PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 21, 1996

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, November 21, 1996.

AGENDA

Work Session - To be held in Work Session Room - Main Level

3:30 p.m. Council questions and comments
3:50 p.m. Review of regular meeting
4:15 p.m. General Plan

Continuation of Work Session - To be held in Council Chambers - Lower Level

5:15 p.m. Heritage tourism presentation

Regular Meeting - To be held in Council Chambers - Lower Level

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

Sandridge Heights Subdivision - Leslie Miller

III COMMUNICATIONS FROM COUNCIL AND STAFF

IV WORK SESSION NOTES OF OCTOBER 31, 1996

V CONSENT AGENDA

1. Amendment to lease to Strachan & Strachan for property located at 528 Main Street

2. Authorization for Mayor to execute Quit Claim Deed 97 Daly Avenue (Dafferin Claim - Colman Property)

3. Authorization for Mayor to execute Quite Claim Deed 161 Daly Avenue (Byer Claim - Colman Property)

VI PUBLIC HEARING

Ordinance outlining the process for refunding school impact fees

VII NEW BUSINESS

Ordinance outlining the process for refunding school impact fees

VIII APPEAL

Appeal of Community Development Department's denial of an encroachment permit in the City right-of-way at 577 Main Street for the construction of columns

IX ADJOURNMENT

Posted: 11/18/96

Note: It should be noted that the entry under Public Input occurred during the meeting and was not posted. It appears here on the agenda for reference purposes.

PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
NOVEMBER 21, 1996

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

Toby Ross, City Manager; Jodi Hoffman, City Attorney; Myles Rademan, Public Affairs Director; Mark Harrington, Assistant City Attorney; Rick Lewis, Community Development Director; Nora Seltenrich, Special Projects Manager

Wilson Martin, Program Manager and Deputy State Historic Preservation Officer, Division of State History; Marianne Cone, Sydney Reed, and Pat Cone

1. **Council questions and comments.** Hugh Daniels referred to an editorial in the *Park Record* indicating that because the PC Youth Coalition doesn't have a director, that it can't obtain funding. He reiterated that there is increased funding for youth programs and an application can be submitted to the Parks and Recreation Board. Mr. Daniels emphasized that the articles have not been accurate. He discussed Council participation in the KPCW auction in February. Shauna Kerr suggested that the Council fund a Senior Citizens Christmas dinner and Council agreed that it was a good idea; Council member Kerr stated that she will coordinate the effort. She relayed that the Seniors requested a driver for their van; John Lind explained that they have someone on call. Paul Sincock suggested using volunteer groups because they probably wouldn't be restricted within the City limits like employees. Ms. Kerr discussed the lengthy public hearing before the School Board regarding overnight trips. It is anticipated that the Board will tighten up requirements and the policy will be voted upon in December. There was no decision on the boundaries for the new middle school. She complimented the police on the improved circulation and enforcement at McPolin. Chuck Klingenstein reported that the Mountainlands Community Housing Trust Board is hiring an executive director. Paul Sincock added that there are new board members on Recycle Utah and construction of the new building on Woodbine will begin shortly. Mr. Sincock stated that he met with the Restaurant Association about a drug free work place program. He added that he distributed the City's and ski areas' policies and discussed the benefit of having a uniform employment application form. Roger Harlan referred to a letter from the Main Street Merchants. He was pleased that filming monies were being used for the flower basket project, but was surprised that Mr. Tesch expressed that the Association would like it totally publicly funded. Myles Rademan discussed inserts about this project that will be enclosed with business license applications. There will also be a mailing to box holders in January.

Myles Rademan discussed the upcoming community meetings to be held December 2, 3, and 4. Jerry Gibbs explained that the City purchased the Senior Citizen van, conducts the driver training, and the County contributes to the operation of the van. Mr. Gibbs indicated that the City would be very willing to train volunteers.

Review of the regular meeting.

Lease to Strachan & Strachan. Mark Harrington explained that this will be moved from the Consent Agenda to New Business on the agenda. Mr. Harrington explained that he is recommending $13.50 per square foot and arrived at this figure by looking at rentals on Main Street which generally ranged from $10 to $18. There are reasons he is recommending not being on the higher end, including the one year termination clause. Mr. Strachan has been accommodating in offering his space for City meetings, there is minimal traffic generation, the rent is paid on time, and there is a good relationship with the Historical Society. He explained that he prorated capital expenses out, not leasehold improvements, and there was discussion about the centralized air conditioning. Mr. Harrington indicated that he also spoke with Joe Tesch, Esq. who has just renegotiated his Main Street lease at $13 per square foot for two five year terms. There are additional common area charges, utilities and taxes and it was pointed out that Mr. Strachan pays taxes on the leased area. Mr. Harrington stated that Mr. Strachan has agreed to a base rent of $13.50 and up to $16. Ms. Kerr would like the termination clause to be consistent with KPCW's lease. Mr. Harrington added that the City will pre-approve all leasehold improvements and there was discussion about capping the $15,000. Ms. Kerr suggested additional language in Item 19 regarding the tenant paying all fees for necessary permits.

Colman quit claim deeds. Through illustration of a map, Mark Harrington described the Daffern claim, Lots 13 and 14 which Council reviewed last July. The sale fell through and they felt that the City soured the deal with its request for a preservation easement. Mr. Harrington advised that there was a CAD on the building. He is not advising charging a fee and both options will be open. Hugh Daniels was uncomfortable with not charging fees when there might be an active CAD application. The other claim is for Frank Byer, Lot 26. There was discussion about clearing up all of the lots at one time, and it was decided address them individually, as they are submitted.

School Facilities Impact Fee Refund. Jodi Hoffman explained that she received a letter of support from Burke Jolley. She continued that the process was to be formalized by a joint resolution with this identical language, but somewhere along the line the County and the School District decided not to execute a joint resolution. The County has adopted an ordinance with this language and the School Board is yet to take action. The County and the School District will handle the refund process; the City will handle only refunds to City-sponsored affordable housing projects.

2. **General Plan.** Rick Lewis explained that a public hearing will be held on December 5. The Planning Commission has held four public hearings and neighborhood meetings and there have been revisions as a result of the input. There seems to be some confusion about what the General Plan is suppose to do for the City and there was some disappointment that there weren't ordinances in the document. The General Plan contains goals, objectives and action plans. The process is a cycle where there are citizen or board concerns, staff is directed to analyze the problem, and the plan prompts goals and objectives. Mr. Lewis explained that the action plans become very specific and over time the ordinances get outdated. One of the key elements in this plan is to review the General Plan annually.

There are five elements including community character in the vision statement, future land use plan, and open space plan. Mr. Lewis elaborated on the open space buffer and pointed out the privately owned open space. In response to a question from Paul Sincock about the completion of Phase 2, Mr. Lewis explained the difficulty in some of the features of this phase. Transportation is a major element and once the study is completed on recreation, that information can be added to the Plan. Mr. Sincock expressed his concern about annexations not being addressed for over a year, especially in consideration of the Flagstaff annexation. Mr. Lewis didn't feel it would take that long, as staff is already amending the annexation policy declaration. Roger Harlan noted that Council often charges staff with other projects, forgetting the importance of completing the General Plan.

Mr. Lewis pointed out the concern of rapid population expansion, particularly in the Snyderville Basin. Nuisance and quality of life are other issues. He discussed the guiding principles in the Plan including the historic heritage of our resort community. Annexations should offer community benefits including open space considerations and offer more than bringing property into the City or expanding a tax base. Mr. Lewis illustrated a graph outlining comparable population trends for Summit County and the City. Currently Park City represents about 28% of the County's growth. It is anticipated that Park City may reach 12,000 people by 2020. Mr. Lewis also discussed a list of growth scenarios and discussed the overall general goals including preserving the mountain resort character, conserving environmental quality open space, maintaining high quality public services, and working effectively with other governmental agencies. An additional goal was added, prompted by the 2002 Winter Games, involving more public involvement in decision-making. The next section of the plan addresses community character, focusing on the historic core, developing areas within the corporate boundaries, and the annexation area. He discussed developing a pedestrian friendly environment, keeping an attractive downtown and pointed out that open space appears in just about every section. The Planning Commission is recommending ordinances and policies as part of an action plan, many of which would be amendments to the Land Management Code and some to the Historic District Guidelines. Mr. Lewis added that there needs to be amendments made to the annexation policy listing incentives for open space. Intergovernmental relationships should be reinforced.

Nora Seltenrich emphasized that open space is a focus of the whole plan and drove the land use plan. Some of the actions include TDRs. Ms. Seltenrich pointed out the different types of open space and the types appropriate for different planning areas. Mr. Lewis discussed property added in the annexation declaration including Telemark Park in Wasatch County. Nora Seltenrich covered the key land use policies. She relayed that the Planning Commission is interested in providing a variety of housing opportunities and discussed amendments to the LMC incorporating construction mitigation, phasing, and infrastructure features. Ms. Seltenrich explained that changes to the document will not be made until after the public hearing. She will have the public hearing comments from previous meetings available for the Council to review; many of those comments have been incorporated in the Plan. Ms. Kerr requested that the public comments that have been incorporated be marked.

3. Heritage tourism presentation. Wilson Martin, Program Manager and Deputy State Historic Preservation Officer of the Economic Development Department emphasized that the audience should ask what it is doing to promote heritage tourism and what it is doing to discourage it. He showed slides of graphs indicating the dramatic increase in the popularity of heritage tourism over other types of travel in the past ten years. Mr. Martin attributed this to the aging population with more financial resources, and an interest in authenticity. He showed several slides from small communities, many in San Juan and Sanpete Counties, where heritage tourism has boosted economic development. He also discussed the effectiveness of uniting heritage-type groups in a community to organize partnerships to formulate a vision and mission statement and eventually develop a business plan. He pointed out an example of using professional tour guides who, as a part of a tour, take visitors into local businesses specializing in heirlooms, local cuisine, or folklore. He added that the local government can take the lead in bringing local groups together, it can be a public-private partnership, or privately organized.

The Mayor indicated that organizing people never really occurred to him, although the City has been devoted to historic preservation and has had an Historic District Grant Program in place for many years. Ms. Kerr suggested that the heritage tourism effort might be something that Mountainlands Association of Governments, which is composed of a variety of historic communities, might pursue. Mr. Martin suggested that the government be the facilitator and the private sector be the engine. In response to a question from Roger Harlan, Mr. Martin explained that the Elder Hostile program has a heritage tourism focus. Marianne Cone pointed out the benefits of economic development for many of the communities Mr. Martin discussed in the slide presentation. She commented that although Park City economically healthy, she is concerned about the balance of new development and the history of the community. Mr. Martin didn't find this unusual and added that the government has tried a number of things in rural Utah, and one of the most notable unsuccessful thing has been industrial parks. Heritage tourism, on the other hand, builds on what a community already has and seems to have far more potential for success. He believed that the heritage industry is so solid in Park City that it could drive the town. Toby Ross indicated that he didn't believe that there is a significant number of heritage products in Park City and Mr. Martin disagreed. Paul Sincock described the heritage tours he experienced in New Orleans which were very memorable and well done. There was discussion about the local tours provided by the Historical Society. Mr. Martin discussed the heritage trips he has taken with his ten-year old son who prefers these types of trips over a trip to Disneyland. Meg Ryan asked if anyone is tracking the economic returns; Mr. Martin indicated that they have some numbers but not all of them. There was discussion about the average heritage traveler who wants to take home the community experience. Mr. Martin explained that there are also archeological heritage travelers. Mr. Martin emphasized that the audience can organize itself and he can assist, and there is a variety of models available to use. He gave examples of local businesses selling hand made products, beds and breakfast, Silver Mine Adventure, etc. who can develop a plan together, including marketing and promotion, and through joint cooperation can reach this specialized traveler. The Mayor thanked Mr. Martin for his presentation and hoped that the Historical Society members in attendance would follow-up and get back to the City Council after the first of the year. Mr. Martin strongly emphasized the importance of private sector involvement.

Prepared by Janet M. Scott

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 21, 1996

I ROLL CALL

Mayor Brad Olch called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, November 21, 1996. Members in attendance were Brad Olch, Hugh Daniels, Roger Harlan, Shauna Kerr, Chuck Klingenstein (for a portion of the meeting), and Paul Sincock. Staff present were Toby Ross, City Manager; Mark Harrington, Assistant City Attorney; Meg Ryan, Planner; John Lind, Water and Streets Superintendent; and Jodi Hoffman, City Attorney.

II PUBLIC INPUT

1. Customer Service Awards - Pace Erickson and Denise Payne, in costume, performed their employee orientation skit on the history of Park City focusing on our mining history and the colorful characters of the community. Shauna Kerr interjected that they had been fooled into thinking that they were invited to perform in conjunction with the heritage tourism presentation when in fact, they have been nominated for the third quarter of the customer service awards. She presented Mr. Erickson and Ms. Payne with plaques and gifts for their superb jobs as trainers for employees.

2. Sandridge Heights Subdivision - Leslie Miller - Ms. Miller, applicant, stated that the Planing Commission meeting last night went array. The process, explained to them by staff, did not occur and a letter was ignored by the Planning Commission. The intent of the letter was a follow-up made by Steve Deckert to Council last week. She relayed that the letter was mailed directly to them and each member received a copy at the meeting. Ms. Miller read the letter from Steve Deckert of Alliance Engineering which indicated that throughout the review, the staff has referred to the complicated procedures of accomplishing the requested amendments. A discussion of the many policy issues associated with this plat amendment request would help clarify this proposal and could lead to the best possible design and plan for the applicant's platted City lots. The purview of the Planning Commission does not permit policy decisions on items such as street abandonments and RDA parcel reappropriation and these two issues greatly affect the proposal as well as other applications for access and plat amendments on existing City lots in the Historic District. She continued to read, that in addition, as Chairman Jones recently stated in a KPCW interview, it is beyond the scope of the Planning Commission to review the economic impacts of a particular proposal unless they are negative. It is therefore, appropriate that the City Council is aware of the implications of the proposed public improvement, paid by private citizens and donated to the City. On behalf of the property owners on November 14, Steve Deckert requested a work session with Council to discuss those policy issues relevant to the proposal. The letter continued that the Council seemed sincerely interested and recognized the importance of such a discussion and requested a continuation on the planning aspect of the proposal in order to discuss the broader policy issues at hand. An opportunity for positive modifications to the existing proposal may result from a policy discussion with the City Council. Ms. Miller continued reading that at that point, the applicants would return to the Planning Commission for further review of the proposal and respectively requested that the Planning Commission continue the planning discussion for the November 20 meeting and forward a recommendation to the City Council to hold a work session with the applicants to discuss the related policy issues of this proposal as soon as possible. The letter was signed by Steve Deckert and presented to the Commission.

Ms. Miller stated that it is only fair to the applicants, of which she is one of seven, who have worked in good faith to discuss the policy issues outlined in the letter. She asked that a meeting be arranged with Council before the end of the year. Shauna Kerr stated that the letter doesn't accurately reflect what happened at the City Council meeting of November 14. She emphasized that it was her statement that if the request came from the Planning Commission for the Council to deal with the policy issues of vacation, the Council would be more inclined to deal with it. Ms. Kerr stressed that if the Planning Commission felt that they could not make a determination on the planning issues without first have a determination of the bigger policy issues on vacations, the Council would do so at its request, but the Council did not ask that the Commission kick it up to the Council. Leslie Miller responded that she is at a disadvantage because she was not at the meeting, but felt that there is a great deal of confusion, but does not dismiss the issue at hand. If the Council decides it doesn't want to enter into this discussion, that is a decision the applicants must accept. Paul Sincock asked what happened at the Planning Commission meeting. Leslie Miller relayed that there was a denial, despite of an effort on the part of the applicants to have the matter continued for the purpose of addressing these other issues which would have a positive impact on the planning aspects. She emphasized that there may literally be hundreds of undeveloped platted City lots on which taxes are paid that need to be addressed. Ms. Miller alleged that the proposal did not come from a vacuum and is more representative of the staff's wishes than the applicants. Four years ago, she discussed this with Toby Ross, the City Engineer, and the former City Attorney who suggested that they design a plan. She asked for a policy decision on the plan that they were encouraged to present and didn't see any reason why it wouldn't be discussed. Ms. Miller implored the Council, as City leaders, to do the right thing.

Hugh Daniels stated that Council discussed the general philosophy and discussed not taking a position on a specific application prior to Planning Commission action. He added that they did listen to Steve Deckert and Craig Masters and felt that the Council agreed that it probably is reasonable to hold a work session sometime in the not too distant future. Mr. Daniels emphasized, however, that they didn't want to interfere with the business of the Planning Commission by prejudging a project. Ms. Miller reiterated that the Planning Commission refused to acknowledge the letter and that may be because it is not important to it and not a serious consideration. She felt that this deserves consideration. Chuck Klingenstein interjected that Council indicated that they would review these issues as soon as the Planning Commission rendered a decision on the application. There was discussion about setting a date and the full master agenda of the Council. The Mayor shared the same timing concerns and brought up the potential of an appeal. Chuck Klingenstein stressed that he is looking for a policy discussion as opposed to a site specific application. The City Manager offered that Ms. Miller would probably want to have this discussion prior to a decision on an appeal. Ms. Miller agreed. Ms. Kerr felt that that would be inappropriate; discussing this issue may taint any appearance of an impartial decision of an appeal. She continued that even though this is described as a global discussion, it is going to require getting site specific. She would be happy to talk about this after the appeal concludes, or if there is no threat of an appeal. Paul Sincock understood from Mr. Deckert last week that if there is an appeal, it will be very narrow and will not relate to the issue of public right-of-ways, etc. He felt that the policy needs to be discussed before the appeal. Ms. Miller stated that this is why they specifically asked for a continuation but that was ignored. This discussion would be beneficial not only to the applicants but the entire community. She didn't feel that this should have anything to do with whether they appeal or not or the issues of the appeal. Roger Harlan noted that this project has been in the process for a long time and questioned why these issues weren't addressed months ago. Leslie Miller felt that there has been a lack of communication between the different levels of City government and there isn't a lot of opportunity to do that. Roger Harlan pointed out the different review of the Planning Commission and City Council and Ms. Miller stated that what is not under its purview may be brought before Council as an appeal, and asked Council to help her solve this problem in a way that is honest and fair. Paul Sincock discussed broadening the scope of this appeal to include public rights-of-way. Ms. Miller was interested in that level of discussion. Toby Ross noted that the applicants will have to make a determination of whether or not to appeal. There has to be Council consensus in order for the appeal to be broadened. He discussed the 30 day appeal deadline and the difficulty in having a "generic" discussion before that time because of the holidays. Ms. Miller thanked Council for its interest.

III COMMUNICATIONS FROM COUNCIL AND STAFF

None.

IV WORK SESSION NOTES OF OCTOBER 31, 1996

Hugh Daniels, "I move approval". Roger Harlan seconded. Motion unanimously carried.

V CONSENT AGENDA

The Mayor suggested moving Item 1 to New Business. Chuck Klingenstein, "I so move". Shauna Kerr seconded. Motion unanimously carried. Shauna Kerr, "I move approval of Consent Agenda Items 2 and 3". Chuck Klingenstein seconded. Hugh Daniels asked the status of the CAD on the Dafferin claim. Mark Harrington responded that the application has not been withdrawn, however, because the property will be sold and there will be a new owner and the current application will not be valid. Hugh Daniels relayed that he wasn't so concerned about a new application as he is about the existing application as the City is quit claiming the property. Hugh Daniels suggested that in exchange for waiving the fee, that the Dafferins withdraw the CAD. Shauna Kerr, "I amend my motion to reflect that with regard to the Dafferin's Claim in consideration for waiving the fee, the CAD must be withdrawn". Chuck Klingenstein seconded. Motion unanimously carried.

1. Amendment to lease to Strachan & Strachan for property located at 528 Main Street - See New Business.

2. Authorization for Mayor to execute Quit Claim Deed 97 Daly Avenue (Dafferin Claim - Colman Property) - See work session discussion and staff report.

3. Authorization for Mayor to execute Quite Claim Deed 161 Daly Avenue (Byer Claim - Colman Property) - See work session notes and staff report.

VI PUBLIC HEARING

Resolution describing the process for refunding school impact fees - See work session notes and staff report. Jodi Hoffman explained that Council has received a revised resolution describing the process for refunding school facilities impact fees. This has been negotiated among all entities; the refund procedure mirrors the procedure outlined in the ordinance adopted in 1994, creating a presumption that the refund will go to the current property owner. If there is a contest over the refund, the matter will be resolved either amicably between the parties or through an action in the Summit County District Court. Chuck Klingenstein asked if all administrative costs will be borne by the School District. Ms. Hoffman responded that the School District will act as the City's agent for accepting applications for refunds and the County Treasurer will actually verify the applications and calculate the refund. A list will be provided to the City who will cut the checks and send them out. It is hoped that there will be very little staff time devoted to the process. The Mayor invited further comments from the public. Hearing none, the public hearing was closed.

VII NEW BUSINESS

1. Resolution describing the process for refunding school impact fees - Paul Sincock, "I move adoption of the resolution describing the process for refunding school impact fees as described on Pages 37 through 44 in our packet; the revised one". Roger Harlan seconded. Motion carried unanimously.

2. Amendment to lease to Strachan & Strachan for property located at 528 Main Street - See work session notes. The Mayor invited Tim Henney to speak.

Tim Henney, representing the Citizens for Equitable Representation and the citizens of Park City asked the status of the square footage price. Mark Harrington explained that Council discussed the number in the proposed lease and a higher number and has yet been decided. It was explained that the $15,000 of capital improvements is amortized over seven years and in the event the City terminates the lease before the term, Mr. Strachan would receive a prorated reimbursement. The KPCW lease was discussed. Mr. Henney suggested that in consideration of the Olympics that the City may want to consider an opportunity in terms of subleasing. Jodi Hoffman stated that in that scenario, the City would negotiate its interest in a participation agreement. Mr. Henney explained that when he read the rates in the draft lease suggested by the tenant, he decided to research comparable rents. He stated that a law office on Main Street where the tenant made $5,000 worth of leasehold improvements, the lease was renegotiated at $13 with a $3 community area maintenance fee above that amount. Mr. Henney emphasized that it is important to equalize this space with others by figuring in the exemptions for taxes, insurance, etc. so that there isn't a public perception that the City makes bad business decisions. Those numbers need to be factored in. He also looked at 614 Main Street which is currently being leased between $16 to $18 and a $2 to $3 CAM, netting $18 to $21. Gateway is asking $19 to $21 with a $3 to $4 CAM; netting $22 to $25. The Main Street Mall has space for $12, with a $5.50 CAM, totaling $17.50. Mr. Henney expressed that he looked at other areas including the Wintzer office space which are priced at $13 to $18 with a $3 CAM. The Lewis Wolcott Building is priced from $14 to $20 with a $5 CAM, and Blooming Enterprises is priced at $14 with a $2.50 CAM. He suggested setting a number and backing the $2.50 out for capital improvements and felt that $16 or $17 with a $13 or $14 base rent appears to be equitable.

Chuck Klingenstein understood from the work session that the new number would be $13.50 plus $2.50 for improvements, bringing it to $15.50. Mr. Klingenstein indicated that he spoke with an appraiser who has conducted a comprehensive survey of the Main Street area and numbers ranged from $12 to $20, plus the CAM. He also discussed this with a real estate agent who estimated $12 to $18 plus the triple net feature and another person projected $13 up to $25. He felt that the City is somewhere in the middle. Mr. Klingenstein emphasized that Mr. Strachan has a great tenant history and has worked well with the Historical Society. He felt that the number is fair. Mr. Harlan added that the law office doesn't produce a lot of traffic and wear and tear on an historic building. Mr. Sincock commented that as a matter of policy the City should be in the lower one-half of the average of rents, rather than the upper half where the City would be responsible for increasing prices. He felt that $13.50 is reasonable and falls at the midpoint and Hugh Daniels agreed. Paul Sincock, "I move approval of the sublease agreement to Strachan & Strachan and Park City Municipal Corporation with the base lease rate amended to read $13.50 in lieu of $11.00 as shown on the lease and including a reference to fees and permits". Hugh Daniels seconded. Tim Henney added that the staff was helpful and the reason he became involved was to encourage a good business decision. The Council thanked him for his research. Motion carried unanimously.

VIII APPEAL

Appeal of Community Development Department's denial of an encroachment permit in the City right-of-way at 577 Main Street for the construction of columns - Meg Ryan explained that the applicant requested an encroachment permit which was reviewed and denied by the City Engineer for reasons outlined in the staff report. She continued that the request from the applicant was referred to the Community Development Director who upheld the City Engineer's decision. The applicant is now appealing this to the Council who ultimately makes decisions on City right-of-way. Ms. Ryan emphasized that it wasn't heard by the Planning Commission. Some of the issues raised by staff include significant increased maintenance from having the columns placed in the City right-of-way during the winter months, potential of liability from pedestrians and automobiles and problems with future utility replacements under the sidewalk or the street. There was discussion on the plans not being available, just the elevation. Chuck Klingenstein asked if encroachments have been prohibited for ten years on Main Street. Ms. Ryan wasn't sure if it has been a decade, and indicated that there are structures on Main Street with columns but they are projects that are at least ten years old or older.

John Lind, Streets and Water Superintendent, explained that it is his responsibility to maintain the infrastructure including snow removal. Mr. Lind added that there is a great effort to make snow removal more efficient, and columns cause problems and increase the costs. He is also concerned about utilities. There are nine employees working on sidewalk snow removal and additional columns will increase costs now and in the future. Paul Sincock asked how the columns increase snow removal costs when they aren't in the street. Mr. Lind explained that Main Street has crowning in the middle of the street, which creates significant build-up of snow and ice in the curb and gutter area and because of the crowning, the columns may be hit with equipment. He emphasized that the City is already spending $42/minute for snow removal, and couldn't answer how much these columns will increase the cost, but they will add time. In response to a question from Paul Sincock about the columns being two feet from the curb, Mr. Lind indicated that there isn't sufficient room for the Bombadier to clear sidewalks. There was discussion about the porch not preventing snow from accumulating on the sidewalk. The Mayor invited the applicant to testify.

Don Sergeant, Project Manager for Gaddis Investment, thanked Council for the opportunity to explain why the columns in this case make good sense for historic Main Street. He referenced four documents, including the Land Management Code. Chapter 9 of the Code states that architectural styles, materials, etc. which are foreign to the area should not be constructed on Main Street. He stressed that the balcony and colonnades are part of the historic Main Street character. Secondly, Chapter 7 references the historic commercial business district which provides for and allows canapes and balconies with Council approval. He felt that when the Code was drafted these architectural elements must have been considered important. Mr. Sergeant continued that Historic District Design Guideline #41, addresses shop front designs which encourages overhangs at the building frontage articulating space and variety along Main Street. He emphasized the implication of the cover of the Guidelines illustrating a colonnade with a projecting balcony. Mr. Sergeant stated that they are trying to create something that fits into the architectural flavor of historic Main Street and the design of the balcony and colonnade complies with the clearance standards of the Code and would create enough space for the Bombadier to clear the columns and the building of seven feet. The Code also requires a certificate of insurance and they have proof that the insurance company is prepared to issue that type of insurance. With regard to the staff report, he referred to the comments that the Public Works Department would have to make special provisions to clear this area of ice and snow in the winter, the City may incur damage claims from pedestrians and motorists, and difficulties with future installation of utilities. It is their belief that the flavor of Historic Main Street should dictate the architecture rather than the speed of removing snow. About half of the buildings on Main Street include balconies and canopies, the snow removal effort works and one more building is not going to hurt. He added that this is not precedent-setting as there are very few vacant parcels on Main Street. The Mayor asked the width of the sidewalk between the building and the column and how it compares to other buildings on Main Street. Mr. Sergeant indicated that the architect, Roger Dirst can address those questions. Chuck Klingenstein excused himself from the meeting.

Architect Roger Dirst responded that the Historic Guidelines suggest an alignment of frontages along the street, and that is how the building is designed. By aligning with Family Jewels, there is a nine foot distance from the face of the building to the edge of the curb. The original design anticipated putting the colonnade at the curbside, but after hearing the concern about snow removal, it was suggested that the columns be moved back from the curb line and still maintain the seven foot clearance and ten foot height required by ordinance. With regard to comparables, Mr. Dirst provided a streetscape analysis. He pointed out that the building width is 80 feet, and the balcony is only 37 feet wide. Mr. Dirst relayed that there are 21 buildings with colonnades, eight with balconies and 52 without either. Don Sergeant argued that balconies keep the sidewalk clear of melting snow and ice. Mr. Sincock pointed out that the utilities look like they are in the street not under the sidewalk and the City Manager clarified that the issue is working on the utilities wherever they are and having clearance for the backhoe. Roger Harlan asked if this has been a problem in the past and John Lind indicated that the Red Banjo has caused problems. Mr. Harlan asked who assumes the cost of the extra labor caused by the architectural style and Mr. Lind indicated that the City bears the cost. Mr. Harlan asked if the applicant was willing to post a bond and Mr. Gaddis indicated his willingness, as long as he had the opportunity to obtain his own bid on the same work. Mr. Harlan suggested a $25,000 bond, and Mr. Gaddis reiterated the importance to obtain his own bid. Shauna Kerr questioned if there would be time in a situation to call Mr. Gaddis and wait for bid information. Mr. Lind agreed that these are usually emergencies. Mr. Gaddis felt that this could be worked out.

The Mayor asked staff how many columns have been damaged over the years and Mr. Lind felt that probably eight or ten. The Mayor suggested cantilevering the balcony over the sidewalk and eliminating the columns. Mr. Dirst felt it was possible, but his reservation is that it is representative of a technology, scale, and massing that was not available years ago. Mr. Dirst felt it important to sustain the proportion, scale and respect for historic technology. Cantilevering is possible but creates other problems in massing. Mr. Dirst relayed that architecture is three dimensional; it is the creation of space and the spaces created by those arcades are important to Main Street. Mr. Gaddis understood that the Historic District Commission would not support a cantilevered building because it is not historical and he didn't want to wait another seven months for a plan to be reviewed by the HDC. Paul Sincock pointed out that there are six columns and asked if one or two columns could be removed. Mr. Dirst explained that this is a distillation of the process in trying to sustain variety, scale and proportion for the street frontage. Shauna Kerr pointed out the difficulty in parallel parking large vehicles like Suburbans on Main Street and the goal is to get a vehicle as close as possible to the curb and out of Main Street. Tourists maneuvering a rented vehicle on a steep grade and damaging columns have prompted claims for the City when in fact it was a parking error. Roger Dirst didn't quarrel with Ms. Kerr's statement but pointed out that hitting a column is better than hitting a person. Jim Gaddis stated that he is willing to take on the liability of damage to vehicles and will insure the City. John Lind asked if the columns could be removed in the winter. Roger Harlan commented that he was glad that Mr. Lind mentioned that. He also thought about removable columns, but feared that it was such a dumb idea he didn't suggest it. Shauna Kerr then took Mr. Harlan's chocolate cookies away, wishing she had cut off his sugar intake earlier in work session.

In response to a question from Hugh Daniels, Meg Ryan explained that the HDC began review of the building but needed Council direction before more time was spent on the design aspects. Paul Sincock commended the architect in the design of the building and personally liked the columns. He is sympathetic with the problems created for the Public Works Department, but 26% of the buildings on Main Street have colonnades. Mr. Sincock suggested reducing the number to five and constructing the columns so that they withstand accidents. He prefers the architectural interest of diversity and could support allowing the columns. Mr. Sincock felt that bonding may be a valid way of protecting the City's interest. Shauna Kerr agreed that the City needs architectural interest and character on Main Street but questioned if the existing buildings on Main Street with colonnades are truly historic. In the last ten years, columns have not been constructed, and she felt that it is probably with good reason. Ms. Kerr added that the buildings that have cantilevered balconies function very well and add architectural interest to the streetscape. She is not in support of columns in pedestrian areas and would not support changing the City's policy. Ms. Kerr considered this a health/safety concern and didn't feel that there is any new information tonight that changes a good existing policy of not allowing further encroachments onto the sidewalks. Mr. Harlan stated that the advantage of the cost savings by not having colonnades in his mind is outweighed by the diversity of the project, therefore he will support the appeal. He continued that the applicant must provide adequate financial guarantees to protect the City against costs created by the design of the building (utility work). Mr. Harlan added that this would not change his vote if the applicant refused, but suggested that the owner consider an added contribution to cover additional snow removal cots. Hugh Daniels stated that he likes the architecture in the rendering and referred to a comment made by the Jack Johnson Company in response to the letter of denial sent by the City Engineer. With regard to the comment, "Our design recognizes and avoids conflict with existing and potential future "street furniture" such as hydrants and street lights", he felt it may with less columns or if the balcony was cantilevered. He believed that columns increase the task of snow removal. He referred to Item 3, "The colonnade could be pulled back two feet from the curbside to facilitate. . .", would improve the situation but would not be as good as if there were no columns. Hugh Daniels commented that the whole project could be set back seven feet, but guessed that the applicant would lose too much square footage. There is no way to tell where utilities are in many sections of Old Town. He felt that the decision should not be based on the architecture but on the City Engineer's and Public Works Director's recommendations. Hugh Daniels stated he would deny the appeal. Brad Olch felt that the building is designed well; he appreciated the residential component and two stories. His concern is the width of the sidewalk and disagreed with the applicant's argument that the porch reduces ice accumulation on walking surfaces because he feels it creates more of a problem for pedestrians. The Mayor stated that he cannot support the columns because he didn't feel that they work on Main Street because the sidewalks are too narrow. Ms. Hoffman stated that she heard three opinions from Council to deny the appeal and will draft findings on that direction. Paul Sincock suggested drafting another set of findings for approval since Chuck Klingenstein was not in attendance. Ms. Hoffman explained that in order for Council member Klingenstein to vote, he would have to go back and listen to all of the tapes and consider the evidence presented because he is not a member of the judicial body at this time. Paul Sincock asked the applicants if it was possible to move the building back another foot in light of the Bombadier problem. The Mayor suggested adjusting the porch by a foot or more. This would make the sidewalk area wider and the porch larger. Roger Dirst asked if eight feet were available, if that would be acceptable to Council. Shauna Kerr stated that it wouldn't change her vote, but the Mayor indicated that it would change his vote. Roger Dirst indicated that it would be possible to redesign the building and Jim Gaddis asked if Council could approve this concept tonight. The City Manager explained that if the majority of the Council agreed with that, they could give that same recommendation on the night of the proposal but give direction to staff that if another plan came back before them that provided eight feet between the post and the building and two feet from the post to the street, that it should be approved. Paul Sincock reiterated that the Council will adopt findings next week and may deny this plan, but give direction to staff on approving the encroachment permit for the other proposal. Roger Harlan and Paul Sincock supported the change in sidewalk width.

IX ADJOURNMENT

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

* * * * * * * * * ** *

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

Prepared by Janet M. Scott

Janet M. Scott, Deputy City Recorder

PARK CITY
1884

DATE: 11/15/96
DEPARTMENT: Legal
AUTHOR: Mark Harrington, Asst. City Attorney
TITLE: Lease Extension- Strachan & Strachan
TYPE OF ITEM: Administrative- Consent Agenda

SUMMARY RECOMMENDATIONS: **Authorize the Mayor to execute a new lease with Strachan & Strachan for upstairs office space at 528 Main for seven years.**

DESCRIPTION:

A. **Topic:** The lease of the upstairs of the Old City Hall building to Strachan & Strachan.

B. **Background:** In 1992, the City leased the upstairs (870 sq. ft.) of the Old City Hall building to Strachan & Strachan for a five year term. The Lease expires July 31, 1997. At the October 10, 1996 meeting, the City Council directed staff to prepare a new lease extending the term of the old lease to allow Strachan & Strachan to make certain capital improvements to the tenant space.

C. **Analysis:** Strachan & Strachan and staff propose a new lease agreement with a seven year term. The lease term begins January 1, 1997 and ends December 31, 2003. However, as suggested by Council member Sincock, the City retains the right to terminate the lease upon giving Strachan & Strachan one year's notice and a pro-rated payment for the amortized costs of the proposed capital improvements Strachan & Strachan intends to install. The lease amounts to a $2 per square foot raise from the original lease in base rent to $11 per square foot, with annual raises based upon the CPI. Without accounting for present value, the amortized costs of the proposed improvements ($15,000) over the seven years amounts to approximately $2.50 per square foot, or $2,143 annually. Strachan & Strachan provided information showing two other law firms on Main Street currently pay $10 and $11 per square foot. New commercial office space has been quoted between $14-18 per square foot. Including the value of the improvements, Strachan & Strachan's rent will be approximately $13.50 per square foot, with annual CPI adjustments.

D. **Department Review:** The Legal and Finance Departments reviewed this matter.

ALTERNATIVES:

A. **Approve the Request:** Authorize the Mayor to execute the Lease as attached as Exhibit A, granting a new seven year term to Strachan & Strachan at 528 Main.

B. **Change the Rental Terms**: The Council may decide to alter the terms of the proposed lease, in which case it should incorporate such changes into the motion to approve the lease or remove the lease from the consent agenda and direct staff to prepare the changes for the next meeting.

C. **Continue the Item**: If the Council wants more information, it should request such additional data and continue the item.

D. **Do Nothing**: This is not recommended since the Council needs to make a decision regarding the space no later than January, 1997.

SIGNIFICANT IMPACTS: The leased area represents approximately 870 square feet of office space. Strachan & Strachan has completed substantial leasehold improvements to the space in addition to the rent.

RECOMMENDATION: **Authorize the Mayor to execute a new lease with Strachan & Strachan for upstairs office space at 528 Main for seven years.**

Exhibit "A"

SUBLEASE AGREEM

STRACHAN & STRACHAN AND
PARK CITY MUNICIPAL CORPORATION

THIS AGREEMENT is made by and between Park City Municipal Corporation (hereinafter referred to as "Landlord") and Strachan & Strachan Attorneys at Law, a professional corporation (hereinafter referred to as "Tenant") to set forth the terms and conditions under which Park City will lease to the Strachan & Strachan surplus space in the Old City Hall. The parties agree as follows:

1. Property. The property leased is the second floor level of the Old City Hall, having a street address of 528 Main Street, Park City, Utah. The space contains 480 square feet of office area and 390 square feet of common area for a total of eight-hundred and seventy (870) gross square feet with access through the first floor and the stairs.

2. Term. The Lease shall have a term of seven ~~five~~ (7~~5~~) years from the rent commencement date stated below. The property being leased is surplus municipal space at the present time, but may be required for municipal purposes by Landlord. At any time, Landlord may give the Tenant one year's written notice to terminate this Lease. ~~at the conclusion of the lease term.~~ No option for renewal or extension is granted, however, if the space is still surplus to the Landlord's needs at the conclusion of the Lease term, the space will be offered to Tenant before being offered to others. Landlord will notify Tenant in writing a minimum of six-months prior to the expiration of the lease term whether or not the space is still surplus to Landlord's need and whether the space will be available for lease.

3. Rent. The base rent for the space shall be ~~NINE~~ ELEVEN-DOLLARS ($ ~~9~~11.00) per square foot of gross floor area, excluding the stairwell, for a total leased space of 870 SQ. feet. The base rent of ~~SEVEN~~ NINE-THOUSAND ~~EIGHT~~ FIVE-HUNDRED AND ~~THIRTY~~ SEVENTY DOLLARS ($9,570~~7,830.00~~) shall be paid in twelve (12) equal monthly installments of ~~SIX~~ SEVEN HUNDRED ~~FIFTY-TWO~~ NINETY-SEVEN DOLLARS AND FIFTY CENTS ($797.50~~652.50~~). Base rent shall be adjusted annually on July 1st base upon the CPI. Base rent ~~and additional rent~~ shall be due on the first of each month, and past due if not paid by the tenth (10th) of the month. Landlord shall be entitled to collect $25 for every five days the rent is past due. The base rent was calculated upon reliance that the Tenant would additionally contribute approximately $15,000 in Capital Improvements to the space. "Capital Improvements" must be first approved by the Landlord and generally means those improvements with a life expectancy in excess of the lease term including, but not limited to, centralized air conditioning, windows, hot water plumbing, and hardwood floors. In the event the expected costs of the improvements is materially different from those actually installed, the Landlord in its sole discretion may adjust the base rent up or down as necessary to obtain an equivalent total rental rate. In the event the Lease is terminated prior to the expiration of the Lease term pursuant to Paragraph 2, the Landlord shall give Tenant a prorated reimbursement for the amortized cost of the Capital Improvements that would have otherwise been spread out over the remainder of the Lease term.

4. Utility Services. Tenants shall be responsible to pay for all utilities including but not limited to natural gas, electricity, telephone, sewer and water for the leased space. If the utility is separately metered, Tenant will establish an account in its own name. If any utility is not separately metered, the Tenant shall be responsible for payment for the utility and will pay $300.00 per month for the utilities which the Tenant agrees are reasonably related to the utility usage for the leased space:

Utility payments are additional rent and deemed a part of the rental due. Failure to pay for utility service is a default in the payment of rent.

5. Prohibited Uses. The Tenant will use the leased space for a professional law office use only.

6. Telephone. The Tenant will install its own telephone in the leased space and will not have its calls tied into the Landlord's switchboard in any way. Any specialized telephone wiring will be done at the Tenant's expense.

7. Insurance. The Tenant will provide insurance at its expense covering its contents against loss through theft, fire, vandalism or similar casualties. The Landlord will maintain insurance on the structure for the replacement of the building itself, and the contents of the building owned by Landlord. The Landlord also carries a public liability policy insuring it against claims of personal injury on Landlord's property. The Landlord's policy does not cover the Tenant's employees or patrons who are on Landlord's property exclusively for the purpose of doing business with the Tenant. The Tenant agrees to include the leased premises in its comprehensive property liability policy and will obtain a certificate of insurance for Park City Municipal Corporation and the Municipal Building Authority of Park City and evidencing coverage as to any person on the premises as a result of Tenant's business or activities. It is the purpose of this provision to protect the Landlord from liability or allegations arising out of the Tenant's use of Landlord's property.

8. Rent Commencement Date. This Lease shall commence on ~~August~~ January 1, 1997 ~~___, 1992,~~ and the term of the Lease shall begin on that date. The lease shall expire on December ~~July~~ 31, 2003 ~~1997. It is understood and agreed by the parties that the University of Utah will remain a tenant in this space until their new space is available at the Carl Winters School. The monthly rental of Tenant shall be reduced by the current rental and utility payments being received by Landlord from the University of Utah. Tenant shall be entitled to occupy and make necessary repairs to the leased premised, as long as the use does not interfere with the existing use of the premises by the University of Utah and the Museum and Historical Society.~~

9. Tenant Improvements. The space is being leased to Tenant in a completely finished state. Electrical work is complete. The space is heated and plumbed. Any additional interior finish desired by the Tenant and approved by the Landlord in writing is the responsibility of the Tenant,

with no allowance made for the costs of Tenant improvements unless agreed to by Landlord in writing. At the termination of the Lease, all Tenant improvements become the property of the Landlord.

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

11. Signage. Tenant shall be entitled to install a sign on the front of the Old City Hall building. The sign shall conform to the Park City sign regulations in effect on the date the sign is installed. Landlord reserves the right to specifically review and approve or reject proposed signage on the building. Landlord's approval for signage will not be reasonably withheld, so long as the sign meets the requirements of the Park City sign code, the historic nature of Main Street and conforms with the architectural detailing of the building. Signage shall be removed at the termination of the Lease, and Tenant shall be responsible for all costs associated with the installation, maintenance and removal of signage.

13. Assignment/Sublease. The Lease may not be assigned or the premises sublet without the advance written consent of Landlord. Landlord's consent to assignment or sublease will be granted on the basis of preservation of the tax exempt status of bonds issued by the Municipal Building Authority of Park City and the financial reliability, character and qualifications of the assignee or sublessee. Landlord's consent will not be unreasonably withheld.

14. Remedies. In the event the Tenant fails to pay monthly installment payments when due, or fails to pay additional rent as billed for, or violates or breaches any other term or condition of the Lease, Landlord shall have the right to exercise the following remedies, and any other remedies available at law or in equity:

(a) Landlord may, by written notice to Tenant, demand that Tenant either pay rental installments and additional rent due within ten (10) days, or quit the premises within fifteen (15) days;

(b) Landlord may permit the Tenant to remain in possession and sue for the installments and additional rent that are past due;

(c) Landlord may re-let the premises for Tenant's account at the rate and on such terms as are commercially reasonable at the time and under the circumstances, and charge Tenant for any difference in the rental received and the rental agreed to herein, provided that any re-letting shall be done in good faith under the circumstances;

(d) Landlord may agree to a payment of damages in such amount as the parties then agree, and release the Tenant from obligations under this Lease entirely. Unless Landlord has released Tenant's continued performance under this Lease, Tenant is deemed to be in possession of the premises, and any re-letting by Landlord is on Tenant's account. Tenant is responsible for all payments and obligations under the Lease until Landlord releases Tenant.

14. Covenant of Quiet Possession. Landlord covenants with Tenant that Landlord has leased the premises from the Municipal Building Authority, and that Tenant's possession will not be disturbed by acts or omissions of the Landlord so long as Tenant faithfully performs the obligations of this Lease.

15. Maintenance. The Landlord shall be responsible for all structural maintenance of the premises, including the roof, foundation, structural members, and exterior wall surfaces. Tenant shall be responsible for all interior maintenance, including mechanical and electrical fixtures, heating and lighting, janitorial service, and glass maintenance (both cleaning and replacement in the event of damage) which is within the leased premises or solely serves the lease premises. Landlord shall be responsible for mechanical systems which serve portions of the building other than, or in addition to Tenant's space as reasonably necessary to maintain the structure and to service common utility facilities. Exterior maintenance and snow removal shall be Landlord's responsibility.

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

17. Force Majeure. This Lease Agreement shall automatically terminate upon any holding, interpretation, or determination by a court, legislative, or administrative body that Landlord may not lease to a private law firm or similar establishment or that the bonds issued by Park City Municipal Corporation or Municipal Building Authority of Park City will not qualify as tax exempt if the property is leased to a private entity monies are received for so leasing, either under existing state and federal law regulation or future state and federal law regulation.

18. Increased Insurance Risk. Tenant will not permit said demised premises to be used for any purpose which would render the fire insurance on the building or the premises void or cause

cancellation thereof or increase the insurance risk or increase the insurance premium in effect at the time of the terms of this Lease. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the leased premises any article or materials which are prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to the premises of the same general type as those covered by this Agreement.

19. Care and Repair of Premises by Tenant. Tenant has inspected the premises and accepts it as acceptable for the purposes of this agreement. The Tenant will not commit any waste on leased premises nor shall it use or permit the use of the premises in violation of any state law or county or municipal ordinance or regulation applicable thereto. Tenant may, with prior written consent of Landlord, but at its own cost and expense, in a good workmanlike manner, make such alterations and repairs to the portion of the Old City Hall building as Tenant may required for the conduct of its business without, however, materially altering the basic character of the building or improvements or weakening the structure on the leased premises. Any permanent alterations or improvements to the leased premises shall become the property of the Landlord upon expiration or termination of this Lease. Tenant is responsible for obtaining all necessary Historic District Commission approvals required for any proposed renovation.

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

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

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

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

occupancy of the leased premises to the full extent provided by law, including reasonable attorney's fees, but excluding any liability resulting from acts or omissions of Landlord, its officers, employees or agents. The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act.

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

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

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

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

28. Security. The Tenant is entitled to put a lock on the door to its space, provided the Landlord is given a key for reasonable access and building maintenance. Both parties will attempt to keep the exterior doors locked after their use of the building is completed for the day, and the Tenant shall have the obligation of checking all exterior doors at the conclusion of each day to make sure that they are locked, and that windows in the rooms used by the Tenant are secured. Lights and radiators should be turned off at the conclusion of the Tenant's use each day.

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

DATED this _____ day of ___________, 1996.

PARK CITY MUNICIPAL CORPORATION

____
Bradley A. Olch, Mayor

Attest:

____
City Recorder

Approved as to Form:

____
City Attorney

STRACHAN & STRACHAN

____
BY: GORDON STRACHAN

CORPORATE ACKNOWLEDGMENT

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

On this ___ day of ______________, 199_, personally appeared before me ___________________, who being duly sworn, did say that he/she is the __________________ of ___________________, and acknowledged to me that the preceding lease was signed on behalf of said company, by their authority and he/she acknowledged that the company did execute the same for its stated purpose.

____
NOTARY PUBLIC

PARK CITY 1884

DATE: 11/18/96
DEPARTMENT: Legal
AUTHOR: Mark Harrington
TITLE: Authorization of QCD to N. Virginia Daffern
TYPE OF ITEM: Administrative

SUMMARY RECOMMENDATIONS: Authorize the Mayor to execute a Quit Claim Deed ("QCD") in a form approved by the City Attorney to N. Virginia Daffern for the property described in Exhibit A in exchange for $10 and other good and valuable consideration.

DESCRIPTION:

A. Topic:

A property claim on the Colman open space parcel

B. Background:

The City has developed a settlement strategy to help facilitate resolution of long standing property claims by owners adjacent to the Colman parcels purchased by the City in 1994. This is the one of several such anticipated claims.

Ms. Daffern is the owner of lot 14 and a portion of lot 13 of Block 13 of the Millsite Reservation (97 Daly). The Council originally authorized a QCD to Ms. Daffern for approximately 1292 sq. ft. on July 11, 1996 in exchange for a preservation easement for the historic home which sits on the property. However, that request was based upon a prospective buyer's intent to restore the structure and that buyer no longer intends to purchase the property. The original area included additional rear yard setback area to accommodate the restoration of the home. Ms. Daffern now simply seeks the less than 50 sq. ft. that the home actually encroaches on so that she has clear title to sell the property.(See map attached as Exhibit A)

C. Analysis:

Since the area is so small, is occupied by the historic home and Ms. Daffern, who does not have a lot of money, already incurred substantial survey costs, Staff recommends that the City waive the administrative fee and quit claim the area to Ms. Daffern as requested with the standard condition that Ms. Daffern agree to participate in a lot combination for the area. Ms. Daffern must also supply the new legal description for the encroachment area.

D. Department Review:

The Legal Department and City Engineer reviewed this claim.

ALTERNATIVES:

A. Approve the Request:

This is the recommended action.

B. Deny the Request:

See below for consequences.

C. Continue the Item:

If the Council wants more information, it should remove the item from the consent agenda and continue to a work session meeting.

SIGNIFICANT IMPACTS:

The area in question is already encumbered by a building owned by Ms. Daffern (see Exhibit A), and it is very small in relation to the overall open space parcel. Therefore, there are no significant impacts resulting from the transfer of title.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

Ms. Daffern may likely attempt to take formal legal action. Until the matter was resolved, her title to the property would remain unclear.

RECOMMENDATION:

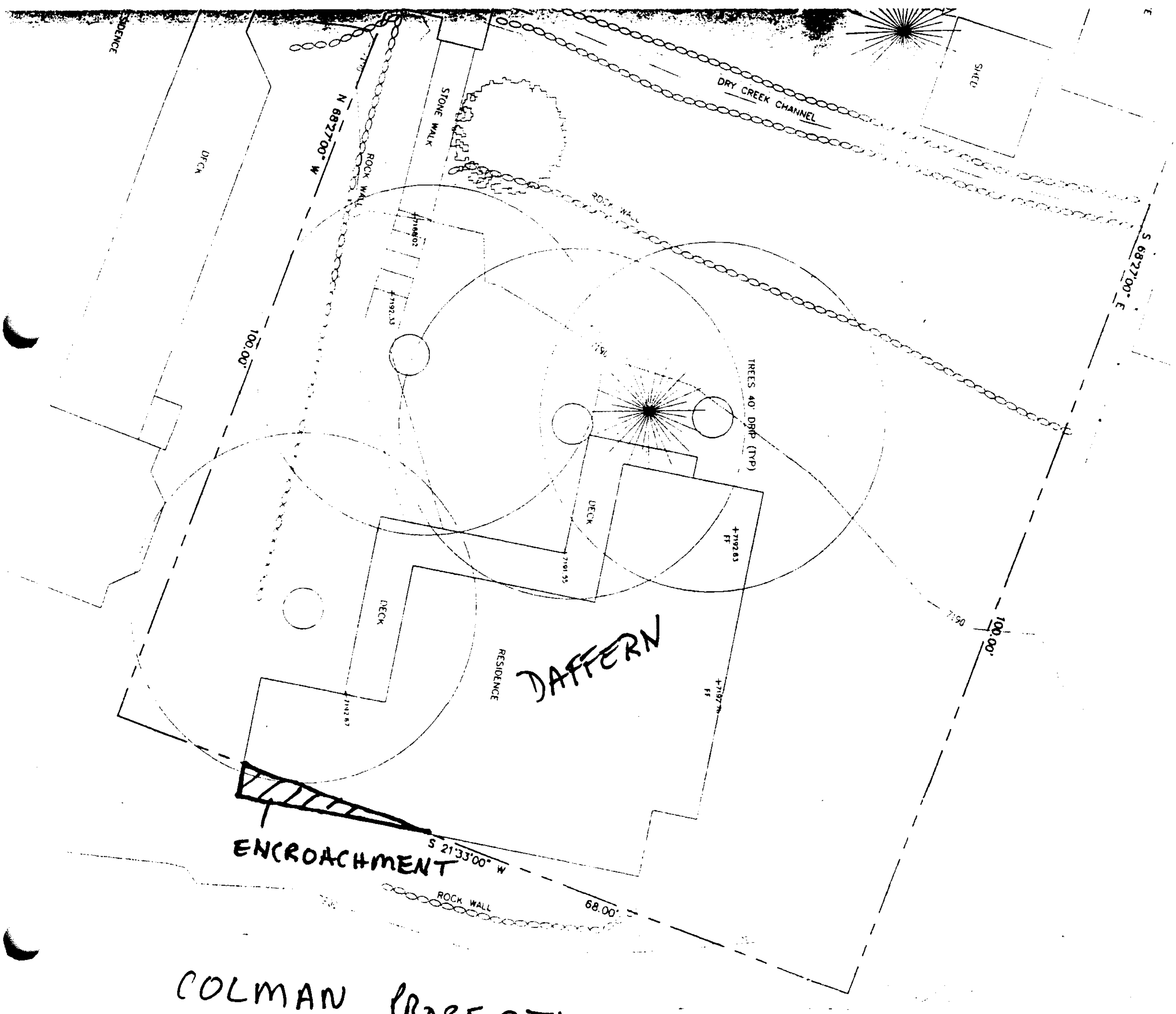
- ♦ Authorize the Mayor to execute a QCD in a form approved by the City Attorney to N. Virginia Daffern for the property described in Exhibit A in exchange for $10 and other good and valuable consideration, subject to the condition of approval listed below.

Conditions of Approval:

1) Ms. Daffern shall furnish a new legal description approved by the City Engineer of the encroachment area as shown on Exhibit A.

2) Ms. Daffern shall cooperate with any re-platting of the area by the City or otherwise perform her own lot combination prior to obtaining a building permit for any portion of the property.

Exhibit "A"


DRY CREEK CHANNEL
SHED
STONE WALK
ROCK WALL
N 68°27'00" W
DECK
100.00'
S 68°27'00" E
TREES 40' DRIP (TYP)
DECK
RESIDENCE
DECK
DAFFERN
100.00'
ENCROACHMENT
S 21°33'00" W
ROCK WALL
68.00'
COLMAN PROPERTY

30

PARK CITY 1884

DATE: 11/18/96
DEPARTMENT: Legal
AUTHOR: Mark Harrington
TITLE: Authorization of QCD to Frank D. Byer
TYPE OF ITEM: Administrative

SUMMARY RECOMMENDATIONS: Authorize the Mayor to execute a Quit Claim Deed ("QCD") in a form approved by the City Attorney to Frank D. Byer for the property described in Exhibit A in exchange for $500 and other good and valuable consideration.

DESCRIPTION:

A. Topic:

A property claim on the Colman open space parcel

B. Background:

The City has developed a settlement strategy to help facilitate resolution of long standing property claims by owners adjacent to the Colman parcels purchased by the City in 1994. This is the one of several such anticipated claims.

Frank D. Byer is the owner of 161 Daly Avenue (Lot 26, Block 73, Millsite Reservation). Mr. Byer submitted a letter requesting a QCD for that portion of the City's Colman purchase that his shed and deck encroach on. (See Exhibit B) Staff believes that based upon the information supplied by Mr. Byer, his claim stems from long-standing use and occupancy of the property. Accordingly, staff recommends that the City quit claim the area to Mr. Byer for the standard administrative fee of $500, and Mr. Byer's agreement to participate in a lot combination for the area. (See map attached as Exhibit C)

C. Analysis:

Mr. Byer has already had the area surveyed and a deed prepared. The recommended action is consistent with the policy adopted last spring to resolve Colman property claims.

D. Department Review:

The Legal Department and City Engineer reviewed this claim.

ALTERNATIVES:

A. Approve the Request:

This is the recommended action.

B. Deny the Request:

See below for consequences.

C. Continue the Item:

If the Council wants more information, it should remove the item from the consent agenda and continue to a work session meeting.

SIGNIFICANT IMPACTS:

The area in question is already encumbered by a building owned by Mr. Byer and a retaining wall (see Exhibit B), and it is very small in relation to the overall open space parcel. Therefore, there are no significant impacts resulting from the transfer of title.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

Mr. Byer may likely attempt to take formal legal action. Until the matter was resolved, his title to the property would remain unclear.

RECOMMENDATION:

- Authorize the Mayor to execute a Quit Claim Deed ("QCD") in a form approved by the City Attorney to Frank D. Byer for the property described in Exhibit A in exchange for $500 and other good and valuable consideration.

Condition of Approval:

1) Mr. Byer shall cooperate with any re-platting of the area by the City or otherwise perform his own lot combination prior to obtaining a building permit for any portion of the property.

at............ M. Fee Paid $....................

by.................................... Dep. Book.............. Page.............. Ref.:....................

Mail tax notice to........GRANTEE.................Address P.O. Box 615
PARK CITY, UT 84060

S-1000

QUIT-CLAIM DEED

[CORPORATE FORM]

Park City Municipal Corporation

, a corporation organized and existing under the laws of the State of Utah, with its principal office at Park City , of County of Summit , State of Utah, grantor, hereby QUIT CLAIMS to
Frank D. Byer

grantee of , County of , State of for the sum of Ten and No/100-- DOLLARS, and other good and valuable consideration
the following described tract of land in Summit County, State of Utah:

Beginning at the Southeasterly corner of Lot 26, Block 73, Millsite Reservation to Park City; running thence North 21°33'00" East 29.00 feet along the Easterly line of Block 73, Millsite Reservation to Park City; thence leaving said Block line South 68°27'00" East 7.41 feet; thence South 21°33'00" West 16.02 feet; thence South 68°27'00" East 6.33 feet; thence South 21°33'00" West 12.98 feet; thence North 68°27'00" West 13.74 feet to the point of beginning.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this day of , A. D. 19 96

Attest:

....
Secretary.

[CORPORATE SEAL]

Park City Municipal Corporation ~~Company~~

By

....
Bradley A. Olch, Mayor ~~President~~.

DRAFT

STATE OF UTAH,

County of Summit } ss.

On the day of , A. D. , 1996 personally appeared before me Bradley A. Olch ~~and~~ who being by me duly sworn did say, each for himself, that he, the said Mayor ~~is the president, and he, the said~~ ~~is the secretary~~ of Park City Municipal Corporation ~~Company~~, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Bradley A. Olch ~~and~~ ~~each~~ duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Exhibit "A"

November 6, 1996 COPY

Park City Municipal Corporation
Mark Harrington, City Attorney
P.O. Box 1480
Park City, UT 84060

Dear Mr. Harrington,

I am writing to you and your staff regarding my property located at 161 Daly Avenue. I recently had a certified survey done by Mr. Robert Pohl only to find that the back of our home sits on the newly acquired open space land that the City purchased. I understand that the City is looking at each individual claim where there is a question on the original boundary lines. Knowing the history of the Park City Survey of the late 1800's, the fires that have destroyed our town and possible monumentation, and the recent flood that wiped out Daly Avenue, makes it's hard to determine where the "original" boundaries line were located and how they have changed over the years.

I was born and raised in our family home which I acquired in 1986 after my father passed away in 1984. I asked High Country Title Co. to do a chain of title which I included for your review. I believe this home was built by another family in the beginning of the 1900's and my grandfather purchased it soon after. It's an interesting family history! My family has continuously use our property since that time.

I am asking the City for their help in clearing up any boundary line discrepancies and restoring our family's property as whole. The enclosed survey shows that the back portion of the home, the deck surrounding this portion of the home, a retaining wall and the shed, (that was built by my father) is what is in question. Mr. Pohl has drawn a legal description for you and the City to review and if acceptable, approve. I am told this is less than the amount (area) of property, in question, that is shown on the City's survey of the Colman parcel.

This area in question has been used by our family for over the past 65 years. I wonder if this is past the statue of limitation for homesteading, prescriptive rights, and/or adverse possession since our family has been paying the taxes on this property. I do not have a lot of money to spend on an attorney and am looking for your guidance on this matter to keep our cost to a minimum. I understand that Mr. Bob Wells, representing the property to the South that abuts the City's property, Quit Claimed to an owner in the same situation as us, at no charge other than the recording fee. I am hoping the City can be as generous too if they have all the information.

I have included the necessary documents from High Country Tittle Company, who also did the title work for the City when acquiring the Colman property, in hopes to keep any administration fees also to a

Exhibit "B"

Continued from page one
November 6, 1996

minimum. I would like to thank you and Mr. Eric Dehaan for visiting the property to see exactly our claim.

I am happy to see my tax paying dollars go to preserve open space on our hillsides. I'd like to think that the Byer family is one of the longest tax paying citizens still here in Park City and that we've helped to contribute to the purchase of this "open space" land. I've lived in this home for the 39 years of my life and sure have seen the rise and fall of Park City. With your help, I am hoping to resolve this matter at hand.

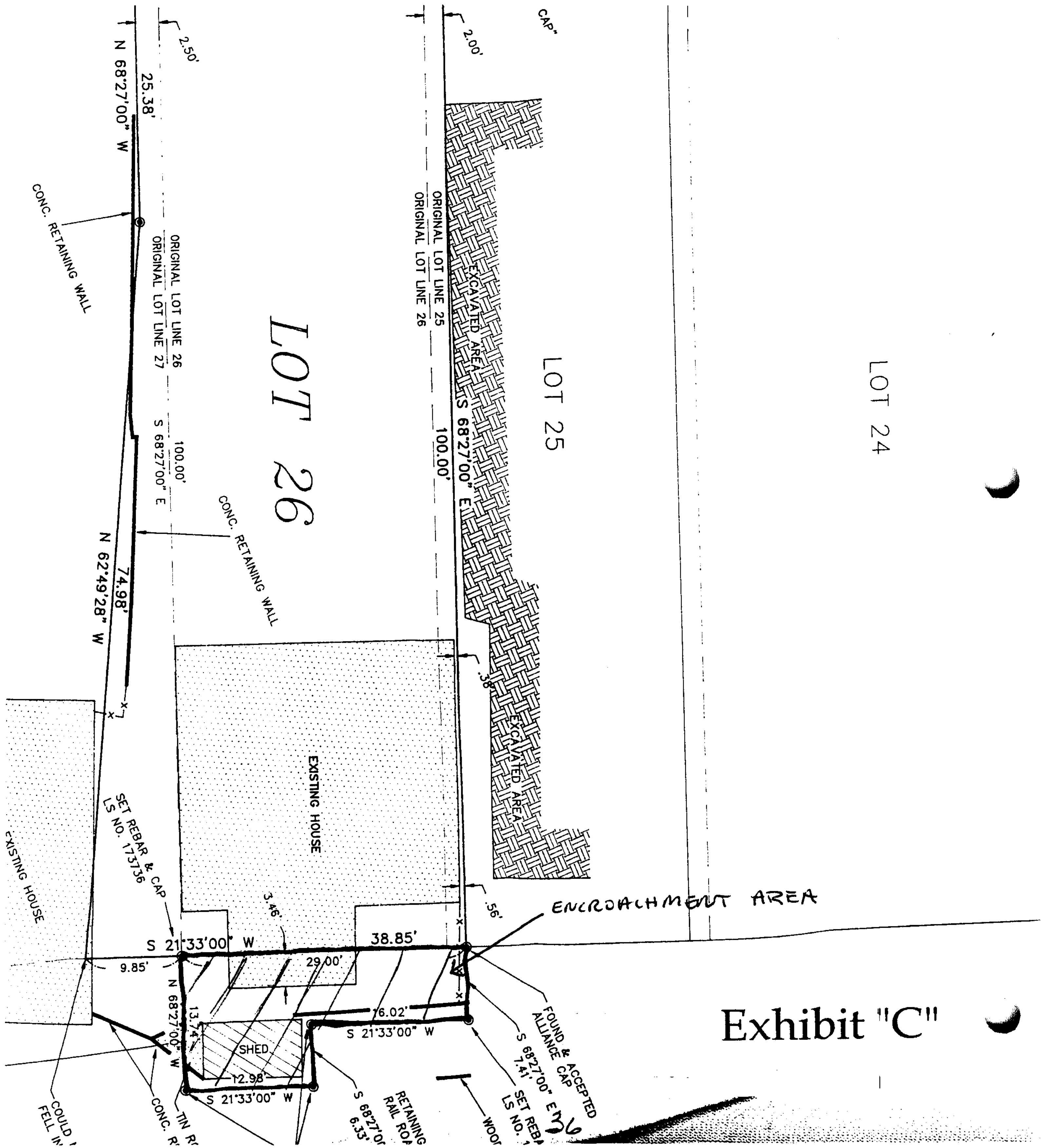
Again thank you very much for your time and effort and I look forward to talk with you if you have any questions regarding 161 Daly Avenue.

Sincerely yours,

Frank D. Byer

Frank D. Byer

Enclosed:
- survey
- chain of title, pgs 1-7
- Quit Claim Deed



CAP"
LOT 24
LOT 25
LOT 26
2.00'
2.50'
N 68°27'00" W
25.38'
CONC. RETAINING WALL
ORIGINAL LOT LINE 26
ORIGINAL LOT LINE 27
100.00'
S 68°27'00" E
ORIGINAL LOT LINE 25
ORIGINAL LOT LINE 26
EXCAVATED AREA
S 68°27'00" E
100.00'
CONC. RETAINING WALL
N 62°49'28" W
74.98'
.38'
EXCAVATED AREA
EXISTING HOUSE
EXISTING HOUSE
SET REBAR & CAP LS NO. 173736
.56'
ENCROACHMENT AREA
3.46'
S 21°33'00" W
38.85'
9.85'
29.00'
N 68°27'00" W
13.74'
6.02'
S 21°33'00" W
SHED
12.98'
S 21°33'00" W
FOUND & ACCEPTED ALLIANCE CAP
S 68°27'00" E
7.41'

Exhibit "C"

PARK CITY
1884

DATE: November 18, 1996
DEPARTMENT: Legal
AUTHOR: Jodi Hoffman, City Attorney
TITLE: Resolution Describing the Process of Refunding School Facilities Impact Fees
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATION: Adopt the attached Resolution Describing the Process of Refunding School Facilities Impact Fees.

DESCRIPTION:

A. Topic: Resolution Describing the Process of Refunding School Facilities Impact Fees

B. Background: Earlier this year, Summit County, Park City and the Park City School District announced their intent to terminate the collection of school impact fees effective March 31, 1996. During the 1995 legislature, state law-makers established new standards for collecting impact fees and terminated local authority to collect School Facilities Impact Fees without specific authorization from the 1996 legislature. The 1996 legislature failed to enact such authority. The County and the City had collected more than $2 million in School Facilities Impact Fees since June of 1994. As a result of the 1996 legislature, the County and the City were prohibited from collecting School Facilities Impact Fees beyond May 1, 1996.

The County, the City and the School District conducted a joint public forum to seek input on the fee refunds in late April. That meeting was well attended and resulted in a Joint Resolution to refund the fees to the Current Property Owner, pending resolution of a lawsuit filed by a developer against the County. That litigation concluded this fall. The task force now recommends a process of refunding fees to the Current Property Owners who apply for a refund of the fees at any time from December 1, 1996 through May 31, 1997.

Park City will advertise the refund process. Refund applicants will submit requests for fee refunds to the District. The District has contracted with the County to determine whether each applicant is entitled to the refund, and to calculate the interest owed on the refunded fee. Any funds remaining after May 31, 1997 will be distributed to the District to be used to fund the capital facilities for which they were collected. Park City will ultimately retain none of the funds collected.

C. Analysis: This Resolution memorializes the work of the joint task force on school impact fee refunds. It has been adopted by the County and has been approved by the School District.

D. Department Review: One City Council person, the City Attorney and the City Manager have participated in the joint meetings to negotiate the process described in this resolution.

ALTERNATIVES:

1. Direct staff to negotiate a different refund process.

2. Take no action at this time.

SIGNIFICANT IMPACTS:

There is a great deal of anticipation within the community for the prompt administration of the refund process. Council has already determined, by Resolution No. 8-96 that the refund will occur.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

By not taking the recommended action, the Council risks further delay in the refund process.

RECOMMENDATION:

Adopt the Resolution.

Resolution No. _____

A RESOLUTION DESCRIBING THE PROCESS FOR REFUNDING OF SCHOOL FACILITIES IMPACT FEES

WHEREAS, Park City, Summit County (the "County"), and the Park City School District (the "School District" or the "District") jointly prepared and adopted a June 1994 Three Party Cooperative Interlocal Agreement for the Implementation of School Facilities Impact Fees (the "Agreement") to collect impact fees to mitigate the needs for new school facilities in the School District caused by extraordinary, sustained growth; and,

WHEREAS, consistent with the Agreement and a School District Capital Facilities Improvement Plan, the City Council passed an ordinance on June 23, 1994, Ordinance No. 94-23, authorizing the collection of school facilities impact fees on new residential development ($3,393 for each primary and $848.25 for each secondary residential unit) within the City; and

WHEREAS, the City has collected more than $900,000 in School Facilities Impact Fees since June of 1994 and pursuant to the Agreement has held such fees in escrow; and,

WHEREAS, the 1995 state legislature enacted, U.C.A. 53A-20-100.5 which placed a moratorium on collection of School Facilities Impact Fees from and after May 1, 1996; and,

WHEREAS, the in March of 1996 County, City, and School District entered into an Amendment to the Agreement to terminate collection of school facilities impact fees; and,

WHEREAS, in May of 1996 the City Council passed Resolution 96-8 establishing its intent to refund such fees pursuant to a process negotiated with the County and the School District; and,

WHEREAS, the City, County, and the District have agreed the implement the following process for refunding school facilities impact fees;

NOW THEREFORE, the City Council resolves as follows:

Section 1. Refunds of School Facilities Impact Fees.

School Facilities Impact Fees collected by the City shall be remitted to the Current Property Owner of a lot on which School Facilities Impact Fees were paid or to an appropriate Applicant as designated by this Ordinance, as long as said Owner/Applicant files a valid Application for a refund of School Facilities Impact Fees as provided herein.

Section 2. Definitions.

2.1 **Uncontested Application**. An Application for refund filed by the Current Property Owner of a lot on which School Facilities Impact Fees were paid and for which no contrary claim for refund is made before May 31, 1997.

2.2 **Contested Application**. An Application for refund of the School Facilities Impact Fees for which two or more competing claims for the refund on particular property are received during the claims period December 1, 1996 through May 31, 1997.

2.3 **Current Property Owner**. The owner of record of real property at the time of Application for a School Facilities Impact Fee refund or his/her assignee.

2.4 **Original Land Developer**. The land developer who constructed the dwelling unit upon which School Facilities Impact Fees were paid. Said developer may also be the Current Property Owner.

2.5 **Refund Application**. An Application for a refund of School Facilities Impact Fees which allows an option to give a full or partial donation of the refunded proceeds to the Park City School District, the Park City School District Capital Facilities Fund, or the Park City Education Foundation (hereinafter referred to as the "Donees").

2.6 **Donees**. Either the Board of Education of the Park City School District, the Capital Facilities Fund, or the Park City Education Foundation as designated by the Current Property Owner in an Application. See Section 2.4 above.

2.7 **Board**. The Board of Education of the Park City School District.

Section 3. Refund Process.

The following rules shall govern the School Facilities Impact Fee Refund process:

3.1 Any person seeking a refund of School Facilities Impact Fees must submit a written Refund Application for a refund of the School Facilities Impact Fees to the Board between December 1, 1996, and May 31, 1997. Refund Applications submitted directly to the City shall, at the City's discretion, be forwarded to the Board or be processed directly by the City.

3.2 Failure to submit a Refund Application for School Facilities Impact Fees paid for a particular dwelling unit within the time period stated in Section 3.1 shall end any obligation created hereunder to refund School Facilities Impact Fees with respect to that dwelling unit.

3.3 An Applicant for a School Facilities Impact Fee refund must provide the following information to qualify for a refund.

3.31 A completed Refund Application showing the name of the Current Property Owner, address of the dwelling unit on which a School Facilities Impact Fee was paid, property serial number and a copy of the most recent title report in possession of the Current Property Owner;

3.311 Where the Applicant is the Original Land Developer, who is not the Current Property Owner, the completed Refund Application must show the name of the Original Land Developer, name of the Current Property Owner, address of the dwelling unit on which a School Facilities Impact Fee was paid, and property serial number;

3.32 The amount of the fee paid;

3.33 The date that the School Facilities Impact Fee was paid; and

3.34 A signed affidavit that the Applicant is the Current Property Owner and has not assigned or otherwise transferred an interest or right to receive the refund.

3.341 Where the Applicant is the Original Land Developer, who is not the Current Property Owner, a signed affidavit must include a statement that the Applicant is the Original Land Developer and an explanation as to why the costs associated with the School Facilities Impact Fee were not passed through to the Current Property Owner.

Section 4. Publication of Notice.

The City shall cause a notice of School Facilities Impact Fee refunds to be published twice in the Park Record. The notice shall state that:

(a) Refund Applications for School Facilities Impact Fee refunds will be accepted by the Board from December 1, 1996 to May 31, 1997;

(b) Specific information set forth in Section 3.3 hereof must be provided with the Refund Application to verify that the Applicant is entitled to the refund;

(c) Applicant must provide a signed affidavit of Current Property Ownership, or where the Applicant is the Original Land Developer, who is not the Current Property Owner, a signed affidavit explaining why the fee was not passed onto the Current Property Owner;

(d) Failure to apply for a refund on or before May 31, 1997, shall result in a waiver of claim to a refund;

(e) Board will send receipt of donations to all those certified to receive a refund who do not claim one; and

(f) Donors will be formally commemorated.

Section 5. Refund Amounts.

The Board shall determine the amount and proper recipient of School Impact Fee Refunds and shall promptly forward its determination to the City. Where a School Facilities Impact Fee refund is authorized, it shall be made in an amount calculated as follows:

5.1 The actual School Facilities Impact Fee paid;

5.2 Interest earned on that sum from the date paid through May 31, 1997, calculated at the daily rate of .01365%, which is equivalent to 5% per annum. However, where a refund is paid out prior to May 31, 1997 in accordance with Section 6 below, interest shall be paid as earned through the date of actual disbursement;

5.3 Less any donation made by the Applicant to the Donees.

Section 6. Payment of Refunds.

The refunds shall be paid directly by the City, without the Board taking possession of the refunds, as follows:

6.1 For **Valid, Uncontested Refund Applications**, the refund shall be payable to the Applicant(s) in an amount calculated pursuant to Section 5. An uncontested refund shall only be deemed such after the claims period has ended and no other claimants have applied for the refund on the dwelling unit at issue. Where the Current Property Owner is the Original Land Developer and said land developer has never transferred its interest in the dwelling unit, upon adequate showing thereof, that uncontested refund may be disbursed prior to the expiration of the claims period.

6.2 For **Invalid, Uncontested Refund Applications**, the Board shall direct that no refund be made with respect to such Refund Application.

6.3 For **Valid, Contested Refund Applications**, the Board shall establish an Interpleader cause of action in the Third District Court of Summit County in accordance with Rule 22, Utah Rules of Civil Procedure, to adjudicate the proper recipient of the refund, and the City in conjunction with such shall pay the amount of the refund, calculated in accordance with Section 5, into an appropriate trust account of the Court.

6.31 Where all of the potential claimants sign an agreement whereby they consent to a specific apportionment of the School Facilities Impact Fee refund, the Board shall not establish an Interpleader cause of action for the contested refund, but instead shall pay out the proceeds to the claimants in accordance with the agreement, provided that all claimants agree, through properly written and recorded documents, to indemnify and hold the City and Board harmless against any past, present or future claims arising out of the disbursement of said refund. Where a properly executed agreement is in force, payment pursuant to Section 5 of this Ordinance shall occur within a reasonable period of time and the claimants shall not be required to wait for the claims period to expire for disbursement of the refund.

Section 7. Donations.

In cases where either there is an uncontested claim (Section 6.1) or contested claims resolved through an apportionment agreement (Section 6.31), the amount of any donation to the Donees shall be paid directly from the City to the designated Donee.

Section 8. No Rights Created in Third Parties.

This Ordinance is not intended to, nor shall it be construed to create any rights, claims, or causes of action in third parties.

Section 9. Unremitted School Facilities Impact Fees.

Any School Facilities Impact Fees remaining after all Applications for refunds have been received and paid, shall be transferred to the Board and shall be used for those capital facilities for which they were collected.

Section 10. Savings Clause.

In the event one or more of the provisions of this Ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under any applicable laws, such unenforceability or invalidity shall not affect any other provision; and in such an event, this Ordinance shall be construed as if such unenforceable or invalid provision had never been contained herein.

Section 11. Effective Date.

This Ordinance shall become effective immediately.

APPROVED, ADOPTED, AND PASSED, this ____ day of _______, 1996.

Park City Municipal Corporation

By:______________________________
Bradley A. Olch, Mayor

ATTEST:

____
City Recorder

APPROVED AS TO FORM:

____
Jodi Hoffman, City Attorney

PARK CITY
1884

COUNCIL AGENDA REPORT

DATE: November 15, 1996
DEPARTMENT: Community Development Department
AUTHOR: Megan B. Ryan
TITLE: 577 Main Street - Appeal of Denial of Encroachment permit
TYPE OF ITEM: Quasi - Judicial

SUMMARY RECOMMENDATIONS:

Hear appellant's position and discuss upholding staff's position to deny the permit at 577 Main Street and direct staff to prepare appropriate findings and conditions to support the Council's decision.

DESCRIPTION:

A. Topic.

Appeal of denial of encroachment permit at 577 Main Street.

B. Background.

In July of 1996 the owners of 577 Main Street, the Gaddis family, represented by Roger Durst and Don Sargent of the Jack Johnson Co., submitted building plans for review and approval by the staff and Historic District Commission. The elevation for the Main Street facade included plans for balconies that extend out over the City sidewalk and right of way. Please see Exhibit B for elevations.

Approximately six columns would be located in the sidewalk area. The existing sidewalk is nine feet wide and the property line is approximately five feet from the edge of the curb. City staff indicated to the applicant that City approval was needed for the inclusion of the columns shown in the design plan. (Land Management Code Section 7.2.4 (b))

C. Analysis

On August 2, 1996 Roger Durst submitted a letter to the City Engineer, Eric DeHaan, requesting the allowance of the columns in the City right of way. Please refer to Exhibit C. Eric DeHaan responded on August 14 and denied the request due to safety, liability and snow removal issues. Please see Exhibit D.

On August 20, Roger Durst appealed this decision to the Community Development Director, Rick Lewis. Please see Exhibit E. On September 6, 1996, Rick Lewis upheld the City Engineer's decision to deny the encroachment permit. See Exhibit F.

This decision was then appealed to the Council on September 16, 1996 by Jack Johnson. See Exhibit G.

The matter is now before you to decide if the staff has erred in this decision. The appellant will present his case before you the night of the meeting. The staff believes its position to deny the permit is legitimate and should be upheld.

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

E. Notice.
This meeting was noticed in the Park Record on Saturday November 9, 1996.

ALTERNATIVES

A. Uphold staff's denial of the encroachment permit.

B. Reverse staff's denial and direct staff to issue the encroachment permit.

SIGNIFICANT IMPACTS:
If the permit is approved and the columns are allowed the Public Works Department will have to make special provisions to clear the area of ice and snow in the winter, the City may incur damage claims resulting from pedestrian and/or auto accidents and future installation of underground utilities may be compromised.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:
Same as above.

RECOMMENDATION:
Uphold the staff's denial of the request for an encroachment permit for columns at 577 Main Street and direct staff to prepare appropriate findings and conclusions for adoption at the December 5th meeting.

Exhibits
Exhibit A - Location Map
Exhibit B - Elevations
Exhibit C - Appellants Letter 8/2/96
Exhibit D - Eric DeHaan Letter 8/14/96
Exhibit E - Appellants letter 8/20/96
Exhibit F - Rick Lewis letter 9/6/96
Exhibit G - Appellants letter 9/16/96

Exhibit A - Location Map

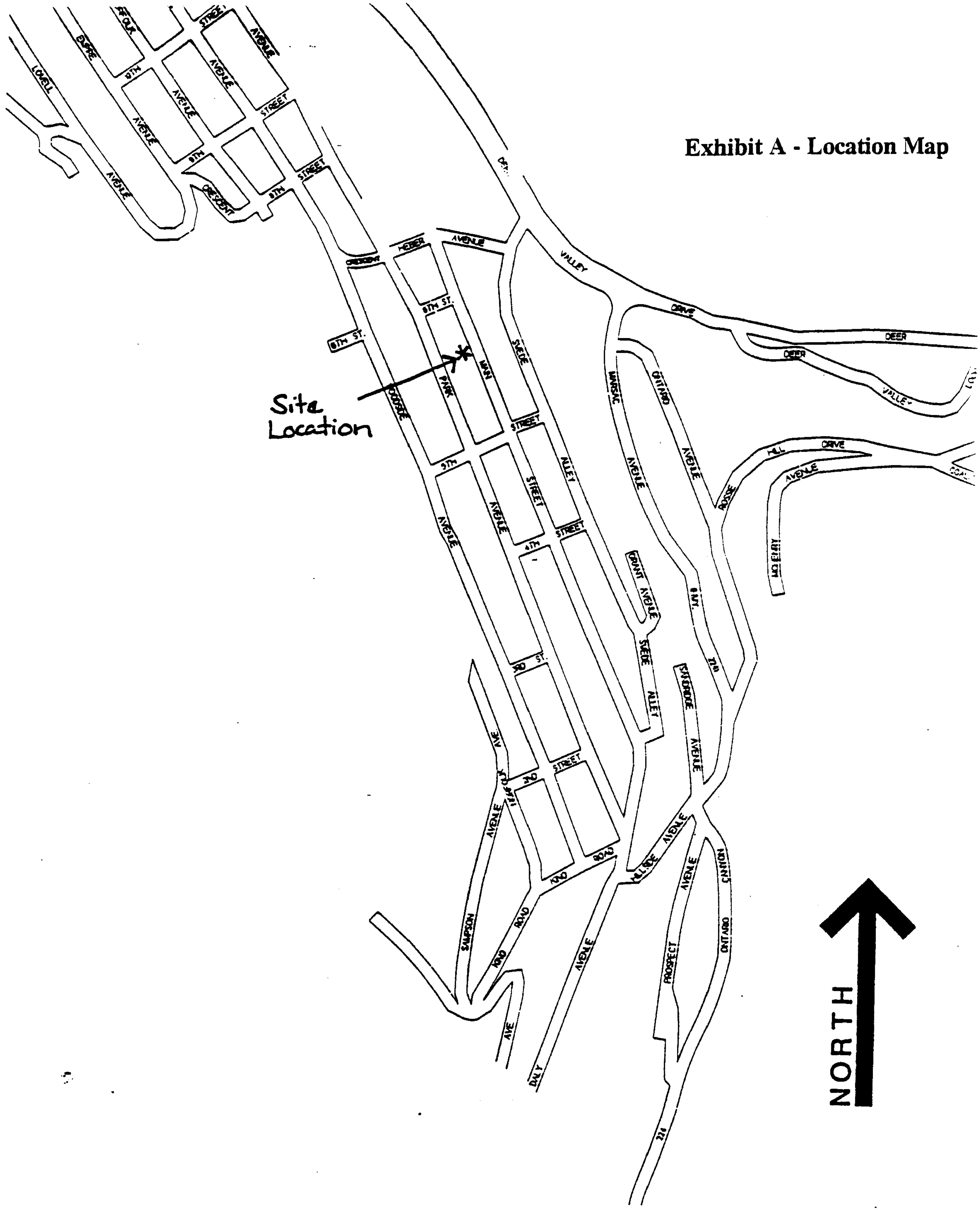


Exhibit B - Elevations

COMMERCIAL ELEVATION 1/4"=1'-0"

Exhibit C - Appellants Letter 8/2/96

Innovators in Project Direction . . .

August 2, 1996

Mr. Eric DeHaan, Engineer
Park City Municipal Corporation
Department of Community Development
P. O. Box 1480
Park City, Utah 84060-1480

RE: 577 Main Street - PCLD/Gaddis Investment - New Commercial Development

Dear Eric:

Preliminary facade designs for the subject project suggest a thirty-seven foot wide balcony extended to curb edge below; supported by six (6) columns that would encroach upon the municipal right-of-way. The existing sidewalk is nine feet (9' - 0") wide and the property line is approximately five feet (5' - 0") from the curb edge. The face of the proposed building is intended to align with that of "Family Jewels" to the north and the useable walkway in front of "The Claim Jumper" to the south.

Our design respects provisions of the current TZO applicable to this locale (i.e.; maximum height of 27' - 0" and individual commercial square footage of less than 2,800 square feet at ground floor level). We have, furthermore, accommodated subjective/aesthetic recommendations for projects on "Historic Main Street" to wit: by providing design elements in character, proportion, scale, detail, texture and color appropriate to the ambient environment.

You have called to question potential liability and functional constraints occasioned by a curbside "colonnade." We feel such an architectural component offers aesthetic and pragmatic benefits that out-weigh any such problems. You have identified interference with sidewalk and street snow removal, and vehicular operation limitation as the primary problems with curb-side "columns".

We submit the following benefits of an overhanging balcony:

1. Reduced ice accumulation on walking surfaces (especially on the shaded easterly side of buildings).

2. Sustaining a modular facade rhythm along Main Street (It is noted that the "colonnade" could be moved back 2' - 0" from the curb edge to still retain a minimum 7' - 0" wide (protected) sidewalk, and enhance vehicular embarkation (disembarkation)).

Governmental Approvals • Land Planning • Architecture • Civil Engineering
1910 Prospector Avenue • Park City, Utah 84060
(801) 645-9000 • Fax (801) 649-1620

THE JACK
JOHNSON
COMPANY

THE JACK JOHNSON COMPANY

3. Retention of vintage design elements reminiscent of historic values.

4. It is noted that the building mass and balcony coverage protect street and sidewalk from prevailing westerly storms and would reduce accumulation of snow on street and sidewalk.

5. Subjective restrictions, undocumented by statute, constrain opportunity for design variety inherent along Historic Main Street. Monotony and uniformity then become the substitute for variety and delight (eclecticism).

6. Provision of concealed sidewalk night lighting enhances safety and security.

Please note that current construction technologies (not prevalent for vintage designs) would allow for a cantilevered balcony. We believe such technologies are inappropriate to massing and appearance in this situation; and that municipal concerns are predicated on judgments that are unjustified by design reality.

We are willing to have the "colonnade" configuration adjudged on its aesthetic merits by DC and Planning Commission; and are confident that the functional, utilitarian, and legal concerns of Public Works, City Engineering, and City Attorney may actually ameliorated by a balcony supported over municipal property such as is indicated by our design.

Your consideration is appreciated.

Sincerely,

Roger Durst, Architect AIA

:mt

cc: Meg Ryan
Ron Ivie
Jim Gaddis

PARK CITY 1884 **Exhibit D - Eric DeHaan Letter 8/14/96**

Department of Community Development
Engineering • Building Inspection • Planning

August 14, 1996

Mr. Roger Durst
The Jack Johnson Company
1910 Prospector Avenue, Suite 210
Park City UT 84060

Re: 577 Main Street - Columns in Main Street Sidewalk

Dear Mr. Durst:

Thank you for your letter of August 2 requesting approval of the encroachment of columns beyond the front property line of 577 Main Street and therefore into the Main Street sidewalk. A copy of your letter is attached.

As I understand your proposal, the building front will be nine (9) feet back from the curb, although a balcony would encroach over the sidewalk and be supported by columns within the sidewalk.

Park City has been trying to avoid having obstacles such as columns in our sidewalks as much as reasonably possible. There are several reasons for this, some of which include:

1. There is a possibility of interruption of the pattern of important "street furniture" such as fire hydrants and street lights. Our flexibility in future installations could be reduced by your proposal.
2. Our Bombardier-type sidewalk snow plow needs all the maneuver room it can get. This is true whether a balcony exists or not because we plow the sidewalk from one end to the other; we don't "skip" the sections with balconies because to do so means pulling out onto the traffic lane.
3. A column on City property brings the City into the loop when there is any accident involving the column such as collisions with car doors, pedestrians, etc.
4. Our ability to install underground utilities in the future may be compromised by the columns.

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

This issue has been discussed with the Public Works Director and the Community Development Department, and we agree that it is not in Park City's best interest to approve columns in the Main Street right-of-way. I hereby respectfully deny your request.

You may appeal this denial to my supervisor, Community Development Director Rick Lewis. You should submit a letter to Mr. Lewis within ten (10) calendar days of the date of this letter.

Mr. Lewis' decision is appealable to the Planning Commission pursuant to Land Management Code ("LMC") Section 3.14(e), and then the City Council pursuant to LMC Section 1.16.

Thank you for your ongoing interest in Park City. Please feel free to call if you have any questions.

Respectfully submitted,

Eric DeHaan

Eric W. DeHaan, P.E.
City Engineer

EWDH/scb

CC: Megan Ryan, Planner
Jerry Gibbs, Public Works Director

BC: Rick Lewis, Director of Community Development

Exhibit E - Appellants letter 8/20/96

Innovators in Project Direction . . .

MEMORANDUM

DATE: August 20, 1996

TO: Rick Lewis, Community Development Director
Park City Department of Community Development

FROM: Roger Durst, AIA, Architect

RE: Eric W. DeHaan, PE Letter dated 14 August 1996 -
Commercial Improvement Project 577 Main Street

The purpose of this communication is to appeal denial tendered by the reference letter.

It is our belief that the "reasons" for denial indicated in Mr. DeHaan's letter are technically unsubstantiated, as follows:

1. Our design recognizes and avoids conflict with existing and potential future "street furniture" such as hydrants and street lights.

2. A balcony of the configuration indicated, in fact minimizes the task of snow removal and allows a clear unobstructed sidewalk passage of not less than seven (7) feet wide and ten (10 feet high.

3. The colonnade could be pulled back two (2) feet from the curbside to facilitate vehicular access and egress, provide for division of pedestrian traffic, enhance safety and security of that traffic, and maintain a seven foot clear pathway.

4. If there are current plans for future underground utilities, we would happily accommodate their inclusion in our design in order to facilitate your planning.

Your attention is directed to our letter dated August 2, 1996 to Mr. DeHaan (copy attached) in which we articulate our case for inclusion of this design element.

Your consideration is appreciated.

:mt

cc: Jim Gaddis
Meg Ryan
Ron Ivie
Eric DeHaan

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AUG 22 1996
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PLANNING DEPT.

Governmental Approvals ▲ Land Planning ▲ Architecture ▲ Civil Engineering
1910 Prospector Avenue ▲ Park City, Utah 84060
(801) 645-9000 ▲ Fax (801) 649-1620

THE JACK JOHNSON COMPANY

PARK CITY
1884

Department of Community Development
Engineering • Building Inspection • Planning

September 6, 1996

Mr. Roger Durst
Jack Johnson Company
1910 Prospector Avenue, Suite 210
Park City, Utah 84060

Re: 577 Main Street - Appeal

Dear Roger:

I have completed my review of your appeal of the City Engineer's decision to deny your request to construct columns in the public right-of-way at 577 Main Street. Whereas there is no disagreement about the historic character created with columns supporting balconies along Main Street, the practicality of snow removal using mechanical equipment becomes extremely problematic when obstacles are allowed in and adjacent to the sidewalks.

In addition to the snow removal issue, the City has public utilities in this right-of-way and the structural support for the columns could, in the future, cause problems as maintenance is required for the utilities.

Even though columns were allowed in the past along Main Street, the City has recently been discouraging the installation of such columns in the public right-of-way.

Based on my review of the issues and the findings listed above, I am, therefore, denying your appeal. If you wish to pursue this issue further, you may appeal my decision to the Park City Planning Commission. If you wish to file such an appeal, contact Pat Putt, the City's Planning and Zoning Administrator, for the proper application procedure. Mr. Putt will be responsible for scheduling the appeal for Planning Commission review.

Sincerely,

Richard E. Lewis, AICP
Community Development Director

REL/scb

CC: Eric DeHaan, City Engineer
Meg Ryan, Senior Planner
Pat Putt, Planning and Zoning Administrator
Mark Harrington, Assistant City Attorney
File

Park City Municipal Corporation • 445 Marsac Avenue • P.O. Box 1480 • Park City, UT 84060-1480
Community Development (801) 645-5020 • Engineering 645-5020 • Building 645-5040
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Exhibit G - Appellants letter 9/16/96

Innovators in Project Direction . . .

September 16, 1996

Mr. Pat Putt
Planning and Zoning Administrator
Park City Department of Community Development
P. O. Box 1480
Park City, Utah 84060

RE: Commercial Improvement Project - 577/545 Main Street; Richard Lewis, Letter of 9/6/96

Dear Pat:

As suggested by the referenced communication and our telephone conversations last week, please be advised of our client's intent to appeal the Staff denial of our request for incorporation of a colonnaded balcony on the subject property. The appeal will be presented to the City Council.

We understand that the only arguments against encroachment on City property are presented by Eric DeHaan in his letter of August 14, 1996. We are unaware of any other contingencies and ask that you refer to our letter of response dated August 20, 1996. We believe there are functional and aesthetic advantages to the design represented by our current submission. Please reconsider factors identified in our letter of August 2, 1996, listing the potential "benefits" of a covered pedestrian right-of-way. Among the considerations supporting our design, are:

- The economy of reduced maintenance and less snow and ice removal
- The liabilities avoided by separation of vehicular and pedestrian traffic
- The opportunity to enhance public safety and comfort

The current Land Management Code, the Building Code regulations and the Historic District Design Guidelines do not include statutory constraints on balconies or colonnades in the public right-of-way. It appears, therefore, that the reasons for denial are subjective in nature.

Whatever the final determination in this matter, please be assured that our purpose is to create an appropriate complement to the economic and aesthetic character of Main Street.

Sincerely,

Jack

Jack J. Johnson
President

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SEP 20 1996
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PLANNING DEPT.

JJJ:mb

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