PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JULY 29, 2004

Present: **Mayor Dana Williams; Council members, Kay Calvert; Marianne Cone, Candace Erickson; Jim Hier and Joe Kernan**

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Phyllis Robinson, consultant; Lori Collett, Finance Manager; and Colin Hilton, Economic Development Director

1. **Council questions/comments** – Marianne Cone commented on her trip to Breckenridge where there are zebra-striped pedestrian crosswalks, which she would like to explore for Park City. She also discussed a signal alerting motorists that a cyclist is on the road. Council member Candace Erickson reported that she visited Durango where she noticed that no outdoor merchandise was displayed. She also relayed that a citizen complained to her about the aggressive behavior of a timeshare salesperson on Main Street. Joe Kernan also observed inappropriate solicitation on Main Street. Mark Harrington interjected that it would be best if these activities were reported to dispatch when occurring and stated that he will follow-up with the timeshare companies in question. Mayor Williams noted that the City is working with the resorts and other agencies on clarifying responsibilities on response to avalanche emergencies. There is a public hearing on access to Brighton Estates at the Wasatch County Courthouse on August 18. He also met with an Australian delegation during the week and a group of Supreme Court judges.

2. **Review of regular meeting:**

Employee mortgage assistance program. Phyllis Robinson explained that the current program provides matching down-payment assistance up to $10,000 for employees to purchase housing within the Park City School District boundaries. The request before Council is to expand the program to encourage home ownership within the Silver Meadows Subdivision. Park City currently owns six units that are rented to City employees and the number of City-owned units has fluctuated over the years. These units provide a great resources but there may a better way to use these assets to expand affordable housing opportunities throughout the City. The new program is designed to keep the first mortgage less than 80% of loan to value to eliminate the need for private mortgage insurance. She added that as the owner of these units, the City pays home owner association fees and is responsible for maintenance. Ms. Robinson noted that she is developing a maintenance fund program for replacement of appliances, etc. and upkeep. Staff is recommending that Council allow the sale of some units and use the sale proceeds from one of the units to accommodate the enhanced second mortgage program. This would yield about $156,000, which could fund about six second mortgages for City employees. She clarified that the interest rate, as a participant in the state pool program, is 1.5%.

Ms. Robinson pointed out the benefits in increasing home ownership in the subdivision. She analyzed the return on a rental unit, calculated at $13,000 annually, and the value of the property. She suggested that the City retain at least two units and pointed out that the deed restrictions do not require owner occupancy of the units, although there are rent limitations. However, a second deed of trust would enable the City to place an owner/occupant requirement on the unit if desired.

In response to a question from Candace Erickson, Ms. Robinson explained that this program is just for the Silver Meadows units. Ms. Erickson expressed concern about selling four units and suggested selling only two. Tom Bakaly felt this would be appropriate as owning four has been an average over the years. One sale will provide assistance for six second home mortgages. Phyllis Robinson stated that the City will always hold a first-right of refusal to purchase units. Jim Hier asked why the program isn't offered to other properties outside of Silver Meadows. Ms. Robinson explained that Silver Meadows is the asset the City owns and there are several City employees living there who would like to purchase their units. The employee mortgage assistance fund is a matching down-payment. It doesn't have a second deed of trust but creates a promissory note between the employee and the City. Lori Collett pointed out that obtaining financing to purchase a Silver Meadows unit often became challenging because more than 50% of the units are rented. A program that encourages home ownership would be helpful and also protects the City's investment.

Jim Hier expressed that he doesn't understand why the program can't be extended to other appropriate projects or the relevancy of ownership. Marianne Cone believes that ownership creates neighborhoods. Ms. Robinson added that if this is successful and mortgages are repaid, staff could look into expanding the program to provide additional assistance. There are three City employees who are renting and interested in purchasing the units. There are two other City employees that are not currently renting but who are also interested in purchasing. In response to a question from the Mayor about the program becoming effective January 1, 2004, she explained that it is retro-active as there are a couple of employees who have recently purchased units there. It was clarified that there is a trust deed on the property and Joe Kernan expressed his support of the program. There was discussion on providing direction on the number of units to be retained in a housing pool. Tom Bakaly clarified that the resolution sets forth the program and a number does not need to be decided tonight. There could be an understanding that an average of four units be retained, with some flexibility for fluctuation.

Inter-local agreement – regional ice facility. Colin Hilton relayed that the agreement is 98% complete. Staff will be addressing joint funding and how that relates to ownership over the next week. As drafted, the City will be responsible for all preliminary planning steps including surveys, wetland studies, environmental reviews and all regulatory compliance regulations. Fourteen firms have responded to the RFP for the design of the recreation complex and GTCI has been recently retained to assist with the capital replacement schedule.

The City will contribute $2 million and pay a minimum of $50,000 annually to fund the operating budget. SBSRD's responsibilities include appointing representatives to the planning and construction phases, contributing $2 million to capital costs, and budgeting and contributing a minimum of $50,000 annually as an operating subsidy. Of the $4 million, Mr. Hilton envisioned that $3.5 million will be allocated to construction costs and $500,000 for the design and outfitting of the facility.

Defining operational subsidies was a point of contention, but representatives from SBSRD have agreed to the following proposal. For the first two years, the contribution is $50,000, plus 50% of all RAP proceeds above $50,000. Currently that is roughly $100,000, which would mean $50,000 plus $75,000 in years one and two. Since the last board meeting, Mr. Hilton explained that reserve funds are better defined including the ice facility fund for unanticipated deficits, capital replacement fund, and an expansion fund, which may be for an additional sheet in the future. All of these elements were forecasted over a 40-year life span, which is an incorporated industry standard. Capital replacement funds are identified from year one to year forty, which translates to $985,000 over that period. The $1.3 million includes new purchases in year forty's costs, which SBSRD would like included in the forecast. In year one and two, 90% of SBSRD's annual subsidy payment would go toward the operating deficit and 10% to the capital reserve fund. In years three through twenty, 75% of the annual subsidy payment will go to capital replacement, 25% to the expansion fund, and 0% to the operating deficit. After year twenty, allocations are split evenly between the expansion fund and capital replacement fund. This represents $1.9 million that SBSRD will be paying in addition to the $2 million. Mr. Hilton clarified that the percentage approach was based on the goal of not scrutinizing how the City is managing the facility. SBSRD didn't want to be paying into the operating deficit reserve fund and prefers to focus on its $2 million asset. There was discussion about the status of the expansion fund in the event an expansion does not occur and Mr. Hilton explained that expansion does not necessarily mean adding another sheet.

Joe Kernan understood that SBSRD's investment is in capital while the City's is operations. He hoped that didn't entitle SBSRD with more ownership rights. Colin Hilton acknowledged this issue as a topic that needs to be resolved within the next week. Jim Hier stated that the City owns the land and the ability to sell the facility would be impossible. He recalled that a separate entity was contemplated under The Canyon's model and asked if that could again be considered. Mr. Hilton explained that the parties are close to agreeing on joint ownership. The City's risk is in operating and managing this facility to break even.

The agreement contains provision for a three-year review period. Final approval of an inter-local agreement is scheduled on August 12, 2004, which may be in tandem with approving a contract for a design team.

The City Council then interviewed the following candidates for vacancies on the Historic Preservation Board and Recreation Advisory Board: Elisa Jary HPB, Kayla Sintz HPB, David White HPB, Roger Durst HPB, Rich Miller RAB, and Maile Buker RAB.

See regular meeting minutes.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JULY 29, 2004

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, July 29, 2004. Members in attendance were Dana Williams, Kay Calvert, Marianne Cone, Candace Erickson, Jim Hier, and Joe Kernan. Staff present were Tom Bakaly, City Manager; Mark Harrington, City Attorney; Eric DeHaan, City Engineer; Colin Hilton, Economic Development Director; and Kevin LoPiccolo, Planner.

II COMMUNICATIONS FROM COUNCIL AND STAFF

1. Resolution extending the Mayor's and City Council's appreciation of the patriotic commitment of Jameson Tyler Hulse honored to serve our country – Mayor Williams read the resolution into the record and presented the document to the Hulse Family.

2. Upper Park Avenue Project – City Engineer Eric DeHaan reported that the curb and gutter will be installed tomorrow and the phases are moving along on schedule.

III PUBLIC INPUT (any matter of City business not scheduled on agenda)

The Mayor invited the public to comment. Hearing none, the public input session as closed.

IV CONSENT AGENDA PUBLIC HEARING

Ordinance amending Title 4, Chapter 3A, Section 7 of the Municipal Code, regulating vending by artists on public property to amend the definition of art allowed to be exhibited – Mark Harrington explained that the amendment qualifies textile products under the definition of original art work. Hearing no questions or comments from the Council or the audience, the public hearing was closed.

V CONSENT AGENDA

Candance Erickson, "I move to approve Consent Agenda Items 1 – 5". Marianne Cone seconded. Motion carried unanimously. Joe Kernan, "I move we move Item 6, the contract with ResortCom, to No. 1 under New Business". Kay Calvert seconded. Motion unanimously carried.

1. Ordinance amending Title 4, Chapter 3A, Section 7 of the Municipal Code, regulating vending by artists on public property to amend the definition of art allowed to be exhibited – See public hearing and staff report.

2. Resolution extending the Mayor's and City Council's appreciation of the patriotic commitment of Jameson Tyler Hulse honored to serve our country – See resolution and Communications from Council and Staff.

3. Award of contract to Mountain Manufacturing and Marketing for eight bus shelter assemblies in the amount of $97,012 – See staff report.

4. Resolution adopting mortgage assistance programs for employees of Park City Municipal Corporation and repealing Resolution No. 23-95 – See staff report and work session discussion.

5. Lease with Boys and Girls Clubs for Recreation Building, located at 1400 Sullivan Road – See staff report.

6. Addendum to contract with ResortCom for management services for the Imperial Hotel, located at 221 Main Street – See staff report and New Business.

VI NEW BUSINESS

1. Addendum to contract with ResortCom for management services for the Imperial Hotel, located at 221 Main Street – Colin Hilton stated that this addendum extends the contract for another nine months and the terms provide that the City is compensated $2,000 a month. Joe Kernan felt it makes sense to extend the contract through the summer. If the Air Force ultimately decides not to purchase the property it makes sense to recover the City's investment by selling the Imperial or finding another use that has value. Mr. Hilton advised that there is a 30-day termination notice provision. Marianne Cone noted that the ten rooms could be rented to employees, but leasing on a month-to-month basis is probably not feasible for housing. Mr. Kernan agreed and added that the City could make more than $2,000 per month if the rooms were rented throughout the season. Candace Erickson agreed with Mr. Kernan about exploring opportunities, but at the moment, this arrangement is not costing the City anything. A decision on the property should probably be made by September or October. Jim Hier, "I move we authorize the City Manager to execute the addendum to contract for the management of the Imperial Hotel with ResortCom for an additional nine month period". Marianne Cone seconded. Motion unanimously carried.

2. Resolution adopting an inter-local agreement with the Snyderville Basin Special Recreation District for joint funding of a regional ice facility – See work session discussion. Marianne Cone, "I move that we continue the Resolution adopting an inter-local agreement with the Snyderville Basin Special Recreation District for joint funding of a regional ice facility until August 12, 2004". Kay Calvert seconded. Motion carried unanimously.

3. Appeal of Historic Preservation Board's denial of a Certificate of Appropriateness for Demolition for 801 Park Avenue – David Belz:

Presentation by staff – The City Attorney stated that this is an unusual appeal as it has been stayed since 1994. Staff's recommendation outlines a way of dispensing the appeal in terms of granting the appeal on a technical legal argument based on the Land Management Code in effect at the time of application. The caveat is that the property was simply not listed on the "list of historically significant properties" maintained by the Planning Department at the time of application. Even if facts are found by virtue of the hearing, which don't support that recommendation, it doesn't dispense the economic hardship criteria argument, which is also a part of the appeal. To the degree that Council may be inclined to denying that component of the appeal, there would need to be a discussion on the economic hardship criteria. Mr. Harrington explained that there are two components of the original appeal. One being that the applicant met the economic hardship criteria outlined in the LMC at the time of application and the second point was based on the determination that the property was not listed.

With regard to the list, Mr. Harrington referred to former City Attorney's Jodi Hoffman's brief in the staff report and acknowledged that this has been a frustrating issue for everyone. In the early 1990s, there were rapid changes to the preservation approach and the first version of the Historic Preservation Ordinance simply regulated commercial structures within the District and instituted a stay of demolition while other alternatives were explored. If that did not occur, then the 100-day period would lapse, and the applicant could pull a CAD. Incrementally, the Historic District Commission and Council decided to expand the ordinance and implement amendments. He emphasized that the legal crux is Section 4.13 of the LMC in effect at the time of application required the HDC to maintain a list of historically significant properties. The only list utilized by the Planning Department at the time for this purpose was the Historic Survey of 1982. In Section 4.15, the LMC provides that unless the Building Department makes a determination of a dangerous building or the Planning Department determines that the property is insignificant by virtue of looking at the Historic Survey on file in the Planning Department, it has to go through a process.

At that time, Mr. Belz raised the fact that 801 Park Avenue was not listed on the Historic Survey of 1982, but the Planning Department and HDC still chose to go forward with the economic hardship analysis and found that he did not meet that criteria. That matter was quickly appealed and the historic significance issue was raised appropriately and timely by Mr. Belz's counsel before the City Council. The issue of whether it was on or off the list was properly raised in 1994 and adequately addressed in Ms. Hoffman's opinion in the staff report. This was publicly disclosed in order to facilitate a negotiation, which resulted in an unlimited stay to provide an opportunity to work with the owner to save the structure. The City wanted to save the structure regardless of the fact that 801 Park Avenue was not technically protected by the provisions of the CAD in the LMC. It has been the Legal Department's opinion since 1994 that the CAD provision is not the mechanism by which this building will be saved.

In response to a question from Jim Hier, the City Attorney discussed the incremental amendments to the statute made in 1994, which totaled as many as four. For example, criteria for significance changed from structures within the Historic District, to within the Historic District and 50 years old, to 50 years old and presumption of significance, to determination of significance presumed unless otherwise shown. These changes were adopted as a bridge before the full survey was complete within three years but to date, the survey has never completed. Mark Harrington advised that the purpose of the list was based on takings cases fought in other jurisdictions over regulation of demolition and in order to prohibit demolition, rather than just imposing a stay, due process must be extended to the owner. Potential owners must be put on notice of special regulation by way of the list. Prior to 1992, there was no maintenance of a list and the staff used the survey. Due process also provides owners with an opportunity to contest the determination. Mark Harrington stated that at the time the application was filed, the determination of significance process was not in the Code and if there is no list, there is no mechanism by which the HDC could determine significance and meet federal due process standards. No list is the same as not being listed. Mark Harrington clarified that the survey was adopted by resolution by the HDC as the list to be maintained by the Planning Department. This property was not on the list at the time of acquisition and application in December 1993. The survey was a collection of photos of homes in a binder and named the "list" by reference. There was also debate on whether the City should adopt stricter criteria than the national standards and it was decided then to go with the presumption approach and place the burden on the owner.

In response to a question from Kay Calvert, the City Attorney stated that Mr. Belz disagreed with the historical significance designation of 801 Park Avenue from the outset. He originally applied for an administrative CAD and was advised by Planner Janice Lew that it would not be processed as an administrative matter because she determined the structure significant and advised that it would go before the HDC. Ms. Calvert asked if other structures on the property are deemed significant. David Belz responded that 811 and 817 Park Avenue have been partially restored but are fully stabilized and are both listed in the contributing group. Marianne Cone asked why 801 was treated differently, and Mr. Belz explained that national standards do not allow 90% of the building to be torn down and the remaining10% of the elements reused on a new building which has been done here. The siding is not historic and much of the building was damaged by fire. Mark Harrington interjected that this discussion is irrelevant because there was no post-application determination of significance in the code at the time Mr. Belz applied.

Kevin LoPiccolo added that staff has worked with Mr. Belz over the years to arrive at a solution and amended the LMC to accommodate projects that have historic structures on site. However, these changes were not enough for their project to be approved by the Planning Commission.

Presentation by appellant – David Belz stated that this has been a long process. Historic preservation is very important to him and he has won national awards for his work in Park City. He is torn about 801 Park Avenue because history is important to him but he has to look realistically at what can be saved. From the outset, it was his impression that this was a building that was not required to remain at the location, but nevertheless, the building was included in every proposal submitted. It is now 12 years out from the initial application and it's time to move forward at this juncture.

The Mayor opened the floor to the audience.

Public input

Alison Child, resident, stated that she was on the planning staff in the early 1980s and actually walked the streets with Ellen Beasley, an architectural historian, to compile the survey in 1982. She described the process for the thematic nomination of the entire District. The City acknowledged that it had to identify buildings contributing and those not in the District. Every building was photographed and categorized, including 801 Park Avenue. Additionally, Ms. Child noted that she was a member of the HDC in the early 1990s when the application was submitted and recalled that the building was listed as contributory or significant. It was on the list. Mark Harrington commented that he was also working for the City in the early 1990s and to his knowledge, 801 Park Avenue was not on the list and because of the circumstances, he provided the planning staff specific direction on the CAD process. Mr. Harrington personally testified that it was not in the book at the time Mr. Belz applied. Ms. Child believed that no one knowingly took it out of the book.

Gary Kimball, HPB member and resident, shared the history of 801 Park Avenue in detail in support of preserving the building.

Lynn Fey, resident and former HDC member, relayed that she personally contacted Ms. Beasley who stated that 801 Park Avenue was listed. She argued that the list she was provided for the meeting was printed in 2000. Kevin LoPiccolo explained that an index was printed in 2000. Mark Harrington clarified that the determinations were made in 1993 and 1994, not just recently. She felt it may have been likely that it is in another book and staff should continue to search. She insisted that Alison Child and Ellen

Beasley recall listing it so that should have credence. Basing a major decision on an error doesn't seem right.

Ken Marth, former HDC member, agreed with Mr. Harrington's comments that the CAD process was developing into a more sophisticated approach. He felt that the HDC was an arm of the Planning Department who provides information and guidance. He stated that he would hate to see a building torn down because of a fluke in the process, which is his concern. This should not be reviewed as a CAD application but a different process should be explored. He added that the building has been neglected for 15 years and again urged the Council to set aside this process.

David Hampshire, former HDC member, discussed the importance of Park City history to residents and visitors. He spoke abut saving the Mid-Mountain Lodge at the Park City Mountain resort. Private property rights need to be balanced with the community's character and values. Allowing demolition of the building may send a message to other historic property owners.

Linda McReynolds, Historic District resident and former HDC member, stated that she spent $35,000 to $40,000 on restoring her historic home while other historic structures are demolished by neglect. She felt there is a lot of confusion about information on this property for such an important decision.

Dana Williams didn't feel this situation is precedent setting because the project is so unique and Mark Harrington agreed. The City Attorney acknowledged the difficulty in dealing with this level of technicality, which takes a higher standing to constitutional principles of due process in the event of a greater good. The fact of the matter is that Mr. Belz is entitled to the application to be processed under the code in effect at the time of application and the Legal Department is confident that the reading in the staff report is correct. Mr. Harrington pointed out that this is exactly why there are time limits on appeals. He also advised that the Chief Building Official Ivie wanted the building demolished under the Dangerous Building Code three years prior to the application. The staff kept Ron Ivie and application of the Dangerous Building Code at bay as long as there was a good faith effort to work toward a solution even though this was at great legal risk to the City. The City is trying to follow the letter of the law, and nothing more.

Ron Butkovich, Old Town resident and businessman, and former HDC member, felt the boarding house is historic and is significant. It has been allowed to deteriorate over the years and to lose a building is always a tragedy. The plans submitted by the owner over the course of ten years incorporating the building are opportunities that have been lost. We need to move forward.

Jeffrey Kuhn, owner's representative, responded to the letter David Belz wrote. They have been involved in other historic preservation efforts. Mr. Belz has done everything possible on 801 Park Avenue and has invested much more than $35,000 planning the property both in part and in whole. A 12-year commitment to a process is significant.

Lynn Fey didn't feel we need to discuss this (Kuhn's comments) since the legal issue is whether the property was on the original list or not. Mark Harrington interjected, not the "original" list, but on the list as it was maintained by the Planning Department at the time of application. Lynn Fey didn't think it appropriate to express sentimental or hardship opinions. Mayor Williams responded that he feels that everyone who has testified has been sentimental and emotional.

David Hampshire, stated that it was his recollection in 1992 as a member of the HDC that the list had not been adopted by the board. Mark Harrington explained that at that time the 1982 survey was being used and by the time the HDC took action, the list was adopted.

Thea Leonard, resident, asked for clarification about incorporating this building in plans over the past 12 years and David Belz responded that he has spent hundreds of thousand of dollars on a solution. It is time to move on. Ms. Leonard agreed that something should happen with the lot as the location deserves better. She asked if people are afraid of what would be allowed to be built there if the building is demolished. Jeffrey Kuhn stated that nothing has been planned or designed. Ms. Leonard felt that replication can work and that a boarded up building really sends the wrong message at this key location. She stated that she trusts David Belz's integrity and felt he would design something appropriate. Something needs to happen on that corner. Marianne Cone stated that once the building is gone, there is no connection with what was there like Arts Hardware.

Sandra Morrison, Park City Historical Society, stated that in 2002, they offered to use their own funds to hire a mutually acceptable architect, Wally Cooper, to analyze the feasibility of restoring the building. The report indicated that although the building is in disrepair it is nowhere near collapse and immediate stabilization is recommended. The Historical Society also offered to match the property owner's estimated cost of demolition of $10,000 to preserve the building and continue this dialog. That offer is still on the table. She added that there is a lot of confusion over which Chapter 4 to apply and cited definitions of significance from different versions. It would seem that Council would want irrefutable evidence before making a decision. Certainly, the intent in 1993 was to save historic buildings and the Historical Society is willing to help secure the building until there is a resolution. For clarification, Mark Harrington stated that Ordinance 94-32 added the 50 year presumption of significance, which was less than a month after the CAD determination by the HDC. Section 4.13 was in effect, which referenced the list and the survey on file in the Planning Department.

Kevin King, resident, expressed the importance of decisions being based on the code. He urged Council to allow Mr. Belz to proceed with the MPD approach. He believed the Council has no choice but to allow the demolition based on technical information.

Barbara Martz, resident, suggested that there be more "fact-finding" before a decision is made.

With no further public input, the session was closed.

Decision

Joe Kernan believed the property was once on the list and that there was a demonstrated desire to preserve the building on the part of the owner. In this instance and under these circumstances, he believes the City has lost its leverage to save the building but there is an opportunity to cooperate and to move ahead. He is relieved that rescinding the HDC decision is not setting a precedent. Kay Calvert agreed and emphasized the importance of cooperation and compromise. Following the letter of the law protects all of our rights. She still believes that the building can be saved with the efforts of the community and the donation offered by the Historical Society. Marianne Cone didn't question the property being on the list originally. She hoped there is some part of the building that can be saved and acknowledged that it is time to move toward resolution. Candace Erickson acknowledged that preservation is very important to the community and tourism. This is an unfortunate situation, but the Council must follow the law. She personally wants the building saved but based on legal advice, can't support the HDC's decision. Jim Hier feels the Council is committed to historic preservation but also supports the opinion of the Legal Department. He directed the City Manager to meet with David Belz to see if something can be worked out to save the building, even though it appears that he will receive a CAD.

The City Attorney applauded the efforts of concerned citizens in attendance. He felt the government failed to a degree in protecting the building based on a technicality, but the City is obligated to move forward. He also apologized for the confusion in assembling the materials in terms of resurrecting the record. Mayor Williams acknowledged that he won't be voting, but stated his interest in saving the building, but not at the expense of providing unrealistic density on the site. Jim Hier, "I move we rescind the Historic District Commission's June 13 decision denying the appellant's certificate of appropriateness for demolition, subject to the findings of fact and conclusions of law, outlined in the staff report, with the addition of the correct Chapter 4, 28th Edition". Kay Calvert seconded. Motion unanimously carried.

VII ADJOURNMENT

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

Prepared by Janet M. Scott

Janet M. Scott, City Recorder

City Council
Staff Report

PARK CITY
1884

LEGAL DEPARTMENT

Author: Mark Harrington
Subject: CITY ATTORNEY
Date: July 29, 2004
Type of Item: Public Hearing and Action - Legislative

Summary Recommendations:
Conduct a public hearing and adopt the ordinance change requested by a citizen to amend the Art in the Park Ordinance to allow the sale of clothing.

Description:
Topic:
Art exhibit space in the public park north of the Library.

Background:
This matter was previously discussed before City Council on July 31, 2003, September 25, 2003, March 1, 2004, April 15, 2004, and July 1, 2004.

In the June 24th Manager's Report, the Council received a copy of a letter from a textile artist who wished to display hand-woven articles of clothing. Council member Marianne Cone requested consideration of the request and specifically suggested amending the Art in Park Ordinance by removing the last phrase in the Art definition, which excluded clothing, as shown below:

<u>(1) "Art" means original works of fine art, graphic art and aesthetic objects produced by the Artist. It shall not include (1) any artwork produced by any person other than the Artist displaying the artwork; or (2) any artwork purchased or taken on consignment and held for resale.</u>

The Council considered the matter during work session July 1st and directed staff to return with an ordinance amending the code as requested.

Analysis:

See July 1, 2004 staff report.

Department Review:
Legal, the City Manager and Special Events have reviewed this matter.

Alternatives:

Approve the Request:
Adopt the ordinance as proposed.

Deny the Request:
List this as an issue to include in the post-test season evaluation, but do not change the ordinance.

Continue the Item:
Provide direction regarding what change in implementation the Council would like to achieve.

Significant Impacts:

Staff will monitor any impacts and report back to Council as necessary.

Consequences of not taking the recommended action:

Staff does not think the amendment will create an overload in number of artists, but as discussed above, the amendment will likely open the door the other requests and create an on-going dialogue, rather than the agreed upon test.

Recommendation:
Conduct a public hearing and adopt the ordinance change requested by a citizen to amend the Art in the Park Ordinance to allow the sale of clothing.

Ordinance No. 04-__

AN ORDINANCE AMENDING TITLE 4, CHAPTER 3A, SECTION 7 OF THE MUNICIPAL CODE, REGULATING VENDING BY ARTISTS ON PUBLIC PROPERTY, TO AMEND THE DEFINITION OF ART ALLOWED TO BE EXHIBITED.

WHEREAS, Park City adopted Ordinance No. 04-10, the Art in the Park Ordinance, on April 15, 2004, to partner with artists who wished to exhibit and sell their artwork on public property to define reasonable time, manner, place regulations and a location to allow such display; and

WHEREAS, at the request of an artist, the Council now finds that it is in the best interests of the city to clarity/expand the definition of art to include art works originally produced but may be worn as clothing;

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

SECTION 1. FINDINGS: The Council finds that:

1. All findings of Ordinanace No. 04-10 are incorporated herein;

2. Expanding the definition of Art to include originally produced artwork which may also be worn as clothing is consistent with the original intent of the Council and increased registration as a result of such new definition is not reasonably expected to detract from the overall capacity nor compatibility of the park area;

SECTION 2. AMENDMENTS TO TITLE 4 OF THE MUNICIPAL CODE. Title 4, Chapter 3A, Section 7 "Art Exhibit for Sale on Public Property," is hereby amended as follows:

(A) **Definitions**. For the purpose of this Chapter, the following words shall have the following meanings:

(1) "Art" means original works of fine art, graphic art and aesthetic objects produced by the Artist. It shall not include (1) any artwork produced by any person other than the Artist displaying the artwork; (2) any artwork purchased or taken on consignment and held for resale~~; or (3) any clothing~~.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

City Council
Staff Report

PARK CITY
1884

Public Works

Author: Eric Nesset, Transit-Parking M
Subject: Bus Shelters
Date: July 29, 2004
Type of Item: Administrative

Summary Recommendations:

Authorize staff to execute an agreement with Mountain Manufacturing & Marketing Inc., in a form approved by the City Attorney, for eight (8) bus shelter assemblies, in the amount of $97,012.

Description:

Background:

Park City Transit and Summit County have been awarded a Federal Transit Administration grant that will provide reimbursement for 80% of the cost, of up to eight (8) bus shelters and related transit amenities. Park City will pay the remaining 20% of the cost of shelters installed within Park City and Summit County will pay the remaining 20% of the cost of shelters installed along county bus routes. It is anticipated that Park City will purchase four (4) of the shelters and Summit County will purchase the remaining four (4) shelters.

Staff is currently in the process of identifying appropriate bus shelter locations. Potential locations within Park City may be on Park Ave at the Library, on Kearns east of Adolph's and the High School, and Sidewinder near Comstock. In Summit County, potential locations may be near the new Field House, Wal-Mart, Ritchins Building, Uinta Blvd near Wild Oats, or near Ecker Hill or Trailside schools. All shelters may not be installed immediately. While the best sites are identified and negotiations completed with landowners; they will be stored at Public Works.

Upon notice of award of this grant, Park City Transit issued a Request For Proposals (RFP) in compliance with applicable Local, State and Federal requirements. The RFP was advertised locally and nationally. The RFP was for no less than five (5) and up to eight (8) approximately 8 ft x 15 ft shelters and included structural design requirements to meet Park City's building codes. Nine companies requested and received copies of the RFP.

Analysis:

Responsive proposals were received from three companies. Cost proposals for eight (8) shelters, including structural design and shipping are:

Design Dimensions -	$115,505
Mountain Manufacturing Inc. -	$97,012
Columbia Equipment Company -	$90,740

A selection committee reviewed the proposals. Selection criteria listed in the RFP were:

- Shelter design appropriate for mountain resort environment
- Ease of maintenance and assembly
- Initial cost

The selection committee's recommendation is to award the contract to Mountain Manufacturing based on a design they determined to be more flexible and compatible with bus shelters previously installed in Park City than the more urban, window wall design of the Columbia shelter.

The reasons for recommending the purchase of the maximum number of shelters available under the grant now, rather than purchasing shelters individually as site negotiations are completed are: 1) the grantor wants the money spent by October, 2004, and 2) the cost of each shelter is reduced when purchased in quantity. The purchase of these shelters was anticipated in the 2004 budget process. Adequate funding for this purchase exists in CIP account 57-47006-7319 "Bus Shelters".

Department Review:

The City Manager's Office, the City Attorney's Office, Budget\Debt and Grants and Public Works have reviewed this Staff report.

Alternatives:

- **Approve the Request:** Authorize staff to execute an agreement with Mountain Manufacturing & Marketing Inc., in a form approved by the City Attorney, for eight (8) bus shelter assemblies, in the amount of $97,012.
- **Deny the Request:** Not utilizing FTA grant monies will forgo an opportunity to fund 80% of the cost of these bus shelters and may jeopardize approval of future grant applications.
- **Continue the Item:** This alternative will have the same impact as Alternative B.
- **Do Nothing:** This alternative will have the same impact as Alternative B.

Significant Impacts:

Transit amenities, including bus shelters, usually result in increased transit use and will provide more comfortable waiting areas for locals and visitors.

Consequences of not taking the recommended action:

Not utilizing FTA grant monies will forgo an opportunity to fund 80% of the cost of these bus shelters and may jeopardize approval of future grant applications.

Recommendation:

Authorize staff to execute an agreement with Mountain Manufacturing & Marketing Inc., in a form approved by the City Attorney, for eight (8) bus shelter assemblies, in the amount of $97,012.

City Council
Staff Report

PARK CITY 1884

City Manager's Office

Author: **Phyllis McDonough Robinson**
Subject: **Silver Meadows Second Mortgage Program**
Date: **July 20, 2004**
Type of Item: **Administrative**

Summary:
Approve the attached resolution that authorizes staff to implement an enhanced Silver Meadows Second Mortgage program to assist City employees to purchase units in the Silver Meadows development.

Topic: Enhancements to Employee Second Mortgage Program

Background:
Park City Municipal Corporation currently owns six town homes in the Silver Meadows development located across from the Park City High School. These units are available for rent by full time, regular employees. Five of the six units are currently rented. The sixth unit was acquired earlier this month to replace a rental unit purchased by a city employee. It is being prepared for occupancy.

The City maintains a waiting list of city employees interested in purchasing a unit at Silver Meadows. Staff recently conducted a survey among the city employees currently renting at Silver Meadows and employees who recently tried to purchase a unit. Four of the current renters, and two other employees would be interested in purchasing a unit, but are unable to accumulate a down payment substantial enough to bring monthly housing costs into an affordable range.

The City currently provides second mortgage assistance of up to $10,000 in matching funds to assist employees to purchase housing within the Park City School District Boundary. While this is an important resource, for some employees – especially those purchasing their first home, or employees with single income households, the hurdle of accumulating a matching down payment to access those funds still exists.

This staff report presents a recommendation for the City to implement an enhanced Employee Second Mortgage Program for the Silver Meadows development. This program will maintain the City's commitment to employee assisted housing with the added benefits of increased homeownership rates within the Silver Meadows development, reduction in the City's risk and exposure as a landlord, and expansion of resources for additional affordable housing projects through the conversion of existing rental units.

Analysis:

Program Description

The key element of the enhanced Employee Second Mortgage Program for Silver Meadows is the increase in the maximum second mortgage loan amount to 17 percent of the unit cost. At current sales prices this is approximately $26,690. The existing Employee Second Mortgage Program is limited to $10,000.

The buyer would be responsible for providing at minimum a three percent down payment, or approximately $4,710. These funds, when combined, would provide 20 percent of the financing thus allowing the buyer to qualify for conventional financing without private mortgage insurance on its first mortgage. This can provide a significant cost savings of up to $100 per month in housing costs.

In addition, a deed restriction requiring that the unit be owner-occupied would be added to the property. This deed restriction does not currently exist. In some cases units have been purchased by city and non-city employees, and after a period of time they have become rental property. While subject to maximum rent limitations, the decreasing homeownership level in the development has affected the ability to obtain financing because it is considered to be a primarily investor-owned HOA. Increasing the overall level of homeownership in the development would be of benefit to all owners. This deed restriction would be enforced through an annual owner-occupancy certification verified by tax roles showing the property taxed as the primary residence. Should the property cease to be the primary residence, the second mortgage would be due and payable at the City's discretion. Consideration should be given for short term rentals necessitated by changes in family situation or military service. This is not intended to prohibit an owner from having a housemate who contributes towards the monthly housing cost.

The interest rate and terms of the program would be similar to the existing City mortgage program. The interest rate would be five percent. Principal and interest payments would be deferred for the first five years. Interest would accrue during the period of deferral. The five year deferral is essential for the loan amount not to be considered in the loan underwriting. If the deferral period were shorter, the first mortgage would need to include the payments in the loan underwriting. It would have the effect of reducing the amount of the first mortgage the employee could afford.

Funds would be available on a first-come, first-served basis to full-time, regular employees. Employees are not required to purchase a city-owned rental unit. The Silver Meadows Second Mortgage program may be used in the purchase of any unit at Silver Meadows. In the event that applications for assistance outstrip available resources during the first 90 days of the program, applications from employees living in city-owed rental units who wish to purchase their current rental property will be given priority. The program would be effective January 1, 2004 to allow employees who recently purchased units to take advantage of these funds if they would be of assistance.

All other master deed restrictions, including appreciation caps and the City's right-of-first refusal would still be in place.

Program Funding

Funding for the enhanced Employee Second Mortgage Program for Silver Meadows would be provided through the sale of an existing city-owned rental unit to a city employee. The sale of one town home would generate funds sufficient to fund up to six second mortgages. Funds generated through the sale of additional town homes would be placed in the City's affordable housing account and used to further other affordable housing goals. Eligible uses of these funds could include capitalizing a replacement reserve account for city-owned rental property at Silver Meadows and 1465 Park Avenue, land or real property acquisition for future affordable housing development, low interest loans for affordable housing development, or seed capital for future programs.

Limitations on Sale

It is recommended that the city retain at least two rental units at Silver Meadows for city employees. These units serve an important function in employee recruitment and retention.

Risk Reduction

The units at Silver Meadows rent for $844. From these proceeds the city must pay HOA dues, a management fee and insurance. These table below details the expenses and estimated return on the current investment.

Current Sales Price	$156,000	
Gross Annual Rent	10,128	
Less: HOA Dues	1,104	
Less: Mgt Fees	304	
Less: Replacement Reserve	500	
Net Annual Income	8,220	
Plus: Appreciation	4,680	(3%)
Total NOI + Appreciation	12,900	
Value of Income	$143,333	(9% capitalization rate)

The sale of one or more Silver Meadow units reduces our risk exposure for ongoing property maintenance.

Comparison of Rental Income vs. Interest Earned

Sale of One Unit	$156,000	(proceeds to fund program)
Interest Earned	7,800	(Second Mortgages at 5%)
NOI	8,220	

The interest earned on the creation of the revolving loan fund is five percent lower than the NOI earned on that unit as a rental property.

Impact of the Sale of Four City-Owned Rental Units

Proceeds from Sale:	$624,000	
Less: Second Mortgages	156,000	(proceeds to sell program)
Net Proceeds available	468,000	(for other affordable housing efforts)

Interest Earned	7,800	(Second Mortgage at 5%)
Interest Earned	14,040	(Remaining Funds Earning 3%)
Net Income	21,840	
Foregone Rental Income	32,880	
Difference	(11,040)	

The short term impact of four city employees purchasing their units is a net loss of $11,040 of income. This assumes that the remaining sales proceeds are in an account earning three percent. If the remaining proceeds are used to fund land acquisition, the funds would then be invested in an appreciating asset. Finally, because the city retains a right of first refusal to purchase units, the city could repurchase units, if desired.

There are intangible positive benefits including:

- Reduction in staff time managing the rental property.
- Availability of funds to capitalize other affordable housing programs.
- Risk reduction in owning rental property including capital replacement costs not currently budgeted or increased HOA costs.
- Employee recruitment and retention encouraged by the second mortgage program.

Department Review:
Budget, Debt and Grants, Finance, City Manager and Legal have reviewed this staff report.

Alternatives:
Approve the Request: Council could approve the request to create an enhanced Second Mortgage Program for the Silver Meadows development as outlined above.

Deny the Request: Council could deny the request and direct staff to maintain the existing rental program.

Continue the Item: Council could continue the item and direct Staff to return with additional information.

Significant Impacts
No long term significant negative impacts are anticipated. As discussed above, the sale of one unit at Silver Meadows will fund second mortgages for up to six employees, as well as capitalize a replacement reserve account for remaining city-owned rental property. Proceeds from the sale of additional units will be placed in the City Housing Fund and used to fund future capital costs related to land and real property acquisition for future affordable housing. There is a potential short term loss of rental income as units are converted from rental to owner-occupied units. This loss is offset by intangible positive benefits discussed above.

Consequences of not taking recommended action:

The enhanced Silver Meadows Second Mortgage Program provides an opportunity to put these assets to work for additional affordable housing opportunities. It provides an opportunity to create a new source of capital that will assist employees to move into homeownership without decreasing the funds available for the existing Second Mortgage Program. The consequence of not taking the recommended action is one of lost opportunities and increased strain on existing housing resources.

Recommendation:
Staff recommends that the City Council approve the creation of the enhanced Silver Meadows Second Mortgage Program.

RESOLUTION ADOPTING MORTGAGE ASSISTANCE PROGRAMS FOR PARK CITY MUNICIPAL CORPORATION EMPLOYEES AND REPEALING RESOLUTION NO. 23-95.

WHEREAS, the City Council has identified employee housing as a high priority in its work program as evidenced by the adoption of Resolution No. 17-99, outlining policies for housing projects; Resolution No. 8-93, detailing affordable housing guidelines and standards; and its commitment and support to the success of several affordable housing projects in Park City;

WHEREAS, in a continued effort to maintain community diversity and high quality emergency services, the City Council adopted Resolution No. 23-95 on October 26, 1995 which established the Mortgage Assistance Program for Park City Municipal full-time employees; and

WHEREAS, it is the determination of this City Council that increasing the limits for the Employee Mortgage Assistance Program to assist in the purchase of units in the Silver Meadows development is in the mutual interest of the City and its employees;

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

SECTION 1. GENERAL MORTGAGE ASSISTANCE PROGRAM. The City Council hereby affirms and renews its support for the continuation of the Mortgage Assistance Program for Park City Municipal employees.

1. This program assists regular, full-time employees with matching down-payments up to $10,000 down-payments on the purchase of primary residences within the Park City School District Boundaries.
2. Funds are available on a first-come, first-served basis until the balance of the General Mortgage Assistance Fund has been depleted.
3. The unit must be owner-occupied. A deed restriction will be recorded with this requirement. This deed restriction will be enforced through an annual owner-occupancy certification verified by tax roles showing the property taxed as the primary residence. Should the property cease to be the primary residence, the second mortgage would be immediately due and payable at the City's discretion. Consideration should be given for short term rentals necessitated by changes in family situation or military service. This is not intended to prohibit an owner from having a housemate who contributes towards the monthly housing cost.
4. All other master deed restrictions if applicable, including appreciation caps and the City's right-of-first refusal continue in full force.

SECTION 2. SILVER MEADOWS MORTGAGE ASSISTANCE PROGRAM. The City Council hereby authorizes staff to implement a Silver Meadows Mortgage Assistance Program for full-time, regular employees of the Park City Municipal Corporation. This program is intended to increase homeownership levels in the Silver Meadows development.

1. The maximum second mortgage assistance shall not exceed 17 percent of the sales price of the unit. A second deed of trust shall be recorded against the property for the amount of the employee mortgage assistance in favor of Park City Municipal Corporation.
2. The employee shall contribute a minimum of 3 percent of the sales price towards the down payment.
3. The unit must be owner-occupied. A deed restriction will be recorded with this requirement. This deed restriction will be enforced through an annual owner-occupancy certification verified by tax roles showing the property taxed as the primary residence. Should the property cease to be the primary residence, the second mortgage would be immediately due and payable at the City's discretion. Consideration should be given for short term rentals necessitated by changes in family situation or military service. This is not intended to prohibit an owner from having a housemate who contributes towards the monthly housing cost.
4. The interest rate for the second mortgage program will be five percent. Principal and interest payments would be deferred for the first five years. Interest would accrue during the period of deferral.
5. Funds are available on a first-come, first-served basis to full-time, regular employees. In the event that applications for assistance outstrip available resources during the first 90 days of the program, applications from employees living in city-owed rental units who wish to purchase their current rental property will be given priority. The program effective date would be retroactive to January 1, 2004 to allow employees who recently purchased units to take advantage of these funds if such assistance would be beneficial.
6. All other master deed restrictions, including appreciation caps and the City's right-of-first refusal continue in full force.
7. Funding for the Silver Meadows Second Mortgage Program would be provided through the sale of an existing city-owned rental unit to a city employee. Repayments would be reallocated to the Silver Meadows Second Mortgage Program.

8. Funds generated through the sale of subsequent city-owned units up to a maximum of four would be placed in the City's affordable housing account and used to further other affordable housing goals.

SECTION 3. REPEAL. Resolution No. 23-95 if hereby repealed.

SECTION 4. EFFECTIVE DATE. This Resolution shall become effective upon adoption.

City Council
Staff Report

PARK CITY 1884

Special Events and Facilities Department

Author: Alison Butz
Subject: Boys and Girls Club
Date: July 29, 2004
Type of Item: Administrative – Lease Authorization

Summary Recommendations:
Staff recommends that Council approve the lease of the Rec Building to the Boys and Girls Club.

Description:

Topic:
The Boys and Girls Club is looking to establish a more permanent home in Park City. At this time they have requested assistance in finding a temporary space in the City's Rec Building to hold programs while a more permanent location is found.

Background:
The Boys and Girls Club currently offers programs in two schools in Park City and has maximized their available space the School District has offered to them. There are 150 registered members in the Park City School District, and with the expansion plans they plan to increase the registered members to 400. When fully operational, the Boys and Girls Club would offer kids in the community programs in Education and Career Development; Health and Life Skills; Character and Leadership Development; Sports, Fitness and Recreation; and the Arts. Boys and Girls Club Services also extend into before and after school care, and after school drop-in.

The Boys and Girls Club is pursuing a permanent home within Park City and anticipate acquiring property within the next four years. In the meantime, with the space in the School District maximized, they have begun looking for a temporary 1 – 3 year location to increase their programs and services to the community.

The Boys and Girls Club would use the entire building to provide their programs and services with the goal to be open as many non-school hours as possible. While the Boys and Girls Club can provide transportation to and from school, a central location in town, on the bus route is convenient for the evening, weekend and summer attendees.

Anaylsis:
Staff began looking at available City buildings and the Rec Building in City Park was suggested. The Recreation Center has many current uses throughout the entire

year. Staff has reviewed the list of users and finds that it could work to reschedule the AA and other various meetings at Miners Hospital. Staff has already worked with the Sundance Institute to find a suitable space to relocate the print room for the festival. The Summer Camp cannot be easily relocated.

The Summer Day Camp program has been offered by Park City Recreation for over 20 years. It is a valuable and popular program for Park City residents, as evidenced by the 2003 and 2004 summers when the camp operated at close to capacity (for the building and staff:camper ratio).

The location of the Recreation Building in City Park is ideal for Day Camp. Staff can easily utilize the skatepark and the soccer/softball fields for games. The library is easily accessible. Being on the bus route allows for short "in-town" field trips to other parks, and to the Racquet Club for swimming.

The lease has been written to continue allow the Recreation Department to continue their use of the building during the summer. Staff has offered the Boys and Girls Club use of the building from September 1st to May 31st.

The attached lease and the addendum will be in effect upon execution.

ALTERNATIVES

A. Recommend the lease be approved, thereby allowing the Boys and Girls Club to rent the Rec Building in City Park.
B. Modify terms of the addendum and approve in order to allow for the Boys and Girls Club Library expansion.
C. Recommend denial of the lease thereby preventing the Boys and Girls to locate their programming in the Rec Building.
D. The City Council may continue the action for more information and discussion.

Significant Impacts:
Renting the Rec Building to the Boys and Girls Club will cause the relocation of some existing meetings in the building. Staff is confident that alternative locations can be provided to those meeting groups in other City facilities.

The Boys and Girls Club will be paying rent at $15.75 per square foot. The total for nine months of rent comes to Eighteen Thousand Three Hundred Forty-Four Dollars and Eighty-One Cents ($18,344.81) for the lease term.

Consequences of not taking the recommended action:
The Boys and Girls Club would need to find another suitable location to expand their programming in Park City.

RECOMMENDATION:
Staff recommends that Council approve the lease thereby allowing the Boys and Grils Club to occupy the Rec Building from September 1st through May 31st.

Exhibits

Exhibit A – Lease Agreement Between the Boys and Girls Club and Park City Municipal Corporation

Boys and Girls Club of Greater Salt Lake
Park City Municipal Corporation
2004 Property Lease

THIS AGREEMENT is made by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and the Boys and Girls Club of Greater Salt Lake (hereinafter referred to as "Tenant") to set forth the terms and conditions under which Landlord will lease space in Recreation Building at 1400 Sullivan Road, Park City Utah (hereinafter referred to as "Rec Building") to Tenant. The parties agree as follows:

1. Property. The property leased is within Rec Building as described in Exhibit A (attached and hereafter referred to as Premises). The leased space includes the entire Main Floor of the Rec Building as is, excluding the Police Department office.

2. Term. The term of this Agreement shall run for up to two (2) consecutive nine-month terms running from September 1st through May 31st. The initial term shall be for September 1, 2004 through May 31, 2005. The leased property is currently surplus municipal space, but may be required for municipal purposes by Landlord at the conclusion of the lease term. Landlord may terminate this lease upon three (3) months prior written notice if the leased space is required for municipal purposes. No option of first refusal is granted to Tenant.

3. Rent. The rent for the leased space shall be as follows:
   (a) Rate: Eighteen Thousand Three Hundred Forty-Four Dollars and Eighty-One Cents ($18,344.81) for the lease term.
   (b) Payments: Rent shall be paid in nine equal installments of Two Thousand Thirty Eight Dollars and Thirty-One Cents ($2,038.31). Rent shall be due on the first of each month, and past due if not paid by the tenth (10th) of the month.
   (c) Deposit: No Deposit is required.
   (d) Credit for Early Payment. Beginning in Calendar Year 2004, if Tenant pays Landlord the term rent in full by September 15, then rent will be reduced by four percent (4%).
   (e) Late Payment: If any installment of rent due from Tenant is not received by Landlord within 10 calendar days after the date in which it's due, Tenant shall pay to Landlord a late charge of $25.00.

4. Utility Service. Landlord shall be responsible for natural gas, electricity, sewer, refuse collection and water for the leased space. Tenant will be responsible for any other utilities such as telephone and cable television and shall establish an account with each of these utilities in its own name.

5. Use of the Premises. The premises shall be used only for programs associated with the Boys and Girls Club of Greater Salt Lake.

6. Telephone, Cable and Microwave. The Tenant will install its own telephone, television, computer and other communication equipment in the leased space. The remodeled space will include wiring, cables or chases for a wide variety for communications between spaces within the building and externally. Any specialized communication facilities, equipment, wiring, cables or installations will be the Tenant's responsibility. Tenant will coordinate installation with the City's IT Department.

7. Insurance. The Tenant will provide insurance at its expense covering its contents against loss through theft, fire, vandalism or similar casualties. The Landlord will maintain insurance on the structure for the replacement of the building itself, and the contents of the building owned by Landlord. The Landlord also carries a public liability policy insuring it against claims of personal injury on Landlord's property. The Landlord's policy does not cover the Tenant's employees or patrons who are on Landlord's property exclusively for the purpose of doing business with the Tenant. The Tenant agrees to maintain a comprehensive property liability policy in the amount of Five Hundred Thousand Dollars ($500,000) (each person and each occurrence) and to obtain a certificate of insurance naming Park City Municipal Corporation and the Municipal Building Authority of Park City as additional insured and evidencing coverage as to any person on the Premises as a result of Tenant's programs or activities. The Landlord is protected by the Utah Governmental Immunity Act, and nothing herein is intended to waive or limit the protection of the Act in behalf of either entity, but to the extent it is consistent with this intent, it is the purpose of this provision to protect the Landlord for liability or allegations arising out of the Tenant's use of Landlord's property.

8. Payment of Taxes and Other Assessments. As a tax exempt entity, the Landlord does not expect to be assessed real estate and personal property taxes and other related assessments or taxes on the Premises. However should the Tenant change the tax status or should other circumstances cause taxes or assessments to be imposed on the Premises, then Tenant shall pay real estate and personal property taxes and other related assessments or taxes on the Tenant's Premises during the term of this lease.

9. Liens. Tenant shall not permit any liens to attach to the property for work done at Tenant's request or for Tenant's benefit. If Landlord received notice of any such against the property, Tenant shall promptly discharge the lien at Landlord's request, or post fund sufficient to satisfy the lien during any period of good faith contest of the lien by Tenant. In the event Landlord reasonably feels its title to the property is in jeopardy because of any lien Tenant has elected to attach to the property, Landlord may discharge the lien and collect the amount paid from the Tenant. The Tenant agrees to pay all reasonable costs incurred by the Landlord in the defense or discharge of any liens on the

property.

10. Tenant Improvements. The Premises are being leased to Tenant in as-is condition. Any additional interior finish or furnishings desired by the Tenant must be approved in advance by the Landlord and Owner in writing and are the responsibility of the Tenant, with no allowance made for the costs of the Tenant improvements unless agreed to by Landlord in writing. At the expiration or termination of the Lease, all Tenant improvements become property of the Landlord unless specifically exempted in writing prior to installation.

11. Signs. Landlord reserves the right to specifically review and approve or reject proposed signs on or in the building. Landlord's approval for signs will not be unreasonably withheld, so long as the sign is directional rather than promotional, meets the requirements of the Park City Sign Code, and conforms with the historic nature and architectural detailing of the building. Signs shall be removed and any damage resulting from removal shall be repaired at the termination of the Lease.

12. Assignment/Sublease. The Lease may not be assigned or the Premises sublet without the advance written consent of Landlord. Landlord's consent to assignment or sublease will not be unreasonably withheld.

13. Remedies. In the event the Tenant fails to pay monthly installment payments when due, or violates or reaches any other term or condition of the Lease, Landlord shall have the right to exercise the following remedies, and any other remedies available at law or equity:
(a) Landlord may, by written notice to Tenant, demand that Tenant either pay rental installments due within ten (10) days, or quit the premises within fifteen (15) days;
(b) Landlord may permit the Tenant to remain in possession and sue for the installments that are past due;
(c) Landlord may re-let the premises for Tenant's account at the rate and on such terms as are commercially reasonable at the time and under the circumstances, and charge Tenant for any difference in the rental received and the rental agreed to herein, provided that any re-letting shall be done in good faith under the circumstances;
(d) Landlord may agree to a payment of damages in such amount as the parties then agree, and release the Tenant from obligations under this Lease entirely. Unless Landlord has released Tenant's continued performance under this Lease, Tenant is deemed to be in possession of the Premises, and any re-letting by Landlord in on Tenant's account. Tenant is responsible for all payments and obligations under the Lease until Landlord releases Tenant.

14. Covenant of Quiet Possession. Landlord covenants with Tenant that

Landlord is the owner of the Premises and that, except as provided herein, Tenant's possession will not be disturbed by acts or omissions of the Landlord so long as Tenant faithfully performs the Tenant's obligations of this Lease. Tenant hereby acknowledges that the Premises are a public recreation facility that often has special events and tournaments. These special events often result in the filling of the parking lot for the Premises, total occupation of the Common Area, and other traffic, access and noise impacts. Tenant hereby acknowledges that such impacts from operation of the recreation facility shall not constitute a breach of Landlord's covenant of quiet possession, and that such events shall be scheduled at the sole discretion of the Landlord. Landlord shall use reasonable efforts to provide the Tenant with advanced notice of said events.

15. Maintenance. The Landlord shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members, and exterior wall surfaces. The Landlord will be responsible for janitorial service in areas used in common and cleaning the outside of the glass and replacement in the event of damage from an outside source. Tenant shall be responsible for all interior maintenance, including mechanical and electrical fixtures to the extent that they are located within and exclusively benefit the Premises, janitorial service, and glass maintenance (both cleaning the inside and replacement in the event of damage from an inside source) which is within the leased premises or solely serves the Premises. Landlord shall be responsible for mechanical systems, which serve space as reasonably necessary to maintain the structure and to service common utility facilities. Exterior maintenance of the site and snow removal shall be Landlord's responsibility.

16. Access to Other Spaces. Tenant shall not interfere with the access to other spaces within the building or obstruct the entrances to those other spaces in any way. Landlord shall have such access through Tenant's space as reasonably necessary to maintain the structure and to service common utility facilities. Landlord shall have the right to inspect the leased space during the Tenant's normal business hours.

17. Force Majeure. This Lease Agreement shall automatically terminate upon any holding, interpretation, or determination by a court, legislative, or administrative body that Landlord may not lease to a private educational entity or similar establishment or that the Landlord may not lease to a private entity either under existing state and federal law regulation or future state and federal law regulation.

18. Increased Insurance Risk. Tenant will not permit said premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this

Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the Premises of the same general type as those covered by this Agreement.

19. Care and Repair of Premises by Tenant. Tenant will inspect and accept the Premises for the purposes of this agreement prior to taking occupancy. Tenant will not commit any waste on Premises nor shall it use or permit the use of the Premises in violation of any state law or county or municipal ordinance or regulation applicable thereto. Tenant may, with the prior written consent of the Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the leased space as Tenant may require for the conduct of its business without, however, materially altering the basic character for the building or improvements or weakening the structure on the leased premises. Any permanent alterations or improvements to the Premises shall become the property of the Landlord upon expiration or termination of this Lease unless specifically exempted in writing prior to commencing work.

20. Damage or Destruction. If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the premises without expense to the Tenant subject to delays due to adjustment in insurance claims, strikes and other causes beyond the Landlord's control. If such damage or destruction shall render the Premises uninhabitable in whole or in part, the rent shall be abated wholly or proportionately until the damage shall be repaired and the premises restored. If the damage or destruction shall be of which may require removal of Tenant's operations from the Premises, either Landlord or Tenant may elect to terminate this lease by written notice to the other within thirty (30) days after the occurrence of such damage or destruction.

21. Surrender of Premise. Tenant agrees to surrender the Premises at the expiration or sooner termination of this Agreement or any extension thereof in the same condition or as altered pursuant to the provisions of this Agreement. Ordinary war, tear and damage by the elements or other acts of God excepted.

22. Hold Over. Should Tenant hold over the Premises or any part thereof after the expiration of the term of this Lease unless otherwise agreed in writing, such holding over shall constitute a tenancy from month to month only, and Tenant shall pay as monthly rental the same monthly rental provided for herein.

23. Indemnity. The Tenant covenants and agrees to indemnify, hold Landlord harmless from all claims, loss damage, injury or liability (hereafter "Liability") resulting from Tenant's use and occupancy of the Premises to the full extent

provided in the Utah Governmental Immunity Act, including reasonable attorney's fees, but excluding any Liability resulting from acts or omissions of Landlord, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq), as amended. The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.

Landlord will indemnify and hold tenant and its employees harmless to the full extent provided in the Utah Governmental Immunity Act, and limited by Paragraph 25 of this lease, from claims, loss, damage, injury, or liability resulting from Landlord's use and occupancy of the Premises or from the conduct of Landlord's operations; including, but not limited to, Landlord's negligence or intentional acts. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Utah Governmental Immunity Act (Utah Code Ann. Sections 63-30-1, et seq.), as amended.

24. Landlord Liable only for Negligence. Except where caused by Landlord's negligence, Landlord shall not be liable for any failure of water supply, natural gas supply or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains or any subsurface area or from any part of the building or buildings or for an interference with light.

25. Nondiscrimination. Tenant agrees not to discriminate against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

26. Waiver of Covenants. It is agreed that the waiver of any of the covenants of this Lease Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein.

27. Rights of Successors and Assigns. The covenants and agreements contained within the Lease shall apply to the benefit of successors in interest and legal representatives, except as expressly otherwise hereinbefore provided.

28. Security. The Landlord will install doors with locking hardware. The Tenant is entitled to put locks on the doors to its space, provided the Landlord is given keys for reasonable access and building maintenance. Both parties will attempt to keep the exterior doors locked after their use of the building is completed for the day, and the Tenant shall have the obligation of checking all exterior doors at the conclusion of each day to make sure that they are

locked, and that windows in the rooms used by the Tenant are secured. Lights and radiators should be turned off at the conclusion of the Tenant's use each day.

29. Notice Provision. Any and all notices required by this Lease Agreement shall be in writing and delivered personally to the party to whom the notice is to be given, or mailed by certified mail, postage prepaid, and addressed as follows:

If to Landlord:
Alison Butz
Facilities Manager
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

If to Tenant:
Boys and Girls Club of Greater Salt Lake
675 East 2100 South, Suite 270
Salt Lake City, Utah 84106

30. Entire Agreement. This agreement constitutes the entire and only agreement between parties and it cannot be altered or amended except by written instrument, signed by both parties.

City Council
Staff Report

PARK CITY
1884

Special Events and
Facilities Department

Author: Alison Butz
Subject: Imperial Hotel
Date: July 29, 2004
Type of Item: Administrative – Review of the Management Contract

Summary Recommendations:
Authorize the City Manager to execute an addendum to the management contract for management of the Imperial Hotel, with ResortCom for an additional nine-month period.

Description:

Topic:
Requests for Proposals (RFP) for the Management of the Imperial Hotel.

Background:
After purchasing the Imperial Hotel in December 2003, the City entered into a contract with ResortCom International. ResortCom took over the day-to-day operation of the hotel. The agreement with ResortCom was scheduled to terminate on June 30, 2004 unless extended by mutual agreement of the parties. At that time Staff extended the contract an additional month, to July 31, 2004, to allow for time to contact the Air Force and find out the status of the City's proposal to swap the Imperial Hotel with land they own on Hwy 248.

Staff contacted the Air Force and received an indication that they will be close to their final decision in September. Staff discussed this with Councilman Heir, the Council's liaison for the Imperial Hotel. Given the past performance of the Imperial Hotel this spring and projected room nights for the summer, a decision was made to close the hotel operation for the remainder of the summer. The projected room nights showed that there would be a loss in income, which is consistent in the summer months with other Park City rental properties.

ResortCom was still interested in extending the management contract and offered a change in some of the terms for the extension. The changes offered addressed the City's concerns regarding the loss in income and allowed the hotel to remain open and in good operating condition.

Analysis:
The current proposal with ResortCom has the City paying a $2,000 monthly management fee for their services. ResortCom would manage the revenues and expenses from the Imperial and will pay the City's 50% of net profits on a semi-annual basis.

Given the past performance and the City's hesitation moving into the summer season ResortCom was willing to amend the current contract with regards to the management fee and pay the City $2,000 for them to operate and manage the hotel. In this case the City would be guaranteed an amount of money a month with no worry about the net profits.

In return, ResortCom did request two items. The first requesting the contract term be extended through the 2004/2005 ski season. The second request asked that the City paint the Imperial Hotel. The City has been planning on painting the hotel and has set a timeline for the painting to be complete by October 1, 2004.

The remaining terms of the contract will remain including the 30 day termination clause. This would allow either party to terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the other party. This would allow the City to provide ResortCom with notice if the Air Force was willing to trade the property for their parcel on Hwy 248.

Significant Impacts

The extension of the management contract for the Imperial Hotel would keep the structure and business in good condition thereby keeping the City's investment in the property.

ALTERNATIVES

- Conduct a public hearing and approve the addendum to the management contract between Park City Municipal and ResortCom International to manager the Imperial Hotel.
- Deny the approval of the management contract and close the Imperial Hotel.
- The City Council may continue the action for more information and discussion.

RECOMMENDATION:

Direct Staff to approve an addendum to the management contract for management of the Imperial Hotel, with ResortCom for an additional nine-month period

Exhibits

Exhibit A – Second Addendum to the Management Contract

SECOND ADDENDUM TO PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS SECOND ADDENDUM is made and entered into in duplicate this 30th day of July 2004, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation and political subdivision of the State of Utah ("City"), and ResortCom International, a California limited liability company ("Service Provider") to amend the Service Provider/Professional Services Agreement signed and executed by the Parties on December 18, 2003, as amended via addendum dated June 10, 2004.

WITNESSETH:

WHEREAS, the parties entered into a Professional Services Agreement on December 18, 2003 (hereinafter "Original Agreement"); and

WHEREAS, both parties to the Original Agreement require additional time to complete performance of their obligations thereunder; and

WHEREAS, the parties desire to amend the Original Agreement to provide sufficient time for such performance.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, the parties hereto now amend the Original Agreement as follows:

1. **EXTENSION OF TERM**. The term of the Original Agreement shall be extended to a termination date of April 17, 2005 or upon such later date as performance by both parties of all obligations pursuant the Original Agreement is completed.

2. **FEE**. The "Monthly Fee, Commission, and Additional Work" section of the Original Agreement (located at Exhibit A, Paragraph 4) is hereby superseded and replaced as follows:

A. Monthly Fee: Service Provider will pay to the City a monthly fee of Two Thousand Dollars ($2,000.00) per month for ResortCom to supervise and manage The Imperial Hotel, due and payable on the first day of each month. Fees for any partial month shall be paid on a pro rata basis.

B. Commission: All net profits earned by the Imperial Hotel for the effective term of this Agreement, as amended herein, shall be retained by Service Provider.

C. Operating Expenses: Service Provider shall be solely responsible for all operating expenses for the Imperial Hotel for the effective term of the Agreement, as amended herein.

D. Additional Work: Any additional work or services required which lie outside of the scope of this Agreement will be performed by Service Provider only upon written request of the City. Such additional work will be billed to City at an hourly rate of $90.00 per hour

3. **PROPERTY IMPROVEMENTS.** The City agrees to paint the exterior of the Imperial Hotel at the City's sole expense by October 1, 2004. Selection of exterior paint colors and scheme shall be at the City's sole discretion.

4. **OTHER TERMS**. All other terms and conditions of the Original Agreement shall continue to apply.

5. **ENTIRE AGREEMENT**. This Second Addendum is a written instrument pursuant to Paragraphs 2 and 23 of the Original Agreement between the parties and cannot be altered or amended except by written instrument, signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first herein above written.

City Council
Staff Report

PARK CITY
1884

Author: Colin Hilton – Park City Municipal Corporation
Subject: Quinn's Ice - Inter-Local Agreement
Date: 7-29-04
Type of Item: Legislative

SUMMARY RECOMMENDATION:

The Regional Ice Committee (RIC Committee), made up of representatives of both the City and the Snyderville Basin Special Recreation District (SBSRD), have finalized the language of the proposed Inter-local Agreement (ILA). It is City Staff's recommendation to review and approve the attached ILA for the purposes of outlining suggested roles and responsibilities of planning, constructing, and operating a regional ice facility at Quinn's Junction.

DESCRIPTION:

Topic: Quinn's Ice - Inter-Local Agreement

Background: In August of 2001, Park City and the Snyderville Basin Special Recreation District (SBSRD) adopted a four (4) year Memorandum of Understanding (MOU) on cooperative youth sports programming and facility operations and maintenance. Section 8 of the MOU states that the City and the SBSRD acknowledge that combined planning efforts for large capital improvement projects may better serve long term constituent needs. Both the City and the Basin have identified the construction of an ice facility as a priority.

The City and SBSRD both passed bonds in November of 2001. Prior to the bonds passing, the City and SBSRD informed the public that it was their intent to jointly develop a large regional ice facility that would serve both communities. Since the passage of the voter approved bonds, both Parties have been working to jointly develop an ice facility.

On January 17, 2002, the City and SBSRD approved a letter of intent for the joint development of an indoor ice facility and the possible phased construction of an adjoining outdoor ice rink. On June 6, 2002, the City Council and the Snyderville Basin Special Recreation District extended the letter of intent until December 31, 2002 so that an inter-local agreement governing the management, construction and operation of the ice facility could be adopted. The letter of intent narrowed the focus of the project to just an indoor ice facility. The letter of intent also identified the SR 224 corridor as the possible location for the ice rink.

On December 17, 2002, the City Council and SBSRD updated the Letter Of Intent (LOI) and extended its life to May 1, 2003. It was hoped that an Inter-local Agreement would be adopted prior to that date. The LOI updated the Regional Ice Committee's recommendation to phase in the development of the ice rink to ensure that the capital budget did not exceed the $4 million in bond proceeds. The LOI also reflected the desire of the SBSRD and the City to have the rink located along the Highway 224 transit corridor. This language did not preclude other sites, but did indicate a preference for the Highway 224 corridor.

In April of 2003, the City and SBSRD extended an LOI until January of 2004. Through the Summer of 2003, the RIC Committee completed a first draft of an Inter-local Agreement (ILA) under the plan of having a new Regional Ice Authority serve as the managing entity. The preferred Canyons site was targeted and all efforts were made to plan for a possible rink in the Specially Planned Area within the Lower Canyons Village. After a year of focus on this site, challenges of land acquisition continued and led to the RIC Committee being concerned over whether this site could be developed for ice anytime soon and whether the site was actually the preferred site, given new developments in other areas of the region.

The Regional Ice Committee (RIC) met on April 27, 2004 and unanimously recommended that the much discussed ice rink facility be considered as a component of the proposed recreation complex at Quinn's Junction. The Committee reviewed a series of pro's & con's of the four sites under consideration. The Quinn's site was considered the most attractive due to:

1. Lower forecasted construction and operating costs in light of shared infrastructure and operating expenses with the proposed playing fields project.
2. Comparably lower design & construction costs that would allow for "better interior building components" to be realized.
3. A proposed management structure that would have an existing organization (City) taking the lead on seeing through the design, construction, and operation of the facility. There would not be a creation of a new organization (Regional Ice Authority) to oversee those elements.
4. The easier access of Quinn's Junction verses the growing traffic concerns in the Hwy 224 corridor.
5. The lack of movement on land issues surrounding the Canyons proposed site
6. Desire to have a site where the probability of moving into a design and construction process sooner rather than later.
7. Possibility of future facility expansion.

On May 10, 2004, the City held a public meeting to hear input about the proposed Recreation Complex – and how a proposed ice rink would be supported here. More than 70+ attendees overwhelmingly supported the concept of a Fields & Ice rink complex in the City-owned land at Quinn's Junction.

Over the subsequent weeks, the RIC Committee convened to streamline the previous draft of the ILA. Terms and conditions highlighted in previous Letters of Intent(s) served as the basis for drafting the new ILA language at a Quinn's Junction location.

On June 23, 2004 a joint planning meeting was held between the City Council and SBSRD. Positive discussions paved the way for a refinement of certain sections of the ILA, mainly pertaining to the use of the Parties annual payments towards forecasted operating deficits, capital replacement and expansion funds.

Timeline of Past History

November 2001	Bond Initiatives Passed voter approval
Jan 2002	First LOI approved by PCMC & SBSRD – joint planning (RIC)
June 2002	Second LOI created identifying the Rt 224 corridor as possible site areas and promoted that an ILA would be developed to address construction, operations, & management responsibilities
2002-2003	Sites Identified: Kimball Jct., Sewer Treatment site, Canyons Canyons Site selected as preferred site
December 2002	Third LOI extension – hoping to see ILA completion by April
April 2003	Fourth LOI created identifying language that both Parties wanted to see in the ILA. Also – pointed out acceptance of a possible "covered pavilion concept" to keep within budget forecasts.
June 2003	Draft ILA language agreed to – 50-50 cost sharing process worked through to address forecasted operating deficits
December 2003	RIC deadline to Canyons/RVMA for "recorded" land realignment
February 2004	Extended RIC deadline to Canyons/RVMA before alternative sites would be explored.
March 1	Feb 28th date came and went – discussion of alternative sites started
April 27, 2004	RIC Committee makes decision to recommend Quinn's Junction as preferred site and proceed with public input.
May 10, 2004	City holds public meeting to hear input about the proposed Recreation Complex – and how a proposed ice rink would be supported here – saw overwhelming support of the 70+ attendees.
June 8-28th	RIC Committee fine tunes proposed ILA language
June 28, 2004	Joint Meeting between SBSRD Board & City Council to work through agreement points.
July 29, 2004	Review & proposed adoption of Ice ILA

<u>Assessment of changes since the last meeting:</u>

The major points addressed since the Joint meeting are:

1. Annual Operating Subsidies: District's annual payment amount and allocation – The District was seeking to ensure that its investment would be properly maintained through a detailed capital replacement schedule and appropriate funding allocations. They desired to see their annual contribution be focused on capital replacement and future facility expansion. Therefore, the schedule outlined in Attachment B of the following proposed ILA reflects a sliding schedule shifting away from operating deficit support after two years to only funding of the capital replacement reserve fund and expansion fund in subsequent years. This reflects their stated objective of allowing the City to operate the facility as they best see fit, without having to track and perhaps scrutinize how it is being managed. Instead, their interests would be in preserving the building assets and utilizing the every three year review period to address any and all other issues. Their amount of contribution would be a minimum of $50,000 annually, with additional funds possible in the first two years that would be dependent on RAP tax allocations. Details on this can be reviewed in Section 4.3 of the attached ILA.

2. Use Guidelines (outlined in greater detail in Attachment C); highlighting these:
    a. Balance of the facility's locals use with event use
    b. Concessions and pro-shop revenues
    c. Maintenance & repairs funding

3. Review periods

4. Disposition of assets

5. Making more clear the operating and decision making steps, keeping in mind the joint funding commitment.

Staff will review other ILA elements during the discussion at City Council's meeting on July 29th.

Department Review: This agreement has been reviewed by the City Manager's Office and Legal Department.

Alternatives

1. Review and adopt the attached ILA as written
2. Review and suggest any changes to the proposed language; and take action on 7-29-04.
3. Review and suggest any changes to the proposed language; return at a later date for action.
4. Provide a directional change in how the City would like to see the planning for the ice facility taken.

Staff Recommendation:

Review and approve the attached ILA as written for the purposes of outlining suggested roles and responsibilities of planning, constructing, and operating a regional ice facility at Quinn's Junction.

Attachments - Inter-local Agreement (ILA) with SBSRD:
The Agreement is being finalized at this time. It will be distributed to Council before Thursday's meeting.

CITY COUNCIL STAFF REPORT

Date:	July 29, 2004
Department:	Planning Department
Title:	801Park Avenue Boarding House Appeal of June 13, 1994 HDC Denial of Certificate of Appropriateness For Demolition
Type of Item:	Quasi-Judicial

Topic

Applicant/Appellant:	David Belz
Location:	801 Park Avenue
Zoning:	Historic Residential Commercial & Historic Residential
Districts	
Adjacent Land Uses:	Commerical and Residential
Project Planner:	Kevin LoPiccolo

Summary Recommendation: Staff recommends that Council hear this matter, take public input, and rescind the Historic District Commission's June 13, 1004 decision denying the appellant's Certificate of Appropriateness for Demolition at 801 Park Avenue, subject to the findings of fact and conclusions of law.

Proposal

Appeal of June 13, 1994 HDC Denial of Certificate of Appropriateness For Demolition

Background

The subject matter of this appeal is a 1994 Historic District Commission denial of an application to demolish a vacant boarding house at 801 Park Avenue.

The property is located within the Historic Recreation Commercial (HRC) and Historic Residential (HR-1) Districts. Research suggests that the building was constructed prior to 1889. The building suffered fire damage during the fire of 1898 and was subsequently repaired and used for boarding house and residential purposes until the City condemned the structure in 1991. The Chief Building Official condemned the building due to its hazardous condition and its deteriorating structural integrity.

On January 8, 1993, the current owner, David Belz, filed a Certificate of Appropriateness for Demolition (CAD) application to raze the building (see Exhibit K).[1] The Historic District Commission denied Mr. Belz's CAD application on June 13, 1994.

1 In addition to and concurrently with the CAD application that is the subject of this appeal, Mr. Belz submitted a Master Planned Development (MPD) application for the properties encompassing 801-817 Park Avenue. The Planning Commission denied the MPD application on August 17, 1994; said denial was also appealed to the City Council in 1994. The MPD appeal was withdrawn by Mr. Belz earlier this year and has no relevance to the CAD appeal presently before the Council. To the extent that some of the exhibits attached to this staff report discuss the MPD appeal (including staff reports and correspondence dated 1993 and 1994), the Council should ignore those materials and focus solely on the materials relating to the CAD application.

The record of the HDC's action is attached to this report. The property owner subsequently appealed the CAD denial to the City Council. Prior to Council hearing the matter, an agreement to stay action on the appeal was reached between the property owner and City. The purpose of staying the appeal was to provide the applicant an opportunity to develop an alternative development plan for the boarding house and associated property (generally 801-817 Park Avenue) that satisfied applicable Land Management Code development requirements.

In the ensuing 10 years, staff and/or the Planning Commission considered several conceptual plans; however, no formal applications were ever completed. In March of 2004, Council amended the Land Management Code to reinstate a provision for consideration of Master Planned Developments in the HR-1 and HRC Districts for properties that, among several factors, included historic structures. The amendments were made, in part, to create incentives and possible design flexibility for properties such as 801 Park Avenue. No development applications for the subject property have been filed since the recent LMC amendments. On June 15, 2004, the applicant formally requested that Council consider and take action on the 1994 appeal.

At the July 22, 2004 City Council meeting, the Council voted to expand the scope of review to include public input.

Analysis

The Council will apply the correctness standard of review in hearing this appeal. This means the Council must decide whether the HDC erred in its June 13, 1994 decision applying and/or interpreting the applicable LMC CAD provisions. The appellant carries the burden of proving that an error has been made.

Although the Land Management Code (LMC) has undergone numerous amendments since 1993, it is important to note that Mr. Belz's CAD application vested under the LMC in effect at the time the application was filed (January 8, 1993). Accordingly, in hearing this appeal, the Council must review the HDC's decision applying the terms of the LMC in effect on that date.

The Code in effect at the time was the 28th Edition of the Land Management Code (adopted November 5, 1992 and subsequently amended beginning in April, 1993). Section 4 of the 28th Edition of the LMC established the process and criteria by which demolition of historic buildings were to be reviewed. Section 4.15: Certificate of Appropriateness For Demolition specified that

> **"No building or other structure located within the Historic District and deemed to be historically significant by the Historic District Commission may be demolished or removed without prior issuance of a Certificate of Appropriateness For Demolition."**

Section 4 further required that historically significant structures be designated on a list. Section 4.13: List of Historic Buildings and Sites states that:

"A list of historic buildings and sites is to be established and maintained by the Historic District Commission to describe as concisely as possible each building or site, the date of its construction as nearly as can be determined, or if a site, the date during which its historic significance was established, the reason for including it on such list, and the name and address of the current owner as shown on the records of the Summit County Recorder. The Historic District Commission shall file such list and any subsequent amendments or any additions thereto with the City Recorder."

A plain reading of these former code provisions reveals that the LMC CAD provisions in effect during January, 1993 applied only to buildings/structures located within the Historic District <u>and</u> deemed historically significant. A building or structure was considered historically significant only if it was included on the list of historic building and sites established by the HDC. In this instance, although located within the Historic District, the boarding house at 801 Park Avenue was not identified on the HDC's List of Historic Building and Sites at the time Mr. Belz submitted his 1993 demolition/CAD application. Accordingly, the boarding house was not deemed historically significant and therefore was not subject to the CAD provisions of former LMC Chapter 4. Unfortunately, it is apparent that neither the City nor Mr. Belz was aware of this fact at the time the CAD application was filed and reviewed by the HDC.

The merit of the HDC's decision denying the CAD application pursuant to former LMC Section 4.17 is at issue only if the Council finds that the boarding house was subject to those CAD provisions. As explained above, Staff finds that the boarding house was not subject to the CAD provisions because it was not deemed historically significant at the time the CAD application was filed. Staff therefore recommends the Council rescind the HDC's June 13, 1994 denial of the CAD application for the boarding house at 801 Park Avenue.

<u>Current CAD Provisions</u>:
It is important to note that the Land Management Code's CAD provisions and City's historic building inventory have been amended several times over the succeeding years. While the CAD provisions still apply only to buildings, structures, or sites deemed historically significant under the current LMC, determinations of historical significance are made by the Historic Preservation Board applying the standard of review and criteria located at LMC Section 15-11-12(A).

Recommendation:
It is recommended that Council hear this matter, take public input, and rescind the Historic District Commission's June 13, 1004 decision denying the appellant's Certificate of Appropriateness for Demolition at 801 Park Avenue, subject to the findings of fact and conclusions of law.

Findings of Fact

1. The property is located within the Historic Recreation Commercial (HRC) and Historic Residential (HR-1) Districts.
2. The building suffered fire damage during the fire of 1898 and was subsequently repaired and used for boarding house and residential purposes until the City condemned the structure in 1991.
3. The Chief Building Official condemned the building due to its hazardous condition and its deteriorating structural integrity.
4. On January 8, 1993, the current owner, David Belz, filed a Certificate of Appropriateness for Demolition (CAD) application to raze the building.
5. The Historic District Commission denied Mr. Belz's CAD application on June 13, 1994 per findings of fact and conclusions of law.
6. The property owner subsequently appealed the CAD denial to the City Council on September 27, 1994.
7. Prior to Council hearing the matter, an agreement to stay action on the appeal was reached between the property owner and City. The purpose of staying the appeal was to provide the applicant an opportunity to develop an alternative development plan for the boarding house and associated property (generally 801-817 Park Avenue) that satisfied applicable Land Management Code development requirements.
8. In the ensuing 10 years, staff and/or the Planning Commission considered several conceptual plans; however, no formal applications were ever completed.
9. CAD application is vested under LMC in effect as of date of application was filed (28th Edition, Sections 4.11-4.17).
10. Attach applicable CAD provisions as an Exhibit (attached hereto and incorporated into these findings of fact as Exhibit "A").
11. As of the date the CAD application was filed, the 801 Park Avenue boarding house was not included on the HDC's list of historic buildings and sites.
12. On August 28, 1991, the Chief Building Official issued a condemnation letter to the subject property at 801 Park Avenue.
13. On June 15, 2004, the applicant formally requested that Council consider and take action on the 1994 appeal.

Conclusions of Law

1. Because it did not appear on the list of historic buildings and sites established and maintained by the Historic District Commission as of the CAD appeal on September 27, 1994, the boarding house located at 801 Park Avenue was not deemed historically significant pursuant to Section 4.13 of the Land Management Code, 28th Edition.
2. Because it was not deemed to be historically significant as of September 27,1994, the CAD provisions of Section 4.15 of the LMC, 28th Edition did not apply to the boarding house located at 801 Park Avenue; accordingly, no CAD was necessary to demolish or remove that structure as of June 13, 1994.
3. Because the CAD provisions of the LMC, 28th Edition did not apply to the boarding house located at 801 Park Avenue, the Historic District Commission's

June 13, 1994 decision denying the appellant's CAD application is hereby rescinded.

See separate appeal packet. Exhibits are available at City Recorder's Office during regular business hours 615-5007.

Page No

Exhibit packet for 801 Park Avenue Appeal

Page No

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JUN 15 2004

THOMAS A. ELLISON
Direct (801) 578-6957
taellison@stoel.com

June 12, 2004

Via U.S. Mail

Park City Council
P.O. Box 1480
Park City, UT 84060

Re: Pending CAD Appeal for 801 Park Avenue

Dear Council Members:

This letter constitutes a request of 801 PK, L.C., a Utah limited liability company, to activate its pending appeal of a denial by the Park City Historic Commission of its application for a Certificate of Appropriateness for Demolition ("CAD"). The original hearing occurred on June 13, 1994, and the matter has remained pending by agreement with Park City for the last ten years while attempts have been made to incorporate a restored structure into a master-planned development or other project approval on the site and adjacent property. All parties now believe that the structure in question cannot be restored.

Attached to this letter as Exhibit 1 is a copy of the Notice of Appeal originally filed. This Notice of Appeal fully sets forth the original basis for appeal urged by the Appellant. Also attached hereto as Exhibit 2 is a response by Jody Hoffman, then Park City Attorney to the CAD appeal and an appeal of an MPD denial not presently at issue.

Your attention is directed to pages 9 and 10 of the Park City Attorney's response. In that response, the Park City Attorney, in reviewing the file, indicates that the demolition controls of Land Management Code as it existed at the time of the original CAD application were not applicable to the structure, and that Park City is legally obligated to nullify the CAD denial.

Based on the information included in the attached Exhibits, we believe there is no legal or factual basis for Park City's denial of the issuance of a demolition permit on the structure located at 801 Park Avenue, and we would request that this result be confirmed by reversing or nullifying the original CAD denial after appropriate process by the Park City Council.

Exhibit A - June 12, 2004 letter from Thomas A. Ellison requesting a hearing on the CAD appeal

Idaho

SaltLake-229936.1 0023866-00004

Please contact the undersigned as representative of 801 PK, L.C. when the time of any meeting or hearing is established. We appreciate your cooperation in this matter.

Very truly yours,

Thomas A. Ellison

Enclosures

cc: Tom Bakaly, Park City Manager
Mark Harrington, Park City Attorney
Patrick Putt, Park City Planning
Ron Ivie, Park City Building
David Belz
Jeffrey Kuhn

SaltLake-229936.1 0023866-00004

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: September 27, 1994
DEPARTMENT: Legal
AUTHOR: Jodi Hoffman
TITLE: 801-811 Park Avenue CAD and MPD Appeals
TYPE OF [illegible]M: Quasi-Judicial

SU[illegible]ATIONS: Uphold the Planning Commission's denial of the MP[illegible] al.

DESCRIPTION:

See attached "Notices of Appeal" and "Response to Appeals"

ALTERNA[illegible]

See attached "Response to Appeals"

SIGNIFICANT IMPACTS:

See attached "Response to Appeals"

RECOMMENDATION:

See attached Response to Appeals

Exhibit B - Council Report from September 27, 1994 and attached exhibits

NOTICE OF APPEAL

801 PK, L.C., a Utah limited liability company (the "Applicant"), is the owner of a building located at 801 Park Avenue, Park City, Utah (the "Building"). On February 16, 1993, David Belz, a member of 801 PK, L.C., filed a Certificate of Appropriateness for Demolition ("CAD") application with the Park City Historic District Commission (the "Commission") on behalf of 801 PK, L.C. for demolition of the Building pursuant to Section 4.17 of the Park City Municipal Corporation Land Management Code (the "Land Management Code"). On June 13, 1994, the Commission held a public meeting and denied the Applicant's CAD application.

Pursuant to Section 1.16 and Section 4.17(d)(3) of the Land Management Code, the Applicant hereby appeals the Commission's June 13, 1994 decision. The Applicant submits that the Commission arbitrarily, capriciously and unlawfully denied the CAD application because the Commission (i) misapplied the standards set forth in Section 4.17 of the Land Management Code and failed to properly find that the Applicant had submitted substantial evidence proving that unreasonable economic hardship exists, (ii) failed to base its decision upon substantial evidence of any kind and (iii) violated the Applicant's substantive and procedural due process rights by failing to provide the Applicant a reasonable opportunity to challenge erroneous information submitted by the Park City Planning Department staff and the other employees of Park City (collectively referred to herein as the "Staff").

In submitting this appeal, the Applicant expressly reserves the right to subsequently challenge (i) whether the Park City Council has the legal authority to hear this appeal, and (ii) whether Section 4.17 of the Land Management Code is unconstitutional based on its failure to comply with the procedural due process, equal protection and takings provisions of the United States Constitution and the Constitution of the State of Utah. The Applicant also reserves the right to present corroborating evidence to the City Council in support of this appeal and to present other arguments and evidence in support of this appeal.

Facts

On February 16, 1993, the Applicant submitted a CAD application to the Commission for demolition of the Building. Park City had condemned the Building in August of 1991 due to the Building's lack of structural integrity. The Building has never been included in the City's thematic nomination of homes on the National Register of Historic Places, nor had the City deemed the Building to be "significant and contributory" to the City's Historic District prior to the Applicant's CAD application.

On June 21, 1993, the Commission held a public hearing and conducted its initial review of the CAD application. The Applicant submitted evidence to the Commission addressing each of the four criteria that an applicant must show in order for the Commission to determine that "unreasonable economic hardship" exists pursuant to Section 4.17(c) of the Land Management Code. The Applicant demonstrated that (i) the Building could not be feasibly used or rented at a reasonable rate of return in its present condition because the Building had been condemned by the City, (ii) the Building could not be remodeled or rehabilitated in a manner which would allow a reasonable use or return from the property to the Applicant due to the enormous costs associated with remodeling and rehabilitating the Building and the inability of rentals to cover these up-front costs, (iii) rehabilitation or remodelling that would be compatible with the preservation of the Building was infeasible due to the advanced state of the Building's decay and (iv) the Building could not be feasibly moved or relocated within the Historic District because not even the Applicant's offer of a $5,000 payment has induced any person to move the Building.

In its report to the Commission dated June 21, 1993, the Staff concluded that the Building "is historically significant and contributes to the District." The Staff's only basis for so concluding was that "[b]oarding houses were an important element of Park City's housing because of the influx of single miners." However, Staff conceded that "[i]t is questionable whether the building maintains its original integrity" due to the extensive additions and alterations of the building over the past 75 years. The Staff submitted no evidence to the Commission regarding the feasibility of rehabilitating or relocating the Building. The Commission briefly discussed the Building, requested that the Applicant provide certain additional information to the Commission and then tabled action on the CAD application.

By February 4, 1994, the Applicant had delivered all of the requested information to the Commission and the Staff. In compliance with the Commission's request, the applicant supplied to the Commission and the Staff a number of pro forma financial analyses regarding the feasibility of rehabilitating or remodelling the Building. Each of these studies demonstrated that the Applicant would suffer a substantial loss by undertaking any rehabilitation or renovation plan.

On March 10, 1994, the CAD application again appeared on the Commission's agenda at the Applicant's request. At this time, the Staff submitted a second report to the Commission regarding the CAD application. This report did not address or analyze any of the information or feasibility studies that the Applicant had submitted to the Commission and the Staff. Nevertheless, the

Staff concluded that it had "difficulty determining that an unreasonable economic hardship exists" and that it was "reluctant to recommend approval of a demolition permit ... ." The Staff conducted no independent studies nor submitted any evidence to the Commission to support this conclusion. The Staff disregarded the information submitted to it by the Applicant and based its conclusion solely on a "comment" it had received from a Mr. Tim Lee who had "expressed a strong interest in renovating and preserving the [Building]." The Staff did not investigate or analyze what Mr. Lee's plans were or whether any such plans were feasible or could provide any reasonable use or return from the property. After receiving the Staff's report, the Commission again postponed any decision on the CAD application in order to allow the Staff an opportunity to review other development proposals that the Applicant had planned for properties adjacent to the Building and to allow the Applicant time to prepare additional feasibility studies and other information requested by the Commission at the March 10, 1994 Commission meeting.

On March 18, 1994, the applicant provided to the Commission and the Staff the requested feasibility studies and supplemental information. These feasibility studies considered "development scenarios" for single home, duplex, triplex, 4-plex and "bed and breakfast" development options for the Building. Like all previous pro forma financial evaluations submitted by the Applicant to the Commission, none of these additional development scenarios demonstrated that the Building could be feasibly remodelled, rehabilitated or relocated.

In mid-April of 1994, the Commission again placed the CAD application on its agenda at the Applicant's request. Prior to the Commission's meeting, however, the Staff informed the Applicant that the Staff still had some unanswered questions regarding the CAD application. The Commission again postponed consideration of the CAD application so that the Staff could compile and deliver a list of these questions to the Applicant.

Throughout the latter weeks of April 1994 and the early weeks of May of 1994, the Applicant made several requests to see the list of questions that the Commission had directed the Staff to compile. On each of these occasions, the Staff informed the Applicant that it had not yet compiled such a list. Accordingly, on May 19, 1994, the Applicant once again requested that the CAD application be placed on the agenda of the Commission's next meeting and that the Commission take final action on the CAD application. The Commission eventually placed the CAD application on the agenda of its June 13, 1994 meeting.

Late in the afternoon on Friday, June 10, 1994, the final working day prior to the June 13th Commission meeting, the Staff submitted a report to the Commission in which it recommended that the CAD application be denied. The applicant received a copy of this report at 5:00 p.m. on June 10, 1994. In its report, the Staff again recommended denial of the CAD application based on "comments" it had received from three individuals who had stated that they were "interested in renovating" the Building. Once again, the Staff did not investigate or analyze the basis for or the feasibility of these expressions of "interest." However, the Staff concluded that based on these expressions of "interest," rehabilitation of the Building was "feasible."

The Staff's June 10, 1994 report then criticized the pro forma financial studies that the Applicant had submitted to the Commission. The Staff concluded that the Applicant had "underestimated" the income producing capability of the property and that the property "should in fact produce a reasonable return." The Staff reached this conclusion merely by altering certain financial assumptions that the Applicant had employed in his feasibility studies, the collective effect of which allegedly rendered renovation of the Building feasible. In particular, the Staff (i) added an unsupported 12 percent annual property value appreciation rate to the applicant's cash flow analysis, (ii) assumed that the applicant could receive a 30-year loan at 8% interest, (iii) speculated that the owner of the property would not have to pay a property management fee, (iv) reduced the level of property taxes, (v) arbitrarily reduced the value of the land attributable to the Building to $90,000, (vi) assumed that necessary renovation costs would be less than estimated by the Applicant, and (vii) asserted that the owner of the property should receive no higher than a 5% return on any equity investment. The Staff failed to substantiate, provide support for or justify any of these particular assumptions.

Despite receiving the Staff's report at 5:00 p.m. on Friday, June 10, 1994, the Applicant submitted a response to the Commission on June 13, 1994 in which it rebutted each of the unsupported financial assumptions employed by the Staff. The Applicant demonstrated that (i) property value appreciation is not an appropriate factor to be included in a financial feasibility study, (ii) in any event, the 12 percent property value appreciation figure adopted by the Staff was arbitrarily selected and could not be supported, (iii) the value of land attributable to the building is at least $100,000, not $90,000 as asserted by the Staff, (iv) a 10 to 15 percent return on equity capital is an appropriate investor expectation given that present risk-free rates on U.S. government securities are 7 percent, (v) a 50 percent property management fee which includes maintenance and utilities expenses is an appropriate and prudent assumption for Park City properties, (vi) interest rates for debt capital on commercial buildings are presently at 10.0 to 10.5 percent, but are unavailable on a thirty year basis, (vii) renovation costs for the Building will be no less than $125 per square foot and will very likely be much greater because costs associated with parking facilities and interior furnishings (which are items that will be required by the City) have not been included in this figure, and (viii) the projected property taxes for the property employed by the

Applicant are reasonable and any discrepancy between the Staff's assumed level of property taxes and the levels employed by the Applicant have no impact on the pro forma results. The Applicant also rebutted Staff's assertion that other developers' "interest" in rehabilitating the Building demonstrated that rehabilitation is feasible. The Applicant demonstrated that even a substantial donation of labor expenses and equity capital, without expectation of any return, would not allow the Building to be feasibly remodelled or rehabilitated.

On the evening of June 13, 1994, the Commission convened a public meeting to consider the CAD application. The Staff appeared and recommended to the Commission that the CAD application be denied because (i) "the building or site could be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner" and "[i]n fact, several people have expressed interest to undertake such a project", and (ii) "[r]ehabilitation or remodelling that would be compatible with the preservation of the building or site is feasible and has been successfully accomplished with similar historic structures within the City." The Staff submitted no evidence that a "reasonable use of or return from the property to the property owner" could result from rehabilitation or remodelling nor any evidence that any "similar historic structure" had been "feasibly rehabilitated or remodelled." Applicant also appeared at the June 13, 1994 Commission meeting and was permitted only "to touch" on the "highlights" of the Applicant's June 13, 1994 response to the Staff's report. Applicant was not allowed to fully rebut or respond to the many allegations and assertions contained in Staff's June 10, 1994 report. Because the Commission received Applicant's response on the day of the meeting, the members of the Commission did not have an opportunity to fully review the response prior to taking action on the CAD application.

After the Commission closed the public meeting on the CAD application, Commissioner Larson moved to deny the CAD application because (i) "[t]he structure in question is significant and contributory to the Historic District as one of the few boarding houses remaining in Park City," (ii) "[s]ubstantial evidence of economic hardship has not been demonstrated since the Finance Department has pointed out wrongs [sic] in the pro forma submitted" and (iii) "[f]easibility of renovation has been demonstrated by the number of individuals willing to renovate said property." Commissioner White seconded the motion and the motion passed unanimously. The Commission issued no written findings which supported their decision.

Argument

I. The Applicant Submitted Substantial Evidence That Unreasonable Economic Hardship Exists.

A. <u>The Building Or Site Cannot Be Feasibly Used or Rented at a Reasonable Rate of Return in Its Present Condition.</u>

The Applicant submitted unrefuted evidence, that the Building is presently condemned as unsuitable for occupation and has been in such a condition since August of 1991. Hence, the Building cannot be lawfully rented to any person and, therefore, cannot be rented at a reasonable rate of return in its present condition.

B. <u>The Building or Site Cannot Be Remodelled or Rehabilitated in a Manner Which Would Allow a Reasonable Use of or Return from the Property to the Property Owner.</u>

The Applicant submitted substantial evidence that the Building cannot be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the Applicant. The Applicant submitted a number of pro forma financial analyses which demonstrated that remodelling and rehabilitation costs cannot be recovered by future rental incomes from the Building. In each pro forma financial analysis submitted by the Applicant, rehabilitation and renovation costs produced negative cash flows in all future periods. Consequently, the Applicant proved that it would not be able to earn a reasonable return from the property. Thus, the Commission could not have reasonably determined that the Applicant failed to submit substantial evidence of economic hardship.

The Applicant employed reasonable, if not optimistic income producing assumptions in each of its feasibility studies. The rental rates employed in each of Applicant's pro forma analyses are above today's market rates. (Belz Affid. at ¶ 5). The Applicant also employed reasonable expectations regarding rentable days. (Belz Affid. at ¶ 6). Consequently, the gross income figures shown in the Applicant's pro forma studies are reasonable, if not optimistic. (Belz Affid. at ¶ 7). While Staff asserted that the Applicant's income producing assumptions were too conservative, the Staff submitted no evidence supporting this assertion. Thus, the Commission received no evidence which refuted the income producing capabilities of the property demonstrated by the Applicants.

The Applicant submitted substantial evidence that appreciation in property value is not an appropriate tool by which to assess returns from property rehabilitation. (See also Belz Affid. at ¶ 9). The Applicant demonstrated that appreciation in property values is extremely cyclical and unpredictable. Furthermore, the Applicant proved that any appreciation in the property's value would be uncapturable until the property is sold and would be unavailable to service debt or other rehabilitation costs. Moreover, at the time of sale, any capital gain on the property would be subject to a substantial and uncertain capital gains tax. Because the Applicant intends to retain ownership of the property as a long term investment, it will not capture any appreciation in the property's value for many years. (Belz Affid. at ¶ 8). Thus, property value appreciation will not assist in offsetting immediate, out-of-pocket renovation costs. (Belz Affid. at ¶ 9). The Commission received no evidence that disputed or rebutted the financial evidence submitted by the Applicant. Staff presented no justification or evidence that supported its allegation that the property will appreciate by 12 percent annually. In fact, Staff employed recent appreciation rates for single family residential properties as the basis for its assertion that commercial properties will appreciate at a 12 percent rate. Park City resort rental properties have not consistently appreciated at a 12 percent annual rate. (Belz Affid. at ¶ 9). Thus, the Commission could not have reasonably relied upon the Staff's appreciation assumption in determining that economic hardship had not been demonstrated by the Applicant.

The Applicant submitted substantial evidence that it is unreasonable to recognize amounts to be "saved" in interest rate tax deductions as a cash flow gain. The Applicant presented evidence that amounts so "saved" cannot be reasonably predicted. Moreover, under federal tax law, interest rate deductions on commercial properties only have value if there is passive income against which they may be applied. (Belz Affid. at ¶ 10). As demonstrated by the Applicant's pro forma analyses, no such passive income would occur under any renovation strategy. Thus, such passive "losses" would not be usable at any time in the foreseeable future. (Belz Affid. at ¶ 10). In other words, interest rate deductions will produce no usable tax benefits for the owner of the Building and, therefore, are not applicable to a cash flow analysis of the renovation project. (Belz Affid. at ¶ 10). Therefore, such calculations cannot serve as a reasonable indication of anticipated returns from the renovation project. Staff submitted no evidence disputing these facts. Thus, the Commission could not have reasonably relied upon the Staff's asserted tax deduction benefits in determining that the Applicant had failed to demonstrate that economic hardship exists.

The Applicant submitted substantial evidence that a "twenty-year debt capital" assumption is reasonable and appropriate. Development of commercial properties is typically funded ten to fifteen year notes. (Belz Affid. at ¶ 11). Staff alleged that a 30 year loan would have lowered annual cash costs, thereby favorably impacting Applicant's cash flow analysis. However, 30-year financing is not available for commercial projects. (Belz Affid. at ¶ 11). The Staff's conclusions to the contrary were not based upon financial market realities and were merely speculative. The Staff submitted no evidence regarding the availability of 30-year debt capital for this type of commercial project. Thus, the Commission could not have reasonably relied upon the Staff's allegation in determining that economic hardship had not been demonstrated by the Applicant.

The Applicant submitted substantial evidence that owners of equity capital must receive a 10 to 15 percent return on these monies in order to be induced to invest in commercial development properties. The Applicant demonstrated that risk-free U.S. Treasury securities presently earn a 7 percent return. In order to induce investors to accept the added risk of investing in commercial development properties, an investor must be capable of earning a risk premium on top of the risk-free rate of 3 to 8 percent. (Belz Affid. at ¶ 12, 13). Contrary to this evidence, the Staff alleged that investors would eagerly commit equity capital to renovate the Building if they could earn as little as a 5 percent return on their investment. Given the present risk-free rate of return of 7 percent, it is apparent that no investor would consider committing equity capital to remodelling the Building if these investors could earn an additional 2 percent return by investing in a risk-free security. (Belz Affid. at ¶ 12, 13). Accordingly, the Commission could not have reasonably relied upon the Staff's allegation that a 5 percent equity return was an appropriate assumption to be employed in assessing the adequacy of earnings associated with renovating the Building. Thus, the Commission could not have reasonably relied upon the Staff's conclusion that renovation of the Building would produce reasonable returns for equity investors.

The Applicant submitted substantial evidence that the management fee assumption it employed in its pro forma analysis is typical for Park City properties. The Applicant demonstrated that Park City property owners' records indicate that these owners incur annual management fees approximating 50 percent of gross receipts. The Staff submitted no evidence to the contrary. The Staff simply made the unsubstantiated assertion that this figure "should be lower," and arbitrarily asserted that a 30 percent figure would be more result in increased rental incomes of $50,000. However, in performing the calculations producing this "result," the Staff utilized a uniform management fee for both winter and summer months, thereby overstating net rental incomes in the winter months when property management fees are higher. To compound this error, Staff then inexplicably concluded that the management fee should be "omitted entirely" from the pro forma income analysis. Staff presented no evidence that this was a proper or reasonable assumption. Thus, the Commission could not have reasonably relied upon Staff's unsupported opinions in determining that economic hardship had not been demonstrated by the Applicant.

The Applicant submitted substantial evidence which supported and justified all other financial variables it used in its pro forma analyses. Staff's general assertions that the values used in the Applicant's analyses were either "too high" or "too low" were not supported by any evidence whatsoever. Thus, the Commission could not have reasonably relied upon these assertions in concluding that economic hardship had not been demonstrated by the Applicant.

C. <u>Rehabilitation or Remodelling that Would Be Compatible with Preservation of the Building or Site is Infeasible</u>.

The Applicant submitted substantial evidence that due to the advanced state of decay of the Building and the extensive modifications that were made to the Building over the past 75 years, a rehabilitation or remodelling effort that would meet the preservation standards of the U.S. Park Service would be infeasible. Staff confirmed this conclusion in its initial report to the Commission on July 21, 1993. This is the principle reason why the State Historic Society did not list the Building on the national survey register when the inventory and analysis was originally completed in Park City. (Belz Affid. at ¶ 14). For the same reason, the Building has not been listed on Park City's "historically contributing" list of significant structures. (Belz Affid. at ¶ 14). The infeasibility of any rehabilitation effort is also substantially evidenced by the Park City Building Department's condemnation of the structure over 3 years ago. The Commission received no evidence that rehabilitation or remodeling that would be feasible or compatible with preservation of the Building or site.

In voting to deny Applicant's CAD application, the Commission determined that "feasibility of renovation has been demonstrated by the number of individuals willing to renovate the property." As indicated by the Staff's June 10, 1994 report, only three individuals expressed any such "willingness." Unlike the Applicant, none of these individuals submitted any evidence to the Commission demonstrating that any such "willingness" was supported by plans, financial projections or any data of any kind. Thus, the Commission could not have reasonably relied upon these individuals' assertions in determining that rehabilitation of the Building was feasible in the face of substantial evidence submitted by the Applicant to the contrary.

D. <u>The Building Cannot Be Feasibly Moved or Relocated within the Historic District</u>.

The Applicant submitted substantial evidence that the Building cannot be feasibly moved or relocated within the Historic District. The Applicant has offered to pay any person willing to move the building onto another site within the Historic District $5,000. The Applicant has received no response to this offer. (Belz Affid. at ¶ 15). Moreover, neither the Staff nor the City has identified any alternative sites that would accommodate the Building. The Commission received no evidence that the Building could be feasibly moved or relocated within the Historic District even though many existing sites in the Historic District would suitably accommodate the Building.

E. Summary.

The Applicant submitted substantial evidence proving that it would suffer unreasonable economic hardship if its CAD application were denied. The Applicant demonstrated that (i) the Building or site cannot be feasibly used or rented at a reasonable rate of return in its present condition, (ii) the Building or site cannot be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the Applicant, (iii) rehabilitation or remodelling that would be compatible with preservation of the Building or site is infeasible, and (iv) the Building or site cannot be feasibly moved or relocated within the Historic District. Thus the Applicant satisfied each of the four criteria [illegible] agement Code for approval of a CAD application. Moreover, Section 4.17(c) directs the Commission's inquiry to whether the owner of the property can earn a reasonable return on the property. Thus, any reliance by the Commission upon how other developers view the possible investment returns from the renovation of the Building are misplaced. Because no party submitted any contrary evidence upon which the Commission could have reasonably relied, the Commission misapplied the standards set forth in Section 4.17(c) and arbitrarily, capriciously and unlawfully denied the Applicant's CAD application.

II. The Commission Failed to Rely Upon Substantial Evidence in Denying the CAD Application.

In voting to deny Applicant's CAD application, the Commission determined that "feasibility of renovation has been demonstrated by the number of individuals willing to renovate the property." As indicated by the Staff's June 10, 1994 report, only three individuals expressed any such "willingness." None of these individuals submitted any evidence to the Commission that any such "willingness" was supported by plans, financial projections or any data of any kind. The Commission did not permit the Applicant to test these three individuals' "willingness" by cross-examination nor did the Commission insist that these individuals support their subjective conclusions with objective evidence. Nonetheless, the Commission unreasonably and arbitrarily concluded that the "willingness" expressed by three individuals, no matter how untested, meant that renovation of the Building was "feasible." In drawing this conclusion, the Commission failed to rely upon substantial evidence and, thereby, unlawfully denied the Applicant's CAD application.

III. The Commission Denied the Applicant a Reasonable Opportunity to Respond to and Rebut the Staff's June 10, 1994 Report.

Late in the afternoon on June 10, 1994, the Staff issued a report and recommendation to the Commission in which it recommended denial of the Applicant's CAD application. The Applicant received this report at 5:00 p.m. on June 10, 1994. Although the Applicant prepared and submitted a response to the Staff's report, the Commission refused to allow the Applicant adequate time at the hearing to fully rebut the number of unsupported claims, assertions and assumptions contained in the Staff's report. The Commission's actions violated the Applicant's substantive and procedural rights to due process of law under the United States Constitution and the Constitution of the State of Utah.

Conclusion

Based on the foregoing, the Applicant respectfully requests that the City Council reverse the Historic District Commission's decision and grant its application for a Certificate of Appropriateness for Demolition for the building located at 801 Park Avenue, Park City, Utah.

DATED this 23rd day of June, 1994.

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BEFORE THE CITY COUNCIL OF PARK CITY, UTAH

801-817 Park Avenue MPD Denial
801 CAD Denial
David Belz,
Appellant

RESPONSE TO APPEALS

David Belz, by and through his counsel, has submitted two (lengthy) appeals for Council consideration on September 29, 1994. The first appeal challenges the Historic District Commission's (HDC) denial of a Certificate of Appropriateness for Demolition (CAD) of an historic boarding house located at 801 Park Avenue. The second appeal challenges the Planning Commission's denial of a proposed Master Planned Development on approximately one half acre located at the corner of 8th Street and Park Avenue. Both appeals contain misstatements of fact and law. However, one should be granted, the other denied. What follows is a brief restatement of the facts, followed by correction of the most significant misstatements of fact and law, followed by a discussion of the merits of each appeal, and concluding with specific requests for Council action on each appeal.

I. STATEMENT OF FACTS

On December 31, 1992, David Belz filed an incomplete application for an MPD to develop property located at 801-817 Park Avenue. On March 3, 1993 staff wrote Mr. Belz describing the deficiencies of his project and informing him that once the City received a complete application the project would "be put into the 'pipeline' for review." On July 20, 1993, Mr. Belz filed a revised, but still incomplete Small Scale MPD Application for the development of the same parcel. In essence, the revised MPD resembles the concepts associated with the proposed MPD now on appeal. It consists of four single-family dwellings fronting on Woodside Avenue, an 8,000 square foot commercial building (with an apartment) fronting on Park Avenue, a 5,000 square foot landscaped, plaza/park, a 200 square-foot retail kiosk and 24 parking spaces in a subterranean/tuck-under parking garage. The proposed MPD includes the relocation of two historic homes (811 and 817 Park Avenue) from Park Avenue to Woodside Avenue, with proposed additions to these structures that would increase the square footage of the homes by approximately twice their current size. It further includes a new residential structure proposed for an existing vacant parcel on Woodside. Finally, it includes the repositioning and restoration of 801 Park Avenue, a significant historic boarding house-- a structure for which Mr. Belz has alternatively sought and received approval for an Historic District Grant[1], and has been denied a Certificate of Appropriateness for Demolition (CAD).

Like the December 31, 1992 MPD application, Mr. Belz allowed the July 20, 1993 MPD application to languish incomplete for at least another five months.[2]
Once Belz submitted a complete application, the Planning Commission reviewed the proposed MPD on at least four occasions: 1) in work session, on April 13, 1994; 2) in work session, on June 22, 1994; 3) in a public hearing, on July 27, 1994; and 4) in a public hearing, on August 17, 1994. On August 17, 1994, the Planning Commission considered, revised, and adopted Findings and Conclusions denying the MPD. *See* Exhibit A. It is those findings that are the focus of this appeal.[3]

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[1] On April 28, 1993 Belz filed an application for an Historic District Grant to restore 801 Park Avenue. He was awarded the grant on May 28, 1993.

[2] *See* Susan Lykes' November 30, 1993 letter to David Belz requesting additional information.

[3] Mr. Belz' appeal documents incorrectly refer to Findings and Conclusions that were not in fact adopted by the Planning Commission. This confusion alone accounts for several unnecessary pages of briefing in the materials Mr. Belz has submitted.

On February 22, 1993, Mr. Belz filed an application for a CAD to demolish 801 Park Avenue, the same structure for which Mr. Belz had applied to restore in the proposed MPD. Mr. Belz filed the required economic hardship analysis in support of his CAD application on February 4, 1994, and further supplemented it on March 18, 1994.[1] On June 13, 1994 the Historic District Commission denied the CAD application after considering contradictory evidence[2] regarding the economic hardship associated with restoration of the structure. They determined that Mr. Belz had not met his burden of proving sufficient economic hardship to justify demolition of such a significant historic structure. LMC §4.17. Mr. Belz filed a timely appeal of the CAD denial, which has been stayed for several months, upon mutual agreement, pending (failed) attempts to negotiate a solution and ultimately pending the outcome of the proposed MPD process.

Just after the HDC denied the CAD application for 801 Park Avenue, Mr. Belz filed yet another series of applications to develop the 801-817 Park Avenue parcel in a manner which conflicts with the proposed MPD. Mr. Belz refers to it as the "Permitted Use Alternative" and by that we believe he means to convey the concept that, unlike as with the proposed MPD, some level of development on the parcels between 8th Street and 817 Park Avenue is allowed under the Land Management Code, without receipt of discretionary approval from the Planning Commission.

Shortly after receiving these applications for development, Mr. Belz was advised, orally and in writing, that Planning Staff would process one application at a time for the development of a particular parcel. In essence, he was advised that staff had not, and would not consider the merits of his "Permitted Use Alternative" proposal until he resolved

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[1] The HDC briefly postponed consideration of the CAD application scheduled for HDC hearing on March 14, 1994. They asked the Planning Commission to evaluate the conflicting proposals and to evaluate the City's options with regard to the site. The Planning Commission took a broad look at the conflicting proposals in work session on April 13, 1994. They advised the applicant that they preferred the applicant to submit a proposal to save all structures in their existing locations.

[2] At least three investors expressed an interest in purchasing and restoring the structure. Belz simply *argued* for economic assumptions different from those of staff's and admitted on the record that many of the figures he used were "grabbed out of the air".

or withdrew the pending MPD application. Any reference to the Permitted Use Alternative in the appeal must be understood as reference to an application which staff has yet to evaluate, and upon which staff expresses no opinion at this time.

II. BELZ' MISSTATEMENT OF FACTS AND LAW

While the Belz appeals are peppered with misstatements of fact and law, in the interests of brevity, we highlight only the two most significant ones.[1] These two misstatements, or misperceptions form the unstable foundation for virtually all of Belz' arguments in favor of the appeal.

A. The Proposed MPD *Does Not* Comply With the Land Management Code or the Comprehensive Plan.

Throughout the briefing, Belz argues that Planning Staff warrants or has represented that the proposed MPD complies with the Land Management Code and the Comprehensive Plan. Mr. Belz is either confused or is confusing. At no time has Planning Staff represented that the proposed MPD complies with the Land Management Code, or the Comprehensive Plan.[2] For example, within a month of the submission of his July 20, 1993 application, staff responded to the new MPD, in writing, disclosing the following Land Management Code deficiencies:

1. Failure to comply with code setbacks;
2. Failure to describe second story decks;
3. Failure to design adequate parking;

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1 A third, relatively significant misstatement is that on June 22, 1994, Bruce Erickson somehow deprived the applicant of his right to due process by expressing prejudgment on the MPD, prior to public hearing. We have scoured the record and find no evidence of the language cited or the sentiments inferred.

2 At most, staff has said that certain aspects of the proposed MPD (i.e. 60% Open Space) appear to meet LMC requirements.

4. Failure to provide Historic District approval for the concept of relocating and expanding the historic homes;
5. Failure to adequately fence between HRC and HR-1 zones;
6. Failure to provide code-specified driveway widths;
7. Failure to properly ventilate underground parking.

See Lykes letter of August 24, 1993. In a later staff report on a later version of the same proposal, staff stated that "building height, setbacks, retaining walls and FARs have yet to be evaluated."

Larger conceptual problems presented by the proposal overshadowed and in fact made unnecessary the "detail" work associated with evaluating whether the proposed MPD was in "full" compliance with the Land Management Code. These larger conceptual problems included the fact that the proposal involved relocating from Park Avenue two restored, historic homes to make room for an 8000 square foot commercial building, fronting on Park Avenue. In virtually every correspondence, and every staff report, Planning Staff and the Planning Commission expressed their belief that relocation of historic structures violated Historic District Design Guidelines and those preservation values expressed in the Comprehensive Plan and in the Land Management Code.[1]

Mr. Belz himself admitted in written materials submitted to the City that two significant pitfalls of the proposed MPD were that "the rhythm of the historic street scape is [lost] to . . . allow for the proposed plaza" and that the "Historic houses are moved from their original location on Park Avenue." Historic rhythm and scale are two critical design criteria of Small Scale MPDs within the Historic District. LMC § 1.13(j) and (k). Relocation of historic structures is *disfavored* in the Historic District Design Guidelines, which are not only controlling, but in fact incorporated into the MPD approval process.

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1 Somehow, Belz glosses over the fact that LMC §1.13, as well as LMC Chapter 10, define the criteria for Small Scale MPDs. Nowhere in the appeal does Belz suggest that the proposed MPD complies with LMC §1.13. It does not.

LMC § 1.13(k); LMC § 10.3(a)(2).[1] Therefore, Belz' insistence that the proposed MPD conforms to the Land Management Code and the Comprehensive Plan is simply without legal or factual foundation.

B. <u>The Adopted Findings and Conclusions are Supported by Substantial Evidence.</u>

Belz insists that there is something inappropriate, or even unconstitutional, about the fact that the Planning Commission adopted Findings and Conclusions that were prepared by staff in draft form. Belz is confused regarding both the facts and law in this respect. First, the Findings and Conclusions Belz refers to and critiques were not in fact the Findings and Conclusions that the Planning Commission adopted on August 17, 1994. The Findings and Conclusions that were in fact adopted by the Planning Commission are attached as Exhibit A.

As provided in LMC §3.11, the Findings and Conclusions were prepared by staff after the third of four public meetings on the proposed MPD. They were revised and then adopted by the Planning Commission in a publicly-noticed meeting, which Belz did not attend. While the proper forum to originally challenge proposed Findings and Conclusions is before the body about to adopt them, Belz failed to raise any objection to the Findings and Conclusions at the proper time. To criticize them now, when the Planning Commission can do nothing to right any perceived wrong is untimely at best. Nevertheless, even if properly raised, Belz' objections are without merit in the law.

Belz argues against the Findings and Conclusions as if they were required to reflect public comment or criticism levied at only one of several meetings on the subject. In fact, the Findings and Conclusions are proper if supported by what is known as "substantial evidence" on the record before the Planning Commission. Substantial evidence is more than a "scintilla", but something less than the weight of the evidence when viewed in light of the whole record. *See Grace Drilling v. Board of Review*, 776 P.2d 63, 67 (Utah App.

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[1] Relocation is also expressly "not recommended" according to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

1989). In essence, if reasonable minds could differ on the evidence, there is *substantial evidence* to sustain the decision. *Id.*; 9 *Wigmore*, 3d Ed. §2494. Further, "substantial evidence" is not undisputed evidence. It is for the fact finder, in this case the Planning Commission, to chose between conflicting facts. In fact, the Utah Supreme Court has stated that, as an appellate body, "It is beyond our prerogative to determine that the [fact finder's] reliance on [certain] testimony was inappropriate." *Northwest Foods Ltd. v. Bd. of Review*, 731 P.2d 470 (Utah 1986); *See also Xanthos v. Bd. of Adjustment*, 686 P.2d 1032 (1984).

Here, Belz fails to recognize that the record consists of everything the Planning Commission considered regarding the project over the life of the proposal including, but not limited to:

1. All staff reports submitted to the Planning Commission;
2. All designs, replies and reports submitted by the Applicant;
3. All Code, Comprehensive Plan and Historic District Guidelines;
4. All personal knowledge of each Commission member of the existing site and its setting;
5. Professional judgment of staff; and
6. Public comment.[1]

Findings and Conclusions need not be limited to the last words of the last Planning Commissioner to speak. They must, by majority vote, fairly and accurately reflect the Planning Commission's interpretation of the record as a whole. Belz' disagreement with the Planning Commission's interpretation of the record does not render it invalid.

[1] Rather than replicate, the full and complete record is available for Council reference in the City Attorney's Office.

III. MERITS OF THE APPEALS

A. MPD Denial Should be Sustained.

Unless the City Council chooses to substitute its judgment for that of the Planning Commission, it should deny the appeal of the MPD. In the past, the Council has committed to acting as an appellate body, not to retry the issues, but to review whether the Planning Commission fairly applied the law to the facts. Fairly stated, upon review of the entire record, there are sufficient facts to support the Planning Commission's determination that the proposed MPD fails to conform to the Land Management Code and to the Comprehensive Plan. Despite 30 single-spaced pages of briefing to the contrary, there appears to be no "reversible error" with regard to the MPD.[1]

Small Scale MPDs are conditional uses under the Land Management Code. LMC §1.14(a). They are not an entitlement under the law. In order for a Small Scale MPD to issue, the Community Development Department must find that:

1. The application complies with all requirements of this Code;
2. The MPD will be compatible with surrounding structures in use, scale, mass and circulation;
3. The use is consistent with the Park City Comprehensive Plan; and
4. The effects of any differences in use or scale have been mitigated through careful planning.

LMC §1.13(j). The Community Development Department offered the Planning Commission no such findings and in fact recommended against approving the MPD. In judging an application, the Department reviews many items, including:

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1 Counsel for the applicants represent that they intend to present "additional evidence" to the City Council regarding this appeal. While it is always well to have all of the facts before deciding a matter of consequence, often appellate bodies decide matters "on the record" created below and do not permit the introduction of additional evidence on appeal. Under this theory, it is improper for Belz to submit additional evidence on appeal. However, if he does, City staff will also present additional evidence in support of the Planning Commission decision. At the conclusion of the newly admitted evidence, Council should rule and direct staff to draft Findings and Conclusions in support of their decision, in anticipation of the following Council meeting.

1. Building mass, bulk, and orientation, and the location of buildings on the site; including orientation to buildings on adjoining lots;
2. Physical design and compatibility with surrounding structures in mass, scale, style, design, and architectural detailing.

Id. Specifically staff reported that the building mass, bulk and orientation were incompatible with the scale and rhythm of the adjoining architecture.

All Small Scale MPD applications within historic zones are subject to architectural review by the Community Development Department, based on the Historic District Guidelines, and subject to a right of review by the Historic District Commission and further review by the Planning Commission for compliance with the Historic District Guidelines. LMC §1.13(k). Small Scale MPDs are allowed only where they preserve the character of the zone and mitigate all potential adverse effects. Where conditions to the MPD cannot be devised to satisfactorily mitigate its adverse effects, the application must be denied. LMC §1.13. The Planning Commission specifically found that the proposed MPD failed to preserve the character of the applicable zones.[1] Clearly, the Planning Commission acted within its discretion in denying the proposed MPD.

B. <u>CAD Denial Should Nullified</u>.

Council should nullify the HDC's denial of the Belz application to demolish 801 Park Avenue. While 801 Park Avenue is without question an historically significant structure within Park City, it is not one that is protected by the CAD provisions of LMC § 4.11 et. al. The law simply does not apply to this structure.

Unfortunately, what was unknown to all concerned[2] with the process at the time Mr. Belz applied for and was denied a CAD to demolish 801 Park Avenue, was that the building was not on the survey of significant historic structures within Park City. Until

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[1] The site is unique in that it straddles to zones: HRC and HR-1.

[2] Even Mr. Belz believed the property to be historically significant because at one time during his ownership he applied for, and was approved to receive, an Historic District Grant to restore the structure. (He did not collect the grant moneys however).

recent revisions in the CAD process, listing on that survey was the only method by which properties fell under the CAD regulations. Failure to appear on the survey prior to recent code amendments, rendered the property exempt from CAD restrictions. Unlike the discretion vested in the Planning Commission with regard to Small Scale MPDs, the HDC had no discretion to include a significant, but unlisted property into the CAD process *after* the property owner has applied for a permit under the pre-existing law.[1]

IV. REQUESTS FOR ACTION

Staff respectfully requests Council to hear all public testimony and evidence and arguments of all parties. Staff ultimately requests Council to uphold the Planning Commission's MPD denial and to render invalid the CAD denial. However, because the agenda is full, and the appeals are lengthy, staff does not request Council action on either appeal until October 13, 1994. If Council is inclined to reverse the Planning Commission's MPD denial, staff respectfully requests Council to remand the proposed MPD to the Planning Commission and to Planning Staff for further evaluation, conditions of approval, and action.

RESPECTFULLY SUBMITTED THIS 27TH DAY OF SEPTEMBER, 1994

Jodi Hoffman, City Attorney

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[1] Recent amendments to the CAD process have cured the problem exemplified in this case. They now create a presumption of historic significance for all structures 50 years or older. Presumptive historically significant properties must now either be proven to be insignificant, or are subject to the CAD restrictions.

AFFIDAVIT OF DAVID BELZ

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

David Belz, being first duly sworn and under oath, deposes and states as follows:

1. I am a resident of Summit County, State of Utah.

2. I am a member of 801 PK, L.C., a Utah limited liability company ("American Capital"), and I am familiar with the activities of 801 PK, L.C., in connection with its application for a Certificate of Appropriateness for Demolition [illegible] Avenue, Park City, Utah (the "Building") submitted to the Park City Historic District Commission.

[illegible] a licen[illegible]itect and have substantial experience in renovating, rehabilitating and remodelling residential and commercial structures. I am familiar with the financial requirements associated with renovating, rehabilitating, and remodelling residential and commercial structures.

4. I have prepared certain pro forma financial studies regarding the feasibility of renovating, rehabilitating and remodelling the Building.

5. The rental rates employed in each of the pro forma studies are higher than current rental rates for other similar nightly rental properties in Park City, Utah.

6. The number of rentable days employed in each of the pro forma studies are reasonable and comparable to the typical number of rental days on similar rental properties in Park City, Utah.

7. The gross income figures appearing in the pro forma studies are reasonable, if not optimistic.

8. 801 PK, L.C., and its members intend to own and operate the property on which the Building now stands as a long term investment.

9. Property value appreciation will not offset immediate out-of-pocket renovation costs and is not an appropriate tool by which to assess a reasonable return from property rehabilitation. To the best of my knowledge, commercial property values in Park City, based upon resort rental values, have never appreciated at a 12 percent annual rate on any consistent basis.

10. Interest rate deductions for tax purposes only have value if there is passive income against which they may be applied. Rehabilitation of the Building would not produce income. Thus, the passive losses would not be usable at any time in the foreseeable future. Interest rate deductions will produce no usable tax benefits for the owner the Building and, therefore, are not applicable to a cash flow analyses of the renovation project.

11. Debt capital funding of commercial properties is typically accomplished with 10 to 15 year notes. If the property could qualify for a residential mortgage, such a note would constitute a nonconforming loan. Present rates for such nonconforming loans are at 9.0 percent for a 20 year note and 9.25 percent for a 30 year note.

12. In order to induce investors to accept the additional risk of investing in commercial development properties, an investor must be capable of

earning a risk premium over the 3 percent to 8 percent on the risk-free rate available on returns on U.S. government securities.

13. Given the present risk-free rate of return of 7 percent, the average investor would generally require equity returns in excess of the risk free rate as compensation for the assumed risk.

14. The Utah State Historic Society did not individually list the Building on the national register survey when the inventory analysis was originally completed in Park City, Utah because of the Building's advanced state of decay and the extensive modifications made to the Building over the past 75 years. For the same reason, the Building was not listed on Park City's "historically contributing" list of significant structures when that survey was completed.

15. 801 PK, L.C., has offered $5,000 to any person willing to move the Building to another site within the Historic District of Park City, but has not received any response to this offer.

DATED this 22nd day of June 1994.

DAVID BELZ

SUBSCRIBED AND SWORN before me this 22nd day of June 1994.

NOTARY PUBLIC
Judith L. Costello
2809 Lucky John Drive
Park City, Utah 84060
My Commission Expires
May 13, 1997
STATE OF UTAH

Judith L Costello
NOTARY PUBLIC

NOTICE OF APPEAL

Introduction

801 PK, L.C., a Utah limited liability company, and 811 PK, L.C., a Utah limited liability company (together, the "Applicant"), are the owners of properties located at 801 Park Avenue, 811 Park Avenue, 815 Park Avenue (presently known as 817 Park Avenue) and 817.5 Park Avenue, Park City, Utah (the "Property"). On or about July 20, 1993, David Belz, a member of 801 PK, L.C., and 811 PK, L.C., filed a revised Small Scale Master Planned Development ("MPD") application with the Park City Planning Commission (the "Planning Commission") on behalf of the Applicant to develop the Property pursuant to Chapter 10 of the Park City Land Management Code (the "Land Management Code"). The MPD application requested Planning Commission approval for the development of the "Town Lift Center" on the Property. On July 27, 1994, the Planning Commission held a public meeting and denied the Applicant's MPD application. On August 17, 1994, the Planning Commission approved certain findings regarding its July 27, 1994 decision.

Pursuant to Section 1.16 of the Land Management Code, the Applicant hereby appeals the Planning Commission's July 27, 1994 decision, as well as related findings approved by the Planning Commission on August 17, 1994. The Applicant submits that the Planning Commission arbitrarily, capriciously, unreasonably and unlawfully denied the MPD application because the Planning Commission (i) failed to apply the MPD standards of review set forth in Chapter 10 of the Land Management Code, (ii) adopted subsequently prepared "findings" that are wholly inconsistent with the record evidence and the Planning Commission's stated basis for denying the MPD application, (iii) arbitrarily, capriciously and unreasonably disregarded substantial evidence that the MPD application fully complies with the Land Management Code and the Park City Comprehensive Plan, (iv) improperly excluded and disregarded relevant evidence regarding the permitted uses of the Property, and (v) failed to provide the Applicant with a full and impartial hearing on the MPD Application.

In submitting this appeal, the Applicant expressly reserves the right to subsequently challenge whether the Park City Council has the legal authority to hear this appeal or whether any provision of the Land Management Code or the Comprehensive Plan is unlawful. The Applicant also reserves the right to present corroborating evidence to the City Council in support of this appeal and to present other arguments and evidence in support of this appeal.

SLC1-9725.1 23866 0001

Factual Background

In order to facilitate continuity in relating certain events, the following factual histories are set forth in separate sections. Section 1. sets forth certain facts and events that are relevant to the MPD Project and the MPD Application. Section 2. sets forth certain facts and events that are relevant to the "CAD Application" (as therein defined). Section 3. sets forth certain facts and events that are relevant to the "Permitted Use Applications" (as therein defined).

1. The Master Plan Development Application.

In March of 1990, Mr. Belz acquired the Property on behalf of 801 PK, L.C., and 811 PK, L.C. At or about this time, Mr. Belz applied to the Park City Historic District Commission ("HDC") for grants to renovate the structures located at 811 Park Avenue and 817 Park Avenue. Accompanying his application was a letter which set forth the Applicant's plans for the Property. The letter explained the Applicant's intent to renovate the two structures and to prepare plans for the development of the Property. Prior to accepting any grant monies from the HDC, however, the Applicant consulted legal counsel who advised the Applicant that it would not be precluded from relocating the structures located at 811 and 817 Park Avenue at a future date if the Applicant accepted the grant monies.

In August of 1991, Mr. Belz completed the renovation work on the buildings located at 811 Park Avenue and 817 Park Avenue.

In January of 1992, the Applicant sought advice from the Park City Planning Department regarding the City's development preferences for the Property. The staff of the Planning Department (the "Staff") informed the Applicant that they could not provide him any such advice until he first presented a development plan to the City. Subsequently, the Applicant prepared and presented several schematic development plans to the Staff. However, the Staff again refused to provide any input to the Applicant. The Staff advised the Applicant that he would have to prepare and submit a formal MPD application to the City before the Staff could provide any substantive input.

On December 31, 1992, the Applicant filed an MPD application with the Park City Planning Department requesting approval for development of the Property pursuant to Chapter 10 of the Land Management Code. The Staff reviewed this application, but again provided no substantive input to the Applicant, in spite of the fact that the application was clear, complete and in compliance with the Land Management Code. The Staff commented that the drawings accompanying the application were not of sufficient professional quality and that the application was "difficult" to understand. The Staff informed the

Applicant that they would not review the MPD application until the Applicant had prepared and submitted a more elaborate and detailed version of the MPD application.

From January of 1993 to July of 1993, the Applicant diligently worked to complete a revised and fully detailed MPD application for the Property. On or about July 20, 1993, the Applicant completed this revised version of the MPD application (the "MPD Application") and submitted it to the Park City Planning Department and the Planning Commission pursuant to the MPD application procedures set forth in Chapter 10 of the Land Management Code. The MPD Application requested that the Planning Commission approve the Applicant's development of the "Town Lift Center" project (the "MPD Project") on the Property. A copy of the MPD Application is attached hereto and incorporated herein by this reference as Exhibit "A".

The Property consists of approximately one-half acre of land bounded by Park Avenue to the east, 8th Street to the South, Woodside Avenue to the West and the Whaley property to the north. There is approximately 175 feet of frontage on both Woodside Avenue and Park Avenue, with an overall average depth of about 140 feet. The frontage on Park Avenue is zoned "HRC," Historic Recreation Commercial, while the property fronting Woodside is zoned "HR-1," Historic Residential. The Property is directly west of the Town Lift ski base facility and the approved Town Lift commercial development which calls for the construction of a four-story hotel and related facilities.

The MPD Project is described in detail in Exhibit A, and consists of four single-family dwellings on Woodside Avenue, a commercial building fronting on Park Avenue, a 5,000 square feet landscaped plaza/park, a 200 square feet retail kiosk and twenty-eight covered parking spaces in a subterranean parking garage. The MPD Project proposes that two historic structures located at 811 Park Avenue and 817 Park Avenue be relocated from Park Avenue to Woodside Avenue in order to accommodate the spatial requirements of the MPD Project and thereby render renovation of the condemned structure located at 801 Park Avenue economically and aesthetically feasible.

The MPD Application complies with all procedural requirements of the Land Management Code and the Comprehensive Plan and contains substantial evidence that the MPD Project complies with all substantive requirements of the Land Management Code and the Comprehensive Plan. In particular, the MPD Application demonstrates that (i) the land uses within the MPD Project are permitted or conditional land uses within the HR-1 zone and/or the HRC zone, (ii) the land uses within the MPD Project are consistent with the purposes and policies of the Comprehensive Plan and the Land Management Code, (iii) the traffic circulation patterns, building height or bulk within the MPD Project will not cause any adverse impacts to its surroundings -- the MPD Project will be sufficiently screened, and will not adversely impact ridge line views or intrude or encroach upon view corridors, wetlands or any individual's privacy, (iv) the MPD Project's density does not exceed the maximum densities permitted by the Land Management Code, (v) the MPD Project complies with all off-street parking requirements set forth in Chapter 13 of the Land Management Code, (vi) the buildings within the MPD Project do not exceed the height requirements of Chapter 7 of the Land Management Code, (vii) the site plan for the MPD Project satisfies all site planning criteria specified by Section 10.9(h) of the Land Management Code, (viii) the buildings and lots within the MPD Project satisfy all building and lot design criteria set forth in Section 10.9(i) of the Land Management Code, (ix) limits of disturbance or building pad lines within the MPD Project satisfy the standards set forth in Section 10.9(k) of the Land Management Code, (x) the uses within the MPD Project are compatible with surrounding structures in use, scale, mass and circulation, (xi) the uses within the MPD Project are consistent with the Comprehensive Plan, (xii) the MPD Project meets or exceeds each criteria and standard for review set forth in Section 1.13(j) of the Land Management Code, (xiii) the MPD Project complies with all architectural guidelines promulgated by the Historic District Commission and the Land Management Code, (xiv) the uses of the Property within the MPD Project conform to the permitted uses shown on the land use table in Chapter 7 of the Land Management Code, and (xv) the MPD Project complies with all other requirements set forth in the Land Management Code.

Between July 20, 1993 and November 30, 1993, the Applicant held numerous meetings with the Staff, the Park City Manager and the Park City Mayor regarding the MPD Project. At no time during these meetings did the Staff or any other City official attempt to determine whether the MPD Project complied with the Land Management Code or the Park City Comprehensive Plan. The Staff and the other City officials simply informed the Applicant that even if the MPD Project complied with the Land Management Code and the Comprehensive Plan, the Applicant would "face an uphill battle" to obtain City approval and, in all likelihood, would never receive City approval.

The Applicant explained to the City that it was not interested in initiating a conflict with the City over development of the Property. The Applicant again requested that the City provide it direction regarding the City's preferred development alternative. The only input the City provided to the Applicant was that any development of the Property would have to be designed around the two buildings located on 811 Park Avenue and 817 Park Avenue and would have to incorporate uses that were permitted on the Property. The Applicant then provided computer generated schematic drawings for such a development to the Staff. After reviewing this development alternative, Staff concluded that this alternative would "work" and that they liked the alternative approach. The Applicant produced additional drawings and refinements of the alternative plan and associated parking and ground floor plans. After completing each refinement, the Applicant delivered copies of these plan to the City and the Staff. After receiving each refinement, the Staff confirmed that they were pleased with the alternative development plans. After several months work, the Applicant had generated a complete set of the alternative development plans for the Property (these development plans are attached hereto and incorporated herein by this reference as Exhibits "B" through "E," inclusive) (the "Permitted Use Alternative).

Notwithstanding the effort expended by the Applicant to generate the Permitted Use Alternative, the Applicant continued to believe that the MPD Project represented a superior development option for the Property and Park City. Accordingly, the Applicant desired to give the City one more opportunity to select the development option represented by the MPD Project. In February of 1994, the Applicant presented the MPD Project and its Permitted Use Alternative to the Park City Manager. After reviewing the two development proposals, the City Manager informed the Applicant that the Staff still preferred the Permitted Use Alternative to the MPD Project. Before the Applicant completely rejected the MPD Project, however, the Applicant asked if it "could get a read" on how the Planning Commission would react to the two development proposals. The City Manager suggested that the Applicant appear before the Planning Commission at a "preliminary" work session meeting to discuss the two development proposals. The Applicant agreed to do so and the City Manager made the necessary arrangements with the Staff.

On April 13, 1994, the Applicant appeared at a preliminary work session of the Planning Commission to discuss the MPD Project and the Permitted Use Alternative with the Planning Commission and the Staff and to receive direction from the Planning Commission regarding the two development alternatives. At that meeting, the Staff submitted a report to the Planning Commission, dated April 13, 1994, which informed the Planning Commission that:

> The City's staff review team, which consists of members from various City department and utility and public service agencies, preferred development of the site as a Master Plan Development due to the provision of open space, the feasibility of phasing and the reduced ingress/egress problems. The Planning Staff recognizes these benefits, but is concerned about loosing the historical structures on Park Avenue. ... Both proposals are sensitive to the residential neighborhood on Woodside, however, the MPD would probably have more aesthetic benefits since residential structures would be visible (as opposed to simply garage doors) from Woodside. ... .

After receiving Staff's recommendation and reviewing both the Permitted Use Alternative and the MPD Project, the Planning Commission expressed a general dislike for the MPD Project. Commissioner Barrett, however, conceded that the MPD Project appeared to be in full compliance with the Land Management Code. The Planning Commission concluded that while they disliked the MPD Project as presented, they "preferred" to handle development of the Property through an MPD process because it gave them "considerably greater latitude" in responding to the development of the Property.

Notwithstanding the Planning Commission's expressed dislike for the MPD Project, the Applicant informed the Staff that he intended to proceed with the MPD review process. Staff informed the Applicant that if the Applicant did not make substantial changes to the MPD Project, the Planning Commission would probably not consider the MPD Application further. Prior to the first formal work session with the Planning Commission on the MPD Project, therefore, the Applicant generated refinements to the MPD Project in order to address certain criticisms voiced by the Planning Commissioners at the preliminary work session. The Applicant generated a new first floor and parking plan for the MPD Project which brought commercial space to the Park Avenue frontage by burying the project's proposed parking facility into the hill side, and in addition, generated a new volumeteric study which eliminated the flat roofs from the project's commercial building.

On June 22, 1994, the Applicant again appeared at a work session of the Planning Commission to request that the Planning Commission review and provide input to the Applicant regarding the basic configuration of the MPD Project. Staff appeared before the Planning Commission and submitted a prepared report, dated June 22, 1994. In its report, the Staff informed the Planning Commission that the MPD Project "appears" to comply with the Land Management Code," but that the MPD Project "appears to be in conflict with the Comprehensive Plan." Staff did not explain the discrepancy between this opinion and its April 13, 1994 preference for the MPD Project. Following Staff's presentation to the Planning Commission, the Applicant appeared and presented a written report to the Planning Commission which contained substantial evidence that the MPD Project did not conflict with the Comprehensive Plan, but conformed in all respects with the Comprehensive Plan. The Applicant provided evidence that (i) the buildings located at 811 Park Avenue and 817 Park Avenue would not be removed from the Property, but would be relocated within the Historic District as authorized by the Historic District Guidelines and encouraged by the Land Management Code, (ii) the two buildings would be of equal, if not greater historic value, to Park City as features of Woodside Avenue, (iii) the condemned building located at 801 Park Avenue could not be feasibly renovated or relocated as a 'stand-alone' project, but could be successfully and feasibly renovated as a part of the MPD Project, (iv) the MPD Project fully complies and is consistent with the spirit and substance of the goals of the Comprehensive Plan, (v) the MPD Project will contribute to the historic preservation of Park City by preserving three historic buildings, providing historic in-fill assets to Woodside Avenue, and providing quality open space to the community, (vi) the MPD Project complies in all respects with the Land Management Code, and in particular, complies fully with the stated goals, objectives and purpose of the HRC zone, and (vii) the MPD Project fully complies with all sidewalk, setback and landscaping requirements set forth in the Land Management Code.

Following the Applicant's presentation, the Planning Commission criticized the Applicant because, in the Planning Commission's opinion, the Applicant had not made any changes to the MPD Project since the preliminary work session. The Applicant informed the Planning Commission that it was willing to change the expression of the commercial structure in any way the Planning Commission deemed appropriate, that it would look at options regarding parking configurations for the housing along Woodside Avenue, and it would explore options for treatment of the plaza within the MPD Project, but that the overall MPD approach of the MPD Project was dictated by the requirements set forth in the Land Management Code. Commissioner Erickson then informed the Planning Commission that based on the positions taken by the Applicant and the Planning Commission that he saw no reason that the review process should be "stretched out." Commissioner Erickson recommended that the Planning Commission schedule a public hearing at the next meeting to take action on the MPD Project so that the Applicant "would not be detained in pursuing other remedies." The other Commissioners agreed with Commissioner Erickson's recommendation. Despite the Planning Commission's expressed intention to deny the MPD Project, the Applicant requested that a second work session for the MPD Project be placed on the Planning Commission's agenda for May 10, 1994.

On June 30, 1994, the Applicant reached an agreement with Park City and the Staff to stay its CAD appeal regarding the building located on the "801 Property" (as defined in Section 3., below). The Applicant and the Staff so agreed in order to "negotiate the specifics of [the Applicant's] Master Planned Development application" and to "reach an agreement on a plan that will save the structure on 801 Park Avenue and meet the development expectations of [the Applicant] for all the lots [within the Property]." As part of these negotiations, the Applicant prepared and presented to the Staff several revised schematic drawings of the MPD Project which showed changes to the MPD Project deemed advisable by the Staff. Despite these efforts by the Applicant, these negotiations proved unproductive.

On May 10, 1994, the Staff informed the Applicant that the Planning Commission had removed the MPD Project from its work session agenda because it "did not feel there was anything new to talk about since the Applicant had not put forward any revisions to the MPD Project" since the last work session meeting.

In June of 1994, the Applicant requested that the Planning Commission take final action on the MPD Project. The Planning Commission placed the MPD Project on the agenda for its July 27, 1994 regularly scheduled public meeting.

On July 27, 1994, prior to the Planning Commission's regularly scheduled public meeting, the Planning Commission convened a work session to once again review the MPD Project. The Staff appeared and submitted a brief report to the Planning Commission regarding the MPD Project. The Staff's report concluded that if the Planning Commission denied the MPD Project, the Applicant would be authorized to develop the Property under the Permitted Use Alternative; however, the Staff also advised the Planning Commission that the MPD Project was consistent with the Land Management Code. The Staff also recommended for "historic preservation purposes" that the buildings located on the "811 Property" (as defined in Section 3., below) and the "815 Property" (as defined in Section 3., below) not be relocated to Woodside Avenue. The Staff acknowledged that the building located on the 801 Property could not be spared from demolition under its "preferred" development scenario. The Staff offered no explanation for this "preference" and failed to cite any provision of the Land Management Code or the Park City Comprehensive Plan that would support such a "preservation" policy. The Staff's report also offered the indeterminate conclusion that the MPD Project, including the proposed commercial building to be constructed on the Property, "appears [to be] out of scale and rhythm" and "appears" to be in conflict with the Park City Comprehensive Plan. The Staff did not provide any evidence that supported these inconclusive opinions. Without explanation, the Staff's report merely referred to a provision of the Comprehensive Plan that, according to the Staff's own admission, applies only to the "Historic Residential" zoning district. According to the Staff, that provision "indicates that [within the Historic Residential district] dilapidated buildings and historic building restoration is expected and encouraged and that special consideration should be given to scale, rhythm and materials of the original streetscape." As indicated by the Land Management Code, only that portion of the Property fronting Woodside Avenue is within the Historic Residential district. However, in stating that the MPD Project "appears" to be in conflict with the Comprehensive Plan, Staff determined, without explanation, that the aforementioned "provision" also applies to the Historic Residential Commercial portion of the Property fronting Park Avenue. Based solely on its incomplete, inconclusive and speculative "analysis," the Staff report recommended that the Planning Commission deny the MPD Project.

At the conclusion of Staff's work session presentation, the Applicant appeared and submitted a response to the Staff's July 27, 1994 report. The Applicant informed the Planning Commission that the Park City Legal

Department had determined that it was important and germane to the Planning Commission's review of the MPD Project that it fully understand and evaluate the Permitted Use Alternative in reviewing the MPD Project. The Applicant reported to the Planning Commission that by filing Permitted Use Applications that conformed in all respects with the Land Management Code, the Applicant had obtained a vested right to develop the Property in the manner specified in the "Permitted Use Applications" (as defined in Section 3., below). The Applicant informed the Planning Commission that under these facts, and the fact that the Park City Legal Department had determined that the Applicant is entitled to a CAD Permit for the 801 Property, it would not be appropriate for the Planning Commission to focus upon the existing uses and conditions of the Property or disregard the Applicant's vested alternative development rights in acting upon the MPD Project. The Applicant also informed the Planning Commission that the Staff had previously identified the building located on the 801 Property as a "highly significant structure," but now refused to allow the Applicant to preserve and renovate that structure within the context of the MPD Project. The Applicant further informed the Planning Commission that under the MPD Project, the buildings located on the 811 Property and the 815 Property would be relocated to Woodside Avenue where they would not only join and add synergistic value to other historic buildings, but would also continue their present nexus to the renovated historic structure on the 801 Property. The Applicant reminded the Planning Commission that under the Land Management Code, MPD proposals must comply with a sixty percent open space requirement. The Applicant emphasized that the MPD Project complied with this requirement and, therefore, sixty percent of the Property would remain undeveloped open space. The Applicant informed the Planning Commission that under the Permitted Use Applications and presently authorized developments on neighboring properties, the buildings located on the 811 Property and the 815 Property would become enveloped and isolated by a four story hotel to the east, 35 foot buildings to the southwest and northwest, and three story buildings to the north and south, thereby eliminating the Staff's asserted rationale for preserving the present locations of these buildings. The Applicant concluded its response to the Staff's report and recommendation by demonstrating that the MPD Project, including the proposed commercial building to be constructed on the Property, does not conflict with the Comprehensive Plan and is, in fact, consistent in all respects with the Comprehensive Plan: (i) the buildings within the MPD comply with all height, floor area ratio, and facade variation requirements of the underlying zoning of the property and, therefore, are "to scale" pursuant to the provisions of the Land Management Code (ii) the bay width of buildings within the MPD Project is between thirteen and thirty feet -- a "rhythm" that is fully consistent with the existing Park Avenue streetscape as well as "Point 72" of the Historic District Design Guidelines, and (iii) the materials used to construct the MPD Project -- wood, siding and concrete -- are consistent with the construction materials presently employed within the Historic District.

After receiving the Applicant's report and immediately after hearing the Applicant's presentation, the Staff requested that it be allowed to change its recommendation from a "denial" to a "continuance" so that the Staff would be allowed time to prepare new findings and grounds for denial regarding the MPD Project. The Staff clearly believed that the Applicant had completely rebutted all of the criticisms of the MPD Project listed in the Staff's report and that the Planning Commission could not lawfully deny the MPD Project based on the "analysis" and "recommendation" contained in the Staff report.

Without reaching a decision on the MPD Project during its work session, the Planning Commission decided to hold further discussions on the MPD Project at its regularly scheduled public hearing.

On July 27, 1994, the Planning Commission met at its regularly scheduled public meeting to further review the MPD Application. The Staff appeared and repeated its recommendation that the Planning Commission deny the MPD Application based solely upon the unsupported assertions contained in its July 27, 1994 report. Staff admitted that this recommendation was based only upon a "preliminary review" of the MPD Project, and conceded that even this [illegible] that the MPD Project complied with all provisions of the Land Management Code. The Applicant also appeared and repeated its work session presentation to the Planning Commission. The Applicant again demonstrated that the MPD Project complied with both the Land Management Code and the Comprehensive Plan.

At the conclusion of the Applicant's and the Staff's presentation, the Planning Commission opened the public hearing for public comment on the MPD Project. Fourteen members of the public appeared and submitted comments to the Planning Commission. The first member of the public who appeared before the Planning Commission, Ms. Mary Wintzer, sought to clarify the relationship between the MPD Project and the Permitted Use Applications and whether the Applicant possessed a vested right to develop the Property under the Permitted Use Applications. However, in response to this inquiry, the Chairperson of the Planning Commission refused to allow the Planning Commission to entertain any discussion regarding the Permitted Use Applications and their relationship to the MPD Project. The Chairperson responded to Mary Wintzer's inquiry by stating that "the only issue being considered tonight is the MPD [Project] and what Mr. Belz might do if the MPD [Project] is denied is not germane to our considerations."

Thirteen other members of the public appeared before the Planning Commission and submitted comments regarding the MPD Project. Six of these individuals supported the MPD Project. Mr. Hal Compton, president of the Park City Historical Society, opposed the MPD Project, but upon direct inquiry from Commissioner Tesch, Mr. Compton stated that he had no problem with the relocation of the buildings on the 811 Property and the 815 Property to Woodside Avenue. Mr. Chris Larson, a member of the Historic District Commission, "felt" that the buildings on the 811 Property and the 815 Property were key to transition from the current developments west and southwest of the Property and the rest of the historic district. Mr. David Hampshire "felt" it was important not to relocate the buildings on the 811 Property and the 815 Property. Ms. Melissa Bird stated that she "favored" renovation to preserve the integrity of the HRC zone. Ms. Marianne Cone "suggested keeping" the building located on the 801 Property and "thought" that the Applicant could feasibly do so. Mr. Michael LeClare "felt" open space was good for the area and that parking was an important issue. Ms. Mary Olszewski "felt" that allowing the moving or demolition of historic structures perpetuated a "domino theory of architectural erosion." Mr. Jeffrey Kuhn supported the MPD Project and reminded the Planning Commission that the HRC zone had historically accommodated intensive industrial uses, and that Park City had committed to accommodate more intensive resort commercial space on Park Avenue. Mr. Ted Larremore did not object to the relocation of the buildings on the 811 Property and the 815 Property and fully supported the MPD Project. Ms. Chris Valera believed that the MPD Project did more to preserve the neighborhood than the Permitted Use Alternative and recommended approval of the MPD Project. Mr. Richard Bamberry, Mr. Jeffrey Howry and Mr. Tim Furlong, representing Interline Homeowners Association, favored the MPD Project. None of the members of the public who appeared before the Planning Commission offered any evidence or cited any particular provisions of the Land Management Code or the Comprehensive Plan in support of their thoughts, feelings or opinions.

After closing the public hearing on the MPD Project, the Chair of the Planning Commission called for discussion of the matter by the Planning Commissioners. Commissioner Zimney stated that the MPD Project conformed with the HRC zone and that she would vote to approve the MPD Project. Commissioner Jones stated that he was "concerned" with the issues of scale, rhythm and materials as it applied to Park Avenue and that he "had a hard time reconciling" the MPD Project with the Comprehensive Plan. Commissioner Jones did not cite or refer to any provision of the Land Management Code or the Comprehensive Plan as justification for his "concern" or his inability to "reconcile" the MPD Project with the Comprehensive Plan. Chairperson Child opposed the MPD Project because she was not "convinced" that the proposed commercial building to be constructed on Park Avenue would "fit the rhythm and scale of Park Avenue." Chairperson Child also stated that she believed the "purpose" of the HRC zoning district was to "protect people on the west side of Park Avenue from a major planning mistake on the Town Lift and the agreements the City had made on the Sweeney parcels." Chairperson Child cited no provision of the Land Management Code or the Comprehensive Plan in support of her conclusions. Commissioner Tesch stated that his objective as a planning commissioner was to preserve as much of the history of Park City as possible. Commissioner Tesch stated that he "interpreted" the HRC zoning district to "create a visual terminus between Main Street and west Main Street." Commissioner Tesch stated that the approval of the MPD Project would result in a "loss of a block of Park Avenue," and that he did not "feel" that Park City could afford to loose any more of its history. Commissioner Tesch offered no explanation nor justification for his conclusions. Commissioner Erickson, despite earlier comments indicating that he had no problems with the relocation of the two buildings or the scale of the proposed structures and that his only real problem was "the creeping of intensive retail use on the west side of Park Avenue, stated that his "decision" would be based on "the issues of preservation of the Historic District and preservation of Park Avenue and Woodside." Commissioner Erickson offered no further explanation nor cited any provision of the Land Management Code or the Comprehensive Plan in support of his statement. Commissioner Calder "had a problem" with the proposed commercial building to be constructed within the MPD Project. Commissioner Calder offered no further explanation nor cited any provision of the Land Management Code or the Comprehensive Plan. Commissioner Klingenstein stated that his decision regarding the MPD Project was "a huge decision for him because his values were based upon preserving as much of Park City as possible." Commissioner Klingenstein "felt" he could not "support" the MPD Project for this reason. Commission Klingenstein offered no further explanation nor cited any provision of the Land Management Code or the Comprehensive Plan.

After the Planning Commissioners had completed their discussion, Commission Tesch "moved to deny the small scale MPD [Project] for 801 through 817 Park Avenue based on comments from the public and the Planning Commissioners and the facts contained therein," and asked that Staff "prepare findings based on facts and comments" presented at the hearing. Commissioner Klingenstein seconded Commissioner Tesch's motion with the understanding that the Staff would prepare subsequent findings. Neither Commissioner Tesch nor Commissioner Klingenstein offered any explanation or rationale for the motion. Without further discussion, the Planning Commission voted to approve Commissioner Tesch's motion five votes to one, with Commissioner Zimney voting in opposition to the motion and Chairperson Child casting no vote. The Planning Commission then moved on to other business.

On August 17, 1994, the Staff submitted a report to the Planning Commission in response to the Planning Commission's request to "prepare findings" for their July 27, 1994 decision to deny the MPD Project. This report is quoted in its entirety below:

> The Planning Commission denied the aforementioned [MPD] application at its meeting on July 27, 1994 and directed staff to prepare findings accordingly. Staff has reviewed the Planning

Commissioner's comments regarding the proposed Master Planned Development and formulated the following findings for adoption and incorporation into the public record.

After considering all the information contained in the Staff Report dated July 27, 1994 and receiving public testimony, the Planning Commission denied the Master Planned Development based on the following findings:

1. Relationship to Purpose and Policies of the Comprehensive Plan. The Master Planned Development does not comply with the City's Comprehensive Plan in that the Historical Residential category of land use in the Comprehensive Plan indicates that dilapidated buildings and historic building restoration is expected and encouraged and that special consideration should be given to scale, rhythm and materials of the original streetscape. The proposed MPD relocates two historic structures and would result in demolition and replication of a third structure instead of adhering to the provisions of the Comprehensive Plan. In addition, the proposed MPD includes the construction of an 8,000 square-foot commercial structure which is not compatible with the mass, scale, rhythm and materials of the original streetscape.

2. Historic Preservation. The Master Planned Development significantly impacts valuable historic resources in that the relocation of the structures at 811 and 817 Park Avenue to Woodside Avenue alters the historic character of Park Avenue and degrades the ambiance of the community as a historic mining community rich in cultural resources. The historic resources of Park City give the community its sense of identity which is critical for its economic success as a resort and although the relocation of two structures and the replication of another results in a substantial incremental loss, the resulting precedent, established by approval of the MPD will result in even greater adverse cumulative impacts.

3. Relationship to The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures.

a) The Master Planned Development is located in a Nationally designated Historic District which is subject to the Secretary of the Interior's

Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The standards indicate that relocating historic structures destroys the historic relationship between buildings and open space within the site. In addition, relocating the structures creates a false historical appearance along Woodside.

b) The Master Planned Development includes additions to historic structures which are out of proportion in size and scale which is in direct conflict with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

5 [sic]. <u>Consistency with the HRC Zone</u>. The Master Planned Development is not consistent with the intent and purpose of the HRC Zone in that it does not provide a visual terminus to Main Street nor does it create a transitional appearance to the adjoining residential neighborhoods.

6. <u>Consistency with Land Management Code</u>. The Master Planned Development does not comply with the provisions of Chapter 10 of the Land Management Code in that the Planning Commission reviewed the proposal and determined that the project does not consider the relationship of the area to other areas, structures and uses within the MPD due to an incompatible architectural mix of historical residential structures and a new 8,000 square-foot commercial building that is out of scale with surrounding structures.

On August 17, 1994, the Planning Commission met at its regularly scheduled public meeting and adopted without further discussion or comment the Staff report dated August 17, 1994 as the findings for its July 27, 1994 decision to deny the MPD Project.

2. The Certificate of Appropriateness for Demolition Application.

On February 16, 1993, the Applicant submitted a Certificate of Appropriateness for Demolition ("CAD") application to the Park City Historic District Commission ("HDC") for demolition of a condemned building located at 801 Park Avenue, Park City, Utah (the "CAD Application"). Park City had condemned this building in August of 1991 due to its lack of structural integrity and threat to public safety. The property on which the condemned building is located represents a portion of the Property that is the subject of the MPD Application.

Between February of 1993 and June of 1994, the Applicant met repeatedly with the Staff and the HDC to discuss the CAD Application. At the request of the HDC, the Applicant provided numerous studies demonstrating economic hardship.

On June 13, 1994, despite the extensive proof Applicant supplied to the HDC demonstrating economic hardship, the HDC held a public meeting and denied the Applicant's CAD Application for 801 Park Avenue. On June 23, 1994, the Applicant timely appealed the HDC's denial of its CAD Application to the Park City Council.

On June 30, 1994, the Applicant reached an agreement with Park City and the Staff to stay its CAD appeal regarding the building located on the 801 Property. The Applicant and the Staff so agreed in order to "negotiate the specifics of [the Applicant's] Master Planned Development application" and to "reach an agreement on a plan that will save the structure on 801 Park Avenue and meet the development expectations of [the Applicant] for all the lots [within the Property]." These negotiations were unsuccessful.

On July 27, 1994, the Park City Attorney advised the Planning Commission and the Staff that under the Land Management Code and Utah law, the Park City Council should reverse the HDC's denial of the Applicant's CAD Application and direct the HDC to issue a CAD permit to the Applicant allowing the Applicant to demolish the building on the 801 Property. The Applicant will request that the Park City Council terminate the stay of its CAD appeal and immediately take action in accordance therewith.

3. The Permitted Use Applications.

On June 24, 1994, the Applicant submitted a development application to the HDC regarding that portion of the Property located at 801 Park Avenue, Park City, Utah (the "801 Property") (the "801 Application"). The 801 Application conformed in all respects with the Land Management Code and formalized the Applicant's request to develop the 801 Property in a manner consistent with the uses permitted on the 801 Property by the Land Management Code. A copy of the 801 Application is attached hereto as Exhibit "B" and is incorporated herein by this reference. On July 18, 1994, the Applicant filed a building permit application with the Building Department (#B94-00525) regarding the development proposals set forth in the 801 Application.

On June 27, 1994, the Applicant submitted a development application to the HDC regarding that portion of the Property located at 811 Park Avenue, Park City, Utah (the "811 Property") (the "811 Application"). The 811 Application conformed in all respects with the Land Management Code and formalized the Applicant's request to develop the 811 Property in a manner consistent with the uses permitted on the 811 Property by the Land Management Code. A copy of the 811 Application is attached hereto as Exhibit "C" and is incorporated herein by this reference. On July 20, 1994, the Applicant filed a building permit application with the Building Department (#B94-00528) regarding the development proposals set forth in the 811 Application.

On June 29, 1994, the Applicant submitted a development application to the HDC regarding that portion of the Property presently referred to as 815 Park Avenue (presently known as 817 Park Avenue), Park City, Utah (the "815 Property") (the "815 Application"). The 815 Application conformed in all respects to the Land Management Code and formalized the Applicant's request to develop the 815 Property in a manner consistent with the uses permitted on the 815 Property by the Land Management Code. A copy of the 815 Application is attached hereto as Exhibit "D" and is incorporated herein by this reference. On July 21, 1994, the Applicant filed a building permit application with the Building Department (#B94-00531) regarding the development proposals set forth in the 815 Application.

On June 29, 1994, the Applicant submitted a development application to the HDC regarding that portion of the Property presently located at 817.5 Park Avenue, Park City, Utah (the "817.5 Property") (the "817.5 Application"). The 817.5 Application conformed in all respects to the Land Management Code and formalized the Applicant's request to develop the 817.5 Property in a manner consistent with the uses permitted on the 817.5 Property by the Land Management Code. A copy of the 817.5 Application is attached hereto as Exhibit "E" and is incorporated herein by this reference. On July 19, 1994, the Applicant filed a building permit application with the Building Department (#B94-00526) regarding the development proposals set forth in the 817.5 Application.

Arguments on Appeal

I. **The Planning Commission violated the Applicant's right to due process of law because the Planning Commission failed to apply the requisite standards of the Land Management Code when it denied the MPD Project.**

Under Utah law, zoning authorities may not act in derogation of legislative standards when approving or denying development permits. Chapter 10 of the Land Management Code specifies the legislative standards that are to be employed by the Planning Commission in reviewing MPD applications. As demonstrated by the minutes of the Planning Commission meeting of July 27, 1994, the Planning Commission failed to properly apply these standards when it voted to deny the MPD Project "based on comments from the public and the Planning Commissioners" rather than upon the standards of review set forth in the Land Management Code.

At the Planning Commission hearing on July 27, 1994, seven members of the public appeared and submitted general comments to the Planning Commission regarding the MPD Project. As stated within the motion approved by the Planning Commission on July 27, 1994, the Planning Commission adopted these comments as their "bases" for denying the MPD Project. However, as Chapter 10 of the Land Management Code makes clear, these comments were not proper bases for denying the MPD Project. Chris Larson's "feelings" regarding the transitional value of buildings is not identified as a MPD standard of review. David Hampshire's and Mary Wintzer's "feelings" regarding the relocation of buildings were not adopted by the Park City Council as MPD standards of review. The same is true for Melissa Bird's and Marianne Cone's "preference" for renovation and Mary Olszewski's "domino theory of architectural erosion." Clearly, these "comments" are nothing more than emotional and conjectural opinions and are not the legislatively enacted standards that the Planning Commission must apply in reviewing any MPD application. Accordingly, the Planning Commission violated Utah law and the Land Management Code when it adopted and relied upon the "comments of the public" as its basis for denying the MPD Project.

As stated within the motion approved by the Planning Commission on July 27, 1994, the Planning Commission also voted to deny the MPD "based on comments of the Commissioners." Like the comments of the public, the comments made by the Planning Commissioners at the July 27, 1994 hearing do not address relevant MPD standards of review. Commissioner Jones stated that the Planning Commission had "gone to great lengths" to preserve two buildings on Park Avenue as part of the Fletcher Kimball project, and "it was inconceivable to him to move two similar buildings off of Park Avenue." Thus, not only did Commissioner Jones fail to apply any relevant MPD standard of review in evaluating the MPD Project, he refused to even consider whether the MPD Project complied with the Land Management Code. For Commissioner Jones, it was "inconceivable" that he would vote to approve the MPD Project under any circumstances. Commissioner Klingenstein stated that "the [MPD P]roject was a huge decision for him because his values were based upon preserving as much of Park City as possible," and as a result, he "could not support the project." Thus, Commissioner Klingenstein's "values," and not the standards of review set forth in the Land Management Code, governed his decision to deny the MPD Project. Chairperson Child stated that she would vote against the MPD Project if necessary, in order to "protect people on the west side of Park Avenue from a major planning mistake on the Town Lift and the agreements the City had made on the Sweeney parcels." For Chairperson Child, prior planning "mistakes" and the City's agreements regarding the Sweeney parcels, and not the standards of review set forth in the Land Management Code, constituted the relevant decision criteria. Commissioner Tesch stated that "if he could do one thing well as a Planning Commissioner, it would be to preserve as much of the history as possible." Thus, "preservation of history," rather than enforcement of the standards and criteria set forth in the Land Management Code governed Commissioner Tesch's decision. Commissioner Erickson stated that his decision "would be based on the issues of preservation of the Historic District and the preservation of Park Avenue and Woodside." Thus, "preservation," without regard to whether the MPD Project complied with the standards set forth in the Land Management Code, became Commissioner Erickson's standard of review. Commissioner Calder stated that he "had a problem with the 8,000 square-foot building." Thus, Commissioner Calder voted to deny the MPD Project without considering whether the "8,000 square-foot building" complied with the development standards of the Land Management Code and the Comprehensive Plan. As is apparent, each of the Planning Commissioners acted in derogation of the MPD standards of review set forth in the Land Management Code. Not only did they amend the Land Management Code by applying their own personal standards of review, they elected to disregard all of the lawfully enacted standards and criteria set forth in Chapter 10 of the Land Management Code. These actions violated the Applicant's right to due process of law under the United States Constitution and the Constitution of the State of Utah.

II. The Planning Commission violated the Applicant's right to due process of law by adopting prepared findings that are inconsistent with the evidence heard by the Planning Commission and its stated basis for denying the MPD Project.

Pursuant to Section 3.11 of the Land Management Code, the Planning Commission directed the Staff to prepare separate findings subsequent to its July 27, 1994 decision to deny the MPD Project. On August 17, 1994, the Planning

Commission approved certain "findings" prepared by the Staff. As the minutes of the Planning Commission's July 27, 1994 hearing indicate, these prepared findings deviate significantly from any statements, representations or evidence presented at the July 27, 1994 hearing and are wholly inconsistent with the stated bases for the Planning Commission's denial of the MPD Project. These findings represent nothing more than an after-the-fact attempt to substantiate and justify an otherwise arbitrary, capricious, unreasonable and unlawful decision of the Planning Commission. The Planning Commission's subsequent adoption of such "findings" constitutes an unlawful abuse of the powers conferred upon the Planning Commission by Section 3.11 and, moreover, constitutes a *per se* violation of the Applicant's right to due process of law under the United States Constitution and the Constitution of the State of Utah.

A. Compliance of the MPD Project with the Comprehensive Plan.

The Planning Commission did not "find" at the July 27, 1994 public hearing that the MPD Project failed to comply with the Comprehensive Plan. The Planning Commission's prepared findings not only allege that they did so find, but advance as an "explanation" for this finding an inconclusive opinion taken from the Staff's July 27, 1994 report. The Planning Commission's prepared findings state that

> the Master Planned Development does not comply with the City's Comprehensive Plan in that the Historical Residential category of land use in the Comprehensive Plan indicates that dilapidated buildings and historic building restoration is expected and encouraged and that special consideration should be given to scale, rhythm and materials of the original streetscape.

The phrase "in that the Historical Residential Category ... original streetscape," is taken directly from the Staff's July 27, 1994 report. However, in the Staff's report that phrase is prefaced by the Staff's admission that they have not conclusively determined whether the MPD Project is actually in conflict with the Comprehensive Plan. In its report to the Planning Commission, the Staff merely offered the inconclusive opinion that the MPD Project "appears to be in conflict with the Comprehensive Plan." As is evident, the Staff did not undertake a full and complete evaluation of the MPD Project prior to issuing its report to the Planning Commission. Accordingly, the Planning Commission could not have found, based on the evidence before it, that the MPD Project failed to comply with the Comprehensive Plan.

As is apparent from the minutes of the July 27, 1994 Planning Commission meeting, the motion approved by the Planning Commission does not reference, endorse or adopt any portion of the Staff's report. At the July 27, 1994, hearing the Planning Commission denied the MPD Project

> based on comments from the public and the Planning Commissioners and the facts contained therein.

As the minutes of the July 27, 1994 Planning Commission meeting demonstrate, Commissioner Jones was the only member of the Planning Commission or the public who explicitly addressed the relationship of the MPD Project to the Comprehensive Plan or employed the term "Comprehensive Plan" in discussing the merits of the MPD Project. Commissioner Jones did not state that the MPD Project failed to "comply" with the Comprehensive Plan, but merely that he "had a hard time reconciling" the MPD Project with the Comprehensive Plan. At no time did Commissioner Jones endorse or adopt the statement that appears in the Planning Commission's prepared findings as the basis for his inability to "reconcile" the MPD Project with the Comprehensive Plan. As is apparent, the Planning Commission's prepared findings are inconsistent with and significantly depart from the stated bases for the Planning Commission's actions on July 27, 1994. This discrepancy constitutes a per se violation of the Applicant's rights to due process of law under the United States Constitution and the Constitution of the State of Utah.

B. <u>Impact of the MPD Project on Historic Resources</u>.

The Planning Commission did not "find" at the July 27, 1994 public hearing that the MPD Project "degrades the ambiance of the community." Moreover, the Planning Commission did not "find" that "historic resources of Park City give the community its sense of identity," that this "identity" is "critical for its economic success as a resort," that the "relocation of two structures and the replication of another results in a substantial incremental loss," or that "the resulting precedent established by the MPD [Project] will result in even greater cumulative impacts." Each of these prepared "findings" is inconsistent with and significantly departs from the stated bases for the Planning Commission's denial of the MPD Project. This discrepancy constitutes a per se violation of the Applicant's rights to due process of law under the United States Constitution and the Constitution of the State of Utah.

C. <u>Relationship of the MPD Project to the Secretary of Interior's Standards Regarding Historic Structures</u>.

At its July 27, 1994 public hearing, the Planning Commission did not reference, mention, discuss in any manner, or receive evidence concerning the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings." It is inconceivable, therefore, how the Planning

Commission could have approved prepared findings which concluded that the Planning Commission had denied the MPD Project at the July 27, 1994 public hearing because the MPD Project "is in direct conflict with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," or that these alleged "standards" are in any way applicable to the MPD Project. This "finding" clearly constitutes an after-the-fact attempt by the Planning Commission to justify its July 27, 1994 decision with extra-record information. By including this clearly extra-record information in its prepared findings, it is apparent that the Planning Commission believed that neither its stated bases for denying the MPD Project nor its other prepared findings are legally sufficient grounds upon which to deny the MPD Project. In any event, the discrepancy between the stated bases for the Planning Commission's denial of the MPD Project and that body's prepared findings constitutes a per se violation of the Applicant's rights to due process of law under the United States Constitution and the Constitution of the State of Utah.

D. Consistency of the MPD Project with the HRC Zone.

The Planning Commission did not "find" at the July 27, 1994 public hearing that the MPD Project is inconsistent with the HRC zone. As is apparent from the minutes of the Planning Commission's July 27, 1994 hearing, the Planning Commission's prepared findings are not consistent with and significantly depart from any stated bases for the Planning Commission's actions. This discrepancy constitutes a per se violation of the Applicant's rights to due process of law under the United States Constitution and the Constitution of the State of Utah.

E. Consistency of the MPD Project with the Land Management Code.

The Planning Commission did not "find" at the July 27, 1994 public hearing that the MPD Project failed to comply with the provisions of Chapter 10 of the Land Management Code. The Planning Commission's prepared findings not only allege that they did so find, but advance as an "explanation" for this finding an unsupported and unjustifiable assertion that directly contradicts the Staff's conclusion that the MPD Project conforms with the provisions of the Land Management Code. The Planning Commission's prepared findings state that

> the Master Planned Development does not comply with the provisions of Chapter 10 of the Land Management Code in that the Planning Commission reviewed the proposal and determined that the project does not consider the relationship of the area to other areas, structures and uses within the MPD due to an incompatible architectural mix of historical residential

structures and a new 8,000 square-foot commercial building that is out of scale with surrounding structures.

As demonstrated by the minutes of the Planning Commission's July 27, 1994 hearing, no member of the public, the Staff or the Planning Commission referenced, mentioned, or discussed in any manner "Chapter 10" of the Land Management Code. It is inconceivable, therefore, how the Planning Commission could have approved prepared findings which concluded that the Planning Commission had denied the MPD Project at the July 27, 1994 public hearing because the MPD Project "does not comply with the provisions of Chapter 10 of the Land Management Code." This "finding" clearly constitutes an after-the-fact attempt to by the Planning Commission to justify its July 27, 1994 decision with extra-record information. By including this clearly extra-record information in its prepared findings, it is apparent that the Planning Commission believes that its stated bases for denying the MPD Project are not legally sufficient grounds upon which to deny the MPD Project. In any event, the discrepancy between the stated bases for the Planning Commission's denial of the MPD Project and that body's subsequently prepared findings constitutes a per se violation of the Applicant's rights to due process of law under the United States Constitution and the Constitution of the State of Utah.

III. The Planning Commission violated the Applicant's right to due process of law because its denial of the MPD Project was arbitrary, capricious, and unreasonable.

As demonstrated by the MPD Application, as well as the work session and other pre-hearing meetings that the Applicant held with the City, the Applicant submitted substantial evidence to the Staff and the Planning Commission that the MPD Project fully complies with the Land Management Code and the Comprehensive Plan, preserves valuable historic resources, and is consistent with the HRC zone. The Planning Commission received no evidence to the contrary. Therefore, the Planning Commission's decision to deny the MPD Project was arbitrary, capricious, unreasonable and unlawful.

A. <u>The MPD Project complies with the purposes and policies of the Comprehensive Plan and significantly contributes to the preservation of historic resources</u>.

In its prepared "findings," the Planning Commission concludes that the MPD Project does not comply with the Comprehensive Plan because "historic building restoration is expected and encouraged," "that special consideration should be given to scale, rhythm and materials of the original streetscape," the "MPD relocates two historic structures and replicates a third," and the MPD includes an

8,000 square-foot commercial building which is not compatible with "mass, scale, rhythm and materials of the original streetscape." The Applicant submitted substantial evidence that the MPD Project fully complies with the purposes and policies of the Comprehensive Plan. The Planning Commission received no contrary evidence from the Staff or from any party or member of the public. As a result, the Planning Commission could not have reasonably concluded that the MPD did not fully comply with the purposes and policies of the Comprehensive Plan.

At the July 27, 1994 public hearing, the Applicant submitted substantial evidence to the Planning Commission that the MPD Project includes the restoration and renovation of the condemned building located on the 801 Property. The Planning Commission received no evidence from the Staff or any other party or member of the public that the building on the 801 Property will be merely "replicated." The Applicant demonstrated to the Planning Commission that without the economic advantages generated by the MPD Project, the building on the 801 Property cannot be saved. As shown in the 801 Application, the building located on the 801 Property will be demolished under that permitted use alternative. Thus, the MPD Project fully complies with the policies of the Comprehensive Plan which encourage historic building restoration. The Planning Commission received no contrary evidence from the Staff or from any other party or member of the public.

At the July 27, 1994 public hearing, the Applicant also submitted substantial evidence that the MPD Project, including the "8,000 square-foot" commercial building, complies with the scale, rhythm, mass and materials of the Park Avenue and Woodside Avenue streetscape. The Applicant demonstrated, and the Planning Commission acknowledged, that the commercial and residential structures proposed for the MPD Project are small in comparison to many of the buildings on Park Avenue. In particular, the Applicant submitted a figure ground study with the MPD Application that clearly illustrated that the proposed commercial and residential buildings are in-scale and consistent with the mass of the other structures located on Park Avenue. The Applicant demonstrated that the proposed commercial and residential buildings are within all the height, floor area ratio, and facade variation requirements of the underlying zoning district and are, therefore, "to scale" according to the Land Management Code. The Applicant submitted substantial evidence that the commercial and residential buildings within the MPD Project will be broken up into forms which establish a bay width of between 13 and 30 feet. The Applicant demonstrated that this design feature is wholly consistent with the existing structures on Park Avenue and Woodside Avenue, as well as "Point 72" of the Historic District Design Guidelines, and therefore establishes a rhythm that is compatible with existing uses. The Applicant demonstrated that significant design flexibility exists within the MPD Project and that the rhythm of the building elements within the MPD Project can be scaled and spaced in a number of ways in order to accommodate any desired rhythm. The Applicant submitted substantial evidence that the building materials to be employed within the MPD Project will consist of wood, concrete, siding, and/or other materials approved for the Historic District. Accordingly, the materials employed within the MPD Project will be compatible with those presently used in the Historic District and within the Park Avenue and Woodside Avenue streetscape. The Planning Commission received no contrary evidence from the Staff or from any party or member of the public.

At the July 27, 1994 public hearing, the Applicant submitted substantial evidence to the Planning Commission that relocation of historic buildings within the historic district fully complies with the purposes and policies of the Comprehensive Plan. The Applicant demonstrated that relocation of buildings is an accepted preservation mechanism recognized by the Historic District Guidelines and the Land Management Code. Thus, the Applicant demonstrated that approval of the MPD Project will not become a "precedential" policy that produces outcomes that are in conflict with the Historic District Guidelines or the Land Management Code. The Applicant demonstrated that under the MPD Project, the two buildings to be relocated to Woodside Avenue would continue to have an adjacency to the building on the 801 Property. The Applicant also demonstrated that the relocation of these buildings would not only enhance the historic value of the relocated buildings, but would also add significant historic value to Woodside Avenue. The Applicant demonstrated that the gain in historic value that would inure to Woodside Avenue and to the relocated buildings plus the gain in historic assets facilitated by the renovation of the building on the 801 Property, would more than offset any loss in historic value or ambiance attributable to relocation. Hence, the Applicant demonstrated that the MPD Project will not degrade the ambiance of the community as an historic mining community. The Planning Commission received no contrary evidence from the Staff or from any other party or member of the public. Consequently, the Planning Commission's conclusion that the MPD Project does not comply with the policies and purposes of the Comprehensive Plan and will result in a degradation of the historic character of the community is arbitrary, capricious, and unreasonable.

B. <u>The Planning Commission received no evidence from any party that the MPD Project violates the Secretary of Interior's Standards for Rehabilitation and Guidelines for Historic Structures</u>.

The Planning Commission received absolutely no evidence at the July 27, 1994 hearing that the MPD Project violates the Secretary of Interior's Standards for Rehabilitation and Guidelines for Historic Structures. Therefore, the Planning Commission could not have issued such a finding. By relying upon this extra-record information and by including this unsponsored and unfounded allegation in its prepared findings, the Planning Commission violated the Applicant's right to due process of law under the United States Constitution and the Constitution of the State of Utah.

C. <u>The MPD Project is consistent with the intent and purpose of the HRC Zone</u>.

At the July 27, 1994 public hearing, the Applicant submitted substantial evidence that the MPD Project is consistent with the intent and purpose of the HRC zone. The Applicant demonstrated that the MPD Project incorporates the various parcels of the Property into a single, cohesive, well-planned project, provides a transition in scale, character and land uses between the HR-1 zone to the west and the HCB zone to the east, and provides a moderate density bed base and commercial space at the Town Lift base area. The Applicant demonstrated that the MPD Project's mining mill architecture provides a transition between the HCB development on Main Street and the residential development on Woodside Avenue. The Applicant provided evidence that the mill architecture utilizes larger building forms more closely scaled to the HCB development, yet utilizes simple gable roofs, dormers and other elements that are similar in form and scale to the architecture of historic mining homes. The Applicant provided substantial evidence that the MPD Project provides a visual terminus to Main Street and creates a transitional appearance to the adjoining residential neighborhoods. The Applicant demonstrated that the housing footprints along Woodside Avenue and the relative size and placement of the commercial structure within the MPD Project are (i) considerably smaller than adjacent development in the HCB zone and the Town Lift buildings, (ii) similar in scale to the Parkwood condominiums and many other buildings along Park Avenue, and (iii) only moderately larger than existing residential structures, especially as they are viewed from or behind the MPD plaza. The Applicant also demonstrated that the open space incorporated in the MPD Project (i) ties directly into the Town Lift open space, which is the primary anchor for the northern end of Main Street, (ii) provides ideal solar orientation for year round usability, (iii) provides flexibility to accommodate undesigned adjacent structures, and (iv) provides clearly defined edges to the Property and adjacent properties. The Applicant demonstrated that the commercial uses of the Property on Park Avenue and the residential uses of the Property on Woodside Avenue would provide both a visual terminus to Main Street and a transition zone between the HCB developments on Main Street and the residential development on Woodside. The Planning Commission received no contrary evidence from the Staff or from any other person or party. Consequently, the Planning Commission's conclusion that the MPD Project is not consistent with the policies and purposes of the HRC zone is arbitrary, capricious, and unreasonable.

D. <u>The MPD Project complies with Chapter 10 of the Land Management Code.</u>

In its MPD Application, the Applicant submitted substantial evidence that the MPD Project fully complies with the MPD standards of review set forth in Chapter 10 of the Land Management Code, as well as Sections 1.13 and 1.14 of the Land Management Code. The Applicant demonstrated by substantial evidence that (i) the land uses within the MPD Project are either permitted or conditional land uses within the HR-1 zone and/or the HRC zone, (ii) the land uses within the MPD Project are consistent with the purposes and policies of the Comprehensive Plan and the Land Management Code, (iii) the traffic circulation patterns, building height or bulk within the MPD Project will not cause any adverse impacts to its surroundings -- the MPD Project will be sufficiently screened, and will not adversely impact ridge line views or intrude or encroach upon view corridors, wetlands or any individual's privacy, (iv) the MPD Project's density does not exceed the maximum densities permitted by the Land Management Code, (v) the MPD Project complies with all off-street parking requirements set forth in Chapter 13 of the Land Management Code, (vi) the buildings within the MPD Project does not exceed the height requirements of Chapter 7 of the Land Management Code, (vii) the site plan for the MPD Project satisfies all site planning criteria specified by Section 10.9(h) of the Land Management Code, (viii) the buildings and lots within the MPD Project satisfy all building and lot design criteria set forth in Section 10.9(i) of the Land Management Code, (ix) limits of disturbance or building pad lines within the MPD Project satisfy the standards set forth in Section 10.9(k) of the Land Management Code, (x) the uses within the MPD Project will be compatible with surrounding structures in use, scale, mass and circulation, (xi) the uses within the MPD Project will be consistent with the Comprehensive Plan, (xii) the MPD Project meets or exceeds each criteria and standard for review set forth in Section 1.13(j) of the Land Management Code, (xiii) the MPD Project will comply with all architectural guidelines promulgated by the Historic District Commission and the Land Management Code, (xiv) the uses of the Property within the MPD Project will conform to the permitted uses shown on the land use table in Chapter 7 of the Land Management Code, and (xv) the MPD Project complies with all other requirements set forth in the Land Management Code. As is apparent, the Applicant demonstrated that the MPD Project clearly considers and addresses the relationships between the Property and the surrounding community, and the structures and uses within the MPD. The Applicant also demonstrated by substantial evidence that all structures within the MPD are in scale with surrounding structures. The Planning Commission received no contrary evidence from the Staff or any other party or member of the public.

By its own admission, the Staff did not conduct a full and complete review of the MPD Application or the MPD Project. Staff's report, dated July 27, 1994, merely states that "it will also be necessary to further evaluate the project for exact compliance with the LMC." Clearly, staff had not sufficiently evaluated the MPD Project at the time of the Planning Commission hearing to determine whether the MPD Project complies with Chapter 10 of the Land Management Code. Because the Staff had not reached any determinative conclusion regarding the MPD Project's compliance with the Land Management Code at the time of the Planning Commission hearing, the Planning Commission could not have reasonably relied upon the Staff's report in determining that the MPD Project does not comply with Chapter 10 of the Land Management Code.

As indicated by the minutes of the Planning Commission hearing, seven members of the public appeared before the Planning Commission and submitted negative comments to the Planning Commission regarding the MPD Project. However, none of these individuals submitted any evidence to the Planning Commission that the MPD Project fails to comply with Chapter 10 of the Land Management Code. These individuals' comments were based only upon thoughts, feelings and opinions, and had no evidentiary value. Thus, the Planning Commission could not have reasonably relied upon these thoughts, feelings or opinions in concluding that the MPD Project failed to comply with Chapter 10 of the Land Management Code.

Because the only evidence that was before the Planning Commission demonstrated that the MPD Project fully complied with the Land Management Code and the Comprehensive Plan, the Planning Commission had no lawful basis to deny the MPD Project. Its decision to do so, therefore, was arbitrary, capricious, unreasonable and unlawful.

IV. The Planning Commission committed reversible error by purposefully and improperly disregarding the Applicant's vested right to develop the Property under the Permitted Use Applications.

Under Utah law, a property owner obtains a vested right to develop his property under an existing zoning scheme at the time he submits a development application that substantially complies with the procedural requirements of that zoning scheme. On June 24, 1994, June 27, 1994 and June 29, 1994, the Applicant submitted four applications to develop each of the four lots that comprise the Property. The applications conform in all respects with the procedural requirements of the Land Management Code and request that the Planning Commission approve the development of four lots on the Property in a manner consistent with the uses that are permitted on the Property by the Land Management Code. Therefore, under Utah law, the Applicant has obtained a vested right to develop the Property in the manner specified in the Permitted Use Applications. Because these rights affect the same Property that is the subject of the MPD Project, they are relevant to any decision of the Planning Commission regarding the MPD Project. The Planning Commission's refusal to consider these rights became evident during the public comment period of the hearing on July 27, 1994. In response to a question from a member of the public, Chairperson Child determined that the Planning Commission would not entertain any discussion regarding the Permitted Use Applications and refused to allow the Planning Commission to discuss the relationship of the MPD Project with the Permitted Use Applications. By so doing, the Chairperson improperly excluded relevant evidence from the Planning Commission hearing on the MPD Project and, thereby, unlawfully prejudiced the Applicant's opportunity for a full hearing on the matter.

V. The Planning Commission did not afford the Applicant a fair and impartial hearing because it concluded that it would deny the MPD Project prior to the July 27, 1994 public hearing.

At its work session on June 22, 1994, the Planning Commission reviewed the MPD Project. This was the first formal work session regarding the MPD Project (a prior, "preliminary" work session occurred on April 13, 1994). At the conclusion of this work session, Commissioner Erickson recommended that the Planning Commission take action on the MPD Project at its next public meeting "so that the Applicant "would not be detained in pursuing other remedies." All of the other Planning Commissioners in attendance agreed with Commissioner Erickson's recommendation. As is apparent from Commissioner Erickson's "recommendation," as well as from the apparent agreement of the other Planning Commissioners, it is evident that the Planning Commission had decided to deny the MPD Project at the Applicant's first formal work session on June 22, 1994 and prior to any public hearing on the issue. These actions violated the Applicant's right to due process of law under the United States Constitution and the Constitution of the State of Utah.

Conclusion

Based on the foregoing, the Applicant respectfully requests that the Park City Council reverse the Planning Commission's decision to deny the MPD Project and approve the MPD Project based upon the MPD Project's compliance with each and every provision of the Land Management Code and the Comprehensive Plan.

Respectfully submitted this 29th day of August, 1994.

Nile W. Eatmon

Thomas A. Ellison
Nile W. Eatmon
STOEL RIVES BOLEY JONES & GREY
Attorneys for 801 PK, L.C., and 811 PK, L.C.

PARK CITY PLANNING DEPARTMENT
STAFF REPORT

TO: HISTORIC DISTRICT COMMISSION
FROM: PLANNING STAFF JL
DATE: JUNE 10, 1994
RE: 801 PARK AVENUE DEMOLITION APPLICATION

I. *PROJECT STATISTICS*

Project Name:	
Applicant:	David Belz
Location:	801 Park Avenue
Proposal:	CAD
Zoning:	HR-1
Adjacent Land Uses:	Historic Residential, Single Family Residential, and Town Lift
Date of Application:	February 16, 1993
Project Planner:	Janice Lew
Staff Recommendation:	DENY

II. *BACKGROUND INFORMATION*

The Historic District Commission preliminarily reviewed the CAD application for 801 Park Avenue at their June 21, 1993 meeting. At that time, the HDC briefly discussed the structure and asked the applicant to provide additional information as outlined in Section 4.17 of the Preservation Ordinance.

The following information is from the June 21 staff report. The building has been used as an income producing rental thereby classifying the structure as a commercial property. Although the former boarding house is not included in Park City's thematic nomination of homes of the mining boom era on the National Register of Historic Places, the structure is historically significant and contributes to the District. Boarding houses were an important element of Park City's housing because of the influx of single miners. This building therefore is particularly important because it is one of the few boarding houses remaining in town which document this type of residential housing.

The structure was built by at least 1889, as indicated by the Sanborn Insurance Maps which have been included for your review. The Sanborn Maps also indicate that numerous additions were added following the original construction. The most recent alterations to the building include new siding and replacement of the original windows. It is questionable whether the building maintains its original integrity, but it appears to be eligible for the National Register as part of Park City's thematic nomination (see attached letter from SHOP). Some of these alterations are reversible. The siding can be replaced and the original outline of the windows is visible. Because the structures on the property are in such poor condition, the property was condemned in August of 1991 (see attached letter from Ron Ivie).

The property was posted with a threatened building sign on March 3, 1993 as required by Section 4.16 of the Land Management Code. Fees have been paid and, as stated above, a hearing was held regarding the application on the June 21, 1993 agenda of the HDC. The staff received a letter from Mr. Belz dated February 4, 1994, which includes the additional information requested by the Commission (see attached).

The Commission again reviewed this application in March of 1994. In order to allow the Planning Commission an opportunity to review develop on Mr. Belz's entire property, the Commission decided to postpone their decision on the request for demolition. The Commission asked the applicant to analyze other alternatives including the option of an addition to the existing structure and a master plan including the two historic properties which the applicant also owns in this location. The Commission also requested documentation of the original purchasing price for the property (see attached meeting minutes). The staff received information from Mr. Belz dated March 24, 1994, in response to the Commissioner's comments.

The Planning Commission reviewed plans for both a Master Planned Development and the individual development of each parcel through a series of conditional use permits. The Planning Department received applications for both projects. The pre-submittal review held April 13, 1994, was intended to give the Planning Commission the opportunity to provide direction to the applicant.

The direction from the Planning Commission was somewhat mixed. Generally, the Planning Commission believes this area is transitional in nature and expressed concern about the intensity of the commercial development proposed in the MPD scenario. The staff report and meeting minutes are attached for the Commission's information. Please review the minutes for more the specific Planning Commission direction to the applicant.

PUBLIC INPUT STATEMENT:

The staff received the following comments about the property:

1. Tim Lee stated he was interested in doing affordable housing with help from the City.
2. Dick Walters stated he was interested in renovating the property.
3. Todd Lindquest stated he was interested in renovating.
4. Eric Miller believes the building should be salvaged.
5. A letter was submitted to the City addressed to David Belz from the Park City

Historical Society requesting that all avenues for restoration and preservation be explored.

III. STAFF ANALYSIS

REQUIRED INFORMATION. The structure is being reviewed under the commercial provisions of the preservation ordinance. Section 4.17 of the Land Management Code allows the HDC to review demolition of significant structures and to require certain information from the applicant. As stated above, Mr. Belz has provided the staff with the information as requested.

REQUIRED FINDINGS FOR APPROVAL. The Land Management Code outlines findings necessary to determine if an unreasonable economic hardship exists which would warrant the issuance of CAD. They are as follows (Section 4.17.(c):

(c) Written Findings. The HDC shall make written findings supporting their decision in the matter. The HDC may determine that unreasonable economic hardship exists and issue a CAD if the Commission finds that:

1. The building or site cannot be feasibly use or rented at a reasonable rate of return in its present condition; and

2. The building or site cannot be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner; and

3. Rehabilitation or remodelling that would be compatible with the preservation of the building or site is infeasible; and

4. The building or site cannot be feasibly moved or relocated within the Historic District.

The Commission also should be aware that demonstration of economic hardship by the owner shall not be based on conditions resulting from:

> willful or negligent acts by the owner; purchasing the property for substantially more than market value at the time of purchase; failure to perform normal maintenance and repairs; failure to diligently solicit and retain tenants; or failure to provide normal tenant improvements.

Mr. Belz purchased the property with the intent to develop and has been working on conceptual drawings. However, it appeared that Mr. Belz was not totally committed to any one proposal. The staff has discussed various development options with the owner and feels that he may not be persuaded to renovate the structure. Mr. Belz is currently proposing a mixed use project. The property along Park Avenue is zoned HRC, and the property fronting Woodside is zoned HR-1. As stated previously, the Planning Commission reviewed two development scenarios. Mr. Belz has now formally submitted an application for the MPD proposal.

Additionally, Mr, Belz applied for and is a recipient of a 1993 Historic District Grant to renovate the boarding house (see attached application). Although no work has been done on the project, the applicant has discussed the possibility of receiving tax credits with the State Historic Preservation Office (see attached letter). This continues to be an option for renovating the building.

It should be noted that the Dr. William Bardsley House located at 517 Park Avenue is being nominated to the National Register of Historic Places at the request of its owner, Tim Lee, so its recent rehabilitation can qualify for the federal and state historic preservation tax credits. This is the best example the City has of how the CAD process works to promote the preservation of historic structures with the cooperative efforts of all interested parties.

The staff has difficulty determining that an unreasonable economic hardship exists. Although the renovation would be expensive and quite difficult, Tim Lee has expressed a strong interest in renovating and preserving the structure. The City also has seen other historic structures in quite dilapidated conditions either renovated or moved in the past. Therefore, the staff is reluctant to recommend approval of a demolition permit and preclude the possibility of saving the buildings without fully evaluating possible options.

The City's Legal and Finance Departments have reviewed the information provided by Mr. Mr. Belz and determined that he has severely underestimated the income producing capability of the property. Information also was received from a member of the rental industry. Based upon the following analysis, the property should in fact produce a "reasonable rate of return."

The biggest problem with the Proforma analysis submitted by Mr. Belz is that it does not include in calculating cash flow requirements, appreciation of value and the ability to deduct the interest on the debt service. Appreciation should be calculated at about 12% of the value of the project, resulting in @ $63,300 annual gain, which alone almost offsets the cash flow requirements listed. Granted, this would vary annually with market conditions.

The interest on his note service would be tax deductible and should result in a substantial savings, depending on tax bracket and income. The applicant should have provided that estimate. The Commission should also inquire as to why a 30 year Fixed Note was not used in the estimate, which would keep the interest rate down at @8% and lower the annual interest payments substantially, depending on the principal payment amount.

Mr. Belz also has a rather high expectation for return on equity. The amount should be calculated no higher than 5% reducing the $10,550 figure by about $5,250. The Commission could argue that this figure be omitted altogether.

Additionally, the management fee should be omitted in its entirety from the cash flow requirements since management fees are already deducted from the rent calculation in the income producing section, unless Mr. Belz can demonstrate the difference between the fees. This further reduces the cash flow requirements by $2,500. Because the legal, maintenence, and accounting figures appear too generalized, the HDC should ask the applicant to justify their numbers.

The property tax costs work out to a property value of $858,000 upon last year's tax rate. Either Mr. Belz is admitting a $300,000 profit upon renovation or his tax estimate is too high.

As far as the income producing information is concerned, the management fees subtracted from the rental income are much too high. The 50% calculation should be no higher than 30% (most companies in town charge @40% in the winter and 20% in summer, depending on volume), and if Mr. Belz has his own management people/company, the rate should be lower. Even at the 30% rate, the net income for a single family rental would increase to $55,125.

This would be close to the annual cash flow requirements with the adjustments described [illegible] equity, management fee, and property tax and a 30 year Note. Add the appreciation value and tax deduction and a $40,000 annual gain does not seem unreasonable. Admittedly there are some costs that may not have been included in the figures, but the applicant bears the burden of showing economic hardship and the information supplied does not appear to justify such a finding. Furthermore, the Commission [illegible] question the $125/sq.ft. renovation cost and the $100,000 land value of the HR1 property (The purchase price for all the property was $250,000 and the applicant attributes $100,000 to the corner 801 parcel. The Commission should inquire as to this value. Splitting the purchase price according to lot size would place the value at @ $90,361 and that assumes equal valuation. Since the HR-1 property is within a residential zone, the value should be lower per square foot.) The applicant should just leave the other parcel out of the calculations or at a minimum also include income producing information for the development of the HRC property upon demolition of the HR1 structure and for if the HR1 structure is renovated.

There is no exact definition or amount for a "reasonable rate of return." The Commission must decide, according to current market conditions, whether it fits within the standard.

IV. *STAFF RECOMMENDATION*

The Planning Staff recommends DENIAL of the CAD for the structure located at 801 Park Avenue based upon the following findings:

1. The building or site could be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner. In fact, several people have expressed an interest to undertake such a project.

2. **Rehabilitation** or remodelling that would be compatible with the preservation of the **building** or site is feasible and has been successfully accomplished with similar historic **structures** within the City.

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David Belz, Architect, Owner
811 Park Avenue PO Box 681237
Park City, Utah 84068
Work: 801-649-9339 Fax: 647-9339

June 13, 1994

The Park City Municipal Corporation
Attn.: Janice Lew, the HDC and whom it may concern
545 Marsac
Park City, Utah 84060
801-645-5000

Re: CAD permit for demolition of 801 Park Avenue

To whom it may concern:

I just received the staff's report on Friday for the 801 CAD permit and although not at all surprised by the staff's recommendation, I am convinced that their findings and position are a reflection of the emotional desire to see this structure saved and not with conformance to the code and the process it establishes for the demolition of structures.

I have met all the requirements for the issuance of a demolition permit and this last minute attempt to discredit my proforma analysis appears to be yet another effort to continue this process.

This application has been pending for around 18 months where only 6 months are required by code. Further, Staff has had essentially all the required proforma information since February 4th, and yet it was not until June 10th that they provided the most recent review which questions our proforma assumptions. This lack of timeliness as well as the questionable validity of their review assumptions makes it unreasonable to ask for another extension on this matter and I am requesting definitive action to approve or deny my CAD permit this evening, June 13, 1994.

I wish I had been able to hand you this response before you needed to vote on this matter but as I just received staff's report, it could not be provided any sooner.

Exhibit D - Letter from David Belz regarding CAD permit for demolition

In response to the staffs most recent review I offer the following:

<u>The staff has stated that Mr. Belz is unwilling to save the structure.</u>

Please understand that the attaining of a demolition permit is a totally separate issue as to whether the owner will actually proceed with the building's demolition or not.

City officials have been informed that the owner has always been, and is still willing, to save the building in question. To do so, however, will require certain code compliant considerations by the Planning Commission and possibly on some points by the HDC.

This willingness to see the building restored aside, the owner will exercise what ever means are required to secure a demolition permit. Based on input and observations to date, we feel that to do otherwise will leave the pending MPD hostage to more subjective considerations.

If during the six months following receipt of a demolition permit the Planning Commission and the HDC are able to forward the MPD in some acceptable form, then the building will be saved and brought up to modern code standards.

If on the other hand, there is an unwillingness by the Commissioners to refine and approve that which is allowed and supported by code, including 801's demolition, then the cost of litigating these matters will make it less likely that the building can be saved.

I have always expressed and demonstrated a sincere willingness to work with everyone involved to find and refine the best solution for this properties development. After 4 years of working on the development of these contiguous properties, I still sincerely look forward to working in partnership with the staff and the Commissioners to refine the project's details.

I hope that my actions will not be seen as adversarial. This is not the attitude or the spirit which I plan on bringing to the meetings. I only desire equity in the planning process through which we can arrive at a final solution which addresses the communities concerns as well as my own.

Specific requirements for the issuance of a demolition permit:

The staff report affirms that I have provided all the required information, exceeded required time tables for processing and responded to all that has been requested of me.

The following is a point by point response to the specific points which must be satisfied before the HDC issues a CAD permit.

1: The building or site cannot be feasibly used or rented at a reasonable rate of return in it present condition: and

As the building was condemned one and one half years before I purchased the property it is not legally rentable and hence cannot provide any rate of return. It is in fact presently a liability both from a cash flow and a public safety perspective.

Requirement #1 is satisfied

2. The building or site cannot be remodeled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner; and

I have provided several reasonable and conservative proformas showing that there would be a substantial negative cash flow from any of the many development scenarios. I have shown rental rates which are at and, by many standards, above today's market rate. I have used liberal expectations on rentable days, and have tried to create a reasonable but optimistic proforma.

The staff has questioned some of the figures used in those proformas, however, even when using their unreasonable assumptions, the project still does not quite break even and only shows a positive cash position when factoring in future appreciation and savings on the tax deductible interest paid on debt service.

Future appreciation is a paper number and will not be realized from a cash flow perspective. It is my intent to hold on to the property long term for its income producing potential and any appreciation will likely not be realized until far in the future.

I know of no reasonable proforma analysis which would factor appreciation on paper as the primary cash return on investment. Although I too feel the property will appreciate, real estate markets and inflation move in cycles and their are no guarantees as to what future appreciation may or may not be.

Further, any appreciation considered and realized at some future date would be subject to capital gains tax, the future rate of which cannot be predicted. This tax would dramatically affect the staff's assumption of a 12% per year return in appreciation.

As to the amount potentially saved in tax deductions on interest paid; like appreciation, it is also unreasonable to use this number as a primary factor in determining a reasonable return in the cash flow analysis.

The staff report acknowledges this fact in discussing but a few of the variables affecting this calculation. But specifically, this number has no set value as it is carried out over the term of the mortgage. During the term of a note, the amount of the deductible interest paid is decreasing each year. Further, no one can predict effective tax rates 20 to 30 years in the future.

Further, I presently have no use for such deductions and the interest deduction itself cannot be carried forward. The value of the deduction may contribute to a net operating loss which may carry forward however this is the subject of complicated calculations which also rely, in part, on assumptions which are impossible to predict at this time.

Despite the difficulties of factoring tax deductable interst payments as a hard number in the proforma's cash flow analysis, even if you were to apply the most optimistic use and need of such deductions, they would not bring the proforma into that of a reasonable return.

I have satisfied requirement #2 and any questions concerning the validity of my analysis will be easily substantiated.

3. Rehabilitation or remodeling that would be compatible with the preservation of the building or site is infeasible: and

Due to the advanced state of decay and extensive modifications of the structure, a *rehabilitation* or *remodeling* effort which would meet the preservation standards established by the Parks Department would be infeasible albeit, not impossible.

It is my understanding from speaking with the State Historic Society that this is the primary reasons the structure was not listed on the national register survey when the inventory and analysis was originally done in Park City. I further suspect this is also why it was not listed as "Historically contributing" on our local list of significant structures.

Not with standing the City's strong desires to now see the structure saved, any measure of feasibility would have to be gauged by some measure of reasonableness. I am confident that any objective analysis will support the position that such an effort in infeasible.

The unfeasibility of a rehabilitation effort has also been logistically established by the specifics of the Park City Building Department's condemnation of the structure some 3 years ago.

Requirement #3 has been satisfied.

4. The building or site cannot be feasibly moved or relocated within the Historic District.

For well over a year there has been a standing offer to pay anyone wishing to save the building $5,000 to move the structure elsewhere in the Historic District. There has been no response.

Further, I have not been able to identify any alternative sites and the City staff has failed to bring any options to my attention as well.

I have done everything reasonably within my power to see the structure saved through a relocation and have been unsuccessful.

Further, based on comments by the HDC and the Planning Commission, I do not believe a relocation, although supported by code, is what they wish to see and / or would support.

Requirement #4 has been satisfied.

Further, as a provision of the code:

hardships are not based on conditions resulting from:

Willful or negligent acts by the owner; purchasing the property for substantially more than market value at the time of purchase; failure to perform normal maintenance and repairs; failure to diligently solicit and retain tenants; or failure to provide normal tenant improvements;

There have been no willful or negligent acts by myself or anyone else acting on behalf of the owner, 801PK, LC. The building was condemned long before the property was purchased.

Comparable sales and listing data for the period around when the property was purchased clearly demonstrates that it was not purchased for substantially more then market value;

The owner's agent has not failed to perform normal maintenance and repairs and even though the building was condemned, the owner has expended considerable time and money to improve the city sidewalk area adjacent to the building as it was directing water into and under the structure. Further, extensive landscaping was provided as a community concern, and diligent efforts have been taken to remove all fire hazards and to prevent vagrants from using the premises;

The owner is not allowed by law to solicit or retain tenants; and as there are no tenants, no tenant improvements have been required.

None of the hardships are the result from any excluded act or failure to act and this provision has been satisfied.

As to other points raised in the staff's report;

The staff has characterized that there are many other people willing to renovate the structure and hence, it must be feasible.

The only individual mentioned with whom we have had substantive discussions is Tim Lee. After reviewing proformas with Tim, the project barely worked on paper using a best case projection where in little or no fees were paid for his own time as builder / carpenter, and with us selling the property at or below our cost / basis.

Any reasonable consideration for our time and money into this project to date as well as a reasonable profit for these efforts would put the project clearly out of reach for Tim, and we suspect any other interested parties as well.

Two years were spent negotiating to acquire the property and we have also supported considerable debt service and planning expenses since its acquisition.

Of the contiguous lots under one ownership in this area, this parcel, in particular, is considered the most desirable due to its location directly adjacent to the ski run.

Not with standing the facts which would establish a sales price the owner could even consider, he is not interested in selling the property.

There are questions by staff on the land value attributed in the proforma to this portion of the project.

The staffs analysis and statements concerning this matter are not accurate.

Under any of the development plans, the building along with the required garage addition and any other additions which were included to **enhance** the proforma in an effort to make the numbers more viable, effectively takes up at least half of the land purchased. That being the case, an equal split in value, as characterized by staff, would show the front half of the property at $125,000 and the rear half at $125,000.

In the proforma, only $100,000 was assigned to 801 while $150,000 was assigned to the commercial half. This was in acknowledgment of the potentially higher value of the commercial property, and as noted on the proforma, assumed that a commercial project could get approved for this site. It further assumed that such commercial approvals did not require extensive legal and processing expense. If processing expense were factored into the equation, an even split in value may be more appropriate.

Staff had questioned the desired return of 10% on equity invested.

Without risk or additional time needed to service the investment, an investor can buy a US treasury note today yielding over 7%. It is reasonable that for an investor to enter into the more risky and demanding investment of real-estate that a slightly higher rate of return should be expected. In past and future times of much higher interest rates, real-estate investments would and will not be considered unless they yield upwards of 15% to 20%.

Because today's market values in Park City have inflated faster then the properties ability to produce a matching income, it is admittedly now difficult to find investments here which allow any return on equity invested. This is unique to our market and perhaps a few other similar markets. This context, however, is not a reflection of real-estate investment practices in the country as a whole.

It is unreasonable that a proforma analysis on a commercial investment opportunity here in Park City should apply different standards than that used by other prudent investors around the country.

Further, the LMC recognizes the differences on commercial investments and residential investments as it relates to proving hardship and we feel those differences extend to returns on equity invested as well.

Staff has expressed concern over management fees shown in the proforma

It is not reasonable to show a 30% fee for nightly property management in a prudent proforma analysis. The bulk of the properties income is during the winter months and will be subject to a 40% to 50% fee. This does not consider utilities, and often hot tub and other maintenance / management expenses. A flat 50% fee as shown in our proformas is reasonable and can be substantiated by many other property owners records for historic expense against income on their properties in rental pools.

All Other management fees in question and shown in the proforma are also reasonable and can be substantiated.

Staff mentions an HDC grant in place for the subject property

This grant was issued in 1993 and was not renewed. I was informed that it had expired and was no longer in place. Despite this, the $5,000 offered, where there is eligibility for $10,000, does not make any significant impact in the proforma analysis.

Staff refers to the Planning Commission's involvement in this CAD process.

As affirmed by the Planning Commission's comments, it is our understanding they have no jurisdiction over the issuance of the CAD. They will be involved in future efforts to save the structure after a demolition permit is in place, however, short of giving their technical and emotional support to the HDC, they have no bearing on this issue.

As mentioned earlier in this letter, for the owner, the demolition permit and the decision on whether to exercise that permit are two separate issues.

In conclusion, it is clear that I have fulfilled all the requirements necessary to attain a demolition permit and a decision to deny such a permit is based on something other than the governing legal provisions.

The staff's most recent report attempts to find solid ground on which to base a denial, however, they only raise questions which are based on assumptions that are neither reasonable nor accurate. Their report appears to characterize. our proforma as an attempt to play with the numbers only to demonstrate economic hardship. In fact our numbers, particularly the nightly rental rates, are quite liberal.

Even if you accept every premise raised in the staff's report, the cash flow itself, is still shown to not quite meet expenses. The projected appreciation aside, there is no basis in their report to characterize a reasonable return as required for denial.

I understand that their are many who want to see this building saved at all cost, however, when denials are based on emotion and not on the letter of the law, then there is a problem.

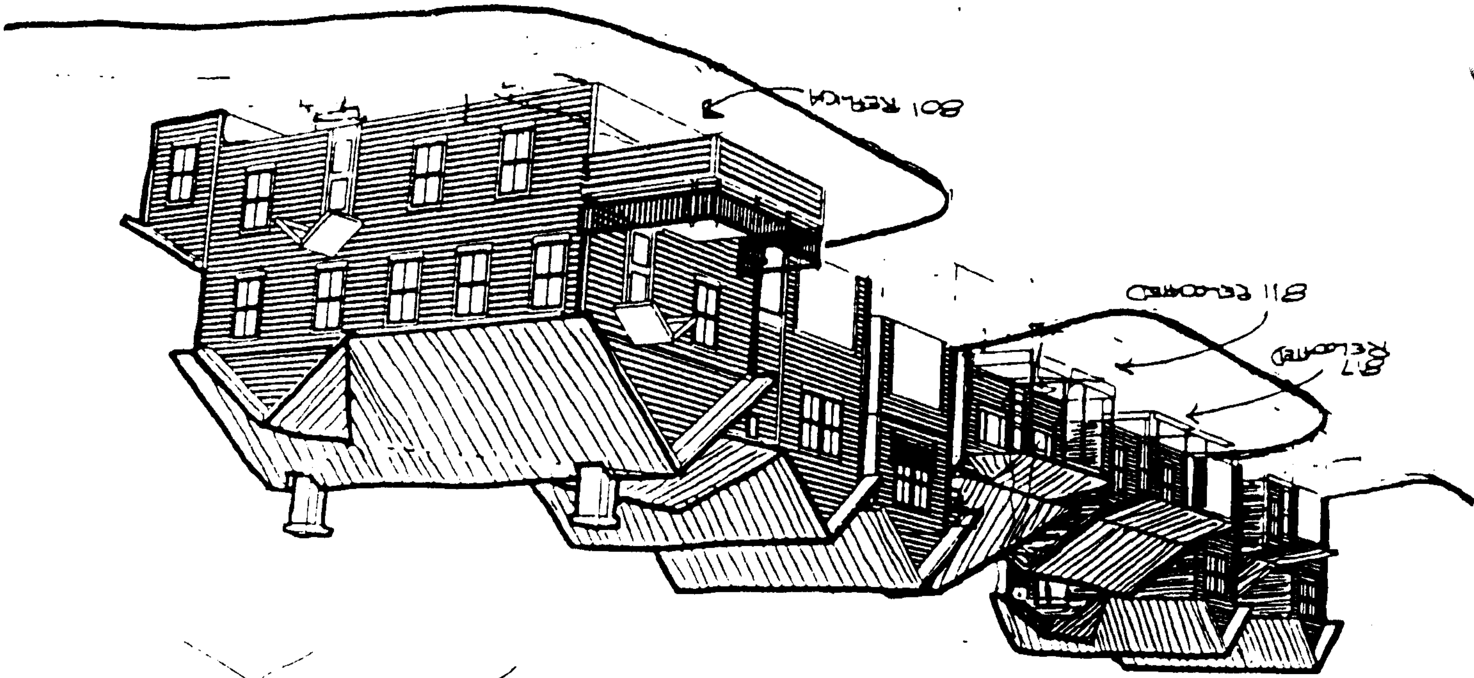
Not with standing my willingness to save the building should the larger MPD issues be resolved over the next 6 months, I will do what ever is required to attain a demolition permit. If this involves litigation, the cost of such litigation will increase my basis in the overall project and make it less likely the building can be saved.

Both on the issues of this demolition and on the related MPD now pending, I am not asking for any considerations not supported and or allowed by code. All I ask of the governing bodies is that they work with me and base their decisions on code allowances and the other governing provisions.

Thank you for your serious consideration of my CAD application and all the related matters discussed here-in.

Sincerely yours,

801 PK. LC., by David Belz



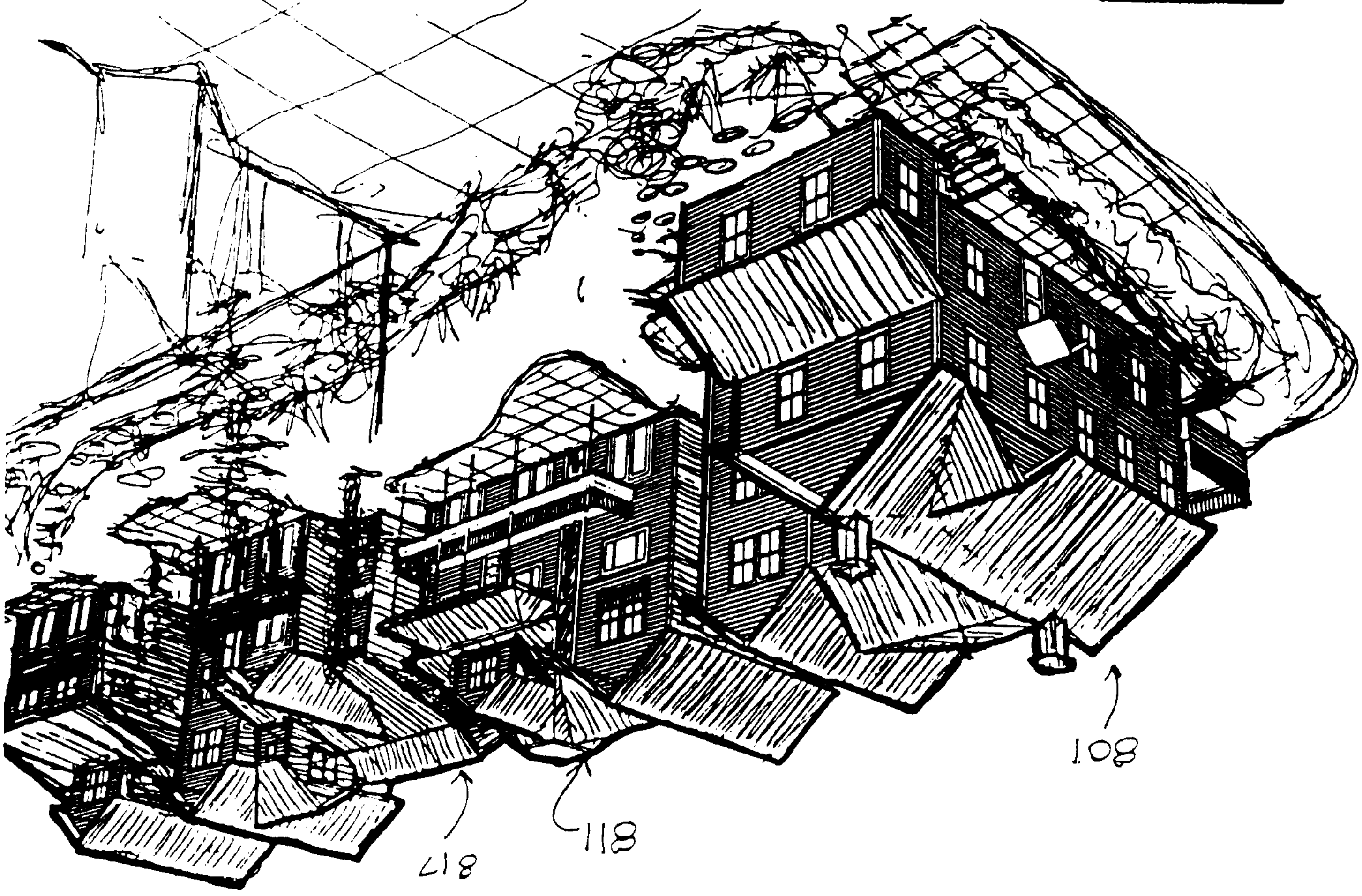


Exhibit E - Architectural rendering/HDC Staff Report from March 10, 1994

PARK CITY PLANNING DEPARTMENT
STAFF REPORT

TO: HISTORIC DISTRICT COMMISSION
FROM: PLANNING STAFF JL
DATE: MARCH 10, 1994
RE: 801 PARK AVENUE DEMOLITION APPLICATION

I. PROJECT STATISTICS

Project Name:	
Applicant:	David Belz
Location:	801 Park Avenue
Proposal:	CAD
Zoning:	HR-1
Adjacent Land Uses:	Historic Residential, Single Family Residential, and Town Lift
Date of Application:	February 16, 1993
Project Planner:	Janice Lew
Staff Recommendation:	DENY

II. BACKGROUND INFORMATION

The Historic District Commission preliminarily reviewed the CAD application for 801 Park Avenue at their June 21, 1993 meeting. At that time, the HDC briefly discussed the structure and asked the applicant to provide additional information as outlined in Section 4.17 of the Preservation Ordinance.

The following in...mation is from the June 21 staff report. The building has been used as an income producing rental thereby classifying the structure as a commercial property. Although the former boarding house is not included in Park City's thematic nomination of homes of the mining boom era on the National Register of Historic Places, the structure is historically significant and contributes to the District. Boarding houses were an important element of Park City's housing because of the influx of single miners. This building

EXHIBIT C-1

therefore is particularly important because it is one of the few boarding houses remaining in town which document this type of residential housing.

The structure was built by at least 1889, as indicated by the Sanborn Insurance Maps which have been included for your review. The Sanborn Maps also indicate that numerous additions were added following the original construction. The most recent alterations to the building include new siding and replacement of the original windows. It is questionable whether the building maintains its original integrity, but it appears to be eligible for the National Register as part of Park City's thematic nomination (see attached letter from SHOP). Some of these alterations are reversible. The siding can be replaced and the original outline of the windows is visible. Because the structures on the property are in such poor condition, the property was condemned in August of 1991 (see attached letter from Ron Ivie).

The property was posted with a threatened building sign on March 3, 1993 as required by Section 4.16 of the Land Management Code. Fees have been paid and, as stated above, a hearing was held regarding the application on the June 21, 1993 agenda of the HDC. The staff received a letter from Mr. Belz dated February 4, 1994, which includes the additional information requested by the Commission (see attached).

PUBLIC INPUT STATEMENT:

The staff received the following comments about the property:

1. Tim Lee stated he was interested in doing affordable housing with help from the City.
2. Dick Walters stated he was interested in renovating the property.
3. Todd Lindquest stated he was interested in renovating.
4. Eric Miller believes the building should be salvaged.
5. A letter was submitted to the City addressed to David Belz from the Park City Historical Society requesting that all avenues for restoration and preservation be explored.

III. STAFF ANALYSIS

REQUIRED INFORMATION. The structure is being reviewed under the commercial provisions of the preservation ordinance. Section 4.17 of the Land Management Code allows the HDC to review demolition of significant structures and to require certain information from the applicant. As stated above, Mr. Belz has provided the staff with the information as requested.

REQUIRED FINDINGS FOR APPROVAL. The Land Management Code outlines findings necessary to determine if an unreasonable economic hardship exists which would warrant the issuance of CAD. They are as follows (Section 4.17.(c):

(c) Written Findings. The HDC shall make written findings supporting their decision in the matter. The HDC may determine that unreasonable economic hardship exists and issue a CAD if the Commission finds that:

1. The building or site cannot be feasibly use or rented at a reasonable rate of return in its present condition; and

2. The building or site cannot be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner; and

3. Rehabilitation or remodelling that would be compatible with the preservation of the building or site is infeasible; and

4. The building or site cannot be feasibly moved or relocated within the Historic District.

The Commission also should be aware that demonstration of economic hardship by the owner shall not be based on conditions resulting from:

> willful or negligent acts by the owner; purchasing the property for substantially more than market value at the time of purchase; failure to perform normal maintenance and repairs; failure to diligently solicit and retain tenants; or failure to provide normal tenant improvements.

Mr. Belz purchased the property with the intent to develop and has been working on conceptual drawings. The staff has discussed various development options with the owner and feels that he may not be persuaded to renovate the structure. Mr. Belz is currently proposing a mixed use project. The plans show a single family residence at the corner of 8th and Woodside with adjoining commercial space along Park Avenue. The property along Park Avenue is zoned HRC, and the property fronting Woodside is zoned HR-1.

The staff has difficulty determining that an unreasonable economic hardship exists. Although the renovation would be expensive and quite difficult, Tim Lee has expressed a strong interest in renovating and preserving the structure. The City also has seen other historic structures in quite dilapidated conditions either renovated or moved in the past. Therefore, the staff is reluctant to recommend approval of a demolition permit and preclude the possibility of saving the buildings without evaluating possible options.

IV. STAFF RECOMMENDATION

The Planning Staff recommends DENIAL of the CAD for the structure located at 801 Park Avenue based upon the following findings:

1. The building or site could be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner. In fact, several people have expressed an interest to undertake such a project.

2. Rehabilitation or remodelling that would be compatible with the preservation of the building or site is feasible and has been successfully accomplished with similar historic structures within the City.

53 C-4

2. **801 Park Avenue** - Request for a Certificate of Appropriateness for Demolition.

The Historic District previously reviewed the CAD application in March of 1993. At that time, the HDC briefly discussed the structure and asked the applicant to provide additional information as outlined in Section 4.17 of the Preservation Ordinance. This house is particularly important because it is one of the boarding houses remaining in town which document this type of residential housing.

Planner Lew stated that Mr. Belz purchased the property with the intent to develop and has been working on conceptual drawings. A mixed use project is currently proposed. The plans show a single family residence at the corner of 8th and Woodside with adjoining commercial space along Park Avenue. The property along Park Avenue is zoned HRC and the property fronting Woodside is zoned HR-1.

[illegible] stated the staff had difficulty determining that an unreasonable economic hardship exists. The staff is also reluctant to recommend approval of a demolition permit and preclude the possibility of saving the buildings without evaluating possible options.

Jeffrey Kuhn, representing the applicant, stated a thorough analysis had been completed trying to find a way to save the building. It was evident that everyone wanted the building saved but found there would be no return on the investment or efforts. David Belz indicated the value of the land is probably worth $250,000-$300,000 which includes the Park Avenue frontage as well as the Woodside area.

Commissioner Chris Larson indicated that in the proforma, residential use was identified as a means to run the numbers, but in the proposal, a commercial use was used. Mr. Belz advised that the existing building is sitting in the HR-1 portion of the site and the commercial uses which could be used only include nightly rentals, etc. In the proforma they used nightly rentals and monthly rentals. They could not put a commercial shop inside because of the parking, etc.

Commissioner Child asked if the building could be renovated, why a profit could not be made. Mr. Belz indicated that in his proforma, using the current market rates with a nightly rental proforma and a monthly proforma, the numbers did not work.

Mr. Belz indicated that there had been a fire and the entire roof structure would need to be replaced with all new rafters. The floor would need all new wood framing, the walls would need all new studs, and, about three-quarters of the siding would need to be replaced. He feels this constitutes a new building.

Chair Cote asked for public comment.

Hal Compton, President of the Park City Historical Society, stated that on behalf of the Society he was against the demolition of this fine old historic miners' boarding house and was in favor of restoring and preserving it. There are very few examples of miners' boarding houses in the City at the present time.

Mary Olszewski stated she would like to see the preservation of the building. She feels that the historical content brings citizens to Park City, not malls, but the old mining houses. She likes the continuity of historic homes along Park Avenue.

Frank Dorka stated he grew up here and spent time in the building as a teenager. He would hate to see Park City lose the building but with the continued growth around that area, he is wondered if it fit in.

Commissioner Child stated they had not analyzed other alternatives. Mr. Kuhn suggested there may be different scenarios that could be explored but they have not been able to find one.

Commissioner Child requested from Mr. Belz, the original price documented, the option of an addition to the existing structure and a master plan with the other two properties.

MOTION: Commissioner Child moved to POSTPONE the decision on the request for demolition at 801 Park Avenue. Seconded by Chris Larson. The vote was unanimously approved.

3. **713 Norfolk** - Review of CUP for Bed and Breakfast and Recommendation to Planning Commission.

In September of 1989 the Planning Commission granted a Conditional Use Approval for the adaptive reuse of this structure as a Bed and Breakfast as well as variances from the Board of Adjustment for the side and rear setbacks to accommodate additions to the existing structure. Planner Lew indicated the conditional use permit had expired and the applicants were reapplying. Parking had been acquired and no changes are proposed to the approved plans.

MOTION: Commissioner Chris Larson moved to FORWARD a positive recommendation to the Planning Commission for 713 Norfolk as a Bed and Breakfast with a condition that a landscape plan and the retaining wall details be submitted to the HDC. Seconded by Commissioner David White. The vote was unanimous.

C-7

2. 801 Park Avenue, Certificate of Appropriateness for Demolition

Planner Lew gave a brief history of the planning activities surrounding this site to the Commission. It is noted the Staff is recommending denial of the CAD for 801 Park Avenue based upon the following findings:

1. The building or site could be remodelled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner. In fact, several people have expressed an interest to undertake such a project.

2. Rehabilitation or remodelling that would be compatible with the preservation of the building or site is feasible and has been successfully accomplished with similar historic structures within the City.

David Belz then addressed the Commission presenting his economic analysis and arguments as to why his application should be approved. He feels he has met the HDC criteria necessary to obtain approval. Commissioner Erickson asked Mr. Belz to address the $300,000 difference in the property tax calculation that exists between the City Finance Department calculation and his figures. Mr. Belz responded the pro forma is showing a projected deficit of close to $20,000 per year. Further, Mr. Belz feels the tax flow calculation would only make the difference of $1-2,000 per year which would not substantially impact the project and put it into a reasonable return category.

Mary Wintzer asked to address the Commission since she had an appointment and needed to leave. She encouraged the Commission to take a hard line and not jeopardize the integrity of historic buildings inch by inch.

The Commission consensus was that this property could be in a reasonable return category with minor changes to the application.

MOTION: Commissioner Larson moved to deny the CAD based on three criteria:

1. The structure in question is significant and contributory to the Historic District as one of the few boarding houses remaining in Park City.
2. Substantial evidence of economic hardship has not been demonstrated since the Finance Department has pointed out wrongs in the pro forma submitted.

3. Feasibility of renovation has been demonstrated by the number of individuals willing to renovate said property.

David White seconded.

Vote: The motion passed unanimously.

3. 24 Daly - Design review of an addition
Mr. Vokas is planning significant improvements to his building. He received a 1993 grant in the amount of $5,000 to install a foundation, reroof the structure, replace the siding and improve the plumbing and electrical systems. An extension was approved for completion of this work. The work for which the grant was originally given has not yet been completed. Since that time, Mr. Vokas has received an interior demolition permit to help him determine what there is to work with structurally. He now knows it will be necessary to build a complete interior/exterior sheer wall from the inside out, as well as do some exterior framing.

Additionally, the windows would be changed to meet the Historic District guidelines. Joe brought a sample window made of vinyl to the meeting for the Commissioners' approval. The sample was a replicate of a wooden window, but made totally of vinyl to last longer. Commissioner White commented the windows the HDC has been approving are vinyl-clad wooden windows with the wood exposed on the interior, and the exterior either vinyl or aluminum-clad.

The long-term scope of work includes an addition to the rear of the structure along the retaining wall. It appears that several changes to this portion of the structure have occurred in the past. The applicant is proposing a change in the roof pitch to accommodate the newest addition which would resolve snow shedding problems. A porch is also proposed. It is unclear if the house had a porch in the past or if the proposed porch is a new addition to the structure. In order for a porch to be approved, evidence must be shown it was part of the structure initially.

Commissioner Larson commented there are two ways to view this project: 1) If the historical integrity of the structure is restored, grant monies can be approved; and, 2) If vinyl windows, etc., are used and additions to the house are made, no grant money will be approved.

What the HDC requests is: 1) a clear and accurate drawing of the proposed improvements to the house; and, 2) a list of items that are proposed for approval under the grant program.

MOTION: Commissioner Larson moved to continue this project until the next meeting; David Hampshire seconded.

Vote: The motion passed unanimously.

4. 408 Woodside - Design review of a single family residence
The applicant reported that redwood shiplap siding is proposed for the house with redwood or cedar trim. Asphalt shingles will be used for the roof. Vegetation will be preserved wherever possible.

MOTION: Commissioner Erickson moved approval of the design with the following conditions:

1. The staff shall review and approve a color palette prior to issuance of building permit.
2. This approval is for design only; the proposal must meet all requirements under the Land Management Code and Uniform Building Codes prior to building permit issuance.
3. Any outstanding issues including window and ornamental details will be resolved by the applicant and the staff prior to Building permit issuance.
4. The garage door shall be painted the same color as the siding and the opening shall be reduced from 10' wide to 8'. Trim board shall be placed over the garage door.
5. On the east and south sides, the double windows shall be taller or separated and the Chicago-type window shall be modified to make the center wider.
6. The front door shall be moved forward.
7. The handrail return and the deck near the front door shall be incorporated into the design.

David White seconded.

Vote: The motion passed unanimously.

Approved by Historic District Commission:_________________________

Commissioner Child stated that both roofs worked, but that option #2 appeared more interesting. She also mentioned that the windows appeared more horizontal than typically seen. Mr. Scott explained that the typical window in the Historic District was two by six feet, but this design incorporated windows three by six to eight feet.

Commissioner White mentioned that the other structures could have varying roof forms. Mr. Scott agreed with this point, stating that would allow each structure to have its own individual character.

David Hampshire confirmed that the garage would be painted to match the siding.

MOTION: Commissioner Alison Child moved to APPROVE the design review of a single family home at 572 Woodside subject to the Conditions of Approval. Commissioner David Hampshire seconded the motion. The motion was unanimously approved.

CONDITIONS OF APPROVAL:

1. A hip roof or gable roof shall be placed over the second story. If the gable roof option is selected, the trapezoidal windows shall be reviewed and approved by the staff.

2. The staff shall review and approve a color palette prior to issuance of a building permit.

3. This approval is for design only; the proposal must meet all requirements under the Land Management Code and Uniform Building Codes prior to building permit issuance.

VI. NEW BUSINESS

1. Request for a Certificate of Appropriateness for Demolition for 801 Park Avenue - David Belz

Planner Janice Lew reviewed the project for the Commissioners. She stated that the structure was built prior to 1889 and was used as a boarding house at one time. Therefore, the staff felt it was a significant structure and added to the district because it was one of the few boarding houses remaining in town which document this type of residential housing. The building was condemned in August of 1991. Planner Lew explained that what the Commission needed to determine was whether or not an unreasonable economic hardship would result which would warrant the demolition.

The applicant, David Belz, had also submitted plans for a proposed commercial project. If that proposal were approved he would move two historic homes at 811 and 817 Park Ave., and would construct 8,000 - 10,000 square feet of new commercial space and approximately 14 housing units. Mr. Belz explained that he had revised the proposal from what he originally submitted and that it would also include four or five single family homes facing Woodside Avenue.

Planner Lew said the project at 801 Park Avenue had two choices, either to build a new structure on the lots or renovate the old building.

Mr. Belz stated that he would like his proposal processed as soon as possible without waiting for a determination of the property's eligibility for the National Register as part of Park City's thematic nomination, which could be at the end of November.

Commissioner Alison Child was against rushing into the process due to the historical significance of the building. The "Historic Recreation Commercial Zone" needed to be reviewed by the Planning Commission. She also said that the applicant needed to take the necessary steps for his proposal, rather than expecting the Planning staff to take the lead.

Commissioner Chris Larson was against tearing down the building. As a historic district representative, he expressed his need to do everything he could to preserve the building. He added that this had been a productive and financially stable structure in the past, and even if it was more expensive to renovate than rebuild, the building should still prove financially successful. He suggested getting a third party estimate for the cost of renovating the building.

Assistant City Attorney Shauna Kerr suggested submitting alternatives to SHPO concurrently.

Vice Chairman David Hampshire suggested doing an evaluation on a cost basis. He also expressed concern about where the 811 and 817 buildings would be relocated.

Public Input came from Planning Commissioner Chris Erickson. Mr. Erickson felt this proposal should be denied. He stated that he was a neighbor to this project and that it would be quite visible. To build a totally new structure would be detracting to the authenticity in the area. He also asked that when it was time for the Commission to take action that they respect the interest shown by others to renovate rather than rebuild, as noted in the staff report.

C-9

MOTION: Commissioner Alison Child moved to POSTPONE the request for a Certificate of Appropriateness for Demolition for 801 Park Avenue. Commissioner Chris Larson seconded the motion. The motion was unanimously approved.

The meeting adjourned at 7:45 P.M.

Approved by Historic District Commission: ______________________

C-10

PARK CITY
1884

Department of Community Development
Engineering • Building Inspection • Planning

April 26, 1993

David Belz
PO BOX 681237
Park City UT 84068

Re: 801 Park Avenue CAD

Dear David:

As you recall, the Planning Staff decided that your demolition application should proceed through the CAD process. Although the structures are in such poor condition, the staff was somewhat reluctant to issue a permit and preclude the possibility of saving the buildings. Please be advised that the pre-hearing period for your request to demolish the historic buildings has expired. If you would like to request a review by the Historic District Commission, please submit the $200 application fee to the Planning Department. Within 45 additional days, a hearing will be scheduled before the HDC. I have enclosed a copy of Section 4.18 of the Land Management Code which outlines the criteria and findings the HDC considers to evaluate the CAD application. If you have any questions, please feel free to call me. I would be happy to meet with you and go over the process.

I would like to stress that it is our intent to preserve the historic and architectural resources of Park City. Because the removal of historic structures diminishes the character of the District, the HDC strongly discourages demolition. Rather, the HDC and staff exhaust all possibilities to have historic structures renovated before allowing demolition.

Sincerely,

Janice

Janice Lew
Planner I

Exhibit H - Staff letter to David Belz, April 26, 1993

Park City Municipal Corporation • 445 Marsac Avenue • P.O. Box 1480 • Park City, UT 84060-1480
Community Development (801) 645-5020 • Engineering 645-5020 • Building 645-5040
Planning 645-5021 • FAX (801) 645-5078

David Belz, Architect, Owner
811 Park Avenue PO Box 681237
Park City, Utah 84068
Work: 801-649-9339 Fax: 647-9339

February 3, 1994

The Park City Municipal Corporation
Attn.: Janice Lew
545 Marsac
Park City, Utah 84060
801-645-5000

Re: CAD permit for demolition of 801 Park Avenue

To whom it may concern;

I am writing to finalize my CAD efforts on 801 Park Avenue which were initiated around a year ago.

At the last meeting with the HDC on this matter I was charged to respond to the requirements of chapter 4 of the LMC, demonstrating financial hardship and a lack of viability to restore the structure.

To that end I am enclosing a proforma on the cost of renovation and the resultant income producing capability.

I would like to summarize my findings by stating that it is unarguably and significantly more expensive to restore the structure than to build a replica or an approximation. I know this from personal experience on several projects as well as from those experiences of many friends in town who have done the same. The additional cost by our estimates would be no less then $60,000 and would most likely be $100,000 or more. The cost of having a house mover handle their end alone is estimated at close to $20,000.

Further, the attached proforma analysis demonstrates that the projected income producing capabilities of a renovated structure cannot support the cost of producing the finished product.

In addition to the lack of financial viability, we have diligently tried to find someone who would relocate the structure and to that end have offered anyone inquiring $5,000 towards the cost of that effort. No one has come forward in the year that the property has been posted willing to undertake such an effort.

Exhibit I - Letter from David Belz, February 4, 1994

I would like to also point out that this structure has been condemned by the Building Department for several years and is to the best my knowledge not listed on the city's roster as "historically contributing". I am certain it is not listed on the National Register's list of historic buildings in Park City.

Further, over the several months since our last meeting, I have diligently explored architectural / development solutions which would make a restoration effort viable. I have been unable to identify any reasonable solution.

Accordingly, I ask the HDC to move immediately to approve my CAD application which has been pending for well in excess of the 180 day period required by code.

Thank you for your help on this matter as I look forward to working with you on the refinement of my designs for this property.

Sincerely,

David Belz

RECEIVED
1994
PLANNING DEPT.

Department of Community & Economic Development
Division of State History
Utah State Historical Society

Michael O. Leavitt
Governor
Max J. Evans
Director

300 Rio Grande
Salt Lake City Utah 84101-1182
(801) 533-3500
FAX (801) 533-3503

June 16, 1993

David Belz
811 Park Avenue
PO Box 681237
Park City, UT 84068

RE: 801 Park Avenue

Dear Mr. Belz:

Enclosed with this letter is a copy of the National Register thematic nomination, *Residences of Mining Boom Era Park City* and copies of the Sanborn Co. fire insurance maps that show the building now known as 801 Park Avenue (highlighted). Based on the age of the building, the remaining historic materials, features and ghosted outlines of window and door trim, and the availability of a clear historic photo that can be used to guide reconstruction efforts, 801 Park Avenue appears to be eligible for the National Register as part of this thematic nomination.

The Sanborn maps show that the main two story portion of this boarding house, and the one story additions to the rear and north side were built prior to December 1889. Also present in 1889 were additional one story sections and an L-shaped porch that are no longer present. The 1900 map shows a name for the property, *Utah Hotel*, and the removal of some of the additions and porch. Some time after 1907 the existing, one story addition to the east was built as well as the garage at the rear. While this later addition to the east is quite compatible with the original historic building, it could probably be removed and the wall repaired as part of a certified rehabilitation. However, this is only a preliminary finding and does not constitute formal approval of the proposed rehabilitation.

We would be pleased to work with you or a professional consultant in nominating 801 Park Avenue to the National Register as well as reviewing the proposed rehabilitation in applying for the federal and/or state investment tax credits. If you have any questions or need additional assistance, please feel free to contact us again. At the request of staff from the Park City Planning Department, a copy of this letter is being sent to them for their information.

Sincerely,

Charles M. Shepherd
Office of Historic Preservation

Enclosures

cc: **Exhibit J - Letter from Utah State Historical Society, June 16, 1993**

84060

PARK CITY
1884

Approved ______
Denied ______
By ______

445 Marsac Avenue • P.O. Box 1480 • Park City, UT 84060-1480
(801) 645-5021 • FAX (801) 645-5078

Application No. [illegible]
Receipt No. 12527

APPLICATION FOR
CERTIFICATE OF APPROPRIATENESS (CAD)
FOR DEMOLITION OF HISTORIC STRUCTURES

Historic Property Address: 801-807 PARK AVENUE

Legal Description: SEE ATTACHED TITLE INSURANCE COMMITMENT/WARRANTY DEED

Commercial Structure ______ Residential Structure ✓

Have you claimed a depreciation deduction under Section 16 of the Internal Revenue Service Code for this structure?
Yes ____ No ✓

APPLICANT

( ) Owner ( ) Optionee (✓) Buyer (✓) Agent ( ) Other

Name: DAVID BELZ DBA 811 PK INC

Mailing Address: PO BOX 681237
PARK CITY UTAH 84060

Telephone Number: 6499339

OWNER OF RECORD

Name: LYNN & JOHN ROCHE

Mailing Address: 1110 NIRVANA RD.
SANTA BARBARA, CA. 93101

Telephone Number: 805-569-2463

Signature of Owner/Agent [signature]

• • • • • • • • • • • • • • • • DO NOT WRITE BELOW THIS LINE • • • • • • • • • • • • • • • •

Application Accepted Feb. 22, 1993
Project Planner JL
Historically Significant Y By JL
Y/N
Hazardous or Dangerous

180 Day Stay ENDS ______
45 Day Pre-Hearing Period ENDS April 1?, 1993

RECEIVED
MAR - 8 1993
PARK CITY
PLANNING DEPT.

Exhibit K - Application for CAD, January 8, 1993

3/3/93 → called to have posted.

* * FOR OFFICE USE ONLY * *

1. PRE-HEARING REQUIREMENTS

Sign Posted 3/3/93

City Negotiations for sale, lease, facade easement, or eminent domain ______

Fees April 29, 1993 June 14, 1993 (45 days)

Date of Hearing by HDC Jun 21, 1993 Postponed.

Applicant must submit everything outlined in LMC

2. REVIEW BY HISTORIC DISTRICT COMMISSION

Approved ______

Denied ______

Date of Reapplication for Commercial Structures (3 year stay) ______

Recommendation to Council for Residential Structures ______

081064/3-90

PARK CITY DESIGN CONSULTANTS 6-91
DAVID BELZ, ARCHITECT
611 PARK AVENUE, P.O. BOX 681087
PARK CITY, UT 84068-1087
PH: 801-649-9339

FIRST SECURITY BANK OF UTAH
PARK CITY, UT 84060
31-1-1240

11282

4/27/1993

PAY TO THE ORDER OF Park City Municipal Corp $ ****200.00

Two Hundred and 00/100** DOLLARS

MEMO Demolition Permit

⑈011282⑈ ⑆124000024⑆038 0021167⑈

RECEIPT

PARK CITY MUNICIPAL CORPORATION

P.O. BOX 1480
PARK CITY, UTAH 84060
PHONE 645-5030

DATE ______

REC'D FROM ______

UF ☐ GF ☐ CASH ☐

FUND ☐ CHECK ☑

WATER SERVICE		
SEWER SERVICE		
BUSINESS LICENSE		
FINES		
MISC. REVENUES		
BUILDING PERMIT		
PLAN CHECK FEES		
CONNECTION FEE		
1 % STATE		
WATER DEV.		
METER		
IMPACT		
ELECTRICAL		
PLUMBING		
MECHANICAL		
SIGN PERMIT		

12527

REC'D BY ______

RECEIPT

PARK CITY MUNICIPAL CORPORATION

P.O. BOX 1480
PARK CITY, UTAH 84060
PHONE 645-5030

DATE April 28, [illegible]

REC'D FROM David Belz

UF ☐ GF ☐ CASH ☐

FUND ☐ CHECK ☑ $200

WATER SERVICE		
SEWER SERVICE		
BUSINESS LICENSE		
FINES		
MISC. REVENUES		
CAD	200	
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PLAN CHECK FEES		
CONNECTION FEE		
1 % STATE		
WATER DEV.		
METER		
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12527

REC'D BY JL

PARK CITY
1884

Department of Community Development
Engineering • Building Inspection • Planning

August 28, 1991

John & Lynn Roche
1110 Nirvana
Santa Barbara, CA 93101

Re: 801 Park Ave., legal description as follows:

BEG N31/48' W 65.70 FT FR SW COR LOT 1 BLK 2 SNYDERS ADDIT TO PARK CITY; TH N61/10'E 62.3 FT; N28/50'W 5.89 FT; S 61/10'W 62.6 FT; S31/48'E 5.9 FT TO BEG QWD494P463 M9-620 M20-106-313

BEG N28/50' W 21.14 FT FR SE COR LOT 1 BLK 2 SNYDERS ADDITION TO PARK CITY TH S 61/10'W 70.25 FT; N 28/50' W 38.42 FT; N 61/10'E 70.25 FT; S 28/50' E 37.40 FT TO BEG M9-620-619 M17-65

Dear Mr. & Mrs. Roche:

An inspection was made of your property to determine it's compliance with the 1982 edition of the Uniform Housing Code. The following noncompliances were noted:

General conditions that apply to all units:

I. Hazardous Electrical Wiring:

1. The service is ungrounded unbounded and improper conductors throughout service and building. This included extension cords being used for power extensions in some cases under carpet etc.

2. Non metallic sheathed cable and improper fuse protection for wire size.

II. Hazardous Mechanical Equipment:

1. Improper venting of water heating into furnace vent.

2. The return air from each unit is being discharged into other units through the central system. This is not allowed by Section 706 (H) - Uniform Mechanical code.

Exhibit L - Letter from Chief Building Official, August 28, 1991

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3. Lack of heat control in each unit.

4. No combustion air in the mechanical room.

III. Hazardous Plumbing:

1. The water closets leak, some are broke.

2. The drainage system is leaking, including broken drum traps allowing sewer to drain into crawl space under unit #1.

3. Some drains are back graded and have no traps or improper traps.

4. Several fixtures do not have sufficient water flow.

5. The whole plumbing system lacks proper protection from freezing and the heat tape used presents a fire hazard.

IV. Faulty Weater Protection:

1. There are many areas that the siding has been broken off exposing the wall of the building.

2. There are many areas in the building that show roof leak damage.

3. The area near the mechanical equipment room and central stairway is damaged to the extent that the plaster is off the walls.

4. The electrical service equipment is being damaged by ice buildup to the extent that much of the equipment and service drop conductor are loose and not attached to the building.

V. Structural Hazards:

1. The building has many areas that have damaged floor from water leaks near plumbing fixtures to the extent that the floors have buckled and broke through.

2. The floor has settled and deflected or sagged through the whole building, causing the floors to be unlevel.

3. There are areas of structural deflections in the roof following the settlement in the floor and foundation and possibly structural deflections from over spans and existing fire damage.

4. The building has walls that are out of plumb more than 1/3 their base. This condition is varied through the building and seems to be part of the overall settlement and some lateral movement in the building.

5. There is substantial rot at the base of the outside walls and the interior wood in contact with the ground.

6. A masonry chimney that is unreinforced and has no earth quake resistance.

7. The stairways have settled and are not stable.

VI. Fire Hazards:

1. Lack of smoke detectors.

2. Bedroom in unit #3 has no windows for egress.

3. All of the exits are unsafe either from unsafe stairs to inoperative doors and hardware.

4. As already mentioned, the wiring including the heat tape, is a fire hazard.

5. The lack of any occupancy seperation throughout the building is a fire hazard.

6. Due to the heat system the lack of complete wall covering and holes in the floors and ceiling there is no effective fire or smoke control in the building.

7. Improper clearance to heat producing equipment "water heaters".

8. No shut off valves to the furnace on the outside of the unit.

VII. Sanitation:

1. The sewer cleanout is unplugged and open.

2. The building is not protected in any way against rodent entry. Lack of screening and open holes to outside.

3. There is considerable trash and an unused oil tanks on the property that needs to be cleaned up.

4. The garages or storage sheds are near collapse and presents sanitation and safety problems.

As a result of the listed conditions this building will be posted against occupancy 60 days from the date of this notice if the proper permits have not been obtained to bring these units up to compliance. You are further advised that you may appeal this order within 30 days by filing a request at our office to the Appeals Board.

Sincerely,

Ron Ivie
Building Official

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or ordinance by the City Council, be the design standards applied by the City (and HDC on review) in reviewing specific building proposals or reviewing City staff actions on appeal. The standards shall address renovation of existing structures, additions to existing structures, and the construction of new structures. From time to time, the HDC may recommend changes in the design guidelines to the Council, provided that no changes in the guidelines shall take effect until adopted by a resolution of the Council.

The design guidelines shall apply in all zones within the Historic District, which are designated throughout this Code by the use of the word "Historic" in the zone district name, or the letter "H" in the abbreviation of that name.

4.11. PRESERVATION OF HISTORIC BUILDINGS, STRUCTURES AND SITES. It is deemed to be in the interest of the citizens of Park City, as well as the State of Utah, to encourage the preservation of buildings, structures and sites of historic significance in Park City. These buildings, structures and sites are among the City's most important cultural, educational, and economic assets. In order that they are not lost through neglect, demolition, expansion or change within the City, the preservation of the remaining buildings, structures and sites of historic or community significance should be encouraged. This section is intended to provide an incentive for identification and preservation of historic buildings, structures or sites that may occur within the Park City Historic District, as well as those that may be located outside the Historic District.

4.12. REVIEW OF HISTORIC BUILDINGS, STRUCTURES, SITES AND PRESERVATION POLICY. The HDC is the official body to review matters concerning designation and preservation of historic buildings, structures and sites within Park City, and may take appropriate action as may be necessary, as authorized by other sections of this Code to preserve historic buildings, structures and sites. The Historic District Commission is authorized to function as a committee on historic buildings, structures and sites and to designate significant historic building, structures and sites within the City which it considers to be of historic significance and to make this information available to all interested citizens.

4.13. SIGNIFICANT HISTORIC BUILDINGS, STRUCTURES AND SITES. It is hereby declared that all buildings, structures and sites within Park City that are either located within the Historic District, listed in the most recent Park City Historic Survey, or are over fifty (50) years old are presumed historically "significant" for the purposes of this Chapter. The HDC may maintain a list of such significant properties. Any owner of a presumed historically significant building, structure or site may apply for a hearing before the HDC to rebut the presumption of significance created herein. The application shall be on forms as prescribed by the HDC and shall be filed with the Community Development Department (CDD). Upon receiving an application for a determination of significance, the CDD staff shall schedule a hearing on the HDC agenda within thirty (30) days. Notice of the hearing shall be posted on the property and published at least once prior to the hearing. At the hearing, the applicant shall have an opportunity to present testimony and evidence to demonstrate the historical insignificance of the building, structure or site.

(a) Standards of Review. In determining the historic significance of the property at the hearing, the HDC shall evaluate whether the building, structure or site demonstrates a quality of significance in local, regional, state or national history, architecture, archaeology, engineering or culture, and integrity of location, design, setting, materials, and workmanship according to the following criteria:

1. The building, structure or site is associated with events or lives of persons significant to our past; and/or

2. The building, structure or site embodies the distinctive characteristics of a type, period or method of construction or that represent the work of a master; and/or

3. The architectural or historical value or significance of the building, structure or site contributes to the historic value of the property and surrounding area; and/or

4. The building, structure or site is at least fifty (50) years old, or has achieved significance within the past fifty (50) years if the property is of exceptional importance to the community; and/or

5. The relation of historic or architectural features found on the building, structure or site to other such features within the surrounding area; and/or

6. Any other factors, including aesthetic, which may be relevant to the historical or architectural aspects of the building, structure or site.

(b) Decision. The HDC shall determine that the property is historically insignificant only if it finds that the building, structure or site is of no or minimal historic significance because of its location, age, condition, modifications, relation to other structures or sites in the area, or other factors demonstrate that the property is inconsequential to the historic value of the area and to Park City as a whole. If the HDC finds that the building, structure or site is insignificant it shall immediately be removed from the list, if any, of significant properties. The HDC shall forward a copy of its written findings to the owner and the Community Development Department. The Community Development Department shall maintain a list of properties that the HDC has determined are historically insignificant.

(c) Appeal. The applicant or any party participating in the hearing may appeal the HDC decision to the City Council within ten (10) days of the decision.

4.14. DEMOLITION AND REMOVAL OF HISTORIC BUILDINGS, STRUCTURES AND SITES. It is the intent of this and succeeding sections to preserve the historic and architectural resources of Park City, through limitations on demolition and removal of historic buildings, structures and sites to the extent it is economically feasible, practical and necessary. The demolition or removal of historic buildings, structures and sites in Park City diminishes the character of the City's Historic District and it is strongly discouraged. Instead, the City recommends and supports preservation, renovation, adaptive reuse and relocation within the Historic District. It is recognized, however, that structural deterioration, economic hardship and other factors not entirely within the control of a property owner may result in the necessary demolition or removal of a historic building, structure or site.

4.15. CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION. With the exception of any building or structure falling under the purview of Section 203 of the Uniform Building Code or undergoing complete renovation\reconstruction in compliance with this Chapter, no building, other structure or site deemed to be historically significant by the provisions of §4.13 may be demolished or removed without the prior issuance of a Certificate of Appropriateness (CAD) by the Community Development Department or the Historic District Commission (HDC). Application for a CAD shall be made on forms prescribed by the HDC and shall be made first to the Community Development Department.

(a) Determination of Significance. If, upon review of the application, the Community Development Department concludes that the building, structure or site sought to be demolished is significant according to the standards set forth in §4.13(a) herein, the application shall be processed under §4.16 and 4.17 as appropriate. Upon making said determination of significance, the Community Development Department shall provide a written explanation of its findings to the applicant. Any applicant disagreeing with such determination of significance may request a hearing pursuant to §4.13 within ten (10) days of being given notice of said determination. After the hearing, if the HDC concurs with the staff determination, the application shall be processed according to §4.16 and 4.17 as appropriate. If the HDC determines that the building, structure or site is insignificant, the Community

Development Director may issue the CAD after a waiting period as determined by subsection (b)(1) below.

(b) Determination of Insignificance. If, upon review of the application, the Community Development Department concludes that the building, structure or site sought to be demolished or removed is not significant according to the standards set forth in §4.13(a) herein, the Department may determine that issuance of a CAD is appropriate. If such a determination is made, the staff shall schedule the CAD as an informational item on the next available Historic District Commission agenda. The staff shall provide the application, background information, and the findings supporting the staff determination.

1. If the Historic District Commission concurs with the staff determination, the Community Development Director shall issue a CAD.

2. If the Historic District Commission determines that the building is significant, the applicant shall be required to process the CAD application through the processes outlined under §4.16 and 4.17 as appropriate, unless the applicant requests a hearing to contest the determination of significance pursuant to §4.13, in which case that section shall apply.

(c) Removal of Hazardous Buildings. If, upon review, the Chief Building Official determines the subject building, structure or site to be structurally unsound, and a hazardous or dangerous building, the Chief Building Official may issue a CAD.

(d) Requirement for Stay of Demolition. In the absence of a finding either of insignificance or of public hazard, the application for demolition or removal shall be stayed for 180 days.

4.16. PRE-HEARING APPLICATION REQUIREMENTS. Upon refusal of the Community Development Department to issue a CAD, a pre-hearing period of (45) days shall commence, during which time the owner shall allow the City to post and sustain a visible sign stating that the property is "threatened." Said sign shall be at least 3'x 2', readable from a point of public access and state that more information may be obtained from the Community Development Department for the duration of the stay. In addition, the owner shall conduct negotiations with the City for the sale or lease of the property or some interest in the property such as a facade easement, or take action to facilitate proceedings for the City to acquire the property under its power of eminent domain, if appropriate and financially possible.

At the end of the (45) days, the owner may request a hearing before the HDC upon showing that the above requirements have been met and all economic hardship information required by the HDC has been submitted. The applicant must also submit fees in accordance with the Park City Municipal fee schedule. The Department staff shall, within (14) days, notify the owner if any additional information is needed to complete the application. If the Department staff does not notify the owner, the application will be deemed complete. Within (45) days of receiving the completed application, the Department staff shall schedule a hearing regarding the application on the agenda of the HDC.

4.17. CAD HEARING FOR A SIGNIFICANT BUILDING, STRUCTURE OR SITE. At the hearing, the HDC will only approve demolition or removal of an historically significant building, structure or site if the owner has presented substantial evidence that demonstrates that unreasonable economic hardship will result from denial of the demolition or removal application.

(a) Economic Hardship Criteria. In order to sustain a claim of unreasonable economic hardship, the HDC may require the owner to provide information pertaining to whether the property is capable of producing a reasonable rate of return for the owner or incapable of beneficial use. The HDC shall adopt by resolution separate standards for investment or income producing and non-income producing properties. Non-income properties shall consist of owner occupied single-family dwellings and non-income producing institutional properties. The information requested by the HDC may include, but not be limited to the following: Purchase date, price and financing arrangements; current market value; form of ownership; type of occupancy; cost estimates of demolition and post-demolition plans; maintenance and operating costs; costs and engineering feasibility of rehabilitation; property tax information; rental rates and gross income from the property.

(b) Conduct of Owner Excluded. Demonstration of economic hardship by the owner shall not be based on conditions resulting from:

1. Willful or negligent acts by the owner; or

2. Purchasing the property for substantially more than market value at the time of purchase; or

3. Failure to perform normal maintenance and repairs; or

4. Failure to diligently solicit and retain tenants; or

5. Failure to provide normal tenant improvements.

(c) Written Findings. The HDC shall make written findings supporting their decision in the matter. The HDC may determine that unreasonable economic hardship exists and issue a CAD if the Commission finds that:

1. For income producing properties, the building, structure or site cannot be feasibly used or rented at a reasonable rate of return in its present condition or if rehabilitated and denial of the application would deprive the owner of all reasonable use of the property; or

   For non-income producing properties, the building, structure or site has no beneficial use as a residential dwelling or for an institutional use in its present condition or if rehabilitated, and denial of the application would deprive the owner of all reasonable use of the property; and

2. The building, structure or site cannot be feasibly moved or relocated.

(d) Final Decision.

1. Approval. If the HDC approves the application and issues the CAD, the owner may apply for a demolition permit with the Building Department and proceed to demolish the building, structure or site in compliance with other regulations as they may apply. The HDC may, as a condition of approval, require the property owner to provide the HDC with documentation of the building, structure or site according to the standards of the Historic American Building Survey (HABS). Such documentation may include photographs, floor plans, measured drawings, an archeological survey or other information specified by the HDC. The HDC may also require the owner to incorporate an appropriate memorialization of the building, structure or site, such as a photo display or plaque, into the proposed replacement project of the property. Approval of a CAD shall be valid for one year.

2. Denial. If the HDC denies the application for demolition, the owner shall not demolish the building, structure or site and the City may provide the owner with information regarding financial assistance for the necessary rehab or repair work, as it becomes available. The owner may not re-apply for demolition for a period of three years from the date of the HDC's final decision, unless the building, structure or site is structurally unsound or substantial changes in circumstances have occurred other than those caused by the negligence or

intentional acts of the owner, in which case the owner may apply as conditions warrant.

3. Appeal. All final decisions of the HDC may be appealed to the City Council within ten (10) days.

4.18. NEW CONSTRUCTION. New construction and exterior remodeling within the Historic District zones shall conform to architectural standards and regulations promulgated by the Historic District Commission and adopted by the City Council. These standards shall be applied by the staff and the Commission, subject to the review process.