 to 3 dwellings.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If the plat amendment is not approved as proposed, the owner will be unable to proceed with processing of the three proposed residences. The lots may be sold individually and developed with up to 4 individual single family residences.

RECOMMENDATION:

Staff recommends the City Council discuss whether or not this proposal results in a project consistent with Chapter 15 and successfully mitigate the impacts resulting from the proposed development. Following the discussion, Staff recommends the City Council approve the proposed plat amendment based on the following:

Findings of Fact

- 1. The property is located in the Historic Residential (HR-1) District.
- 2. The plat amendment combines four and one-half 25'-0" x 75'-0" lots into three 37'-6" x 75'-0" lots.
- 3. The proposed lot size, 37'-6" x 75'-0", is consistent with the existing ownership patterns in the surrounding area. The new lots will allow a structure to be constructed which is compatible in mass and scale with the surrounding structures.
- 4. Dedication of a ten foot (10'-0") non-exclusive snow storage easement, along Norfolk

Avenue, is necessary to provide adequate snow removal services.

5. The project is located on Norfolk Avenue with constricted access and with minimal construction staging area. A Construction Mitigation Plan is necessary to mitigate any adverse impacts on the neighboring properties.
6. A financial guarantee is necessary to ensure completion of public improvements.
7. The Applicant has agreed to a 13'-0" front yard setback for 214 Norfolk Avenue, a 15'-0" front yard setback for 220 Norfolk Avenue, and a 13'-0" front yard setback for 226 Norfolk Avenue.

Conclusions of Law:

1. There is good cause for the amendment in that the parcel combination will result in a net decrease in the density when compared to individual ownership of the four and one-half separate parcels.
2. Neither the public nor any person will be materially injured by the proposed plat amendment.

Conditions of Approval:

1. Prior to plat recordation, the City Attorney and City Engineer shall review and approve the final plat for compliance with the Land Management Code and conditions of approval.
2. All Standard Project Conditions and Land Management Codes shall apply.
3. A financial guarantee, for the value of all public improvements (including any road and/or retaining wall) to be completed, shall be provided to the City prior to plat recordation. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
4. The final plat shall be recorded at Summit County within one year from the date of City Council approval. If recordation has not occurred within the one year time frame, this approval and the plat shall be considered null and void.
5. A Construction Mitigation Plan, approved by the Community Development Department, will be required from the applicant prior to any construction on the newly created parcels.
6. A ten foot (10'-0") non-exclusive snow storage easement along Norfolk Avenue shall be dedicated to the City on the amended plat.
7. Front yard setbacks shall be 13'-0" front yard setback for 214 Norfolk Avenue, 15'-0" front yard setback for 220 Norfolk Avenue, 13'-0" front yard setback for 226 Norfolk Avenue.

EXHIBITS:

Exhibit A- Proposed plat map
Exhibit B- Location map

112.50'
C/L NORFOLK AVENUE - N 25°38'00" W
30.24 PLAT

N 66°12'00" E
25.00'

N 66°12'00" E 75.00'

LOT 23
LOT 24

37.50'

37.50'

S 66°12'00" W - LOT LINE TO BE REMOVED
75.00'

LOT 24
LOT 25

N 25°38'00" W
37.50'

N 66°12'00" E - LOT LINE TO BE ADDED
75.00'

S 25°38'00" E
37.50'

S 66°12'00" W - LOT LINE TO BE REMOVED
75.00'

LOT 25
LOT 26

37.50'

37.50'

112.50'

S 66°12'00" W
75.00'

LOT 26
LOT 27

112.50'

37.50'

37.50'

S 66°12'00" W - LOT LINE TO BE REMOVED
75.00'

LOT 27
LOT 28

S 66°12'00" W
25.00'

S 66°12'00" W 75.00'

EXHIBIT "A"

C/L SECOND STREET - S 66°12'00" W

200.00' PLAT

18

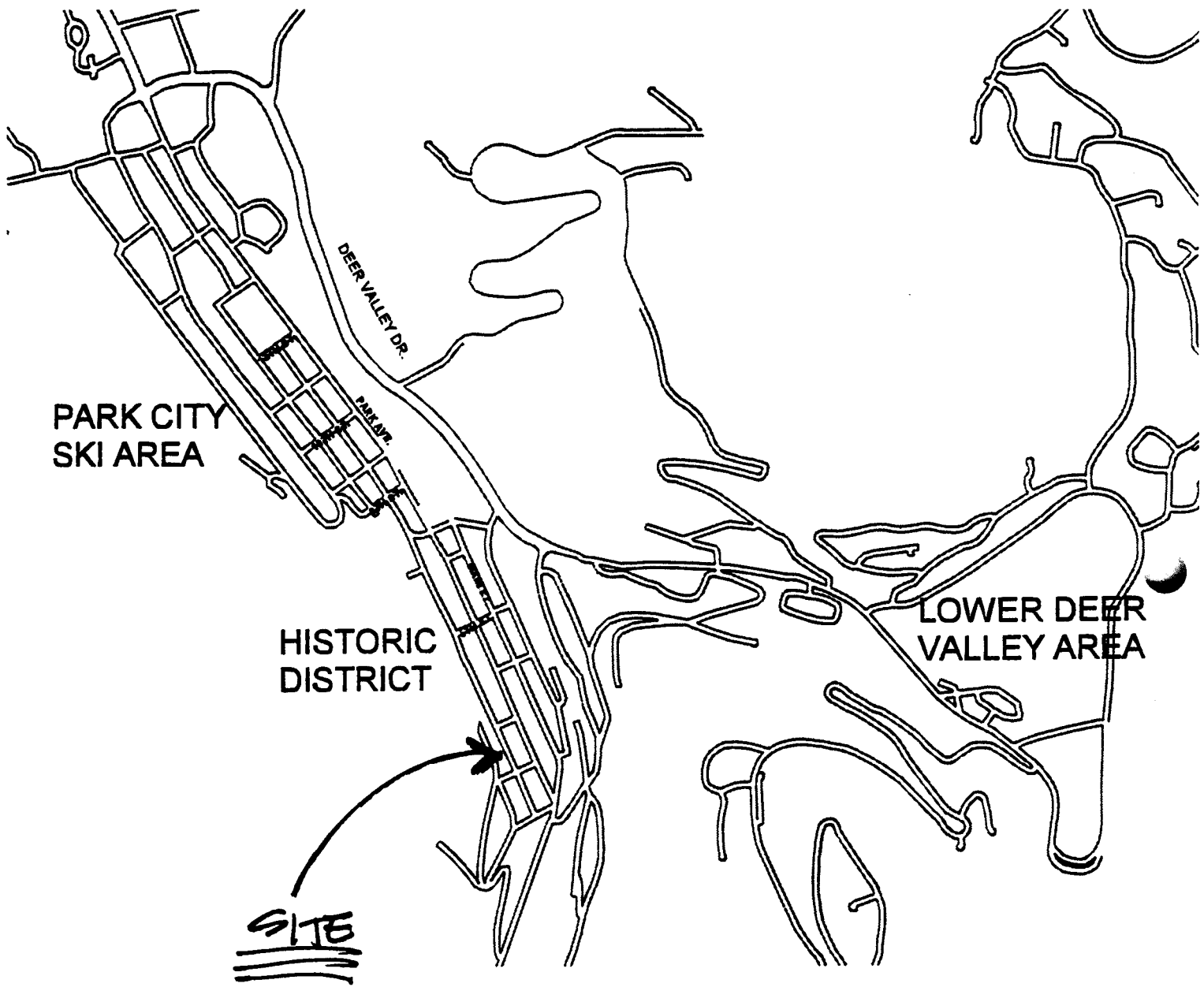


EXHIBIT "B"

**AN ORDINANCE APPROVING THE PLAT AMENDMENT
AT 222 NORFOLK AVENUE, CONSOLIDATING LOT 24, 25, 26, 27,
AND THE NORTHERLY HALF OF LOT 28, IN BLOCK 31
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 16,
TOWNSHIP 2 SOUTH, RANGE 4 EAST,
SALT LAKE BASE AND MERIDIAN,
PARK CITY, UTAH**

WHEREAS, the owner's agent, Richard Gallacher, of the property at 222 Norfolk Avenue, located in the Southeast Quarter of Section 16, Township 2 South, Range 4 East, Park City, Utah, have petitioned the City Council for approval of a plat amendment; and

WHEREAS, proper notice was sent and the property posted according to requirements of the Land Management Code and state law; and

WHEREAS, on August 13, 1997 the Planning Commission held a public hearing to receive public input on the proposed condominium plat and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, on September 25, 1997 the City Council reviewed the proposed plat amendment and held a public hearing; and

WHEREAS, it is in the best interest of Park City, Utah to approve the plat amendment;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. FINDINGS OF FACT.

1. The property is located in the Historic Residential (HR-1) District.
2. The plat amendment combines four and one-half 25'-0" x 75'-0" lots into three 37'-6" x 75'-0" lots.
3. The proposed lot size, 37'-6" x 75'-0", is consistent with the existing ownership patterns in the surrounding area. The new lots will allow a structure to be constructed which is compatible in mass and scale with the surrounding structures.
4. Dedication of a ten foot (10'-0") non-exclusive snow storage easement, along Norfolk Avenue, is necessary to provide adequate snow removal services.
5. The project is located on Norfolk Avenue with constricted access and with minimal

construction staging area. A Construction Mitigation Plan is necessary to mitigate any adverse impacts on the neighboring properties.

6. A financial guarantee is necessary to ensure completion of public improvements.
7. The Applicant has agreed to a 13'-0" front yard setback for 214 Norfolk Avenue, a 15'-0" front yard setback for 220 Norfolk Avenue, and a 13'-0" front yard setback for 226 Norfolk Avenue.

SECTION 2. CONCLUSIONS OF LAW.

The City Council hereby concludes that there is good cause for the above-mentioned plat amendment and that neither the public nor any person will be materially injured by the proposed plat. The plat is consistent with the Park City Land Management Code and applicable State law.

SECTION 3. PLAT APPROVAL.

The plat amendment located at 222 Norfolk Avenue, is hereby approved as shown on Exhibit A, with the following conditions:

1. Prior to plat recordation, the City Attorney and City Engineer shall review and approve the final plat for compliance with the Land Management Code and conditions of approval.
2. All Standard Project Conditions and Land Management Codes shall apply.
3. A financial guarantee, for the value of all public improvements (including any road and/or retaining wall) to be completed, shall be provided to the City prior to plat recordation. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
4. The final plat shall be recorded at Summit County within one year from the date of City Council approval. If recordation has not occurred within the one year time frame, this approval and the plat shall be considered null and void.
5. A Construction Mitigation Plan, approved by the Community Development Department, will be required from the applicant prior to any construction on the newly created parcels.
6. A ten foot (10'-0") non-exclusive snow storage easement along Norfolk Avenue shall be dedicated to the City on the amended plat.
7. Front yard setbacks shall be 13'-0" front yard setback for 214 Norfolk Avenue, 15'-0" front yard setback for 220 Norfolk Avenue, 13'-0" front yard setback for 226 Norfolk Avenue.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 25 th day of September, 1997.

PARK CITY MUNICIPAL CORPORATION

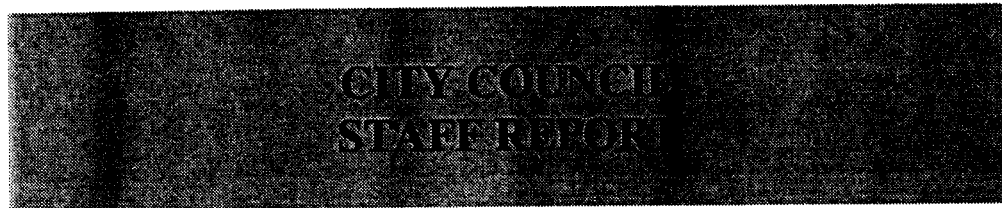
Mayor Bradley A. Olch

Attest:

Janet M. Scott, Deputy City Recorder

Approved as to form:

Mark D. Harrington, Assistant City Attorney



DATE: September 22, 1997
DEPARTMENT: Planning Department
AUTHOR: Megan B. Ryan
TITLE: Arrowood Condominium Plat - Gilt Edge Circle
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Consider the Planning Commission's positive recommendation for the adoption of a three unit condominium project at Gilt Edge Circle.

DESCRIPTION:

A. Topic.

Applicant: Chris Rideout for John Tracy
Location: Gilt Edge Circle
Zoning: Residential Development - RD
Adjacent Land Uses: Single Family and condominiums
Date of Application: January 18, 1996

B. Background.

This item was continued from the Council's September 11th meeting. It had been continued indefinitely due to legal access issues several months ago. The access issue has been resolved and the applicant has requested that the item return to the Council agenda.

The parcel is located off Gilt Edge Circle and sits directly behind the Chapperal Condominiums and the Solamere Single family subdivision. The Queen Esther Condominium project is to the north and east. A residential development is a permitted use in this zone, RD. The applicant wishes to construct three detached condominium units with shared recreational amenities on a 1.8 acre parcel. Please see Exhibit A.

The Planning Commission has held two public hearings, September 11, and December 4, 1996, on this proposal. This application has received considerable public input and opposition from neighboring residents in regards to height, use and compatibility. Subsequently the plan has been modified and attempts have been made to address the neighbors concerns. At the last public hearing on this project the Planning Commission directed staff to prepare positive findings, conclusions and conditions for this project that would be forwarded to the City Council for adoption.

C. Analysis

The applicant has worked to incorporate staff's and the public's suggestions in the site plan which will result in the following:

1. Three structures to be constructed with wood siding, rock trim and shake roof.
2. Each dwelling shall have two car garages. Driveway parking shall also be provided.
3. A shared drive between units 1 and 3. A minimized drive to unit 2.
4. A pool and recreation area in the middle part of the site.
5. A deed restricted unbuildable open space area to the north.
6. A landscape plan that works to buffer the edges of the project.
7. Living area is approximately 2,850 square feet for each unit and three spaces will be provided for each unit.

Staff believes that this plan minimizes the amount of asphalt on the site and provides a significant open space buffer to the north.

• Access

Gilt Edge Circle is a private road and the Legal Department has been provided with legal documentation that demonstrates the applicant's rights to use Gilt Edge Circle as the access point to the property. The property also has two significant sewer easements that traverse the site. A fifty foot easement runs through the northern section of the parcel and a 20' easement runs through the center of the parcel. Upon completion of the remaining Solamere parcels, this site will be visually screened from both Deer Vally Drive and Solamere.

• Parking

The parking requirement for this structure as a multifamily unit over 2,500 square feet is three spaces. These can be provided on each site. Three additional spaces for guests are provided for between units one and three.

• Setbacks

Setbacks for this zone, RD, are 25' front, 12' side and 15' rear for single family structures with lots of 12,000 square feet or more. The project meets these setbacks.

• Height:

The height limits permitted for this zoning district are 28' with a five foot allowance for pitched roofs, (33'). The applicant is aware of the height limit and will need to adhere to this when building plans are submitted. The applicant has provided a site section,

included as Exhibit C. The preliminary building elevations indicate that the applicant is proposing a height of 28' with a five foot allowance for a pitched roof (33").

- **Pool Operations:**

The applicant in response to concerns from the Chaparral residents have moved the pool to the interior of the site and propose to limit operations from 8 a.m. until 10:30 p.m. Fencing and lighting will be addressed at the building permit stage. Chain link fencing is prohibited under the Land Management Code.

- **Signs:**

The applicant has not addressed any sign plan for the project. Staff recommends that any project identification signs be restricted to building faces, are downlit and not internally illuminated. A separate permit will be required for any signs.

D. Department Review

The City wide staff review team has reviewed this project. The Synderville Basin Sewer Improvement District has reviewed the site plan and is satisfied that their easements will be preserved.

PUBLIC INPUT

The project was noticed on August 25, 1997. Several residents have contacted the legal department on the legal issues revolving around this project.

ALTERNATIVES

A. Conduct a public hearing consider public input and adopt the findings, conclusions and conditions as proposed by staff.

B. Continue the item for further discussion and/or additional input from Staff.

C. Deny the proposed Record of Survey and direct staff to prepare the appropriate findings.

SIGNIFICANT IMPACTS:

The project will result in the development of three structures on a previously vacant site. The site plan attempts to minimize asphalt and preserve open space. A construction management plan will also help to ensure that the construction impacts to the neighborhood are minimized to the best extent possible.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

The applicant could pursue alternate development plans should the current project be denied. Under the Land Management Code a single family house or multifamily development could occur.

RECOMMENDATION:

The staff recommends that the City Council conduct a public hearing and consider adopting the Record of Survey (condominium plat) with the following Findings, Conclusion and Conditions:

Findings of Fact:

1. The project is located in the RD Zoning District.
2. The condominium plat will result in three detached condominium units with shared recreational amenities. Living area is approximately 2,850 square feet for each unit. This use is permitted under the Residential Development District and meets all Land Management Code requirements concerning heights and setbacks.
3. Gilt Edge Circle is a private road, over which the applicant has an easement.
4. An open space buffer to the North has been offered by the applicant to be restricted as unbuildable. This restriction will prohibit any future development on this portion of the applicant's property and provide significant open space on the site.
5. The property has two significant sewer easements that traverse the site. A fifty foot easement runs through the northern section of the parcel and a twenty foot easement runs through the center of the parcel. Due to the site's physical constraints and the restricted open space parcel, careful construction planning on this site will be necessary.

Conclusions of Law:

1. There is good cause for the Record of Survey, as a significant portion of the property will remain unbuildable.
2. The proposed Record of Survey is consistent with the Park City Land Management Code, Section 7.5 and the State Condominium Ownership Act requirements.
3. Neither the public nor any person will be materially injured by the proposed plat amendment.

Conditions:

1. The final Record of Survey and CC&R's shall be reviewed by the City Engineer and City Attorney for compliance with State law, the Land Management Code and these conditions of approval as a condition precedent to plat recordation.
2. The preliminary plat site plan as submitted on January 31, 1997 shall be in substantial form the site plan that is approved under this process. Setbacks must conform to Chapter 7.5 of the Land Management Code. For the purpose of setback calculations, Gilt Edge Circle abuts the front of the parcel and the Solamere subdivision abuts the rear.
3. Signs for the project shall be limited to the building face of one structure and shall be governed in size and materials by the Municipal Sign Code.
4. All exterior security lighting, including the pool area, shall be high pressure sodium light sources that are shielded and down directed.
5. The northernmost parcel of this property and the 50' wide sewer easement shall be restricted in a form acceptable to the City Attorney that delineates that area as unbuildable. A note indicating such shall be recorded on the Record of Survey plat.
6. Approval of a Construction Management Plan for the site, which details at a minimum staging, vehicle and material storage and Limits of Disturbance fencing, shall be submitted, by the Chief Building Official is a condition precedent to any building permit issuance on the site. The open space area shall be used for temporary construction staging, material or vehicular storage during construction only if no other

location on site can be utilized. Any site disturbance in this are shall be revegetated to ensure that the site is returned to a passive, landscape area and sureties shall be posted to ensure this at time of the building permit issuance.

7. The plat shall be recorded within one year of the date of this approval or this approval is null and void.
8. If at any time the easement for access over Gilt Edge Circle is invalidated and access is not provided the Certificate of Occupancy, or building permits if still under construction, shall immediately be revoked by the City for all units until access can be provided.

EXHIBITS

Location Map

Exhibit A - Ordinance

Exhibit B - Site plan/plat/ proposed elevations

ORDINANCE NO. 97-__

**AN ORDINANCE APPROVING A RECORD OF SURVEY, ARROWOOD
CONDOMINIUMS, AT GILT EDGE CIRCLE, PARK CITY, UTAH**

WHEREAS, the owners of the property known as Arrowood Condominiums petitioned the City Council for approval of a Record of Survey plat; and

WHEREAS, proper notice was sent and the City Council held a public hearing to receive input on the proposed amendment on February 13, 1997; and

WHEREAS, it is in the best interest of Park City to approve the Record of Survey, as a large portion of the lot remains in open space, and

WHEREAS, neither the public nor any person will be materially injured by the proposed plat.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Park City, Utah, as follows:

SECTION 1. The Record of Survey plat is approved as shown on the attached Exhibit A with the following findings, conclusions and conditions:

Findings of Fact:

1. The project is located in the RD Zoning District.
2. The condominium plat will result in three detached condominium units with shared recreational amenities. Living area is approximately 2,850 square feet for each unit. This use is permitted under the Residential Development District and meets all Land Management Code requirements concerning heights and setbacks.
3. Gilt Edge Circle is a private road, over which the applicant has an easement.
4. An open space buffer to the North has been offered by the applicant to be restricted as unbuildable. This restriction will prohibit any future development on this portion of the applicant's property and provide significant open space on the site.
5. The property has two significant sewer easements that traverse the site. A fifty foot easement runs through the northern section of the parcel and a twenty foot easement runs through the center of the parcel. Due to the site's physical constraints and the restricted open space parcel, careful construction planning on this site will be necessary.

Conclusions of Law:

1. There is good cause for the Record of Survey, as a significant portion of the property will remain unbuildable.
2. The proposed Record of Survey is consistent with the Park City Land Management Code, Section 7.5 and the State Condominium Ownership Act requirements.
3. Neither the public nor any person will be materially injured by the proposed plat amendment.

Conditions:

1. The final Record of Survey and CC& R's shall be reviewed by the City Engineer and City Attorney for compliance with State law, the Land Management Code and these conditions of approval as a condition precedent to plat recordation.
2. The preliminary plat site plan as submitted on January 31, 1997 shall be in substantial form the site plan that is approved under this process. Setbacks must conform to Chapter 7.5 of the Land Management Code. For the purpose of setback calculations, Gilt Edge Circle abuts the front of the parcel and the Solamere subdivision abuts the rear.
3. Signs for the project shall be limited to the building face of one structure and shall be governed in size and materials by the Municipal Sign Code.
4. All exterior security lighting, including the pool area, shall be high-pressure sodium light sources that are shielded and down directed.
5. The northernmost parcel of this property and the 50' wide sewer easement shall be restricted in a form acceptable to the City Attorney that delineates that area as unbuildable. A note indicating such shall be recorded on the Record of Survey plat.
6. Approval of a Construction Management Plan for the site, which details at a minimum staging, vehicle and material storage and Limits of Disturbance fencing, shall be submitted, by the Chief Building Official is a condition precedent to any building permit issuance on the site. The open space area shall be used for temporary construction staging, material or vehicular storage during construction only if no other location on site can be utilized. Any site disturbance in this area shall be revegetated to ensure that the site is returned to a passive, landscape area and sureties shall be posted to ensure this at time of the building permit issuance.
7. The plat shall be recorded within one year of the date of this approval or this approval is null and void.
8. If at any time the easement for access over Gilt Edge Circle is invalidated and access is not provided the Certificate of Occupancy, or building permits if still under construction, shall immediately be revoked by the City for all units until access can be provided.

SECTION 2. This ordinance shall take effect upon publication.

DATED this 25th day of September 1997.

PARK CITY MUNICIPAL CORPORATION

Bradley A. Olch, Mayor

ATTEST:

Jan Scott, Deputy City Recorder

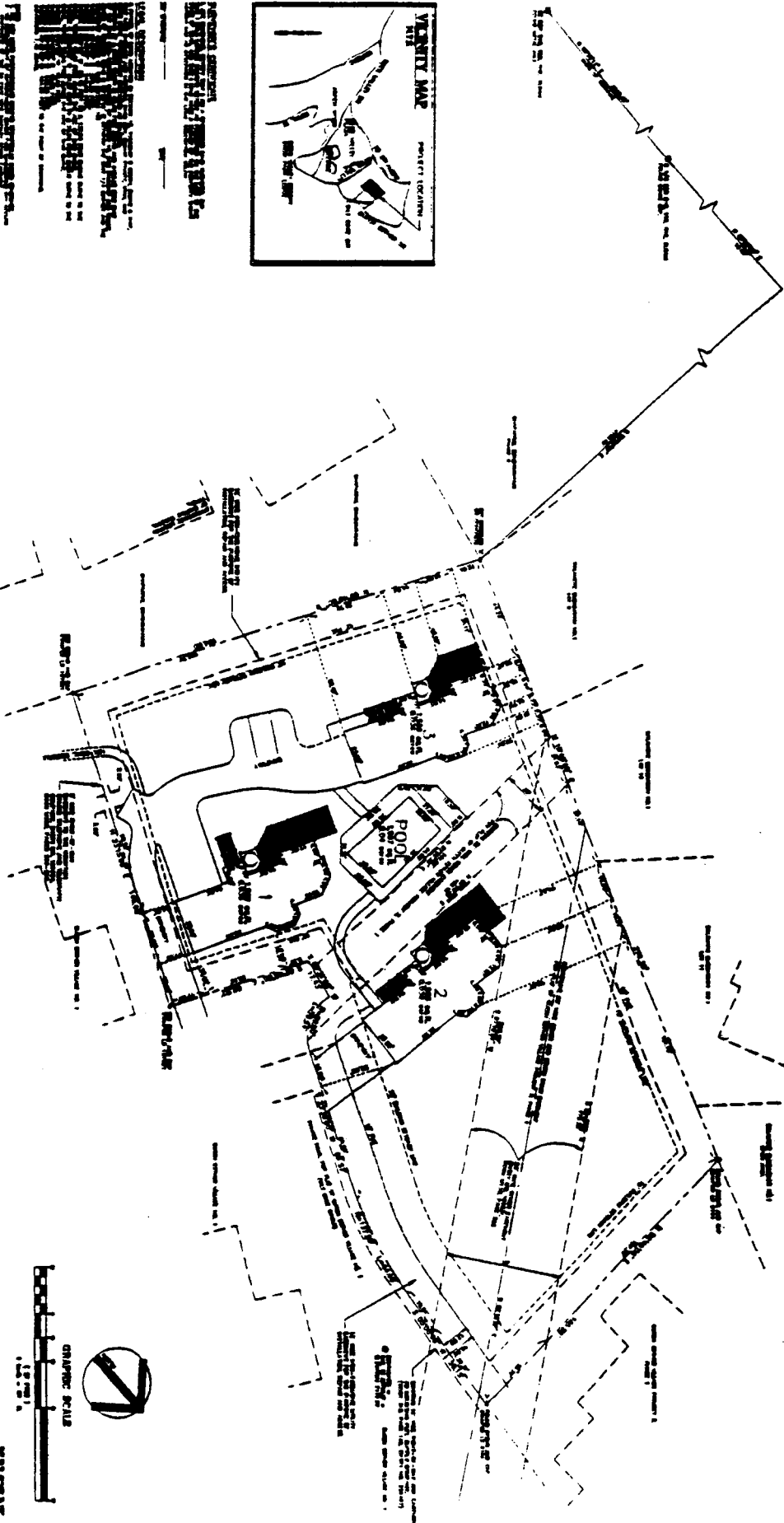
APPROVED AS TO FORM:

Mark Harrington, Deputy City Attorney

PLAT
ARROWOOD CONDOMINIUMS
A PARCEL OF LAND LOCATED IN SECTION 15, TOWNSHIP 2 SOUTH, RANGE 4 EAST
SALT LAKE BASLINE AND MERIDIAN, UTAH.

RECEIVED

JAN 31 1997
PARK CITY
PLANNING DEPT.



CITY COUNCIL APPROVAL

RESOLUTION TO BE GIVEN BY
CITY COUNCIL, IN _____ AT _____
RECORD OF SALT LAKE BASLINE AND MERIDIAN, UTAH

DATE _____

CITY RECORDS _____

CITY ENGINEER

APPROVED AND ACCEPTED BY THE
CITY ENGINEER, IN _____ AT _____
DATE _____

CITY RECORDS _____

CITY PLANNING COMMISSION

APPROVED AND ACCEPTED BY THE
CITY PLANNING COMMISSION, IN _____ AT _____
DATE _____

CITY RECORDS _____

APPROVAL AS TO FORM

APPROVED AS TO FORM BY THE
CITY ATTORNEY, IN _____ AT _____
DATE _____

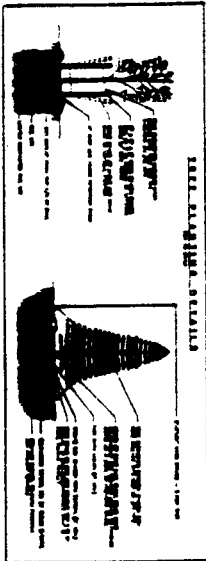
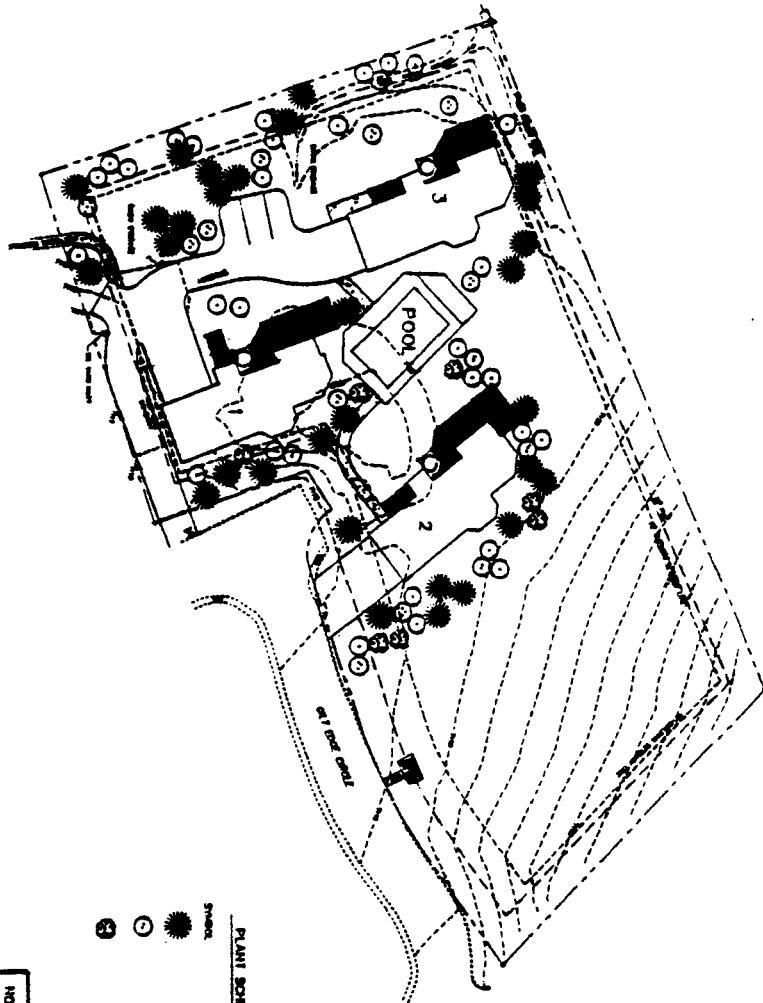
CITY RECORDS _____

RECORDED

STATE OF _____
COUNTY OF _____
RECORDED AND FILED AT THE RECORDS OF
COUNTY RECORDS _____

Evergreen Engineering, Inc.

1000 S. 1000 E. SUITE 100
SALT LAKE CITY, UT 84143
(801) 466-1000



PLANT SCHEDULE AND LEGEND FOR PRELIMINARY PLANTING PLAN

SYMBOL	QUANTITY	COMMON NAME	COMMON NAME
●	20	POCA POONED VARIETY	COMMON NAME
○	40	POCA POONED VARIETY	COMMON NAME
○	1	POCA POONED VARIETY	COMMON NAME

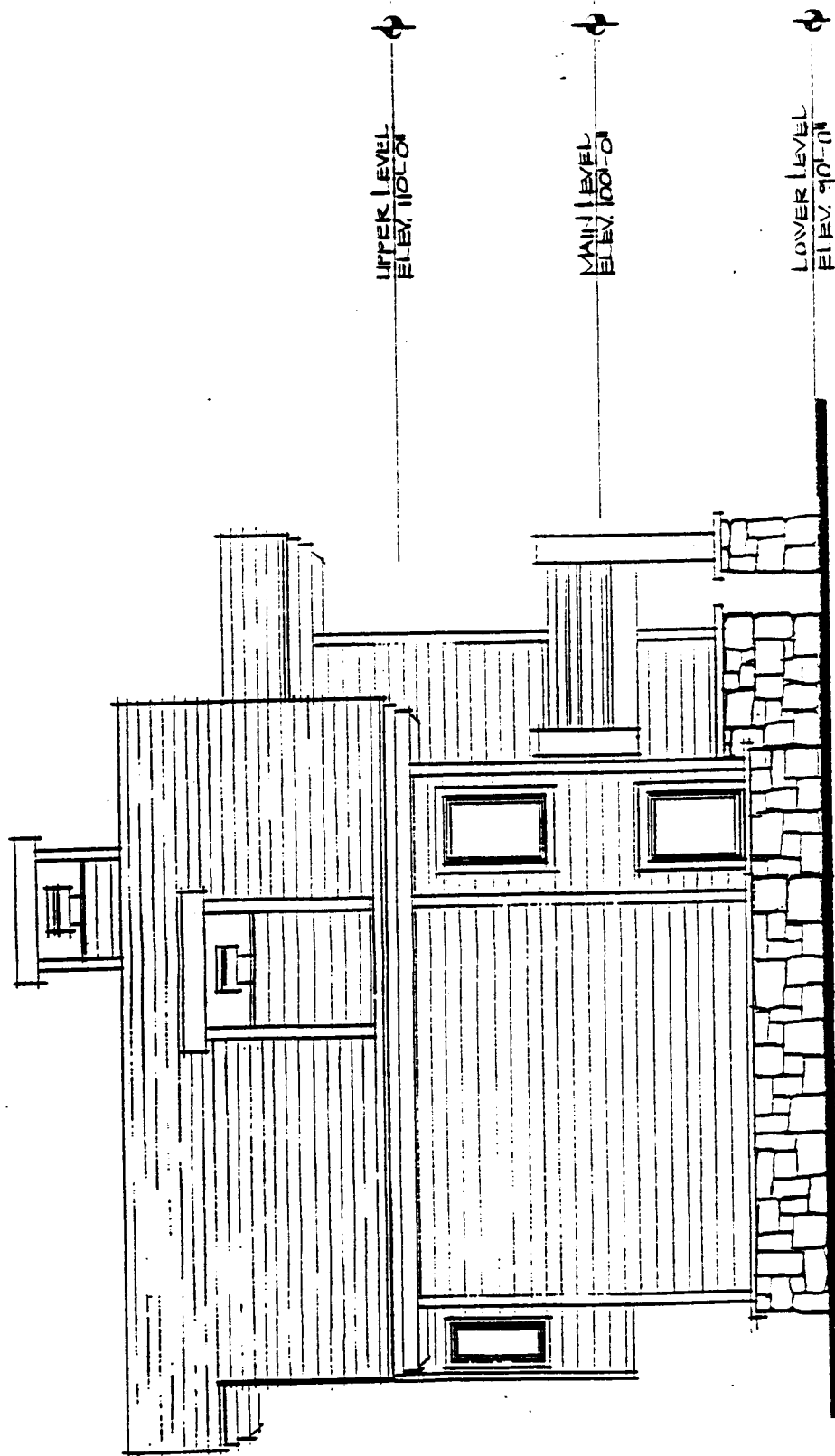
NOTE: CAUTION SHALL BE USED WHEN PLANTING IN OR NEAR EXISTING SEWER AND STORM DRAIN EASEMENTS

RECEIVED

JAN 31 1997

PARK CITY
PLANNING DEPT.

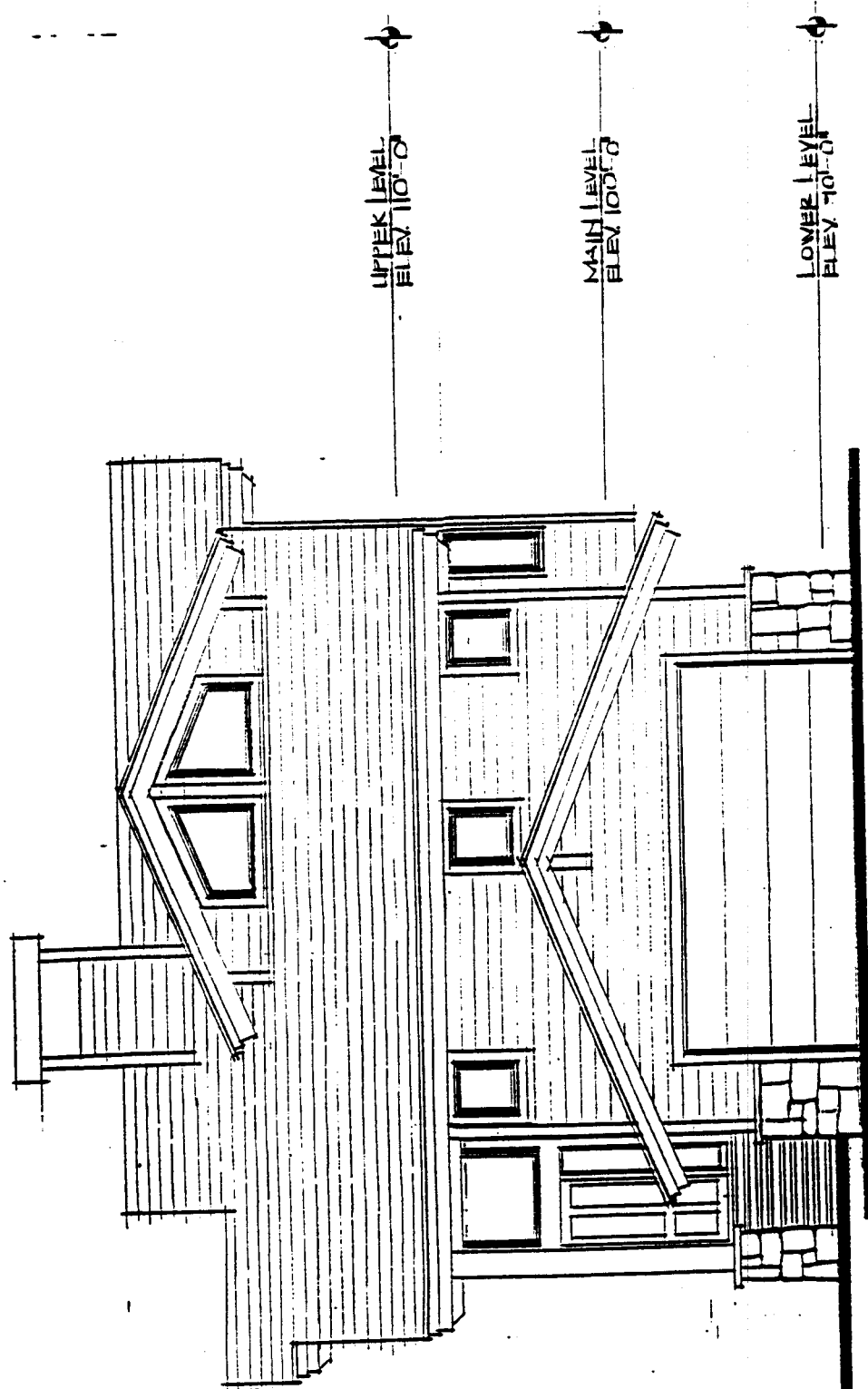
LANDSCAPING PLAN ARROWWOOD CONDOMINIUMS		PREPARED BY DATE CHECKED BY DATE	SCALE SHEET NO.	PROJECT NO.	CLIENT	DESIGNER	ENGINEER	ARCHITECT	LANDSCAPE ARCHITECT	CIVIL ENGINEER	ELECTRICAL ENGINEER	MECHANICAL ENGINEER	PLUMBING ENGINEER	STRUCTURAL ENGINEER	OTHER	SIGNATURE	DATE
PREPARED BY DATE																	



WEST ELEVATION

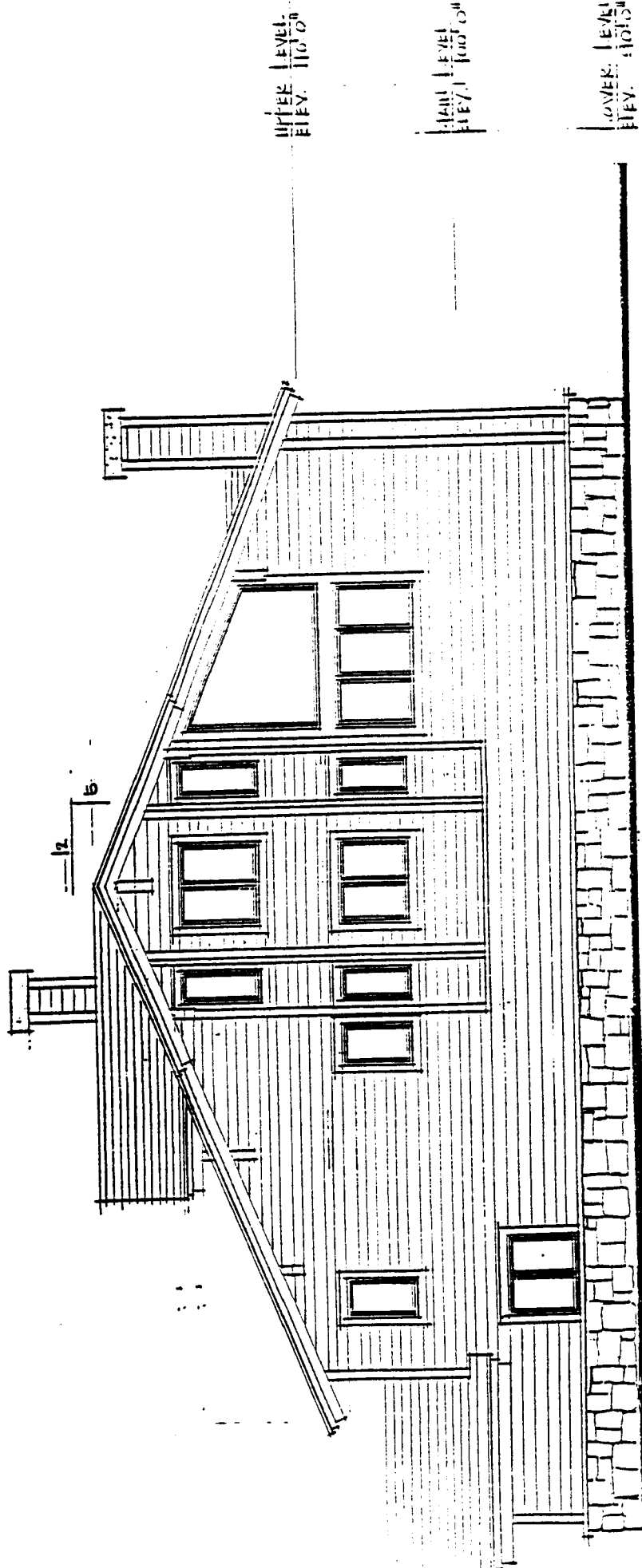


SCALE: 1/4" = 1'-0"



EAST ELEVATION
SCALE: 1/4" = 1'-0"

RECEIVED
AUG 30 1996
PARK CITY
PLANNING DEPT



NORTH ELEVATION

SCALE: 1/4" = 1'-0"



RECEIVED

AUG 30 1996

PARK CITY
PLANNING DEPT.

PARK CITY

1784

CITY COUNCIL STAFF REPORT

DATE: September 22, 1997 (September 25 meeting)
DEPARTMENT: Planning Department
AUTHOR: Kurt von Puttkammer, AIA *KP*
TITLE: Summit Watch at Park City
Condominium Conversion
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS:

Staff requests the City Council review the project within the context of the Land Management Code and approve the condominium plat for the commercial space at Summit Watch at Park City, phases 1, 1A, 2, 2A, 3, and 3A as requested by the applicant.

DESCRIPTION:

A. Topic

PROJECT STATISTICS:

Applicant:	McIntosh Mill
Location:	710-900 Main Street
Zoning:	Historic Recreation Commercial (HRC)
Adjacent Land Uses:	Commercial and residential condominiums, Town Lift condominiums and commercial, Zions Bank building, historic residential, commercial, vacant
Date of Application:	May 5, 1997
Project Planner:	Kurt von Puttkammer, AIA
Staff Recommendation:	Approve with conditions

B. Background

This request is for approval of the Fourth Supplemental condominium plat for the Summit Watch at Park City Condominium project. A final plat must be recorded with the County in order for the current owner to sell ownership interests to other parties.

The total project consists of six buildings known as the Summit Watch at Park City which includes parking, commercial space, and residential condominiums. The project began construction in the fall of 1994 and should be completed winter 1997.

Buildings 3 and 3A are currently finishing construction at 890 and 900 Main Street. Once complete, the buildings will be divided into 10 commercial units ranging from 715 sf to 11,420 sf in floor area totaling 44,090 square feet. Through prior approvals the parking was approved to accommodate the residential, commercial, and restaurant uses as currently proposed. All future requests for changes of use and tenant space will require a parking analysis to determine parking code compliance.

On August 13, 1997, the Planning Commission held a public hearing to receive public input on the proposed condominium plat and forwarded a positive recommendation of approval to the City Council.

C. Analysis

The applicant's request is to provide supplemental documentation to divide the plaza level into private ownership, common areas/facilities, and limited common areas/facilities. After review and approval by the Community Development Department, this supplemental documentation will be recorded with the Summit County recorder. The remaining portion of the project will remain platted as currently recorded with Summit County Recorder.

The plat changes the type of ownership of this parcel to private ownership for the individual commercial units, a portion of the plaza areas to limited common areas, and the remaining as common areas.

The proposed condominium plat is consistent with the Land Management Code and the previously approved plats. Staff is recommending a condition of approval that a financial guarantee for completion of all public improvements, landscaping, and pedestrian amenities associated with this project, shall remain in place with no additional securities required at this time. All conditions of approval of the previous plat approvals regarding landscaping, pedestrian amenities, and maintenance shall apply.

The Community Development Department shall review the project for compliance with the conditions of approval of all prior plats prior to releasing any financial securities.

D. Department Review

The City Engineer reviewed the plat and recommended some minor changes prior to final plat recordation regarding City approval of outdoor dining. The applicant has agreed to revise the plat as requested by the City Engineer. The City Attorney's office will review and approve the plat and CC&R's for final form and compliance with the LMC and State Law prior to recordation.

RECOMMENDATION:

The Staff recommends the City Council approve the condominium plat for the commercial space at Summit Watch at Park City, phases 1, 1A, 2, 2A, 3, and 3A based on the following:

Findings of Fact

1. The proposed plat changes the type of ownership of this property to private ownership.
2. The condominiums are part of the Summit Watch at Park City and are subject to all of the prior conditions of approval from previous plats.
3. A financial guarantee for all public improvements, landscaping, and pedestrian amenities is necessary to ensure completion of necessary improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner.

Conclusions of Law

1. There is good cause for this condominium plat.
2. Neither the public nor any person will be materially injured by the proposed condominium plat.
3. The proposal is consistent with the Land Management code and previous plat approvals.

Conditions of Approval

1. The City Attorney and City Engineer shall review and approve the final form and content of the plat and the Conditions, Covenants and Restrictions (CC&R's), for compliance with State law, the Land Management Code, and conditions of approval, prior to recording the plat.
2. All conditions of approval for the Summit Watch at Park City plats shall apply.
3. All standard project conditions shall apply.
4. A financial guarantee, in a form and amount acceptable to the City, for the value of all landscaping, public improvements, and pedestrian amenities to be completed, shall be provided to the City prior to plat recordation. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
5. The final condominium plat shall be recorded at the County within one year of the date of City Council approval. If recordation has not occurred within the one year time frame, this approval and the plat shall be considered null and void.

EXHIBITS:

Exhibit A- Proposed condominium plat

Exhibit B- Location map

M:\CDD\KVP\CC\890MAIN.CC

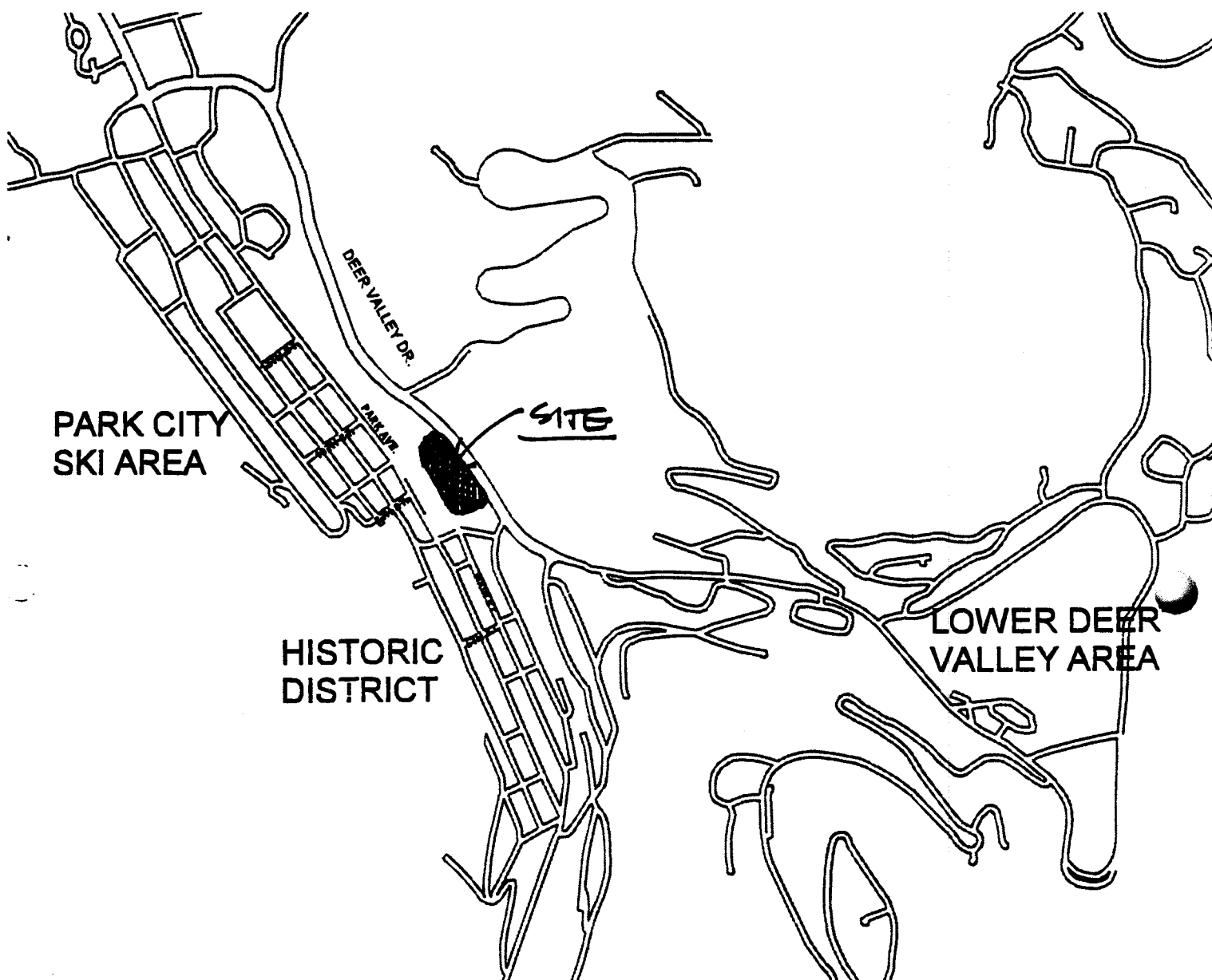


EXHIBIT "B"

41

**AN ORDINANCE APPROVING A CONDOMINIUM PLAT
FOR THE SUMMIT WATCH AT PARK CITY AT 710-900 MAIN STREET,
LOCATED IN THE NORTHEAST QUARTER OF SECTION 16,
TOWNSHIP 2 SOUTH, RANGE 4 EAST,
SALT LAKE BASE AND MERIDIAN,
PARK CITY, UTAH**

WHEREAS, the owner of the property at 710-900 Main Street, located in the Northeast Quarter of Section 16, Township 2 South, Range 4 East, Park City, Utah and known as the Summit Watch at Park City, has petitioned the City Council for approval of a condominium plat; and

WHEREAS, proper notice was sent and the property posted according to requirements of the Land Management Code and state law; and

WHEREAS, on August 13, 1997 the Planning Commission held a public hearing to receive public input on the proposed condominium plat and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, on September 25, 1997 the City Council reviewed the proposed condominium plat; and

WHEREAS, it is in the best interest of Park City, Utah to approve the condominium plat;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. FINDINGS OF FACT.

1. The proposed plat changes the type of ownership of this property to private ownership.
2. The condominiums are part of the Summit Watch at Park City and are subject to all of the prior conditions of approval from previous plats.
3. A financial guarantee for all public improvements, landscaping, and pedestrian amenities is necessary to ensure completion of necessary improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner.

SECTION 2. CONCLUSIONS OF LAW.

The City Council hereby concludes that there is good cause for the above-mentioned condominium plat and that neither the public nor any person will be materially injured by the proposed plat. The plat is consistent with the Park City Land Management Code and applicable State law regarding condominium plats.

SECTION 3. PLAT APPROVAL.

The condominium plat, known as the Fourth Supplemental Record of Survey Map Summit Watch at Park City, at 710-900 Main Street, is hereby approved as shown on Exhibit A, with the following conditions:

1. The City Attorney and City Engineer shall review and approve the final form and content of the plat and the Conditions, Covenants and Restrictions (CC&R's), for compliance with State law, the Land Management Code, and conditions of approval, prior to recording the plat.
2. All conditions of approval for the Summit Watch at Park City plats shall apply.
3. All standard project conditions shall apply.
4. A financial guarantee, in a form and amount acceptable to the City, for the value of all landscaping, public improvements, and pedestrian amenities to be completed, shall be provided to the City prior to plat recordation. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
5. The final condominium plat shall be recorded at the County within one year of the date of City Council approval. If recordation has not occurred within the one year time frame, this approval and the plat shall be considered null and void.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 25 th day of September, 1997.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark D. Harrington, Assistant City Attorney

M:\CDD\KVP\CC\890MAIN.ORD



DATE: September 15, 1997
DEPARTMENT: BUILDING DEPARTMENT
AUTHOR: RON IVIE
TITLE: CIVIL COMPLAINT
TYPE OF ITEM: QUASI-JUDICIAL

SUMMARY RECOMMENDATIONS: Authorization for City Attorney to file a civil complaint against the owner of property located at 740 Kearns Blvd., for Land Management and Building Code violations and to return the site to a clean and safe condition.

DESCRIPTION:

A. Topic Land Management and Building Code violations at 740 Kearns Blvd.

B. Background: Two letters dated May 29, 1997 and August 28, 1997 (certified) were sent requesting clean up and remediation of the site (see attached). The site once was a car wash but has not been used for several years. There is currently a chain link fence around the area with accumulated junk and debris. The dirt debris is a result of a leaking underground storage tank. So far there has been no progress made to comply.

C. Analysis: Due to the nature of the code violations, i.e. site improvement work not completed, Land Management Code Section 8.21; building being used without required parking and improper parking surface, Land Management Code 13.1 and change of use from a car wash to storage without a certificate of occupancy, Uniform Building Code Section 109.1, a civil procedure would be more productive than a criminal action because it gives greater flexibility for negotiating an acceptable solution.

D. Department Review: Reviewed by Community Development staff and the Legal Department.

ALTERNATIVES:

A. Approve the Request: Allows us to proceed with enforcement action, which should result in getting the site cleaned up.

B. Deny the Request: Site will likely stay in its current condition. Building Official could ask the City Prosecutor to file a criminal action

C. Continue the Item: Site will likely stay in its current condition.

D. Do Nothing: Site will likely stay in its current condition.

SIGNIFICANT IMPACTS: If unrectified this will continue to be a blight to Park City's entry corridor and could potentially become a public nuisance.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: We could file a criminal complaint but due to the complex nature of the site and different legal standards, the outcome would be less certain.

RECOMMENDATION: To authorize our Legal Department to file a civil complaint.

Department of Community Development
Engineering • Building Inspection • Planning

August 28, 1997

P.C. DEVELOPMENT INC.
ATTN MR. RICHARDSON
510 SOUTH 600 EAST
SALT LAKE CITY UT 84106

RE: 740 Kearns Blvd., Park City Utah

Dear Mr. Richardson,

This letter is a follow-up to my letter of May 29, 1997, and your subsequent phone call requesting time to meet with Rick Lewis, in an effort to resolve your concerns with the planning process on this property.

It is my current understanding that as of today you have not met with Mr. Lewis and there has been no effort to clean up the property or return it to a reasonable condition.

If we are not in receipt of your proposal within 7 days, as to how you are going to resolve this matter, I will ask our Legal Department to proceed with appropriate action to accomplish the above.

I'm sure this was just an oversight on your part so I wish to thank you in advance for your anticipated cooperation.

Sincerely,

Ron Ivie
Building Official

Ridmi

445 Marzac Avenue • P.O. Box 1480 • Park City, UT 84060-1480
 • Building 445 3040

Unrelated Business

STATES POSTA

47

May 29, 1997

P. C. DEVELOPMENT INC..
510 SOUTH 600 EAST
SALT LAKE CITY. UTAH 84106

Dear Mr. Richardson:

This letter is notice that your property at 740 Kearns Blvd. needs to be cleaned up and returned to a suitable and safe condition including the removal of the chain link fence. I am requesting this work be done with in the next 30 days. If there is a problem please advise me.

Regards,

Ron Ivie
Park City Building Official

Q-159 R-97



Resolution No.

**RESOLUTION DECLARING OCTOBER
AS BREAST CANCER AWARENESS MONTH
IN PARK CITY, UTAH**

WHEREAS, in 1997, it is estimated that 820 Utah women will be diagnosed with breast cancer; and

WHEREAS, in 1997, it is estimated that 200 women will die from the disease; and

WHEREAS, early detection could spare as many as one-third of those lives; and

WHEREAS, data from a 1995 statewide survey show that only 47% of Utah women age 50 and older reported having a mammogram and a clinical breast exam in the preceding 12 months; and

WHEREAS, mammography is the single best method for detecting breast cancer;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council that October 1997 is hereby declared:

BREAST CANCER AWARENESS MONTH IN PARK CITY, UTAH

and **Friday, October 17, 1997 as Mammography Day**, and challenge all women in Park City to take advantage of early detection methods, and urge each resident of this City to make sure the women they care about participate in this program.

PASSED AND ADOPTED this 25th day of September, 1997.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder



CITY COUNCIL REPORT

DATE: September 22, 1997
(September 25, 1997 Meeting)

DEPARTMENT: Planning Department

AUTHOR: Patrick Putt

TITLE: 615 Woodside Avenue Subdivision

TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS:

The Planning Department recommends that the City Council adopt the attached ordinance approving the proposed resubdivision of the Walter-Daniels Subdivision located at 615 Woodside Avenue.

DESCRIPTION:

A. Topic.

Request: Resubdivision of Parcel 2, Walter-Daniels Subdivision (Combined Preliminary and Final Plat)

Applicant: Jon R. Brinton/Old Miners' Lodge

Location: 615 Woodside Avenue
(A resubdivision of the Walter-Daniels Subdivision, Block 27, Park City Survey)

Adjacent Uses: Residential

Date of Application: February 7, 1997

Project Planner: Patrick Putt

B. Background.

Proposal: Jon R. Brinton has submitted a subdivision application to resubdivide Parcel 2 of the Walter-Daniels Subdivision and create two lots. The Parcel 2 is located in the Historic Residential (HR-1) District and is 14,903 square feet in area. The site is the location of the historic Old Miners' Lodge, currently operating as a bed and breakfast inn. Proposed Lot 1 is 11,153 square feet in size and includes the lodge and gazebo area. Proposed Lot 2 will be 3,750 square feet and is intended for a separate residence. A copy of the proposed subdivision and site plan are included with this report (*See Exhibit B*).

Subdivision History: The Walter-Daniels Subdivision was approved in November 1995 and resubdivided approximately one acre in Block 27 of the Park City Survey. Prior to the 1995 resubdivision, the applicant's property consisted of six (6) 25' x 75' platted lots and a 50' x 75' unplatted parcel. The purpose for the Old Miners' Lodge's participation in the 1995 resubdivision was to remove the common interior lot lines which would:

1. eliminate the condition of the historic Lodge building extending over platted lot lines; and
2. accommodate the development of a caretaker's residence and a garage/off-street parking area.

A copy of the plat of the property prior to the 1995 resubdivision is also included with this report (*see Exhibit C*).

Construction and Conditional Use Permit History: In the spring of 1996, the applicant approached the Planning Department with a request for two separate projects:

1. the reconstruction of the Lodge's front-yard historic stone retaining wall and staircase, including an extension of the wall along the front of the property (*the reconstruction of the historic retaining wall was conducted under a Historic District grant*); and
2. construction of a detached two-car garage (*four-car off-street parking area in front of the garage*) with a caretaker's living quarters above the garage to the north of the Lodge.

An excavation permit was issued by the Community Development Department in the Summer of 1996 for an area to the north of the Lodge to provide an off-street staging area

for the historic retaining wall/staircase reconstruction. The excavation, it was determined by the Planning Department, could ultimately be adapted for an approved detached garage or garage/caretaker's unit. The historic wall/staircase reconstruction was completed in the fall of 1996. The wall along the front of the property was reconstructed in its historic location.

Although caretaker's units for bed and breakfast inns are permitted (*and encouraged per the LMC, Section 7.1.7b*) in the HR-1 District, Staff requested that the applicant apply for an accessory apartment Conditional Use Permit inasmuch as the C.U.P. process would allow for the Planning Commission's review of the project plan and public comment. The applicant consented to the Planning Department's request. Following a public hearing held on August 28, 1996, the Planning Commission approved a conditional use permit for an accessory apartment.

Subsequent to the Planning Commission's 1996 C.U.P. approval and prior to a Historic District design review approval for the proposed garage/caretaker's unit, the applicant requested a footing and foundation permit to shore the cut slopes and prevent the Lodge building, a water line, and the adjacent residence to the north (*the Scheinberg residence*) from potentially sliding into the excavation area. Satisfied that, at the minimum, a detached garage could be constructed at the proposed garage/caretaker's unit location, Staff issued the footing and foundation permit.

As construction of the foundation walls commenced, the Planning Department was made aware of the fact that the new building improvements exceeded the Floor Area Ratio (F.A.R.) for the property (*Parcel 2*) as replatted in 1995. Under the Land Management Code, the historic Lodge building is exempt from the F.A.R.; however, new detached structures, such as the proposed garage/caretaker's building, are not. If the applicant's 14,903 square foot property was vacant, the maximum F.A.R. for the entire site would be 5595 square feet. If a new detached structure is to be constructed on the currently platted property, the total building square footage for the property is limited to the maximum 5595 square feet. The F.A.R. would not be an issue were the applicant to construct an addition to the Lodge; however this alternative does not meet the Lodge's operations objectives.

The Planning Department made an error in estimating the size of the Lodge building. Estimating the square footage to be approximately 3900 square feet, Staff concluded that sufficient development square footage remained to accommodate the new building which proposed 984 square feet of habitable area ($3900 \text{ sq. ft.} + 984 \text{ sq. ft.} = 4,884$ which is less than the maximum F.A.R. of 5595 sq. ft.). When the Department learned that the size of the historic Lodge is approximately 7000 square feet and became aware of concerns from the adjacent property owners to the north, the project was halted. In order to stabilize the cut slopes, the applicant was allowed by the Building Official to complete the foundation walls. The foundation walls are still in place.

The applicant's one-year time frame to take action on the accessory apartment conditional use permit expired on August 28, 1997. The applicant is not seeking to extend or renew

the Conditional Use Permit and Staff has closed this file.

The Planning Department regrets this unfortunate situation. In the attempt to resolve this matter, the applicant has elected to resubdivide Parcel 2 of the Walter-Daniels Subdivision to recreate a development parcel for a separate residence utilizing the current foundation location.

April 23, 1997 Planning Commission Public Hearing:

The Planning Commission held a public hearing on this application at the April 23, 1997 meeting. At the suggestion of the adjacent property owners (*Richard and Jill Scheinberg*) that the approval of the proposed subdivision may preclude design solutions for the proposed caretaker's residence, the Planning Commission continued the application to have the proposed building reviewed by the Historic District Commission.

July 14, 1997 Historic District Commission Action:

The Historic District Commission approved the applicant's proposed caretaker's residence (*with conditions*) on July 14, 1997. The Scheinbergs appealed the HDC design review approval to City Council. Council will hear the appeal of the HDC decision at Thursday night's meeting. A review and analysis of the appeal is covered in a separate packet to be distributed prior to the meeting.

August 27, 1997 Planning Commission Public Hearing and Action:

The Planning Commission forwarded a positive recommendation for this application (*with conditions of approval*) to City Council on August 27, 1997 (*see attached Planning Commission minutes, Exhibit D*). During the public hearing, the Scheinbergs expressed several concerns including the potential use and size of the proposed new residential structure and the use of the four (4) proposed exterior parking spaces (*to be used by the Old Miner's Lodge*). To address these specific concerns, the Planning Commission added a condition of approval requiring a restriction which ties the use and off-street parking to the Old Miners' Lodge so long as the Lodge remains a lodging use. A condition of approval was also added limiting the size of new residential structure to no more than 1900 square feet (*see attached conditions of approval in the August 27, 1997 Planning Commission Minutes, Exhibit D*).

C. Analysis

Standards For Review: Resubdivisions require discretionary approvals by the City. Pursuant to the *Land Management Code* and State subdivision statutes, the Council must be able to conclude that:

1. There is good cause for the resubdivision.

2. Neither the public nor any person will be materially injured by the proposed plat resubdivision.

As part of the Commission's evaluation of whether or not good cause exists to approve the applicant's proposal, it is important to consider the proposal in the context of the purpose of the HR-1 District.

The *Land Management Code* describes the purpose of the HR-1 District in the following manner:

The purpose of the Historic Residential HR-1 District is to allow the preservation of the present land uses and the character of the historic residential areas of Park City, and to encourage the preservation of historic structures and the construction of new structures that preserve and contribute to the character of the district, and to encourage densities of development that will preserve the desirable residential environment, and also densities within narrow canyon areas and areas that may have steep or substandard street systems.

The Planning Department finds that the proposed application complies with all requisite Land Management Code subdivision requirements. As conditioned by the Historic District Commission in its July 14, 1997 approval and the Planning Commission by its action on August 27, 1997, the proposed caretaker's residence is consistent with the Historic District Design Guidelines and exceeds the required Land Management Code requirements.

The following areas of review have been analyzed by Staff to assist the Council in its evaluation of this subdivision proposal.

Lot Size: The proposed lots exceed the HR-1 minimum lot size requirement of 1,875 square feet. Lot 1 (*Lodge site*) is 11,153 square feet. Lot 2 is 3,750 square feet.

Lot Configuration: The proposed lots meet or exceed the minimum lot configuration requirements of the HR-1 District. The Land Management Code specifies that resubdivisions within the HR-1 District comply with the [minimum] lot size of 25' x 75'. Lot 1 (*the historic Lodge site*) will be 50 feet wide at the street and 150 feet deep. Lot 2 will be 50 feet wide and 75 feet deep. The proposed lot sizes are also consistent with the City's efforts to promote lot combinations which allow for development on 1 ½ to 2-lot wide parcels.

Floor Area Ratio: The approximately 7000 square foot historic Lodge on the 11,153 square foot proposed Lot 1 is exempt from the Floor Area Ratio. The total building volume permitted under the HR-1 F.A.R. for Lot 2 is 2650 square feet (2250 sq. ft. + 400 square feet for a garage). The applicant's preliminary building plans propose a total building volume (*living area and garage*) of approximately 1900 square feet which

is under the maximum allowed building volume. A condition of approval limits the total building volume (*living area and garage*) to 1900 square feet.

The Scheinbergs assert that the proposed action is not one covered by the Land Management Codes F.A.R. exemption (Section 7.1.3), i.e the Old Miners' Lodge is not exempt from the F.A.R., because the resubdivision/new construction is not a renovation, addition, or expansion of the historic structure (*see Scheinberg Brief, Point No.3, Exhibit E*). This statement is erroneous. If it were true, all existing historic building which exceed the current F.A. R. are illegal unless they are renovated, expanded or enlarged.

Setbacks Between Buildings: Under the proposed resubdivision, the required building setbacks for the historic Lodge building on proposed Lot 1 and the current foundation on proposed Lot 2 meet or exceed the HR-1 requirements. Both the historic Lodge and the (*proposed Lot 2*) foundation meet or slightly exceed the minimum 10 foot front-yard setback.

The HR-1 side-yard setback requirements for both Lot 1 and 2 are a total of 10 feet , with 3 foot minimums. The proposed sum of the side-yards for Lot 1 (*the historic Lodge site*) is 11 feet. The proposed north side-yard setback for the historic Lodge is 7 feet. The existing south-side setback on the historic Lodge is 4 feet. The sum of the side yards for Lot 2 (*the foundation site*) is 16 feet. The current foundation on proposed Lot 2 provides a 6-foot side-yard setback from the north property line (*8 feet from the neighbor's residence to the north*) and a side-yard setback which ranges from 10 to 18 feet.

Mitigation of Potential Snow Release Issues: The applicant's HDC-approved preliminary building plans and a roof design which includes a dormer element on the north side of the proposed building to prevent a direct snow release trespass onto the neighbor's property. The Scheinbergs assert that the snow release issue has not been adequately addressed (*see Scheinberg Brief, Point No. 4*). The HDC-approved building design includes a 6-foot side-yard building setback (*8 feet of building separation to the Scheinberg residence*) and a large dormer to direct snow away from the Scheinberg residence. The Scheinberg residence has a non-conforming side-yard setback and its placement on the lot exacerbates the snow release problem. The Scheinberg residence is approximately 2 feet from the applicant's property. As constructed the Scheinberg roof releases snow onto the applicant's property as well. The applicants building design mitigates snow release from the new building as well as releases for the Scheinberg house.

The Building Department has reviewed the proposed roof plan and finds it acceptable. The Building Official's final approval for snow release mitigation prior to the issuance of a building permit is a condition of approval.

Legal Noticing: The Scheinbergs assert that the August 27, 1997 Planning Commission

action was not properly noticed (*see Scheinberg Brief, Point No. 1*). Legal notice for the August 27, 1997 has been met. The legal noticing for subdivisions requires that the property be posted and one mailed noticed to property owners within 300 feet at least 7 days prior to the Planning Commission hearing. A legal notice is to be published once, at least 7 days prior to the hearing before the Planning Commission. Adjacent property owners were originally notified by mail on February 25, 1997 (*prior to the March 12, 1997 Planning Commission public hearing*). The application was continued at the March 12, 1997 meeting to the March 26, 1997 meeting. The matter was also continued at the March 26, 1997 meeting to the April 23, 1997 meeting. At the April 23, 1997 meeting, the application was postponed. Staff informed the Commission that notice would take place for the next hearing (*August 27, 1997*). The August 27, 1997 meeting was noticed in the newspaper, posted on-site and at City Hall and the post office.

The Scheinberg's attendance at participation in the August 27, 1997 Planning Commission public hearing waives their claim of improper notice.

Negative Impacts To Views, Light, and Visibility of the Scheinberg Residence and Old Miners' Lodge: The Scheinbergs assert that the proposed construction of the new residence (*as a result of this resubdivision*) will adversely impact views, light, and visibility of the Scheinberg residence and the Old Miners' Lodge (*see Scheinberg Brief, Point No. 2*). This issue has been addressed to satisfaction of the Historic District Commission through the design-review process and is irrelevant to this resubdivision application.

Appeal of the Historic District Commission's Design Review Approval: The Scheinbergs assert that the Historic District has not given approval to the project inasmuch as the HDC action has been appealed to the City Council (*see Scheinberg Brief, Point No. 5*). The Planning Commission referred the design of the proposed new residential structure to the Historic District Commission in order to determine whether or not the proposed resubdivision configuration would preclude structure from complying with Historic District Design Guidelines. Historic District Commission design review approval is not a condition precedent to action on subdivision application. The appeal of the July 14, 1997 HDC approval does not stay an action on the subdivision.

Materially False and Misleading Staff Report: The Scheinbergs assert that the August 27, 1997 Planning Commission was materially false and misleading (*see Scheinberg Brief, Point No. 6*). The information in the aforementioned report is based on information in the project file and is correct.

The Accessory Apartment Conditional Use Permit: The Scheinbergs assert that the proposed project was subject to a conditional use permit with specific conditions which were not met (*see Scheinberg Brief, Point No. 7*). This issue is irrelevant to this subdivision application. Although the applicant received a conditional use permit

approval for an accessory apartment on August 28, 1996, the applicant never executed the permit. The conditional use permit expired on August 28, 1997. A conditional use permit is not required in this case and the applicant has no intention of applying for a renewal of the permit.

Expansion of the Old Miners' Lodge: The Scheinbergs assert that the Old Miners' Lodge is functioning beyond the scope of a legal use allowed by the Land Management Code and will be expanded as a result of this resubdivision (*see Scheinberg Brief, Point No. 8*). The Old Miners lodge is a legal non-conforming lodging use which predates the 1987 adoption of the Land Management Code's HR-1 Bed and Breakfast regulations. No additional expansion of the Old Miner's Lodge is proposed. This issue is irrelevant to the proposed resubdivision application.

The Planning Commission's August 27, 1997 Action: The Scheinbergs assert that the Planning Commission's August 27, 1997 action was based upon the Staff Report, constitutes an abuse of discretion and is contrary to applicable law (*see Scheinberg Brief, Point No. 9*). Following an eight-month review process, the Planning Commission forwarded a recommendation to the City Council that the proposed two-lot resubdivision application is consistent with all necessary Land Management Code requirements. Final action on this matter will be made by the Council.

D. Department Review.

This application has been reviewed by the inter-departmental Staff Review Team and local utility agencies and has been determined to be in compliance with all requisite development codes.

E. Recommendation:

The Planning Department recommends that the Council review the Planning Department's analysis and conduct a public hearing to receive public input on this matter. Staff finds that the proposed resubdivision complies with the HR-1 District lot requirements and Land Management Code subdivision standards and, therefore, recommends that the City Council adopt the attached Ordinance resubdividing Walter-Daniels Subdivision.

Findings of Fact:

1. The proposed subdivision will create one 11,153 square foot lot and one 3,750 square foot lot in the HR-1 District.
2. Proposed Lot 1 (*11,153 square feet in area*) includes an historic Lodge of approximately 7000 square feet. The historic Lodge is exempt from the HR-1 Floor Area Ratio.

3. Lot 2 (3,750 square feet in area) includes an existing building foundation. Based on the current HR-1 Floor Area Ratio, the maximum allowed building area (total building volume) for Lot 2 is 2,650 (2250 living and 400 garage). The applicant's preliminary buildings plans are for a total building volume of approximately 1,900 square feet. The building volume will not expand beyond the proposed 1900 square feet.
4. On July 14, 1997, the applicant has obtained an Historic District Commission approval (with conditions) for a caretaker's residence with garage and off-street parking area on proposed Lot 2.
5. Any impacts resulting from this subdivision, including potential snow release issues, will be mitigated through the final Building Permit Application review.
6. The applicant has offered to dedicate to the City a deed restriction, equitable servitude or real covenant which ties off-street parking to use of the Old Miners' Lodge and which binds the use of the new structure (Lot 2) as a caretaker's unit for the Old Miner's Lodge so long as the Old Miners' Lodge remains a Lodging use.
7. The applicant stipulates to all conditions of approval.

Conclusions of Law:

1. There is good cause for the subdivision.
2. As conditioned neither the public nor any person will be materially injured by the subdivision.

Conditions of Approval:

1. The City Attorney and City Engineer's review and approval of the subdivision plat for compliance with Land Management Code, Utah State Code and the final conditions of approval is a condition precedent to plat recordation.
2. The City Building Official's review and approval of a building and or roof plan to address potential snow release issues is a condition precedent to the issuance of a Building Permit for any structure on Lot 2.
3. The applicant shall dedicate to the City a deed restriction, equitable servitude or real covenant which ties off-street parking to use of the Old Miners' Lodge and which binds the use of the new structure (Lot 2) as a caretaker's unit for the Old Miner's Lodge so long as the Old Miners' Lodge remains a lodging use.
4. The total building volume on Lot 2 shall not exceed 1900 square feet

5. If the subdivision is not recorded within one year of the City Council's approval this action shall be null and void.

Exhibits:

Exhibit A: Ordinance

Exhibit B: Subdivision Plat and Site Plan

Exhibit C: Pre-1995 Plat

Exhibit D: August 27, 1997 Planning Commission Minutes

Exhibit E: Scheinberg Brief

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60

ADJACENT
RESIDENCE

PROPOSED
CARETAKERS
UNIT/GARAGE

WOODSIDE AVE.

OLD PINERS' LODGE

52.56' (E)

18'

50.00'

12'

(OPEN PORCH)

10'

18'

9'

60'

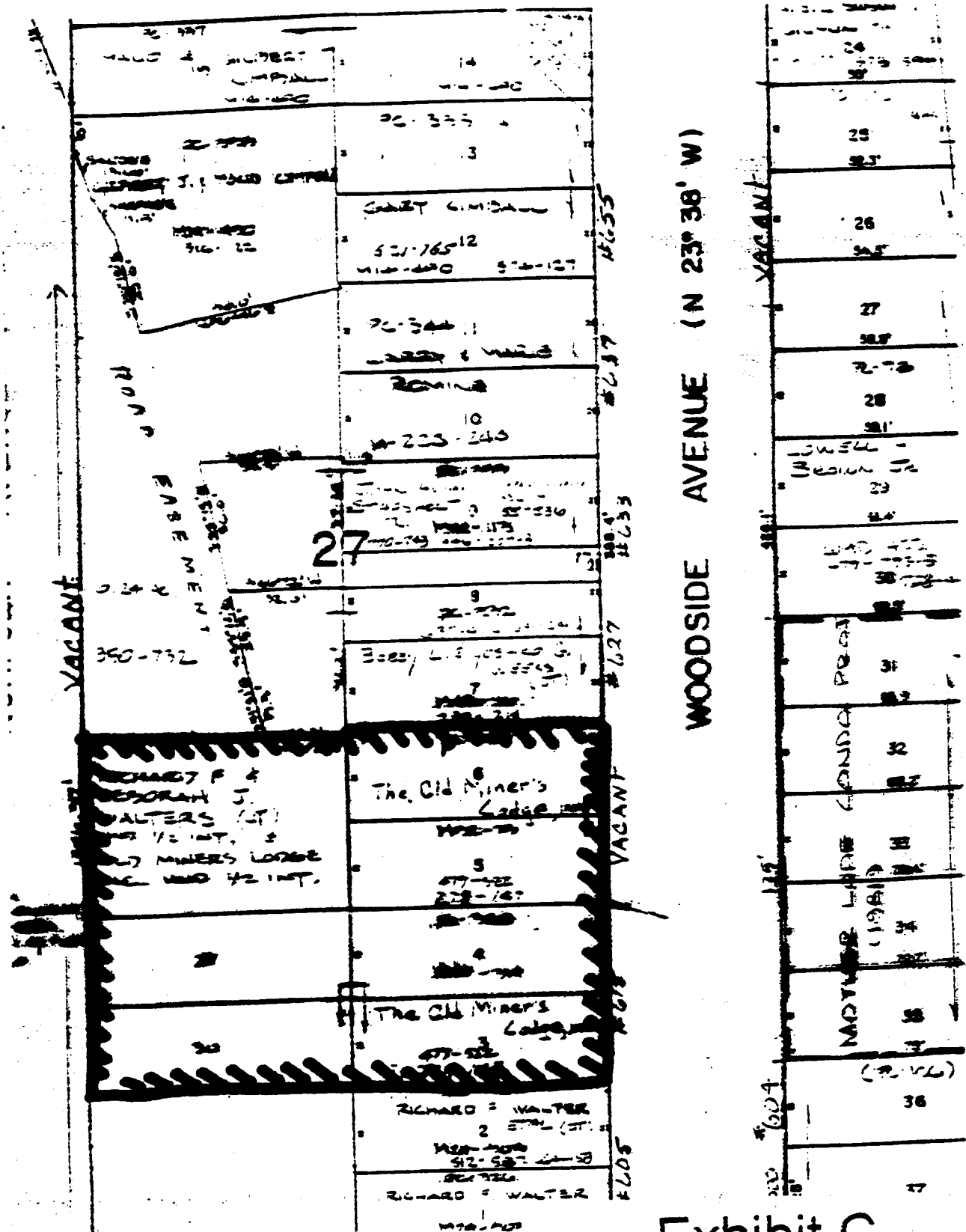


Exhibit C
PRE-NOVEMBER 1995 PLAT

3. All standard project conditions shall apply.
4. A financial guarantee for the value of all public improvements to be completed shall be provided to the City prior to plat recordation. All public improvements shall be completed according to City standards and accepted by the City Engineer prior to release of this guarantee.
5. The final record of survey shall be recorded at the County within one year from the date of City Council approval. If recordation has not occurred within the one-year time, this approval and the plat shall be considered void.
6. Lot 2 Subdivision plat shall be recorded prior to issuance of Building Permits for Bellemont at Deer Valley Condominiums for Lot 2A of Lot 2 North Silver Lake Subdivision.
6. 615 Woodside Avenue, Old Miners' Lodge - Subdivision application

Administrator Patrick Putt reported that John Brinton and the Old Miners' Lodge have submitted a subdivision application to resubdivide Parcel 2 of the Walters-Daniels subdivision into two lots. Prior to the subdivision, the property consisted of six Old Town lots and an unplatted parcel for an area equivalent of eight Old Town lots approximately 15,000 square feet in total area. The proposal is to re-subdivide the property to create one parcel which would accommodate a caretaker's residence on Lot 2 and a lot which would accommodate the existing historic Old Miners' Lodge. Lot 1 is approximately 11,000 square feet in size, and Lot 2 would be 3,750 square feet in size. The last time the Planning Commission reviewed this item, an issue was raised as to whether action on the subdivision with the proposed dimensions would preclude a design solution to the proposed residence, so the Staff returned to the Historic District Commission to process the design review application for the structure. The HDC approved the structure at its meeting on July 14, 1997, with conditions. The primary conditions addressed landscaping, bringing a front exterior staircase to the street, and cosmetic changes to the street side facade in the area of the garage. That decision was appealed to the City Council by an adjacent property owner. The matter will be scheduled for a forthcoming City Council meeting. Administrator Putt noted that the matter was referred to the HDC to discuss the design related issues. An HDC approval is not necessary for the Planning Commission to forward a recommendation to City Council, and the appeal of HDC action does not stay their action. The Staff requests that the Planning Commission take action on the application this evening with the findings of fact, conclusions of law, and conditions of approval contained in the staff report. The

EXHIBIT D

staff analysis of the project suggests that it complies with the necessary Land Management Code requirements, specifically Chapter 15, the Subdivision Requirements of the Land Management Code. The Staff also feels that forwarding this matter to City Council would allow both the appeal for the HDC design and the final review and action of this application to occur simultaneously. The Staff recommends forwarding a positive recommendation to the City Council.

The applicant, John Brinton, stated that he believed this project would serve the needs of the City. He offered to answer any questions or provide any input requested by the Planning Commission.

Chair Erickson opened the public hearing.

Bob Wilde, an attorney representing the Scheinbergs, who are adjacent neighbors opposing the project, distributed copies of a written response he had prepared. He also distributed copies of the hotel and travel index, which is a professional publication dealing with hotels and similar facilities in which the Old Miners' Lodge is referenced, and copies of the advertisement pertaining to the sale of the Old Miners' Lodge. He summarized the key points of the response letter and addressed a number of issues where he felt the staff report diverted from reality. He referred to the background and discussion regarding why the property was initially replatted which stated that it was to eliminate the condition where the Lodge traditionally extended over plat lines and to accommodate development of a caretaker's residence and a garage for off-street parking. He noted that the present plan provides for tandem parking, and his review of the Land Management Code indicated that was not an appropriate use. He addressed the issue of noticing and stated that, in the minutes of April 23, this particular application was postponed, and he quoted Administrator Putt as stating that this was a good move since it would require significant notice before it was brought back. He stated that his clients did not receive notice, and he presumed that the other neighbors did not either. He questioned whether it was appropriate to proceed this evening. He referred to comments by Administrator Putt that HDC approval does not normally precede Planning Commission action and noted that, when this project was before the Planning Commission on August 28, 1996, it was suggested that an HDC approval would be involved. While it would not normally be required, he understood that for this particular piece of property on this particular project it was specifically required. Under the analysis section, Mr. Wilde referred to the citation of the Land Management Code which states that one of the purposes is to encourage densities of development that will preserve the desirable residential environment of the property. He noted that the two

exhibits distributed indicate that there is a question as to whether this is, in fact, a residential property. The Hotel and Travel Index references the Old Miners' Lodge for travel agents making accommodations and indicates the number of rooms as ten. The document advertising the property for sale shows a 12-suite bed and breakfast plus an innkeeper's house. The Old Miners' Lodge is supposedly being used as a bed and breakfast, but under the Land Management Code, a bed and breakfast implies only up to eight units. If it reaches the levels of 10 and 12 units as advertised, they are talking about a hotel/motel, which is not an approved use in the Historic District. The analysis section also references action taken by the HDC which, as Administrator Putt correctly noted, the Scheinbergs have appealed. Mr. Wilde stated that he understood the law under the Utah Administrative Procedures to be that an appeal from an action of the HDC is known as a de novo appeal, which means it goes to the Commission and starts all over again, and it is not as though that body has to take into consideration whether or not the HDC did things correctly. In other words, it starts the action over again brand new. Accordingly, an approval that was given by the HDC does not exist any more. He referred to the Floor Area Ratio in the analysis, noting that the Staff has underlined the statement that the Old Miners' Lodge is exempt from the Floor Area Ratio requirements of the LMC. Mr. Wilde did not believe that was a correct statement of the application of the Land Management Code, which states that, if you renovate, add to, or expand an historic building, the Floor Area Ratio requirements will not apply. However, that is not what is happening here. Taking a chunk out of a large portion of property does not constitute adding, expanding, or renovating. Mr. Wilde explained his argument for questioning whether 7,000 square feet is an accurate number. He recognized that the floor area issue may well have been grandfathered, but when they cut up the parcel it would no longer be grandfathered, and the applicants should have to comply with the issue. He referred to another paragraph in the analysis section regarding mitigation of potential snow release issues. The final two sentences state that the Staff finds that a roof plan which directly reduces the impacts created by snow releasing off the applicant's future building would minimize any potential conflicts between the structures. The Building Official's approval for a design to mitigate snow will be required prior to issuance of a building permit. Mr. Wilde agreed if they were talking about cutting out this piece of property and designing something for it. Instead, they are talking about a design that has already been presented to this body, that was presented to the HDC, and has been the subject of extensive ongoing negotiations between the Scheinbergs and the applicants. Therefore, the snow release issue should be taken care of before the matter moves forward rather than realizing that impacts occur and choosing to ignore it now and deal with it later. He commented

that the findings of fact are accordingly not appropriate, and a number of facts are erred. Finally, there is no show of good cause. Mr. Wilde outlined other concerns regarding parking. As described by Administrator Putt, Mr. Wilde felt the caretaker's cottage fit into the requirements of an accessory building. His understanding of the proposal as currently presented was that there is nothing that will legally tie this accessory building to the Old Miners' Lodge once the subdivision is granted. That being the case, the structure is no longer an accessory building and raises the question as to whether or not the use is an approved use. He noted that the Scheinbergs are present because this impacts their property. When this issue was previously before the Planning Commission, a Conditional Use Permit was granted with four specific requirements. One was HDC review and approval. This is not typically done, but it was done for this matter. Based upon the lot as currently platted, the applicants will have a 10-foot side yard between them and the Scheinbergs. The foundation seen today is not on a 10-foot side yard. He referred to the minutes of August 28, 1996, noting that Commission O'Hara requested that Administrator Putt be sure that the square footage of the accessory apartment at 615 Woodside is in accordance with the Land Management Code. In the same minutes, he quoted a suggestion by Vice-Chair Erickson that language be changed in Finding 4 to read, "The applicant has agreed to revise the project plan to comply with the Land Management Code setbacks." Mr. Wilde stated that the applicants agreed to do this, but when they put in the foundation, it was not done, and now they are trying to get around what they were specifically asked to do a year ago. He stated that the Old Miners' Lodge is an historic building in the Historic District, presumably operating as a bed and breakfast, but he felt the documents he provided indicated that it is actually a hotel/motel. He stated that the Old Miners' Lodge is grandfathered as a non-conforming use provided they do not add to or expand that use. The documents he provided indicated that the caretakers who used to live in the Lodge will now be living in a caretaker's cottage, and that expands or changes the use of the Old Miners' Lodge. In doing this, Mr. Wilde believed the grandfathering no longer applied, and the applicant should be subject to the Floor Area Ratio and parking requirements of the Land Management Code.

Jill Scheinberg, a resident at 627 Woodside, stated that the major point is that, if the property is subdivided, it will not be tied to the Old Miners' Lodge. There will be no control over parking or garage use, and the Old Miners' Lodge will end up with 12 rooms and no parking. She did not understand how the Planning Department, which supposedly represents the town, could suggest that this is a viable subdivision. She noted that another neighbor, John Stafsholt, who is now away for two years in Singapore, attended the March 26, 1997, meeting and opposed the project. Mr. Stafsholt

asked why the City would look at a subdivision on Woodside and why someone could request a subdivision for an accessory apartment. He never received an answer. At the time, Mr. Brinton stated that the size and scale would be very small. Ms. Scheinberg did not consider what was proposed to be very small, and she did not understand how the City could consider it small either. Mr. Brinton also said that the proposal would minimize density, but now she saw that he was adding two rooms to the Old Miners' Lodge as well as a separate structure. In an earlier meeting, Commissioner Jones asked if there was a way to insure that the structure would remain a manager's unit in the long term, and Commissioner Hays asked how the caretaker's unit could be subdivided from the Old Miners' Lodge, and Commissioner O'Hara asked if the size of the accessory apartment was in accordance with the Land Management Code. Ms. Scheinberg stated that, at that time, the proposed structure was 790 square feet. That was in 1996, when she did not oppose a Conditional Use Permit because what was proposed was a real caretaker's unit. Commissioner O'Hara requested at a later meeting that the Staff ensure that the unit complied with the 800-square-foot minimum. Ms. Scheinberg stated that the unit does not comply, but the Planning Department does not care. At the same meeting, Commissioner Erickson asked that the setbacks comply with the Land Management Code. She referred to the Findings of Fact contained in the staff report this evening which states that the Old Miners' Lodge with its 7,000 square feet on its original lot was exempt. She wanted to know why it would be exempt once it is subdivided. The grandfather condition should not apply when the applicant is reducing the lot size. There is nothing in the Code that states that, once you reduce the lot size, you are entitled to that kind of grandfathering. She suggested that the applicant not be entitled, because it will set a precedent, and everyone will want to do it. She commented that the discussion of the maximum totally ignores the fact that it is a caretaker residence, an accessory apartment, and garage, and she did not understand the 800-square-foot maximum that is being ignored. Based on these facts, she failed to see where there was good cause. She disagreed with the statement about lack of materially injury, stating that her historic house will be impacted. She has improved it, and it is there for the entire community, and now it will be hidden, shadowed, and obstructed. The proposal will also obstruct the view of the beautiful, historic Old Miners' Lodge that she enjoys looking at along with the rest of the community. She believed that failure to impose the conditions set forth in the Conditional Use Permit and the Land Management Code would permit future applicants to point to this approval as a reason to support subdivisions and unconditional permits in Old Town and give new meaning to grandfathered conditions.

Don Bloxom commented that snow release was the main issue he saw with this application. The idea that someone would be allowed to build outside of their setbacks was ludicrous. He stated that he has built buildings all over town and has never been allowed such a variance. He believed the point was moot, because Mr. Brinton could not get a building permit without an agreement from his neighbor stating that it was all right for him to build within 10 feet of the property line and that they would enter into a hold harmless agreement for snow release. He stated that he recently had to do this for a client, and he wanted to be sure that this applicant was aware that, if the Scheinberg's do not sign an agreement, the Building Department will not issue a permit. If this building gets special treatment, He stated that every designer in town would demand the same. He expected treatment that is equal to everyone.

Quentin Scott stated that he has done some research and drawings for the Scheinbergs on this matter. He felt it would be inappropriate for a matter as contentious as this to take a piece of property out of a platted eight lots for the purpose of constructing another building. If approved, this would seem very much like playing favorites. It would be very difficult for most people to increase density on property that has a historic building and add another building, particularly since the impacts have been outlined and discussed. At a time when the Planning Commission and the Historic District Commission are trying to decrease densities, the idea of an applicant trying to increase density by getting around the agreements and Land Management Code should be stopped.

Chair Erickson closed the public hearing.

City Attorney Jodi Hoffman responded to Mr. Wilde's points. She stated that the City is not at risk of improper legal notice. Legal notice was published and posted. Under the Historic District revisions made within the last two years, one written notice to immediately contiguous neighbors is required. She commented on the attempt to challenge a Conditional Use Permit for the Old Miners' Lodge and explained that was not the issue this evening. There is a procedure in the Land Management Code to challenge a Conditional Use Permit which has not been initiated by the neighbors. She advised the Planning Commission to address that issue when it is properly presented and not before. Mr. Wilde cited the Utah Administrative Procedures Act, and Ms. Hoffman explained that it does not apply to municipalities. The Park City Land Management Code applies, and the actual decision on appeal is stayed, because that decision is not a condition precedent to what the Planning Commission is doing this evening. It has absolutely no impact on this proceeding. Normally, the Planning Commission decides on subdivisions prior to matters going to the HDC for subdivision or

replat and not visa versa. The decision of the HDC was in large part advisory, and their advice has been accurately reported. Ms. Hoffman commented on the argument that the Old Miners' Lodge is not exempt from the FARs and challenged anyone to show her a provision in the Land Management Code that says such. In addition, the Old Miners' Lodge is not at issue. A provision in the Code specifically deals with additions and remodeling and expansion of historic uses and states that they are specifically exempt. She commented on the argument that the Scheinbergs' light, air, and view have been impacted, noting that no one has an easement for light, air, or view in Utah unless you purchase it. She was unaware of an easement for light, air, and view over this property. She felt there was confusion over whether this is an accessory apartment, which must be less than 800 square feet in size. This is not an accessory apartment. It is a caretaker's unit and the functional equivalent of a single family home. FAR's would allow 1,687 square feet for living area plus 400 additional square feet for the garage. The living area for the caretaker's unit would be 950 square feet. The accessory apartment CUP was, in part, wrong advice on the part of Staff to the applicant, but it was an innocent mistake in the sense that the Staff was trying to invite more public input into the process than would otherwise be available. This is not an accessory apartment because accessory apartments generally are within the unit itself, and the main structure must be owner occupied. There has never been any intent for the main structure, which is a bed and breakfast by design, to be owner occupied. Ms. Hoffman explained that this is a single-family home, and whether or not it becomes deed restricted to be a caretaker's unit is a question before the Planning Commission. She commented on the citation of Chapter 13.2(e) regarding tandem parking prohibition and stated that this unit satisfies its parking obligation with the parking within the garage. The additional tandem parking outside is simply a bonus and a benefit to the neighborhood. The extra four spaces outside the garage are not needed to comply with the Land Management Code. Comment has been made that the subdivision will enable an expansion of the use of the Old Miners' Lodge. Ms. Hoffman explained that the Old Miners' Lodge use is not an issue. The Old Miners' Lodge has never increased in size, and the number of bedrooms has always been there. The bed and breakfast use has never changed. Mr. Bloxom had disputed a six-foot setback on a 50-foot-wide lot, and Ms. Hoffman explained that the minimum setback on one side is three feet, so the applicant has provided at least twice the required setback. In response to Mr. Bloxom's concern about satisfying snow release with the design of the roof, she explained that the design of the roof that was presented to and approved by the HDC went through the Building Department and satisfied their concerns about snow release. This is complicated by the fact that the Scheinberg residence is located between 18 inches and 24 inches from their own

property line. Mr. Scott talked about not increasing density, and Ms. Hoffman stated that she looked at this as going from eight lots to one on the supposition that the caretaker's unit can be accommodated within a single lot. This was wrong advice on the part of Staff. It cannot be accommodated on this lot without attaching it to the historic structure. If the applicants had been given proper advice and had gone from eight units to two, they would be applauded for reducing density. They now must fix the product of bad advice. Ms. Hoffman did not have concerns about the merits of the project from a legal perspective nor about the propriety of the Planning Commission taking advisory action at this time. All of the appeal issues will be resolved by the City Council, and she felt it would be better for the City Council to have the entire product before them when they make a decision on the appropriateness of the use.

Commissioner Jones clarified that there is nothing in the application that requests a variance from the Land Management Code. Ms. Hoffman replied that he was correct. The Staff has evaluated the request, and to the best of their knowledge, this subdivision completely complies with the provisions of the Land Management Code.

Administrator Putt stated that the Conditional Use Permit for the accessory apartment was approved on August 28, 1996, and will lapse at midnight tonight. He has spoken with the applicants, and due to events of the past year, they have no intention of executing the Conditional Use Permit or reapplying. Administrator Putt explained that tandem parking is permitted in the HR-1 zone, Section 13.2(F), for single-family residences, and this proposal is considered to be a single-family residence. If the four tandem spaces were removed, the two garage spaces would meet the parking requirement.

Commissioner Hier referred to Mr. Bloxom's comments about a release from the neighbors prior to obtaining a building permit and asked if that would affect any discussion or action by the Planning Commission. Ms. Hoffman replied that the City is trying to mend an old habit of allowing people to build structures that release snow onto someone else's property. This is more common with a three-foot setback than with a six-foot setback. The Building Department has reviewed the proposed roof design and believes it will adequately shed snow on its own property and not release snow onto the neighbor's property. This issue will be addressed by the Building Department.

Commissioner Jones noted that the Planning Commission is not being asked to approve a building, and it is only the subdivision that is at issue. He understood that this subdivision request fully complied with the Land Management Code, and even though there is an

historic structure, it is on a piece of ground that by Code can be subdivided. The simplistic approach is that it complies, but as he considered it, there might be some extenuating circumstances. The main issue he was concerned about was parking relative to the Old Miners' Lodge and the impact this subdivision might have on it. The creation of four additional parking space is relevant, but only if there is some tie of this lot to the Old Miners' Lodge in the long term. There might be some connection between the two, and he saw that connection being from a parking standpoint. He asked whether it would be appropriate to deed restrict the property in some fashion so that it remains a caretaker's unit and would be tied to the Old Miners' Lodge as long as it remains a bed and breakfast.

Commissioner O'Hara agreed that it should remain a caretaker's unit tied to the Old Miners' Lodge and not be allowed to develop in some other way.

Commissioner Hier understood that, if the applicant had been given appropriate advice, these issues would not have surfaced. The intent was to take eight lots and appropriately combine them into two to provide for this unit and preclude the development of three or four other lots that could have been developed as additional residences. He agreed with tying this property back to the Old Miners' Lodge and felt that the parking could be tied back to the other property by an easement rather than a deed restriction. He was unsure how they could tie the property itself to the Old Miners' Lodge.

Commissioner Larson stated that, given the fact that the HDC has approved the design for the property and that the subdivision is consistent with the Land Management Code, he felt they should forward a recommendation to the City Council.

Chair Erickson suggested that Jodi Hoffman and Administrator Putt structure a condition of approval that would allow time to create a mechanism for tying the structures together.

Commissioner Hays asked if they would have seen the same structure and the same setbacks if the property had been subdivided in the first place. Ms. Hoffman replied that they might have seen more structure. This applicant has agreed to put a cap on this subdivision to keep the structure significantly smaller than what would be allowed by the FAR's. Based on what they could have, Commissioner Hays felt they were getting a better deal with this application.

In response to Chair Erickson's request, Ms. Hoffman drafted the following finding and condition:

Finding 6 - The applicant has offered to dedicate to the City a deed restriction, equitable servitude, or real covenant which ties off-street parking to use of the Old Miners' Lodge and which binds the use of the new structure (Lot 2) as a caretaker's unit for the Old Miners' Lodge so long as the Old Miners' Lodge remains a lodging use.

Condition 4 - The applicant shall dedicate to the City a deed restriction, equitable servitude, or real covenant which ties off-street parking to use of the Old Miners' Lodge and which binds the use of the new structure (Lot 2) as a caretaker's unit for the Old Miners' Lodge so long as the Old Miners' Lodge remains a lodging use.

MOTION: Commissioner Larson moved to forward a POSITIVE recommendation to the City Council on the 615 Woodside Avenue subdivision with the findings of fact, conclusions of law, and conditions of approval with the additional Finding 6 and Condition 4 as written by City Attorney Jodi Hoffman. Commissioner O'Hara seconded the motion.

Commissioner Jones asked if they needed to restrict the size of the caretaker's unit.

Ms. Hoffman noted that a finding addresses the size but not a condition. She drafted language for Condition 5 to read, "The structure on Lot 2 shall be limited to total building volume of approximately 1,900 square feet."

Commissioner Larson amended his motion to include Condition 5. Commissioner O'Hara accepted the amendment.

VOTE: The motion passed unanimously.

Findings of Fact - Old Miners' Lodge

1. The proposed subdivision will create one 11,153-square-foot lot and one 3,750 square lot in the HR-1 District.
2. Proposed Lot 1 (11,153 square feet in area) includes an historic lodge of approximately 7,000 square feet. The historic lodge is exempt from the HR-1 Floor Area Ratio.
3. Lot 2 (3,750 square feet in area) includes an existing building foundation. Based on the current HR-1 Floor Area Ratio, the maximum allowed building area (total building volume) for Lot 2 is 2,650 (2,250 living and 400 garage). The applicant's preliminary building plans are for a total building volume of approximately 1,900 square feet.

4. On July 14, 1997, the applicant has obtained an Historic District Commission approval (with conditions) for a caretaker's residence with garage and off-street parking area on proposed Lot 2.
5. Any impacts resulting from this subdivision, including potential snow release issues, will be mitigated through the final Building Permit Application review.
6. The applicant has offered to dedicate to the City a deed restriction, equitable servitude, or real covenant which ties off-street parking to use of the Old Miners' Lodge so long as the Old Miners' Lodge remains a lodging use.

Conclusions of Law - Old Miners' Lodge

1. There is good cause for the subdivision.
2. As conditioned, neither the public nor any person will be materially injured by the subdivision.

Conditions of Approval - Old Miners' Lodge

1. The City Attorney and City Engineer's review and approval of the subdivision plat for compliance with the Land Management Code, Utah State Code, and the final conditions of approval is a condition precedent to plat recordation.
2. The City Building Official's review and approval of a building and or roof plan to address potential snow release issues is a condition precedent to the issuance of a Building Permit for any structure on Lot 2.
3. If the subdivision is not recorded within one year of the City Council's approval, this action shall be null and void.
4. The applicant shall dedicate to the City a deed restriction, equitable servitude, or real covenant which ties off-street parking to use of the Old Miners' Lodge and which binds the use of the new structure (Lot 2) as a caretaker's unit for the Old Miners' Lodge so long as the Old Miners' Lodge remains a lodging use.
5. The total building volume shall not exceed 1,900 square feet.

The Park City Planning Commission Meeting adjourned at 9:30 p.m.

Approved by Planning Commission _____

ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
ATTORNEYS AND COUNSELORS AT LAW

ROBERT H. WILDE
SUCHADA P. BAZZELLE

935 EAST SOUTH UNION AVENUE, SUITE D-102
MIDVALE, UTAH 84047

TELEPHONE (801)255-4774
TELEFAX (801)255-4846

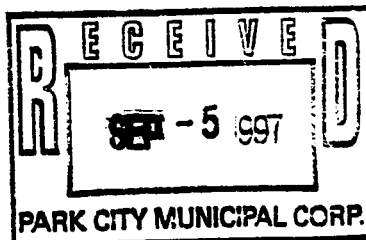
September 5, 1997

RECEIVED

SEP 05 1997

THIRD DISTRICT COURT
PARK CITY DEPARTMENT

Park City Council
c/o City Recorder
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060



Re: 615 Woodside

Dear Ladies/Gentlemen:

This letter will serve as an appeal by Jill and Richard Sheinberg of the decision of the Planning Commission of August 27, 1997 with regards to the resubdivision of the Walter-Daniels Subdivision located at 615 Woodside Avenue.

At the hearing of the Planning Commission the Sheinbergs submitted a written objection and exhibits thereto, a copy of those documents are attached hereto and hereby incorporated by reference.

The Sheinbergs also appeal based on the following issues.

1. The action before the Planning Commission was not properly noticed. ✓
2. The proposed action will result in construction of a structure which negatively impacts the view, light and visibility of both the Sheinberg residence and the Old Miners Lodge. Both the Sheinberg residence and the Old Miners Lodge are historic structures. ✓
3. The proposed action is not one covered by the exemption provisions of 7.1.3 of the Land Management Code (LMC) pertaining to the application of Floor Area Ratio (FAR) requirements. In particular it is not a renovation, addition, or expansion of the historic structure. The result of the proposed action is to move the Old Miners Lodge even further out of compliance with the FAR provisions of the LMC. ✓
4. The Staff recommendation that snow release issues be dealt with hereafter is inappropriate in light of the fact that the proposed structure intended to be placed on the property has already been designed. The recommendation implicitly recognizes that the snow release issues have not been adequately dealt with. ✓

EXHIBIT E

If the proposed project is to receive approval by the City these issues should be resolved first.

5. Historic District Commission (HDC) approval has not been given inasmuch as the HDC action was appealed. HDC approval was previously made an explicit condition precedent to proceeding with the proposed project.

6. The Staff Report is materially false and misleading. ✓

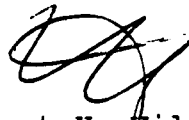
7. The proposed project was the subject of a prior Conditional Use Permit with specific conditions which were not met. ✓

8. The proposed project is part of the Old Miners Lodge facility. The facility, as a whole, is currently functioning beyond the scope of legal use allowed by the LMC. It is purportedly a Bed and Breakfast. That use is limited by the LMC to eight rooms. The Old Miners Lodge currently has ten rooms. The LMC definition of a lodging facility with ten rooms is a hotel/motel. Hotels are not allowed in the HR-1 zone. With the completion of the proposed project the Old Miners Lodge facility will have twelve rooms. The result will be that the Old Miners Lodge, will then be an additional twenty percent beyond the scope of legal use, or 150% of legal use.

9. The action of the Planning Commission, based upon the Staff Report, constitutes an abuse of discretion and is contrary to applicable law.

The Sheinbergs request this matter be set for hearing at a mutually convenient time so these issues may be addressed.

Sincerely,



Robert H. Wilde
Attorney at Law

ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
ATTORNEYS AND COUNSELORS AT LAW

ROBERT H. WILDE
SUCHADA P. BAZZELLE

935 EAST SOUTH UNION AVENUE, SUITE D-102
MIDVALE, UTAH 84047

TELEPHONE (801)255-4774
TELEFAX 255-4846

August 27, 1997

Park City Commission
c/o The Planning Department
445 Marsac Avenue
P. O. Box 1480
Park City, Utah 84060

Re: 615 Woodside

Dear Ladies and Gentlemen:

Jill and Richard Sheinberg reside at 627 Woodside Avenue, P.O. Box 2593, Park City, Utah 84060. Their home telephone is 801-655-3352 and their office telephone is 801-649-4393. The Sheinbergs are the owners of the property immediately north of 615 Woodside. The Sheinbergs are opposed to the proposed replatting of 615 Woodside. Some of the reasons the planning department should have opposed the replatting initially are as follows:

1. The building, which is currently planned for the property at 615 Woodside is clearly a "caretaker's cottage" and is an accessory building to the Old Miner's Lodge, which is located on the same lot as it is currently platted. See 2.1 of the Land Management Code. Attached hereto as Exhibit 1 is a copy of the multiple listing information submitted by the owners. That information shows that the building to be built on the foundations which currently exist is being offered for sale with the Old Miner's Lodge and being represented to prospective buyers as part of the same project. That being the case, the building under construction must meet the criteria of 8.18 and 8.19 of the Land Management Code which requires that such accessory buildings have no more than 800 square feet and additional parking. The building currently planned would have in excess of 900 feet.

2. The proposed structure is part of a hotel/motel complex, as that term is defined at page 2-9 of the Land Management Code, and is not an approved use in the HR-1 zone. While the prior use

of the Old Miner's Lodge as a hotel/motel may have been a grand fathered nonconforming use, the modification of the property by adding the additional building, thereby allowing more rentable rooms, becomes an illegal use. See 5.6, 12.1, 12.2 of the Land Management Code.

3. Allowing this property to be replatted will assist the owners in violating 7.1.1 and 7.1.2 of the Land Management Code in that the resulting development will be one not contemplated by the purpose of the historic residential district, nor will it be a permitted use within that district.

The owner of the property as it is now platted requested that the property he previously owned, 6 building lots plus unplatted property, be consolidated into a single 100 by 150 foot parcel. It was previously represented by the owners that any expansion or addition to the existing structure would be subject to cite regulations and historic district standards for the HR-1 zoning.

The Old Miner's Lodge, which is located on the property as it is now platted, is a nonconforming use. See 12.1 of the Land Management Code. The Lodge historically existed and currently exists on the 100 by 150 foot parcel, which was replatted at the request of the Old Miner's Lodge owners. Replatting will result in an abandonment of the historic nonconforming use of the Old Miner's Lodge, to the extent that it has not already been abandoned, and require the Old Miner's Lodge to meet the standards of the Land Management Code including parking, which will not be met by applicant's proposed resubdivision.

A Conditional Use Permit was previously issued in connection with the Old Miner's Lodge and the structure which is proposed to be built on the north end of the Old Miner's Lodge property which is the subject of the proposed replat. Four conditions were required in connection with that conditional use permit. None have been met. In the corrected minutes of the August 28, 1996, meeting, the following entries are found "Commissioner Michael O'Hara requested a correction to the August 28 minutes. He requested that Administrator Putt be sure that the square footage of the accessory apartment at 615 Woodside Ave. is in accordance with the Land Management Code." (Maximum of 800 square feet.) "Vice Chair Erickson suggested changing the language in finding

Park City Commission
August 27, 1997
Page 3

#4. The findings were changed to read, 'the applicant has agreed to revise the project planned to comply with the Land Management Code set-backs.'" Obviously, those setbacks would pertain to the project as it was then contemplated on a larger lot. They required the minimum 10-foot side yard setback.

In order to be eligible for the resubdivision of the property, the owners need to show good cause and that neither the public nor any person will be materially injured by the subdivision.

The application fails on both counts. This property was combined with other property owned by the same owners within the least 2 years. That it is now suddenly suggested there is good cause to resubdivide lacks credibility. The result of any resubdivision is to increase the density of use in Old Town. The granting of the application to resubdivide would adversely affect the neighborhood by increasing the density, thereby crowding an already crowded area. It will further impair the Sheinbergs' use of their property as it will interfere with their view and access to light.

This proposed subdivision in no way ties it to the Old Miner's Lodge. Nothing in the application indicates that will in fact be the case. The planning department has done nothing to impose any condition, despite the language of the conditional use permit and the history of previous commission hearings.

Attached hereto and incorporated by reference as Exhibit 2 is a copy of the Sheinbergs' appeal of the action of the Historic District Commission dated July 14, 1997. Virtually all of the issues raised therein are applicable here.

Very truly yours,

Robert H. Wilde by SB

Robert H. Wilde
Attorney at Law

RHW/cpp
Enclosures

EXHIBIT 1

Address	Street Name	Wood
615		



19820 Bldg

1st May 2005

Loan Type CONV

000' 27' 00" MID

100-443886-1000

EQUITY: 1890, 1963, 1980, 1998. SALE INCLUDES ADDING TWO R

1) SELL THIS WITH THE IMPERIAL HOTEL. SHOWINGS MUST BE

1

10

[illegible]

EXHIBIT 2

JUL 30 1997

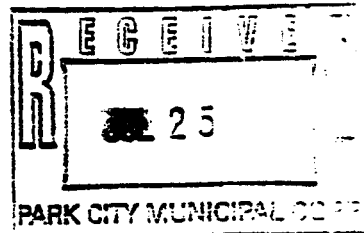
ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
ATTORNEYS AND COUNSELORS AT LAW

ROBERT H. WILDE
SUCHADA P. BAZZELLE

915 EAST SOUTH UNION AVENUE, SUITE D-102
MIDVALE, UTAH 84047

TELEPHONE (801)255-4774
TELEFAX (801)255-4846

July 25, 1997



Park City Commission
c/o Park City Recorder
445 Marsac Ave
P.O. Box 1480
Park City, Utah 84060

Re: Historic District Commission Review: 615 Woodside

Dear Ladies/Gentlemen:

On July 14, 1997 the Historic District Commission met to review the design proposed by the owner of 615 Woodside. The Historic District Commission approved the proposed design subject to modifications to be brought back before the Historic District Commission. To the extent the actions of the Historic District Commission of July 14, 1997 constitute an appealable decision this letter appeals that decision.

This letter shall also serve as a request for review of staff actions pursuant to 3.14(e). The staff actions should be reviewed on the basis that the approval of the project is improper for the reasons stated below.

This letter shall also serve as a petition by Jill and Richard Sheinberg to vacate any and all existing permits in connection with the project.

Jill & Richard Sheinberg reside at 627 Woodside Avenue, P.O. Box 2593, Park City, Utah 84060, Home Telephone: 801-655-3352, Office Telephone: 801-649-4393. The Sheinbergs are the owners of the property immediately north of 615 Woodside.

The reasons for this appeal are as follows:

1. The Historic District Commission (HDC) misapprehended its purpose in duties in reviewing the project. The HDC chair stated the purpose of the HDC review merely to determine if the proposed project met design criteria under the Historic District Design Standards though 4.4 of the Land Management Code describes substantially broader purposes which were not considered.

2. In the presentation by the Planning Department it was suggested that the floor area need not include stairs, despite

the fact that floor area, as defined by the Land Management Code Page 2-7, specifically includes stairs.

3. The petitioner misrepresented to the Historic District Commission that the proposed building, being a "caretakers cottage" was not either an accessory apartment or an accessory building despite the fact that the project meets the definition described of an accessory building at page 2-1 of the Land Management Code.

4. . Despite the specific definitions of height at page 2-9 of the Land Management Code, in particular, pertaining to the HR-1 Zone the Planning Department Staff represented the project meets height requirements when it does not, see Land Management Code at 3.17 and 7.1.5.

5. The proposed structure is part of a hotel/motel complex as that term is defined at page 2-9 of the Land Management Code, which is not an approved use in the HR-1 zone. While the prior use of the Old Miner's Lodge as a hotel/motel may have been a grandfathered nonconforming use the modification of the property by adding the additional building thereby allowing more rentable rooms becomes an illegal use. See 5.6, 12.1, 12.2 of the Land Management Code.

6. The operation of 4.5(b) of the Land Management Code implies that the department has found that the project is not in compliance.

7. The time limit set by 6.6 of the Land Management Code has expired.

8. The proposed project does not fit the purposes for permitted uses of the HR-1 zone. See 7.1.1 and 7.1.2 of the Land Management Code.

9. Even if the Petitioner were to modify the project to make it a bed and breakfast, the project as proposed or as modified would not meet the parking criteria set forth at 7.1.7(g).

10. The proposed project does not meet the criteria of 3.18 and 3.19 of the Land Management Code for secondary living quarters or accessory apartments which are required to have a no more than 300 square feet and additional parking.

11. Accessory apartments and buildings must be owner occupied. See 3.19 of the Land Management Code.

12. The Old Miner's Lodge is of nonconforming use; See 12.1

of the Land Management Code which has been abandoned under 12.2(d) of the Land Management Code.

13. By virtue of the abandonment of the nonconforming use, parking must be brought to standard pursuant to 12.2(e) of the Land Management Code.

14. The fact that the overall project is a nonconforming use requires a use application pursuant to 12.4 Land Management Code.

15. The modification of the overall project results in a changed use which requires additional parking pursuant to 13.1 of the Land Management Code.

16. The proposed parking spaces do not meet the size requirements of 13.2 of the Land Management Code.

17. The proposed parking is tandem parking which is not permitted hotel/motel or bed and breakfast use pursuant to 13.2(g) of the Land Management Code.

18. The overall project does not have sufficient parking as required by 13.3 and 13.4 of the Land Management Code.

19. The proposed project has inadequate ingress and egress for parking as required by 13.2 of the Land Management Code.

20. The use of the property is a commercial use and accordingly the commercial driveway standards of 13.2(f) of the Land Management Code apply and are not met.

21. The use made of the Old Miner's Lodge is a commercial use which regularly involves the receipt of materials by vehicle i.e. luggage, skis, etc. Its use requires off street loading pursuant to 13.6 of the Land Management Code. No off street loading has been provided for in the plans submitted by the Petitioner.

22. The proposed design fails to comply with the design standards for the historic district required for all new construction, standard number 3. Avoid designs that would cause snow shedding onto adjacent properties.

23. The proposed design fails to comply with the design standards for the historic district required for all new construction, standard number 4. Avoid designs that would cause extensive shedding of public sidewalks in winter.

24. The proposed design fails to comply with the design

standards for the historic district required for all new construction, standard number 5. New construction may not negatively effect nearby structures.

25. The proposed design fails to comply with the design standards for the historic district required for all new construction, standard number 6. Build to heights that appear similar to those found historically in the area.

26. The proposed design fails to comply with the design standards for the historic district required for all new construction, standard number 7. New construction may not negatively affect nearby historic structures.

27. The proposed design fails to comply with the design standards for the historic district required for all new construction. 16. When feasible citing new building such that it would not block significant views of natural and historical landmarks as seen from the public way - recessing the current project further back on the property would mitigate this impact.

28. The proposed design fails to comply with the design standards for the historic district required for all new construction, standard number 20. Maintain tradition building setbacks and spacing patterns.

29. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 5. Maintain a typical spacing pattern of street facades.

30. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 6. Maintain the typical setback of front facades.

31. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 10. Minimize the appearance of garages on site.

32. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 11. When a garage is to be located below the primary living space also configured such that a porch had pedestrian injury remain the dominant feature.

33. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 12. Minimize the appearance of

garage doors.

34. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 13. Minimize the visual impact of on site parking areas and drives.

35. The proposed design fails to comply with the design standards for the historic district required for new residential construction, standard number 14. Differentiate driveways from the street.

36. There also appear to be problems with design standards numbered 71, 72, 73, 74, 75, 77, and 78.

37. Prior staff reports on this property reflect conversations with the owner showing the construction to be "parking and a garage" with no mention of a "caretaker's unit."

38. The Old Miner's Lodge already has a caretaker's unit attached to the main building.

39. The Conditional Use Permit issued August 28, 1996 has four conditions. None have been satisfied.

40. The minutes of the meeting of August 28, 1996 show Commissioner Michael O'Hara requested the Administrator, Mr. Putt, be sure that the square footage of the accessory apartment at 615 Woodside Ave be in accordance with the Land Management Code which requires a maximum of 800 square feet.

41. The findings of the August 28, 1996 meeting show the applicant agreed to revise the project plan to comply with the Land Management Code.

42. The proposed project is contingent upon a replatting of the property which has not yet occurred, and may not occur.

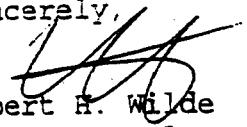
43. The project was halted when the applicant poured the current foundations in violation of a building permit.

44. There is nothing in the application which would indicate the "caretaker's cottage" use will be tied to the Old Miner's Lodge by a deed restriction if the replat is allowed.

45. The Sheinbergs listed other concerns which were contained in their memorandum to the HDC dated July 14, 1997.

Park City Commission
July 25, 1997
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Sincerely,



Robert H. Wilde
Attorney at Law

EXHIBIT
July 14, 1997 Memorandum

ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
ATTORNEYS AND COUNSELORS AT LAW

ROBERT H. WILDE
SUCHADA P. BAZZELLE

935 EAST SOUTH UNION AVENUE, SUITE D-102
MIDVALE, UTAH 84047

TELEPHONE (801)255-4774
TELEFAX (801)255-4846

MEMORANDUM

To: Park City Historic District Commission
From: Robert H. Wilde
Dated: July 14, 1997
Re: 615 Woodside Avenue, Design Review

A brief chronology of the project proposed for 615 Woodside Avenue will help the commission understand why Jill and Richard Sheinberg, the owners of the property immediately north of 615 Woodside, believe the design review presently before the commission should be rejected at this time.

THE PROJECT DOESN'T COMPLY WITH ZONING REQUIREMENTS

In November of 1995, the proposed project was characterized in a staff report. "The owner plans to add parking and a garage on the front of the vacant lots next year" ... The owner Hugh Daniels owns all of the parcels and would like to create one large parcel, 100 by 150'. Any expansion or addition to the existing structure would be subject to the cite regulations and historic standards for the HR-1 Zoning District."

As is evident from reviewing the site or photographs of the site, the owner has commenced excavation and installed concrete walls. The concrete wall on the North side of the property is six feet from the Sheinberg property line despite the fact that the zoning for an HR-1 on a 100' by 150' lot requires a 10 foot setback.

In a letter of May 30, 1997 to the Old Miners' Lodge, Patrick Putt, the Planning and Zoning Administrator advised the Old Miners' Lodge of the 10 foot minimum setback. EXHIBIT One.

In the minutes of the Planning Commission meeting for March, 1997, the following is found on page 22: "the applicant agreed to continue to work with the Sheinbergs to address their concerns." The applicant has not done any such thing. Page 23 of those minutes notes that the applicant poured the concrete walls within 10 feet of the north property line of the project. Despite the fact that no clearance was given by the building department for

that pour. The minutes also noted that Mr. Daniels, the previous owner of this property, has agreed to a 10 foot setback that was not what had been constructed on the side. EXHIBIT Two.

The Building Inspector's Report of October 4, 1996 shows approval only for "back to within 10' of North side." EXHIBIT Three.

WE DON'T KNOW WHAT THE PROJECT IS

It must be considered that the Old Miners' Lodge seeking to resubdivide its current 100 by 150' lot into two lots. If that happens, the structure which is at issue cannot be said to be an accessory apartment because it is not accessory to anything on the lot on which it is constructed. There does not appear to be anything in the application to resubdivide but the property which would restrict the use of the new structure to that of "caretaker's cottage" the Old Miners' Lodge now asserts it wishes to have. The Old Miners' Lodge, or its successors (the property is currently for sale) are not restricted in any fashion to the use they currently describe.

THE FLOOR AREA RATIO REQUIREMENTS ARE NOT MET

As the project currently stands it is not subdivided, but is two structures on a single lot. The Old Miners' Lodge is grandfathered in order not to be required to meet the floor area ratio requirements. The addition of the new structure is not covered by the grandfathering provisions and the two structures together exceed the floor area ratio requirements for the existing lot. The Old Miners' Lodge should not be allowed to circumvent the floor area ratios.

On September 11, 1996, the Planning Commission Meeting notes read "Commission Michael O'Hara requested a correction to the August 28, 1996 minutes he had requested and the Administrator Putt be sure that the square footage of the accessory department of 615 Woodside Avenue is in accordance with the Land Management Code. The findings were changed to read the applicant has agreed to advise the project planned to comply with the Land Management Code setbacks.

THE USE DOESN'T COMPLY WITH THE LAND MANAGEMENT CODE

In August of 1996, a conditional use permit for the addition of a 2 car garage with a one bedroom cottage and offstreet parking was approved by the planning commission. This structure was to be used as the "care takers cottage" for a "bed and breakfast."

In the Hotel and Travel Index, a hotel industry publication, the old miners lodge lists itself as having ten units. EXHIBIT Four. The Land Management Code, describes bed and breakfast inns

as "a dwelling of historic significance in which two to eight rooms are rented out by the day ..."

The eight room bed and breakfast use of the Old Miners' Lodge is a grandfathered use. 7.1.7(b) of the Code describes the criteria for bed and breakfast inns "the maximum number of rooms will be determined by the applicant's ability to demonstrate that impact such as parking and neighborhood compatibility can be adequately mitigated". Subparagraph g of 7.1.7 provides "Parking shall be provided on site at a rate of 1 space per rentable room. If no onsite parking is possible, the parking in close proximity to the inn shall be provided. The planning commission may waive the parking requirement if it is found that no onsite parking is possible at all or any alternatives or other parking has been explored and exhausted. The planning commission must find that the structure which is to be a bed and breakfast is not economically feasible to restore or maintain without the granting of the adaptive use. The burden of proof in requesting a parking exception shall be on the applicant. In no case, a parking space is on the downhill side of public streets and those partially or totally within the city right of way be counted toward parking requirement."

The added guest rooms change the use of the Old Miners' Lodge and deprive it of the grandfathering protection it previously enjoyed.

The new use must comply with the parking provisions. All of the parking in front of the old miner's inn is within the city right-of-way. The result is that the old miner's inn bears the burden of proof to show that it can now provide parking for a car for each of its ten bed and breakfast rooms. A requirement which it cannot meet.

The Land Management Code describes uses which are prohibited within various zones. Inasmuch as the result, if the Old Miners' Lodge plan continues, will have more than 3 bedrooms the result will not be a bed and breakfast, but a hotel. The code lists as prohibited uses within an HR-1 zone "hotel, motel, inn, boarding house with fewer than 16 rooms."

THE CURRENT CONSTRUCTION WAS PERFORMED
IN VIOLATION OF APPLICABLE PERMITS

The footing and foundation permit issued on September 4, 1996 notes that Condition One of the Conditional Use Permit was "Historic District Design Review and Approval of Building Plans is a condition precedent to building permit issuance". EXHIBIT Five.

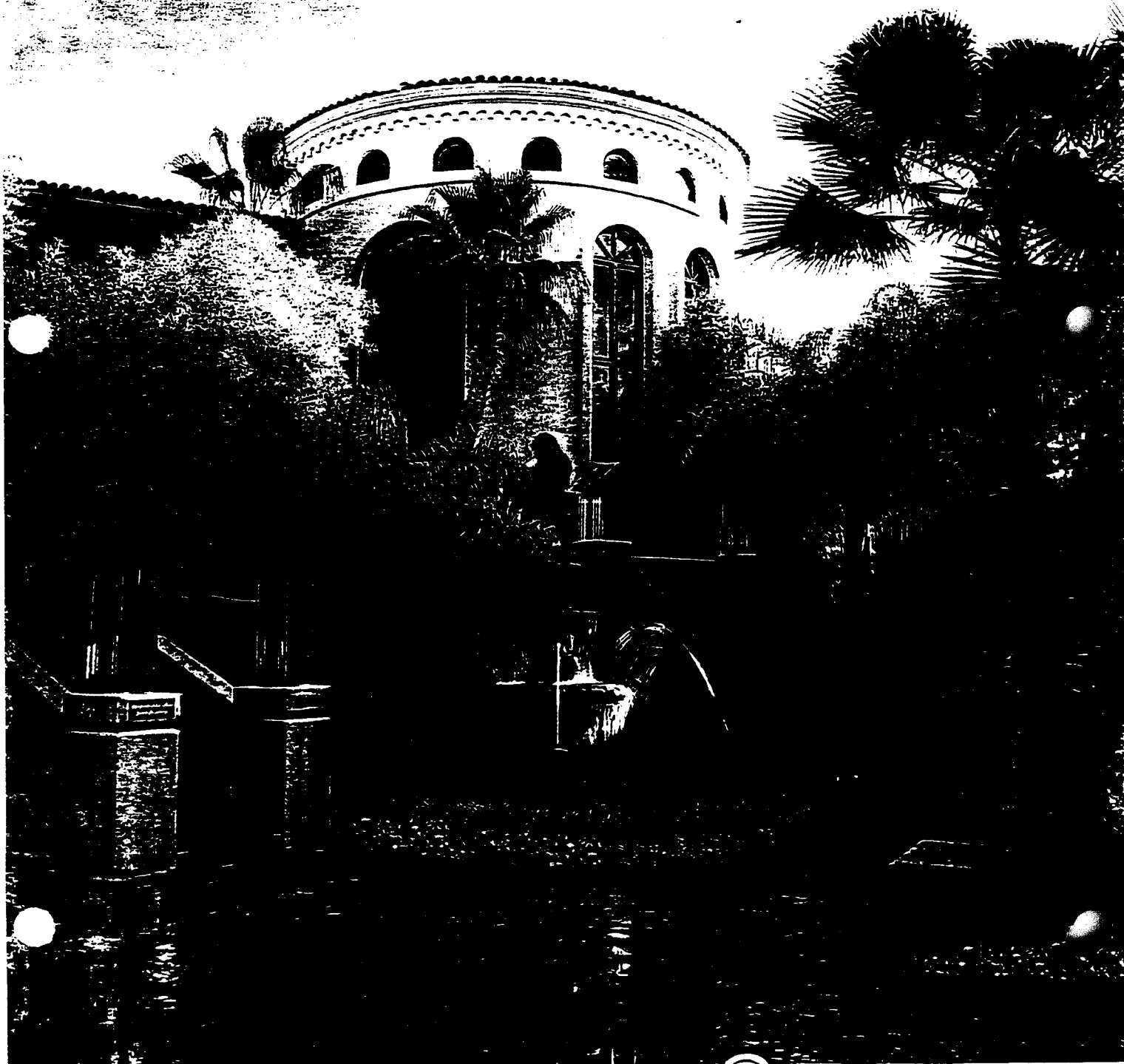
The Historic District Commission Design Review which is now before the commission is the review which was a condition precedent to the granting of the footing and foundation permit

HOTEL & TRAVEL INDEX

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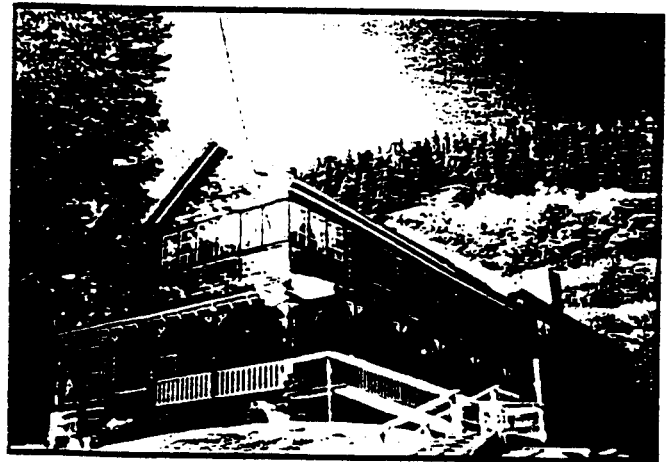
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