



CITY COUNCIL REPORT

DATE: August 25, 1995
(August 31, 1995 Meeting)
DEPARTMENT: Planning Department
AUTHOR: Patrick Putt
TITLE: 540 Main Street Plat Amendment
TYPE OF ITEM: L Legislative

SUMMARY RECOMMENDATIONS: Adopt the Ordinance amending the plat at 540 Main Street.

DESCRIPTION:

A. Topic.

PROJECT STATISTICS

Applicant: DJK Properties, David Krajeski
Location: 540 Main Street
Zoning: HCB
Adjacent Land Uses: Commercial
Date of Application: June 22, 1995
Project Planner: Patrick Putt

B. Background.

The applicant owns a portion of Lots 8, 9, and 10, Block 24, Park City Survey which are developed with the Main Street Pizza & Noodle, Riverhorse and Great Garbs buildings. The Planning Commission approved an eight foot wide commercial addition to the Riverhorse (a.k.a. Masonic) building, directly adjacent to Elks Building on April 10, 1995. The proposed addition also includes a 14.5' x 15' addition to the east (Swede Alley) side of the Riverhorse building. The applicant's existing buildings and approved

addition extends across interior lot lines and, therefore, require a lot line adjustment/plat amendment.

In 1989 and 1995 the City approved minor land trades with the applicant. The City traded a 560 sq. ft. and a 360 sq. ft. parcel between Lots 8, 9, 10 and Swede Alley in exchange for a pedestrian easement between the Main Street Pizza & Noodle and the Old City Hall building; a facade easement on the Masonic building; and right-of-way for the Main Street sidewalk across the front of the property. The proposed plat amendment will memorialize these previous exchanges on the subdivision plat.

An error in the legal description for the pedestrian easement between Main Street and Swede Alley occurred at dedication which resulted in a 5 ft. gap between the pedestrian walkway and Swede Alley. The applicant has agreed to provide the additional easement dedication to correct this error (*see conditions of approval*).

C. Analysis

The plat amendment will create one 6500 sq. ft. lot and memorialize the right-of-way previously dedicated by the applicant for the Main Street sidewalk and pedestrian easement. This plat amendment will also provide the remaining pedestrian easement necessary to connect the walkway to Swede Alley.

D. Department Review.

The City Staff Review Team and City Attorney's have reviewed this application and find that it complies with all requisite Land Management Code and State Subdivision Statutes.

ALTERNATIVES

- A. Approve the proposed subdivision plat amendment creating one lot and dedicating the necessary pedestrian easement to Swede Alley.
- B. Deny the subdivision plat amendment and retain the current lot configuration.
- C. Continue the item and request further evaluation from the Staff.

SIGNIFICANT IMPACTS:

The proposal will:

- * result in one 6500 sq. ft. lot;

* memorialize the right-of-way dedicated by the applicant for the Main Street sidewalk and pedestrian easement; and

* provide the remaining pedestrian easement necessary to connect the walkway to Swede Alley.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If Council denies this request the property owner will own buildings which cross interior lot lines, thereby, constituting a violation of the Uniform Building Code which will prevent the construction of the building addition. Denial of this application will require that the City obtain the necessary pedestrian easement to Swede Alley in some other manner.

PUBLIC INPUT:

The property was posted and legal notice sent to all property owners within the affected subdivision. As of August 24, 1995, no public input has been received.

RECOMMENDATION:

The Community Development Department recommends approval of the subject lot line adjustment/plat amendment based upon the following:

Findings of Fact:

1. The proposal is consistent with both the Park City Land Management Code and State subdivision requirements.
2. The proposed plat amendment will create one 6500 sq. ft. lot and memorialize the right-of-way previously dedicated by the applicant for the Main Street sidewalk and pedestrian easement. This plat amendment will also provide the remaining pedestrian easement necessary to connect the walkway to Swede Alley.
3. The plat amendment is necessary to allow the approved building addition that would otherwise cross interior lot lines.

Conclusions of Law:

1. There is good cause for the amendment.
2. Neither the public nor any person will be materially injured by the proposed plat amendment.

Conditions:

1. Prior to plat recordation, the City Attorney and City Engineer shall review the final form and content of the plat.
2. The plat shall be executed and recorded prior to the issuance of a building permit for the Riverhorse building addition.
3. The remaining pedestrian easement necessary to connect the pedestrian walkway to Swede Alley shall be dedicated.

Exhibits:

Attachment A: Proposed Ordinance

Exhibit A: Proposed Plat

Ordinance No. 95-

AN ORDINANCE APPROVING AN AMENDMENT TO THE AMENDED PARK CITY SURVEY, LOTS 8, 9, AND 10, BLOCK 24 LOCATED AT 540 MAIN STREET, PARK CITY, UTAH

WHEREAS, the owners of the property known as Lots 8, 9, and 10, Block 24 of the amended Park City Survey, have petitioned the City Council for approval of an amendment to the amended Park City Survey; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the City Council held a public hearing on August 31, 1995 to receive input on the proposed amendment; and

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

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

SECTION 1. 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 amendment.

SECTION 2. PLAT APPROVAL. The amendment of the amended Park City Survey plat, Lots 8, 9, and 10, Block 24, is approved as shown on the attached Exhibit A with the following condition:

Prior to plat recordation, the City Attorney and City Engineer shall review and approve the final plat to the City.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect upon adoption.

PASSED AND ADOPTED this 31st day of August, 1995.

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

COUNCIL AGENDA REPORT

DATE: August 31, 1995
DEPARTMENT: Community Development Department
AUTHOR: Kirsten Whetstone
TITLE: Plat Amendments to Lot 6, Willow Ranch Subdivision and Lot 10, McLeod Creek Subdivision
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS:

Adopt an ordinance amending two subdivision plats to combine a portion of Lot 6, Willow Ranch Subdivision with Lot 10, McLeod Creek Subdivision. The purpose of the amendment is to allow additions to the existing house on Lot 10, located at 2647 Meadow Creek Drive, to conform with required side yard setbacks. New construction will be limited to the original portion of Lot 10 with the new portion to be used as yard area.

DESCRIPTION:**A. Topic.****PROJECT STATISTICS**

Applicant:	Stan Johnson
Proposal:	Plat amendments for Lot 6 Willow Ranch Subdivision and Lot 10 McLeod Creek Subdivision
Zoning:	SF-Single Family
Adjacent Land Uses:	Residential
Date of Application:	June 6, 1995
Project Planner:	Kirsten A. Whetstone
Staff Recommendation:	Approve with conditions

B. Background.

The applicant, Stan Johnson, represents the owner of Lot 10, McLeod Creek Subdivision. The owner, Philo Smith, has proposed to construct two additions to the north side of his existing home located at 2647 Meadow Creek Drive (see Exhibit A). The additions would encroach into the existing 12' side yard setbacks established for the McLeod Creek Subdivision. Therefore, Mr. Smith has purchased approximately 0.4 acres of the adjacent Lot 6, Willow Ranch Subdivision, to ensure that these additions meet required setbacks.

The applicant requests that this 0.4 acre portion of Lot 6 be legally combined with Lot 10 by means of these plat amendments. This portion of Lot 6 has physically been combined with the adjacent 0.34 acre Lot 10 by means of an open three rail fence. The new Lot 10 would be 0.74 acres in size. The remaining Lot 6 would be approximately 6.4 acres in size. Lot 6 is currently vacant (see Exhibit B).

Property owners within 300' and within the affected plats were sent notice of this proposal. At this time, no concerns have been raised by the affected property owners.

The applicant submitted a letter from the Willow Ranch Homeowners Association indicating that there were no objections to the proposal (see Exhibit C).

C. Analysis.

If these subdivision amendments are approved, the proposed additions to 2647 Meadow Creek Drive would not encroach in the required side yard setbacks for the McLeod Creek Subdivision. There are no house size restrictions in the McLeod Creek Subdivision, therefore additional land area is not needed for the proposed additions, in terms of floor area ratio. The resulting Lot 10 would be larger than most of the lots in McLeod Creek Subdivision, but because this is the last lot in the subdivision and it is adjacent to the larger Willow Ranch lots, the resulting lot would be compatible with the immediate neighborhood.

If these amendments are approved, Lot 6 will be reduced in size by approximately 0.4 acres. At 6.4 acres, Lot 6 will remain compatible in size with the other "ranch" lots in the Willow Ranch Subdivision and will still be significantly larger than the three "standard" Willow Ranch lots across the street. A single family house could still be constructed on Lot 6 of Willow Ranch Subdivision within the originally platted building envelop, as the amendment does not change the buildable area or location.

This current request for plat amendments is a request to formally combine, by a legal subdivision plat, lots that the owner already has a deed to. In addition, the small section of Lot 6 has been physically combined with Lot 10 by an open three rail fence.

The Willow Ranch Subdivision allows construction of houses and barns to occur only in designated building envelopes. Therefore, Staff recommends as a condition of approval, that the additions to the existing house at 2647 Meadow Creek Drive not extend onto that portion of Lot 6 which is being combined with Lot 10. The additional lot area for Lot 10 shall be used for yard area only, including any uses that would have been allowed on that portion if it had remained a part of Lot 6. The applicants have agreed to place a note on the plat to this effect.

In addition, there is an existing utility easement between Lots 6 and 10. Staff recommends that the applicant provide letters from utility agencies, prior to recording the plat, stating that there are either no utilities in the easement or that the utilities can be relocated; and that utility providers do not have a problem vacating the easement with this plat amendment. Staff recommends that new utility easements be shown on the plat along the new lot line between Lots 6 and 10. The applicant has agreed to provide the new utility easements.

Findings:

Staff supports this plat amendment as it creates a legal document to describe the land already purchased by deed. Staff finds that impacts to the City and surrounding neighborhood are not significant. We have reviewed the Willow Ranch and McLeod Creek Subdivision requirements and find that house size is not restricted in the McLeod Creek Subdivision. The size and building envelope for the future house on Lot 6 is not affected by the amendment. In addition, the proposed additions to the existing house are not out of character with the surrounding neighborhood.

Conclusions of Law:

1. There is good cause for the amendment, as outlined in the staff report.
2. Neither the public nor any person will be materially injured by the proposed plat amendment.

D. Department Review.

The Community Development Department and City Attorney's Office have reviewed this proposal. There is a recommendation that a note be added to the plat stating that all new construction on Lot 10 be limited to the area of Lot 10 as it existed prior to the plat amendment and that the added area from Lot 6 be yard area, limited to those uses which were previously allowed when it was a part of Lot 6 Willow Ranch Subdivision.

ALTERNATIVES:

A. Deny the plat amendments thereby retaining the original configuration of Lot 6 Willow Ranch and Lot 10 McLeod Creek. The addition to the house at 2647 Meadow Creek Drive would have to be redesigned to conform to existing side yard setbacks.

B. Approve the amendment to the two subdivision plats and allow the new configuration of lots with or without the Staff recommended condition about use of the added parcel.

C. Continue the item and request evaluation and recommendations from Staff.

SIGNIFICANT IMPACTS:

Staff does not believe that there are significant impacts as a result of the requested plat amendments.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If the Council chooses not to approve the plat amendments as proposed, additions to the house at 2647 Meadow Creek Drive would have to be redesigned to conform to the existing lot lines and required setbacks.

RECOMMENDATION:

The Staff recommends that the Council select Alternative B and approve the proposed plat amendment subject to the following conditions:

1. Prior to plat recordation, the City Attorney and City Engineer shall review and approve the final plat.
2. All Standard Conditions of Approval apply.
3. All previous conditions of the Willow Ranch and McLeod Creek Subdivisions shall remain in full force and effect.
4. A note shall be added to the plat stating that the area added to Lot 10 shall be a non-build yard area with such uses allowed as were previously allowed as part of Lot 6, Willow Ranch Subdivision.

EXHIBITS

EXHIBIT A- LOCATION MAP

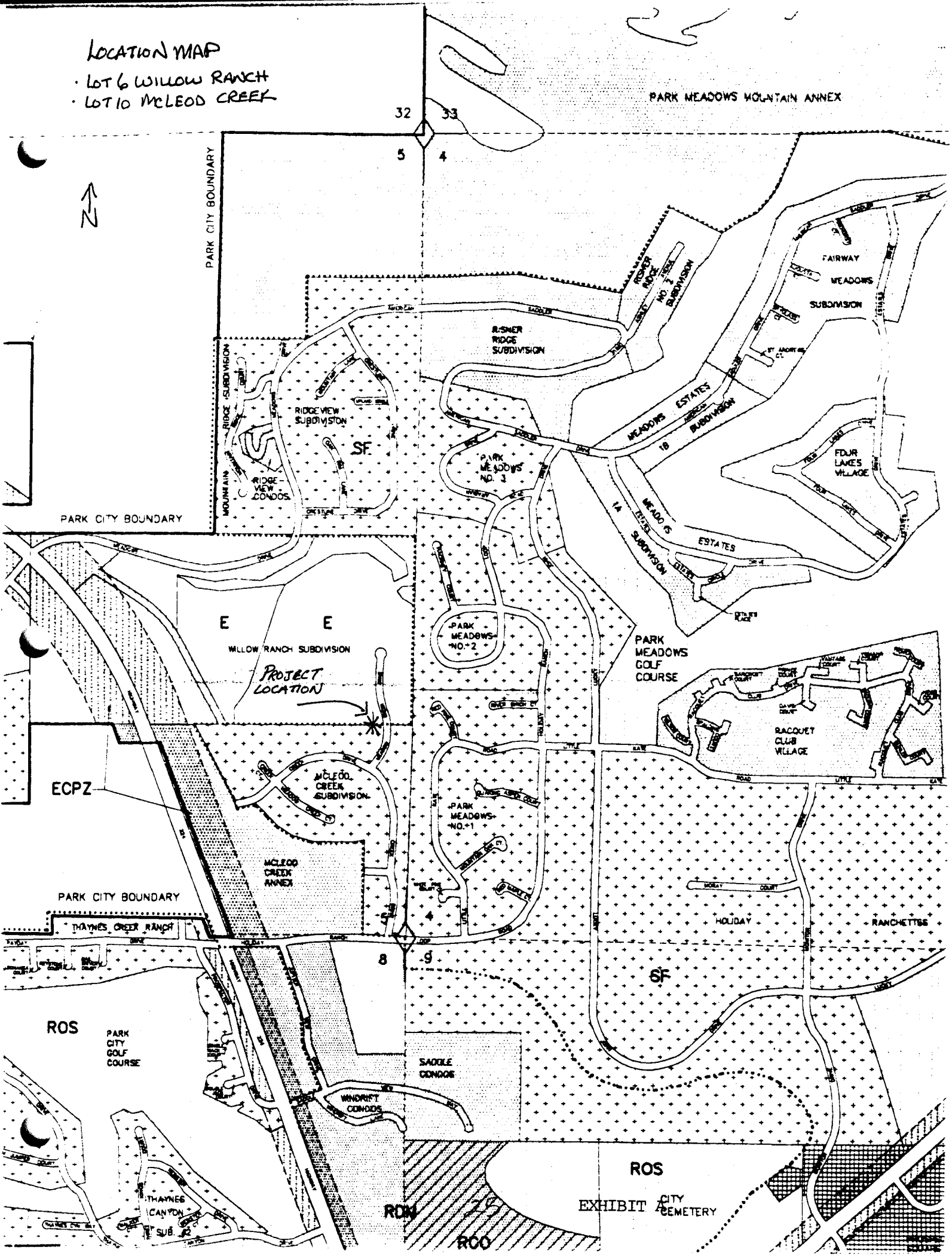
EXHIBIT B- PROPOSED PLAT AMENDMENT

EXHIBIT C- HOMEOWNER'S ASSOCIATION LETTER

LOCATION MAP

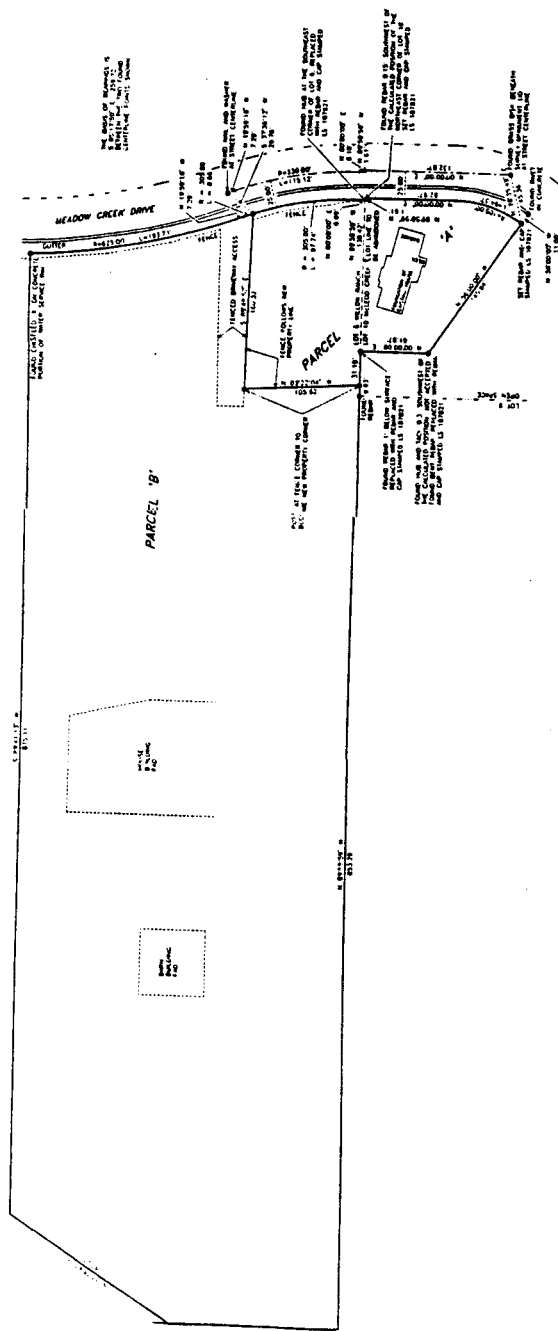
- LOT 6 WILLOW RANCH
- LOT 10 MCLEOD CREEK

PARK MEADOWS MOUNTAIN ANNEX



PLAT AMENDMENT OF LOT 6 WILLOW RANCH SUBDIVISION AND LOT 10 MCLEOD CREEK SUBDIVISION
and RECORD OF SURVEY

1" = 50'



SURVEYOR'S CERTIFICATE

NOTES

LEGAL DESCRIPTIONS

LEGAL DESCRIPTIONS

NOTES



DUPLICATE

RECORDED

INDEXED
FILED
BY
DATE

SNYDERVILLE BASIN SEWER
IMPROVEMENT DISTRICT

APPROVED AND CERTIFIED TO BE TRUE
DATE

CITY ATTORNEY

APPROVED AS TO FORM BY THE CITY ATTORNEY ON THIS
DATE

CITY PLANNING COMMISSION

APPROVED BY THE CITY PLANNING COMMISSION
ON THIS DATE

CITY ENGINEER

APPROVED BY THE CITY ENGINEER ON THIS
DATE

CITY COUNCIL

APPROVED BY THE CITY COUNCIL ON THIS
DATE

RE: Plat Amendment of Lot 10 McLeod Creek Subdivision and Lot 6 Willow Ranch Subdivision

To whom it may concern:

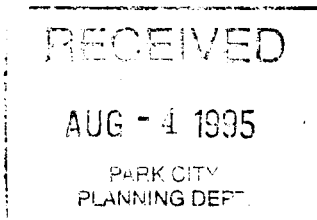
Diane Jordan-Smith, owner of Lot 10 of the McLeod Creek Subdivision, and Philo Smith, owner of Lot 6 of Willow Ranch Subdivision, asked the Willow Ranch Homeowners Association to approve the combination of approximately 1/3 of an acre (16,800 Square Feet) of Lot 6 Willow Ranch Subdivision to Lot 10 of McLeod Creek Subdivision at the May 8, 1995 meeting of the Willow Ranch Homeowners Association.

This combination would allow the Smith's to create a backyard for their residence on Lot 10 of McLeod Creek Subdivision without creating an adverse effect on Lot 6 of Willow Ranch Subdivision, or any of the other Lots of the Willow Ranch Subdivision.

The Remaining portion of Lot 6 Willow Ranch Subdivision will be approximately 6.5 acres.

The Smith's also asked the Willow Ranch Homeowners Association to approve the landscaping of the portion of Lot 6 Willow Ranch Subdivision which will be combined with Lot 10 McLeod Creek Subdivision, which is located on the North side of his residence in McLeod Creek. Landscaped area would be about 1/3 of an acre.

There were no objections to these proposals by the Architectural Committee or any Homeowners.



Will Jordan
PRESIDENT
WILLOW RANCH HOMEOWNERS ASSN.

Ordinance No. 95-

**AN ORDINANCE APPROVING AMENDMENTS TO LOT 6 WILLOW RANCH
SUBDIVISION AND LOT 10 MCLEOD CREEK SUBDIVISION
LOCATED AT 2647 MEADOW CREEK DRIVE, PARK CITY, UTAH**

WHEREAS, the owners of the property known Lot 10 McLeod Creek Subdivision, Park City, Utah, have petitioned the City Council for approval of amendments to both Lot 6, Willow Ranch Subdivision and Lot 10, McLeod Creek Subdivision; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the City Council held a public hearing on August 31, 1995 to receive input on the proposed amendments; and

WHEREAS, it is in the best interest of Park City, Utah to approve the amended plat, known as the Plat Amendment of Lot 6 Willow Ranch Subdivision and Lot 10 McLeod Creek Subdivision;

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

SECTION 1. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for the above-mentioned plat amendments and that neither the public nor any person will be materially injured by the proposed plat amendments.

SECTION 2. PLAT APPROVAL. The amendments to Lot 10, McLeod Creek Subdivision and Lot 6, Willow Creek Subdivision, Park City, Utah, are approved as shown on the attached Exhibit A with the following conditions:

1. Prior to plat recordation, the City Attorney and City Engineer shall review and approve the final plat.
2. All Standard Conditions of Approval apply.
3. All previous conditions of the Willow Ranch and McLeod Creek Subdivisions shall remain in full force and effect.
4. A note shall be added to the plat, prior to recordation, stating that the area added to Lot 10 from the Willow Ranch Subdivision shall be a non-build yard area with such uses allowed as were previously allowed as part of Lot 6 Willow Ranch Subdivision.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect upon adoption.

PASSED AND ADOPTED this 31st day of August, 1995.

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



COUNCIL AGENDA REPORT

DATE: August 25, 1995
DEPARTMENT: Community Development Department
AUTHOR: Megan B. Ryan
TITLE: Revision to Final Subdivision Plat for Hidden Meadows
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Approve the proposed boundary revision to the final subdivision plat for Hidden Meadows.

DESCRIPTION:

A. Topic.

Applicant:	United Park City Mines Company dba Blue Ledge Corporation - Hank Rothwell
Location:	Between Royal Oaks and Prospector
Zoning:	Estate-MPD and Recreation Open Space
Adjacent Land Uses:	Vacant, planned single family residential
Date of Application:	July 27, 1995

B. Background.

In February of 1994, the City Council approved an annexation of the Hidden Meadow MPD. The Annexation Plat and Agreement were finalized and recorded on March 5, 1995. The applicant received final subdivision plat approval on May 11, 1995. Please see Exhibit B - Approved subdivision plat. Attempts to record the plat were refused by the County Recorder due to an unclear title on a portion of the property.

The applicant is now requesting a boundry revision to the plat that would remove a portion of the Open Space parcel four and transfer that portion to Phase II.

C. Analysis

The requested boundry change removes approximately 4.39 acres of Open Space from ROS Parcel 4 and transfers this amount to Phase II of the Hidden Meadows plat. Please see Exhibit A - Proposed amendment to final plat. ROS Parcel 4 will be reduced from 90 acres to approximately 85 acres.

The applicant has requested this change due to their inability to resolve a title dispute on that portion of the property. Please see Exhibit C - Tom Clyde 7/27/95 letter. The applicant will still give the City a warrenty deed for the 4.39 acres in question, so the City wil own the area and would be indemnified from any title problem.

D. Department Review.

The Community Development Department and the City Attorney's office have reviewed this project.

ALTERNATIVES

- A. Approve the revisions to the Hidden Meadows Subdivision plat.
- B. Deny the revisions Hidden Meadows Subdivision plat.
- C. Continue the item until for further discussion and/or additional input from Staff, Applicant or Council members.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If the City Council does not approve the proposed revisions to the Final subdivision plat for Hidden Meadows with the proposed change the plat can not be recorded and the applicant cannot individually sell lots.

RECOMMENDATION:

The staff recommends that the City Council approve the amended subdivision plat at Hidden Meadows subject to the followings :

Findings:

1. The originally approved plat is not valid as drawn due to unclear title on approximately 4.39 acres of ROS Parcel 4.

2. The City will still receive a warranty deed on the property in question.
3. The 4.39 acres will still be zoned ROS

Conclusions of Law:

1. There is good cause for the approval of the final subdivision plat as it still provides dedicated Open Space; and
2. Neither the public nor any person will be materially injured by the proposed plat revision.

Conditions of Approval:

1. Prior to plat recordation the final plat shall be reviewed and approved by the City Engineer and City Attorney. The final plat shall also incorporate all the Final Conditions of Approval as ratified on December 15, 1993 and the Hidden Meadows Annexation Agreement approved on March 5, 1995 and all prior plat subdivision plat approvals dated May 11, 1995.
2. The 4.39 acres of Open Space removed from ROS Parcel 4 shall be included and dedicated to the City by warranty deed prior to Phase II of this development.

EXHIBITS

Location Map

Exhibit A - Proposed Revised Final Plat

Exhibit B - Approved plat - 5/11/95

Exhibit C - Letter from Tom Clyde 7/27/95

ORDINANCE NO. 95-___

**AN ORDINANCE AMENDING THE FINAL PLAT OF HIDDEN MEADOWS
LOCATED AT SOLAMERE DRIVE, PARK CITY, UTAH**

WHEREAS, the owners of the property known as Hidden Meadows petitioned the City Council for approval of a revision to the final plat; and

WHEREAS, the staff supports the final subdivision plat for Hidden Meadows as it is in compliance with the Annexation Plat and Agreement recorded on March 5, 1995 and the Master Planned Development Final Conditions of Approval, December 15, 1993; and

WHEREAS, the City Council held a public hearing on this matter on August 31, 1995; and

WHEREAS, it is in the best interest of Park City to approve the final plat; and

WHEREAS, there is good cause for the approval of the final subdivision plat; and

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

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

SECTION 1. The Hidden Meadows final plat is approved as shown on the attached Exhibit A with the following conditions:

Conditions of Approval:

1. Prior to plat recordation the final plat shall be reviewed and approved by the City Engineer and City Attorney. The final plat shall also incorporate all the Final Conditions of Approval as ratified on December 15, 1993 and the Hidden Meadows Annexation Agreement approved on March 5, 1995 and all prior plat subdivision plat approvals dated May 11, 1995.
2. The 4.39 acres of Open Space removed from ROS Parcel 4 shall be included and dedicated to the City by warranty deed prior to Phase II of this development.

SECTION 2. This ordinance shall take effect immediately.

DATED this 31st day of August, 1995.

PARK CITY MUNICIPAL CORPORATION

BRADLEY A. OLCH, MAYOR

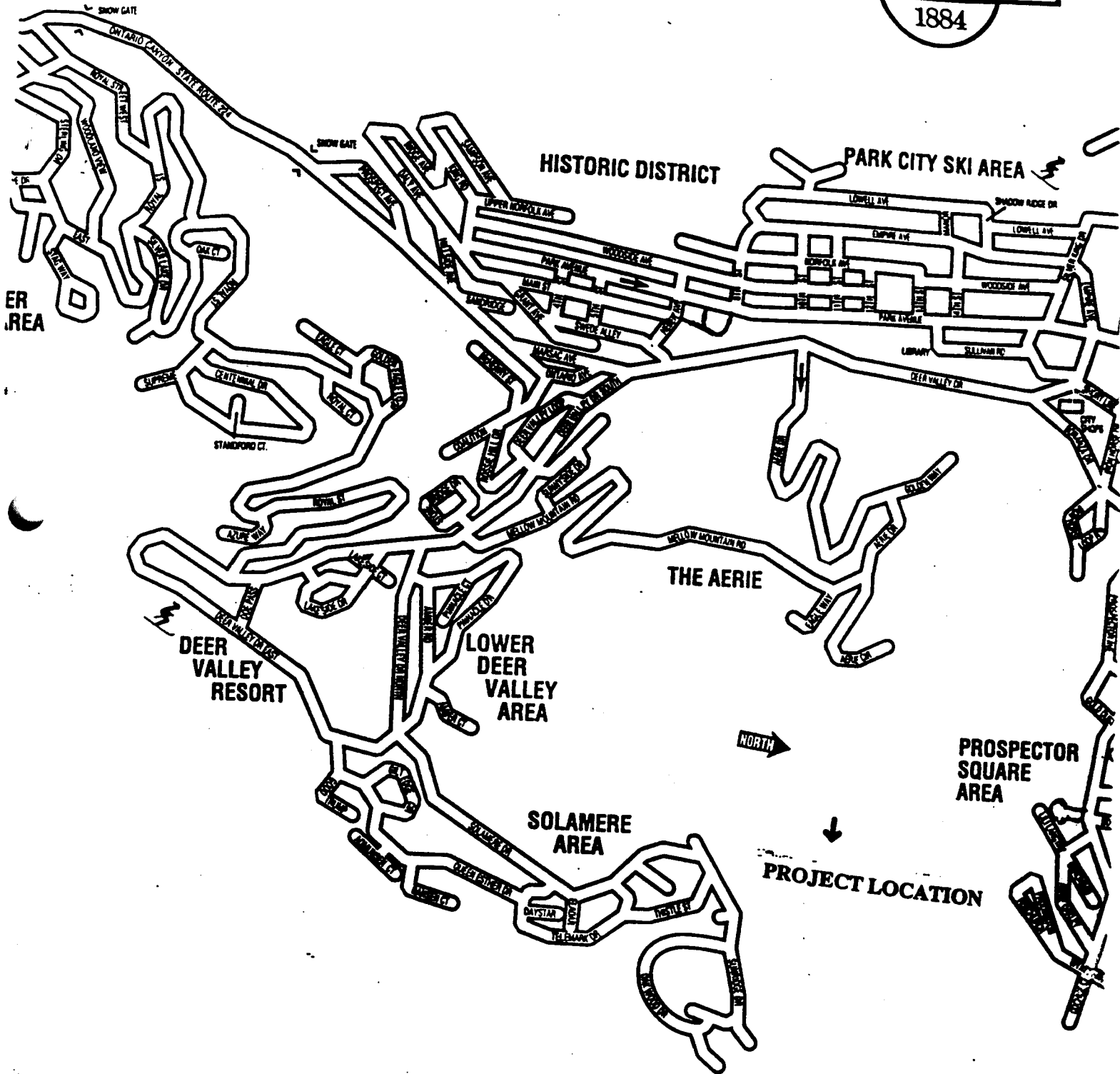
ATTEST:

Anita Sheldon, City Recorder

APPROVED AS TO FORM:

Mark Harrington, Deputy City Attorney

**HIDDEN MEADOW
LOCATION MAP**



HIDDEN MEADOWS

Exhibit B - Approved final plat - 5/11/95

RECORDS SECTION

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/1/95 BY 60322 UCBAW/STP

PLANNING SECTION

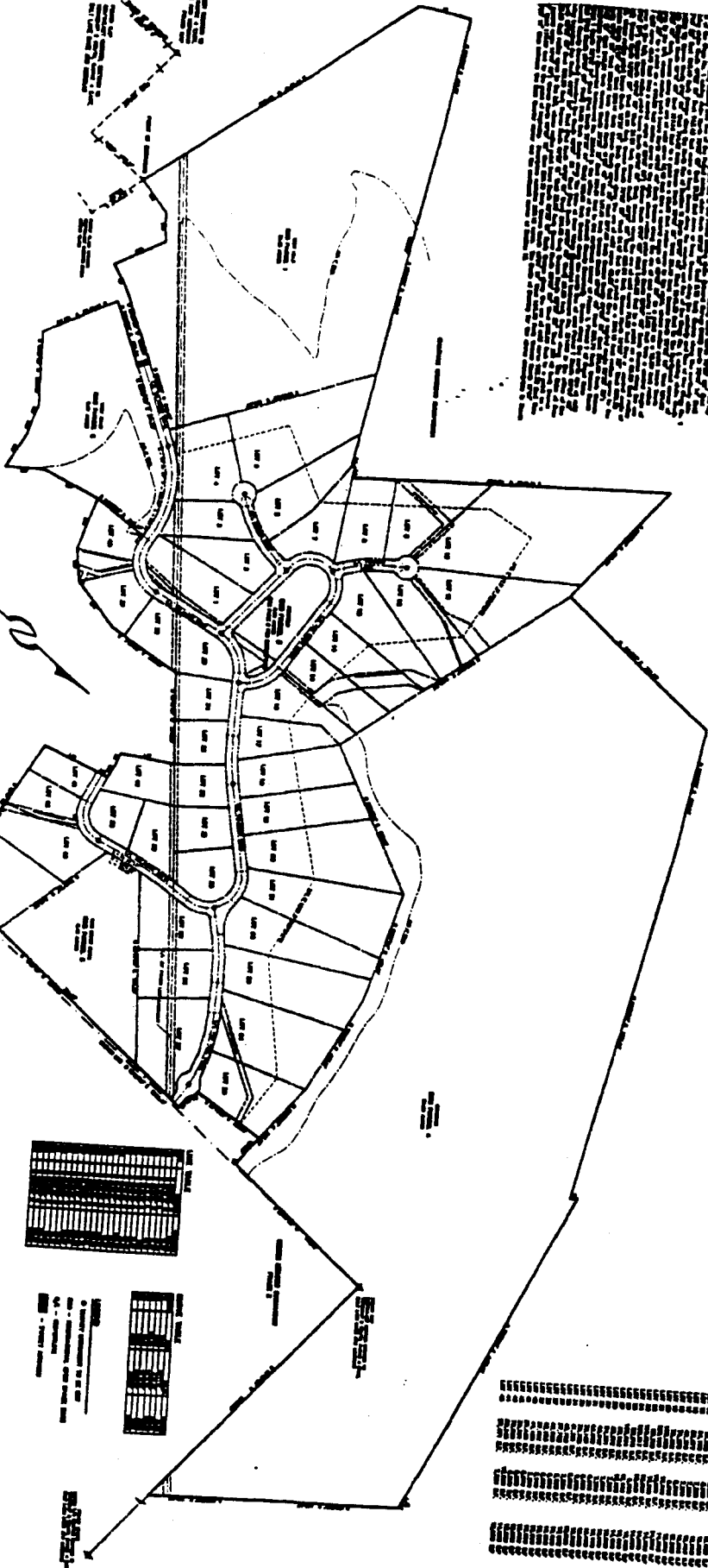
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/1/95 BY 60322 UCBAW/STP

ENGINEERING SECTION

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/1/95 BY 60322 UCBAW/STP

PLAT 8

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/1/95 BY 60322 UCBAW/STP



HIDDEN MEADOW SUBDIVISION

PHASE 1

A SUBDIVISION LOCATED IN SECTIONS 10 AND SECTION 11, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASIN AND UTAH.

PROGRESS DRAWING 4-25-95

ALLIANCE ENGINEERING INC. 225 West 1000 South Salt Lake City, Utah 84119 (801) 466-1000		STREETWAY AND WATER INFRASTRUCTURE PROJECT PREPARED FOR: [blank] PROJECT NO.: [blank] DATE: 5/11/95	
PLANNING COMMISSION APPROVED BY THE PLANNING COMMISSION DATE: 1995 A.D. BY: [blank]		ENGINEERING CERTIFICATE I HEREBY CERTIFY THAT THE ENGINEERING WORK SHOWN ON THIS PLAT WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF UTAH. DATE: 1995 A.D. BY: [blank]	
APPROVAL AS TO FORM APPROVED AS TO FORM BY THE PLANNING COMMISSION DATE: 1995 A.D. BY: [blank]		CERTIFICATE OF ATTORNEY I HEREBY CERTIFY THAT THE RECORD OF THIS PLAT HAS BEEN FILED IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT OF THE COUNTY OF SALT LAKE, UTAH. DATE: 1995 A.D. BY: [blank]	
CORRECTION APPROVAL AND ACCEPTANCE APPROVED AND ACCEPTED BY THE PLANNING COMMISSION DATE: 1995 A.D. BY: [blank]		RECORDED FILED IN THE COUNTY OF SALT LAKE AND FILED IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT OF THE COUNTY OF SALT LAKE, UTAH. DATE: 1995 A.D. BY: [blank]	

LAW OFFICE OF
THOMAS E. CLYDE5800 HULL MOOSE RD.
WOODLAND, UTAH 84086
(801) 783-4862
FAX 783-4784

July 27, 1995

Mark Harrington
Assistant City Attorney
Park City Municipal Corp/
P.O. Box 1480
Park City, Utah 84060

Re: Hidden Meadows

Dear Mark;

As we discussed, Alan Spriggs is unwilling to accept the Hidden Meadows Subdivision plat because of a title conflict with Minnie and Daniel Byer affecting about 4 or 5 acres on the extreme east end of the open space parcel. His position is that the statute requires the signature of "owners of record," regardless of the validity of the claim.

The nature of the dispute is pretty simple. United Park City Mines' title is a result of the patent issued on the Clegg group of mining claims. The patents were issued in the 1920's, though the mining claims are much older than that. Prior to the issuance of the patent to the mining claims, the federal land office obtained a disclaimer from the State Land Board, which had a claim to the lands in Section 2 as a school section. The waiver and in-lieu selection is dated 1928. The Utah Supreme Court affirmed the trial court holding that the United Park patent covered both the surface and mineral estate in *UPCMC v Clegg*.

Subsequent to the UPCM patent, Byers made entry under a state homestead or state mining claim statute, and in about 1972 obtained a patent from the State of Utah. The legal description in the Byer patent is "the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$." The patent then recites that it contains some 11 acres. The legal description covers 20 acres, so the acreage notation indicates that there was knowledge of the prior UPCM patent, and the fact that the description included more land than the State actually had title to convey. The difference is the prior patent on the Clegg claims to United Park. There is a triangle cut out of the Byer "20 acres" on both the north and south corners, but we are only concerned with the south. The two triangles total about 8 acres, and the dispute here is probably between 4 and 5 acres.

When Joe Byer died intestate, his interest was distributed 1/3 to his wife, Minnie, and the remaining 2/3rd to his 9 children. All but one of the children have since

conveyed their interest to Minnie. Joe, Jr., who was a minor at the time, still appears to have an interest. Those deeds conveying back to Mrs. Byer use the patent description as "Parcel 1" and a metes and bounds that excludes the Clegg claims (and the other triangle) as "Parcel 2." They appear to have been aware of the overlapping patents.

The Byer claim is weak, given the relative dates on the patents and the specific waiver by the State prior to the Byer patent from the State. It may take a quiet title action to resolve it.

I would like to record the plat with the modifications suggested by Alan Spriggs, which are shown on the red-lined copy delivered to you this morning by Coalition Title. Blue Ledge or UPCMC would then convey the open space parcel to the City by warranty deed, and proceed to clear up the title defect. In the meantime, the property has been annexed, zoned ROS, and is fully subject to control by the City. Even if the UPCMC title failed, which I think is unlikely, the land is still zoned ROS. It also appears to be land-locked, unless there is a private easement. It doesn't abut a public road.

The City Council approval was drawn in terms that anticipated the need to make the adjustment in open space around the Gillmor dispute (which is south and east of the Byer property, but along the easterly line of the Clegg claims). This is essentially an extension of the same boundary line, and I hope you feel that there is room in the approval to make this kind of adjustment. It's pretty technical, since UPCMC will convey title by deed anyway. It just will be excluded from the plat for the time being. It could be added to the subdivision with the Phase II plat when the Gillmor problem is resolved, if there is some reason that it needs to be shown on the plat at all.

Rob at Coalition has the documents. I've asked him to get you copies. Please call me if you have any questions.

Sincerely,



Tom Clyde

COUNCIL AGENDA REPORT

DATE: August 31, 1995
DEPARTMENT: Planning Department
AUTHOR: Kirsten Whetstone
TITLE: Frandsen Subdivision
TYPE OF ITEM: Plat Amendment, Subdivision Plat and Vacation of right-of-way

SUMMARY RECOMMENDATIONS

Staff recommends approval of the subdivision and plat amendment with conditions as recommended by the Planning Commission. Staff also recommends approval, with conditions, of the right-of-way vacation for Woodside Avenue in the vicinity of 1439-1445 Woodside Ave.

DESCRIPTION**A. Topic**

Project Name: Frandsen Subdivision
Applicant: Alan Frandsen
Location: 1439-1445 Woodside Avenue
Proposal: Three Lot Subdivision with ROW vacation
Zoning: RC- Recreation Commercial
Adjacent Land Uses: Residential, Condominiums, Vacant
Date of Application: March 24, 1995

BACKGROUND

The applicant, Mr. Frandsen, approached the City approximately 13 years ago about resolving property line and right-of-way encroachment issues for his house at 1439 Woodside Avenue. From 1982 to 1985 Mr. Frandsen pursued an option to pay the City for the right-of-way and to construct a hotel/condominium project in accordance with the City's RC, Resort Commercial, zoning requirements. At that time the City Council was not interested in facilitating development of another high density project in this area and the request was turned down.

Approximately a year ago, Mr. Frandsen approached the City with this current request for a three lot subdivision and right-of-way vacation. After several meetings to discuss various options, the applicant submitted a subdivision plat for review in April of this year. The subdivision plat was reviewed by the City Engineer and the City Staff at several Staff Review Meetings in May and June of this year. Staff worked with the applicant for several months to resolve outstanding issues and scheduled the item for a June 28, 1995 Planning Commission worksession and meeting.

At the June 28th meeting a public hearing was held to receive input on the proposed Frandsen Subdivision Plat. The item was continued to the July 26, 1995 meeting where the Planning Commission heard additional public comment and recommended that the City Council approve the subdivision plat, with conditions as outlined in this report. The Planning Commission also made a motion to refer to Council their comments concerning the vacation of a portion of Woodside Avenue.

PROJECT DESCRIPTION

SUBDIVISION

The applicant, Alan Frandsen, is requesting approval of a plat amendment (resubdivision) for a portion of Lot 8 and Lots 9, 10, 11, and 12 of Block 21; and portions of Lots 7 and 8 of Block 22 Snyder's Addition; and a vacation of a portion of the platted Woodside right-of-way (ROW) (**Exhibit A**). Mr. Frandsen is also requesting approval of a subdivision of an unplatted parcel located immediately to the north of the Snyder's Addition lots. In combination, the plat amendments (resubdivision), subdivision, and ROW vacation result in the proposed 3 lot Frandsen Subdivision (**Exhibit B**).

The Frandsen Subdivision creates three legal lots for two existing houses and a future house or duplex. The three lots, Lots A, B, and C, have frontage on paved Woodside Avenue. Lots A and C are 3,475 and 4,927 sq. ft. in area, respectively, and are occupied by existing structures. Lot B is a combination of portions of 4 old town lots and is 9,363 sq. ft. in area. A small accessory structure is located on Lot B.

The applicant proposes to construct one house or duplex on Lot B and has agreed by plat note to limit the size of the structure to 2400 sq. ft. The applicant proposes to restore 1439 Woodside, an historic home, and preserve that home in mass, scale, and facade for all time. The applicant

has proposed a limited addition to the rear of the home to facilitate liveability, although Staff has not reviewed the plans at this time.

Access for parking and utilities for the existing house at 1439 Woodside (Lot A) would be provided by an easement granted to Lot A from Lot B. The subdivision plat is configured such that all setbacks, lot sizes, access, and parking requirements are in conformance with the Park City Land Management Code, with additional conditions as listed in this report. See **Exhibit C** for existing and proposed lot configuration.

Through this subdivision process Mr. Frandsen proposes the functional equivalent of a significant down zone by converting approximately 8 RC lots and associated ROW, with development potential of about 35 hotel/studio units into three single family lots with substantially smaller houses than are typical of new construction in old town.

The applicant is proposing to dedicate a 15' strip of land across the frontage (120') of the three lots for the purposes of utilities, snow storage, and ROW dedication. This amounts to approximately 1,800 sq. ft. dedicated to public purpose (**Exhibit D**). A facade easement, which protects the historic facade from demolition, has been proposed for the historic structure at 1439 Woodside Avenue as well. Based on the current footprint, this amounts to approximately 1,000 sq. ft. of area. The applicant has also agreed to tree preservation easements for the 3 significant evergreen trees and two Maple trees.

VACATION OF RIGHT-OF-WAY

The applicant has submitted a request to the City for vacation of a remnant section of platted Woodside Avenue (**Exhibit E**). A majority of the house located at 1439 Woodside Avenue is situated on platted Woodside Avenue ROW. At this location, existing paved Woodside Avenue is situated to the east of the platted right-of-way (**Exhibit F**). There is no existing ROW to the north of this site and ROW to the south was vacated to the Wildwood Condominiums in the 1980's. There is an 6'- 10' section of ROW adjacent to the south that is not vacated. The ROW to be vacated is approximately 3600- 4250 sq. ft. in area according to the assessor's maps of the Synder's Addition Subdivision. The figure is not exact because there are many discrepancies with the various survey's and control points in this area and the exact location of the Section Line in this area is not known.

The following table is a comparison of ROW being vacated and ROW and easements being dedicated by the Frandsen proposal:

ROW AREA TO BE vacated	NEW ROW TO BE dedicated	SNOW STORAGE EASEMENT- dedicated	FACADE EASEMENT- dedicated	TREE EASEMENT dedicated	NET AREA dedicated
3600- 4250 SQ. FT.	600 SQ. FT.	1200 SQ. FT.	1000 SQ. FT.	900 SQ. FT	3700 SQ. FT.

STAFF ANALYSIS

FRANDSEN SUBDIVISION

Staff has reviewed the subdivision request and has determined that the proposal meets requirements for subdivision and resubdivision as stated in the Land Management Code and the State Subdivision Code. The lot sizes, lot configuration, and setbacks are in conformance with the LMC. All lots have frontage on a platted ROW as 5' of land across the front of the lots and adjacent to paved Woodside Avenue is being dedicated as ROW. The applicant is providing a 10' snow storage and utility easement across the fronts. Off-street parking is provided for each lot.

Staff finds that the consolidation and replatting of these six lots and two parcels into three legal lots is in the best interest of the City in that there is a significant reduction of density (35 hotel units to 3 small single family homes), the residential character of the street is preserved, the historic structure is fully restored and preserved, mature and significant vegetation is preserved, ownership lines are cleaned up, and access and parking problems are resolved.

Staff also finds that neither the public nor any person will be materially injured by the proposed subdivision. This is one of the last remaining parcels of platted Woodside in this vicinity (there is another 6' to 10' length of ROW to the south). All other portions of Woodside have already been vacated to adjacent property owners (without a reduction of density or preservation of historic structures achieved).

VACATION OF RIGHT-OF-WAY

Staff has reviewed the ROW vacation request and finds that the request complies with all requirements for vacation as stated in both the City's LMC and the State Code.

The existing house at 1439 Woodside Avenue is situated on the platted ROW of Woodside Avenue. This house is considered an historic structure. The platted ROW ends at the north property line of 1439 Woodside because the Snyders Addition Plat ends at this point. Therefore this remnant of ROW does not connect to ROW to the north. The property to the north, the site of a house at 1445 Woodside, is an unplatted parcel. This parcel is owned by Mr. Frandsen.

According to the City Engineer, it is unlikely that the street would be extended to the north in the platted ROW because there are existing structures in it's path and because the existing paved street lies to the east. He perceives no need for this ROW for future street or utility purposes.

Right-of-way is land set aside for the purposes of providing necessary ingress and egress to private property, as well as for utility and transportation corridors. According to State Law, if a municipality or government entity is not using the land for public purposes, the adjacent property owners may request the ROW be vacated (see **Exhibit G**). If an adjacent property owner petitions for vacation and the City determines that this ROW no longer serves the public interest

for existing or future roads or utilities, the land may, according to State Law, be vacated and returned equally to property owners on either side of the ROW (see **Exhibit H**).

In certain instances in the past, the City has vacated ROW by quit claiming the property to adjacent owners for a nominal fee. The City has also issued revocable encroachment permits at no cost for porches and other improvements which encroach into ROW. In the case of the Wildwood Condominiums located in the 1400 block of Woodside, the City sold a portion of the ROW for fair market value allowing the developer to increase the density of his project because of the additional square footage gained and additional land that could be used for parking.

Mr. Frandsen pursued this option from 1982 to 1985. At that time the Council determined that it did not want another larger condominium project on the Frandsen parcel, and declined to vacate for that purpose. (Staff has no doubt that Mr. Frandsen would be happy to pay cash for the Woodside ROW at this time, if he were allowed to pursue RC development on the property, as the zone currently allows.)

Planning Staff believes that the recommended conditions of approval for this vacation request address concerns that the City has had in the past with infill development. The reduction in density, preservation of historic structures, protection of mature vegetation, limitation on house size, provision of snow storage easements, and ROW dedication for future sidewalks or widening of streets, in combination, will insure the public's interests are maintained, should the ROW be vacated.

The ROW in question is not a platted lot or buildable parcel of ground, but land set aside for the purpose of providing ingress and egress and/or a corridor for utilities and transportation. The land is not being used for ROW and the applicant has asked the City to consider vacation of the ROW. The City Engineer has determined that this ROW no longer serves the public interest for roads or utilities. The City has three options: 1) either use the ROW now, 2) reserve the ROW for a future street or utility, or 3) vacate the ROW. It does not have the option to use the ROW for housing or historic preservation.

According to State Law, if ROW is vacated it is to be given back equally to adjacent property owners on either side of the ROW. Mr. Frandsen owns the property on either side of the ROW in question, therefore, if the ROW in question is vacated, Mr. Frandsen would be the sole recipient.

The Planning Commission discussed the ROW vacation at its meeting on July 26, 1995 (see **Exhibit I**) and requested that staff convey to the City Council the following concerns:

- a. The size of ROW being requested for vacation seemed larger than other requests they have seen.
- b. They suggested an appraisal of the property to be vacated, to determine the market value. This would be appropriate if staff had not negotiated the significant density reduction; restoration and preservation easements; and dedications detailed above. If the Council would

like to simply sell Mr. Frandsen the ROW without restrictions, an appraisal would be warranted.

Two and a half years ago, the City offered to sell Mr. Frandsen the ROW for \$2.50 per sq. ft. without any restrictions and further deed restrictions. This would have allowed him to pursue a condominium of hotel development as per the RC zone. Recently, the City purchased unrestricted RC property on Park Avenue for \$10.00 per sq. ft.

If the City would like to vacate Woodside to Mr. Frandsen without restrictions on use, then it would be appropriate to ask Mr. Frandsen to pay somewhere between \$2.50 and \$10.00 per sq. ft. This amounts to between \$5,000 and \$25,000 depending on the price negotiated and the net are of ROW vacated. Selling the ROW outright however would likely result in destruction of two small homes and significantly increased density (up to 35 hotel rooms/studio units).

Council must decide if this is the course it would like to pursue. Staff is fairly certain that Mr. Frandsen would welcome this option as it would result in a significant increase in the value of his land, far in excess of the \$5,000 to \$25,000 he would be required to pay.

- c. Ownership of the house and the land it sits upon was not clear and more information was needed. Past and present City Attorneys, the Third District Court, and the Third Circuit Court have each concluded that Mr. Frandsen owns the house.
- d. Information was needed on what was done in the past concerning compensation to the City for vacated ROW. (This information has been provided above.)

PUBLIC INPUT

Planning Staff has reviewed the public input, as well as comments from the Planning Commission, and has conducted research on several issues that were raised at the hearing. The primary issues were:

- a. ownership
- b. setbacks
- c. existing vegetation
- d. ROW vacation

a. Ownership

City Staff does not dispute the applicant's ownership of the Snyder's Addition lots in question or the improvements to those lots, including improvements in the ROW. According to public records at the County Assessors office, taxes have been paid by the applicant, Alan Frandsen, on the properties in question since early 1970. The right-of-way is City property and the structures are owned by the applicant. The City has a copy of a quit claim deed from the previous owners to the applicant for Lots 9 thru 12, inclusive, Block 21 Snyder's Addition and a

bill of sale for the home at 1439 Woodside, and its contents (see **Exhibit J**). There is also a memorandum from the City Attorney in November of 1993 establishing the City's interests in the property. (see **Exhibit K**).

A current title report will be submitted prior to recording the subdivision plat and the legal description on the plat will be verified against the title report. All owners of record will be required to sign the plat.

b. Setbacks

City Staff has field verified the setbacks and location of existing buildings and has determined that the subdivision plat will not create non-conforming lots or setbacks. Should this application be approved, Staff and the Planning Commission recommend a condition of approval that the non-historic cinder block garage at 1439 Woodside Avenue be removed prior to plat recordation as it would straddle the new property line and block access to Lot B. The cinder block garage is of modern construction and non-contributory to the Historic District. There is an additional accessory structure/shed on the property and setbacks for that structure meet those required by the Code.

c. Existing vegetation

As a result of concerns regarding impacts of this subdivision and vacation on the site's tree cover, City staff conducted a field inspection of the property in question (see **Exhibit L**). There are three significant conifer trees, as located on the plat. There is a fourth conifer tree shown on the plat which is crowded by a retaining wall and may or may not survive in the future. A specimen Big Tooth Maple is located behind the existing house at 1439 Woodside Avenue and another one is located on the property line between 1445 Woodside Avenue and the property to the north. There is a large poplar and several large and small boxelder trees scattered about the site, as well as a fair amount of shrubbery, which provide greenery and shading.

Staff and the Planning Commission recommend a condition of plat approval that there be a tree preservation easement located on the plat to protect these mature trees from disturbance. This includes the maple and large evergreen trees. The poplar and boxelder trees require additional evaluation. The total area of the tree preservation easement amounts to approximately 900 sq. ft. During new construction in Park City, limits of disturbance fencing is required to be in place to protect significant vegetation. Staff will review the limits of disturbance at the time of plan review and building permit issuance to ensure maximum protection of other significant existing vegetation.

d. ROW vacation

A significant portion of the house at 1439 Woodside currently encroaches into the City right-of-way for Woodside Avenue. This is a situation which exists throughout Old Town Park City because the existing paved roadways and the platted street rights-of-way often did not coincide and property owners in the early 20th century built homes from the edge of pavement rather than

from surveyed lot lines. Historically, if the City Engineer determined that such platted right-of-way was unlikely to be used for a street or utilities in the future, then the ROW was vacated to accommodate the encroachment.

e. Other issues

There were other issues raised, such as: historic grants and building permits issued for the property in question, concerns for destruction of public property, and other agreements that the City has entered into with this applicant. Staff has attached information regarding these issues as Exhibit M.

ALTERNATIVES

- A. Deny the vacation and Frandsen Subdivision, thereby retaining the original configuration of lots. Because Lots 9-12 have frontage on platted Woodside, the applicant could request that Woodside be improved (at his expense) to standards of a City street in order to provide access for development of houses, hotels, or condominiums.

It would be an open question who would be charged with the financial responsibility to remove the cement block garage (the City or Mr. Frandsen), as the garage does not belong in the ROW and blocks access to the platted lots fronting on the ROW. The City may want to issue a revocable encroachment permit to allow the house at 1439 Woodside to remain.

- B. Approve the vacation and Frandsen Subdivision as recommended, or with modifications, and allow the new configuration of lots with conditions as recommended by Staff and the Planning Commission.
- C. Continue the item and request evaluation and recommendations from Staff.

SIGNIFICANT IMPACTS

Staff believes that the Frandsen Subdivision and related ROW vacation preserves the character of the neighborhood; significantly reduces the potential density, traffic, and congestion on what in many respects is a substandard street; restores and preserves an historic structure and several significant mature trees; resolves property lines; places existing structures on legally platted lots; and removes ROW from beneath an historic structure.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION

If the Council chooses not to approve the Frandsen Subdivision and related ROW vacation, the historic structure will continue to sit upon a dedicated ROW with Mr. Frandsen free to collect rents from the home thereon. The owner of the lots fronting on the platted ROW, currently Mr. Frandsen, (Lots 9 -12) could request that the ROW be improved to provide access to these four

RC, Recreational Commercial, zoned lots. A decision would have to be made about removing the house and trees in order to improve the ROW, and at whose expense those improvements would be made.

In addition, the applicant could combine his existing property and have approximately 13 development credits in the RC zone. This would allow hotel/condominium development of 26 hotel rooms or 6- 12 condo units depending on configuration and size. The maximum building height for hotel/condominium development in the RC zone is 35 feet. Single family or duplex structures in the RC zone must follow restrictions as outlined in the HR-1 zone.

RECOMMENDATION

Staff finds that the proposed subdivision and ROW vacation are consistent with requirements as set forth in the Land Management Code and state statutes as related to subdivision of land and vacation of ROW. The Planning Commission voted to forward a positive recommendation to Council to approve the subdivision request with conditions. Staff relayed the Commission's concerns about the ROW to Council. Staff recommends that Council adopt the following **proposed** findings of fact and conclusions of law if they approve the subdivision and the vacation of ROW.

FINDINGS OF FACT

1. The subdivision proposal is consistent with the Park City Land Management Code and State Statutes relating to vacation of public ROW.
2. The proposed lot configuration meets requirements of the RC Zoning District.
3. The proposed lot configuration will reduce the density from portions of 6 or more lots and a parcel, with RC development potential, to 3 lots with limited single family development potential.
4. The proposed subdivision, with conditions, would preserve the "Old Town" residential character of this section of Woodside Avenue.
5. Historic buildings are valuable assets which contribute to the distinct character of the community. It is therefore desirable to encourage new construction of residential structures which are compatible with the mass and scale of the historic context. The applicant has agreed to dedicate a facade easement for the historic structure and limit the size and mass of any additions.
6. Large trees are valuable to the community for the beauty and shade they offer. The applicant has agreed to dedicate tree preservation easements for the large conifer trees on the property.
7. The owner has agreed to dedicate a 10' snow storage easement across the front of these

lots at the request of the City Engineer.

8. The owner has agreed to dedicate a 5' strip of land across the front of these lots as right-of-way for street widening or sidewalks if deemed necessary in the future.
9. The existing ROW adjacent to lots 9 - 12 does not continue to the north in front of 1445 Woodside Avenue, because the Snyders Addition Subdivision Plat ends between 1439 and 1445 Woodside Avenue.
10. The paved Woodside Avenue is located entirely to the east of the platted Woodside in this location and the portion of platted Woodside that is to be vacated is not adjacent to existing ROW to the north, east, or west and is adjacent to only a remaining sliver of ROW to the south.
11. The applicant has agreed to limit construction on the 9363 sq. ft. Lot B to a single family or duplex house not to exceed 2400 sq. ft. (current zoning would allow approximately 4,000 sq. ft.).
12. Parking will be provided in accordance with the City's Land Management Code.
13. The applicant has requested in writing the vacation of unimproved Woodside Avenue ROW, between Lots 9 - 12, Block 21 and Lots 7 and 8, Block 22 of the Snyder's Addition Subdivision plat.
14. Proper procedure for vacation of ROW was followed and proper notice given to all owners within the Snyder's Addition Subdivision.
15. A public hearing was held on July 26, 1995 by the Planning Commission and on August 31, 1995 by the City Council, to receive public input.

CONCLUSIONS OF LAW

1. There is good cause for this plat amendment and subdivision plat for the reasons outlined in this staff report.
2. There is good cause for the ROW vacation for reasons outlined in this staff report.
3. Neither the public nor any person will be materially injured by the proposed plat amendment, subdivision plat, and ROW vacation.

CONDITIONS OF APPROVAL

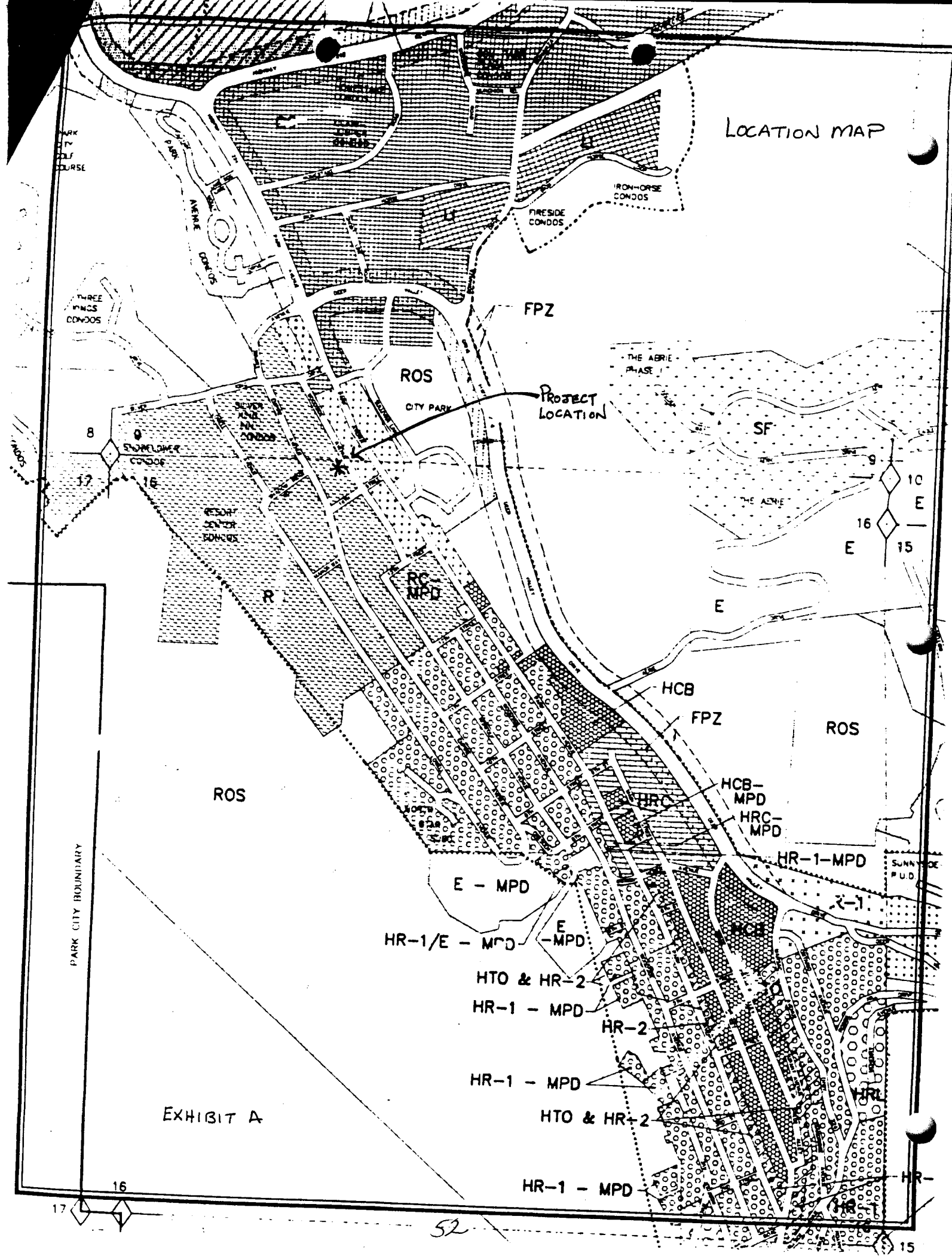
1. Approval of the subdivision plat is contingent upon the applicant successfully completing the vacation of Woodside Avenue ROW crossing the subject property.

2. Prior to plat recordation, the City Attorney and City Engineer shall review and approve the plat.
3. Prior to plat recordation, the cinder block garage at 1439 Woodside Avenue shall be removed and the resulting disturbed area graded smooth. All debris shall be removed.
4. All Standard Project Conditions apply.
5. There shall be a note on the plat limiting the maximum house size for Lot B to 2400 square feet, with an additional 600 square feet allowed for a garage.
6. There shall be a note on the plat, and a Grant of Easement submitted, granting a facade easement to Park City for 1439 Woodside Avenue.
7. There shall be a note on the plat granting a tree preservation easement to Park City for the evergreen and maple trees at 1437 and 1439 Woodside Avenue.
8. There shall be a note on the plat dedicating a 10' snow storage easement to Park City across the frontage of Lots A, B, and C.
9. There shall be a note on the plat dedicating a 5' strip of public right-of-way adjacent to the front property lines for Lots A, B, and C.
10. Prior to recording the subdivision plat, the applicant shall add a note to the plat specifying that no additional subdivision of the property shall occur.

EXHIBITS

- A. **Location Map**
- B. **Proposed Subdivision Plat**
- C. **Sketch showing existing and proposed lot configuration**
- D. **Sketch showing vacation and dedication areas**
- E. **Applicants vacation of ROW request letter**
- F. **County assessors map**
- G. **Vacation of ROW Procedure Memo**
- H. **State Code regarding Vacation of ROW**
- I. **Quit Claim Deed to Frandsen Property**
- J. **November Memo from City Attorney regarding ROW and Frandsen Property**
- K. **Sketch showing existing vegetation**
- L. **Attachments regarding "Other Issues" related to this property**

LOCATION MAP



I, JAMES G. WEST, _____ do hereby certify that I am a Registered Civil Engineer, _____ and or Land Surveyor, _____ State of Ohio, _____ as prescribed under the laws of this State of Ohio, _____ further certify that by authority of the Owners, _____ a survey of the tract of land shown on this plat and described hereafter to have subdivided said land into lots and _____ and that same has been correctly surveyed and staked on _____ as shown on this plat _____

[illegible]

WE FURTHER CERTIFY ALL LOTS MEET THE AREA WIDTH AND FRONT LOT REQUIREMENTS OF THE APPLICABLE ZONING ORDINANCES.

DATE 3/23/95

OWNER'S DEDICATION

Known all men by these presents that the undersigned owner () of the above described tract of land, having caused said to be subdivided into lots and streets to be hereafter known as the

FRANDSEN SUBDIVISION

do hereby dedicate for perpetual use of the public all portions of
shown on this plat as intended for public use
In witness whereof _____ have hereunto set
_____ day of _____ A.D. 19 ____

ACKNOWLEDGEMENT

STATE OF UTAH : S S : personally appeared
County of Summit : A.D. 19 : in and for said County if
On the : day of : the undersigned Notary Public,
before me, the undersigned Notary Public of the State of Utah, the signer of the foregoing instrument, duly acknowledged to me that
Summit in said State of Utah, in number, was lawfully acknowledged to me that the said
dedication was lawfully and voluntarily made for the uses
and purposes therein mentioned
MY COMMISSION EXPIRES

NOTARY PUBLIC
RESIDING IN SUMMIT COUNTY

FRANDSEN SUBDIVISION

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 9 AND THE
SOUTHWEST QUARTER OF SECTION 16, T2S, R4E, S1H&M

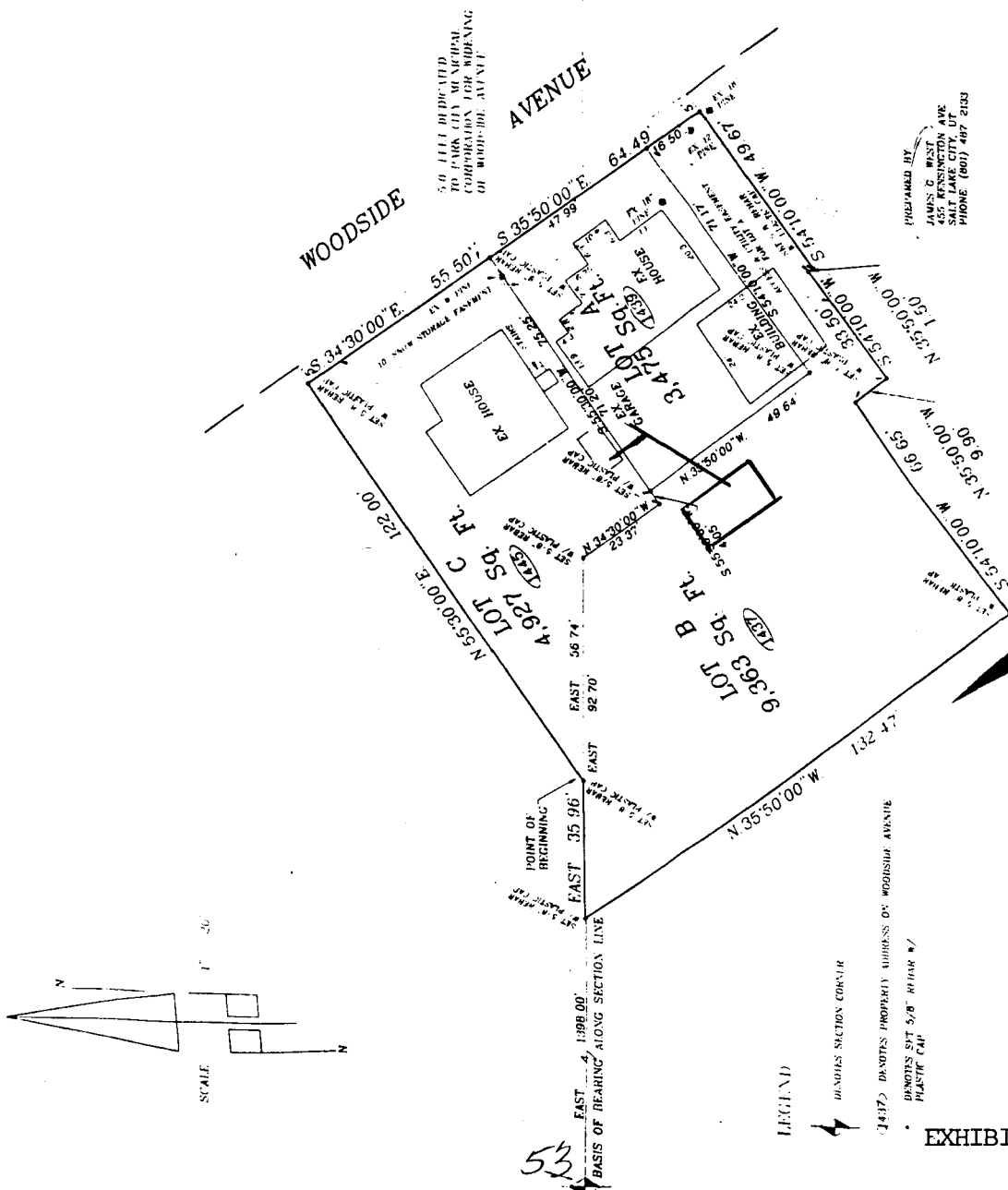
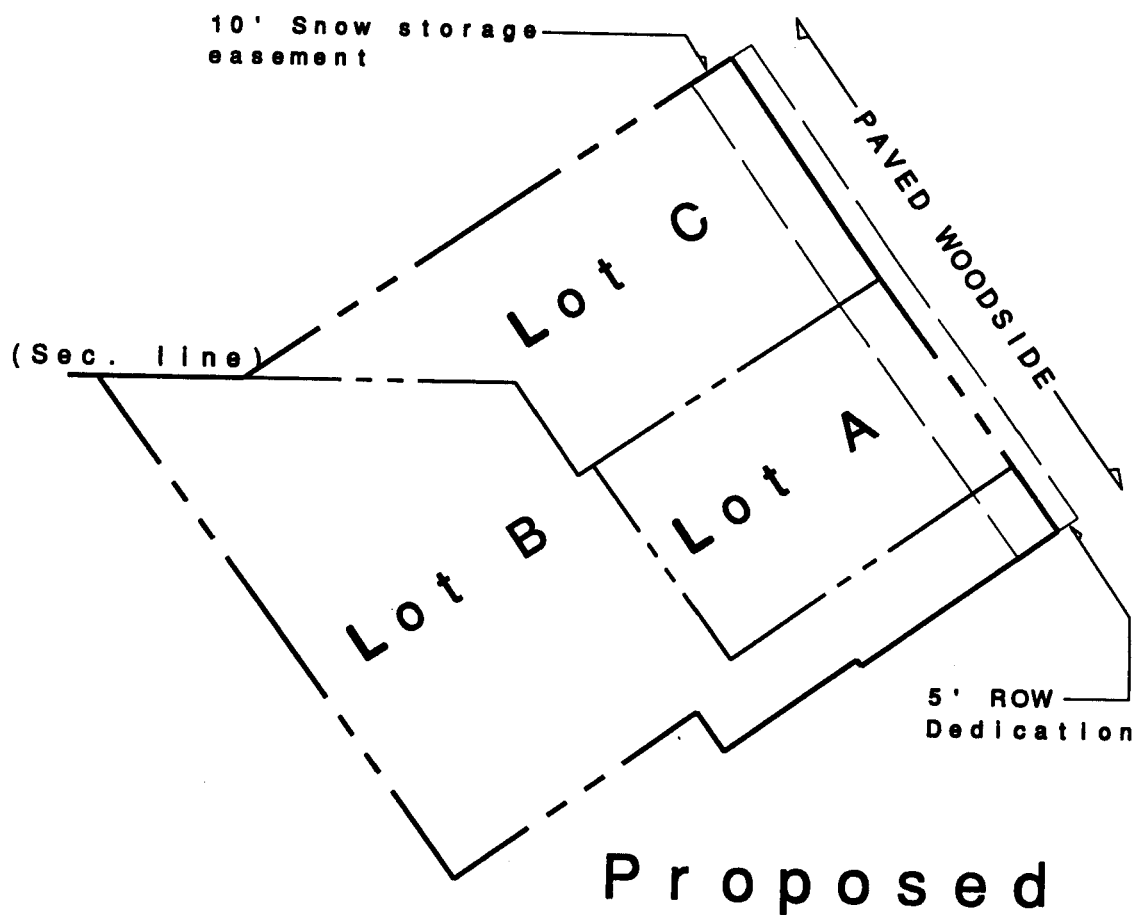
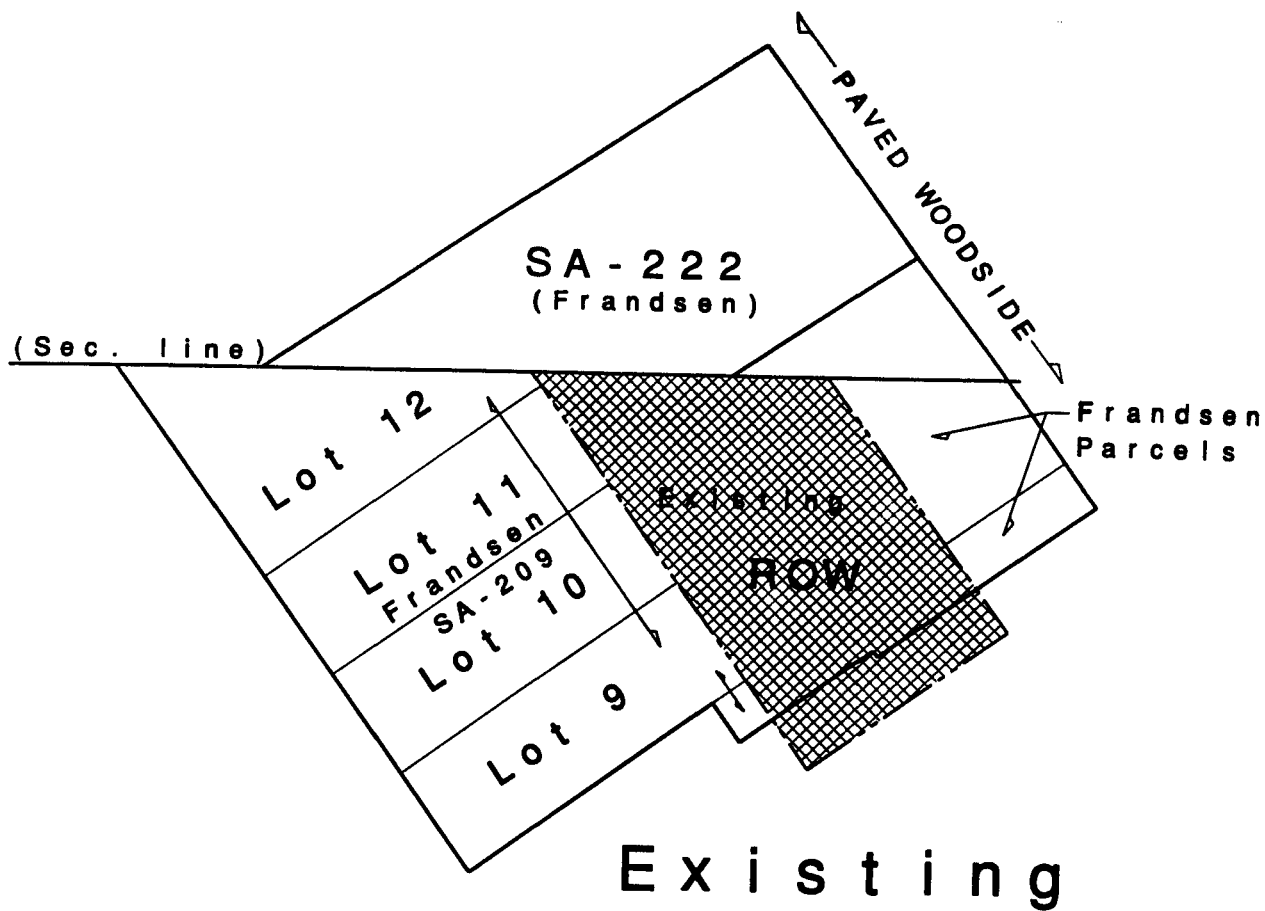
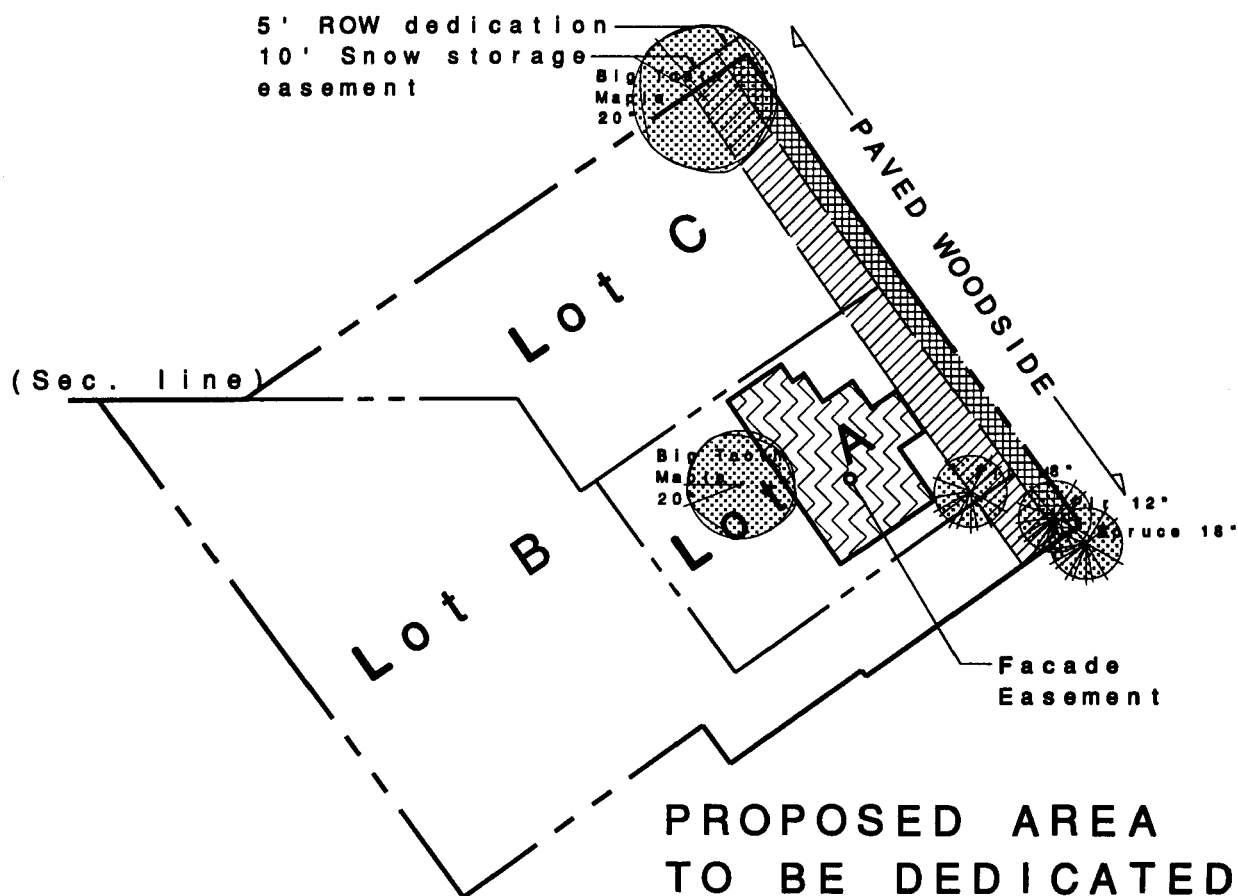
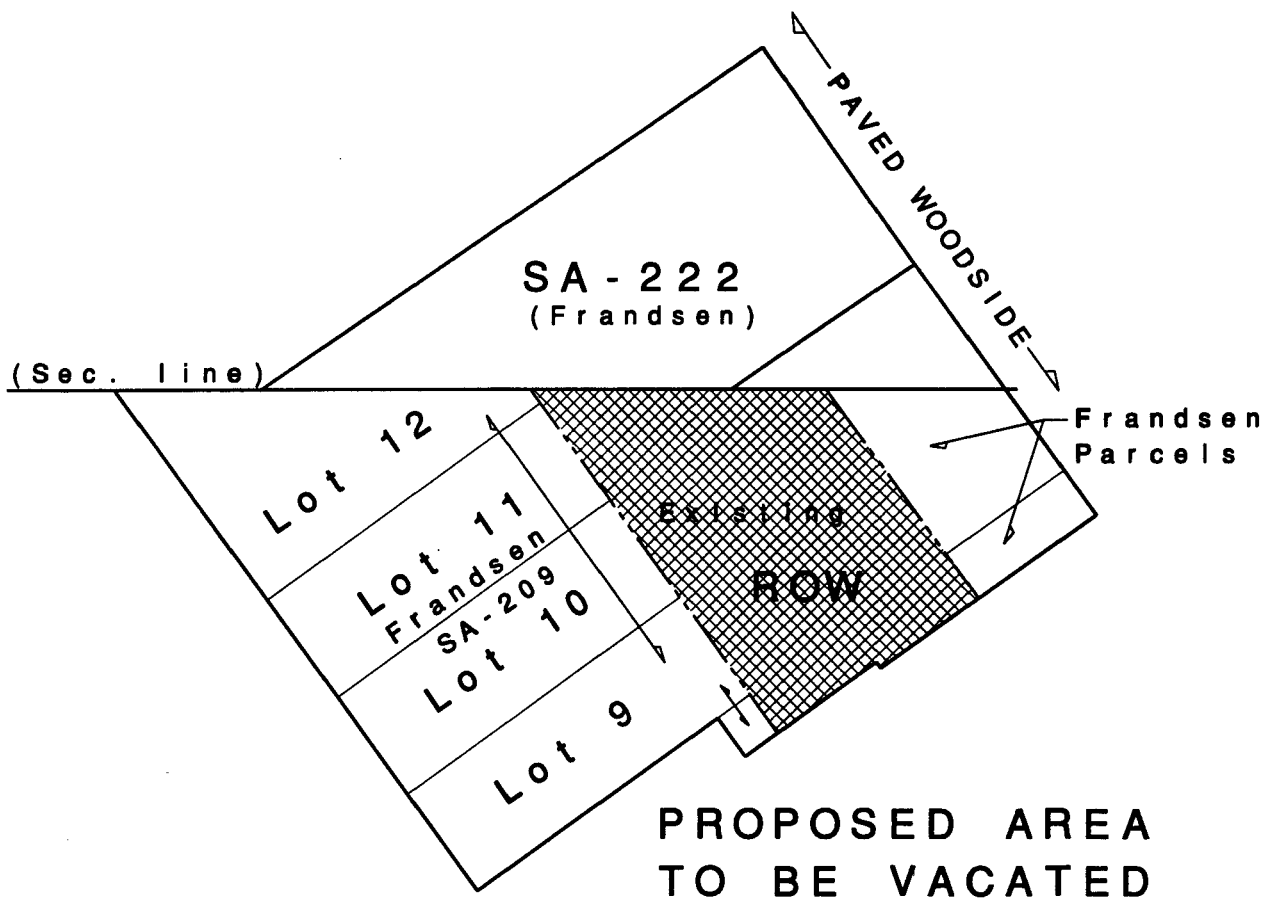


EXHIBIT B

PLANNING COMMISSION APPROVED THIS <u>4.0</u> <u>18</u> BY THE PARK CITY PLANNING COMMISSION	SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT APPROVED THIS <u>4.0</u> <u>18</u> OF	PARK CITY ENGINEERING I HEREBY CERTIFY THAT THIS OFFICE HAS REVIEWED THE APPLICATION AND IS IN ACCORDANCE WITH INFORMATION OF FILE IN THIS OFFICE	APPROVAL AS TO FORM APPROVED AS TO FORM THIS <u>4.0</u> <u>18</u> DAY OF	PARK CITY COUNCIL PRESENTED TO THE PARK CITY COUNCIL THIS <u>4.0</u> <u>18</u> DAY OF THIS SUBMISSION WAS APPROVED AND ACCEPTED	STATE OF UTAH COUNTY OF SUMMIT, RECORDED AND FILED AT THE REQUEST OF DATE TIME MOOR PAGE RECORDED / SUMMIT COUNTY RECORDER
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KIESTEN

Park City Mune. Corp
445 Massac Ave.
P.O. Box 1480
Park City, Utah 84060

Attn: Mrs. Ruby Ross
City Manager

August 1, 1995

RE: 1439 & 1445
Woodside Ave.

Dear Mrs. Ross,
It has been more than three years since we discussed the City vacating the platted Woodside Avenue property that is partially under the house at 1439 Woodside Ave, that I own.

I am requesting & petitioning the City to vacate & convey to me the platted Woodside property that is described in the attached Quit Claim Deed.

The petition for vacation

EXHIBIT E

is based upon Sections 10-8-8, 1
Utah Code Annotated, as
amended, which provides:

"On petition by a person owning
a lot in a city, praying that
a street or alley in the im-
mediate vicinity of such
lot may be vacated ...

The governing body of such city,
upon hearing and upon being
satisfied that there is good
cause for such ... vacation,
that it will not be detrimental
to the general interest,
and that it should be
made, may declare by
ordinance ...

The vacation will further
resolve one of the many
boundary line problems that
has existed over 100 years
in Park City.

I have agreed to convey certain
real property east of the house
at 1445 Woodside Ave. to the
city. Said property is described
in the attached Quit Claim
Deed (Both deeds were prepared
57

by James Carter, Esq., former
City attorney)

In addition to my conveyance
of real property, I have
agreed to certain conditions that
the Planning Commission Staff
has recommended to further
the interests of Park City.

Respectfully
Submitted
Alane Hansen

cc Jodi Hoffman

City City

Eric W. Duffan

City Eng.

Kirsten Whitstone

Planning Dept.

When recorded, mail to:

QUIT CLAIM DEED

PARK CITY MUNICIPAL CORPORATION, a municipal corporation organized and existing under the laws of the State of Utah, with its principal office at 445 Marsac Avenue, Park City, Summit County, Utah, GRANTOR, hereby quit claims to ALAN D. FRANDSEN, GRANTEE, the following described tract of land in Summit County, State of Utah:

Beginning at a point which is the northeast corner of Block 21, Snyder's Addition to Park City, said point also being on the north line of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence South 35°59' East along the easterly line of said Block 21, Snyder's Addition to Park City, 95.81 feet, more or less, to a point on the northerly line of Wildwood Condominiums as described on the Record of Survey Map for Wildwood Condominiums as recorded in the office of Summit County Recorder, Coalville, Utah; thence North 55°57'59" East along the said northerly line of Wildwood Condominiums 49.095 feet to a point on the westerly right-of-way line of Woodside Avenue (40.0 feet wide); thence North 35°59' West 59 feet, more or less, to a point on the north line of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence west along the section line and along the northerly line of Snyder's Addition 63 feet, more or less, to the point of beginning.

The officers who sign this deed hereby certify that this deed and the transfer represented hereby were duly authorized under a resolution duly adopted by the City Council of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this ____ day of _____, 1992.

PARK CITY MUNICIPAL CORPORATION

Bradley A. Olch, Mayor

Attest:

Anita L. Sheldon, City Recorder

Approx. 1,400 sq. ft.

When recorded, mail to:

PARK CITY MUNICIPAL CORPORATION
P. O. BOX 1480
PARK CITY, UTAH 84060
ATTN: CITY RECORDER

QUIT CLAIM DEED

ALAN D. FRANDSEN, GRANTOR, hereby quit claims to PARK CITY MUNICIPAL CORPORATION, GRANTEE, the following described tract of land in Summit County, State of Utah:

Beginning at a point East 1398.00 feet, and North 55°30' East 127 feet from the Southwest corner of Section 9, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 34°30' East 55.508 feet; thence South 55°30' West 6.537 feet to the westerly right-of-way line of Woodside Avenue (40.00 feet wide); thence North 32°26'20" West along said westerly right-of-way line 55.544 feet; thence North 55°30' East 4.539 feet to the point of beginning. Contains 307.40 square feet.

DATED this _____ day of _____, 1992.

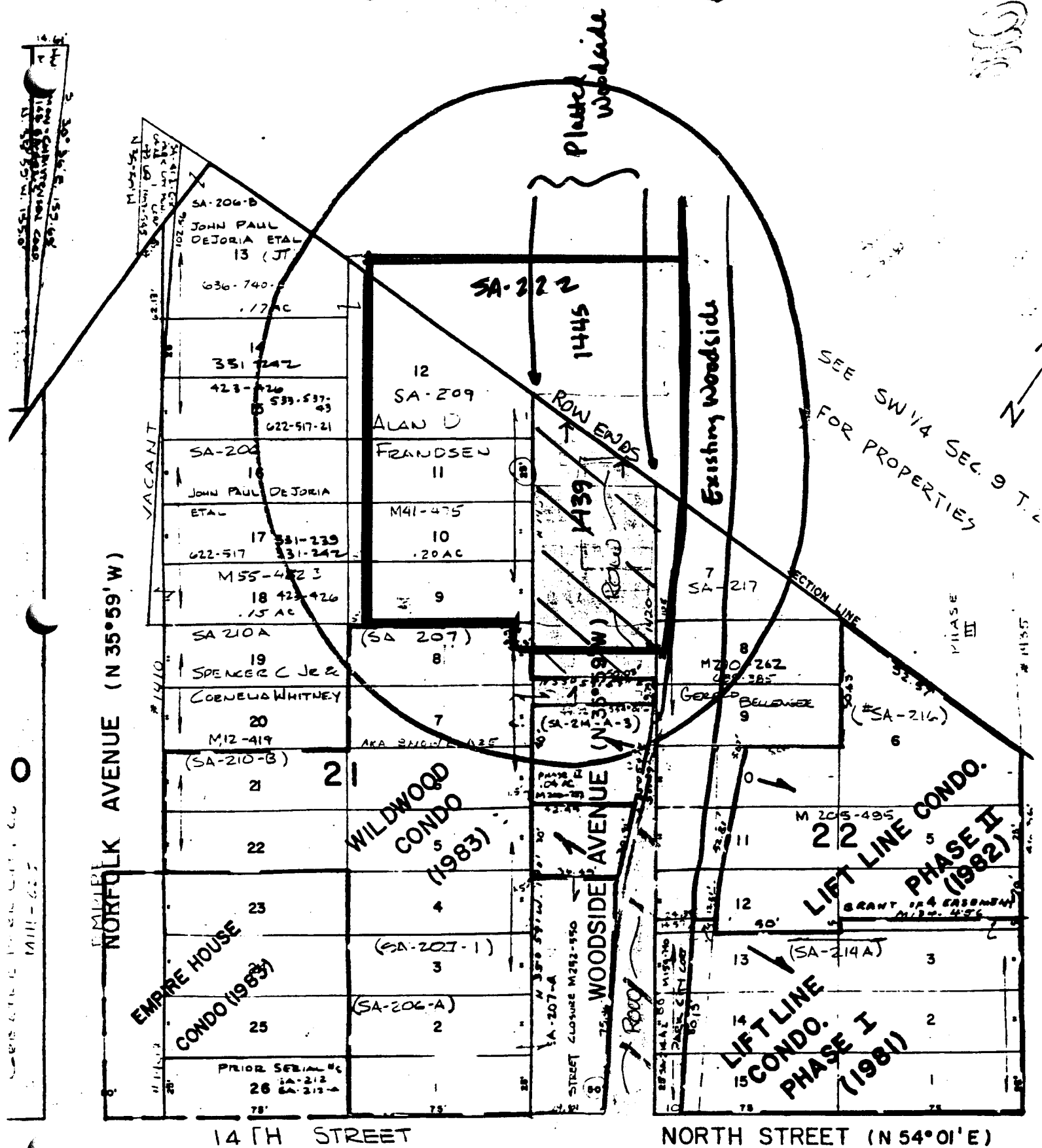
Alan D. Frandsen

*Approx:
307 sq. ft.*

STATE OF UTAH)
 SS
COUNTY OF SUMMIT)

The foregoing Quit Claim Deed was acknowledged before me this _____ day of _____, 1992 by Alan D. Frandsen, who executed the same.

NOTARY PUBLIC



provided	REVISIONS - DATE AND INITIAL (In Pencil)			
StateTaxComm	25 March 1977			
By				
Associates Inc.				

SUMMIT CO

EXHIBIT F

MEMORANDUM

TO: JANICE LEW, PLANNER
FROM: MARK HARRINGTON, ASST. CITY ATTORNEY
DATE: 5/8/95
RE: VACATION PROCEDURE
CC: FILE NO. 95-__¹

Road vacation is governed by UCA § 10-9-808, 809 and 810. (attached) Once the City receives a petition, the Council must hold a public hearing within 45 days. A petition must include the names and address of all owners of record in the entire plat, the names and address of all owners of property adjacent to the portion to be vacated, and the signatures of all those above who consent. If all do not consent, notice of the date, time and place of the hearing must be mailed to all owners AND the notice must be published in the Park Record for four consecutive weeks. Notice is to be paid by the petitioner.

After the hearing, the Council must make a decision within 30 days. The Council may vacate the road if it finds neither the public nor any person is materially injured by the vacation, and that there is good cause for the vacation.

If you have any questions regarding this matter, please call me at X5011.

EXHIBIT G

¹K: \LEGAL\MH\CDD\VACATE.MEM

armer § 27-3-3, clearly indicated that the Legislature did not regard the dedication to the public of a street in a platted subdivision as the surrender of an easement with retention of the fee to the corpus in the abutting owner. *White v. Salt Lake City*, 121 Utah 134, 239 P.2d 210 (1952).

A statutory dedication by the filing of plats of a subdivision vests a fee title in the municipality or county to the streets shown therein. *Oregon Short Line R.R. v. Murray City*, 2 Utah 2d 427, 277 P.2d 798 (1954).

Location of streets.

—Present use.

The court rejected as unsound the argument that streets could not be located on the plat of a township unless the street was already in use. *Hall v. North Ogden City*, 109 Utah 304, 166 P.2d 221, judgment set aside on other grounds P.2d 221, judgment set aside on other grounds

on rehearing, 109 Utah 325, 175 P.2d 703 (1946).

Rights of owners of abutting land.

—Boundary by acquiescence.

Where county owned street separating property owned by two parties, the doctrine of boundary by acquiescence could not apply since the requirement that the parties be "adjoining" landowners was not met. *Condas v. Willesen*, 674 P.2d 115 (Utah 1983).

—Damages.

The owner of abutting land is not entitled to damages for the laying of a city water main in a street in a platted subdivision where the permission of the commissioners of the county in which the street is situated has been obtained. *White v. Salt Lake City*, 121 Utah 134, 239 P.2d 210 (1952).

COLLATERAL REFERENCES

C.J.S. — 26 C.J.S. Dedication § 22.

10-9-808. Vacating or changing a subdivision plat.

(1) (a) The governing body of a municipality may, with or without a petition, consider any proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any street, lot, or alley contained in a subdivision plat at a public hearing.

(b) If a petition is filed, the governing body shall hold the public hearing within 45 days after it is filed.

(2) Any fee owner, as shown on the last county assessment rolls, of land within the subdivision that has been laid out and platted as provided in this part may, in writing, petition the legislative body to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or amended as provided in this section.

(3) A petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or lot contained in a plat shall include:

(a) the name and address of all owners of record of the land contained in the entire plat;

(b) the name and address of all owners of record of the land contained in the street that is proposed to be vacated, altered, or amended; and

(c) the signature of each of these owners who consents to the petition.

(4) (a) Petitions that lack the consent of all owners referred to in Subsection (3) may not be scheduled for consideration at a public hearing before the legislative body until the notice required by this part is given.

(b) The petitioner shall pay the cost of the notice.

(5) When the legislative body proposes to vacate, alter, or amend a subdivision plat, or any street or lot contained in a subdivision plat, they shall consider the issue at a public hearing after giving the notice required by this part.

MUNICIPAL LAND USE

10-9-810

History: C. 1953, 10-9-808, enacted by L. Effective Dates. — Laws 1991, ch. 235, § 110 makes the act effective on July 1, 1992.

NOTES TO DECISIONS

Statutory history.

The origin of former section in the Laws of 1894 and its later status are given in *Hall v. White*, 109 Utah 325, 175 P.2d 703 (1946).

COLLATERAL REFERENCES

Utah Law Review. — The Failure of Subdivision Control in the Western United States: A Blueprint for Local Government Action, 1988 Utah L. Rev. 569.

C.J.S. — 26 C.J.S. Dedication § 60.

10-9-809. Notice of hearing for plat change.

(1) The legislative body shall give notice of the date, place, and time of a hearing before them to consider a vacation, alteration, or amendment without a petition or to consider any petition that does not include the consent of all land owners as required by Section 10-9-808 by mailing the notice of hearing to all owners referred to in Section 10-9-808, addressed to their mailing addresses appearing on the rolls of the county assessor of the county in which the land is located.

(2) If the proposed change involves the vacation, alteration, or amendment of a street, the legislative body shall give notice of the date, place, and time of the hearing by:

(a) mailing notice as required in Subsection (1); and

(b) either:

- (i) publishing the notice once a week for four consecutive weeks before the hearing in a newspaper of general circulation in the municipality in which the land subject to the petition is located; or
- (ii) if there is no newspaper of general circulation in the municipality, post the notice for four consecutive weeks before the hearing in three public places in that municipality.

History: C. 1953, 10-9-809, enacted by L. Effective Dates. — Laws 1991, ch. 235, § 110 makes the act effective on July 1, 1992.

10-9-810. Grounds for vacating or changing a plat.

(1) (a) Within 30 days after the public hearing required by this part, the legislative body shall consider the petition.

(b) If the legislative body is satisfied that neither the public nor any person will be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the legislative body, by ordinance, may vacate, alter, or amend the plat, any portion of the plat, or any street or lot.

(c) The legislative body shall ensure that the vacation, alteration, or amendment is recorded in the office of the county recorder in which the land is located.

(2) An aggrieved party may appeal the legislative body's decision to district court as provided in Section 10-9-1001.

general interest, it may, by ordinance, and without petition therefor, vacate or narrow such street or alley or any part thereof.

History: C. 1953, 10-8-8.2, enacted by L. 1955, ch. 14, § 1.

NOTES TO DECISIONS

Ordinance not required.

Although narrowing of a street must be accomplished by the passing of an ordinance, special improvement district plan which did not actually affect total width of street, but

widened the sidewalk, thus narrowing vehicular passage, was valid without authorization of an ordinance. Standard Optical Co. v. Salt Lake City Corp., 535 P.2d 1150 (Utah 1975).

10-8-8.3. Notice required — Exception.

Notice of the intention of the governing body to vacate any street or alley, or part thereof, shall in all cases be given as provided in the next section, except when there is filed with the governing body written consent to such vacation by the owners of the property abutting the part of the street or alley proposed to be vacated, in which case such notice shall not be required.

History: C. 1953, 10-8-8.3, enacted by L. 1955, ch. 14, § 1.

10-8-8.4. Notice — How given.

No street or alley shall be so vacated, unless notice of the pendency of the petition and prayer thereof, and the date of the hearing thereon, if such petition is filed, or of the intention of the governing body of the city to vacate, and the date of the hearing on such question if no petition is filed, be given by publishing in a newspaper published or of general circulation in such city once a week for four consecutive weeks preceding action on such petition or intention, or, where no newspaper is published in the city by posting the notice in three public places therein four consecutive weeks preceding such action, and by mailing such notice to all owners of record of land abutting the street or alley proposed to be vacated addressed to the mailing addresses appearing on the rolls of the county assessor of the county wherein said land is located. Action thereon shall take place within three months after the completion of notice.

History: C. 1953, 10-8-8.4, enacted by L. 1955, ch. 14, § 1.

10-8-8.5. Effect of vacation or narrowing of street or alley.

The action of the governing body vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating ordinance, as a revocation of the acceptance thereof, and the relinquishment of the city's fee therein by the governing body, but the right of way and easements therein, if any, of any lot owner and the franchise rights of any public utility shall not be impaired thereby.

History: C. 1953, 10-8-8.5, enacted by L. 1955, ch. 14, § 1.

NOTES TO DECISIONS

Reversion of underlying fee.

The interest a municipal body acquires in the streets in a platted subdivision is a determinable fee which reverts back to the abutting

property owners upon vacation of the municipality's interest. *Sears v. Ogden City*, 572 P.2d 1359 (Utah 1975).

— *property given equally to adjacent owners.*

10-8-9. Bathhouses, playgrounds.

They may establish, maintain and provide for the supervision of bathhouses, public playgrounds, recreation places and swimming pools.

History: R.S. 1898 & C.L. 1907, § 206, subd. 8; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1, C.L. 1917, § 570x8; L. 1919, ch. 11, § 1; R.S. 1933 & C. 1943, 15-8-9.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of

commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Establishment of playgrounds generally, § 11-2-1. School buildings as civic centers, § 53A-3-413 et seq.

NOTES TO DECISIONS

Liability of city for negligence.

City was not liable for personal injuries sustained as a result of the collapse of a tier of seats erected in a public park since it was acting in a governmental capacity in the erection of the seats. *Alder v. Salt Lake City*, 64 Utah 568, 231 P. 1102 (1924).

A city operating bathhouses and swimming

pools for pecuniary profit or fees similar to those charged by private establishments does so in its corporate, and not in its governmental, capacity and is liable for injury to patrons resulting from negligence in the operation. *Burton v. Salt Lake City*, 69 Utah 186, 253 P. 443, 51 A.L.R. 364 (1926); *Griffin v. Salt Lake City*, 111 Utah 94, 176 P.2d 156 (1947).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 202; 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 6. C.J.S. — 63 C.J.S. Municipal Corporations § 1057; 64 C.J.S. Municipal Corporations § 1818.

A.L.R. — Liability to one struck by golf ball. 53 A.L.R.4th 282.

Violation of governmental regulations as to conditions and facilities of swimming pools as affecting liability in negligence, 79 A.L.R.4th 461.

10-8-10. Trees.

They may plant, or direct and regulate the planting of, ornamental shade trees in streets, parks and public grounds.

History: R.S. 1898 & C.L. 1907, § 206, subd. 9; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x9; R.S. 1933 & C. 1943, 15-8-10.

beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Right of action for injury to trees, §§ 78-38-3, 78-38-4.

There was no public comment.

Chair Erickson closed the public hearing.

MOTION: Commissioner Child moved to CONTINUE the Brookside Annexation public hearing until August 9. Commissioner Klingenstein seconded the motion.

VOTE: The motion passed unanimously.

8. Frandsen Subdivision, 1439-1445 Woodside Avenue - Plat amendment application to make 4 lots into 3

Due to a conflict of interest, Commissioner Tesch abstained from discussing and voting on this matter.

Planner Kirsten Whetstone reviewed the proposal for a three-lot subdivision that would be a lot combination and a subdivision of unplatted property which would place two existing structures on platted lots and provide one lot for a future house or duplex. The site is in the 1400 block of Woodside on the west side around 1437-1445. The Staff recommended that the Planning Commission forward a positive recommendation to the City Council to approve the subdivision and plat amendment based on the findings of facts, conclusions of law, and conditions of approval outlined in the staff report as well as the amended conditions distributed to the Planning Commission that evening.

Chair Erickson opened the public hearing.

Leslie Miller, a resident, referred to item 1 of the Conclusions of Law which states that there is good cause for this plat amendment and subdivision plat. She stated that she found it difficult to find a good cause to approve the proposal unless the applicant had agreed to pay fair market value for the ground. She could see no good cause for a subdivision unless there was a benefit to the community and the City, and she could find none.

Alan Frandsen, the applicant, remarked that a great deal of work had gone into the project for over 10 years to resolve the property line dispute. He felt every City body, past and present, was familiar with the problem, and if the City ever intended to straighten out some of the property lines in Park City, this was one way it could be done. He felt it would benefit the City and adjacent property owners to establish the roadway and proper property lines. He noted that he would gain nothing from it, and that it would diminish the possibility of building more units.

Diane Durham, a property owner adjacent to the Frandsen property, stated that she had not received any notices about the meeting or that anything was being done with the property. She was notified about the Town Run but not the matter totally adjacent to her property. She asked if Leslie Miller had spoken as a citizen or as a councilwoman. The record keeper clarified that Ms. Miller stated she was speaking as a resident. Ms. Durham noted that the location of the houses makes it a weird street. A property survey in 1972 showed her property to be four feet over the next door neighbor's line. When a new survey was conducted, her property shifted west four feet. All of the property in that area was in flux and messed up. She felt the Planning Commission should consider that, when Mr. Frandsen purchased his house in the early 1970's, he and the seller felt that it was on the property line and not on City property. She felt that, if Mr. Frandsen was paying taxes on the property, it should be his property and not taken by the City.

On the issue of noticing, Director Lewis remarked that once in a while someone does not get a notice. The City publishes the required notices in the paper. Individual notices sent are over and above the requirements of the statute. He offered to check the list to see if a notice was sent to Ms. Durham. He apologized for the oversight and recognized it as a problem, but it does not negate the process.

Commissioner Child reiterated the discussion during work session about separating the two issues of the Planning Commission looking at the subdivision from a planning standpoint and forwarding a recommendation to the City Council with a message to consider compensation for the land for the vacation.

Commissioner Zimney hoped that when the matter reached the City Council the exact dimensions of the property and the amount of land involved in vacating the right-of-way would be made known. In reading the Staff report, the vacation of land sounded like a small, customary piece when, in fact, it was a substantial piece of property. She would concur with Commissioner Child if she could be assured that pertinent information would be provided to the City Council.

Director Lewis stated that the information would be forwarded with that recommendation, and a staff report always accompanies the recommendation. The staff report would indicate the approximate square footage based on the document. Planner Whetstone explained that the information was not provided to the Planning Commission because it was not part of the staff review of a subdivision planning document.

MOTION: Commissioner Child moved to forward a POSITIVE recommendation to the City Council with regard to the Frandsen Subdivision with the modifications outlined in the memo received that evening from Planner Whetstone. The modifications replaced Item 1 to read, "Approval of the subdivision plat is ~~continued~~ upon the applicant successfully completing the vacation of Woodside Avenue right-of-way crossing the subject property." All other conditions after Condition 1 will be renumbered, and a Condition 10 shall be added stating that, "Prior to recording the subdivision plat, the applicant shall add a note to the plat specifying that no additional subdivision of the property shall occur." Along with the POSITIVE recommendation to City Council is direction to the Staff to forward the Planning Commission's concern relative to the vacation of the right-of-way specifically concerning the value and past precedent issues of compensation for vacated right-of-way. The City Council should understand the size of the property being requested to be vacated. Commissioner Klingenstein seconded the motion.

Commissioner Calder asked that the motion include language addressing title interest. Commissioner Child amended her motion to add, "The Planning Commission suggests that the City Council review title reports and the legal situation involved as well as property appraisals." Commissioner Klingenstein accepted the amendment.

Commissioner Jones requested an amendment to the motion relative to Finding of Fact 1. He suggested that it be reworded to read, "The proposed plat amendment and subdivision plat is consistent with the Park City Land Management Code."

Commissioner Child amended her motion to include the change to Finding of Fact 1. Commissioner Klingenstein accepted the amendment.

VOTE: The motion passed unanimously with Commissioner Tesch abstaining from the vote.

Conditions of Approval - Frandsen Subdivision

1. Approval of the subdivision plat is contingent upon the applicant successfully completing the vacation of the Woodside Avenue ROW crossing the subject property.
2. Prior to plat recordation, the City Council, City Attorney, and City Engineer shall review and approve the plat.

3. Prior to plat recordation, the cinder block garage at 1439 Woodside Avenue shall be removed and the resulting disturbed area graded smooth. All debris shall be removed.
 4. All Standard Project Conditions apply.
 5. There shall be a note on the plat limiting the maximum house size for Lot B to 2,400 square feet, with an additional 600 square feet allowed for a garage.
 6. There shall be a note on the plat, and a Grant of Easement submitted, granting a facade easement for 1439 Woodside Avenue.
 7. There shall be a note on the plat granting a tree preservation easement for the evergreen trees at 1437 and 1439 Woodside Avenue.
 8. There shall be a note on the plat dedicating a 10-foot snow storage easement across the frontage of Lots A, B, and C.
 9. There shall be a note on the plat dedicating a 5-foot strip of right-of-way adjacent to the front property lines for Lots A, B, and C.
 10. Prior to recording the subdivision plat, the applicant shall add a note to the plat specifying that no additional subdivision of the property shall occur.
9. Town Run

This item was scheduled for public hearing only. No action would be taken at this meeting.

Chair Erickson noted that the Planning Commission wanted to hear three things from the public: what issues should be considered; what opportunities were available, if any, in considering the item; and what concerns the public had relative to the item. The purpose of the public hearing early in the process was to ensure that the Planning Commission is aware of the public issues, opportunities, and concerns prior to deliberation. He referred to the list of issues provided by the Planning Staff that the applicant should address prior to Planning Commission action.

Planner Whetstone explained that the proposal was a modification to the approved Sweeney MPD for the west side of Park Avenue, including a modification to the Sweeney Town Life Small Scale MPD for a bridge connecting to the parcel on the east side. The original Town Lift MPD approval did not include a bridge. It also

EXHIBIT "A"

Recorded at Request of Alan D. Frandsen
at _____ M. Fee Paid \$ _____
by _____ Dep. Book _____ Page _____ Ref.: _____
Mail tax notice to _____ Address 353 East Fourth South, Suite 302
Salt Lake City, Utah 84111

QUIT CLAIM DEED

TOM P. COSTAS and VINIE S. COSTAS, his wife
of Park City, County of Summit, State of Utah, hereby
QUIT CLAIM to _____ grantors

ALAN D. FRANDSEN, a single man

of Park City, County of Summit, State of Utah
TEN Dollars and other good and valuable consideration----- for the sum of
the following described tract of land in Summit DOLLARS
State of Utah, to wit: County,

All of Lots 9 thru 12, inclusive, Block 21, Snyder's Addition
to Park City, according to the official plat thereof on file
in the office of the County Recorder, Summit County, State
of Utah.

EXCEPTING therefrom the Westerly 5.0 feet.

Entry No.	<u>117210</u>	Book	<u>M 41</u>
RECORDED	<u>10-10-72</u>	at	<u>9:19</u> M Page <u>475</u>
REQUEST of	<u>Alan D. Frandsen</u>		
FEE	<u>2.00</u>	WANDA Y. STROOS, SUMMIT CO. RECORDER	
\$	<u>2.00</u>	E. Wanda Y. Stroos	
INDEXED	<u>A</u>	<u>2</u>	ABSTRACT

November 1, 1993

Barbara Kresser
Summit County Assessor
P. O. Box 128
Coalville, Utah 84017

Dear Ms. Kresser:

A question has arisen whether property taxes are currently being assessed on a house located at 1439 Woodside Avenue in Park City and, if so, whether they are paid and by whom. This question is complicated by two factors: 1) the house at that address appears to be all or partially located within platted Woodside Avenue; and 2) Alan Frandsen, who claims ownership of the house at 1439 Woodside apparently owns a neighboring house located at 1445 Woodside. It is possible that both houses are assessed under the same tax identification number, or taxes may be assessed on only one house with no record existing of the other.

Park City would be most appreciative if you would verify whether the taxes are being paid on the houses at 1439 and 1445 Woodside. If they are not, obviously all reasonable efforts should be taken to place the omitted property on the tax rolls and collect back taxes. It appears that 1445 Woodside is assessed under the tax ID #SA-209. Up until at least 1968, a tax identification number of SA-211 was assigned to 1439 Woodside, but SA-211 may have been consolidated into SA-209. I have enclosed a copy of the assessment card for SA-211 for your assistance. I would also be happy to facilitate a visual inspection if that would be helpful.

If further information would be helpful to you, please contact me. Thank you.

Yours truly,

J. Craig Smith

cc: Jodi Hoffman
File

SUMMIT COUNTY STATE OF UTAH

ASSESSOR: BARBARA J. KRESSER
ATTORNEY: ROBERT ADKINS
AUDITOR: BLAKE L. FRAZIER
CLERK: DOUGLAS R. GEARY
RECORDER: ALAN SPRIGGS
SHERIFF: FRED ELEY
TREASURER: GLEN G. THOMPSON

November 19, 1993

J. Craig Smith
Legal Department
Park City Municipal Corp.
P. O. Box 1480
Park City, Utah 84060

Dear Mr. Smith:

Both Steve Martin, county staff appraiser for the Park City area, and I have carefully researched and visited the homes you have questioned located on Woodside Avenue. This is what we have determined.

1989		
SA-209	SA-211	SA-222
land only	land & house	land & house

1990 and 1991 same

1992 county recorder combined SA-209 and SA-211 into SA-209
-one parcel and one house
-SA-222 land and house

1993

SA-209	SA-222
land & house	land and house

The situs address for SA-209 is 1439 Woodside and for SA-222 is 1445 Woodside.

If there were a correction to be made, it would be to move the house from SA-222 to SA-209 where it is physically located. Both homes of the current owner, Mr. Alan Frandsen, have been accounted for during the period in question.

Sincerely,

Barbara Kresser
Barbara J. Kresser
Summit County Assessor

Memorandum

To: The Honorable Bradley Olch
Members of the City Council

From: Jodi Hoffman, City Attorney

Date: November 10, 1993

Subject: 1439 Woodside

On November 4, 1993, you received a memo from Christopher Smart regarding his residence at 1439 Woodside Avenue. At that time, I offered you a brief update on the situation, and promised you a comprehensive memorandum on the subject. What follows is a summary of the facts, a recitation and analysis of the law, and a series of options.

The Facts

1439 Woodside is situated within the original 1883 Snyder's Addition Plat describing the lots and dedicating the streets and rights-of-way within the limits of Park City. The property in question involves platted Woodside Avenue and four adjacent lots that were at the northernmost edge of the City, just prior to incorporation of Park City in 1884.

The Snyder's Addition Plat does not correlate well with existing Old Town streets and structures. It was drafted out of state, in two dimensions, without attention to topography, or to existing public ways. As a result, many of the existing streets diverge from the "paper" streets. In the case of the 1400 block of Woodside, the existing street runs completely east of the platted street.

I have attached two maps for your reference. The first, is an aerial map, superimposed by platted rights-of-way. As the map demonstrates, 1439 Woodside is a small historic home that lies within "paper" (platted) Woodside Avenue. An accessory garage/art studio lies partially within platted Woodside, and partially within an adjacent lot owned by Alan Frandsen.

The second map is the relevant portion of the Snyder's Addition Plat. It shows Block 21, lots 9, 10, 11, and 12, owned by Alan Frandsen, and shows a rough approximation of how the 1439 Woodside home and garage are situated with respect to the lots and the platted street.¹ (Both maps show

¹ Alan purchased Block 21, lots 9, 10, 11, and 12, by deed, in 1972. It appears that he has been paying taxes on those lots, with an associated residence (1439 Woodside), since that time. Although we have not yet heard from the County regarding our inquiry into the

that there are structural encroachments all along the west side of platted Woodside.) Neither map results from a survey to establish the location of the improvements, so both should be considered as approximate illustrations of the improvements relative to the platted street.

In the past, the City abdicated its interest in the platted streets (by vacation or by Quit Claim), sometimes for no compensation and other times for a close approximation of market value. That practice allowed the adjacent lot owner to develop a much larger parcel than he/she originally purchased, and allowed fairly intense development within Old Town. In the case of the Wildwood Condominium project, just south of 1439 Woodside, the City sold its right-of-way to the developer for fair market value. More recently, the City has granted revocable encroachment permits to allow private improvements to remain in the public rights-of-way, generally without charge.

In the case of the Frandsen property, the City stepped back from its historic course of vacating the right-of-way to the adjacent land owner. In 1982 Alan Frandsen had a buyer for his property who wanted to demolish the structure at 1439 Woodside and construct a condominium similar to the Wildwood Condominiums. He asked the City to vacate platted Woodside as it had with the adjoining property.

By that time, the City was not interested in another large condominium project in that neighborhood, and refused to vacate platted Woodside to Frandsen. Frandsen sued the City in 1985 arguing that regardless of the Council's assertions, he owned the platted street. Among other things, he alleged that the City's practice of vacating the paper streets upon adjacent landowners' requests constituted an implied vacation of all unused portions of platted streets within the City.

The Law

In 1986, Judge Billings ruled that the City had not vacated the platted street in front of Frandsen's property and dismissed his claim. Although Christopher Smart asserts otherwise, the Council should know that at no point in the litigation did the parties, or the judge, discuss the impact of the litigation on Frandsen's home at 1439 Woodside. It simply was not relevant to the controversy at hand: If Frandsen had prevailed, his purchasers would have demolished the home to construct a new condominium. Because the

payment of taxes at 1439 Woodside, we have eliminated several scenarios that would suggest that Frandsen had not paid taxes. Further, because of the law of Occupying Tenants in Utah, the payment of taxes on 1439 Woodside is not relevant to the question of whether Frandsen is a rightful claimant to the value of the home.

City prevailed, the pending sale and the threat of an additional condominium fell through. The City's ends were achieved.

Chris Smart has asserted that because of the 1986 court ruling, the home at 1439 Woodside belongs to the City. This is not a correct interpretation of Judge Billings' ruling, as described above, nor is it a correct interpretation of the law, should a court be asked to rule on the matter.

The law is very clear: In brief, Title 57 Chapter 6 of the Utah Code (Occupying Claimants) provides that the City owns the land, but not the improvements to the land. Utah Code § 57-6-3. If the City wishes to own the improvements, the statute provides that the City may "evict" Frandsen and his tenants (Miller and Smart), and then must pay him for the value of the improvements (i.e. the home and the garage/art studio). Id. If the City is unable to negotiate a price, the statute provides for a judicial proceeding to determine the value of the home (absent the land).² Id.

In sum, it is simply not the case that the City owns the home at this time. If the City wishes to spend additional funds to acquire the home, it is fully within the City's right to do so.

Chris Smart also asserted in his letter to the Council last week, that if the City does not intervene in his eviction proceeding currently pending in 3rd Circuit Court, the City will forever lose its rights to platted Woodside. Mr. Smart is not correct. The City is not a party to the 3rd Circuit Court proceeding. Therefore, the City's rights cannot be affected by the court's rulings. Further, Circuit Courts are courts of limited jurisdiction and have no jurisdiction to determine real property disputes.

Options

As discussed above, the City has several options:

1. Stay the course;
2. Grant Frandsen an encroachment permit;
3. Evict Frandsen and his tenants and purchase the home from Frandsen;
4. Sell the right-of-way to Frandsen;
5. Rent the right-of-way to Frandsen.

² We have not attempted to estimate the value of the home in preparation of this document.

If the Council desires to change City practice, it should first direct staff to conduct a comprehensive survey of the volume and nature of existing encroachments. This is for two reasons: 1) My sense is that a change in policy could have a dramatic effect on a great number of citizens in Old Town and perhaps elsewhere; 2) The City must not single Frandsen out for treatment any different from that of other similarly-situated encroaching property owners.

Mayor Bradley A. Olch

PARK CITY

1684

Office of The Mayor and City Council

Ruth Gezelius
Roger Harlan
Lou Hudson
Shauna Kerr
Leslie Miller

July 28, 1995

Dear Rick Lewis and Jodi Hoffman,

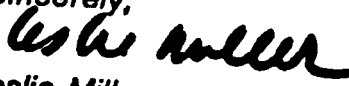
Having reviewed the staff information in the planning commission packets regarding the proposed Frandsen subdivision and street vacation request, it is my opinion that critical information to the decision has been missing. While I understand the subdivision portion of the proposal has been approved by the Planning Commission, the issue of vacating platted Woodside is yet to be determined. It is this portion of the application that causes me concern in combination with the lack of relevant information. I am therefore requesting specific information from your departments and staff to be included in the City Council packet. If you are unable to produce the requested information for any reason will you please call me regarding my request?

I consider the disposal of public land to be a serious matter and wish to make a decision that is well based in fact and sound judgement. Thank you for your assistance. My hope is that whoever ultimately holds title to the real property at 1439 Woodside is the best steward of the land and that the general public receives the highest and best use of it's property.

1. Total square footage of the area to be vacated. ✓ ³¹⁰⁰ ₄₈₀₀, ACCORDING TO COURSE MAPS
2. A valid appraisal of the value of the parcel as it is currently zoned. ✓ \$235-\$10.00/sf w/o restriction
3. The total amount of property tax paid on the structure at 1439 Woodside since Frandsens alleged ownership. ✓ AVAILABLE AT COUNTY ASSESSOR
4. A copy of the actual deed to the structure at 1439 Woodside. ✓ EXHIBIT I
5. A copy of the survey of the total area proposed for vacation and subdivision. ✓ EXHIBIT B
6. An inventory of the significant vegetation on the public parcel as well as the parcels proposed for development. ✓ EXHIBIT L
7. Land Management code that references the destruction of public property and penalties and municipalities failure to respond. none
8. The total cost accrued in legal fees for the defense of the Frandsen vs. Park City lawsuit in 1984. - < \$1000.00

9. All options as outlined by statute for vacation of public property. ✓ EXHIBIT H
10. A summary of all legal and/or contractual arrangements between Park City ✓ if related.
and Frandsen during the past 15 years. (Please include Prospector Square EXHIBIT L
tailings issue, 1439 Woodside lawsuit, Swede Alley property, and 1445
Woodside building pad) ↑ AVAILABLE IN LEGAL DEPT.
11. A copy of the building permit for reroofing 1439 Woodside. ✓ EXHIBIT L

This is by no means intended to be a complete list of necessary information. I'm certain the staff will have additional items to bring to the discussion as well.

Sincerely,

Leslie Miller

c.c. Park City Council
City Manager, Toby Ross

B94-00815

BUILDING PERMIT
BUILDING INSPECTION DEPARTMENT

Page 1

445 Marsac Avenue
P.O. Box 1480
Park City, Utah 84060
(801) 645-5040

Building B-SIMPLE
Permit Number: B94-00815

Date of Application: 10/26/1994
Date Issued: 00/00/0000
Permit Expires: 04/24/1995
Status: APPROVED

Job Address:
Parcel No:

Owner of Property: ALAN FRANDSEN
Mailing Address:

Phone #:
Zip:

Contractor: BAIN WILLIAM L
Mailing Address: 3929 NORA CIRCLE
SALT LAKE CITY UT

Phone #: 0004845183
Zip: 84124
St.Lic#: 222330465501

Work Description:
REROOF

Kind of Const: SALT SINGLE FAMILY ALTERATION

Class Code: 434 # of Bldgs: 000 # of Units: 000

Valuation: 3,700

BUILDING FEE SCHEDULE

Building Fee.....	\$ 27.75
Plan Check Fee.....	\$ 10.04
Investigation Fee.....	\$.00
Water Connect Fee....	\$.00
Reinspection Fee.....	\$.00
1% State Surcharge...	\$.28
Water Development Fee	\$.00
Water Meter Fee.....	\$.00
Impact Assessment Fee	\$.00
WAIVE FEES(y/n).....	Y
TOTAL FEE.....	\$ 46.07

7 fees waived

Landscape Guarantee Amount:\$.00

Conditions:

SIGNATURE

[Handwritten Signature]

DATE

Oct 10/24

GRANT FUNDS RELEASE FORM

To: Finance Department

From: Planning Department

Date: July 8, 1993

Re: Historic Incentives Grant for 1445 Woodside

Please release payment (or partial payment) in the amount of \$ 5,000 for the above 1992 Historic Incentives Grant to be mailed to Alan Hansen. The recipient has completed (or partially completed) the approved renovation work.

Robert Taylor 7/8/93
Building Inspection Department Date

Janice New 7/13/93
Planning Department Date

Ordinance No. 95-

**AN ORDINANCE APPROVING THE FRANDSEN SUBDIVISION;
BEING A REPLAT OF A PORTION OF LOT 8 AND LOTS 9, 10, 11 AND 12,
BLOCK 21; AND A PORTION OF LOTS 7 AND 8, BLOCK 22
OF THE SNYDER'S ADDITION OF THE PARK CITY SURVEY;
AND INCLUDING A PARCEL KNOWN AS SA-222,
LOCATED AT 1445 WOODSIDE AVENUE; AND INCLUDING THE
WOODSIDE AVENUE RIGHT-OF-WAY LOCATED ADJACENT TO
THESE PARCELS FROM 1437 TO 1439 WOODSIDE AVENUE**

WHEREAS, the owner of the property known as the Frandsen Subdivision has petitioned the Planning Commission and City Council for vacation of certain right-of-way and for approval of a final subdivision plat, including such a right-of-way; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, on July 26, 1995 the Planning Commission held a public hearing and approved the final plat attached hereto as Exhibit A; and

WHEREAS, the City Council held a public hearing and considered the vacation and subdivision plat at a regularly scheduled meeting on August 31, 1995; and

WHEREAS, it is in the best interest of Park City, Utah to vacate the right-of-way and to approve the final plat, known as the Frandsen plat;

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

SECTION 1. FINDINGS OF FACT.

1. The subdivision proposal is consistent with the Park City Land Management Code and State Statutes relating to vacation of public right-of-way.
2. The proposed lot configuration meets requirements of the RC Zoning District.
3. The proposed lot configuration will reduce the density from portions of seven or more lots with RC development potential, to three lots with limited single family development potential.
4. The proposed subdivision, with conditions would preserve the "Old Town" residential character of this section of Woodside Avenue.

5. Historic buildings are valuable assets which contribute to the distinct character of the community. It is therefore desirable to encourage new construction of residential structures which are compatible with the mass and scale of the historic context. The applicant has agreed to dedicate a facade easement for the historic structure and limit the size and mass of any additions.
6. Large trees are valuable to the community for the beauty and shade they offer. The applicant has agreed to dedicate tree preservation easements for the large conifer trees on the property.
7. The owner has agreed to dedicate a 10 foot snow storage easement across the front of these lots at the request of the City Engineer.
8. The owner has agreed to dedicate a 5 foot strip of land across the front of these lots as right-of-way for street widening or sidewalks if deemed necessary in the future.
9. The existing right-of-way adjacent to lots 9 - 12 does not continue to the north in front of 1445 Woodside Avenue, because the Snyder's Addition Subdivision Plat ends between 1439 and 1445 Woodside Avenue.
10. The paved Woodside Avenue is located entirely to the east of the platted Woodside in this location and the portion of platted Woodside that is to be vacated is not adjacent to existing right-of-way to the north, east, or west and is adjacent to only a remaining sliver of right-of-way to the south.
11. The applicant has agreed to limit construction on the 9363 sq. ft. Lot B to a single family or duplex house not to exceed 2,400 sq. ft. (current zoning would allow approximately 4,000 sq. ft.).
12. Parking will be provided in accordance with the City's Land Management Code.
13. The applicant has requested in writing the vacation of unimproved Woodside Avenue right-of-way, between Lots 9 - 12, Block 21 and Lots 7 and 8, Block 22 of the Snyder's Addition Subdivision plat.
14. Proper procedure for vacation of right-of-way was followed and proper notice given to all owners within the Snyder's Addition Subdivision.
15. A public hearing was held on July 26, 1995 by the Planning Commission and on August 31, 1995 by the City Council, to receive public input.
16. The applicant, Alan Frandsen, has agreed to the conditions of approval as listed in the following Section 3.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for vacation of the right-of-way and for the subdivision plat and that neither the public nor any person will be materially injured by the vacation or the proposed plat. The subdivision plat is in conformance with the Land Management Code.

SECTION 3. PLAT APPROVAL. The Frandsen Subdivision plat for 1437, 14439 and 1445 Woodside Avenue, being Lots A, B, and C is approved as shown on the attached Exhibit A with the following conditions:

1. Approval of the subdivision plat is contingent upon the applicant successfully completing the vacation of Woodside Avenue right-of-way crossing the subject property.
2. Prior to plat recordation, the City Attorney and City Engineer shall review and approve the plat.
3. Prior to plat recordation, the cinder block garage at 1439 Woodside Avenue shall be removed and the resulting disturbed area smoothly graded. All debris shall be removed.
4. All standard project conditions apply.
5. There shall be a note on the plat limiting the maximum house size for Lot B to 2,400 square feet, with an additional 600 square feet allowed for a garage.
6. There shall be a note on the plat, and a grant of easement submitted, granting a facade easement to Park City for 1439 Woodside Avenue.
7. There shall be a note on the plat dedicating to Park City a ten foot snow storage easement across the frontage of Lots A, B and C.
9. There shall be a note on the plat dedicating a five foot strip of public right-of-way adjacent to the front property lines for Lots A, B and C.
10. Prior to recording the subdivision plat, the applicant shall add a note to the plat specifying that no additional subdivision of the property shall occur.

SECTION 4. VACATION OF RIGHT-OF-WAY. All right-of-way immediately adjacent to a portion of Lot 8 and Lots 9, 10, 11 and 12, Block 21 and a portion of Lots 7 and 8, Block 22 of the Snyder's Addition of the Park City Survey, more specifically described below is hereby vacated:

Beginning at a point which is the northeast corner of Block 21, Snyder's Addition to Park City, said point also being on the north line of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence South 35°59' East along the easterly line of

said Block 21, Snyder's Addition to Park City, 95.81 feet, more or less, to a point on the northerly line of Wildwood Condominiums as described on the Record of Survey Map for Wildwood Condominiums as recorded in the office of Summit County Recorder, Coalville, Utah; thence North 55°57'59" East along the said northerly line of Wildwood Condominiums 49.095 feet to a point on the westerly right-of-way line of Woodside Avenue (40.0 feet wide); thence North 35°59' West 59 feet, more or less, to a point on the north line of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence west along the section line and along the northerly line of Snyder's Addition 63 feet, more or less, to the point of beginning.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect upon adoption.

PASSED AND ADOPTED this 31st day of August, 1995.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, Deputy City Recorder

Approved as to form:

Jodi Fatland Hoffman, City Attorney

COUNCIL AGENDA REPORT

DATE: 8/25/95
DEPARTMENT: Legal
AUTHOR: Mark Harrington
TITLE: Sexually Oriented Business ("SOB") Ordinance
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Hold a public hearing on the SOB licensing regulations and direct staff accordingly.

DESCRIPTION:

A. Topic.

Sexually Oriented Business licensing and zoning.

B. Background.

The City Council adopted a licensing procedure for SOBs on January 19, 1995, (see Attachment A) and forwarded a recommendation to the Planning Commission to establish the zoning and conditions for such businesses. The Planning Commission held one work session in February and has taken no action since. This hearing is at the request of Joe Tesch who urges the Council to reconsider whether it is in the best interest of the community to regulate SOBs at all.

C. Analysis.

A municipality can regulate SOBs separately from other businesses so long as the regulation is aimed at curbing the secondary effects of SOBs, and not content of proffered speech, expression or materials of such businesses. Our regulation attempts to achieve this result through two mechanisms: 1) business licensing; and 2) conditional use permit/zoning.

LICENSING

The regulations set forth application requirements/disclosures which will enhance the City's ability to review the backgrounds of the owner(s) of SOBs. The SOB licensing ensures that an applicant has not violated SOB or related laws/ordinances from any jurisdiction within the past two years, that all fees and taxes have been paid, that the premises has been approved by the CDD building and health officials, that the applicant is over 18 years old and that the application does not contain any false statements or information. The ordinance also sets forth regulations aimed at preventing illicit activities (prostitution, etc.) associated with SOBs during the operation of SOBs. Additionally, the ordinance sets forth standards for designs of the premises which will ensure minimal neighborhood impacts of noise, visual, and illegal activity. Finally, the ordinance sets forth the criteria for license revocation and suspension.

ZONING

SOBs are **conditional uses** under the current regulations but the Planning Commission has yet to specify which zone and under what conditions SOBs are permitted. Staff suggested the Light Industrial (LI) zone as a starting point for discussion purposes only, but does not have a preference of one zone over another. (See Minutes of 1/19/95) **The Planning Commission could very well recommend to allow SOBs in all zones and with no additional conditions.**

JOE TESCH'S LETTER (Attachment B)

Mr. Tesch asserts that the I mislead the Council in my staff report of January 19th because I stated that "Staff had taken the position that SOBs are not currently permitted within the City." While it would have been clearer to specify "Community Development Department Staff", the sentence was not intended to mislead, nor was it misleading - that was the position of the Community Development Department. I clearly stated at the meeting that this position was indefensible and the result was that the city had no ability to regulate SOBs under the code as it was written. I think that the Council knew exactly what it was doing in passing the ordinance. Council Member Kerr worked several years on this very ordinance and answered additional questions at the meeting. Certainly if Council does have questions at this time or at any time, I will be happy to discuss the regulations with you.

Mr. Tesch also asserts that the Legal Department met with members of the religious community prior to Council action on the ordinance. Jodi and I met with about 50 members of the public at the request of Council Member Harlan **AFTER** the adoption of the ordinance in order to explain the ordinance and to try and help them understand the Planning Commission's upcoming hearing process. I think that Roger will confirm that the meeting was very informative and successful. Jodi and I similarly offered to meet with members of the arts community, but as Joe's letter points out, this offer was refused.

Mr. Tesch also describes his concerns about several definitions in the regulations. Legal staff has offered to work with Joe to bring technical revisions to any part of the regulations that he has concerns with. However, Joe has since stated that he wants the hearing to focus on whether it

makes sense to regulate SOBs at all. Staff disagrees with his view of the definitions, but will gladly work to improve any definition that the Council directs the Legal staff to improve.

D. Department Review.

The Legal Department and the Community Development Departments have reviewed this matter.

ALTERNATIVES:

1. Close the public hearing, do not modify the SOB regulations and direct the Planning Commission to continue with their analysis of zoning and conditional use restrictions for SOBs.
2. Hold the public hearing and direct staff to prepare an ordinance repealing the SOB regulations.
3. Continue the matter on the agenda for further public hearing(s) before taking action.
4. Hold the public hearing and direct staff to bring specific changes in the SOB regulations back to Council for adoption.

SIGNIFICANT IMPACTS:

It is imperative that some action is taken on this matter so that the Planning Commission is given a clear signal on whether to finish or abandon the zoning for SOBs. Impacts vary depending upon the action taken. Repeal of the regulations will mean that the City loses all ability to regulate the secondary effects of the SOBs and increases the possibility of an SOB being located on Main Street or some other area which the Council may view as incompatible.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

Since the zoning is not established, SOBs cannot currently locate within the City. However, this will not be true in the long run. Extended delay in establishing a zone or zones for SOBs risks a legal challenge for excluding SOBs.

RECOMMENDATION:

Hold public hearing. If Council finds that minor clarification of some definitions are warranted, direct staff accordingly. Direct the Planning Commission to establish SOB zoning as soon as possible. The Legal Department does not recommend abolishing the SOB ordinance.

PARK CITY MUNICIPAL CODE

substantial public impact or requires substantial City service. Any run, walk, film, or promotion undertaken by any for-profit business or corporation, must first be licensed as a business under the Chapter 2 Business Licenses. For-profit corporations falling under the provisions of this Chapter or who are specifically in film-making or promotions on public or private property must, as a provision of their license, provide proof of insurance, shooting schedule or schedule of events, produce written permission of property owners, and provide access to any set or site for purposes of Code enforcement.

4- 8-12. CRIMINAL PENALTY. Any person who willfully violates any provision of this Chapter shall be guilty of a Class B misdemeanor. Persons conducting Special Events or Public Festivals without having first obtained a Master Festival License are subject to arrest and the event is subject to closure.

CHAPTER 9 - SEXUALLY ORIENTED BUSINESSES

4- 9- 1. TITLE FOR CITATION This section shall be known and may be referred to as the Sexually Oriented Business Licensing Ordinance.

4- 9- 2. PURPOSE. It is the purpose and object of this section that the City establish reasonable and uniform regulations governing the time, place and manner of operations of Sexually Oriented Businesses and their employees in Park City. This section shall be construed to protect the governmental interests recognized by this section in a manner consistent with constitutional protections provided by the United States and Utah Constitutions.

4- 9- 3. APPLICATION OF PROVISIONS. This section imposes regulatory standards and license requirements on certain business activities, which are characterized as "Sexually Oriented Businesses". Except where the context or specific provisions require, this section does not supersede or nullify any other related ordinances including, but not limited to, the Municipal Code of Park City, Utah, or the Park City Land Management Code.

4- 9- 4. DEFINITIONS. For the purpose of this section the following words shall have the following meanings:

(A) **ADULT BUSINESS** - an Adult Theater, Adult Motion Picture Theater, Adult Bookstore or Adult Video store.

(B) **ADULT BOOKSTORE** or **ADULT VIDEO STORE** - a commercial establishment which:

- (1) Holds itself out to be such a business; or
- (2) Excludes minors from more than thirty (30%) percent of the retail floor or shelf space of the premises; or
- (3) Which as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations the central theme of which depicts or describes "specified sexual activities" or "specified anatomical areas", or instruments, devices or paraphernalia which are designated for use in connection with specified sexual activities, except for legitimate medically recognized contraceptives.

(C) **ADULT MOTION PICTURE THEATER** - a commercial establishment which:

- (1) Holds itself out as such a business; or
- (2) Excludes minors from the showing of two consecutive exhibitions (repeated showings of any single presentation shall not be

considered a consecutive exhibition); or

- (3) As its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(D) **ADULT THEATER** - a theater, concert hall, auditorium, or similar commercial establishment which:

- (1) Holds itself out as such a business; or
- (2) Excludes minors from the showing of two consecutive exhibitions (repeated performances of the same presentation shall not be considered a consecutive exhibition); or
- (3) As its principal business, features persons who appear in live performance in a state of semi-nudity or which are characterized by the exposure of "Specified Anatomical Areas", or by Specified Sexual Activities.

(E) **NUDITY** or **STATE OF NUDITY** - A state of dress in which the areola of the female breast, or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.

(F) **OPERATOR** - the manager or other natural person principally in charge of a Sexually Oriented Business.

(G) **SEMI-NUDE** - a state of dress in which a person wears opaque clothing covering (1) only the male or female genitals, pubic region, anus, or (2) the nipple and areola of the female breast, by an opaque cover that is four inches wide in the front and five inches wide in the back tapering to one inch at the narrowest point.

(H) **SEMI-NUDE DANCING AGENCY** - any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books, or otherwise engages or offers to furnish, book or otherwise engage the service of a professional dancer for performance or appearance at a business licensed pursuant to this chapter.

(I) **SEMI-NUDE ENTERTAINMENT BUSINESS** - a business, including an Adult Theater, where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a Semi-Nude Entertainment Business if the business holds itself out as such a business.

(J) **SEXUALLY ORIENTED BUSINESS** - Semi-Nude Entertainment Businesses, Adult Businesses, and Semi-Nude Dancing Agencies as defined by this Chapter.

(K) **SPECIFIED ANATOMICAL AREAS** - the human male or female pubic area or anus with less than a full opaque covering, or the human female breast from the beginning of

the areola, papilla or nipple to the end thereof with less than full opaque covering.

(L) **SPECIFIED SEXUAL ACTIVITIES** means:

(1) Acts of:

- (a) Masturbation;
- (b) Human sexual intercourse; or
- (c) Sodomy

(2) Manipulating, caressing or fondling by any person of:

- (a) The genitals of a human;
- (b) The pubic area of a human; or
- (c) The breast or breasts of a human female.

(3) Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

4-9-5. OBSCENITY AND LEWDNESS - STATUTORY PROVISIONS.

Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to applicable federal or state statutes prohibiting obscenity.

Notwithstanding anything contained in this Chapter, nothing in this section shall be deemed to permit or allow conduct or the

showing or display of any matter which is contrary to the provisions of the Criminal Code, Section 8-4-20 "Lewdness".

4-9-6. LOCATION AND ZONING RESTRICTIONS. It shall be unlawful for any Sexually Oriented Business to do business at any location within the City not zoned for such business. Sexually Oriented Businesses licensed pursuant to this Chapter shall only be allowed in areas zoned for their use pursuant to Chapter 7 of the Park City Land Management Code.

4-9-7. BUSINESS LICENSE REQUIRED. It shall be unlawful for any person to operate a Sexually Oriented Business, as specified herein, without first obtaining a Sexually Oriented Business license from the Park City license officer, with the approval by the Police Chief. The business license shall specify the type of Sexually Oriented Business for which it is obtained.

4-9-8. EXEMPTIONS FROM LICENSE REQUIREMENTS. The provisions of this Chapter shall not apply to any sex therapist or similar individual licensed by the State of Utah to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the State of Utah for activities in the classroom.

4-9-9. ARTISTIC MODELING. The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar state protections.

4-9-10. BUSINESS CATEGORIES: SINGLE LICENSE. It is unlawful for any business premises to operate or be licensed for more than one category of Sexually Oriented Business. The categories of Sexually Oriented Businesses are:

- (A) Adult Businesses.
- (B) Semi-Nude Entertainment Businesses.
- (C) Semi-Nude Dancing Agency.

4-9-11. LICENSE APPLICATION: DISCLOSURE. Before any applicant may be licensed to operate a Sexually Oriented Business pursuant to this Chapter, the applicant shall submit, on a form to be supplied by the Park City Business License Officer, the following:

- (A) The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name.
- (B) If the applicant is a corporation, partnership or limited partnership or individual or entity doing business under an assumed name the information required below for individual applicants shall be submitted for each partner and each principal of an applicant and for each officer or director. Any holding company, or any entity holding more than ten percent of an applicant, shall be considered an applicant for purposes of disclosure under this chapter.
- (C) All corporations, partnerships or non-corporate entities included on the application shall also identify each individual authorized

by the corporation, partnership or non-corporate entity to sign the checks for such corporation, partnership or non-corporate entity.

(D) For all applicants the application must also state:

- (1) any other names or aliases used by the individual;
- (2) present business address and telephone number;
- (3) present residence and telephone number;
- (4) Utah drivers license or identification number; and
- (5) Social security number.

(E) Acceptable written proof that any individual is at least 21 years of age;

(F) The applicant's fingerprints on a form provided by the Park City Police Department. For persons not residing in Park City, the fingerprints shall be on a form from the law enforcement jurisdiction where the person resides. Fees for the fingerprints shall be paid by the applicant directly to the issuing agency.

(G) A statement detailing the license or permit history of the applicant for the five year period immediately preceding the date of the filing of the application, including whether such applicant possesses or previously possessed any liquor licenses. The statement shall list all other jurisdictions

in which the applicant owned or operated a Sexually Oriented Business. The statement shall also state whether the applicant has ever had a license, permit, or authorization to do business denied, revoked or suspended in this or any other county, city state, or territory. In the event of any such denial, revocation or suspension, state the date, the name or issuing or denying jurisdiction and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.

(H) All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual or entity subject to disclosure under this chapter for five years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense); stating the date, place, nature of each conviction and plea of nolo contendere and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing the court identifying case numbers or docket numbers.

Application for a Sexually Oriented Business shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

(I) In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or

is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

(J) A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee and any rules, regulations or employment guidelines under or by which the Sexually Oriented Business intends to operate. This description shall also include:

- (1) the hours that the business or service will be open to the public and the methods of promoting the health and safety of employees and patrons and preventing them from engaging in illegal activity;
- (2) the methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;
- (3) the methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts

prohibited by this Chapter or other statutes or ordinances;

- (4) the methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

It is unlawful to knowingly submit false or materially misleading information on or with a Sexually Oriented Business license application or to fail to disclose or omit information for the purpose of obtaining a Sexually Oriented Business license.

4- 9-12. LICENSE FEES. Each applicant for a Sexually Oriented Business license shall be required to pay a license fee pursuant to the schedule established by resolution of the Park City City Council.

4- 9-13. SINGLE LOCATION AND NAME.

(A) It is unlawful to conduct business under a license issued pursuant to this Chapter at any location other than the licensed premises.

(B) It is unlawful for any Sexually Oriented Business to do business under any name other than the business name specified in the application.

4- 9-14. LICENSE - ISSUANCE CONDITIONS. The Police Chief or his designee shall approve the issuance of a license to the applicant within thirty days of

receipt of a completed application, unless the official finds one or more of the following:

- (A) The applicant is under twenty-one years of age;
- (B) The applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to a Sexually Oriented Business;
- (C) The applicant has falsely answered a material question or request for information as authorized by this chapter;
- (D) The applicant has violated a provision of this Chapter or similar provisions found in statutes or ordinances from any jurisdiction within two years immediately preceding the application; a criminal conviction for a violation of a provision of this chapter or similar provisions from any jurisdiction, whether or not being appealed, is conclusive evidence of a violation, but a conviction is not necessary to prove a violation;
- (E) The premises to be used for the business have been disapproved by the Summit County Health Department, the Fire Department, the Police Department, the building officials, or the zoning officials as not being in compliance with applicable laws and ordinances of the City. If any of the foregoing reviewing agencies cannot complete their review within the thirty-day approval or denial period, the agency or department may obtain an extension of time of no more than fifteen days for their review. The total time for the city to approve or deny a license shall not exceed forty-five days

from the receipt of a completed application and payment of all fees.

- (F) The required license fees have not been paid;
- (G) All applicable sales and use taxes have not been paid;
- (H) An applicant for the proposed business is in violation of or not in compliance with this Chapter or similar provisions found in state statutes or ordinances from any jurisdiction;
- (I) An applicant has been convicted or pled nolo contendere to a crime involving:
 - (1) Prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution, or display of material harmful to minors; sexual performance by minors; possession of child pornography; lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction, regardless of the exact title of the offense; for which:

- (1) Less than two years have

elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five years if the convictions are of two or more misdemeanors within the five years; or

(2) Less than five years have elapsed from the date of conviction if the offense is a felony;

(J) The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this Chapter.

4- 9-15. CHANGES IN INFORMATION.

Any change in the information required to be submitted under this Chapter for a Sexually Oriented Business license shall be given, in writing, to the Police Department, within fourteen days after such change.

4- 9-16. TRANSFER LIMITATIONS.

Sexually Oriented Business licenses granted under this chapter are not transferable. It is unlawful for an individual to transfer a Sexually Oriented Business license. It shall be unlawful for a Sexually Oriented Business license held by a corporation, partnership or other non-corporate entity to transfer any part in excess of 10% thereof, without filing a new application and obtaining prior City approval. If any transfer of the controlling interest in a Sexually Oriented Business licensee occurs, the license is immediately null and void and the Sexually Oriented Business shall not operate until a separate new license has been properly issued by the City as herein provided.

4- 9-17. GENERAL REGULATIONS. It is unlawful for any Sexually Oriented Business to:

(A) Allow persons under the age of eighteen years on the licensed premises, except that in Adult Businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;

(B) Allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;

(C) Allow the outside door to the premises to be locked while any customer is in the premises;

(D) Allow, offer or agree to gambling on the licensed premises;

(E) Allow, offer or agree to any employee of a Sexually Oriented Business touching any patron or customer;

(F) Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;

(G) Allow Sexually Oriented Business employees to possess, use, sell or distribute controlled substances, while engaged in the activities of the business;

(H) Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities harmful to a minor to occur on the licensed premises;

(I) Allow, offer, commit or agree to any specified sexual activity as validly defined by Park City ordinances or state statute in the presence of any customer or patron;

(K) Allow, offer or agree to allow a patron or customer to masturbate in the presence of an employee or on the premises of a Sexually Oriented Business;

(L) Allow, offer, or agree to commit an act of lewdness as defined in Section 8-4-20 of this Code; or

(M) Not permit the Police Department or other City official to have access at all times to all premises licensed or applying for a license under this chapter, or to make periodic inspection of said premises whether the officer or official is in uniform or plain clothes.

4-9-18. ADULT BUSINESS, DESIGN OF PREMISES.

(A) In addition to the general requirements of disclosure for a Sexually Oriented Business, any applicant for a license as an Adult Business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business shall conform to the following:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms;

(2) Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person be allowed in the restroom per stall and only one person in any stall at a time and requiring that patrons shall not be allowed access to manager's station areas;

(3) For businesses which exclude minors from the entire premises all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded;

(4) The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures and ratings for illumination capacity.

(B) It shall be the duty of licensee and licensee's employees to insure that the views from the manager's station of all areas specified in section (1) above remain unobstructed by any doors, walls, merchandise, display racks or any other materials, at all times that any patron is present in the premises, and to insure that no patron is permitted access to any area of the premises which has been designated as an

area in which patrons will not be permitted.

(C) The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle measured at floor level. It shall be the duty of licensee and licensee's employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present in the premises.

4-9-19. SEMI-NUDE ENTERTAINMENT BUSINESS;

INTERIOR DESIGN Adult Theaters shall require that the performance area shall be separated from the patrons by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high. It is unlawful for business premises licensed for Semi-Nude Entertainment to:

(A) Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an Adult Theater such items may be on the stage as part of a performance;

(B) Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors to be lockable from the inside;

(C) Provide any room in which the employee or employees and the patron or

patrons are alone together without a separation by a solid physical barrier at least three feet high and six inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier;

4-9-20. ALCOHOL PROHIBITED. It is unlawful for any business licensed pursuant to this Chapter to allow the sale, storage, supply, or consumption of alcoholic beverages on the premises. It is unlawful for any person to possess or consume any alcoholic beverage on the premises of any Sexually Oriented Business.

4-9-21. SEMI-NUDE DANCING AGENCY.

(A) It is unlawful for any individual or entity to furnish, book or otherwise engage the services of a professional dancer, model or performer to appear in a state of semi-nudity for pecuniary compensation in, or for, any Semi-Nude Entertainment Business or Adult Theater licensed pursuant to this Chapter unless such agency is licensed pursuant to this Chapter.

(B) It is unlawful for any individual or entity to furnish, book or otherwise engage or permit any person to perform as a professional dancer, model or performer in a state of semi-nudity either gratuitously or for compensation, in, or for, any business licensed pursuant to this Chapter unless such person is employed by a Semi-Nude Dancing Agency licensed pursuant to this Chapter.

4-9-22. NUDITY - DEFENSE TO PROSECUTION. It is a defense to

prosecution or violation under this Chapter that a person appearing in a state of nudity did so in a modeling class operated:

(A) By a proprietary school licensed by the State of Utah or a college, junior college or university supported entirely or partly by taxation;

(B) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

CHAPTER 10 - FRANCHISED UTILITIES AND CABLE TELEVISION OPERATORS

4-10- 1. BUSINESS LICENSE

REQUIRED. All franchised utilities and cable television operators must obtain from the city a license to do business within the city. It shall be unlawful for a franchised utility or cable television operator to conduct business in Park City without a license.

4-10- 2. LICENSE TAX. There is hereby imposed on all franchised utilities and cable television operators who conduct business within the city a license tax. The license tax shall be three and one-half (3.5%) of the gross revenue of the franchised utility or cable television operator derived from the sale of its service or product within Park City's corporate limits. For purposes of this chapter, gross revenue shall include all revenue generated from the sale of the franchisee's product or service. The franchise fee imposed by other ordinances as a consideration for granting the franchises shall be excluded from the gross revenue.

4-10- 3. EXCLUSIONS. This gross revenue tax shall not apply to revenue derived from the sale of household appliances by a franchisee, service of appliances, or to the sale or rental of telephone switching equipment not included in "exchange access service".

4-10- 4. SCOPE OF TELEPHONE AND TELECOMMUNICATION SERVICES.

For the purpose of determining gross revenue in accordance with Section 4-9-2 for telephone and telecommunication services, the following will apply:

"Telephone service" means those services which may lawfully be taxed under the provisions of U.C.A. § 11-26-1 (1993), or any successor provision, including: 1) exchange access service; 2) extended area service; 3) customer access line charges; and 4) any service for which a tax or other charges was being paid pursuant to Utah Code Section 11-26-1, this chapter or previous applicable ordinances as of January 1, 1992.

However, with respect to customer access line charges for Centron/Centrex services, the tax shall be applied on a trunk equivalency basis or as though Centron/Centrex network access registers were PBX trunks on which customer access line charges would be assessed.

"Telephone service" does not include any customer access line charge or extended area service that is provided as part of the Utah Low Income Assistance Program as set forth in the "Lifeline" Rule of the Utah Public Service Commission.

"Exchange access service" means telephone exchange lines or channels, and services provided in connection with them, which are necessary to provide access from the premises of a subscriber to the local switched public telecommunications network of the public utility to effect communication or the transfer of information. "Exchange access service" does not include (1) private line service; (2) long distance toll service; (3) carrier access service; (4) telephone services that are not regulated by the Utah Public Service Commission; and (5) services that emulate functions available in customer

premises equipment.

4-10- 5. PAYMENT OF TAX. The license tax is payable in monthly installments which shall be due on or before the fifteenth (15th) day of the month following the billing cycle of the utility or cable television operator. The tax shall be paid on the basis of the preceding month's actual collections. A service charge of one and a half (1 1/2) percent per month of the total amount due may be imposed on late payments.

4-10- 6. PENALTY. The operation of a franchised utility or cable television business within Park City without paying the required tax shall be a Class "B" misdemeanor punishable by a fine of not more than two hundred and ninety-nine dollars for each day of each violation and imprisonment of the corporate officials responsible for the violation for not more than six months in the County jail for each day of each violation. These criminal penalties are in addition to, and not in lieu of a civil action to recover the license tax due, or a civil action to terminate the franchise. Each connection to the utility or cable television system through which service is provided by the franchisee is hereby deemed a separate transaction or sale, and each such sale, while unlicensed, shall constitute a separate violation.

4-10- 7. TAX ON THE GROSS REVENUES OF BUSINESSES IN COMPETITION WITH UTILITIES. Tax levied. There is hereby levied on the business of every person or company engaged in the business within this city, of supplying telephone services, gas or electric energy in competition with any public utility,

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July 13, 1995

Mayor Bradley Olch
Park City Council
P.O. Box 1480
Park City, Utah 84060

**RE: Sexually Oriented Businesses (SOBs),
Park City Ordinance 95-5**

Dear Mayor Olch and Council Members:

On January 19, 1995, the Park City Council passed an ordinance concerning sexually oriented businesses ("SOB"). This ordinance was passed without public hearing. Shortly thereafter, the ordinance was presented to the Planning Commission as *fait accompli* with the direction that the Planning Commission decide *only* in what zone or zones SOBs should be allowed to operate. It was suggested by the Legal Department of Park City that they be allowed as conditional uses only and only in the light industrial zone. The matter was lightly debated by the Planning Commission, with some tongue and cheek comments, but no decision was made. Upon a close reading of the ordinance, I formed the opinion that it is perhaps ill-advised, overly broad and vague and, as a result, should enjoy the scrutiny of public hearings and review. The review should not be on legal adequacy (I have formed no opinion on that), but simply on whether the ordinance as it currently reads is as good as it should be. To that end, I prepared a petition requesting that the matter be put on the City Council agenda for public hearing and review. However, the matter seemed so simple that early on I ceased the petition effort and I simply wrote to you, on April 13, 1995, pointing out certain problems with the ordinance, and requesting that the matter be put on the City Council agenda for public hearing and review. A copy of that letter is enclosed.

In my letter of April 13, 1995, I wrote that:

"... the breadth of the ordinance is such that, whether or not it meets legal muster, it has a chilling effect on the exercise of First

Amendment rights and as such may have unintended consequences in application, particularly with regard to artistic expression. Furthermore, while the ordinance may be directed at controlling peep-shows and such, the ordinance can be used by ultra-puritanical individuals and groups to force the city to take official action (or as the basis of private lawsuits) to enforce censorship against organizations such as the Kimball Art Center, the Park City Arts Festival, the Sundance Film Festival, Park City Performances [the Egyptian], Park City Film Society, bookstores, and video shops...Any chilling of the full robust operation of our First Amendment rights should occur only after a full discussion by the community at large with all interested parties permitted to participate."

Subsequent to the letter, at whose direction I know not, I was contacted by City Attorney Jodi Hoffman and entered discussions with her. I remain convinced that the ordinance is improvident and, because of its First Amendment implications, it deserves full community wide debate and Council review.¹

On July 6, 1995, I again wrote to you requesting that this matter be put on the City Council agenda for public hearing and review. See copy enclosed. In that letter, I enclosed petitions signed by several outstanding, civic minded members of our community including among others (although not all in their official capacity), the President of Park City Performances (the Egyptian), the President of the Park City Arts Council, the Park City Arts Council by unanimous motion, current President of the Park City Bar Association, current President of Historic Main Street Association, and other engaged civic minded members of this community, all of whom, by signing the petition, also requested a public hearing. In the July 6, 1995 letter I note that "... this letter renews the request made therein [referring to the April 13, 1995 letter] and requests that this matter be placed on the City Council agenda at an early convenient time."² On July 10, 1995 City Attorney Hoffman responded to my letter of July 6, 1995, and in perhaps its only relevant comment stated: "To date, the Council has expressed no desire to schedule your request on the agenda. Their agenda is their purview, Joe: not yours; not mine."³

¹On May 3, 1995, I wrote Attorney Hoffman concerning the continuing discussions. See letter enclosed.

²In that letter I also note that I was disturbed by certain statements made by your City Attorney concerning my motives. Any time my integrity is attacked, I will be quick to respond. However, that discussion is irrelevant to the merits of the SOB ordinance and should not become a red herring to sidetrack the important public issues at hand.

³The remainder of her letter is irrelevant to substantive discussion on the issue. However certain inaccuracies deserve footnote comment only. The letter is misleading and varies widely from my recollections. Full fleshing of those negotiations would require inclusion of her comments, such as: if this matter was brought to public hearing, the Council would not resist the political pressure of the religious right-wing and would "cave" and would likely pass an even worse ordinance. I didn't believe her comments then. I doubt she believed them. In the main, her arguments and mine were presented as

There are two very troubling aspects concerning the passage of the ordinance which deserve full public review:

1. The memorandum to the Planning Commission, and as I understand it, to the City Council, from the Legal Department is grossly misleading.

The Legal Department's memorandum to the Planning Commission reads, as introductory background information as follows:

"Until the last City Council meeting, the Municipal Code of Park City (MCPC) had no licensing provisions for SOBs. Currently, the Land Management Code (LMC) Land Use Table (§ 7.19) does not list SOBs as a permitted use within the City. The LMC expressly states that any use category not expressly permitted is deemed excluded. LMC § 7.19.2. Accordingly, staff had taken the position that SOBs are not currently permitted within the City. The Legal Department did not view that position as wholly defensible since the U.S. Supreme Court has held that such businesses cannot be prohibited nor regulated solely because of the form or content of their speech." (emphasis added)

While the underlined sentence reads that Staff had taken the position that SOBs are not currently permitted within the City, that position is legally incorrect. Without going into detail, we issue business licenses to movie theaters, bookstores, video rental shops, art galleries, etc. Since no limitation was formerly placed upon the content of their sales, exhibitions, or other business, clearly everything that is now restricted by the SOB ordinance was permitted until its passage. When I called this apparent error to attention of City Attorney Hoffman, she told me that I had misread the paragraph. She pointed out that the paragraph does not say that the Legal Department took the position that SOBs were not allowed, but only that Staff took that position. I doubt anyone who read that paragraph noted that distinction. Furthermore, the subsequent sentence

negotiation positions. Furthermore, while I think a film series based on "Films Made from Books Banned in Boston" would be educational and fun as a fine arts project presenting, among other things, the silly history of right-wing puritanical thought in this country, any misreading of Ms. Hoffman's letter to suggest that I am in favor of "erotica" needs to be dispelled. Similarly, her comment that Tom Billings stated to the Mayor that he did not read the ordinance prior to signing the petition, while perhaps technically true, is inaccurate in the sense that he sat in a meeting where I read relevant portions of the ordinance to those in attendance. Her comment that our request for a review of this matter on public agenda will "further divide the community" is misplaced. My view is that any time you pass ordinances which implicate First Amendment rights, they deserve full, and if needed, heated public debate. Lastly, while we seek now to review only policy and good government issues, her conclusion that my statement of "whether or not it meets legal muster" (see page 1 above) equals "you acknowledge that there were no First Amendment infirmities associated with the ordinance" is an example of a self-serving leap of logic and misunderstanding of position that has occurred all too often.

gives the Legal Department's view, not that Staff's interpretation of the code was wrong, but that Staff's interpretation of the code could not stand constitutional muster. The clear impression of the paragraph is, of course, that protected First Amendment speech which was formerly prohibited (which is not true) would be liberalized and permitted under the SOB ordinance. Again, not true.

Because of that misleading introduction, or political "spin" put on the ordinance at its passage, it should be reviewed and reconsidered.

In addition, it is my understanding that while the Legal Department and Staff met with delegations of the religious community prior to presentation of the ordinance to the Council and Planning Commission, they did not meet or notify similar representatives of the arts community. Therefore, the arts community was not included in any way in the debate over these issues, as it should have been.

2. The ordinance includes definitions which are dangerously over-broad and may chill First Amendment expression.

Without going into extended debate over issues which should be aired in public and open forum, an outline of some of the issues that exist in the ordinance may be helpful in your decision as to whether or not to review this ordinance at an open City Council meeting:

1. Adult bookstores or adult video stores are defined under the ordinance, in part, as ones which exclude minors from more than 30% of retail floor or shelf space. They are also defined as such stores which, as one of their principle purposes, sell or rent material which depicts or describes "specific sexual activities." These provisions are extremely broad and may well chill legitimate, worthy, and valued artistic expression and could impact the Kimball Art Center, Dolly's Bookstore, and others.

2. An adult motion picture theater is defined as one which excludes minors from the showing of two consecutive exhibitions, and is further defined as one which shows films and other material which are primarily characterized by depiction or description of, among other things, "specified atomical areas." It is conceivable that many of the arts groups and others who legitimately show worthwhile, valuable, artistic motion pictures, but prudently exclude minors from some of those showings, may end up in violation of that definition. Worthy presentations by the Sundance Film Festival, the Park City Film Society, the Park City Arts Council and others could violate this provision.

3. Adult theater is defined in part as one which excludes minors from the showing of two consecutive exhibitions.

This provision is fraught with dangers and potential chilling of valuable artistic and expression as noted above, and could well impact the Park City Performing Arts Center, Park City Performances and others.

4. The ordinance would prohibit any of the above activities at any location not zoned for such business. Again, the recommendation was that these businesses be allowed only in the light industrial zone. This severe restriction deserves debate.

5. In the event anyone wishes to apply for a license under the ordinance, among other distasteful provisions, he/she will be required to be fingerprinted in a form provided by the Park City Police Department with the additional indignity of requiring the applicant to pay for such process.

6. The ordinance requires that it shall be unlawful for any person to operate an SOB without first obtaining a license from Park City, and while it makes certain exceptions to that such as bonified sexual therapy or counseling, licensed medical practitioner, etc., it makes no exception for activities presented by profit or by non-profit entities such as those organizations which have been previously noted.

As you know, the ordinance is 13 pages long and fraught with highly technical definitions and requirements. The above is not intended to exhaust the difficulties with the ordinance, but is only intended to call your attention to a few of the glaring issues which deserve full discussion and review.

This is a serious matter. The SOB ordinance can diminish the full panoply of freedoms we cherish and currently freely exercise. This is particularly distasteful since we generally pride ourselves as being a community which is a slice of America, although located in Utah (or perhaps Colorado). While I can understand why the City Council does not necessarily want to engage in a possibly divisive public debate, with an educated population and a vibrant democracy, such as we have in Park City, we must assume that the debate will be intelligent, productive and conducive to good government. The Council started this process by passing the SOB ordinance. It should publicly and openly hear objections to that ordinance so that it may rationally consider modifications.

Sincerely,



Joseph E. Tesch

JET/ajt
enclosures

cc: Tom Billings, President, Park City Performances
Katherine Henney, President, Park City Arts Council
Stuart Erwin, Jr., President, Save Our Stage
Gary Sanders, Director, Kimball Art Center
Ann Macquoid, President, Performing Arts Center
Jodi Hoffman, Park City Attorney
Bruce Erickson, Chairman, Park City Planning Commission
Park Record
KPCW

COUNCIL AGENDA REPORT

DATE: August 25, 1995
DEPARTMENT: City Manager
AUTHOR: Toby Ross
TITLE: Request for Waiver of Impact Fees
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: The Council should waive \$389,375 of development and water impact fees.

DESCRIPTION:

A. Topic. Council consideration of a request from the Superintendent of Schools on behalf of the Park City Board of Education (District) to waive impact fees.

B. Background. A bond election on February 7, 1995 authorized \$32,000,000 for school facilities. Expansion of Park City High School is part of that authorization. The Park City High School Expansion will include:

26 classrooms/labs	media center
applied technology center	auditorium
counseling/career center	two lecture halls special education
classrooms	art room
furniture and equipment	storage
290 student parking spaces	administrative space
athletic facilities	writing lab
bookstore and related student areas	band/choral/dance/aerobic
expand cafeteria to seat 500	child care vocational center

Historically, the District has requested and the Council has granted waivers of impact fees for school facilities constructed in Park City.

C. Analysis. The City is prohibited from requiring public school districts to pay impact fees unless the fees are reasonably related to impacts caused by construction of school facilities (see 10-9-106 (2), attached). Some of the City's impact fees, such as the Parks and Open Space fee

may not be directly attributable to construction of a public school; others such as water impact fees may be directly attributable but probably would require an alternate fee calculation since the commercial fee calculation used for schools may not correctly assess the impacts of a school remodel. The school district has requested that the City waive all planning, building and impact fees. They will be paying for plan checking and inspection on a contractual basis and for the water meter charge even if the impact fees are waived. The planning staff provided a courtesy review of the site plans and expect a similar review of building plans but no formal City review of the project has been requested by the District. The estimated fees are as follows:

Plan Check	\$ 53,268
Building Permit	81,951
State Surcharge	820
Development Impact	218,536
Water Connection	5,220
Water Development	<u>29,580</u>
Total	\$389,375

D. Alternatives.

1. *Waive all impact, building and planning fees.*
2. *Selectively waive fees.* If the Council wants to consider this approach it should continue the item with direction on which fees should not be waived so that staff could examine the approach for legality and the fees for technical accuracy.
3. *Continue the item for additional discussion or information.*

E. Significant Impacts.

The apparent fiscal impact is loss of up to \$389,000 in impact fee revenue, however, the issue is more complicated. Traditionally, Park City has waived fees for local government building (fire sewer and school districts) in the city limits to avoid raising the cost of such facilities for City tax and rate payers (City property tax payers generate about two-thirds of the property revenue for the school and fire district) and because our authority to charge such fees wasn't clear. Since school facilities are designed to address impacts of residential development, it may not appropriate to charge additional impact fees. The District has not budgeted these fees in the building program. Imposing the fees could delay construction.

RECOMMENDATION: The Council should waive \$389,375 of development and water impact fees.

**10-9-106. Property owned by other government units —
Effect of land use and development ordinances.**

(1) (a) Each county, municipality, school district, special district, and political subdivision of Utah shall conform to the land use and development ordinances of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality only in a manner or for a purpose that conforms to that municipality's ordinances.

(b) In addition to any other remedies provided by law, when a municipality's land use and development ordinances are being violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) A school district is subject to a municipality's land use regulations under this chapter, except that a municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) require a school district to participate in the cost of any roadway or sidewalk not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless neither the school district nor the state superintendent has provided for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent with the approval of the state building board and state fire marshal;

(e) require a school district to pay any impact fee for an improvement project that is not reasonably related to the impact of the project upon the need that the improvement is to address; or

(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

History: C. 1953, 10-9-106, enacted by L. 1991, ch. 235, § 6; 1992, ch. 23, § 4.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, substituted "an

improvement project" for "improvements" and made stylistic changes in Subsection (2)(e).

Effective Dates. — Laws 1991, ch. 235, § 110 makes the act effective on July 1, 1992.

Resolution No. -95

**RESOLUTION WAIVING BUILDING, PLANNING AND
DEVELOPMENT IMPACT FEES BY
THE CITY COUNCIL OF PARK CITY, UTAH
FOR THE CONSTRUCTION OF SCHOOL FACILITIES
IN PARK CITY, UTAH**

WHEREAS, voters in the Park City School District have authorized \$32,000,000 for school facilities; and

WHEREAS, Superintendent Fielder, on behalf of the Board of Education, requested that the City Council waive building, planning, and development impact fees for the construction of school facilities in Park City, Utah; and

WHEREAS, consistent with its granting of fee waivers to the School District in the past, the City Council finds it in the best interest of the community to waive fees estimated at a value of \$389,375;

SECTION 1. FEE WAIVERS. The City Council hereby waives the following fees including plan check, building permit, state surcharge, development impact, water connection, and water development.

SECTION 2. EFFECTIVE DATE. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 31st day of August, 1995.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, Deputy City Recorder

Approved as to form:

Mark D. Harrington, Asst. City Attorney

PARK CITY

1881

COUNCIL AGENDA REPORT

DATE: August 31, 1995
DEPARTMENT: Public Works
AUTHOR: Hope Bleecker *HB*
TITLE: Main Street Trolley Procurement
TYPE OF ITEM: Administrative

SUMMARY RECOMMENDATIONS: Authorize Public Works Staff to enter into contract with Chance Coach, Inc. to procure a new compressed natural gas trolley. The amount of the contract shall not exceed \$280,000.

DESCRIPTION:

A. Topic

Purchase of Replacement Trolley

Public Works recommends the purchase of a new compressed natural gas (CNG) AH-28 trolley manufactured by Chance Coach, Inc. The purchase is necessary in order to replace the existing Main Street trolley which is approaching the end of its 10 year useful life. The recommended vehicle meets Park City's requirements more effectively than other trolleys which are currently available.

B. Background

Existing Trolley

The Public Works Department purchased a Chance VS-24 diesel trolley in 1985 for use on Main Street. This vehicle functioned well, but because of complaints from Main Street merchants regarding particulate exhaust, a fuel conversion kit supplied by Mountain Fuel, Inc. was installed in 1994. The new dual fuel system supplied the option to burn both diesel and natural gas and redirected exhaust through the ceiling of the vehicle. This lessened the noticeable effects of particulate and toxic emissions. This vehicle has a ten year life span and is currently due for replacement in 1996.

C. Analysis

Options for Replacement

This vehicle procurement process has consisted of a review of the three trolley manufacturers in the United States and Canada. Vehicles were rated in the categories of purchase price, anticipated life-cycle costs, durability, range, emissions, safety, and aesthetics. The Chance Coach CNG AH-28 is the vehicle which best meets Park City's overall requirements. The effectiveness of the vehicle has been proven by recent operations of prototypes in Austin, Texas and Riverside, California. Overall, the emissions rating and successful performance of the Cummins B5.9 engine as well as the appearance of the vehicle make it an appropriate choice over other trolleys currently available.

CNG versus Clean Diesel

The recommendation to purchase CNG over clean diesel is based on the established policy of low particulate emissions on Main Street. The CNG engine will release 75% less particulate matter than a standard clean diesel engine. As previously mentioned, the Main Street merchants have complained about visible black smoke from the trolley exhaust pipe. The natural gas engine will also result in less noise pollution. This fuel system will cost the city approximately \$40,000 more than the purchase of a clean diesel system. Although

there is a 30% savings in fuel cost, fuel represents less than 8% of the trolley operating budget, and a substantial savings is not anticipated.

Replacement Strategy

Public Works staff recommends the assumption of a contract option between Chance Coach, Inc. and Sun Metro Transit Authority of El Paso, Texas. The Sun Metro Request for Bids was advertised in November, 1994 and their contract was executed in January, 1995. The process of assuming options on competitively bid contracts is endorsed by the Federal Transit Administration (FTA) and the Utah Department of Transportation (UDOT). The process allows agencies with similar needs to assume contract options in order to protect agencies and manufacturers from costly and lengthy procurement processes which achieve the same net result as option assumption or sole source procurement. The particular facts of this procurement were analyzed by the FTA and UDOT and both agencies concur with the proposed strategy.

ALTERNATIVES:

A. Assume option on Sun Metro Transit Authority Contract to purchase CNG AH-28 Chance Coach Trolley - This alternative would allow staff to change-order an existing contract to exclude an air conditioning system and a voice annunciator system. The final cost of the trolley will not exceed \$280,000. If this alternative is chosen, the City will take delivery on the vehicle in March, 1996.

B. Solicit Request for Bids - This alternative will require three months to advertise and approve another contract. The specification should be designed to allow for receipt of the same vehicle. Because of the demand for the AH-28, the cost will exceed \$300,000 and result in delivery between November, 1996 and January, 1997, seven-nine months later than the above listed alternative.

C. Refurbish Existing Trolley - Last year it was estimated that a refurbishment of the current trolley engine and body could be achieved for \$150,000. The disadvantages of choosing this alternative are that the existing fuel system can never be certified to 1998 emissions standards. The present chassis cannot be redesigned to accommodate dedication of a compressed natural gas system. Additionally, the present subfloor CNG fuel tank configuration will prevent installation of a wheelchair lift, which will prevent Park City from complying with an ADA accessibility deadline of January, 1997.

D. Do Nothing - This alternative could result in substantial opposition from the Main Street merchants because the existing trolley is approaching the end of its useful life. The trolley provides functional and enjoyable transportation for Main Street pedestrians and the merchants notice the absence of the trolley in the event of vehicle substitution. Therefore, it is recommended that we avoid this alternative.

D. Department Review: This proposal has been developed by staff from Public Works Divisions of Transit and Central Garage. It has been reviewed by the City Manager.

SIGNIFICANT IMPACTS:

Currently, there are no DOT-certified CNG trolleys operating in any transit property in the United States. Whereas much information is still unknown about the performance of CNG trolleys, prototypes of the AH-28 vehicle have operated with overwhelming success. Park City's policy of low visible emissions on Main Street, coupled with the experience of our mechanics with the Chance chassis and CNG technology makes the AH-28 vehicle the best choice for Park City at this time. Other significant features of the vehicle are its wheelchair lift system and a higher seating capacity of four passengers more than the current VS-24 model. Operating costs will likely remain the same as a result of purchasing a dedicated CNG technology. The real benefit will be realized in reduction of particulate matter and noise pollution. The cost of this vehicle will be paid for with Park City transportation funding in the amount of \$97,600 and \$182,400 in federal funds.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

Consequences of not assuming the option on the Sun Metro contract are three months of additional staff time, a delivery date which could be seven to nine months later, and a higher cost as a result of the delayed procurement.

RECOMMENDATION:

Council should authorize staff to assume an option on the contract between Sun Metro Transit Authority and Chance Coach, Inc. for procurement of a Chance AH-28 model CNG trolley. The Sun Metro contract will be change-ordered to eliminate an air conditioner and a voice annunciator system. The contract price will not exceed \$280,000 and delivery is expected in March, 1996.



COUNCIL AGENDA REPORT

DATE: 31 August 95
DEPARTMENT: Public Works
AUTHOR: Jerry Gibbs
TITLE: Racquet Club Roof Repair
TYPE OF ITEM: Award of Contract

SUMMARY RECOMMENDATIONS: Award roofing contract to Kendall & Sons Roofing of West Valley City in the amount of \$83,780 and authorize staff to enter into an agreement.

DESCRIPTION:

A. Topic. Racquet Club Roof Repair

B. Background. The Park City Racquet Club was built in the mid 60's for a private developer. The City took over ownership in the mid 80's. The building had additions and remodeling of the interior area. No major work has taken place on the original roof.

The roof has developed leaks over the last ten years. Our investigation has found numerous problem areas associated with age, deterioration and sloppy workmanship. Joints that should be overlapped 4 to 6 inches are overlapped less than two inches.

C. Analysis. Staff consulted with architect Rodney Coles to explore viable solutions. These solutions included a new standing seam roof (\$150,000 +), an add on roof (\$100,000) and coatings for existing metal roofs. The building department is concerned that the existing roof structure does not meet the required snow loading. Adding additional weight would compound the problem.

The approach selected is recoating the existing roof. Fasteners and washers will be replaced, seams will be sealed and a new ridge cap installed. The project was advertised and bids were opened on August 23, 1995. Three bids were received.

Kendall & Sons, West Valley City	Base Bid	\$73,600
	Alt. # 1	10,180
	Alt. # 2	11,760
	Total	\$95,540
Utah Tile & Roofing, Salt Lake City	Base Bid	\$78,913
	Alt. # 1	12,262
	Alt. # 2	14,344
	Total	\$105,883
Capital Roofing Services, Inc, Sandy	Base Bid	\$85,465
	Alt. # 1	11,425
	Alt. # 2	12,196
	Total	\$109,086

Alternate #1 added the roof section over the recreation offices and racquetball courts. This roof was constructed at the same time as the main roof. Alternate #2 would add a section of new roof that was completed as part of the Racquet Club expansion. Minor roof leakage has been experienced. Building Maintenance believes the problem areas have been repaired.

The roof repair will not create any impact to the day to day activities. Work will begin within two weeks of a notice to proceed. The capital improvements budget includes \$110,000 for this repair.

D. Department Review. This project has been reviewed by Leisure Services, Building Department and Public Works.

ALTERNATIVES:

- 1.) Award contract to the low bidder Kendall & Sons in the amount of \$83,780. The contract will include the base bid and alternate #1.
- 2.) Reject all bidders and do nothing.

SIGNIFICANT IMPACTS: Water leaks will no longer be a problem to indoor tennis players, water damage to insulation and other areas will be minimized and failed existing roof coatings will be covered.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

Water damage will continue to increase, significant staff time will be required to locate and correct leaks and play will continue to be interrupted on court 2 during rain storms.

RECOMMENDATION: Award the contract to the lowest qualified bidder of Kendall & Sons for the total of \$83,780. The contract to include the main roof, racquetball roof and the recreation office roof (base bid and alt. #1).

COUNCIL AGENDA REPORT

DATE: August 24, 1995
DEPARTMENT: Community Development
AUTHOR: Richard E. Lewis
TITLE: Lot Line Adjustment Process - Land Management Code Amendment
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Adopt the ordinance amending Chapter 2 and Section 15.1 of the Land Management Code to create the new Lot Line Adjustment Process.

DESCRIPTION:

A. Topic: Lot Line Adjustment Process

B. Background: The Utah State Legislature passed a bill in the last legislative session allowing lot line adjustments in subdivisions by an administrative process. The legislation limits these adjustments to property boundary lines between two adjoining lots and requires the consent of the adjoining property owners. This administrative process may be allowed provided:

- a. No new dwelling lot or housing unit results from the lot line adjustment;
- b. The adjoining property owners consent to the lot line adjustments;
- c. The lot line adjustment does not result in remnant land that did not previously exist; and
- d. The adjustment does not result in violation of applicable zoning requirements.

The City Attorney has prepared the attached ordinance amending Chapter 2 and Section 15.1 of the Land Management Code creating a process to allow lot line adjustments. The Planning Commission held public hearings on the ordinance on March 8, 1995, May 24, 1995, June 28, 1995, and on July 12, 1995. After the public hearing on July 12, 1995, the Planning Commission recommended approval of the ordinance.

C. Analysis: The administrative process for lot line adjustments, as presented in the attached ordinance, will provide an informal, inexpensive means to solve most lot line adjustment issues, particularly in the historic section of Park City. If an applicant meets the specific criteria in the ordinance, lot lines will be adjusted without the Planning Commission and/or the City Council reviewing the application.

In addition to the criteria in the State legislation, the Planning Commission asked that written notice be sent to all property owners within 300' of the property under consideration, that all property owners contiguous to adjusted property (including those across the street) must consent to the lot line adjustment before it can be approved through this administrative process, and that neither of the lots had been previously combined under this process (thereby eliminating the possibility of multiple lot combinations in the informal process).

D. Department Review: The City Attorney's office, Planning Department, and Community Development Director, have reviewed the ordinance and this report.

ALTERNATIVES:

- A. Adopt the ordinance thereby implementing the lot line adjustment process.
- B. Deny the proposed ordinance amendment and refer this item back to the Planning Commission and Staff for more study.
- C. Continue this item and request additional evaluation from the Staff.

SIGNIFICANT IMPACTS:

The Planning Commission and City Council have reviewed a substantial number of minor lot line adjustments over the past six months while this ordinance was under study. If the ordinance is adopted and the lot line adjustment process implemented, a significant amount of Planning Commission, City Council, and Staff time can be saved in the future.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

If the City Council chooses not to approve the ordinance amendment, minor lot line adjustments will continue to come directly to the City Council for their review.

RECOMMENDATION:

The Planning Commission recommend approval of the ordinance amending Chapter 2 and Section 15.1 of the Land Management Code to create a new lot line adjustment process.

Ordinance No. 95-

AN ORDINANCE AMENDING CHAPTER 2 AND SECTION 15.1 OF THE LAND MANAGEMENT CODE TO CREATE A NEW LOT LINE ADJUSTMENT PROCESS.

WHEREAS, the Planning Commission, after giving proper notice and holding public hearings on March 8, May 24, June 28, and July 12, 1995, did pass a positive recommendation of the ordinance to the City Council on July 12, 1995; and

WHEREAS, the City Council, after proper notice, did hold a public meeting on the ordinance on August 17, 1995; and

WHEREAS, the City Council has determined it is in the best interests of the residents of Park City to provide a streamlined, inexpensive administrative process to make minor lot line adjustments between lots within subdivisions; and

WHEREAS, protection of neighborhood integrity, mass, rhythm and scale in the historic neighborhoods is essential to the well being of the City; and

WHEREAS, the amendments proposed herein will preserve historical integrity within City neighborhoods while providing an opportunity for creative restructuring of historic lots; and

WHEREAS, the adoption of the ordinance is in the best interests of the residents of Park City;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARK CITY, UTAH THAT:

SECTION 1. Amendment. A new definition is hereby added to Chapter 2 of the Park City Land Management Code as follows:

~~Lot line adjustment. The relocation of the property boundary line between two adjoining lots with the consent of the owners of record.~~

SECTION 2. Amendment. Section 15.1 of the Park City Land Management Code is amended to read as follows:

15.1.2. POLICY.

(a) It is hereby declared to be the policy of Park City to consider the subdivision of land and the subsequent development, ~~or amendment of the subdivided plat, or the adjustment of lot lines therein,~~ as subject to the control of Park City pursuant to the official Comprehensive Plan of Park City for the orderly, planned, efficient, and economical development of Park City.

(b) Land to be subdivided or resubdivided, or lot lines that shall be adjusted therein, shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, landslide, mine subsidence, geologic hazards, or other menace, and land shall not be subdivided, resubdivided, or adjusted until available public facilities and improvements exist and proper provision has been made for drainage, water, sewerage, and capital improvements such as schools, parks, recreation facilities, transportation facilities, and improvements.

15.1.3. PURPOSES. These regulations are adopted for the following purposes:

(h) To establish reasonable standards of design and procedures for subdivisions, ~~and resubdivisions, and lot line adjustments~~, in order to further the orderly layout and use of land; and to insure proper legal descriptions and monumenting of subdivided land.

(i) To insure that public facilities are available and will have a sufficient capacity to serve the proposed subdivision, ~~resubdivision, or lot line adjustment~~.

15.1.4. AUTHORITY.

(a) By authority of ordinance of the City Council of Park City (hereinafter referred to as "City Council") adopted pursuant to the powers and jurisdictions vested through ~~Chapter 5, Title 57 and Chapter 9, Title 10 of the Utah Code, Annotated (1953, as amended)~~ and other applicable laws, statutes, ordinances, and regulations of the State of Utah, the City Council hereby exercise the power and authority to review, approve, and disapprove plats for subdivision land within the corporate limits of Park City which show lots, blocks, or sites with or without new streets or highways.

(b) By the same authority, the City Council does hereby exercise the power and authority to pass and approve development in subdivisions, ~~resubdivisions, or lot line adjustments~~ of land already recorded in the office of the County Recorder if such are entirely or partially undeveloped.

(c) The ~~plat, subdivision, resubdivision, or lot line adjustment~~ shall be considered to be entirely or partially undeveloped if:

1. ~~thesaid plat, subdivision, or resubdivision, or lot line adjustment~~ has been recorded with the County Recorder's office without a prior approval by the City Council, ~~or in the case of a lot line adjustment, its designated responsible official, or~~

2. ~~thesaid plat, subdivision, or resubdivision, or lot line adjustment~~ has been approved by the City Council where the approval ~~has~~ been granted more than three (3) years prior to granting a building permit, on the partially or entirely undeveloped land and the zoning regulations, either bulk or use, for the district in which the subdivision is located, have been changed subsequent to the original final ~~plat, subdivision, resubdivision, or lot line adjustment~~ approval.

JURISDICTION.

(a) These subdivision regulations shall apply to all subdivisions or resubdivisions of land and to lot line adjustments, as defined herein, located within the corporate limits of Park City.

(b) No land shall be subdivided within the corporate limits of Park City until:

1. the subdivider or his/her agent shall submit a sketch plat of the parcel to the Planning Commission through the Park City Planning Department;

2. obtain approval of the sketch plat and preliminary and final approval of the plat itself by the Planning Commission and City Council; and

3. the approved plat is filed with the County Recorder.

(c) The Community Development Department may approve a lot line adjustment between two lots without a plat amendment, within the corporate limits of Park City, if:

1. the owners of both lots demonstrate, to the satisfaction of the Community Development Director that:

- (I) no new developable lot or unit results from the lot line adjustment;
- (II) all owners of property contiguous to the adjusted lot(s) or to lots owned by the applicant(s) which are contiguous to the adjusted lot(s), (including those separated by a public right of way) consent to the lot line adjustment;
- (III) the lot line adjustment does not result in remnant land;
- (IV) the lot line adjustment, and resulting lots comply with LMC Section 15.4 and are compatible with existing lot sizes in the immediate neighborhood;
- (V) the lot line adjustment does not result in violation of applicable zoning requirements;
- (VI) neither of the original lots were previously adjusted under this section; and
- (VII) written notice was mailed to all owners of property within 300 feet and neither any person nor the public will be materially harmed by the adjustment; and

2. The Community Development Director authorizes the execution and recording of an appropriate deed and sketch plat, with City stamp affixed thereto, to reflect that the City has approved the lot line adjustment.

3. If, based upon non-compliance with subsection (1), the Community Development Director denies the lot line adjustment, the Director shall inform the applicant(s) in writing of the reasons for denial, of the right to appeal the decision to the Planning Commission, and of the right to file a formal plat amendment application.

(d) No building permit or certificate of occupancy shall be issued for any parcel or plat of land which was created by subdivision, ~~resubdivision, plat amendment, deed, survey, or lot line adjustment~~ after the effective date of, and not in conformity with, the provisions of these ~~subdivision~~ regulations or approved under prior subdivision ordinance, and no excavation of land or construction of any public or private improvements shall take place or be commenced except in conformity with the applicable city regulations.

15.1.6. ENACTMENT. In order that land may be subdivided, ~~resubdivided, or lot lines adjusted~~ in accordance with these purposes and policy, these ~~subdivision~~ regulations are hereby adopted.

PARK CITY MUNICIPAL CORPORATION

Bradley A. Olch, Mayor

Attest:

Anita L. Sheldon, City Recorder

Approved as to form:

Mark D. Harrington, Asst. City Attorney

Ordinance No. 95-

**AN ORDINANCE REPEALING RESOLUTION NO. 12-90,
FIXING THE RATE OF COMPENSATION
FOR ELECTED AND APPOINTED OFFICIALS
AND SETTING FORTH EXPENSE AND TRAVEL GUIDELINES**

WHEREAS, the City Council recognizes and appreciates the many contributions made by individuals willing to serve the community in an official capacity; and

WHEREAS, the City Council finds it desirable to foster diversity of membership on all boards and commissions, including the City Council; and

WHEREAS, the City Council finds it in the best interest of the community to review stipends for public service, from time to time; and

WHEREAS, rates of compensation for elected and appointed officials must be adopted by ordinance according to state law, and accordingly a public hearing was held on this matter on August 24, 1995 at the City Council's regularly scheduled meeting;

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

SECTION 1. COMPENSATION FOR MAYOR AND COUNCILMEMBERS. Resolution No. 12-90 is hereby repealed. Compensation for services rendered in an official capacity shall be provided as follows.

Option 1 - Keep current salary levels the same:

Mayor	\$16,032 per year plus \$100 per month car allowance
Councilmembers	9,444 per year

Option 2 - Increase salary by 2% this year and then follow pay plan guideline: Increases in compensation shall be consistent with the average percentage of increase in the ranges of salaries of the Park City Municipal Pay Plan set forth by resolution for municipal employees. Increases beyond the Pay Plan guideline will be established by amendment to this Ordinance.

Mayor	\$16,352.64 per year plus \$100 per month car allowance
Councilmembers	9,632.84 per year

Option 3 - In addition to a stipend, provide single health insurance to member at City's expense as a part of the compensation package (single health insurance coverage currently available at member's expense).

Option 4 - In addition to a stipend, pay a portion of the premium for private insurance coverage equal to the cost of City single health insurance coverage if arrangements can be made with the private carrier.

Option 5 - In addition to a stipend, pay a portion of the premium for private insurance coverage equal to the cost of City single health insurance coverage if arrangements can be made with the private carrier. If arrangements cannot be made, increase compensation by the amount of City single health insurance coverage (approximately \$155/per month).

Option 6. Service on the City Council is voluntary; no compensation or benefits, except for reimbursement of expenses.

SECTION 2. COMPENSATION FOR APPOINTEES OF BOARDS AND COMMISSIONS. Compensation for services rendered in an official capacity shall be provided as follows:

Option 1. Keep current compensation the same:

Planning Commission	\$75/per meeting
Historic District Commission	\$40/per meeting
Board of Adjustment	\$30/per meeting

Option 2 - Increase compensation by 2% this year and then follow pay plan guideline:

Planning Commission	\$76.50/per meeting
Historic District Commission	\$40.80/per meeting
Board of Adjustment	\$30.60/per meeting

Option 3 - Increase compensation by 25%, 15% and 5%, respectively, of Council compensation this year and then follow pay plan guideline:

Planning Commission	\$2,362 per year (\$98/per meeting)
Historic District Commission	\$1,417 per year (\$59/per meeting)
Board of Adjustment	\$472 per year (\$39/per meeting)

Option 4 - Service on all boards and commissions is voluntary; no compensation, except for reimbursement of expenses.

SECTION 3. PROFESSIONAL DEVELOPMENT. Allowances for City officials shall be budgeted for costs of professional development and educational conferences designed to improve understanding of and proficiency in municipal affairs.

SECTION 4. CITY BUSINESS AND MILEAGE. The compensation specified in Section 1 is intended to cover the usual costs incurred in the conduct of official City business for City officials. It is reasonable for the City to reimburse mileage costs for travel beyond Summit County and the Wasatch Front; mileage reimbursement shall be consistent with the standard set by the Internal Revenue Service.

SECTION 5. TRAVEL GUIDELINES. When official business requires air travel or overnight stays, it shall be the responsibility of the attendee to find cost effective travel and lodging. The individual will be reimbursed for tickets, meals, lodging, and other reasonable costs incurred in the conduct of such official business, consistent with the Business Travel Policy adopted by Park City Municipal Corporation.

When a City official is attending a conference where said individual's spouse is expected to attend, funds may be authorized to sufficiently cover the cost of a double room. However, all other expenses related to the participation of a spouse shall be paid by the City official. It will not be the responsibility of the City to reimburse costs for recreational activities.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 31st day of August, 1995.

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