PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 3, 2008

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, April 3, 2008.

Closed Session
4:00 p.m. Property

Work Session

4:45 p.m.	Council questions/comments	
5:00 p.m.	Uses at the Farm	P 5 - 6
5:20 p.m.	Trails master plan	P. 7 - 34
5:50 p.m.	Break	

Regular Meeting
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Resolution acknowledging Friends of the Library P. 35

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

IV CONSENT AGENDA *(Items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")*

1. Consideration of approving a Resolution acknowledging Friends of the Library P. 35
2. Consideration of approving a Service Provider Contract, in a form approved by the City Attorney, for the Police Facility Art Project in the amount of $40,000 P. 36 - 52

V OLD BUSINESS *(Continued from a previous meeting)*

City Council call-up of a Planning Commission decision of February 13, 2008 regarding an amendment to the technical report for Empire Pass affordable-employee housing to be provided as required by the Flagstaff Development Agreement, as amended - Talisker Corp. P. 53 - 64

(a) Continuation of public hearing
(b) Action

VI NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

Consideration of an Ordinance approving the Knoll Estates (aka Deer Valley Club Estates) Lots 17 and 18 Amended Subdivision Plat, located at 7888 Aster Lane, Park City, Utah P. 65 – 105 (Exhibit E under separate cover)

(a) Public hearing

(b) Action

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 10, 2007

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, April 10, 2007.

Posted: 03/31/08
See www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

April 2008

10 **No meeting**

17 Planning Commission stipend – work
"The Yard" operation on Kearns Blvd – 2008 Film Festival – work
Eden update - work
Ordinance approving a plat amendment for 154 McHenry Avenue, Park City, Utah
Ordinance – 313 Daly Avenue plat amendment – FA
Ordinance – 1615 Park Avenue Cole Sport rezone - FA
Consideration of approval of an amendment to the Water Agreement between the City and Talisker Corp, in a form approved by the City Attorney
Amendment to Sundance MOU
MFL – A Day at the Races – Men of McPolin – May 10, 2008 – partial street closure Main Street between Heber and 9th Street – MP
Resolution – Cody Wheaton

24 PC Heights Annexation
Resolution setting forth a strategic plan for the Park City Ice Arena
MFL – Friday Skate Series – amplified music – 5/16 and 5/30 – 5 p.m. to 7:30 p.m. – Park City Recreation Department - JB

May 2008

1 **Roger gone**
Presentation of budget
MFL – Utah State Firemen's Parade – Main Street – June 12, 2008 – RR
MFL – Savor the Summit (aka Taste of Park City) June 20 and 21, 2008 – Main Street closure and use of City Park
MFL – Wasatch Back Relay – June 21, 2008 – Quinns Junction

3 Move to Miners and Library and Education Center for meetings

8 **No meeting**

15

22

29

Pending Items:

Affordable housing resolution
Update on water supply and demand
Consideration of an amendment to the Burbs LLC Annexation Agreement/Affordable Housing
Resolution - Trails Master Plan
Carrying capacity/market analysis survey
Wild land interface issues

City Council
Staff Report

Subject: McPolin Farm
Author: Denise Carey
Department: Recreation/Golf/Library
Date: April 3, 2008
Type of Item: Informational

Recommendation: Staff recommends approval of the Museum brown bag lunch series at the Farm. Staff also recommends additional use of the Farm using the criteria listed not to exceed 12 events per year.

Topic:
Community group use of the Farm.

Background

In 2001, a CUP was approved for the Farm that included 12 City sponsored events to be held at the Farm each year.

On June 1, 2006, staff brought to Council the first draft of a strategic plan for the McPolin Farm. One of the items discussed was the development of a process to allow other community groups to apply for use of the Farm for new community events. These selected events would fall under the existing Conditional Use Permit which allows a total of 12 events per year. All requests would be reviewed by City staff and members of the Friends of the Farm. The recommendation would be presented to the City Council to consider "sponsoring" the events so that they may take place at the farm. Criteria such as open to the public, preserving the historic nature and parking could be used to select events. The additional events could, if there is a fee charged for the event, provide a rental income for the property which in turn could be used to assist in funding the capital improvements needed.

The Friends of the Farm (FOF) usually sponsor three events per year. The FOF and staff would like to encourage other community groups to use the property, if sponsored by the City.

During the Council meeting, Council liaison Candy Erickson suggested developing administrative criteria for events at the farm. Staff developed the criteria to be:

1. Open to the public
2. No public parking, must provide transportation plan or walk, bike or bus to the event.
3. Dependent on any fees, a percentage of proceeds to be donated to the FOF Farm improvement account.

4. Approved by City Council
5. Meet the criteria of the CUP
6. Foster community use of the Farm.

The museum staff acknowledge that the museum will be responsible for clean up and set up.

Analysis

City staff and FOF agree these brown bags meet the criteria and recommend the use. This will bring the estimated number of events at the Farm to six for this year. Staff will use the criteria above when receiving requests.

The Museum has requested to use three Thursday's in May for 1 to 1 ½ hours each Thursday. These brown bag educational seminars are free to the public. The speakers to date will be Hal Compton, History of the McPolin Farm. They are trying to get Eileen Hallet Stone through the Utah Humanities Council. Her talk "Utah Faces of Judaism". Dick Pick, president of the Board of Trustees will talk about the Museum and what is happening in the upcoming year.

Department Review:

The City Mangers Office, Recreation – Golf - Library Department have reviewed this report.

Alternatives:

- **A. Approve the request:** Allow the Museum to hold the brown bag lunch series.
- **B. Deny the request:** The Friends will continue to be the only group to hold events at the Farm.
- **C. Continue the Item:** Council could direct staff to provide further criteria for event use and approval.
- **D. Do nothing:** This would have the same effect as alternative B.

Significant Impacts: None

Recommendation: Staff recommends approval of the Museum brown bag lunch series at the Farm. Staff also recommends additional use of the Farm using the criteria listed not to exceed 12 events per year.

City council
Staff Report

SUSTAINABILITY DEPARTMENT

Author: Matt Twombly & Jonathan Weidenhamer
Subject: Trails Master Plan Update
Date: April 3, 2008
Type of Item: Informational

Summary Recommendation
Staff recommends the City Council discuss the outlined next steps to update the Trails Master Plan (TMP). The current plan is to amend the Trails Master Plan during the budget process, and will include discussions on both (1) Urban Trails (Walkability), and (2) Back Country Trails; as well as both capital spending and ongoing operational and maintenance costs.

Background
The Trails Master Plan (TMP) was first developed as part of the Park City Parks and Recreation Master Plan in 1982. The TMP was updated and adopted by Council Resolution in 1992 and 2003, and has subsequently enabled the preservation and implementation of critical public trail easements and capital improvements in the development of all subdivisions since its adoption.

As the Park City area continues to develop and grow there is an increasing need and demand for recreational hiking and biking trails, trail-head parking, neighborhood trails and connections, sidewalks, bicycle lanes, signs and maps. There is a desire in the community to better identify, develop, and preserve pedestrian and bicycle access as the land becomes developed. The TMP is a planning tool and resource to help accomplish the needs and desires of the community for recreation, help support the transportation and transit systems, and provide viable alternative transportation systems and access. The TMP is not intended to set forth strict standards, but to present sound guidelines for the location, policies, type and construction of trails and other non-motorized capital improvements.

Adoption of update/addendum to TMP to recognize Walkability Study
Aside from implementation (building capital projects) a final step of the City Walkability efforts will be the adoption of an update to the TMP to reference and support at a policy level the technical Landmark Walkability Study completed in 2007. Although outside the budget process, this policy discussion and subsequent adoption of the TMP addendum should take place concurrently with the budget process to ensure consistency. A draft of an addendum to the TMP is included (Exhibit A).

Capital Projects/ Bond Spending/ O&M Implications & the Budget Process
During the upcoming Budget discussions, Council will be asked to consider funding options related to both urban and back country trails. The discussion for the urban trail system will be based in the Walkability project recommendations, and will have both capital (bond monies) and on-going operational and maintenance (O&M) impacts.

Discussions relating to backcountry trails will be more focused on a level of service (LOS) standpoint, which has mostly O&M implications. During the budget process, staff will provide recommendations on how to provide maintenance of trails based on Council's desired service levels.

Analysis

In addition to a concurrent walkability policy addendum to the TMP, staff anticipates addressing the issues outlined below as part of the budget discussions:

I. **Backcountry (recreation) Trails**
   a. Id what 2003 TMP currently says we should do
   b. Id cost for 2003 LOS identified above ($/mile)
   c. Id current LOS & costs
   d. Compare to other jurisdictions
   e. Id staff recommended LOS & cost

II. **Urban Trails (Walkability & Bond Spending)**
   a. Capital Projects - WALC & Staff recommended projects based on Landmark Study (Tiers I-V)
      i. Tiers I & II – highest priority capital projects; including recommendations on project timing
      ii. Spine system – financial placeholder & timing for future implementation
      iii. Tiers III – V - (FY 2010 budget & beyond)
   b. Policy Related Item discussion
      i. O&M costs (general, necessary on-going costs)
      ii. Level of Service O&M Costs
         1. lighting
         2. Sidewalk snow removal
            a. existing priorities
            b. criteria for consideration of any new snow removal routes
            c. consideration to new WALC projects
            d. Enforcement of existing Ordinance regarding snow removal on sidewalks (14-4-9 of the Park City Code*)

***14- 4-9. SIDEWALKS TO BE CLEARED**.
It shall be the duty of every property owner to clear the sidewalks and stairways at the perimeter of his property from accumulation of snow within a period of eight hours from the end of each storm. It shall be unlawful to permit an accumulation of more than eight inches (8") of snow to remain on the sidewalk for more than eight (8) hours at a time.

Discussion

Staff does not seek specific policy direction regarding these specific topics at this time. Staff seeks direction to whether the general outline and format meets Council's expectations as the appropriate way to frame the policy and spending discussion for the upcoming budget process.

Recommendation
Staff recommends the City Council discuss the outlined next steps to update the Trails Master Plan (TMP). The current plan is to amend the Trails Master Plan during the budget process, and will include discussions on both (1) Urban Trails (Walkability), and (2) Back Country Trails; as well as both capital spending and ongoing operational and maintenance costs.

Exhibits
Exhibit A – Draft TMP Update*

EXHIBIT A

PARK CITY TRAILS MASTER PLAN UPDATE
WALKABILITY AND BIKEABILITY

TABLE OF CONTENTS

LIST OF FIGURES

1.0 Background and Context

Since its beginnings as a late-nineteenth-century mining town, walking has been the primary form of negotiating the steep and hilly streets of Park City. In the earliest days, there was little or no delineation between the areas for walking and the areas for driving - pedestrian beware.

As the town has grown and evolved, the form and function of the city's streets have modified accordingly. Park City has transcended its mining background and resort skiing roots, blossoming into a place with high-level, year-round recreation and entertainment expectations, and a populace drawn to these activities. Hiking and biking have become major recreation draws, for visitors and residents alike.

Examples of Historic Park City Streets and Sidewalks

In recent decades, city districts that were originally designed as places for second homes and temporary lodging have morphed into full-time neighborhoods – sometimes lacking sidewalks and other amenities that make walking and biking safe and pleasant. Residents of these neighborhoods – adults and children alike – look forward to walking and biking to school, work and other destinations as part of their daily lives. However, sharing the roads has become increasingly difficult as vehicular traffic has increased and the roadways have become more crowded with vehicles.

Park City is recognized as a world-class recreation destination. It is home to renowned skiing and winter sports activities, in addition to a wide range of fair-weather sports and draws, including hiking, mountain biking and cycling. However, some residents and others feel that walking and biking in the built-up part of the city is less than desirable, lagging behind hiking and biking in the nearby backcounty.

The recently-completed Park City Walkability and Bikeability Neighborhood Study (March 2007) indicates that Parkites desire a community that is safe and well-connected for walkers and bikers. The study also indicates a desire to preserve the tight and compact community form that makes the city a good place to walk and bike – for residents, tourists and visitors alike.

2.0 Purpose of the Walkability and Bikeability Update

The Park City Trails Master Plan Update - Walkability and Bikeability builds upon the information and direction provided in the Park City Trails Master Plan, which was adopted in March 2003. The update addresses the need and desire for a safe, pleasant and well-connected biking and pedestrian system in Park City proper.

The purpose of the update is to analyze the “walkability and bikeability” of Park City and in the process provide planning and design suggestions that will improve walking and biking in Park City. The study assesses walking and biking within the urban environment of the city, as opposed to the surrounding system of off-road and backcountry trails.

The Walkability and Bikeability update builds on and coordinates with the approach and information contained in the Park City Walkable/Bikeable Neighborhood Study, which was presented to the City Council in March 2007.

3.0 Existing Conditions

As illustrated in Figure 1, there are approximately 41 miles of paved urban trails within city boundaries of Park City. These consist of seventeen miles of asphalt sidewalks and trails; 20 miles of concrete sidewalks and trails; and four miles of unpaved trails. In addition to the sidewalks and trails listed, approximately 4 miles of cycle lanes are located along the edge of Park City’s streets.

The bulk of Park City's trails are located alongside existing streets in the form of sidewalks and roadside trails. The remaining facilities are located primarily along two fully-separated trails - the UPRR Rail Trail and Poison Creek Trail. The existing trail and sidewalk system provide connections and linkages with a wide range of destinations and community places – as illustrated on Figure 2.

At present, approximately half of the existing walking and biking system is plowed by Park City during the winter, representing a significant maintenance commitment on the part of the city. Only the Poison Creek Trail includes a system of pedestrian lighting.

As new trails are developed and existing facilities enhanced, determining the levels of maintenance and lighting are of particular concern.

Examples of Historic Walking and Biking Environments

4.0 Walkability/ Bikeability Vision

Park City is envisioned as a place with neighborhoods and districts where people can live within walking distance to most places they want to visit - schools, work, stores, parks, churches and so on. The city is a place where walking, biking and mass transit are well-connected and easy, with corresponding environments that are pleasant and safe to walk or bike to at all hours of the day.

The Park City Walkability/ Bikeability Vision foresees a community that is accessible to all persons, including those with disabilities, and is compliant with the regulations of the Americans with Disabilities Act (ADA). The design and layout of the Park City walking and biking environment is unique, reflecting the special physical and social character of the mountain community. It is a place that has a distinctive identity, and is a place people want to live and visit.

The Park City Walkability/ Bikeability Vision supports the five goals and established for the Park City Walkable/Bikeable Neighborhood Study (March 2007), as follow:

GOAL 1: SAFETY
Walking and biking in Park City should be safe and pleasant. The needs of those least able to negotiate busy streets – children and elderly citizens, for example – should set the standard. Residents and visitors should be able to safely walk and bike to school, shopping, work and other destinations, and access public transit.

GOAL 2: EFFICIENCY
Walking and biking in Park City should be easy and efficient. The urban walking and biking environment should be capable of helping to reduce vehicle trips and/or mitigate traffic congestion.

GOAL 3: ENHANCES REGIONAL CONNECTIONS
The Park City walking and biking environment should be highly integrated and interconnected. Facilities should enhance regional walking and cycling mobility and access, particularly along primary walking/biking routes including SR-224, SR-248 (Kearns Blvd.), Bonanza Drive, the Rail Trail and other significant regional links.

GOAL 4: ENHANCES LOCAL CONNECTIONS
The Park City walking and biking environment should be developed in a manner that improves intercity mobility to and through the city’s neighborhoods. Connections should be seamless and obvious, ultimately linking with regional routes and activities. Walkable and bikeable design for both residential and commercial areas should be encouraged.

GOAL 5: COST AND MAINTENANCE
Walking and biking in Park City should be cost effective, providing the greatest value to taxpayers. Facilities should serve a large number of users, and build upon established routes and ways.

Figure 1
Existing Walking and Biking System

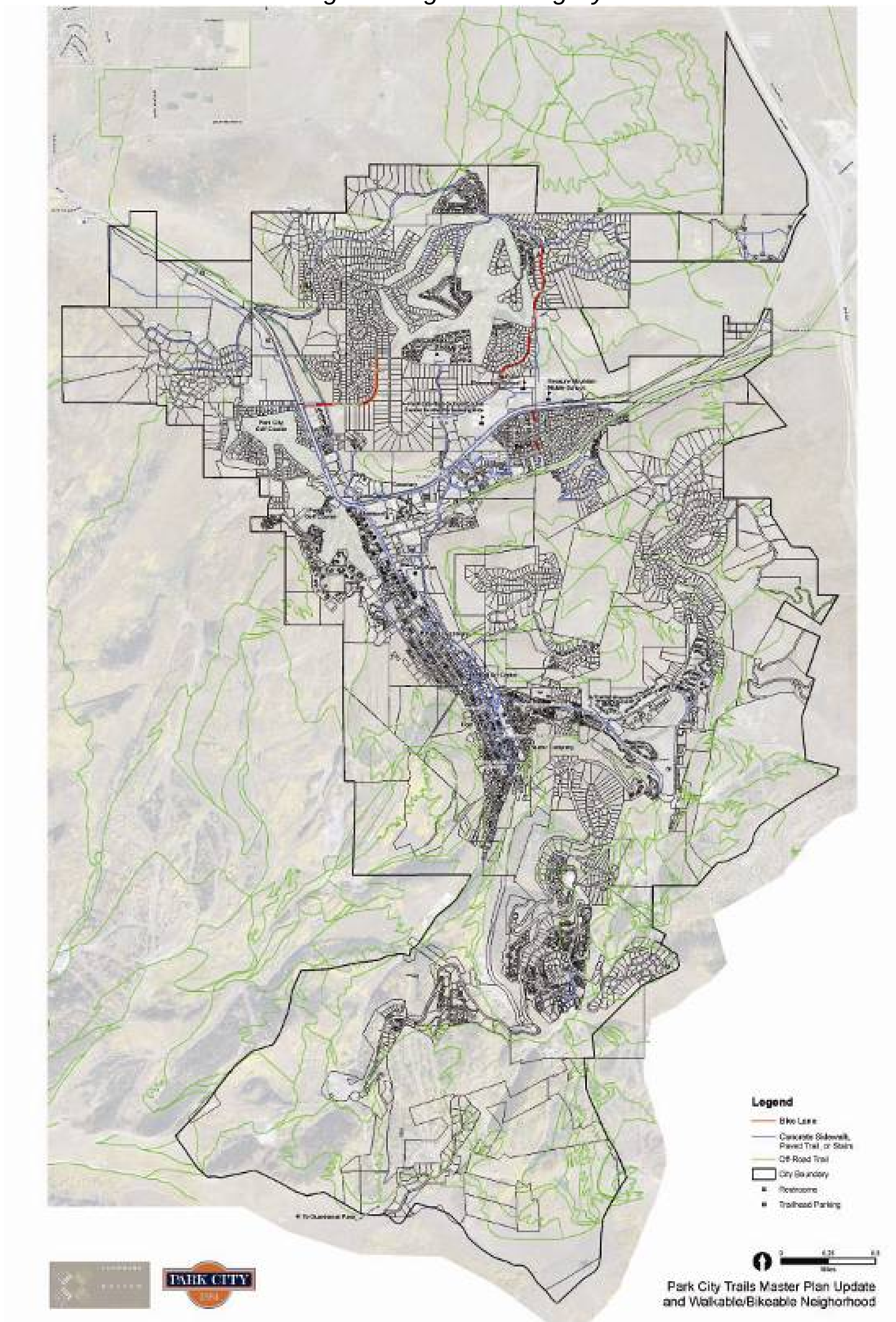
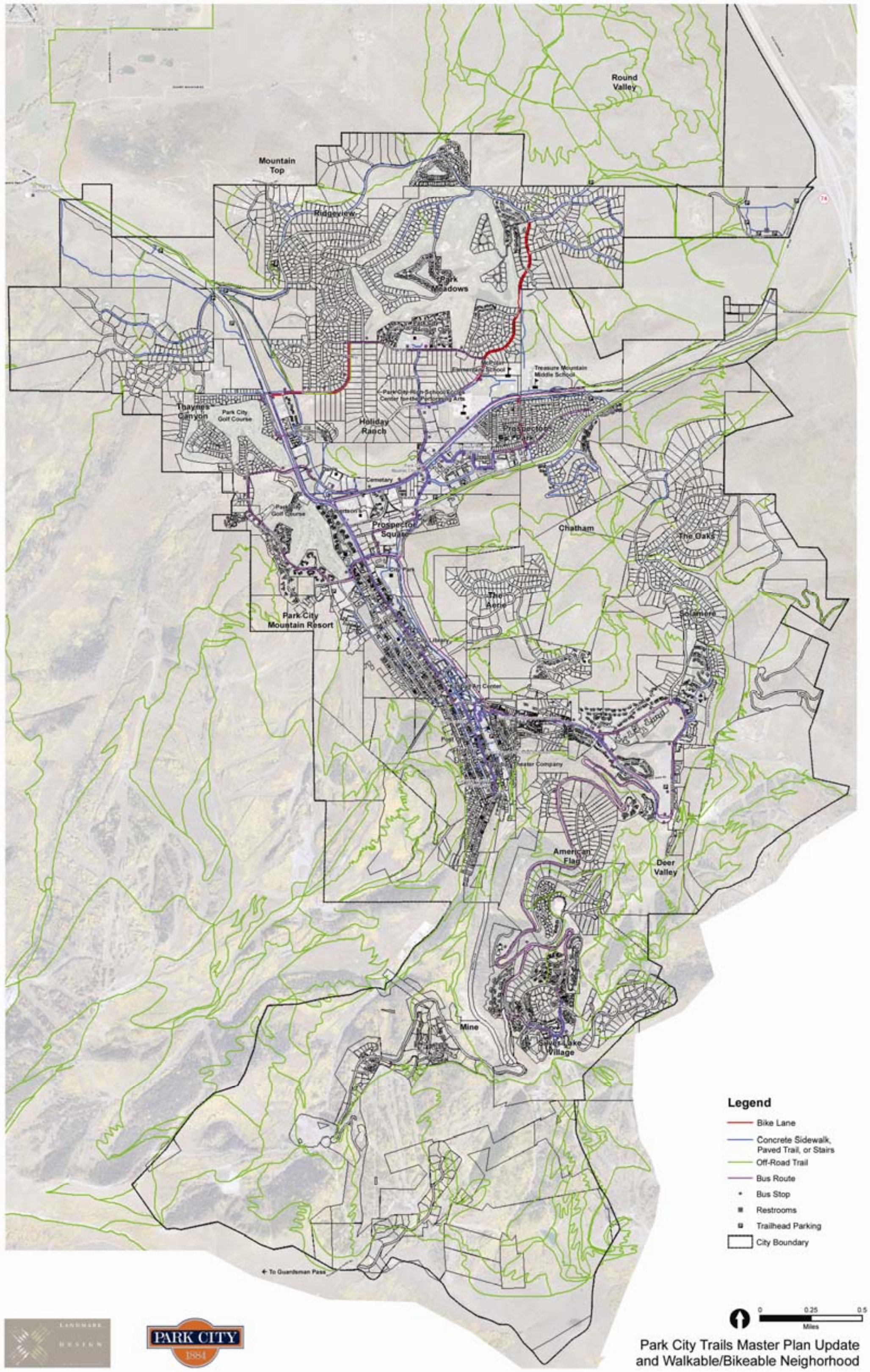


Figure 2
Existing Destinations and Community Locations



5.0 Walkability/Bikeability Planning Concept

The Park City Walkability/Planning Concept builds upon the well-established walking and biking system currently in place, while supporting enhancements that create a high-quality, interconnected system.

The Planning Concept envisions a “Spine System” that will serve as the primary Walking/Biking route. The "Spine System" is supported by a system of “Interconnected Neighborhood Linkages”. Together, the various sidewalks, trails, pathways and routes which comprise these systems provide a high-quality, interconnected system for walking and biking through the community, and for accessing trails beyond the city limits.

The “Spine System” (Figure 3), is only partially implemented at present. In order to be fully functional, it will ultimately incorporate a system of interconnected sidewalks and trails located along the edges of major thoroughfares (SR-224, SR-248 /Kearns Boulevard and Bonanza Drive).

The “Spine System” will provide good access to schools, shopping and work places, and easy connections with transit. The system also improves or eliminates crossings on busy roads, fixes current gaps and missing connections, will serve a large number of users, and maximizes underutilized existing walking and biking facilities to the greatest degree possible.

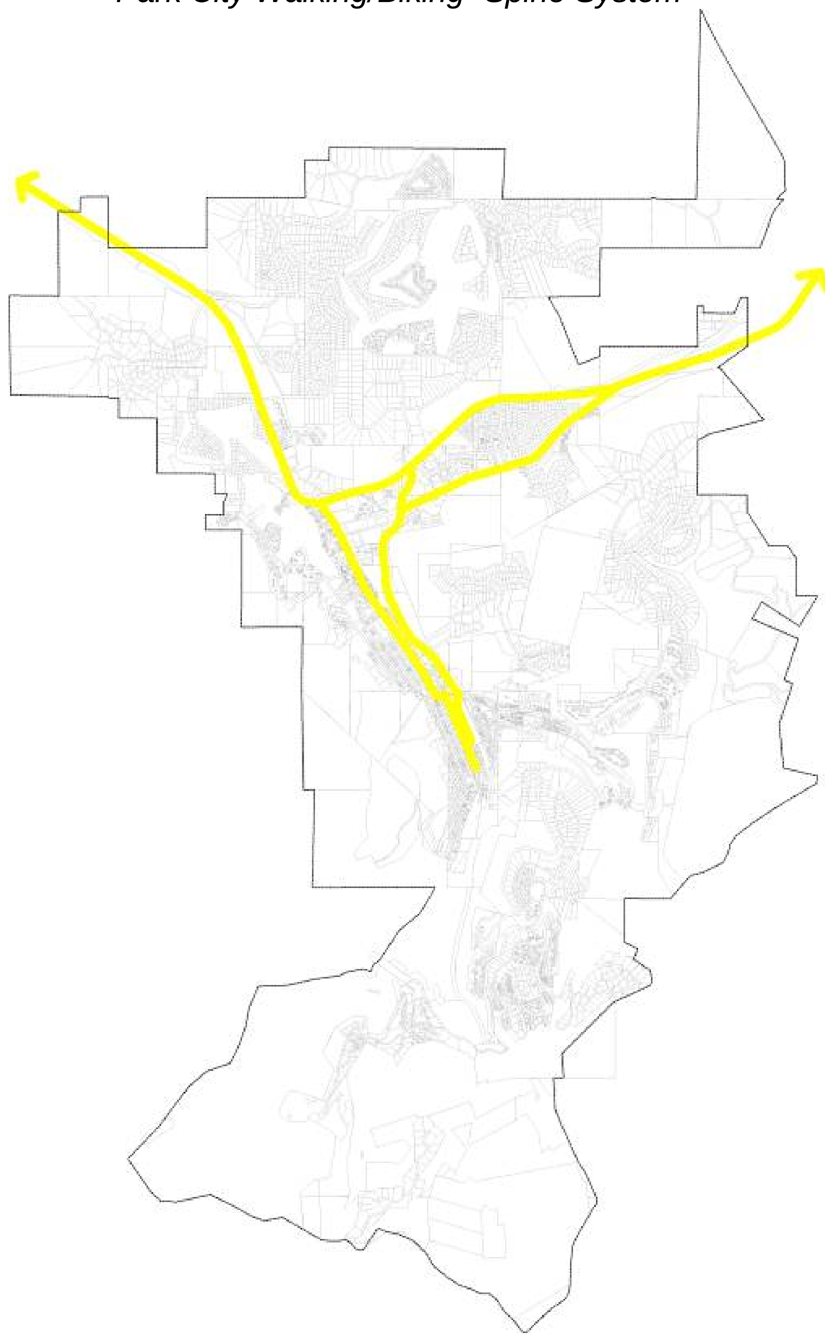
As illustrated in Figure 4, a system of “Interconnected Neighborhood Linkages” connects surrounding neighborhoods and districts with the “Spine System”, helping to create a high-quality, fully-connected walking and biking environment in the city. The range of walking and facilities which compose this system are by nature more diverse than those which make up the "Spine System" encompassing various sidewalks, pathways, trails and routes.

6.0 Walkability/Bikeability Recommendations: Goals and Policies

Specific walkability/bikeability enhancement projects and priorities are contained in the Park City Walkable/Bikeable Neighborhood Study (March 2007). The corresponding implementation and phasing recommendations contained in that study are supported in this update.

The Park City Walkable/Bikeable Neighborhood Study (March 2007) undertook an extensive and comprehensive process to identify projects and priorities. However, discretion should be afforded to the Park City Council and staff to use their judgment, experience, and institutional knowledge to determine the legitimacy and viability of individual projects. Costs included in the study do not generally include the enforcement and administrative costs of improvements. An example is a crosswalk where paint needs to be reapplied in subsequent years and enforcement of crosswalk regulations strains law enforcement resources. All walking/biking improvement projects, similar to other capital projects within Park City, need to be considered within the overall context of Park City as well as the

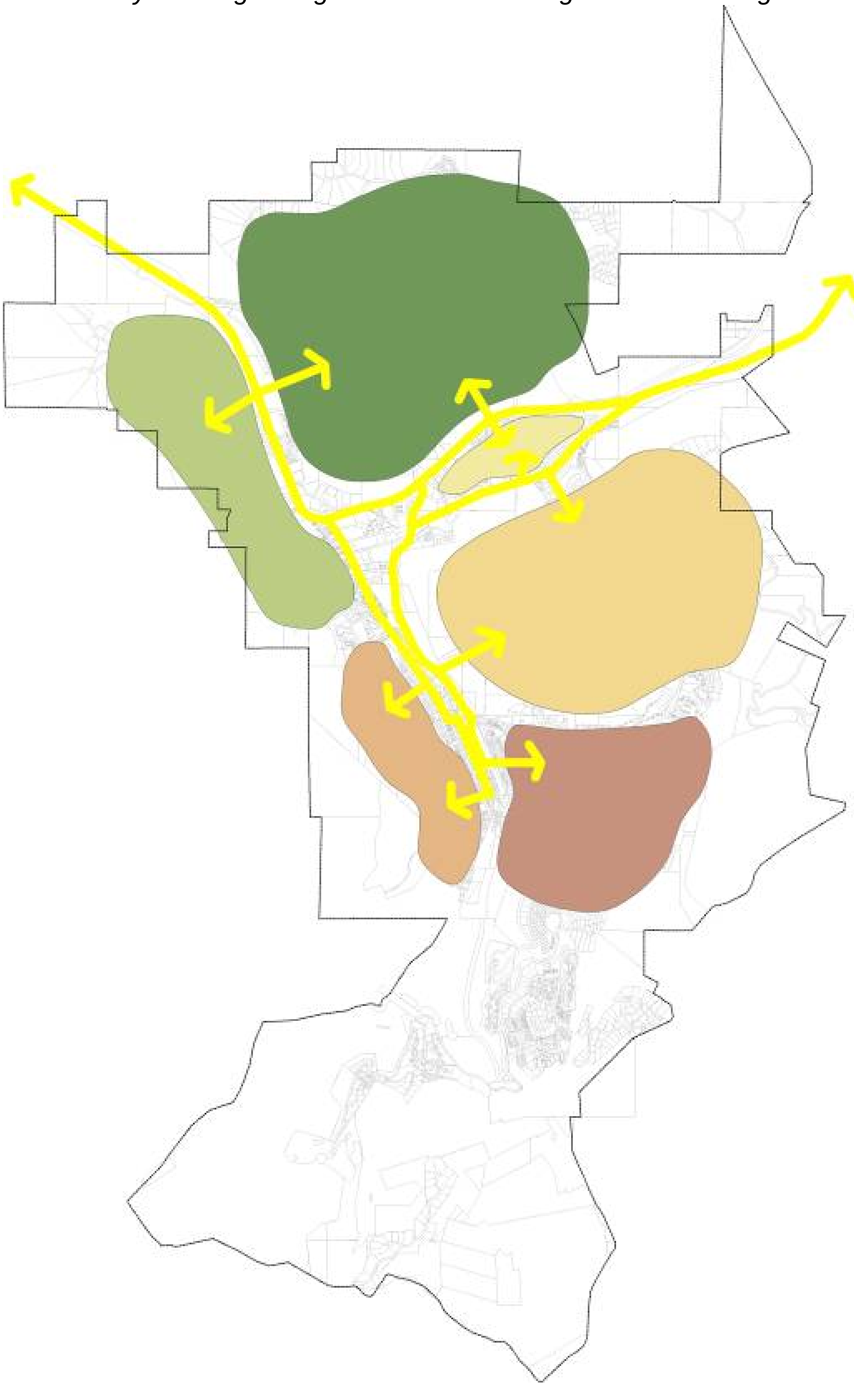
Figure 3
Park City Walking/Biking "Spine System"



existing traffic calming program, the Manual on Uniform Traffic Control Devices (MUTCD), and AASHTO design standards.

The following recommendations focus on maintenance and policy issues identified as part of the Park City Walkable/Bikeable Neighborhood Study (March 2007), and are intended to aide decision-makers as they address walkability and bikeability issues in the future.

Figure 4
Park City Walking/Biking Interconnected Neighborhood Linkages



Goal 1
To promote walking and biking in Park City

Policy: Improve existing walking and biking facilities in a manner that meets community desires and aspirations.

Implementation Measure: Review implementation actions outlined in the Park City Walkable/Bikeable Neighborhood Study (March 2007) on a regular basis and make adjustments as necessary.

Policy: Encourage pedestrian-friendly development and design within and near neighborhoods, districts and community destinations.

Implementation Measure: Evaluate future development and re-development proposals to ensure compliance with walking and biking needs and aspirations of the community.

Implementation Measure: Provide safe routes to school in all residential areas, utilizing a mix of sidewalks, trails and other design features as appropriate.

Implementation Measure: Link Park City's neighborhoods and destinations as part of a comprehensive system of trails and pathways.

Policy: Consider a wide range of "simple" enhancements to promote safe walking and biking in Park City.

Implementation Measure: Create a special fund to implement simple, on-going enhancement programs, such as striping and curb cut solutions.

Implementation Measure: Consider modifications of standard crossing solutions, including pedestrian "flags" and countdown pedestrian crossing lights.

Goal 2
To ensure good maintenance of existing and future walking and biking facilities

Policy: Ensure that snow removal is adequate to safely facilitate walking during winter months.

Implementation Measure: Review and update as appropriate the snow removal plan for all facilities comprising the Park City walking/ biking "Spine System".

Implementation Measure: Review and modify existing snow removal policy for non-"Spine System" facilities to ensure legislation is implementable and enforceable.

Implementation Measure: Review, modify and enforce as appropriate the snow removal policy for non-"Spine System" facilities by adjacent land owners and/or operators.

Policy: Ensure the lighting of walking and cycling facilities is adequate to safely facilitate walking during nighttime hours.

Implementation Measure: Provide pedestrian lighting along "Spine System" facilities in a judicious manner. Lighting solutions should be carefully developed to generally meet and acknowledge conflicting policies (night sky, in particular).

Implementation Measure: Light minor trails when appropriate and feasible according to street lighting standards for neighborhoods.

Policy: Provide walking/ biking signage that promotes wayfinding and safe movement through the community.

Implementation Measure: Design and develop a system of walking/ biking signage that is easy to read, attractive and part of coordinated standard furnishing palette solution.

Implementation Measure: Minimize the use of multiple sign locations, posts and standards to convey similar and related messages.

Implementation Measure: Adhere to the standards and requirements for signs as detailed in the Manual on Uniform Traffic Control Devices (MUTCD).

Policy: Maintain existing and future walking/ biking facilities according to industry and local standards.

Implementation Measure: Ensure ADA and common-sense accessibility standards are met as required.

Implementation Measure: Ensure AASHTO standards for trails are met as required.

Goal 3
To ensure walking and biking policy and ordinances meet the needs and desires of the community

Policy: Ensure that construction and maintenance budgets are adequate to meet needs and expectations

Implementation Measure: Conduct regular review of funding policies and make adjustments as required.

Policy: Promote educational efforts to inform and sensitize residents and visitors of the prominent role of walking and biking in the community.

Implementation Measure: Develop and fund a walking/biking educational program.

Implementation Measure: Promote walking and biking in Park City as part of a concerted marketing approach.

Policy: Merge local walking/ biking enhancement efforts with regional needs and desires.

Implementation Measure: Evaluate the development of park-and-ride lots and other means that encourage bicycle commuting.

7.0 Funding Options and Strategies

Local governments in Utah have a number of tools available for financing capital facilities on a tax-exempt basis and for encouraging economic development. This section provides a summary of financing mechanisms and economic development incentives available to Park City that may be helpful in moving forward with the strategies and recommendations of this report.

The summary includes an evaluation of appropriate financing mechanisms for the various strategies and recommendations included in this report; and a review of: 1) financing mechanisms for capital improvements; and 2) economic development incentives. While there is some overlap between these two areas, as capital infrastructure plays a heavy role in furthering economic development, we have chosen to discuss these areas separately.

Prior to summarizing the financing mechanisms that may be used for each type of capital project, we will list a few of the key federal tax laws that come into play when contemplating the issuance and timing of issuance of tax exempt bonds.

- With the exception of some facilities that can be funded through tax-increment bonds, all facilities funded must be owned by the tax-exempt issuer and generally cannot be utilized for the benefit of a single private entity;
- The issuer must reasonably expect to utilize all proceeds from tax-exempt bonds within a three-year period. Furthermore, specific percentages of draw-downs must occur each quarter over a two-year period if the issuer wants to keep any potential arbitrage that might be generated; and
- If the issuer chooses to utilize capitalized interest in the structuring of the debt, the capitalized interest can only be funded for a three-year period or less.

Other general tax-exempt financing considerations are:

- One hundred percent financing is typical for most projects inclusive of all costs of issuance associated with the debt offering;
- With the exception of general obligation bonds, all bonds will require some type of debt service reserve fund, either funded from bond proceeds or with a surety policy, unless privately placed;
- Generally, debt service can be structured to match estimated available revenues that will be used to pay the debt; and
- State law does not allow for the use of “double-barrel” bonds, those that pledge both an asset and a revenue stream.

Financing alternatives that are available to local governments in Utah are summarized below:

Capital Infrastructure Financing

General Obligation Bonds - General Obligation bonds (“GO”) are subject to simple majority voter approval by the constituents of the issuing entity. General obligation elections can be held two times each year, in November and June, following certain notification procedures that must be adhered to in accordance with State Statutes in order to call the election (pursuant to Utah State Code 11-14-2 through 12). Following a successful election, it is not necessary to issue bonds immediately, but all bonds authorized must be issued within ten years. Once given the approval to proceed with the issuance of the bonds, it would take approximately sixty days to complete the bond issuance.

General obligation bonds can be issued for any governmental purpose as detailed in Section 11-14-1. The amount of general obligation debt is subject to the following statutory limitations:

- Counties are limited to two percent (2%) of the total taxable value of the County;
- School Districts are limited to four percent (4%) of the total taxable value in the District;
- Cities of the 1^{st} and 2^{nd} class are limited to a total of eight percent (8%) of the total taxable value, four (4%) for general purposes and four (4%) for water, sewer and lights; and
- Cities of other classes or towns are limited to a total of twelve percent (12%) of total taxable value, four percent (4%) for general purposes and eight percent (8%) for water, sewer and lights.

Notwithstanding the limits noted above, most local governments in Utah have significantly less debt than the statutory limitations. Practical limitations imposed on the market will be based on ratios such as general obligation debt per capita and general obligation debt compared to total taxable value. Medians vary somewhat depending on the size of the issuer.

Pursuant to state law, general obligation bonds must mature in not more than forty years from their date of issuance. Typically, however, most GO bonds mature in twenty-five to thirty years.

Since general obligation bonds are secured by the taxing power and are a full faith and credit pledge of the issuing government, they offer the lowest credit risk to the bondholders and the lowest overall cost. In today's market, for an 'A' rated credit with AAA credit enhancement, structured with twenty-year level debt service, the issuer could anticipate a net interest cost (NIC) of approximately 4.45 percent.

Generally speaking GO debt is the lowest cost tax-exempt financing. If Park City desires to make substantial improvements to the downtown area in terms of sidewalks, trails, pathways, routes, pedestrian bridges and tunnels. It is advisable to conduct a survey of current residents of Park City to determine the likely viability of any potential tax increase for infrastructure needs in the project area. The downside to GO bonds is that they require an election, and election outcomes are uncertain and can be costly (win or lose). GO bonds are generally issued when the benefits are viewed as accruing to the community as a whole – not just a specific area of town. Depending on the nature of the capital improvements, GO bonds may be a viable means of financing capital infrastructure in downtown.

A recent example where GO bonds were issued to construct, repair and replace various elements of municipal infrastructure including roads and water improvements was in the City of Orem, Utah. Voters approved the issuance of not to exceed $15,500,000 million in GO bonds a portion of which was issued early in 2005 and a portion will be issued early in 2006.

Excise Tax Revenue Bonds - Revenue bonds payable from excise tax revenues are governed pursuant to Utah State Code Section 11-14-307. Without the need for a vote, Cities and Counties may issue bonds payable solely from excise taxes levied by the City, County or those levied by the State of Utah and rebated to the City or County such as gasoline taxes or sales taxes.

Sales Tax Revenue Bonds - Sales taxes are also collected and distributed by the State of Utah. With a change in the state's constitution in November of 2000, and with a clarification from the Attorney General's office regarding a technical matter, the first non-voted sales tax revenue bond was issued in July 2001. Sales tax revenues can also be utilized as a sole pledge for repayment of debt without a vote of the constituents and funds can be utilized for the acquisition and construction of any capital facility owned by the issuing local government. They are frequently used for parks and recreation facilities or other City buildings such as City Hall or Public Safety buildings.

State law limits the amount of bonds that can be issued through this mechanism by limiting the pledge to a maximum of 80 percent of the preceding fiscal year's receipt of sales tax revenues. However, sales taxes are not limited to a pledge for a ten-year period but can legally be issued for up to forty years. While this state law provides a

1.25X debt service coverage ratio, due to the elasticity of sales tax revenues and local governments typical heavy reliance on the revenues for general government operations, the market will demand a significantly higher debt service coverage ratio of at least two or three times revenues to debt. Also, most sales tax revenue bonds are structured to mature in twenty-five years or less.

Depending on the ownership of the capital facilities to be financed, the City could issue sales tax revenue bonds. The issuer would need to adopt a Notice of Intent to Issue Bonds and allow for a thirty-day contestability period prior to closing on the bonds and must also hold a public hearing. Once the Notice of Intent has been adopted, it would take approximately sixty to seventy-five days to complete an issuance of these bonds.

In today's market, for an 'A' rated sales tax revenue bond credit with AAA credit enhancement, structured with twenty-year level debt service, the issuer could anticipate a net interest cost (NIC) of approximately 4.60 percent.

An example of this funding mechanism is a $10,745,000 sales tax revenue bond issued by South Ogden City for the financing of a new city complex inclusive of a City Hall, Police Station and Fire Station. The bonds have a twenty-five year maturity, were rated 'A' by S&P and credit enhanced by FGIC, a 'AAA' insurer.

Municipal Building Authority Lease Revenue Bonds ("MBA") - Pursuant to the Utah Municipal Building Authority Act (17A-3-301) Cities, Counties and School Districts[1] are allowed to create a non-profit organization solely for the purpose of accomplishing the public purpose of acquiring, constructing, improving and financing the cost of a project on behalf of the public body that created it.

The security for a MBA bond is a first trust deed on the real property, any buildings or improvements and any security interest in any furniture, fixtures and equipment financed pursuant to a particular MBA transaction. The only 'pledge' by the City is that it will remit any lease payments received from the MBA to the trustee. Bonds structured in this fashion are not considered long-term debt as the lease payments are subject to an annual appropriation by the City.

Due to the security structure, the best types of capital facilities to finance under this mechanism are those that are deemed as "essential purpose" by the bond market. Municipal buildings such as city halls, public safety buildings and public works buildings are considered essential public purpose. That stated, many other capital improvements and facilities have been funded using MBA bonds including parks and recreation facilities. To strengthen the credits of facilities that are not deemed as essential purpose, it is common to cross-collateralize facilities. However, under Utah law once a facility has been completely paid for and is owned outright by the local government, it cannot be utilized to collateralize debt on another facility.

[1] *Although available for use by School Districts, the mechanism is rarely utilized by them.*

The legal limitation for maturity on bonds issued pursuant to the Building Authority Act is forty years. From a market perspective however, final term on this type of debt will be governed by the maximum useful life of the facility or facilities. Most MBA bond transactions are structured to mature in thirty years or less.

Due to the real property nature of the transaction, it may take some additional time to process and close an MBA bond due to the need to obtain a title report and clear any liens or encumbrances that may appear on the title so that clear title policies can be provided to the owner and lenders.

In today's market, for an 'A' rated Municipal Building Authority Transaction with AAA credit enhancement, structured with twenty-year level debt service, the issuer could anticipate a net interest cost (NIC) of approximately 4.75 percent.

One recent example of a City utilizing this mechanism to fund capital improvement acquisition is for the City of South Jordan. The City issued $9,505,000 of bonds to finance the costs of acquiring an existing golf course with an added games component (miniature golf and batting cages). The bonds mature in twenty-five years, are rated 'AA-' by S&P and credit enhanced by Ambac. The bonds were cross-collateralized with other recreational facilities that were also insured by AMBAC.

Special Improvement District (SID) Assessment Bonds - A County, City, Town or Special Service District can create a Special Improvement District and issue Special Assessment Bonds.

Utah State Code Section 17A-3-304 (a) through (p) details all of the improvements that can be constructed through the use of Special Assessments, and generally include any capital facilities / public improvements that can be owned by a local government. Ordinary repairs to existing infrastructure are specifically excluded.

There are currently no specific legal limitations under state law as to the amount of improvements or debt that can be issued and secured by special assessments, but local governments can, by policy, determine when they will consider the creation and utilization of assessment districts. Additionally, through the creation process, all property owners that are to be assessed are given the opportunity to protest the creation of an SID. If more than fifty percent (50%) protest, measured by proposed method of assessment, then the local government cannot create the SID. Practically speaking, if a significant number of protests are received, even if the 50 percent benchmark is not exceeded, the elected officials may choose not to create the SID.

The market factors that constrain the issuance of SID bonds are generally related to the following matters:

- Demonstrated willingness and ability of the landowners to make the annual assessment payments;

- Perceived demand for the project that may need to be verified by an absorption study in the case of new development; and
- Value of assessed property to par amount of bonds issued for the improvements. Typical two-fold tests are (1) at least one-to-one value of assessments compared to the raw land in the “as-is” condition and (2) a range of three to four times value, at a minimum, with the inclusion of the improvements to be funded through the SID.

SID bonds are secured by an assessment lien against all property benefited by the SID improvements. The lien is on parity with a tax lien and can be foreclosed on for non-payment in the manner provided for actions to foreclose mortgage or trust deed liens, which in Utah takes approximately 120 days. Commonly, for an SID on a large area of unimproved property, an additional structural security for the bondholder will be a requirement to pre-pay the assessment at some particular trigger point such as plat recording or building permit.

Assessments can be imposed by acre, lot, Equivalent Residential Unit (“ERU”), front footage or any combination of these. State law requires that debt service on an SID bond be structured so that you have either (a) substantially level total debt service payments or (b) level principal.

SID bonds can have a maximum maturity of twenty years, but many are financed over a fifteen-year period to coincide with the anticipated build-out of a project area.

Since assessment bonds are not typically rated, it is very difficult to give an anticipated interest rate since there are fewer general commonalities among SID bonds. However, to provide some idea of the potential differential in interest rate, for a sound SID credit, financed over twenty-years in today’s market the issuer could anticipate a net interest cost (NIC) in the range of 5.75 percent to 7.00 percent. Of the many SID’s we’ve financed, the lowest interest rates were in the range of 4.50 percent and the highest in the range of 8.25 percent.

There are a number of procedural steps and notification requirements that are involved in the creation of a SID that add a significant amount of time to the overall financing process. The local government must notify all affected property owners of the intent to create a SID, advising them of the SID area, the improvements to be made, the location and estimated cost of the improvement, and allow for protests prior to the issuance of interim warrants which are used to construct the improvements prior to the completion of the Assessment Ordinance and issuance of long-term debt.

Mountain Regional Water Special Service District issued $18,600,000 of SID bonds in 2003 to fund a portion of the costs of constructing irrigation and culinary water improvements and a water treatment facility. The method of assessment was by ERU based against an agreed upon and recorded master development plan. Pre-payments are required at [building permit]. The bonds are not rated and have a fifteen-year maturity.

Community Development (CDA), Urban Renewal (RDA) and Economic Development Area (EDA) Tax Increment Revenue Bonds - Recently, the Utah State Legislature modified the Redevelopment Agencies Act to be known as the Local Community Development and Renewal Act, allowing local municipal government the ability to create community development areas, as well as renewal (formerly known as redevelopment) and economic development areas.

Urban renewal areas require a finding of blight, and require taxing agency approval of project area plans and budget. Economic development areas require the proof of job creation (not transference) and also require taxing agency approval of project area plans and budget. Community development areas are targeted to general municipal development, are more flexible in their formation, but are limited to the use of municipal sales and municipal property tax, unless other taxing entities opt-in.

The availability of property tax increment for urban renewal and economic development project areas is impacted by a number of matters including the date of adoption of the project area plan budget, the first taking of increment and the rate at which development occurs and property tax values increase.

Unfortunately, but understandably, the bond market will severely discount the projected tax increment cash flows due to the fact that they are solely reliant on tax-increment as the source for repayment of the debt and at the outset of a new project, little if any tax-increment is being generated. Without multiple years of historical tax-increment revenue receipts, the bonds may not be marketable at reasonable rates and at best projected increment will be discounted by at least half.

One method utilized to overcome the market challenges posed by direct tax-increment financing is to use a SID in conjunction with the use of tax increment. This provides a means to leverage the potential tax-increment at an earlier stage in the development process. Under this structure, an RDA is created and the developer / landowner enters into an Agreement to Develop Land (ADL) with the local government wherein the developer negotiates receipt of a portion of the tax increment to be generated. Then, SID bonds are issued and assessments on the benefited property of the developer/ landowner provide security to the bonds noting that the property then serves as the ultimate security for the debt (not projected increment receipts). If the developers proceed with development and building in a timely fashion, they can utilize the increment received to make the assessment payments, although they are not pledging this stream of revenues.

Special Service District (SSD) - A Special Service District is not a type of debt security, but rather the creation of another legal entity that can provide some governmental services and issue debt. They are widely used in the state primarily for water and sewer services.

Special Service Districts can be created by a County, City or Town for the purpose of providing water service, sewer service, storm retention, electrical or natural gas services, fire protection, recreation, mosquito abatement and public transit. SSD's can be created as dependent or independent entities.

Creation and appointment of board members is dependent on the type of district, who forms the district, and when it is formed.

Industrial Revenue Bonds - Industrial revenue bonds can be issued by Park City City. There is a $10 million cap per issue and a $150 million total annual state allocation cap. Industrial revenue bonds have strict regulations regarding business types that are eligible; a 501(c)(3) can generally use them for a wider variety of projects.

Funding Options and Strategies

The following is an overview of financing tools and incentives that may be appropriate for some of the projects suggested in this report.

Roadway Crossing Improvements - If not paid for by UDOT, these will need to be funded by the City through some type of bond. The most likely scenario is a sales tax bond; however, if the road is city-owned, Park City can pledge B&C road funds. B&C road funds can only be pledged for a period of ten years. Pledging B&C road funds for a period not to exceed ten years, walking/ biking improvements could also be financed in this manner, or with other types of bonds such as sales tax revenue bonds, in order to improve safety and access in this area. Sales tax revenue bonds do not have the ten-year time limit of bonds secured by B&C road funds.

District/ Neighborhood Trail and Sidewalk Enhancements - An SID could be formed for specific districts/ neighborhoods where facilities are lacking or a higher level of amenity is desired. Improvements could be funded through an SID where property owners pay an assessment to offset the costs of the improvements. Some commercial areas might also qualify for an RDA area, where 50 percent of the parcels (covering 50 percent of the land area) must have buildings on them, and where there must be a finding of blight. Tax increment money from this area could then be used for infrastructure improvements. However, the area would need to attract significant new development in order to generate enough increment to fund the level of infrastructure needed in this area.

Business Improvement District - Certain commercial property owners could benefit from forming a Business Improvement District to facilitate Old Town walkability/ bikeability projects, including safety campaigns, signage, and sidewalk, trail and crossing street crossing enhancements.

Walking/ Biking projects as part of Parks, Trails and Open Space Systems
The following are some potential funding sources for Walking and Biking improvements as part of parks, trails and open space improvements in Park City. Since the sources

vary in their application – some can be used for planning and design, some for construction only, and others for both - it is important to become familiar with the various sources, the management agencies, the application process and timing, and the specific requirements for each funding agency or organization.

Funding parks, trails and open space projects can be challenging. A great deal of the feasibility for funding is the willingness of taxpayers to influence the allocation of tax monies toward that kind of priority, or their willingness to pay additional taxes in one form or another.

Aside from raising taxes or some sort of special assessment are a range of funding options and opportunities to be explored. Public funding is much more difficult to obtain in 2006, and many programs are either not being funded or have been substantially reduced by either Federal or State agencies. Money from foundations and other philanthropic organizations and groups is also difficult to acquire, in part because available funds are highly sought-after and very competitive. Nevertheless, all potential sources should be acknowledged and explored to the fullest.

Private and Public Partnerships - Park City and a private developer may cooperate on a facility that services the public, yet is also attractive to an entrepreneur. These partnerships can be effective funding methods for special use facilities such as an amphitheater or similar facility. In contrast, such funding is generally not feasible when the objective is to develop neighborhood and community sidewalks and pathways that are generally available to the public free of charge.

Private Fundraising - While not addressed as a specific strategy for individual recreation facilities, it is not uncommon that public monies are leveraged with private donations. Private funds will most likely be attracted to high-profile facilities, and generally require aggressive promotion and management on behalf of the responsible Park City department or administration.

Service Organization Partners - Many service organizations and corporations have funds available for park and recreation facilities. For example, local Rotary Clubs have combined resources to develop parks and park facilities in numerous communities throughout Utah and elsewhere. Organizations such as Home Depot are often willing to partner with local communities in the development of playground and other park and recreation equipment and facilities. Similar agreements may be possible for select walking and biking facilities.

Joint Development Partnerships - Joint development opportunities may also occur between municipalities and among agencies or departments within a municipality. The potential advantages of cooperative relationships between Park City , Summit County, Share-the- Road and other groups should be explored. Other opportunities to merge efforts with larger development interests should be explored whenever possible in order to maximize recreation opportunities and minimize costs. In order to make these kinds of opportunities happen there must be on-going and constant communication between people, governments, business interests, and others.

ZAP or RAP Taxes - Many communities have initiated **Z**oo, **A**rts, and **P**arks (**ZAP**) or **R**ecreation, **A**rts, and **P**arks (**RAP**) taxes which have been very effective in raising funds to complete parks, recreation, trails and open space projects. A municipality or county generally administers them.

Park and Recreation Impact Fees - The use of impact fees for park and trails development vary from community-to-community. Impact fees are especially useful in areas of rapid growth. They help maintain a specified level of service as new development puts strain on existing facilities, and assure that new development pays its fair share to maintain quality of life standards for its residents. Whether such funding is available for the selected list of Capital Projects should be investigated

Dedications - The dedication of land for tails, sidewalks and path facilities has long been an accepted development requirement and is another valuable tool for implementing parks. Such requirements are most common in new subdivision areas, but may be applicable as part of i redevelopment projects within the study area, particularly east of State Street.

City Funding: General Fund or Bonding - Park City can fund pedestrian/ biking improvements directly from its general fund or can bond for park development and spread the cost over many years. Bonding is a very common approach, where repayment of the bonds comes from general City revenue sources such as property and sales tax, or other earmarked tax revenue. Bonding associated with plan implementation should be kept as low as possible. However, for large developments or large land acquisition priorities, bonding is likely to be the best option.

Special Taxes - Tax revenue collected for special purposes may be earmarked for park and related development. In Sandy City, for instance, the room tax applied to hotel and motel rooms in the city is earmarked for parks, recreation, and trails development.

Community Development Block Grants - Community Development Block Grants (CDBG) can be used for park development in areas of the City that qualify as low and moderate-income areas. CDBG funds may be used to upgrade parks, purchase new park equipment, and improve accessibility through the Americans with Disabilities Act (ADA). Additionally, CDBG funds may be used for projects that remove barriers to access for the elderly and for persons with severe disabilities.

User Fees - Fees can be charged by Park City for reserved rental on park pavilions and organized recreation programs using city facilities. The redistribution of such fees should be evaluated as a potential way for acquiring and developing walking and biking facilities earmarked for Park City.

Some cities, such as Herriman, Utah also charge all property owners a monthly park maintenance fee, collected with the water bill. This approach may free up more park funds for capital improvements, as maintenance costs can be offset with the monthly fees.

Redevelopment Agency Funds - Generally, Redevelopment Agency (RDA) Funds are available for use in redevelopment areas. As RDA areas are identified and developed, tax increment funds generated can, at the discretion of the city, be used to fund path and trail acquisition and development.

State and Federal Programs for Pedestrian and Cycling improvements

The availability of these funds may change annually depending on budget allocations at the state or federal level. It is important to check with local representatives and administering agencies to find out the current status of funding. Many of these programs are funded by the Federal government and administered by local State agencies.

Urban Parks and Recreation Recovery Program (UPARR) - This program, administered by the National Park Service, provides grants for the rehabilitation and enhancement of existing parks and recreation facilities in communities. The program provides matching funds and technical assistance to economically distressed urban communities for the rehabilitation of critically needed recreation facilities. It also encourages local funding and commitment to the operations and maintenance "Rehabilitation Grants are used for remodeling, rebuilding, or expanding existing outdoor or indoor recreation areas. Innovation Grants are for projects that demonstrate innovative and cost-effective ways to enhance park and recreation opportunities. Planning Grants provide funds for the development of a Recovery Action Plan, which must be on file with the National Park Service in order to receive funds.

Although Park City is not listed as an eligible jurisdiction – only Ogden and Provo are eligible in Utah - the program does allocate up to 15 percent of program funds annually to local governments that do not meet eligibility criteria. Salt Lake City for instance, which is not an eligible jurisdiction, has received $435,000 in federal funds (not including city match) for park improvements.

Land and Water Conservation Fund - This Federal money is made available to States. The Utah State Division of Parks and Recreation administers the fund in Utah. Funds are matched with local funds for acquisition of park and recreation lands, redevelopment of older recreation facilities, trails, improvements to accessibility, and other recreation programs and facilities that provide close-to-home recreation opportunities for youth, adults, senior citizens, and persons with physical and mental disabilities.

SAFETEA-LU - In 2005, Congress passed and the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU establishes federal transportation policy and funding for the next five years. It continues programs - including transportation enhancements and recreation trails - and creates new ones, such as Safe Routes to Schools.

- Recreation Trails were funded at $70 million in 2006, and will rise to $85 million in 2009.
- Transportation Enhancements are funded at 3.5 billion over five years beginning in 2005. Three eligible activities include bicycle, pedestrian or shared use physical facilities; conversion of abandoned railroad corridors for trails; and safety and education programs for pedestrians and bicyclists. A local match is required to use Utah's TE funds
- The Safe Routes-to-School program is funded at $100 million in 2006, rising to $183 million in 2009. These funds are available for planning, design, and construction of infrastructure related to project that improve bicycle and pedestrian safety. Funds may also be used for public education programs, bicycle safety classes, and other programs that encourage bicycling and walking to middle and elementary schools.

Federal Recreational Trails Program - The Utah Department of Natural Resources, Parks and Recreation Division administers these Federal funds. The funds are available for motorized and non-motorized trail development and maintenance projects, educational programs to promote trail safety, and trail related environmental protection projects. The match is 50 percent, and grants may range from $10,000 to $200,000. Projects are awarded in August.

Utah Trails and Pathways / Non-Motorized Trails Program - Funds are available for planning, acquisition, and development of recreational trails. The program is administered by the Board of Utah State Parks and Recreation. Selections are made annually at a Fall meeting, the decisions based on recommendations of the Recreation Trails Advisory Council and Utah State Parks and Recreation. The match is 50 percent, and grants may range from $5,000 to $100,000. Funds are available in 2006.

LeRay McAllister Critical Land Conservation Fund **-** The fund is administered by the Utah Quality Growth Commission and provides funds each year to preserve or restore critical open or agricultural lands in Utah, and targets lands deemed important to the community such as agricultural lands, wildlife habitat, watershed protection, and other culturally or historically unique landscapes. Money from the fund must be used to preserve or restore agricultural lands. Applicants must provide matching funds equal to or greater than the amount of money received from the fund. Funds must be spent within one year from the date of the grant award. The size of parcels for a purchase is limited to 20 acres or less. Purchases of conservation easements or restoration projects are exempt.

Utah Arts Council **-** The Utah Arts Council offers grants to non-profit organization and entities for arts education programs and program grants. The funding is limited and requires a match, and may be useful in developing a program or event within the community; however, these funds are not designed to develop arts facilities or enhance building programs.

In-Kind and Donated Services or Funds for Parks and Recreation

Several options for local initiatives are possible to further the implementation of walking and biking Capital projects. These kinds of programs would require the City to implement a proactive recruiting initiative to generate interest and sponsorship, and may include:

- Adopt- a-Trail or Adopt-a-Pathway, where a service organization or group either raises funds or constructs a given facility with in-kind services;
- Corporate sponsorships, whereby businesses or large corporations provide funding for a particular facility, similar to Adopt- a-Trail or Adopt-a-Pathway;
- Public trail and park facility construction programs, in which local citizens donate their time and effort to trail and park facility construction and/or maintenance.

RESOLUTION HONORING THE FRIENDS OF THE PARK CITY LIBRARY

WHEREAS, the Friends of the Park City Library volunteer time and effort to enhance library services, promote literacy and bring tireless dedication, enthusiasm and proficiency to every event and activity they host; and

WHEREAS, the Friends of the Park City Library donate monetarily to the Library to enhance services to the community and to improve the collection; and

WHEREAS the Friends of the Park City Library contribute an annual average of 1500 volunteer hours to events and book sorting throughout the year; and

WHEREAS, the Friends of the Park City Library organize and promote an annual used book sale that is a successful fundraiser and a popular community event as well as a monumental effort which requires extensive planning and preparation throughout the year; and

WHEREAS, the Friends of the Park City Library sponsor an annual author luncheon and member drive that is an anticipated local event and typically attracts 150-250 attendees; and

WHEREAS, the Friends of the Park City Library provide an ongoing display in the library consisting of used books and magazines for sale that is continually profitable and always professionally maintained; and

WHEREAS, the Friends of the Park City Library festively decorate the Library each year during the holidays for the enjoyment of the staff and the library patrons:

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Council applaud the past and present commitment and efforts of The Friends of the Park City Library in raising funds to supplement the community's library needs and promoting literacy.

PASSED AND ADOPTED this 3rd day of April, 2008.

City Council Staff Report

Subject: **Police Facility Public Art**
Author: **Sharon Bauman and Gary Hill**
Department: **Executive**
Date: **April 3, 2008**
Type of Item: **Administrative - Service Provider Contracts**

Summary Recommendations:
Authorize the City Manger to enter into a service provider contract (attached) for Police Facility Art in a form to be approved by the Legal Department with Thomas Elmo Williams, in the amount of Forty Thousand Dollars ($40,000.00).

Topic/Description:
Art on the upper brick walls of the new Police Facility lobby.

Background:
The Public Art Advisory Board released an RFP for artists to design, produce and install art on the upper portions of the north and east lobby walls of the new Police Facility. Funding for the art was based on 1% of the total cost of construction of the facility and the project budget was between $40,000 to $57,500.

Staff advertised the Request for Proposals in the *Park Record*, *Salt Lake Tribune* as well as number of art-oriented websites (15 Bytes, Utah Arts Council, and Western States Arts Councils). The RFP was open to all media, materials and themes and specified that the work would be installed on upper portions of brick walls in the Police Facility Lobby. The RFP specified that the design should be “authentic to the community and its surroundings,” per the City’s **Public Art Plan** and the criteria included:

- Highest quality public art - *exceptional quality and enduring value*
- Authenticity - *authentic to the community and its surroundings*
- Celebration - *portray sense of place and people in community*
- Creativity - *communicate new ways of thoughts, ideas and feeling*
- Durability, Safety, Accessibility and Compatibility with Community Standards

Analysis:
There were ten proposals, from which the Public Art Board selected three finalists. Staff contacted references and requested additional information from each finalist. On March 19, 2008, the Board selected Thomas Elmo Williams to provide art consistent with his proposal for the Police facility. Mr. Williams proposal consists of six canvasses (three are approximately 5 feet high and total 12 feet in length; three measure approximately 3 feet in height and total 21 feet in length). Illustrations of Mr. Williams’ proposal are attached, although the Board has requested some alterations to elements in the pieces. They requested that the paintings reflect Park City’s present as well as the past, including historic buildings, and focus on Park City life in general. The Art board wants

want to see more women, children and dogs, as well as including references to winter sports activities. Installation is to be completed by September 1, 2008.

Department Review:
Budget, Legal and Executive departments have reviewed the proposals and comments have been incorporated into the report.

Alternatives:

A. Approve:
Authorize the City Manager to enter into Service Provider Contract in a form to be approved by the Legal Department with Thomas Elmo Williams in the amount of Forty Thousand Dollars ($40,000.00).

B. Deny:
The Council could decide to no longer proceed with the project and not install art in the Police Facility lobby.

C. Modify:
Council could request modifications to the proposal.

D. Continue the Item:
Delaying a decision would delay the proposed schedule and possible completion of the art installation in the Police Facility lobby.

E. Do Nothing:
There would be no public art in the Police Facility

Significant Impacts:

$57,000 was set aside as a part of the Policy Facility construction budget for this project consistent with City Policy. The difference between the $40,000 contract and the $57,500 budget ($17,500) will remain in the Public Art CIP for future projects or maintenance as allowed by the Art Policy.

Consequences of not taking the recommended action:
No Public Art will be installed in the Police Facility lobby at this time.

Recommendation:
Authorize the City Manger to enter into a service provider contract (attached) for Police Facility Art in a form to be approved by the Legal Department with Thomas Elmo Williams, in the amount of Forty Thousand Dollars ($40,000.00).

Attachments: Renderings
Service Provider Agreement

THOMAS ELMO WILLIAMS

THEME AND STYLE

PARK CITYS' PRIDE

"Art does not exist merely to entertain. It can play a role in the improvement of our collective existence." I have always stated and believe it to be true.

I want the paintings to be a tribute to Public Safety , Yet at the same time, represent Park City as a whole. A sense of place, people and community would be portrayed throughout the canvases.

Relying on the style of great American realist, Ash can artists, and WPA painters, I will try to accomplish my goal as an artist. I will hold true to my style of the use of a limited palate.

The paintings would represent , in a very original and authentic manner, Park City, and Public Safety, throughout time.

The paintings on the north wall:

Left: would reflect the Pride of Park City's Mining Industry, (Underground and surface miners).

Center: The compassion, strength , and devotion of all Public Safety Officers.

Right: a celebration of community and Public service.

The paintings on the east wall:

Would portray more of Park City's Pride.

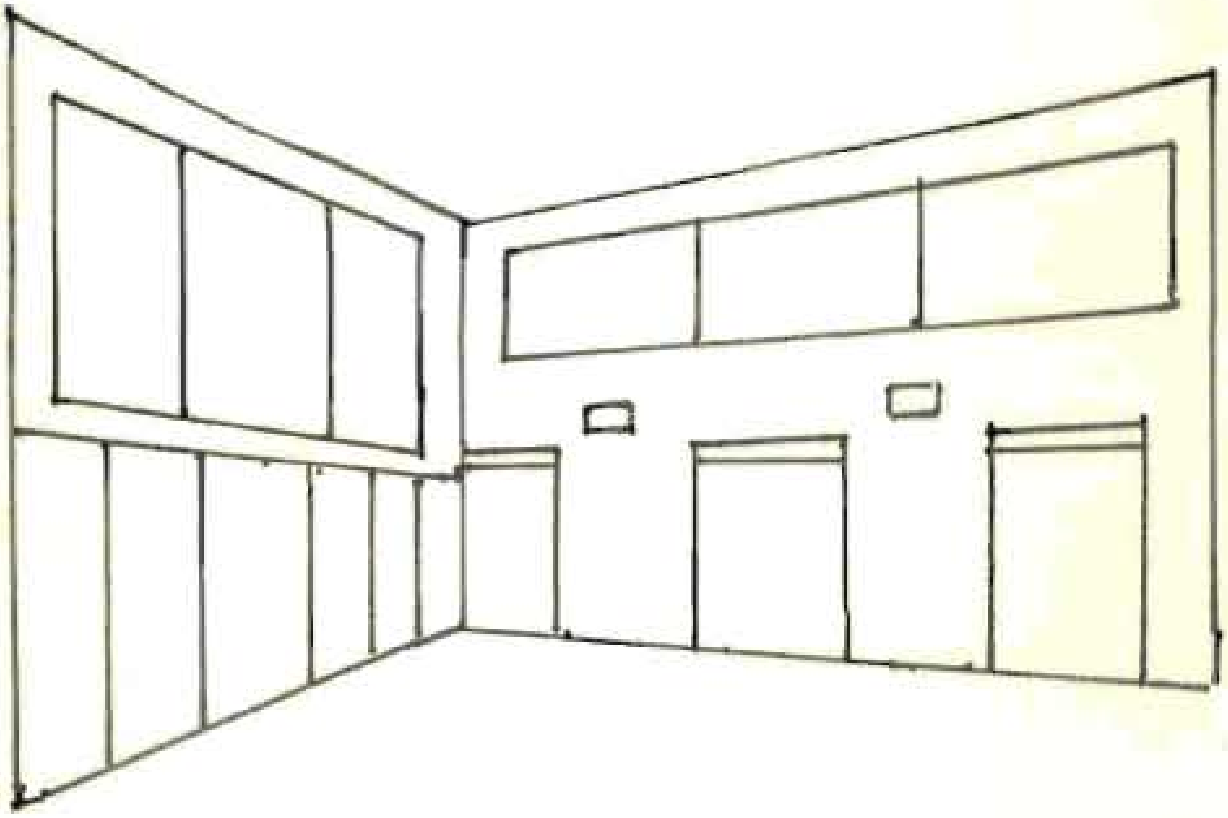
Left: The History, foundation , and strength of the Park City Police Dept. would be evident and represented well by the use of the original Police Station building.

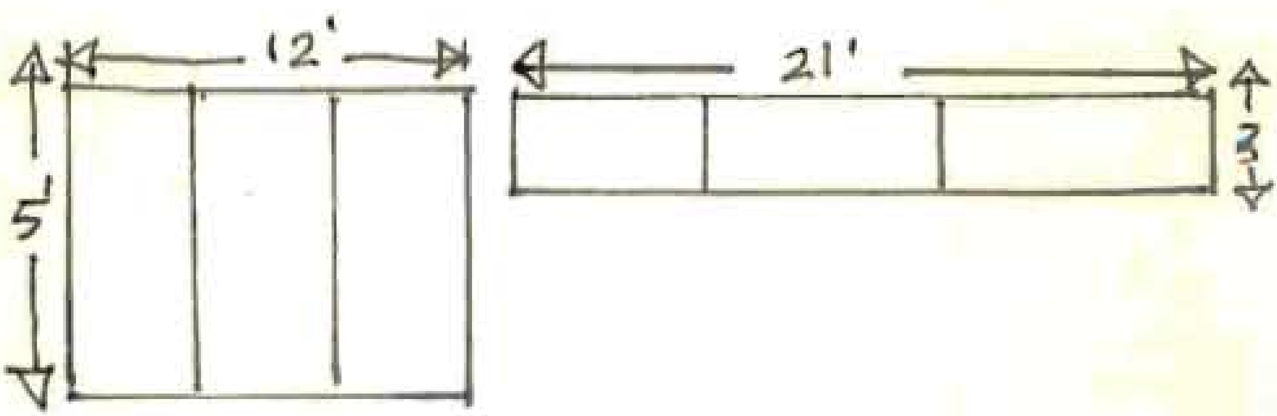
Center: Park City as a whole, (Main street, filled with law enforcement officers, city workers, business owners , and men, women and children, at work and play.

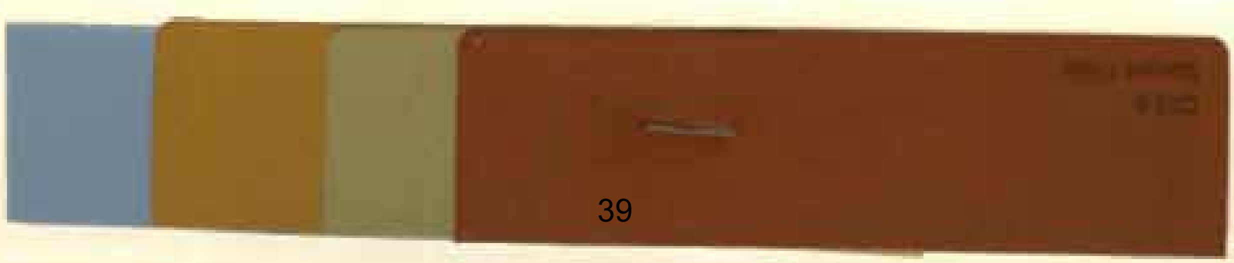
Right: The History, fun, and joy of Park City's ever popular Skiing industry.

The beauty and serenity of Park City's wonderful canyons and mountains.

NORTH WALL EAST WALL

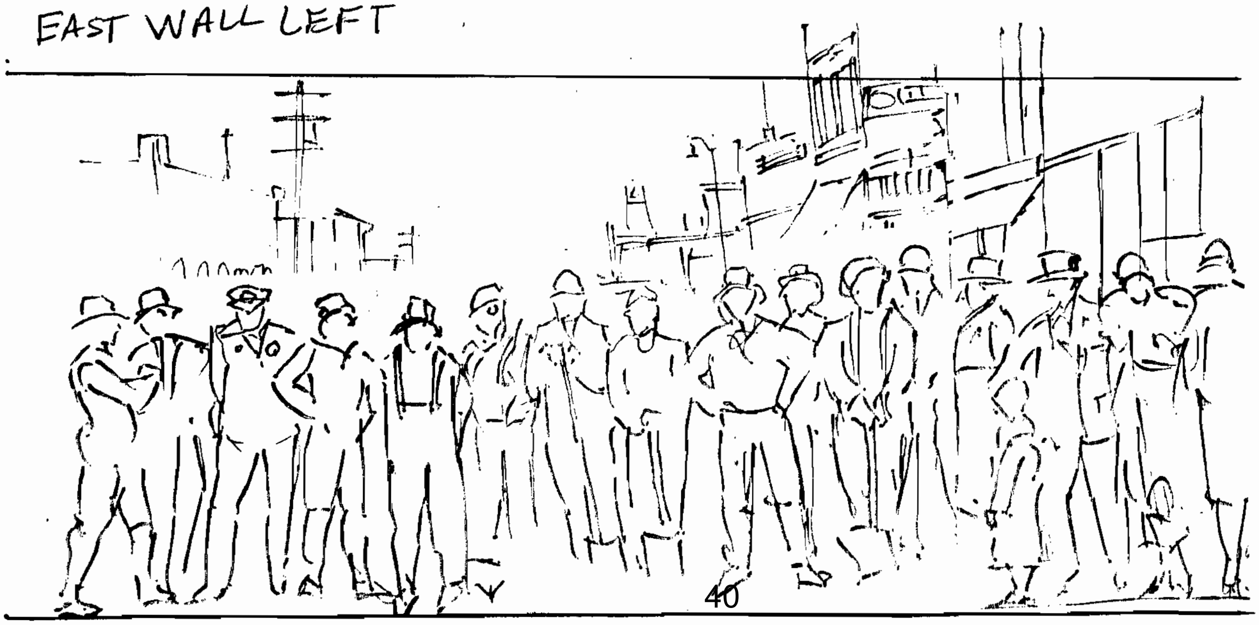




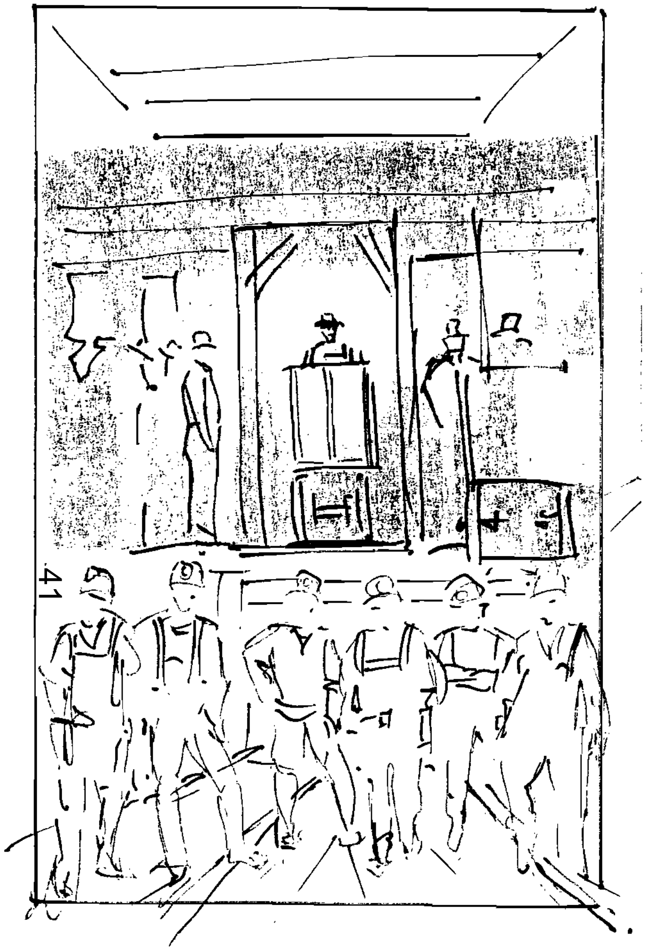


EAST WALL RIGHT

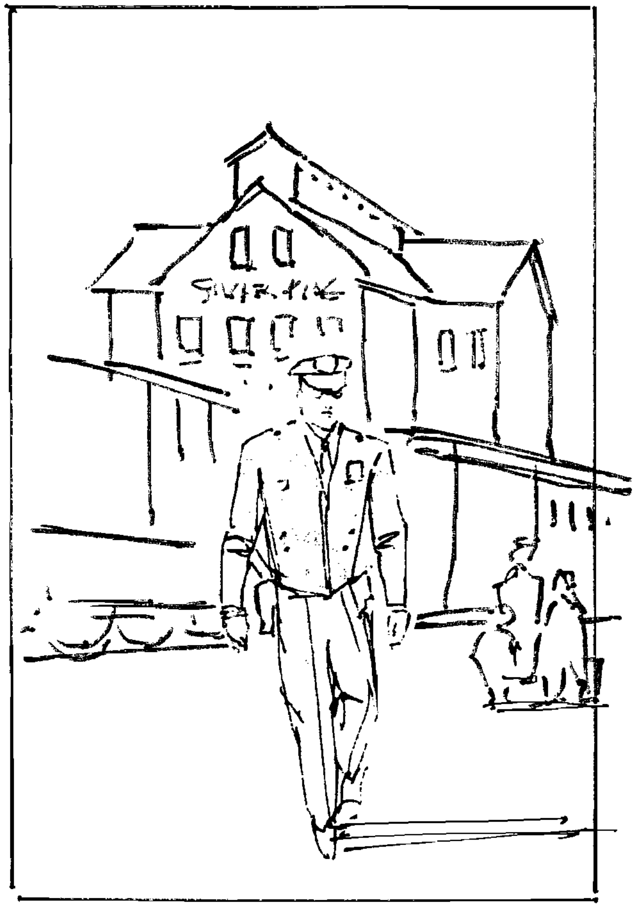
EAST WALL LEFT



EAST WALL CENTER



NORTH WALL LEFT



NORTH WALL CENTER

NORTH WALL RIGHT

PARK CITY MUNICIPAL CORPORATION MINOR SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this _____ day of _______, 2008, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and THOMAS ELMO WILLIAMS ("Service Provider").

WITNESSETH:

WHEREAS, the City desires to have certain services and tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient City resources are not available to provide such services; and

WHEREAS, the service provided exposes the City to minimal insurance risk; and

WHEREAS, the Service Provider represents that the Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**.
The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Exhibit A" and incorporated herein (the "Project"). The total fee shall not exceed **Forty Thousand Dollars ($40,000.00)**.

2. **TERM**.
The term of this Agreement shall commence on the date of execution on this Agreement and shall terminate on September 1, 2008, unless extended by mutual written agreement of the Parties.

3. **COMPENSATION AND METHOD OF PAYMENT**.

A. Payments for services provided hereunder shall be made as follows: twenty-five (25%) percent of Contract Price upon execution of Agreement; twenty-five percent (25%) upon completion of Design Phase by Service provider and approval by the City of design plans and engineering construction documents in a manner materially consistent with the contract Document; twenty-five (25%) percent upon completion and approval by City of Art Fabrication (the "Art"); and twenty-five (25%)

percent) upon complete installation of the Art and final acceptance of the Project by the City.

B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.

4. REPORTS AND INSPECTIONS.

A. The Service Provider, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Service Provider shall at any time during normal business hours and as often as the City may deem necessary, make available for examination of all its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Service Provider's activities, which relate directly or indirectly, to this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent Service Provider/City relationship will be created by this Agreement. No agent, employee, or representative of the Service Provider shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

The City may at its sole discretion require the Service Provider to remove an employee(s), agent(s), or representative(s) from employment on this Project. The Service Provider may, however, employ that (those) individuals(s) on other non-City related projects.

7. <u>HOLD HARMLESS INDEMNIFICATION</u>.

A. The Service Provider shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Service Provider's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

B. Service Provider does hereby remise, release, forever discharge and covenant not to sue PARK CITY MUNICIPAL CORPORATION, its agents, servants, employees, officers, successors and assigns, and/or heirs, executors and administrators, and also any and all other persons, associations and corporations, whether herein named or referred to or not, and who, together with the above named, may be jointly and severally liable to the Service Provider, of and from any and all, and all manner of, actions and causes of action, rights, suits, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, including claims for contribution, arising from and by reason of any and all KNOWN AND UNKNOWN, FORESEEN AND UNFORESEEN bodily and personal injuries or death, damage to property, and the consequences thereof, which heretofore have been, and which hereafter may be sustained by the Service Provider or by any and all other persons, associations and corporations, whether herein named or referred to or not, from all liability arising out of, in connection with, or incident to the execution of this Agreement

C. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. INSURANCE.

The City agrees to waive insurance requirement upon Service Provider's agreement to hold the City harmless pursuant to Paragraph 7 (B) above. Service Provider hereby acknowledges that their insurance policy is the primary coverage.

9. TREATMENT OF ASSETS.

A. Ownership: Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Service Provider pursuant to this Agreement (contingent on City's performance hereunder).

B. Duplication of Art: Service Provider retains all rights under the Federal Copyright Act and all other rights in and to the Art except ownership and possession, and except as such rights are limited by this Agreement. In view of the intention that the Art in its final dimension shall be unique, Service Provider shall not make any additional duplicate reproductions of the final Art, nor shall Service Provider grant permission to others to do so except with the written permission of the City. Service Provider grants to the City and its assigns an irrevocable license to make two- and/or three-dimensional reproductions of the Art for commercial or noncommercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, fundraising, and catalogs or other similar publications, provided that these rights are exercised in a tasteful and professional manner. Wherever practicable, City shall make reasonable efforts to include Service Provider's name in any such advertisement, brochure, media publicity, catalog or other similar publication in which the Art appears and to notify the Artist of its efforts.

C. Repair or Restoration: Where, in the opinion of the City or Service Provider, repairs and/or restoration of the Art are required for which Service Provider is not responsible pursuant to the terms of this Agreement, the City shall, when reasonably practicable, give Service Provider the opportunity to accomplish such repairs and/or restoration if a reasonable fee can be agreed upon between the City and Service Provider. Nothing herein shall obligate the City to make such repairs and/or restoration nor to contract with Service Provider to accomplish such repairs and/or restoration.

D. Independent Sale: If in the future the City wishes to sell the Art separate and apart from any real property to which the Art may be integrated or affixed, Service Provider shall, when reasonably practicable, be given a right of first refusal to purchase the Art from the City. This Paragraph is not intended to give Service Provider any rights if the Art is sold by the City as part of or the consequence of the sale of the City's interests in real property. The rights of Service Provider under this Paragraph shall expire after fifteen (15) years from the date of execution of this Agreement; and said rights shall be specific to Service Provider personally and shall not be transferred, assigned, pledged or levied upon, nor shall they pass by way of inheritance or other operation of law to any third person.

E. Notice: Service Provider agrees to keep the City notified in writing of changes in Service Provider's address, and failure to do so shall be deemed a waiver of Service Provider′s right of first refusal in Paragraph 10D above.

F. Warranty: If, within one year after the date of the completion of installation of the Project and acceptance by the City, the Project or any component or material thereof is found to be defective or to not be in accordance with the Design Plans and Construction Documents attached at Exhibit A, Service Provider shall correct it promptly after receipt of a written notice from the City to do so unless the City has previously given Service Provider a written acceptance of such condition. This obligation shall survive acceptance of the Project under this Agreement and termination of this Agreement. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to any other obligation which Service Provider might have under this Agreement, including Paragraph 4 herein. The establishment of the time period of one year after completion of installation and acceptance by the City relates only to the specific obligation of Service Provider to correct the Project, and has no relationship to the time within which Service Provider's obligations to comply with the Design Plans and Construction Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Service Provider's liability with respect to an obligation other than to specifically correct the Project.

10. COMPLIANCE WITH LAWS.

A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

11. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Service Provider will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Service Provider shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Service Provider shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. The Service Provider will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

D. If any assignment or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Service Provider shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. ASSIGNMENTS/SUBCONTRACTING.

A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.

13. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. MAINTENANCE AND INSPECTION OF RECORDS.

A. The Service Provider shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The Service Provider shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The Service Provider agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

16. PROHIBITED INTEREST.

No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.

C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

18. <u>TERMINATION</u>.

A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the other party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the City. If the Service Provider has any property in its possession belonging to the City, the Service Provider will account for the same, and dispose of it in a manner directed by the City.

B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. <u>NOTICE</u>.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

20. <u>ATTORNEYS FEES AND COSTS</u>.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney’s fees and other costs incurred in that action or proceeding.

21. <u>JURISDICTION AND VENUE</u>.

A. This Agreement has been and shall be construed as having been made and delivered with the state of Utah, and it is agreed by each party hereto that this Agreement shall be governed by laws of the state of Utah, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

22. SEVERABILITY.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the state of Utah, said provision, which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

23. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

(continued)

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

PARK CITY MUNICIPAL CORPORATION
445 Marsac Avenue
Post Office Box 1480
Park City UT 84060-1480

____
Thomas B. Bakaly, City Manager

Attest:

____
City Recorder's Office

Approved as to form:

____
City Attorney's Office

Thomas Elmo Williams
(address)
Park City UT 84060-1693
Tax ID#: _______________________

____
Name, Title

STATE OF ___________)
) ss.
COUNTY OF _________)

On this ____ day of _______, 2008, personally appeared before me Thomas Elmo Williams, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he signed it voluntarily for its stated purpose.

____
Notary Public

ADDENDUM "A"

SCOPE OF SERVICES: ART FOR POLICE FACILITY
PARK CITY, UTAH

The Project will be bound by the specifications referenced herein, according to the City's Request for Proposals, the General Project Requirements and Specifications provided by City, and Service Provider's Proposal for the Public Art associated with Public Art for the Park City Police Facility collectively referred to as the Contract Documents, all of which are incorporated herein by reference. To the extent that this Agreement conflicts in any way with the Contract Documents, this Agreement shall control.

1. Site Location, Description, and Regulations:

The artwork Service Provider will design, produce and install art for the lobby of the new Park City Police Facility located at 2060 Park Avenue, Park City, Utah.

2. Project Description:

See Service Provider's Proposal for the Public Art for the Park City Police Facility - Addendum B.

3. Task List:

a. Construction Documents
Service Provider shall design the Project in a manner materially consistent with the Contract Documents.

b. Design and Production
Service Provider shall create all Art Elements of the Project pursuant to the approved Design Plans. .

c. Delivery & Installation of Art on Site
(1) Delivery to Site
(2) Art Installation Complete – September 1, 2008

Service Provider shall deliver the Art to the Project Site and install the Art pursuant to the approved Construction Documents on or before September 1, 2008.

4. Warranty

Service Provider shall warranty the Project for material and workmanship for a period of one (1) year following acceptance by the City.

City Council Staff Report

Subject: **Flagstaff Mountain Resort Employee/Affordable Housing Plan**
Author: **Phyllis McDonough Robinson**
Department: **Sustainability**
Date: **April 3, 2008**
Type of Item: **Call-Up: Administrative**

Summary Recommendations: Staff recommends that the City Council take public input, approve the proposed amendments to the Flagstaff Mountain Resort Employee/Affordable Housing Plan, and adopt terms and conditions of the proposed financial guarantee.

Topic/Description:
Employee/Affordable Housing

Background:

The Employee/Affordable Housing Phasing Plan as amended requires 98.90 affordable housing unit equivalents (AUEs), a *minimum* of 25 percent which must be located on-site. In addition to the initially required AUEs, the Developer committed to an additional 20 AUEs as part of the Montage/PMCR Annexation. An affordable housing unit equivalent is defined as an 800 square foot, two-bedroom unit.

At its February 27th meeting, the City Council called up a decision by the Planning Commission regarding a request by United Park City Mines/Talisker (Talisker) to amend the Phasing Plan of the Housing Technical Report (Exhibit 14 of the Flagstaff Mountain Development Agreement.) The Development Agreement requires that the affordable housing be phased with the development of the Flagstaff Mountain (now Empire Pass) Development. A staff determination found that Talisker has not been fulfilling its obligation in terms of number of Affordable Unit Equivalents (AUES) provided, timing of AUE construction, or phasing as agreed to and adopted by the City pursuant to the Agreement.

At that meeting, Council directed staff to make the following clarifications to the Housing Phasing Plan:

- Replace the term “construction” or “under construction” with “Certificates of Occupancy”.
- Clarified that the phrase Certificate of Occupancy refers to Temporary Certificates of Occupancy (TCO) as well as final Certificates of Occupancy (CO). This clarification applies to all COs issued beyond the initial 150 COs. For the initial 150 Residential Unit Equivalents TCOs shall not be counted until they convert to a permanent CO.
- Replace the reference to “before the next density increment is ***permitted***” with “before the next density increment is ***allowed***.” Talisker must provide the required AUE, or the approved financial guarantee, before the last Certificate of

Occupancy for that density increment is received in order to receive TCOs on the next increment. This amendment clarifies that the TCO or CO is the benchmark that must be met not building permits.

Analysis

The City Council formed a task force to work with Talisker to address additional revisions to the Employee/Affordable Housing Phasing Plan and refine the terms and conditions for a financial guarantee. Council continued these items to its April 3rd meeting.

The task force, made up of Council Members Hier and Simpson, City staff and Talisker representatives, met several times over the last month. A summary of the recommendations of the task force is presented below. Appendix A is the proposed amendments to Flagstaff Mountain Resort Employee/Affordable Housing Plan.

Revised Phasing Plan

The Development Agreement requires that the affordable housing be phased with the development of the Resort. The goal of this Plan is to develop affordable housing units at a rate in excess of that required by the Resort's development schedule in order to mitigate the impact on the community.

The Revised Phasing Plan contains the following information:

1. **Amended Employee/Affordable Housing Obligation that reflects the Montage Hotel and 2007 Amendment to Development Agreement regarding the Annexation of PCMR.** The number of Affordable Unit Equivalents increased from a maximum of 91 under this initial Development Agreement to 118.90 AUEs. The total AUEs includes 98.90 mandatory AUEs and 20 additional AUEs.

2. **Revised Development Targets.**
   a. A minimum of 25 percent of the mandatory AUEs must be located within the project area. It is anticipated that these units will be employee rental units.
   b. Fifteen percent of the mandatory AUEs shall be targeted as either seasonal or year-round rentals with a preference for AUEs within the Park City limits.
   c. Sixty percent of the mandatory AUEs shall be targeted for homeownership with a preference for the AUEs within the Park City limits.
   d. Initial rates shall be set at 60 percent of AMI adjusted for household and unit size. Initial sales price shall be set at 80 percent of AMI adjusted for household and unit size.

3. **Status update for each of the housing options identified in the Employee/ Affordable Housing Plan.** The number and location of the on-site AUEs completed and proposed is updated. Currently 7.6 of the AUEs have been completed or are under construction within the project area. Council approved the purchase of up to eight AUES in March 2008. The Developer expects to complete this acquisition in May 2008.

4. **Updated the Phasing Plan including Sequencing Strategies and Phasing Commitment.** The Phasing Plan was revised to provide a blueprint for the delivery of the AUEs that more accurately reflects the current program. In addition, the Phasing Commitment was updated to include the additional units associated with the Montage Hotel.

Staff is requesting Council discussion on the proposed amendments to the Employee/Affordable Housing Plan. Does Council support the proposed amendments to the Phasing Plan?

Financial Guarantee for Deficient Units
Talisker is committed to maintaining the proposed revised phasing plan and timeline. The task force recognized that the majority of the proposed units necessary to meet this revised schedule do not have entitlements or approvals at this time. In the event that Talisker has not provided the AUEs and obtained Temporary Certificates of Occupancy for the number of AUEs required for any given 150 TCO increment (above the initial 150 CO increment, a financial guarantee would be required. The terms and conditions of the financial guarantee are presented below. These conditions will also be included in the Employee/Affordable Housing Plan (Exhibit 14) as amended by Council.

1. Within 30 days from the approval of this amended Employee/Affordable Housing Plan, Developer shall execute a Corporate Completion Guarantee, in a form acceptable to the City Attorney and consistent with prior Corporate Completion Guarantees executed between Developer and City. The Corporate Completion Guarantee shall acknowledge the requirements of the Phasing Commitment as obligations of the Developer, and shall include the following additional terms and conditions:

2. In the event that the Developer has not constructed and obtained at least a Temporary Certificates of Occupancy for the number of AUEs required for any given 150 Temporary Certificate of Occupancy increment (above the initial 150 CO increment) under Table 11: Phasing Commitment of the Employee/Affordable Housing Plan, or has not otherwise satisfied the required number of AUEs through alternatives approved in the Housing Plan, a Deposit equal to 150 percent of the in lieu fee in effect at the time of default for each AUE that is then deficient under Table 11 shall be required. Within 45 days of written notice of default from the City, the Developer shall deposit the required amount. In the event that the Deposit is not made within that 45-day period, the City shall suspend the issuance of any further Temporary or Permanent Certificates of Occupancy until the Deposit is made.

3. Upon notice of default, the Developer may request a progress review of the AUEs under construction by the Chief Building Official. Such notice shall be requested within 10 days of Notice of Default with a determination made within 20 days. The purpose of such review is to evaluate the construction status of the AUE(s). If the Chief Building Official determines that the outstanding construction period is greater than 60 days, then a full Deposit for each deficient AUE shall be made within 15 days of the Chief Building Official’s determination. If in the sole opinion

of the Chief Building Official the AUE(s) the AUEs are within 60 days of completion, then no Deposit shall be required at that time. If such units do not receive at least a Temporary Certificate of Occupancy by the end of the 60-day period, Developer shall immediately post the required financial guarantee.

4. The total Deposit amount shall be paid into in a segregated Escrow Account held by an independent financial institution or Title Company approved by the Developer and the City Attorney, and having an office in Park City. That financial institution or Title Company shall act as an Escrow Agent and as the Disbursement Officer in controlling and administering the Escrow Account and the Deposit. The Deposit shall operate as a Construction Fund. The Deposit shall be used solely to fund the costs to construct the deficient AUEs.

5. Ten percent (10%) of the per AUE Deposit associated with each deficient AUE shall be held in the Escrow Account until the issuance of at least a Temporary Certificate of Occupancy. The 10 percent retention shall be released to the Developer upon issuance of the Temporary Certificate of Occupancy. Any amount above the 10 percent retention then remaining in the Escrow Account also shall be released to the Developer upon issuance of the Temporary Certificate of Occupancy for that AUE.

6. Developer shall complete construction of any deficient AUEs, defined as receiving Temporary Certificates of Occupancy for those AUEs, within 18 months from date of issuance of any entitlements and permits required to construct those AUEs.

7. Neither the Corporate Completion Guarantee nor the Deposit shall fulfill Developer's responsibility to post a financial guarantee for construction of public improvements and landscaping or other similar improvements as may be required by the City Engineer and/or Chief Building Official under the Land Management Code or other City ordinances.

Staff is requesting Council discussion and direction on the terms of the financial guarantee in general, and specific direction on the following terms of the Agreement.

1. The Developer anticipates that it will be able to deliver the initial 15 AUES in advance of the 150th Certificate of Occupancy. Staff would like clarification that this Financial Guarantee Agreement applies to these first 15 AUEs as well as subsequent AUE increments outlined in Table 11. ***Staff is requesting further clarification that a financial guarantee for a fractional deficiency would be required in an amount proportionate to the outstanding fractional deficiency.***

2. Staff is recommending that the amount of the deposit necessary to cure a default be set at 150 percent of the in lieu fee in place at the time of the default. The Developer has requested a fixed fee of $240,000 which is equivalent to 150 percent of the in lieu fee in place today. ***Staff is requesting Council discussion and direction on this valuation.***

3. Staff is recommending that the Developer fund the account within 45 days of the City delivering a notice of default. The Developer is requesting 60 days. Other members of the task force would prefer the funding period to be shorter than 45 days. ***Staff is requesting Council discussion and direction on the period for funding into the escrow account.***

4. Staff is recommending that a deposit not be required for AUEs that in the professional opinion of the Chief Building Official are within 60 days of completion. ***Is Council comfortable with this approach?***

Department Review:
Planning, City Attorney and City Manager reviewed this report.

Alternatives:

- ***A.*** **Approve the Request:** Council may approve the proposed amendments to the Housing Phasing Plan and the terms of the financial guarantee. ***This is Staff's recommendation.***
- **B. Modify the Request:** Council may modify the proposed amendments to the Flagstaff Housing Plan Employee/Affordable Housing Plan or the terms of the financial guarantee required for the Developer to move to the next density increment.
- **C. Deny the Request:** Council may reject the proposed amendments and/or the terms of the financial guarantee.
- **D. Continue the Item:** Council may continue the item and direct staff to return with additional information or options.
- **E. Do Nothing:** Council may elect not to take any action on this request.

Significant Impacts:
Significant staff time was expended in drafting the amended housing phasing plan and terms of the financial guarantee. This shift in resources may have an adverse impact upon the schedule of other Council-directed affordable housing projects.

Consequences of not taking the recommended action:
Should Council deny this request, the Developer may be in default of the current phasing plan by late spring/early summer 2008. It is likely that additional remedies will be proposed at that time requiring additional staff and Council time and consideration.

Recommendation:
Staff recommends that the City Council take public input, approve the proposed amendments to the Flagstaff Mountain Resort Employee/Affordable Housing Plan, and adopt terms and conditions of the proposed financial guarantee.

Appendix A: 2008 Amendment to the Flagstaff Mountain Resort Employee/Affordable Housing Plan

APPENDIX A
PROPOSED AMENDMENTS TO THE FLAGSTAFF MOUNTAIN RESORT EMPLOYEE/AFFORDABLE HOUSING PLAN
APRIL 3, 2008

This is a supplemental amendment to the Flagstaff Mountain Resort Employee/Affordable Housing Plan. This report is Exhibit 14 to the Flagstaff Mountain Resort Development Agreement. The data and information presented in this supplemental plant supersedes all earlier references in the 1999 Employee/Affordable Housing Plan and the 2001 amendment.

Amended Employee/Affordable Housing Obligation
The Employee/Affordable Housing Obligation increased from a maximum of 91 Affordable Unit Equivalents (AUE) to 118.90 AUEs as part of a 2007 amendment to the Development Agreement for the Annexation of PCMR. Table 7 below includes the affordable housing obligation associated with this project.

Table 7: Employee/Affordable Housing Obligation for Flagstaff Mountain Resort/Empire Pass

Type of Use	**Unit Equivalents**	**Mitigation Rate**	**AUEs Required**
Residential			
Residential Units	785	0.1	78.50
Single Family Home Sites	54	0.1	5.40
Subtotal Residential	***839***		***83.90***
Commercial	**Square Footage/ 1,000 SF**	**Mitigation Rate**	**AUEs Required**
Commercial Unit Equivalents	75	0.2	15.00
Subtotal Commercial	***75***		***15.00***
Affordable Unit Equivalents Mitigation			**98.90**
Additional AUEs contributed by Developer			**20.00**
Total Affordable Unit Equivalents			**118.90**

Development Targets

- Twenty-five percent of required AUEs shall be developed on site, defined as within the Flagstaff Mountain Resort/Empire Pass Master Planned Development Area. It is anticipated that these units will be rental units and provide seasonal and/or year round employee housing.
- Fifteen percent of the AUEs shall be targeted as either seasonal or year-round rentals with a preference for AUEs to be within the Park City limits.
- Sixty percent of the AUEs shall be targeted for home ownership with a preference for AUEs to be within the Park City limits.

- The initial rental rates for AUEs shall be set at 60 percent of Area Median Income (AMI) as adjusted for household and unit size. The initial sales prices for ownership shall be set at 80% of AMI as adjusted for household and unit size.

Affordable Housing Options

The following options are allowed means of fulfilling the affordable housing requirement and voluntary contribution.

Option A: *On-Site AUES*. A minimum of 25 percent of the required AUEs shall be located within the Flagstaff Mountain Resort/Empire Pass Master Planned Development area. This percentage equates 24.725 AUEs. It is anticipated that these units will generally be rental units targeted to households earning up to 60% of AMI adjusted for household and unit size.
Status: *See Table 8: Empire Pass Completed/Anticipated AUE Programming below*

Table 8: Empire Pass Completed/Anticipated AUE Programming

Pod A	Project Name	AUEs Completed/Under Construction	AUEs Programmed for Future Construction
1	Club Residences		1.4
3	Stacked Flat Condo Bldg		2.4
4	Stacked Flat Condo Bldg		2.4
5	East West		1.0
6	Silver Strike	1.0	
7	Flagstaff Lodge	1.6	
8	Arrow Leaf A	3.0	
H	Grand Lodge	1.0	
Pod B1			
Lot C	Ironwood	1.0	
Pod B2			
West	Montage Hotel		7.8
East	Condominiums		2.4
Totals		7.6	17.4

Option B: *Ontario Mill Property* located on the east side of Marsac Avenue.
The proposed use for this property for up to 20 one and two-bedroom for sale units (15 AUEs) targeted to households earning up to 80% of the Area Median Income adjusted for household size.
Status: *The Developer has a Master Planned Development application in process with the Planning Commission for 15 AUEs configured as 20 units. Planning Commission initial feedback at the Preliminary Master Planned Development hearing was to consider a reduction in density at this site.*

Option C: ***Marsac Avenue property*** located on the west side of Marsac uphill from the Ontario Mill site.
Status: *A preliminary review in 2001 considered an overall density of eight to ten units or an estimated six to 10 AUEs depending on project configuration. There is not an active development proposal for this site. City Council declined the donation of this site in lieu of unit construction by the Developer in February 2008.*

Option D: ***Daly Avenue*** property located at the top of Daly Avenue. This Developer is proposing eight units configured as four duplexes for a total of six AUEs.
Status: *Developer has been directed to explore relocation of these units to the west side of the street. A development proposal for the east side of the property was submitted in late March 2008.*

Option E: ***20-acre Quinn's Junction parcel.*** Development on this site is proposed as part of the Park City Heights Annexation and Master Planned Development. The Developer is proposing 20 AUEs associated with the PCMR Annexation and approximately 147.25 additional AUEs (configured as 52 town homes and 30 twin homes) with affordability restrictions.
Status: *The Developer is part of the pending annexation request for Park City Heights. The City Council must make a favorable determination for this site to move forward.*

Option F*:* ***Purchase of Existing Market Rate Units****.*
Status: *The City Council approved the acquisition of up to eight AUEs (configured as 22 efficiency units) in March 2008. Staff recommends that no more than 10 percent (9.89 AUEs) be accepted in fulfillment of the total AUEs obligated.*

Option G: ***Partnership with Mountainlands Community Housing Trust.*** The Developer may work with Mountainlands Community Housing Trust on options related to development purchase or subsidy of units to meet AUE obligation.
Status: *There are no current projects identified.*

Option H: ***Donation of 20-acre Quinns Junction Parcel*****.** The Developer may consider the donation of the Quinn's Junction parcel to Park City for development of AUEs.
Status: *The property is part of an on-going annexation proposal and the Developer has proposed units for development on this site. Therefore, this option is not under discussion at this time.*

Option I: ***Exchanging the 20-acre Quinns Junction Parcel.*** The Development may consider exchanging this parcel for another affordable housing parcel provided by Park City.
Status: *This option is not under discussion at this time.*

Option J: ***Payment of In Lieu Fee.*** The payment of an in lieu fee for Affordable housing acquisition or construction must be mutually acceptable to the City and the Developer.

Status: *The Developer has not requested to exercise this option to date. Current City policy does not favor the payment of in lieu fees and places a high priority on the construction of units.*

Option K: *Other Development Opportunities.* The Developer is committed to ongoing affordable housing site evaluation and feasibility analysis of its land as well as privately held land.
Status: *The Developer is evaluating a submittal of an application for approximately eight AUES for the Mine Bench location that is within the project area (on-site). An application is anticipated in Spring 2008.*

Table 9: Status of Housing Delivery Options

Option	AUEs Completed/ Under Construction	AUES with Submitted Applications	Potential AUE locations
A: On-Mountain	7.6		17.4
B: Ontario Mill Site		15	
C: Marsac Avenue (East Side)			10
D: Daly Avenue		8	
E. Quinn's Junction Montage Additional Proposed AUEs (townhomes) Additional Proposed AUES (twin homes)		20 74.75 52. 5	
F. Existing Units Purchase	8		
K. Other Opportunities (Mine Bench)			8
Total	15.6	170.25	35.4

Sequencing Strategy, Phasing Commitment and Financial Guarantee
The anticipated sequencing strategy for the Employee/Affordable Housing options is detailed in *Table 10: Housing Options Sequencing Table* below. The purpose of the sequencing table is to provide a blueprint to guide the delivery of the AUEs. The sequencing reflects current market conditions and is subject to change. Projects may be accelerated or removed based upon the findings of feasibility analyses, market studies or other due diligence, the ability of the Developer to obtain the necessary approvals or as new or unanticipated opportunities are presented.

Table 10: Housing Options Sequencing Table

Options	Phase I Completed/ Nearing Completion	Phase II Under PCMC Review	Phase III Pending Analysis	Phase IV No Activity Pending/Not Currently Contemplated
A. On-Mountain Units Within Project Area	➔➔➔➔➔➔			
B - D: In Fill Projects Marsac and Daly Avenues		➔➔➔➔➔➔		
E. Quinn's Junction		➔➔➔➔➔➔	➔➔➔➔➔➔	
F. Existing Units Purchase	➔➔➔➔➔➔			
G.: MCHT Partnership				➔➔➔➔➔➔
H – I. Quinns Donation/Exchange				➔➔➔➔➔➔
J. In Lieu Fee				➔➔➔➔➔➔
K. Other Opportunities/Mine Bench			➔➔➔➔➔➔	

The Affordable Units Equivalents shall be phased with the development of Flagstaff Mountain Resort/Empire Pass. The goal of the Housing Plan is to create affordable housing units in advance of that required by the resort development in order to mitigate the impact on the community. The table below presents the Phasing Commitment.

Table 11: **Phasing Commitment**

Density Increment or Number of Flagstaff Unit Equivalents, with Temporary and Permanent Certificates of Occupancy	Affordable Housing Unit Equivalents with Temporary and Permanent Certificates of Occupancy Before Next Density Increment is Allowed
0 – 150*	15
151 – 300	30
301 – 450	45
451 – 600	60
601 – 750	75
751 – 900	90
900 – 914	118.90

** 0-150 Increment is based on Permanent Certificates of Occupancy*

Financial Guarantee

In the event that the Developer's production of Affordable Unit Equivalents lags behind the production of market rate units as described in the Phasing Commitment Table above, the Developer shall be required to post a Financial Guarantee to ensure the completion of the required units. The terms of the Financial Guarantee are detailed below and incorporated into a Corporate Completion Guarantee.

1. Within 30 days from the approval of this amended Employee/Affordable Housing Plan, Developer shall execute a Corporate Completion Guarantee, in a form acceptable to the City Attorney and consistent with prior Corporate Completion Guarantees executed between Developer and City. The Corporate Completion Guarantee shall acknowledge the requirements of the Phasing Commitment as obligations of the Developer, and shall include the following additional terms and conditions:

2. In the event that the Developer has not constructed and obtained at least a Temporary Certificates of Occupancy for the number of AUEs required for any given 150 Temporary Certificate of Occupancy increment (above the initial 150 CO increment) under Table 11: Phasing Commitment of the Employee/Affordable Housing Plan, or has not otherwise satisfied the required number of AUEs through alternatives approved in the Housing Plan, a Deposit equal to 150 percent of the in lieu fee in effect at the time of default for each AUE that is then deficient under Table 11 shall be required. Within 45 days of written notice of default from the City, the Developer shall deposit the required amount. In the event that the Deposit is not made within that 45-day period, the City shall suspend the issuance of any further Temporary or Permanent Certificates of Occupancy until the Deposit is made.

3. Upon notice of default, the Developer may request a progress review of the AUEs under construction by the Chief Building Official. Such notice shall be requested within 10 days of Notice of Default with a determination made within 20 days. The purpose of such review is to evaluate the construction status of the AUE(s). If the Chief Building Official determines that the outstanding construction period is greater than 60 days, then a full Deposit for each deficient AUE shall be made within 15 days of the Chief Building Official's determination. If in the sole opinion of the Chief Building Official the AUE(s) the AUEs are within 60 days of completion, then no Deposit shall be required at that time. If such units do not receive at least a Temporary Certificate of Occupancy by the end of the 60-day period, Developer shall immediately post the required financial guarantee.

4. The total Deposit amount shall be paid into in a segregated Escrow Account held by an independent financial institution or Title Company approved by the Developer and the City Attorney, and having an office in Park City. That financial institution or Title Company shall act as an Escrow Agent and as the Disbursement Officer in controlling and administering the Escrow Account and the Deposit. The Deposit shall operate as a Construction Fund. The Deposit shall be used solely to fund the costs to construct the deficient AUEs.

5. Ten percent (10%) of the per AUE Deposit associated with each deficient AUE shall be held in the Escrow Account until the issuance of at least a Temporary Certificate of Occupancy. The 10 percent retention shall be released to the Developer upon issuance of the Temporary Certificate of Occupancy. Any amount above the 10 percent retention then remaining in the Escrow Account also shall be released to the Developer upon issuance of the Temporary Certificate of Occupancy for that AUE.

6. Developer shall complete construction of any deficient AUEs, defined as receiving Temporary Certificates of Occupancy for those AUEs, within 18 months from date of issuance of any entitlements and permits required to construct those AUEs.

7. Neither the Corporate Completion Guarantee nor the Deposit shall fulfill Developer's responsibility to post a financial guarantee for construction of public improvements and landscaping or other similar improvements as may be required by the City Engineer and/or Chief Building Official under the Land Management Code or other City ordinances.

City Council
Staff Report

PARK CITY 1884 PLANNING DEPARTMENT

Subject:	**7888 Aster Lane**
Author:	**Kirsten A. Whetstone, AICP**
Date:	**April 3, 2008**
Type of Item:	**Administrative – Subdivision**

Summary Recommendations
Conduct a public hearing, review and discuss the 7888 Aster Lane subdivision, being a replat of Lot 17A of the amended Deer Valley Club Estates Subdivision plat (now known as The Knoll Estates) and consider approving the plat based on the findings of fact, conclusions of law, and conditions of approval in the draft ordinance.

Description

Applicants:	Brett Ammon, owner's representative
Project Address:	7888 Aster Lane
Zoning:	Residential Development (RD-MPD) Deer Valley MPD
Adjacent Land Uses:	Single family residential, resort condominiums and support uses, Silver Lake fire station, Deer Valley Resort
Reason for Review:	Subdivisions require Planning Commission review and City Council approval

Background
The Deer Valley Club Estates Subdivision plat was originally approved by City Council in June of 1992 and recorded on December 10, 1992, as a 21 lot single- family subdivision.

In 1998, an administrative lot line adjustment was approved to combine Lots 17 and 18 of the Deer Valley Club Estates Subdivision (now known as the Knoll Estates Subdivision) to create Lot 17A. This lot line adjustment was recorded on July 2, 1998.

On October 19, 1998, after the lot line adjustment plat was recorded, the Knoll Estates HOA quit claimed a 3,281 sf strip parcel to the property owner. The strip parcel is located between the curb of Aster Lane and the front property line of Lots 17 and 18. This strip parcel is assessed with Lot 17A. The addition of this quit claimed parcel as lot area is considered a subdivision of land that was not approved by the City, per the LMC Section 7.1- Subdivision procedures.

On October 18, 2007, the City received a completed application for a subdivision to Lot 17A, to recreate Lots 17 and 18, with a modification to put the lot line approximately 12' to the west of the original location and to formally incorporate the 3,281 sf quit claim parcel into the two lots as a subdivision per LMC Section 7.1. The applicant has no vested right to subdivide and this subdivision request needs to be reviewed for compliance with the current LMC (Section 15-7).

On January 23, 2008, the Planning Commission reviewed this item and conducted a public hearing (see Exhibit G- minutes). The Knoll Estates HOA and several neighbors opposed this subdivision and stated that they believe they will be materially harmed if Lot 17A is allowed to be subdivided into 2 lots and a house is constructed on Lot 18. The HOA claimed that they had been promised that the vacant part of Lot 17A would be a park. The applicant stated that this was not the case. The Commission continued this item to the February 13, 2008, meeting and requested information regarding the location of the rock wall and access to Lot 18 and clarification of the recorded easement/quit claim language.

On February 13, 2008, the Planning Commission reviewed the item and re-opened the public hearing. The legal representative of the HOA reiterated the concerns that the HOA believed they would be materially harmed by the subdivision, in terms of use of the lot for a park and because they couldn't maintain landscaping on the proposed paved driveway. The applicant stated that this was not the case. The Planning Commission voted unanimously to forward a positive recommendation to the City Council (Exhibit H).

Analysis

The property is located at 7888 Aster Lane, a private street in the Silver Lake area of Deer Valley. The property is zoned Residential Development (RD) and is subject to the Deer Valley Master Planned Development- 9th Amended and Restated. (Exhibits A – C)

Lot 17 would contain 22,565 square feet of lot area. Lot 18 would contain 14,441 square feet of lot area. In the original configuration of the Deer Valley Club Estates Subdivision, Lot 17 contained 12,991 sf and Lot 18 contained 20,805 sf (not including the strip parcel). Lot 17 is currently improved with one existing single-family house and mature landscaping. Lot 18 includes mature landscaping associated with Lot 17 but does not have a house on it. Lot 18 would become a lot of record for a future house and the plat would identify a building pad in a similar, yet slightly smaller (by about 225 sf), configuration to that of the original platted lot.

Landscape maintenance easement

The proposed plat continues to identify the landscape maintenance easement across the fronts of Lots 17 and 18, granting the Knoll Estates Association access to the 3,281 sf strip of land quit claimed to the owner of Lot 17A. As described in the title report, the purpose of the easement is for maintaining the landscaping and lighting as follows:

> Grantor (The Knoll Estates Association) reserves the right in perpetuity to enter upon the property transferred hereunder for the purpose of maintaining, attending to and replacing, as circumstances require, the trees located thereon and the rock wall running adjacent thereto and along Aster Lane, together with the perpetual right to install and maintain attractive decorative lighting and holiday season adornment upon those trees, all with the purpose of maintaining and perpetuating the attractive landscaping appearance of the entrance area of Aster Lane from Royal Street.

Staff finds that this landscape easement does not preclude the owners of Lots 17 and 18 from accessing Aster Lane, the private road and non-exclusive utility easement intended to provide access for all Lots within the subdivision.

A decorative stone wall is located within the Aster Lane private road and non-exclusive utility easement north of the front property lines of Lots 17 and 18, and runs along the edge of Aster Lane. According to the survey provided with the submittal, staff finds that the wall itself is not located within the landscape maintenance easement area on Lots 17 and 18 and is located within the Aster Lane “private road and non-exclusive utility easement”, behind the curb.

Access

Lots 17 and 18 are proposed with frontage on Aster Lane, a private road and non-exclusive utility easement, owned by the Knoll Estates HOA. Staff has not found any indication that this access and utility easement, as shown on the original subdivision, has been vacated or abandoned by the quitclaim language or landscape maintenance agreement. An existing driveway for Lot 17 crosses the HOA landscape maintenance easement (described above) on the front portion of the lot.

A driveway for Lot 18 is proposed at the western end of the lot (Exhibit D). A driveway in this location would not necessitate removal or disturbance of the existing rock wall. Some existing landscaping would need to be removed or relocated. The property owner and HOA constructed the wall and HOA permission would be required to disturb it. With the information presented it appears that the driveway could be constructed without disturbing the wall. Required setbacks could be met and construction of a driveway is possible in this location. The driveway design may require relocation of some existing utilities. Staff recommends a condition of approval that the driveway location issue be resolved to the satisfaction of the City prior to issuance of a building permit for Lot 18.

Alternatively, access to Lot 18 could be provided from Lot 17 via a shared driveway, provided an access easement is granted to Lot 18 across Lot 17 and any utility conflicts are resolved. The proposed driveway location, illustrated on Exhibit D, is preferable, given the extent of mature vegetation that would be removed or relocated to accommodate such a shared driveway.

Deer Valley MPD

Development of the subdivision is subject to the Deer Valley MPD (9th amended and restated), which continues to identify a density of 21 units (lots) for the MPD parcel (i.e. for Deer Valley Club Estates). With the 1998 lot line adjustment between Lots 17 and 18, the current density exists at 20 units (lots). The subject plat amendment would put the density back to the 21 lots as approved with the Deer Valley MPD. The density was not traded to another Deer Valley MPD parcel.

LMC- Section 15-7 Subdivision Ordinance

The applicant has no vested right to subdivide and this subdivision request needs to be reviewed for compliance with all applicable sections of the current Land Management Code, including the RD Zoning District and Chapter 7, the Subdivision Ordinance, specifically Section 15-7.1 (Subdivision Procedures) and Section 15-7.3 (Requirements for Improvements, Reservations and Design). The applicant has followed the required process for a 2-lot subdivision. Staff has reviewed the subdivision request for conformance with applicable rules and regulations as outlined in LMC 15-7.3 and finds that, as conditioned, the plat is in conformance with the LMC. The plat is consistent with the lot and site requirements of the RD zoning district and the proposed lot line does not create non-conforming situations for the existing house.

Existing platted easements
There is an existing 20' wide non-exclusive storm drain easement along the western property line of proposed Lot 18. This easement makes a right angle turn and heads east along the south edge of the proposed building pad, crosses onto Lot 17, and continues east to the east property line of Lot 17 along the south edge of the building pad. This easement will remain in place with the plat amendment. A 5' wide easement for pedestrian access for the benefits of Lots 17 and 18 is proposed to be dedicated with the subject plat amendment. There is an existing 10' wide public utility easement along Royal Street within the eastern portion of Lot 17. Other easements, as described in the title report, will not change as a result of this plat amendment.

Deer Valley Club Estates (Knoll Estates) Subdivision plat notes
The applicant proposes to include applicable plat notes consistent with the original amended Deer Valley Club Estates subdivision, including maximum house size, maximum irrigated area, fire protection requirements of residential fire sprinklers and non-flammable roofs, LOD limitations, and potential requirement for ejector pumps to provide sewer service for Lot 18 up to Aster Lane. The applicant also proposes platted building envelopes for the two lots similar in size and location to those identified on the original plat. The building envelope for Lot 17 will accommodate the existing house. The building envelop for Lot 18 will be slightly smaller in area as originally platted due to the narrower lot width, existing easements, and setback limitations of the zone.

The purpose of this subdivision plat is to replat the existing 37,006 sf Lot 17A back into two lots of record, as Lots 17 and 18, in a similar configuration to what was originally platted prior to the administrative lot line adjustment recorded in 1998, with the addition of the property quit claimed to Lot 17A. This subdivision does not create any non-conforming circumstances, nor does it increase the overall density of the Deer Valley MPD or the density allocated to this MPD development parcel.

The proposed subdivision plat would create an additional lot of record from the 20 lots that currently exist on the second amended Deer Valley Club Estates Subdivision, a development parcel of the Deer Valley MPD. The Deer Valley MPD allows 21 single-family lots. The original subdivision, known as the amended Deer Valley Club Estates Subdivision, included a total of 21 lots. The proposed subdivision, as conditioned, is consistent with both the Deer Valley MPD and the amended Deer Valley Club Estates Subdivision.

Summary

Staff finds good cause for this subdivision plat in that two lots of record, in a configuration, and with conditions, similar to the original subdivision plat, would be created for an existing house on Lot 17 and a future house on Lot 18, consistent with the approved Deer Valley MPD. No non-conforming situations are created and the lots would be similar in size to the average lot size in the subdivision (16,296 sf). Lot 17 is proposed at 22,565 sf and Lot 18 at 14,441 sf. The resulting lot size is consistent with the pattern of development in the neighborhood and the proposed density is consistent with the approved Deer Valley MPD. The building pad for Lot 18 could be increased to accommodate the existing deck and the building pad for Lot 17 would be decreased by about 225 square feet. The applicant has agreed to include all applicable plat notes from the existing amended Deer Valley Club Estates subdivision on the revised plat (Exhibit F). The applicant also agrees to dedicate a pedestrian easement across Lot 17 for the benefit of Lot 18 and to maintain all existing easements for landscaping, utilities, and access.

Staff finds no material injury to the public or any person as a result of this subdivision plat. Staff also finds good cause in that the quit claimed parcel would be included in the lots as part of a legal subdivision plat, processed and approved per the required LMC Subdivision criteria. Staff has reviewed the subdivision request against the requirements for subdivisions in the Land Management Code and finds that as conditioned the subdivision plat is in conformance with the LMC.

Department Review

This proposal has gone through an interdepartmental review. Issues discussed included notice to the applicant that sewer service for Lot 18 would likely require ejector pumps, as noted on the original plat, assurances that the private gate code would be made available to all utility providers and property management personnel who may need to respond to emergencies within the subdivision, and a requirement for an existing conditions survey. Several utility providers made comments that in certain instances landscaping is being placed over utilities, not just in this subdivision, and this can cause conflicts if these utilities need to be accessed. These issues have been resolved by additional information from the applicant and/or by conditions of approval.

Public Notice

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record. Staff received letters and a packet of information from property owners and a legal representative for the Knoll Estates HOA objecting to this plat amendment (Exhibit E) attached under separate cover). Several property owners and the HOA attorney spoke against the proposed subdivision plat, stating that they believed they would be materially harmed by the subdivision. They indicated that there were agreements between the previous owner of Lots 17 and 18 that promised that the area of Lot 18 would remain open and undeveloped. The HOA property owner’s provided affidavits to this effect. The applicant did not agree.

Alternatives

- The City Council may adopt the ordinance approving the Knoll Estates (FNA Deer Valley Club Estates) Lots 17 and 18 amended subdivision plat as conditioned or amended; or
- The City Council may deny the Knoll Estates (FNA Deer Valley Club Estates) Lots 17 and 18 amended subdivision plat and direct staff to prepare findings supporting this decision; or
- The City Council may continue the discussion to a date certain to allow additional time for review or any concerns or issues raised at the hearing.

Significant Impacts

A fiscal impact resulting from this subdivision is that a separate lot of record would be created and a single-family house could be constructed without necessity of extending additional public roads or utilities. There are no significant environmental impacts that result from this application, as conditioned, as the density and lot configuration were contemplated with the Deer Valley MPD. Some mature landscaping would have to be removed and/or relocated.

Consequences of not taking the Suggested Recommendation

A separate lot would not be created.

Recommendation

Staff recommends the City Council conduct a public hearing for the proposed subdivision at 7888 Aster Lane, consider any input, and consider approving the subdivision plat based on the findings of fact, conclusions of law and conditions of approval provided for the Council's consideration.

Exhibits

Ordinance
Exhibit A- proposed plat
Exhibit B- original configuration of Lots 17 and 18 and plat notes
Exhibit C- July 2, 1998 lot line adjustment plat, including note added in October of 1998.
Exhibit D- proposed driveway location and rock wall illustration
Exhibit E- letters and affidavits from property owners, HOA, and HOA representative Tesch Law, title report (**separate attachment package**- copies are available at the Planning Department)
Exhibit F- quit claim document
Exhibit G- minutes of the January 23, 2008 Planning Commission hearing
Exhibit H- minutes of the February 13, 2008 Planning Commission hearing

Ordinance No. 08-

AN ORDINANCE APPROVING THE KNOLL ESTATES (FNA DEER VALLEY CLUB ESTATES) LOTS 17 AND 18 AMENDED SUBDIVISION PLAT, PARK CITY, UTAH.

WHEREAS, the owner of the property located at 7888 Aster Lane petitioned the City Council for approval of a subdivision to recreate and reconfigure Lots 17 and 18 of the amended Deer Valley Club Estates Subdivision; and

WHEREAS, the owner of the property located at 7888 Aster Lane requests that the 3,281 sf strip of land, platted originally as part of the Aster Lane private road and non-exclusive utility easement, and on October 19, 1998 quit claimed to the owner of Lot 17A from the Knoll Estates HOA, be included in this subdivision to recreate and reconfigure Lots 17 and 18.

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

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

WHEREAS, the Planning Commission held a public hearing on January 23, 2008, to receive input on the proposed subdivision plat; and

WHEREAS, the Planning Commission, on February 13, 2008, forwarded a recommendation to the City Council; and,

WHEREAS, on April 3, 2008, the City Council conducted a public hearing and discussed the proposed subdivision plat request; and

WHEREAS, it is in the best interest of Park City, Utah to approve the subdivision to recreate and reconfigure Lots 17 and 18, consistent with the original Deer Valley Club Estates Subdivision, Deer Valley Master Planned Development and the current Land Management Code.

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

<u>SECTION 1. APPROVAL</u>. The above recitals are hereby incorporated as findings of fact. The Knoll Estates (FNA Deer Valley Club Estates) Lots 17 and 18 amended subdivision plat, as shown in Exhibit A is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

<u>Findings of Fact</u>

1. The property, currently known as Lot 17A of the Deer Valley Club Estates record of survey and plat amendment, and previously known as Lots 17 and 18 of the

amended Deer Valley Club Estates Subdivision, is located at 7888 Aster Lane. Aster Lane is a private street located in the Silver Lake area of the Deer Valley Master Planned Development area.

2. The property is located in the Residential Development (RD) zoning district and is subject to the requirements and conditions of the Deer Valley MPD, 9^{th} Amended and Restated.
3. The Deer Valley Club Estates Subdivision was approved by City Council in June of 1992 and recorded at Summit County on December 10, 1992. The subdivision was approved according to the Land Management Code in effect at the time.
4. On June 1, 1998, an administrative lot line adjustment was approved by the Community Development Director to remove the lot line between Lots 17 and 18 of the Deer Valley Club Estates Subdivision and create Lot 17A. The plat amendment was recorded on July 2, 1998.
5. On October 19, 1998, a 0.075-acre (3,281 sf) strip of land, located between the curb of Aster Lane and front property line, was quit claimed to the property owner by the Knoll Estates HOA. A note was added, by the County Assessor's office, to the working copy of the lot line adjustment plat, stating that this parcel was to be assessed with Lot 17A. The addition of this lot area is considered a subdivision of land that was not formally approved by the City, per the LMC Section 7. 1- Subdivision procedures.
6. The 0.075 acre quit claim parcel was previously part of the Aster Lane private road and non-exclusive utility easement as indicated on the Deer Valley Club Estates Subdivision. Staff has not found any indication that this private road and utility easement, as shown on the original subdivision, has been vacated or abandoned by the quitclaim language or landscape maintenance agreement.
7. Lot 17A consists of 37,006 square feet of lot area.
8. On October 18, 2007, the City received a completed application for a subdivision to Lot 17A, to recreate Lots 17 and 18, to put the lot line approximately 12' to the west of the original location, and to formally incorporate the previously combined 3,281 sf parcel into the two lots.
9. The applicant has no vested right to subdivide the property and the subdivision request is subject to the current Land Management Code Section 15-7- Subdivision.
10. This subdivision plat creates two lots of record. Lot 17 is proposed to contain 22,565 square feet and Lot 18 is proposed to contain 14,441 square feet.
11. The average lot size in the Knoll Estates, including proposed Lots 17 and 18, is 16,296 square feet.
12. Lot 17 is currently improved with one existing single-family house and mature landscaping. Lot 18 includes mature landscaping associated with Lot 17 but does not have a house on it.
13. There is an existing 20' wide non-exclusive storm drain easement along the western property line of proposed Lot 18. This easement makes a right angle turn and heads east along the south edge of the proposed building pad, crosses onto Lot 17, and continues east to the east property line of Lot 17 along the south edge of the building pad. This non-exclusive easement will remain in place with the plat amendment and does not preclude construction of a driveway in this

location to provide access to the lot, provided that any existing utilities or pipes are relocated, as necessary.

14. The plat will not create a non-conforming situation for the existing house on Lot 17 and all existing utility easements, including storm drainage easements, and access easements remain, including a pedestrian access easement across Lot 17 for the benefit of Lot 18.
15. The plat memorializes a recorded easement across the fronts of Lots 17 and 18 that grants the Knoll Estates Association access to a 0.075 acre strip of land for the purpose of maintaining the landscaping and decorative lighting, etc. as described in Summit County Recorder Book 1192 on Page 395. The purpose stated in the quit claim deed was to maintain and perpetuate the attractive landscaping appearance of the entrance area of Aster Lane from Royal Street.
16. This landscape maintenance easement does not preclude access to Aster Lane from Lots 17 and 18.
17. A decorative stone wall is located within Aster Lane, a private road and non-exclusive utility easement, and runs along the edge of curb of Aster Lane adjacent to the above described 0.075 acre strip parcel. The wall was constructed by the HOA and owner of Lot 17A. According to the survey submitted with the application, the wall is not located on proposed Lots 17 and 18.
18. Lots 17 and 18 have frontage on Aster Lane, a private drive owned and maintained by the Knoll Estates Association, for the purpose of providing access to the lots. The existing driveway for Lot 17 crosses the 0.075-acre landscape and maintenance easement. A driveway for Lot 18 was proposed opposite Aster Court, a private cul-de-sac within Knoll Estates, also crossing this landscape and maintenance easement. A driveway in this location would necessitate creating an opening in the existing rock wall. Modification of the wall is a private matter between the owner and the HOA. The driveway is currently proposed at the western edge of the property in a location that does not disturb the wall.
19. Access to Lot 18 could be provided from Lot 17 via a shared driveway, however this is not the preferred location due to the extent of mature vegetation that would have to be removed or relocated to accommodate a shared driveway.
20. There is sufficient width at the far western portion of Lot 18 to access the lot beyond the west end of the wall. This location was proposed by the applicant at the February 13, 2008, Planning Commission meeting.
21. A private gate was installed at the entrance to the Knoll Estates Subdivision. There are instances when the gate is closed that emergency and property management personnel are not able to enter the subdivision, creating a potential health, safety and public welfare situation.
22. Royal Street provides frontage for Lots 17 and 18. Royal Street is considered a major collector street in the Silver Lake area and access to Royal Street would cross a primary pedestrian walkway and may create conflicts with sight distances and turning movements from other driveways and streets.

<u>Conclusions of Law</u>

1. There is good cause for this subdivision in that two lots of record, in a

configuration, and with conditions, similar to the original subdivision plat, would be recreated. Additionally, no non-conforming situations are created, the lots would be similar in size to the average lot size in the subdivision, the lots are consistent with the pattern of development in the neighborhood, and the quit claimed parcel would be formally included in the subdivision per the LMC requirements and process for subdivisions.
2. The subdivision and density are consistent with the approved Deer Valley MPD-9th Amended and Restated.
3. The subdivision is consistent with the Park City Land Management Code and applicable State law regarding subdivisions.
4. As conditioned, neither the public nor any person will be materially injured by the proposed subdivision.
5. As conditioned, approval of the subdivision does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval

1. The City Attorney and City Engineer will review and approve the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant will provide a recordable mylar to the City for recordation at the County within one year of the date of City Council approval. If the signed mylar has not been received within one year's time, this approval for the plat will be null and void. A one year extension may be granted by the City Council.
3. All conditions of approval of the Deer Valley Club Estates Subdivision shall continue to apply in full force and effect and all applicable plat notes shall be included on the plat prior to recordation as follows: 1) Maximum Floor Area of 11,000 sf, (exclusive of garages, balconies, porches, patios, and basements); 2) Maximum irrigated area of 10,000 sf; 3) modified 13-D residential fire sprinklers and non-flammable roofs are required; 4) LOD limitations not to exceed 15' outside of the building pads with exception that Front Yards maybe disturbed to provide driveways, landscaping, and utilities; and 5) ejector pumps may be required to provide adequate sewer service for Lots 17 and 18.
4. Platted building envelopes are required as shown on the proposed plat amendment, consistent in size and approximate location to those building pads identified on the original Deer Valley Club Estates subdivision plat and to accommodate the existing house.
5. A note shall be included on the subdivision plat prior to recordation requiring a landscape plan to be submitted with any building permit application. The landscape plan shall identify all existing vegetation, landscaping to be removed or relocated, and shall include a re-vegetation plan for all disturbed areas. The landscape plan shall be in conformance with the LOD limitations identified in condition #3 above.
6. Prior to issuance of a building permit, location of the driveway shall be identified and all issues regarding easements, utilities, landscaping, and the rock wall shall be resolved to the satisfaction of the City Planning, Engineering, Building and Legal Departments. All utility easements of record are still in full force and effect

and shall be shown on the plat.

7. The Knoll Estates Subdivision and Knoll Estates Condominium private gate code shall be made available to all utility providers and property management personnel who may need to respond to emergencies within the subdivision, in a manner acceptable to the Chief Building Official.
8. A fire protection plan shall be provided with any building permit applications and a modified 13-D fire sprinkler system shall be required. A note to this effect shall be added to the plat prior to recordation.
9. Access to Lots 17 and 18 shall not be allowed from Royal Street.

SECTION 2. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this ____ day of April 2008.

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, MAYOR

ATTEST:

____
Jan Scott, City Recorder

APPROVED AS TO FORM:

____
Mark Harrington, City Attorney

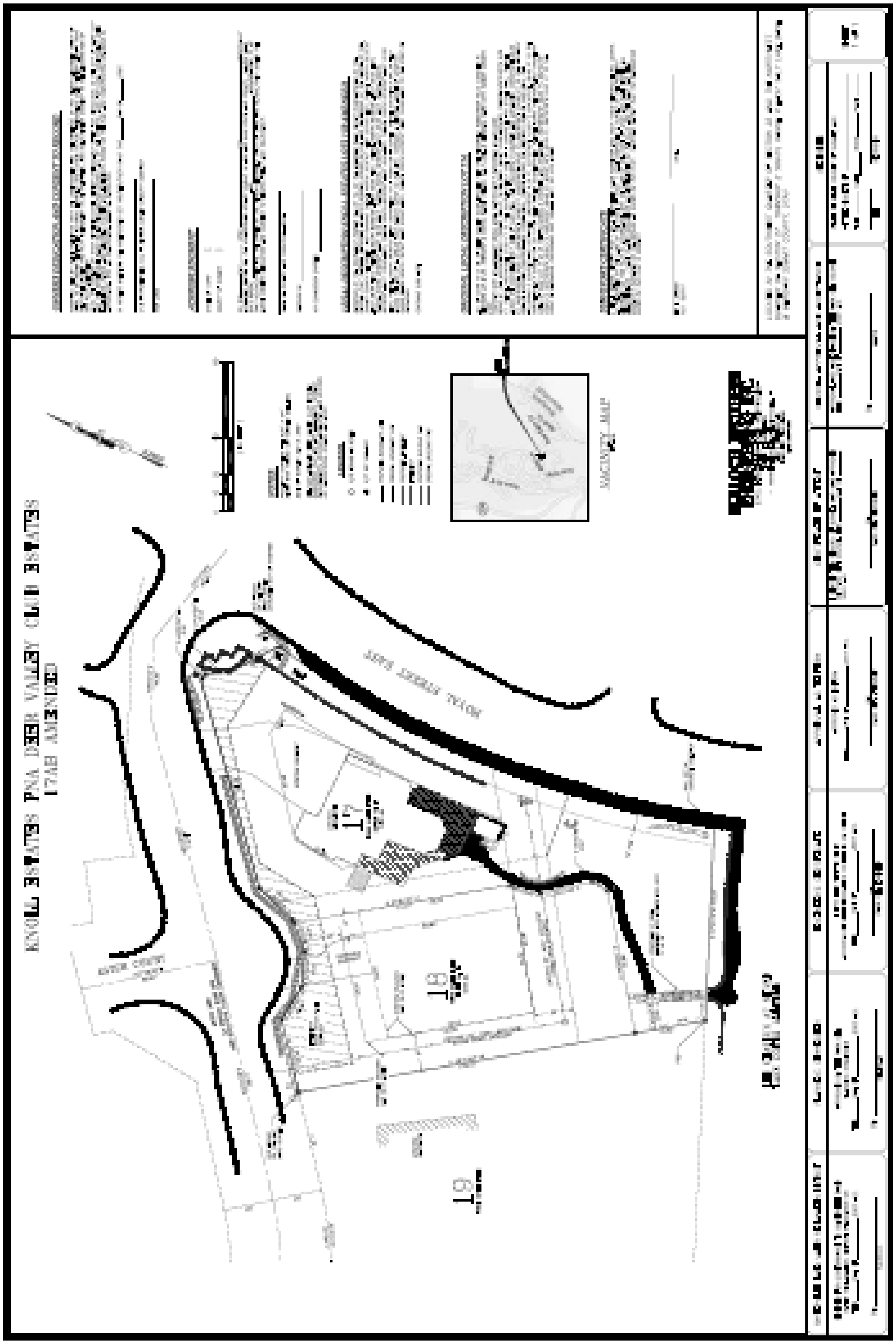


Exhibit A

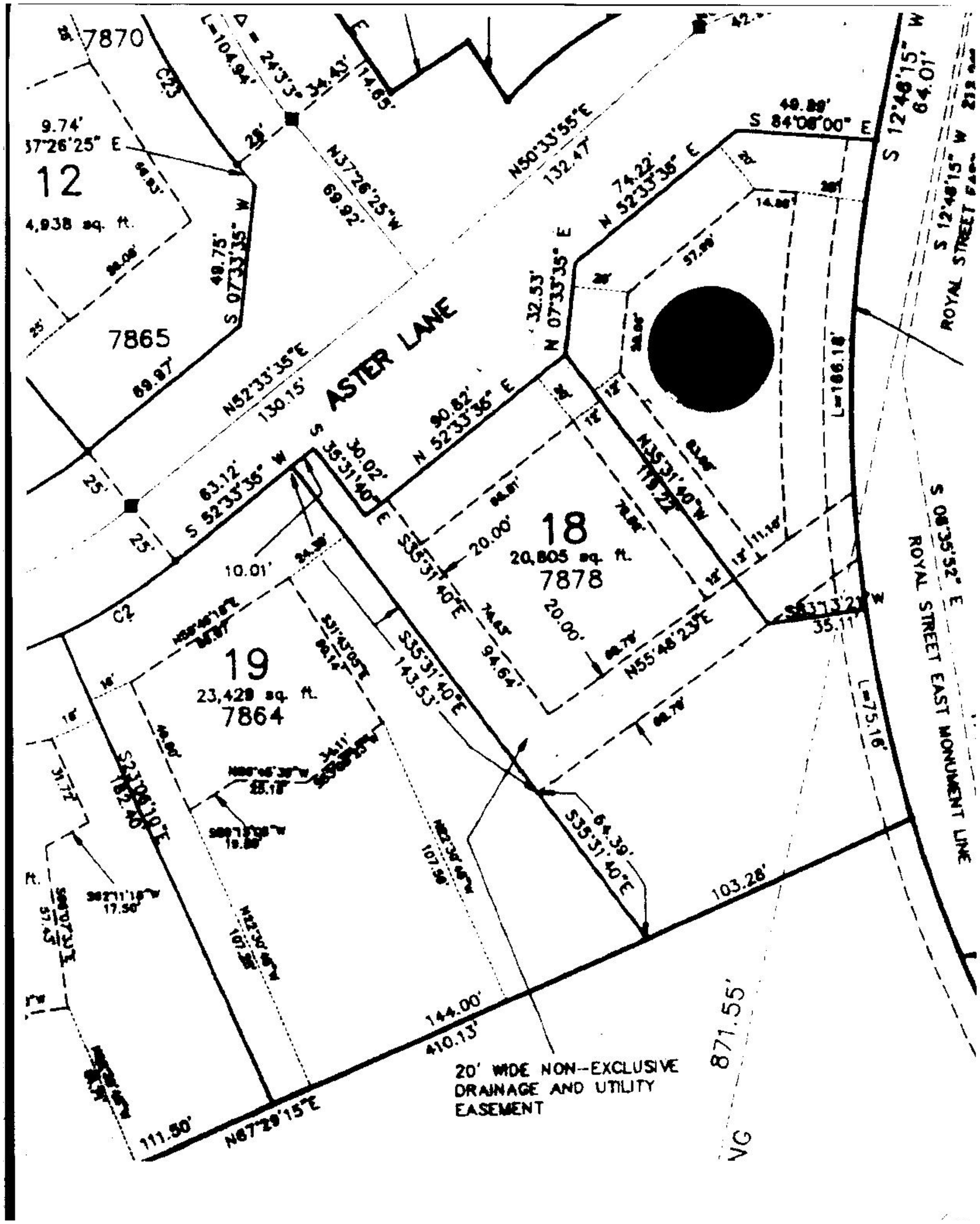

7870
C23
9.74'
37°26'25" E
12
4,938 sq. ft.
7865
69.97'
49.75'
S 07°33'35" W
N37°26'25"W
69.92'
34.43'
14.65'
N50°33'55"E
132.47'
49.89'
S 84°08'00" E
S 12°48'15" W
64.01'
S 12°48'15" W
ROYAL STREET EASEMENT
74.22'
N 52°33'35" E
32.53'
N 07°33'35" E
N52°33'35"E
130.15'
ASTER LANE
90.82'
N 52°33'35" E
30.02'
S 35°31'40" E
63.12'
S 52°33'35" W
25'
25'
L=166.18'
N35°31'40"W
118.22'
18
20,805 sq. ft.
7878
20.00'
20.00'
S35°31'40"E
94.64'
N55°46'23"E
10.01'
C2
S 08°35'52" E
ROYAL STREET EAST MONUMENT LINE
35.11'
19
23,429 sq. ft.
7864
S35°31'40"E
143.53'
S23°06'10"E
182.40'
L=75.16'
64.39'
S35°31'40"E
103.28'
144.00'
410.13'
111.50'
N67°29'15"E
20' WIDE NON-EXCLUSIVE
DRAINAGE AND UTILITY
EASEMENT
871.55'

Exhibit B

NOTES:

1. PLANS, DESIGN & CONSTRUCTION SHALL BE IN ACCORD WITH THE "CONDITIONS, COVENANTS, AND RESTRICTIONS" AS ON RECORD IN THE SUMMIT COUNTY RECORDER'S OFFICE.
2. ALL DWELLINGS SHALL BE FIRE SPRINKLED AND THE SPRINKLING PLAN SUBMITTED WITH THE SITE PLAN AND ARCHITECTURAL DRAWINGS FOR REVIEW PRIOR TO ISSUANCE OF A BUILDING PERMIT.
3. ALLOWABLE IRRIGATED AREA 10,000 SQ. FEET, MAXIMUM PER LOT.
4. NON-EXCLUSIVE UTILITIES AND DRAINAGE EASEMENTS ARE RESERVED ALONG THE FRONT AND SIDE 5.0 FEET OF EACH LOT AND THE REAR 10.0 FEET OF EACH LOT.
   SEE TYPICAL LOT FOR EASEMENTS.
5. "ASTER LANE" AND "ASTER COURT" ARE PRIVATE ROADS AND ROADWAY IMPROVEMENTS THEREON WILL NOT BE MAINTAINED BY PARK CITY. CONSIDERABLE MAINTENANCE COSTS WILL ACCRUE TO LOT OWNERS. (ALSO SEE BELOW)
6. ALL ROOFS SHALL BE CONSTRUCTED USING FIRE RETARDANT MATERIALS.
7. SINGLE FAMILY DWELLINGS TO HAVE MAXIMUM LIVING AREA OF 11,000 SQUARE FEET. LIVING AREA SHALL BE EXCLUSIVE OF GARAGES, BALCONIES, PORCHES, PATIOS, AND BASEMENTS.
8. LIMITS OF DISTURBANCE SHALL BE 15 FEET OUTSIDE OF ALL ROAD RIGHT OF WAYS, BUILDING PAD ENVELOPES, AND UTILITY EASEMENTS. FRONT YARD AREAS MAY BE DISTURBED AND RE-VEGATATED UPON APPROVAL OF PARK CITY PLANNING DEPT.
9. PARK CITY WATER EASEMENT RECORDED APRIL 4, 1982, ENTRY NO. 190450, BOOK M217, WITH THE SUMMIT COUNTY RECORDER.
10. THE DESIGN ELEVATION FOR THE SANITARY SEWER WILL PROVIDE GRAVITY FLOW FOR A STANDARD FLOOR LEVEL BELOW MAIN FLOOR LEVEL AT STREET GRADE, BUT NOT FOR SECOND FLOOR LEVEL BELOW STREET GRADE. RESIDENTIAL TYPE SEWAGE EJECTOR PUMPS MAY BE REQUIRED WHERE THIS CONDITION OCCURES.

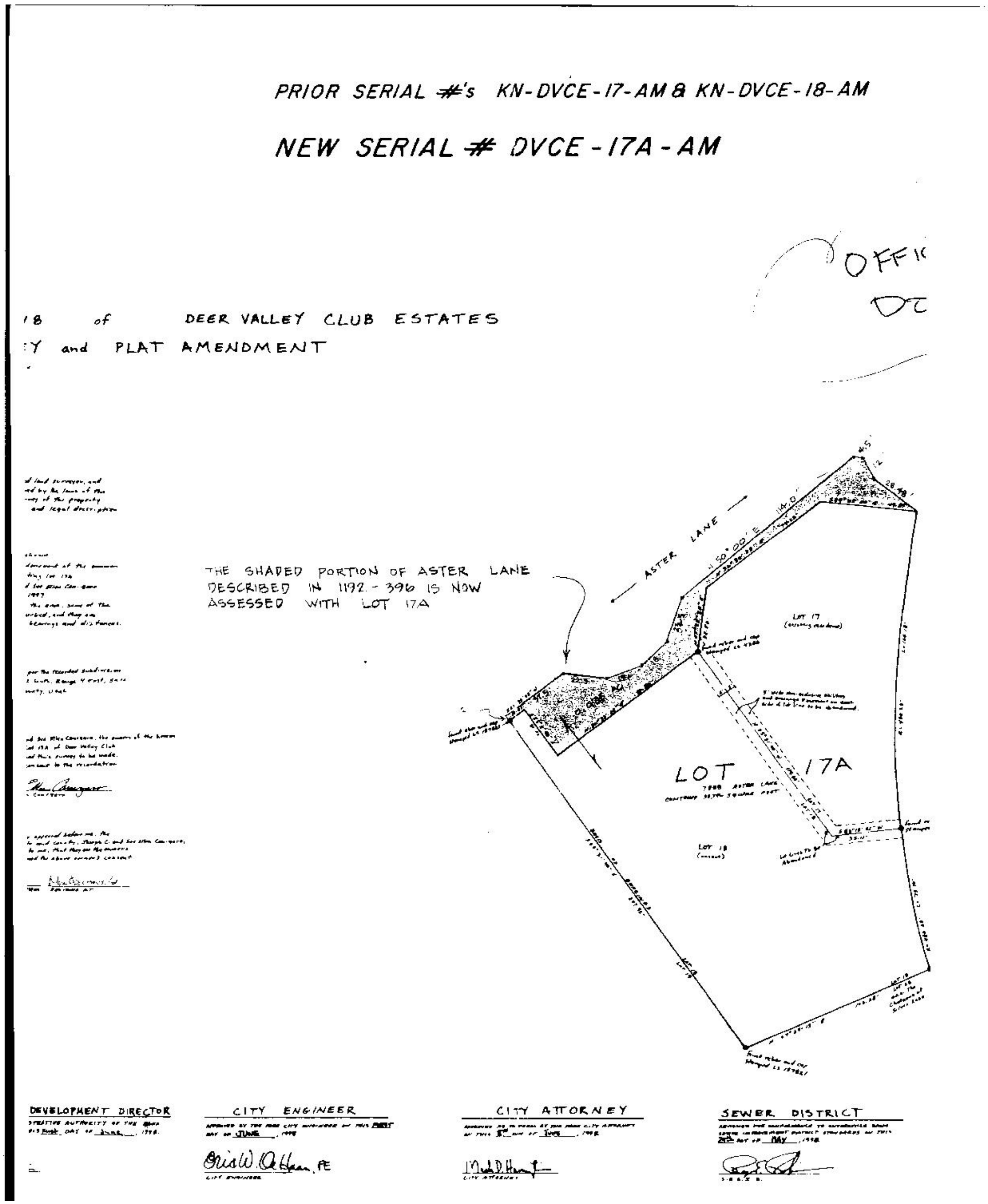


Exhibit C- Assessor's working c

Exhibit D

Exhibit E- Letters and affidavits from property owners, HOA, Tesch Law and Title Report

See separate attachment package

WHEN RECORDED RETURN TO:

JOSEPH C. CANIZARO
909 POYDRAS ST. SUITE 1700
NEW ORLEANS, LA 70112

00520321 BK01192 PG00395-00397

ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1998 OCT 19 15:57 PM FEE $15.00 BY DMG
REQUEST: COALITION TITLE

QUIT CLAIM DEED

THE KNOLL ESTATES ASSOCIATION, formerly known as the Deer Valley Club Estates Association, a Utah non-profit corporation serving as the homeowners' association for the Knoll Estates Subdivision, Park City, Summit County, Utah, whose address is c/o John Lehmer, D'Elia & Lehmer, P.O. Box 626, Park City, UT 84060, GRANTOR, for the sum of Ten Dollars and other good and valuable consideration the receipt of which is hereby acknowledged, hereby QUIT CLAIMS to:

JOSEPH C. AND SUE ELLEN CANIZARO husband and wife as joint tenants and not as tenants in common, 7888 Aster Lane, Park City, Utah 84060, GRANTEES,

the following described portion of the private roadway known as Aster Lane located in the Knoll Estates Subdivision, Park City, Summit County, Utah, which portion is more particularly described as follows:

SEE LEGAL DESCRIPTION ATTACHED.

SUBJECT, HOWEVER, to an easement on this property retained in favor of the Grantor as follows:

Grantor reserves the right in perpetuity to enter upon the property transferred hereunder for the purpose of maintaining, attending to and replacing, as circumstances require, the trees located thereon

Exhibit F

and the rock wall running adjacent thereto and along Aster Lane, together with the perpetual right to install and maintain attractive decorative lighting and holiday season adornment upon those trees, all with the purpose of maintaining and perpetuating the attractive landscaping appearance of the entrance area of Aster Lane from Royal Street.

DATED this 30 day of September, 1998.

THE KNOLL ESTATES ASSOCIATION

By: [signature]
Frank Skillern, President

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

Mr. Frank Skillern, President of the Knoll Estates Association, appeared before me on the 30 day of September, 1998, and, being by me first duly sworn, acknowledged that he executed the foregoing document on behalf of the Association and with full authority.

[signature]
NOTARY PUBLIC

My Comm. expires: 10/6/01 Residing at: Park City, Utah

Notary Public
JOHN R. LEHMER
PO Box 626 7470 Royal St. #201
Park City, Utah 84060
My Commission Expires
October 6, 2001
State of Utah

00520321 Bk01192 Pg00396

F

JAN 10 2008

Description of a portion of Aster Lane, Deer Valley Club Estates Subdivision :

A parcel of land located within Deer Valley Club Estates subdivision, said subdivision being located in Sections 22 and 27, Township 2 South, Range 4 East, Salt Lake Baseline and Meridian, Park City, Summit County, Utah, said parcel of land being more particularly described as follows :

Beginning at the Northwestly corner of Lot 18 of Deer Valley Club Estates, thence N 35° 31' 40" W 2.00 feet, thence N 53°30'00" E 37.50 feet to the southeasterly side of a concrete and stone wall, thence along the southeasterly side of said wall the following 5 courses and distances :

S 85°00'00" E 22.50 feet,
N 69°30'00" E 19.00 feet,
N 46°00'00" E 18.00 feet,
N 19°30'00" E 23.50 feet,
N 50°00'00" E 114.00 feet to the Westerly side of another concrete and stone wall ; thence along the Westerly side of said wall the following 3 courses and distances :

S 83°00'00" E 4.50 feet,
S 27° 30' 00" E 12.00 feet,
S 54° 36' 15" E 28.48 feet to the Northeasterly corner of Lot 17 of Deer Valley Club Estates, thence along the Northerly property lines of said lots 17 and 18 the following 6 courses and distances :

N 84°08'00" W 49.89 feet,
S 52°33'35" W 74.22 feet,
S 07°33'35" W 32.53 feet, 00520321 Bk01192 Pg00397
S 52°33'35" W 90.82 feet,
N 35°31'40" W 30.02 feet,
S 52°33'35" W 10.01 feet to the point of beginning.

Containing 3281 square feet, or 0.075 acres.

JAN 16

Exhibits G and H- Planning Commission minutes

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
JANUARY 23, 2008

COMMISSIONERS IN ATTENDANCE:

Chair Michael O'Hara, Evan Russack, Dick Peek, Rory Murphy

EX OFFICIO:

Principle Planner, Brooks Robinson; Kirsten Whetstone, Planner; Polly Samuel McLean, Assistant City Attorney

==

REGULAR MEETING - 6:30 p.m.

I. ROLL CALL

Chair O'Hara called the meeting to order at 6:40 p.m. and noted that all Commissioners were present except for Commissioners Pettit, Wintzer, and Thomas.

II. ADOPTION OF MINUTES

MOTION: Commissioner Murphy moved to APPROVE the minutes of January 9, 2008 2007 as written. Commissioner Peek seconded the motion.

VOTE: The motion passed unanimously.

III. PUBLIC COMMUNICATIONS

There was no comment.

IV. STAFF & COMMISSIONERS' COMMUNICATIONS/DISCLOSURES

Due to problems with printing the Staff report and posting it on line, Assistant City Attorney, Polly Samuels McLean, informed the Planning Commission that it would be appropriate to discuss the agenda items and continue them to the next meeting if they needed more time to review the packet.

She also noted that only four Commissioners were present this evening. if any Commissioner needed to recuse from an item on the agenda this evening, that would leave the Planning Commission without a quorum and that particular item would need to be continued.
Commissioner Peek disclosed that he would recuse himself from 429 Woodside Avenue because the applicant, Bill Elder, is a client of his.

Commissioner Murphy disclosed that he has done work with the Park City Mountain Resort in the past; however he did not believe that would affect his judgment on the 1310 Lowell Avenue item.

Chair O'Hara disclosed that he and Brett Amon, the owner's representative for Aster Lane, both work for Coldwell Banker. He did not believe this presented a conflict and he would not recuse himself from that item.

V. CONSENT AGENDA

1. <u>429 Woodside Avenue - Steep Slope Conditional Use Permit</u>

Commissioner Peek recused himself from this item.

Based on the content of the report and the direction given to the applicant at the last meeting, Planner Robinson requested that this item be continued to a date uncertain.

MOTION: Commissioner Russack moved to CONTINUE 429 Woodside Avenue to a date uncertain. Commissioner Murphy seconded the motion.

REGULAR AGENDA/PUBLIC HEARINGS

1. <u>7888 Aster Lane - Plat Amendment</u>

Planner Kirsten Whetstone reviewed the request for a plat amendment to split Lot 17A into two lots, 17 and 18, located at 7888 Aster Lane, within the Deer Valley Club Estate subdivision. She noted that the property is located at Silver Lake, directly north of the Chateau.

Planner Whetstone reported that the Deer Valley Club Estate subdivision was recorded on December 10, 1992 as a 21 lot single family subdivision. It is subject to the Deer Valley Master Planned Development and the allowed density allowance on the parcel was subdivided into 21 lots. In 1998 a request was made for a lot line adjustment to combine lots 17 and 18, which removed a single line between the two lots. That request was approved as an administrative lot line adjustment by the Community Development Director, with consent letters from all the appropriate adjacent property owners.

Planner Whetstone stated that the current owner of this parcel is requesting a plat amendment to put the lot line back between Lots 17 and 18 in order to recreate and slightly reconfigure the two lots. There have not been significant changes in circumstance in the plat amendment process or the subdivision regulations between the lot line adjustment and this current application.

The Staff requested that the Planning Commission conduct a public hearing, consider any input, and consider forwarding a positive recommendation to the City Council. Planner Whetstone noted that there is opposition from some of the neighbors and Homeowners Associations in the neighborhood. She reported on letters she had received, which were provided to the Planning Commission.

Chair O'Hara opened the public hearing.

Thomas Howard, an attorney representing the applicant, Mr. Danse, presented the reasons for requesting this lot line adjustment. Mr. Howard referred to a letter from the attorney representing the Homeowners Association, who called this lot line adjustment a re-subdivision.

Mr. Howard disagreed that it is a re-subdivision. He provided a brief history and noted that the Knolls Estates has 21 lots. In 1997, Joe Canizaro owned Lots 17 and 18. Mr Canizaro came before the Planning Commission with a request to combine Lots 17 and 18 into one lot. There were problems and opposition because the Association owned a piece of land along the road way that was common area. People felt they would be deprived of that common area and were unsure how they felt about the lot combination. Mr. Howard explained that Mr. Canizaro wanted to put everything into one lot. At that time, his deck encroached slightly on to the other lot. Mr. Howard pointed out that the vacant lot is Lot 17. When Mr. Canizaro approached the HOA, the deal apparently was that he would put a nice rock fence along the roadways. Mr. Howard presented pictures of a fence that is not the fence as it exists today, but it is similar.

Mr. Howard indicated the entrance into the project and noted that it is a gated community. It was proposed that if Mr. Canizaro built a nice rock wall, it would enhance everything. In exchange for him bearing the expense to put in the wall, the HOA agreed to give him the common area. The common area was deeded to Mr. Canizaro and the HOA retained an easement to access the common area and to maintain the landscaping.

Mr. Howard commented on the other discussions that have surfaced pertaining to another deal and an agreement made by Mr. Canizaro that the entire Lot 17 would then become a park that would be an unrestricted open area for everyone to use.

Planner Whetstone clarified that it was actually Lot 18 and not 17.

Mr. Howard stated that there is not a shred of evidence to show that it was ever an agreement. He has only seen letters written by adjacent lot owners indicating that understanding. Mr. Howard remarked that in order to preserve open space and any kind of park, it would have to be in writing and it would have to be deeded and deed restricted. That has never occurred. When Mr. Danse purchased his property from Mr. Canizaro, the listing agreement went as far as to indicate that these two lots may be unbundled. Mr. Danse spoke with Mr. Canizaro several times during the period of time in which he bought the property. There was never any mention of a park or open space, or anything of that nature. Mr. Howard noted that it has been argued that Mr. Canizaro originally put art work and a waterfall on Lot 18 and made improvements, which were intended to be semi-permanent. He actually put in a 3 foot water course and other things for his own grandchildren, but there was no intent for there to be a park. In exchange for getting this little strip of common area land, he built a fence and paid for it, and created a nice entrance way into the subdivision. This was the reason for deeding the land to Mr. Canizaro. The HOA maintained an easement to make sure they could go on to the land to properly maintain the landscaping. Mr. Howard felt it was ludicrous to think that Mr. Canizaro gave the entire project a million dollar piece of property to use in perpetuity for a park. Mr. Howard remarked that no one uses the property and it is not used as a park.

Mr. Howard believes they are now seeing these kinds of arguments because the owners would like to say that they have view corridors and they are entitled to be able to see everywhere. If that is taken away by allowing a house to be built, it will impact their views and negatively affect their property values. Mr. Howard passed around pictures he had taken today from various points. After explaining these photos and pointing out the grade, he could not see why any views would be obstructed. Mr. Howard stated that even if a home was built to the maximum height requirement, the structure could only come up 16 feet. Mr. Howard noted that Rob Long built a home on the property adjacent to Lot 18 and he had no objection to views or view corridor. Mr. Long has been in negotiations with Mr. Danse to work in partnership to build a home on Lot 18.

Mr. Howard could see no evidence whatsoever being submitted to the Planning Commission that supports the concern of an obstruction or damage to property values. There is no evidence that could be submitted to the Planning Commission showing that there was any agreement on that land. He pointed out that, by law, any real estate agreement must be in writing. There has never been a deed restriction and when Mr. Danse purchased his property, he had no notice whatsoever, or was even told of the agreement. Mr. Howard found it interesting that the Homeowners Association has been billing Mr. Danse dues for two lots; even though the property had been combined into one lot. Mr. Howard stated that Mr. Danse is proposing to cut into the wall to accommodate a driveway if a home is built on Lot 18. If that is not feasible, he is proposing that a small portion of the rock wall be removed near the end of the wall to accommodate a driveway in that location. He noted that the argument has been that the Homeowners Association owns that piece of property, but that it not true. The HOA owns an easement but that easement is only for maintenance of the landscaping. Putting in a driveway would not affect the easement and it would make maintenance easier. Therefore, in his opinion, that argument fades. Mr. Howard pointed out that the CC&R's contain a provision that reads, "No lot shall be re-subdivided". He argued that this is not a re-subdivision. This development was originally platted for 21 lots and in 1997 it went to 20 lots. The applicant's request puts the number back to what was originally platted and approved. A re-subdivision would mean that Mr. Danse plans to divide the lot and put in more homes.

Chair O'Hara pointed out that Park City does not enforce CC&R's, and any issues related to the CC&R's are a moot point for the Planning Commission.

Mr. Howard stated that the HOA has used the road in front of the rock wall to store snow. This is not a legal right and he cannot see how that argument has any merit. Mr. Howard remarked that the most significant point is that there is no deed restriction on this property. He understood that Joe Tesch plans to make an argument that the Planning Commission is making an arbitrary and capricious decision if it approves this application, because the applicant has failed to show good cause for this application and that there is no damage. Mr. Howard argued that there is no showing that there is damage of any kind and Mr. Danse is entirely within his rights. Mr. Howard reiterated that Mr. Canizaro never intended to finance a park for the subdivision. If that were his intention, there would be deed restriction. All that exists is a small quit claim deed, which quit claims the strip of land where the wall sits to the owner of Lots 17 and 18, retaining an easement for necessary maintenance and improvements.

Mr. Howard stated that open space must be created by deed. There are no impacts to any of the homes, views are not being taken away, and there is no vested right for any of the homeowners. Mr. Howard pointed out that since this application was submitted, three other homes in the subdivision are under construction or have been completed and there have been no complaints or loss of view issues with regard to these homes. Mr. Howard believed there was no basis for the objections significant enough for the Planning Commission to override an approval by the Planning Commission.

Allen Herzig, the owner of Lot 3 at the Knoll, read an email he had sent to the Planning Commission stating that when Lots 17 and 18 were combined in 1998 at the request of Joe Canizaro, a deal was made in which the Knoll quit claimed land in return for giving Mr. Canizaro permission to build a wall, with the assurance that open space would be provided as a result of the permanent combination of the lots. That was apparently a reasonable deal acceptable to both parties. Now, for no apparent reason, other than financial gain, the new owner of Lot 17A wishes to renege on that deal. Mr. Herzig could see no reason why the town of Park City should permit this. He stated that several people have purchased lots and built homes in the Knoll Estates since the combination of Lots 17 and 18 was effected. Those people were not there and those homes were not there when the combination took place. They purchased land and built homes on the assumption that the open space and view corridors provided by the legal and presumably permanent combination of the two lots into one lot was going to continue indefinitely. Now these owners are being threatened by the loss of this open space and view corridors for no substantive reason. In addition to losing the enjoyment of the open space and view corridors, they can openly assume that their property values will be negatively impacted by the proposed separation of Lot 17A into two lots and the construction of an additional home on the newly created lot. Mr. Herzig remarked that he has never heard the word unbundling, as used by Mr. Howard. Unbundling has nothing to do with the fact that those lots were permanently combined and that a quit claim was made in order to satisfy Mr. Canizaro so he could build the wall, which benefitted everyone. The homeowners gave up land to get open space and view corridors in a legally binding deal. The bylaws prohibit re-subdivision. He understands that the City does not consider that their purview, however, he believes it is clearly the intent of the Homeowners Association that there be no re-subdivision. In his opinion, this is nothing but a re-subdivision. Mr. Herzig stated that material injury has taken place due to loss of open space, loss of view corridors, removal of a portion of the rock wall, and removal of trees for the driveway and the house. As a homeowner, Mr. Herzig does not believe this request should be permitted.

Rick Coleman was unsure of his lot number because the house was built prior to his purchase. Mr. Coleman stated that when Mr. Danse contracted with Mr. Canizaro to purchase this property, he received a plat form and a title opinion on the property. Therefore, he subsequently knew what he was buying. He purchased the property from Mr. Canizaro based upon the condition that it existed on the day of the closing. To his knowledge, that has not changed. Mr. Coleman stated that for the Homeowners Association to re-grant a change in the layout of Lot 17 and 18 would be a great windfall to Mr. Danse, in that he would acquire a million dollar piece of property that he did not pay for. Mr. Coleman stated that he purchased his property based upon the condition and the layout of this subdivision as it currently exists today.

Norm Gooden, a resident at 7850 Aster Lane opposed this plat amendment because property was given in order for this to be common area for the Association. He stated that Mr. Canizaro had reiterated at several HOA meetings that this land was for them to use. It is now being taken away when everyone gave something to have this option. Mr. Gooden remarked that the property on both sides of his property sold and houses are being built. He has no objection to this because there was never a prior agreement that it would be left as open space. Mr. Gooden did not believe it was right for the City to make a change for the monetary value of a new owner. In addition, the other owners are not getting back the property they gave in exchange for open space and that is not right.
Joe Tesch, representing the Homeowners Association, stated that what Mr. Howard told them is not evidence. What they have as evidence are the packets and letters from the homeowners in the association. These people actually witnessed the events in the HOA meetings and know what took place at that time. Mr. Tesch stated that Joe Canizaro combined two lots and the HOA deeded him 3,281 square feet of property in order to reduce the density and to keep Lot

18, as he promised, as open space to be used as a park. Mr. Tesch remarked that as evidenced by the letters submitted for the record, people in the neighborhood used that space as a park. The land was not deeded to Mr. Canizaro to build a fence. It was deeded to him in a package deal. He could build the fence he wanted to improve the value of his property and the people would get open space and a reduction in density. Mr. Tesch stated that Mr. Canizaro kept his word for ten years and both sides performed for ten years. Part of the deal is written in the sense of the easement. The easement says that the landscaping will stay in perpetuity, that the HOA will be able to decorate it in the Christmas season in perpetuity and be able to go on that property to maintain their rock wall. Mr. Tesch remarked that the rock wall is not on the applicant's property and he cannot touch it or move it to make a driveway. This means the applicant cannot demonstrate access to the new lot being proposed. Mr. Tesch disputed the Staff policy to only consider the City ordinance and not agreements. He believes it is arbitrary and capricious to choose not to consider information because it makes things more difficult. Mr. Tesch did not think the Staff could legally do that. If something violates an agreement that is clear and clean, it is injury. He noted that the letter from the Homeowners Association lists fourteen areas of injury that would result from this plat amendment and he felt it was important for the Planning Commission to consider all the facts in making their decision, and not just the City ordinance. He asked the Planning Commission to think about what they consider as injury because this application does not pass the smell test. He felt that greed and profit is the only reason for requesting this plat amendment. Mr. Tesch stated that if Joe Canizaro misrepresented something in his listing agreement, that is between he and the buyer. There was no misrepresentation by the Homeowners Association.

Steve Drury, the real estate agent representing Mr. Danse, found it interesting that when points of law are disputed Mr. Tesch refers back to the folksy wisdom of anecdotal conversations from ten years ago. He assumed if Mr. Tesch was on the other side of the fence he would stick more to the points of law involved in this matter. Mr. Drury remarked that a deal is not a deal unless it is in writing. If anything agreed upon was of a permanent nature, it would absolutely be in writing and, of course, it is not. Mr Drury stated that when Blair Danse purchased that lot, he had conversations with Joe Canizaro and Mr. Canizaro never mentioned anything of this nature, which Mr. Tesch has so passionately defended. Mr. Drury stated that when Mr. Canizaro was contacted to comment on his pledges, he refused to return phone calls. It is apparent that he does not want to get involved in this whole mess. When Mr. Danse purchased the lot he did seek an advisory opinion from the Planning Commission about the potential of unbundling the lots, and was given an opinion that barring unforeseen or unpredictable circumstances, the lot could be returned to its original state.

Chair O'Hara clarified that an opinion would have been given by the Planning Staff and not the Planning Commission.

In terms of damage, Mr Drury stated that he and his partner spent a year and a half in that subdivision. They have several listings and have open houses on a weekly basis several times a week. In two years he has yet to see one person walk across that park, let alone use it for recreation purposes. Mr. Drury pointed out that there are no view damages because the grade of the lot steps down. Mr. Drury remarked that when the other property owners want to protect their property values, that is the American way; but when Mr. Danse wants to enhance his property, it's all about greed. Mr. Drury stated that Mr. Danse has not yet determined what he will do with that lot. He wants to exercise the right to build a home and has mentioned using it for his own personal use. The argument of greed simply is not the case. Mr. Drury stated that

Mr. Danse has the right to do what he wants with his lot and that is all he is asking from the Planning Commission.

Joe Tesch asked that the people who have used the open space be allowed to speak.

Allen Herzig stated that he does not play on that lot but he has walked across that lot at least six times in the last two years, even though a claim was made that nobody did.

Norm Gooden stated that he has used that property several times in the last five years. He has been president of the Association for eight years and there was a verbal agreement that the property was to remain as open space. He can see now that something should have been put in writing but at the time they took Mr Canizaro for his word.

Rick Holden stated that he has used that space as a park and actually played croquette on it with Joe Canizaro.

Chair O'Hara closed the public hearing.

Assistant City Attorney, Polly Samuels McLean, stated that private agreements or sales agreements have no bearing on the Planning Commission. There is no vested right for anything to be subdivided or not and the Planning Commission should analyze this application based on the Land Management Code. She specifically directed them to the criteria in Chapter 15, Section 7.3, the Subdivision Chapter.

Chair O'Hara clarified that this matter came before the Planning Staff for administrative approval, but it had not been before the Planning Commission. Planner Whetstone replied that this was correct. Chair O'Hara asked if Planning Director Patrick Putt had signed off on that approval. Planner Whetstone noted that Rick Lewis, the Community Development Director at that time had signed the approval. Planner Whetstone had provided the Planning Commission with copies of the Staff report from the original lot line adjustment. Planner Robinson stated that he had written the Staff report and he was familiar with the lot combination.

Planner Robinson referred to page 80 of the current Staff report and Exhibit C, which showed the lot combination. He stated that this was a working document from the Summit County Recorders and the County had added the shaded area. That shaded area was not part of the original lot line but it was part of the quit claim deed that was recorded with the County. Planner Robinson felt it was slightly misleading to look at a document with City Staff signatures showing this as part of the lot line adjustment when, in fact, the County Recorders Office added that quit claim on to their public document.

Planner Robinson recalled that some of the discussion was on re-subdivision and because the City does not enforce CC&R's, he was unsure if the CC&R's define a re-subdivision. He pointed out that the Land Management Code defines a re-subdivision as a change in a map of an approved or recorded subdivision plat, if such change affects any right-of-way or lot line. He was sure the lawyers could argue whether the original lot combination was a re-subdivision because it affected a lot line.

Mr. Howard hoped the Planning Commission was not affected in any way by the threats of a lawsuit that he heard implied this evening. Chair O'Hara assured Mr. Howard that any threats would have no bearing on their decision.

Mr. Howard noted that Mr. Gooden had said that the Homeowners Association gave that strip of property in exchange for open space. Mr. Howard clarified that Mr. Canizaro was given the property so he could have a fence, which he did at his own expense. He heard Mr. Tesch say that Mr. Danse does not own that fence because it is not on his property. Mr. Howard pointed out that the quit claim deed clearly shows that the fence does sit on his property. He owns it and he has the right to do whatever he wants with that fence. This is the applicant's property because they deeded it to him. There is no statement anywhere indicating that it was in exchange for a promise in perpetuity of open space. Mr. Howard stated that Mr. Coleman had referred to his reliance upon a title report and noted that Mr. Danse did the same thing. When Mr. Danse obtained his title report, there was nothing that said this must remain open space. Mr. Danse has paid taxes on the deeded strip and on both lots. He also paid dues on both lots. Mr. Howard found it strange to now hear the homeowners association argue that he is not entitled to both lots. He was bothered by comments such as smell test and greed and he felt those words should not affect this decision in any way.

Chair O'Hara stated that because the Planning Commission has had a limited time to go through the information given to them this evening, there is no guarantee that the Planning Commission would move forward with any decision tonight. Chair O'Hara noted that issues were raised regarding evidence and hearsay. He has heard testimony but he has not seen any evidence. He felt it was important for the Planning Commission to continue this item so they can have time to obtain and review the necessary documentation, particularly the easement language. Chair O'Hara assured the homeowners that the Planning Commission takes CC&R's into consideration but they do not enforce them. They also consider private agreements but they do not enforce those either. Chair O'Hara explained the Planning Commission position on view corridors and when loss of views becomes a valid argument for their consideration.

Commissioner Murphy referred to a drawing of the stone fence and asked for clarification on whose property the wall actually sits on. Mr. Howard stated that the HOA property was deeded to the applicant originally and the HOA retained an easement. Planner Whetstone remarked that the Staff interpretation is that the wall appeared to be on the Aster Lane land. This is why a condition of approval was written requiring that the driveway issue must be resolved before a building permit can be issued. Commissioner Murphy felt that access was a key component because he was reluctant to approve a lot that does not have access. Planner Whetstone noted that in the RD zone, the Land Management Code allows access to a street or private street or a street on the master plan. It also allows an easement so there could be a private easement or an agreement to come directly off that if there is space. Planner Whetstone stated that there appears to be enough room for a driveway on the far west side of the wall without touching the wall. She agreed that access is an issue that needs to be addressed.

Mr. Howard noted that a document in the packet provides an alternate to using the existing driveway to lot 17, and then it becomes a shared driveway on to Lot 18. This can be done without having to disturb the wall.

Commissioner Russack stated that he needed more time to review the information provided and the letters that were on the dias when they arrived. He noted that the HOA letter that was mentioned was not included in their packet and asked if Planner Whetstone could forward that letter to the Commissioners. Commissioner Russack favored a continuance this evening.

Commissioner Peek asked if an easement was granted for this parcel, why the owner did not grant a counter easement when he combined the lots to grant use of that property as open space for the homeowners. He felt that would have been a reasonable business deal if that was the agreement that was entered into. Commissioner Peek supported a continuance.

Commissioner Murphy requested additional information showing the location of the wall, since that will affect the conditions of approval if they reach that point. Commissioner Peek wanted information on whether an LMC approved driveway could be constructed across the end of the wall or can clear the easement into the proposed Lot 18. Chair O'Hara was interested in seeing any written agreements or any records implying those written agreements. Planner Whetstone stated that she would also provide the quit claim deed.

MOTION: Commissioner Murphy moved to CONTINUE the public hearing for 7888 Aster Lane to February 13, 2008. Commissioner Russack seconded the motion.

VOTE: The motion passed unanimously.

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
February 13, 2008

2. 7888 Aster Lane - Plat Amendment

Planner Whetstone reviewed the request for a subdivision of an existing lot, Lot 17A, of the Knolls Estates, which is officially the Deer Valley Club Estates subdivision. She noted that the Planning Commission previously reviewed this application on January 23, 2007.

Planner Whetstone stated that this property is subject to the Deer Valley master planned development which allowed a density of 21 lots for the Deer Valley Club Estates subdivision. In 1998 a lot line adjustment was done administratively to combine two of the existing lots, Lots 17 and 18, into Lot 17A. Planner Whetstone reported that since the last meeting, she had discovered that the strip of land, which was the Aster Lane portion that was quit claimed from the HOA and included into Lot 17A, was not part of that lot line administrative action. That plat was recorded and the quit claim came in later. She presented a slide showing the Aster Lane portion that was quit claimed to the property owner and noted that the plat note was added by the recorder's office subsequent to the 1998 Lot Line adjustment. This was done without a subdivision with the City to combine that parcel into the lot.

Planner Whetstone provided a brief history beginning with the application the Planning Department received in 2007. The request is to recreate Lots 17 and 18 with a small modification to put the lot line approximately 12 feet to the west in order to address a non-conforming issue with a deck. In addition, the applicant is now asking for formal incorporation of that 3,281 square foot quit claim parcel as part of this subdivision. This would formalize the illegal subdivision that was done when the County added the plat note.

Planner Whetstone noted that the applicant has no vested rights to the subdivision. The subdivision request was reviewed by Staff for compliance with the Land Management Code in Chapter 7. The Planning Commission reviewed this application at the January 23rd meeting and heard a considerable amount of public input. Minutes from that meeting were included in the Staff report. Planner Whetstone reported on opposition from the Knoll Estates HOA and several neighbors opposing this subdivision. This opposition is based on concerns that they would be harmed because they believe they had an understanding that Lot 18, which would be formed with the subdivision, was promised as open space and there may be a potential for impacts on the view corridors.

Planner Whetstone stated that the Planning Commission had continued this item to February 13th and requested additional information regarding the location of the rock wall, access to Lot 18, and clarification of the easement language. The Staff looked at the survey provided, which indicates that the rock wall that was constructed by the property owner is not located on his property. The rock wall is actually located within the Aster Lane access easement and a non-exclusive utility easement.

Planner Whetstone stated that she spoke with the City Engineer and he found that the landscape easement on the quit claim parcel does not preclude access. It is simply an easement that allows the HOA to access that property to maintain the landscaping. The easement itself does not preclude access to this property from Aster Lane. Planner Whetstone had provided an explanation of the easement language in the Staff report. She pointed out the additional findings that indicate this is not a vested right. This application will be reviewed through the subdivision process in Chapter 7 of the Land Management Code.

The Staff found good cause for this subdivision to create the two lots with conditions similar to the original subdivision plat. That there is no non-conforming situations created. The lots will be similar in size to the average size lots in the subdivision. The lots are consistent with the pattern of development in the neighborhood. The quit claim parcel would formally be included in the subdivision per the LMC requirements and process of subdivision.

The Staff requested that the Planning Commission conduct a public hearing, consider any input, and consider forwarding a positive recommendation to the City Council according to the findings of fact, conclusions of law, and conditions of approval as outlined in the Staff report.

Thomas Howard, legal counsel representing the applicant, recalled two specific things the Planning Commission requested at the last meeting. There was a question about where the wall sits and whether it was common area or private property. He stated that it appears that the homeowners are opposed to going through the wall, although he believes it probably could happen. Mr. Howard remarked that the applicant has taken the time to re-engineer and demonstrate alternative access to Lot 18, which is listed as one of the alternatives in the Staff report.

Brett Ammon, an engineer representing the applicant, reviewed the previous option, as well as Option 2 where they actually eliminated 10 feet on the east end of the rock wall to create a second option for an entrance for a driveway. Mr. Ammon remarked that the third and most recent option is to leave that low wall where it was originally and still come in from the west side for a driveway entrance. Mr. Ammon presented Option 3 and noted that this option does not disturb the wall at all. He indicated the portion where they would put the 12 foot driveway entrance.

Mr. Howard reiterated that Option 3 addresses the condition of approval that requires them to demonstrate access to the property.

Mr. Howard recalled that the Planning Commission was also concerned about the discussion from the homeowners regarding the former owner's promise that this would always remain open space. They were asked to look into whether or not there was any type of written agreement to support that claim. Mr. Howard stated that Joe Tesch, the representative for the HOA, had provided him with the language that shows to the contrary. Mr. Howard commented on a letter that has the original MLS listing and it indicates that Lot 18 is a master planned buildable lot and can be unbundled. This came from Mr. Canizaro's real estate agent who indicated that Mr. Canizaro truly believed that the lot could be unbundled at any time. Mr. Howard pointed out that no one else has produced anything in writing showing that there was an agreement to the contrary.
Mr. Howard stated that Mr. Tesch has written to the Planning Commission indicating that the applicant made representations to a former commitment that when this came before the

Planning Commission it would pass. He believes this is not true. They were given the indication that it would be considered at that point in time and unless there was something overriding, it would probably go through. Mr. Howard clarified that this was the extent of the commitment given by the past Planning Commission. He did not wish to misrepresent that fact.

Mr. Howard stated that the only issue he heard during the public hearing and in letters from Mr. Tesch is that everyone claims they will suffer material injury if this request is approved. He has not seen any factual evidence that goes to material injury. Mr. Howard asked that the Planning Commission approve this application and that it be moved through the process.

Chair O'Hara opened the public hearing.
Joe Tesch thought the public hearing had been closed at the last meeting. He mentioned this because that was the reason why the homeowners had not attended this evening.

Chair O'Hara clarified that he follows the agenda in the Staff report in terms of when he opens a public hearing. Mr. Tesch understood but he did not want lack of attendance to be misconstrued as disinterest from the homeowners.

Mr. Tesch encouraged the Commissioners who had not attend the last meeting to study the minutes carefully. They report what the homeowners association did and they need to be part of their consideration.

Mr. Tesch remarked that the Knoll Estates Board of Trustees sent a letter to the Planning Commission dated January 14, 2008, wherein they indicated unanimous approval by the homeowners present at that meeting, as well as the Board of Trustees, to oppose this application. Mr. Tesch remarked that in that letter the Board of Trustees indicate eleven different areas where they believe they are materially injured. He stated that unless the Planning Commission can say no to all eleven, then there is material injury and they cannot approve the application. Mr. Tesch reviewed the list and provided an explanation as to why there is material injury and why the applicant cannot demonstrate otherwise.

Mr. Tesch referred to a recent affidavit from Penny Goodwin, the wife of the President of the Homeowners Association, who had gone through all the minutes. In this affidavit, Ms Goodwin referred to a meeting she attended in the year 2000 where the representative for Mr. Canizaro in the HOA meeting made the representation that he intended to keep his word and that would remain open space forever. Ms. Goodwin attended the HOA meeting in 2001 where Mr. Canizaro was present. Mr. Tesch encouraged the Planning Commission to carefully read the entire affidavit because Ms. Goodwin talks about use of the park by herself, by others, by children over a ten year period per the open space agreement. Mr. Tesch stated that in reading Ms. Goodwin's affidavit, they find out that the rock wall was not constructed until 2003 and it was then that Mr. Canizaro said if the HOA would hire an architect, re-landscape and build a better wall, he would pay for it. As the affidavit reports, Mr. Canizaro paid $9,729 to build that wall. The HOA paid the remainder of the $19,000+ bill. Mr. Tesch clarified that the wall was built at Mr. Canizaro's request by the homeowners association based on his commitment to pay. However he only paid half of it. Mr. Tesch stated that he thought what Mr. Canizaro did was generous and he was not complaining. However you cannot say that building the rock wall was any consideration for the easement in 1998, because the rock wall did not occur until five years later. Mr. Tesch pointed out that the consideration to the homeowners for deeding all that property was the promise of open space and that promise was kept for ten years.

Mr. Tesch believes the testimony presented in the sworn affidavits should have credibility in front of the Planning Commission.

Mr. Tesch stated that taking away open space injures the entire neighborhood. Common sense tells you that injury to the neighborhood will take place with this subdivision. Mr. Tesch pointed out that this application clearly violates the CC&R's which states that no lots may be re-subdivided. He stated that Utah law presumes injury and harm because enforcement of the CC&R's are a benefit. He hoped the Planning Commission would make their decision with that in mind. Mr. Tesch remarked that the test in front of the Planning Commission with regard to harm is not a balancing test. The question of who would have more harm, the homeowners association or the person who purchased his property under some misunderstanding, is not relevant. The simple question is whether anybody is materially injured by allowing this subdivision. He believes the documents presented does show material injury.

Mr. Tesch commented on the statement by Planner Whetstone that the original deeding of the property was illegal. He submitted for the record what he believed to be the same document Planner Whetstone had talked about which was signed off by the Community Development Director at the time, as well as the City Engineer and other City Staff.

Planner Whetstone remarked that the document Mr. Tesch had did not include the space she had mentioned. The Staff has the document of what was recorded and it did not include the shaded area. The County added that shaded area after the document was signed.

Mr. Tesch had the original plat of the original subdivision in his possession and stated for the record that Note 1 on the plat indicates that the CC&R's pertain for the entire subdivision. He did not think anyone could make the argument that they were misled.
Mr. Tesch felt the only question is whether or not this subdivision, as it exists today, is injured by adding another lot. The answer is yes it is and everything else is irrelevant. The idea that the MPD allows it or there is similar sized lots in the area, only means it is not illegal or against the law. That is not the same a good cause.

Chair O'Hara clarified that the Planning Commission does not enforce CC&R's but they do consider them. He noted that 5.6 of the CC&R's states that no lots shall be re-subdivided. Chair O'Hara stated that in looking at the definition of a lot, a lot is one of the first 21 parcels. His reading of the definition is that those first 21 parcels or lots are the only ones that are not to be re-subdivided. Chair O'Hara noted that after reviewing the CC&R's he dismissed the argument about re-subdivision.

Chair O'Hara personally wanted to address the issues regarding material injury and suggested that the discussion focus on those issues. Chair O'Hara stated that the Planning Commission has set precedent in their actions over a number of years regarding lots of record. If someone has purchased property and claimed they did so with full knowledge that they had open space in a lot of record or that the lot of record was limited in height so they can have their views, the Planning Commission considers that sufficient enough to preclude a material injury by making changes to those lots.

Steve Jury stated that in the face of contradictory testimony, this is America and a man should be able to build where he wants to build. He disagreed with Mr. Tesch's comment that the entire neighborhood will go up in flames if another home is built. Mr. Jury remarked that if they look at the facts they will find nothing anywhere in writing the words that he used such as "park", "forever" or "ten years". Nowhere, anywhere will you find that in any type of written testimony. Mr. Jury stated that he attended that homeowners meeting and the fact is that it was a wine and cheese party. Six of the twenty-one homeowners were there and in between their fourth and fifth bottle of wine, someone said Joe assured us that it would stay there forever. In the same breath, this person said that they never did get anything in writing and they probably should have. Mr. Jury remarked that when it comes to proof of the former owner's intentions, it was not the real estate agent putting remarks into public comment about what they did or didn't know. It was the original owner's 12 year relationship with his agent who had originally sold him the lot. With his approval, she stated in the public remarks with the sale that this lot can be unbundled. Those were the remarks his real estate agent put in there. She knew Mr. Canizaro well and sold him the lot originally. Mr. Jury stated that calling something open space does not make it open space. It is a lot. He remarked that no one is welching on any deal. Joe Canizaro kept his commitment for the ten years that he owned the property. When he sold it, he sold it with the full public remarks that the lot could be unbundled with the advice of his agent. This was how the property was portrayed and sold and all the new owner wants to do is exercise the option, at a future date, to do what the owner wants do to with his lot. Mr. Jury noted that to date there are no plans, no surveys, no architectural renderings for building on that lot. The owner may decide to do that one day, but so far there has been no discussion to do that in any material sense.

Chair O'Hara closed the public hearing.

Commissioner Thomas wanted to know why Lots 17 and 18 were initially combined in 1998. Planner Robinson explained that at that time Mr. Canizaro had expressed and interest in combining the two lots he owned. In looking at the survey the Staff discovered a deck encroachment that went in to the setback and it was problematic to expand upon that deck. Combining the lots or changing the lot line at the time would have solved that issue. Mr. Canizaro landscaped and improved the area and Planner Robinson was unsure if it was only for his benefit or for the benefit of the community. Planner Robinson reported that it was not an easy lot combination due to utility easements that ran down the lot lines and the owner needed to obtain letter from each of the utility companies.

Commissioner Thomas clarified that presently the property is one lot. Planner Robinson answered yes. Planner Robinson remarked that based on the definition of re-subdivision in the Land Management Code, when the HOA quit claimed a piece of the Aster Lane right-of-way common area to Mr. Canizaro, that was a re-subdivision. The HOA clearly did not have a problem about it violating the CC&R's at that time.

Commissioner Thomas stated that it is a struggle for the Planning Commission to enforce the CC&R's. As a Planning Commission they are held accountable to the restrictions of the Land Management Code and the General Plan. In his opinion, this matter appears to be more of a disagreement between the HOA and the property owner. Commissioner Thomas did not think the Planning Commission has the right to evaluate the CC&R's or make judgment based on the CC&R's.

Commissioner Pettit read from the LMC Chapter 15-7-5(b)2, which deals with private provisions. "These regulations are not intended to abrogate any easement covenant or any other private agreement or restriction provided that were the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement covenant or other private agreement or restriction. The requirements of these regulations shall govern." Commissioner Pettit was concerned about the following language in terms of getting guidance from the LCM. "Where the provisions of the easement covenant or private agreement or restriction imposed duties and obligations more restrictive or higher standards than the requirements of these regulations, or the conditions of the Planning Commission, City Council or the municipality in approving a subdivision or enforcing these regulations, and such private provisions are not inconsistent with these regulations or determination they are under, then such private provisions shall be operative and supplemental to these regulations." Commissioner Pettit noted that the language goes on to say that the City does not enforce private covenants. She was trying to reconcile that language with the concept that there is an agreement in place and whether the Planning Commission should be giving more credence to the agreement, based on this provision.

Assistant City Attorney, McLean explained that CC&R's are allowed to be more restrictive than the LMC. She believed that the last sentence Commissioner Pettit read says that it is not the role of the Planning Commission or the City to be judge and jury of civil disputes that may arise from situations like the one they are presented with. They are not equipped to hear all the evidence and make a civil ruling about whether there were other conditions upon the transfer of the land, etc. As legal counsel, Ms. McLean advised the Planning Commission to apply the Land Management Code and not the requirements of the CC&R's. Currently, they are looking at an illegal subdivision because the approval was for the two lots to combine but it did not include that strip of land. Re-subdividing the two lots would rectify that issue.

Commissioner Russack had no further comment and was ready to move forward.

Commissioner Peek stated that if the City does not take into account private agreements, whether written or verbal, then it appears the Planning Commission needs to grant the subdivision.

Chair O'Hara stated that the arguments this evening should not rest in any way with the CC&R's. However, he believes they rest on whether or not someone will be materially injured. He asked the Planning Commission to keep that in mind as they make their comments. Chair O'Hara clarified that the Planning Commission is looking at a lot of record that has been platted and recorded since 1998. If people purchased their land under the assumption of that one lot of record, the question is whether they will be materially injured if the lot is subdivided. He felt that argument was worthy of discussion before they make a decision.

Commissioner Russack felt the Planning Commission deals with the material injury issue at every meeting when they discuss subdivisions in Old Town. In this case, the lots in this development have assigned building pads. Therefore, if the one lot is subdivided back into two lots, there would be an assigned building pad for the new lot. He believes the view sheds from the adjoining lots were originally taken into account during the master plan process.

Ms. McLean remarked that the Planning Commission could consider allowing Lots 17 and 18 to re-exist and not include the quit claimed portion. That portion would have to remain as a metes and bounds parcel. Commissioner Wintzer did not believe that would solve the problem with the controversy.

Commissioner Murphy agreed with Joe Tesch's comments from the last meeting that something does not feel quite right with this request. However, the City has allowed a density in the MPD of 21 lots and currently there are 20 lots. In the absence of any written record, he did not believe the Planning Commission had a choice. Relative to the material injury claims, he was not certain that applies in this case, particularly since the immediate neighbor does not oppose this subdivision.
Commissioner Wintzer asked if the setbacks set the building pads in this subdivision or if they are building pads themselves. Planner Whetstone replied that they were originally building pads. He wanted to know if the building pad was erased when the lots were combined. Planner Whetstone stated that it was not added to the plat. Commissioner Wintzer clarified that currently there is not a building pad and Planner Whetstone replied that this was correct. Commissioner Wintzer asked if the owner could build on that lot as it currently exists. Planner Whetstone stated that based on the City Code it would be recognized as a lot. The issue is with the CC&R's. Commissioner Wintzer wanted to know if it was possible to double the size of the existing house on the lot. Planner Robinson pointed out that there is still a utility easement that runs north and south along the old lot line between the Lots 17 and 18. The owner could not expand the house without redoing the easement.

Commissioner Peek asked if the MPD allows an accessory building. Planner Whetstone noted that the MPD talks about a number of units. She felt the RD zone would answer that question. She believed the RD zone would probably allow a guest house as a conditional use. Commissioner Peek clarified that a guest house could be allowed as the lot lines currently exist. He felt the material harm aspect of splitting the lots is reduced if an accessory building is allowed as a conditional use.

MOTION: Commissioner Russack moved to forward a POSITIVE recommendation to the City Council for the plat amendment for 7888 Aster Lane based on the Findings of Fact, Conclusions of Law and Conditions of Approval. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

<u>Findings of Fact - 7888 Aster Lane</u>

1. The property, currently known as Lot 17A of the Deer Valley Club Estates record of survey and plat amendment, and previously known as Lot 17 and 18 of the amended Deer Valley Club Estates Subdivision, is located at 7888 Aster Lane. Aster Lane is a private street located in the Silver Lake area of the Deer Valley Master Planned Development area.

2. The property is located in the Residential Development (RD) zoning district and is subject to the requirements and conditions of the Deer Valley MPD, 9th Amended and Restated.

3. The Deer Valley Club Estates Subdivision was approved by City Council in June of 1992 and recorded at Summit County on December 10, 1992. The subdivision was approved according to the Land Management Code in effect at the time.

4. On June 1, 1998 an administrative lot line adjustment was approved by the Community Development Director to remove the lot line between Lots 17 and 18 of the Deer Valley

Club Estates Subdivision and create Lot 17A. The plat amendment was recorded on July 2, 1998.

5. On October 19, 1998, a 0.075 acre 93,281 sf) strip of land, located between the curb of Aster Lane and front property line, was quit claimed to the property owner by the Knoll Estates HOA. A note was added to the lot line adjustment plat stating that this parcel was to be assessed with Lot 17A. The addition of this lot area is considered a subdivision of land that was not formally approved by the City, per the LMC Section 7.1-Subdivision procedures.

6. The 0.075 acre quit claim parcel was previously part of the Aster Lane private road and non-exclusive utility easement as indicated on the Deer Valley Club Estates Subdivision. Staff has not found any indication that this private road and utility easement, a shown on the original subdivision, has been vacated or abandoned by the quit claim language or landscape maintenance agreement.

7. Lot 17A consists of 37,006 square feet of lot area.

8. On October 18, 2007, the City received a completed application for a subdivision to Lot 17A, to recreate Lots 17 and 18, to put the lot line approximately 12' to the west of the original location, and to formally incorporate the previously combined 3,281 sf parcel into the two lots.

9. The applicant has no vested right to subdivide the property and the subdivision request is subject to the current Land Management Code Section 15-7-Subdivision.

10. The proposed lot line does not create a non-conforming situation for the existing house.

11. This subdivision plat creates two lots of record. Lot 17 is proposed to contain 222,565 square feet and Lot 18 is proposed to contain 14,441 square feet.

12. The average lot size in the Knoll Estates, including proposed Lots 17 and 18, is 16,296 square feet.

13. Lot 17 is currently improved with one existing single family house and mature landscaping. Lot 18 includes mature landscaping associated with Lot 17 but does not have a house on it.

14. There is an existing 20' wide non-exclusive storm drain easement along the western property line of proposed Lot 18. This easement makes a right angle turn and heads east along the south edge of the proposed building pad, crosses onto Lot 17, and continues east to the east property line of Lot 17 along the south edge of the building pad. This non-exclusive easement will remain in place with the plat amendment and does not preclude construction of a driveway in this location to provide access to the lot, provided that any existing utilities or pipes are relocated, as necessary.

15. The plat will not create a non-conforming situation for the existing house on Lot 17 and all existing utility easements, including storm drainage easements, and access

easements remain, including a pedestrian access easement across Lot 17 for the benefit of Lot 18.

16. The plat memorializes a recorded easement across the fronts of Lot 17 and 18 that grants the Knoll Estates Association access to a 0.075 acre strip of land for the purpose of maintaining the landscaping and decorative lighting, etc, as described in Summit County Recorder Book 1192 on Page 395 with the purpose of maintaining and perpetuating the attractive landscaping appearance of the entrance area of Aster Lane from Royal Street.

17. This landscape maintenance easement does not preclude access to Aster Lane from Lots 17 and 18.

18. A decorative stone wall is located behind the curb on the Aster Lane private road and non-exclusive utility easement, adjacent to the above described 0.075 acre parcel. The wall was constructed by an owner of current Lot 17A. According to the survey submitted with the application, the wall is not located on proposed Lots 17 and 18.

19. Lots 17 and 18 have frontage on Aster Lane, a private drive owned and maintained by the Knoll Estates Association, for the purpose of providing access to the lots. The existing driveway for Lot 17 crosses the 0.075 acre landscape and maintenance easement. A driveway for Lot 18 is proposed opposite Aster Court, a private cul-de-sac within Knoll Estates, also crossing this landscape and maintenance easement. A driveway in this location would necessitate creating an opening in the existing rock wall. Modification of the wall is a private matter between the owner and the HOA.

20. Access to Lot 18 could be provided from Lot 17 via a shared driveway, however, this is not the preferred location due to the extent of mature vegetation that would have to be removed or relocated to accommodate a shared driveway. Alternatively, there is sufficient width at the far western portion of Lot 18 to access the lot beyond the west end of the wall.

21. A private gate was installed at the entrance to the Knoll Estates Subdivision. There are instances when the gate is closed that emergency and property management personnel are not able to enter the subdivision, creating a potential health, safety and public welfare situation.

22. Royal Street provides frontage for Lots 18 and 18. Royal Street is considered a major collector street in the Silver Lake area and access to Royal Street would cross a primary pedestrian walkway and may create conflicts with sight distances and turning movements from other driveways and streets.

<u>Conclusions of Law - 7888 Aster Lane</u>

1. There is good cause for this subdivision in that two lots of record, in a configuration, and with conditions, similar to the original subdivision plat, would be recreated. Additionally, no non-conforming situations are created, the lots would be similar in size to the average lot size in the subdivision, the lots are consistent with the pattern of development in the

neighborhood, and the quit claimed parcel would be formally included in the subdivision per the LMC requirements and process for subdivisions.

2. The subdivision and density are consistent with the approved Deer Valley MPD-9th Amended and Restated.

3. The subdivision is consistent with the Park City Land Management Code and applicable State law regarding subdivisions.

4. As conditioned, neither the public nor any person will be materially injured by the proposed subdivision.

5. As conditioned, approval of the subdivision does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval - 7888 Aster Lane

1. The City Attorney and Cit Engineer will review and approve the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.

2. The applicant will provide a recordable mylar to the City for recordation at the County within one year of the date of City Council approval. If the signed mylar has not been received within one year's time, this approval for the plat will be null and void. A one year extension may be granted by the City Council.

3. All conditions of approval of the Deer Valley club Estates Subdivision shall continue to apply in full force and effect and all applicable plat notes shall be included on the pat prior to recordation as follows: 1) Maximum Floor Area of 11,000 sf, (exclusive of garages, balconies, porches, patios, and basements); 2) Maximum irrigated area of 10,000 sf; 3) modified 13-D residential fire sprinklers and non-flammable roofs are required; 4) LOD limitations not to exceed 15' outside of the building pads with exception that Front Yards may be disturbed to provide driveways, landscaping, and utilities ; and 5) ejector pumps may be required to provide adequate sewer service for Lots 17 and 18.

4. Platted building envelopes are required, as shown on the proposed plat amendment, consistent in size and approximate location to those building pads identified on the original Deer Valley Club Estates subdivision plat.

5. A note shall be included on the subdivision plat prior to recordation requiring a landscape plan to be submitted with any building permit application. The landscape plan shall identify all existing vegetation, landscaping to be removed or relocated and shall include a re-vegetation plan for all disturbed areas. The landscape plan shall be in conformance with the LOD limitations identified in condition #3 above.

6. Prior to issuance of a building permit, location of the driveway shall be identified and all issues regarding easements, utilities, landscaping and the rock wall shall be resolved to the satisfaction of the City Planning, Engineering, Building and Legal Departments. All utility easements of record are still in full force and effect and shall be shown on the plat.

7. The Knoll Estates Subdivision and Knoll Estates Condominium private gate code shall be made available to all utility providers and property management personnel who may need to respond to emergencies within the subdivision, in a manner acceptable to the Chief Building Official.

8. A fire protection plan shall be provided with any building permit applications and a modified 13-D fire sprinkler system shall be required. A note to this effect shall be added to the plat prior to recordation.

9. Access to Lots 17 and 18 shall not be allowed from Royal Street, unless all conflicts can be mitigated to the satisfaction of the City Engineer.