

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 8, 2001**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, November 8, 2001.

AGENDA

Closed Session

4:00 p.m. Property acquisition

Work Session

4:45 p.m. Customer service award
5:00 p.m. Council questions/comments
5:20 p.m. Special service contract requests
5:25 p.m. Prospector parking
5:50 p.m. Review of regular meeting

Regular Meeting

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

III COMMUNICATIONS FROM COUNCIL AND STAFF

**IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF OCTOBER 11, 2001
AND OCTOBER 18, 2001**

V CONSENT AGENDA PUBLIC HEARING

1. Ordinance amending Title 8, Chapter 7, Section 2 of the Municipal Code of Park City prohibiting the possession, use and delivery of drug paraphernalia as defined by the Criminal Code
2. Ordinance approving an amendment to the Record of Survey Plat for Town Pointe Condominiums located at 1000 Park Avenue, Park City, Utah

VI CONSENT AGENDA

1. Massage Express lease at the Racquet Club
2. Ordinance amending Title 8, Chapter 7, Section 2 of the Municipal Code of Park City prohibiting the possession, use and delivery of drug paraphernalia as defined by the Criminal Code
3. Ordinance approving an amendment to the Record of Survey Plat for Town Pointe Condominiums located at 1000 Park Avenue, Park City, Utah

VII NEW BUSINESS

Authorization to staff to enter into a surplus water purchase agreement with the Jordanelle Special Service District to annual receive up to 500 acre feet of water for the next five years

VIII ADJOURNMENT

PARK CITY SPECIAL COUNCIL MEETING SUMMIT COUNTY, UTAH NOVEMBER 13, 2001

PUBLIC NOTICE IS HEREBY GIVEN that the City Council, convening as the Board of Canvassers, will hold a special meeting at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah on Tuesday, November 13, 2001 at 5 p.m. to accept the Official Canvass of the General Municipal Election held on Tuesday, November 6, 2001.

Posted: 11/05/01
See parkcity2002.org

**PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
NOVEMBER 8, 2001**

Present: Council members Peg Bodell; Candace Erickson; and Jeff Mann

Toby Ross, City Manager; Myles Rademen, Public Affairs Director, Mark Christensen, Budget and Grants Manager; and Kent Cashel, Transportation Director

Shelly Weiss, Mountainlands Community Housing Trust; Sally Elliott, Prospector resident; and Jim Totara, owner of Nacho Mamas

Absent: Mayor Brad Olch, Council members Roger Harlan and Fred Jones

1. **Customer service award.** Candace Erickson announced that Jennifer Byrd from the Public Affairs Department is the quarterly award recipient. Myles Rademan reviewed a variety of her projects and the attributes she brings to the City.

2. **Council questions/comments.** Peg Bodell recognized the success of the traffic calming efforts in Park Meadows and urged staff to consider these in Old Town. She continued that NLC has domestic tourism resources information on its website for local governments and congratulated the candidates and the quality of the campaign. Ms. Erickson thanked the Police Department for organizing a parent/police drug and alcohol related session at the High School which was very informative. Jeff Mann agreed and Chief Lloyd Evans also believed it was a productive forum that many parents would like to see continued.

3. **Special services contract requests.** Mark Christensen reported that the grants subcommittee met to consider requests from the Friends of the Animals and Women's Athenaeum and are recommending that they not be approved at this time. The organizations have been encouraged to reapply during the budget process, consistent with Council's policy. Ms. Erickson, subcommittee member, explained that there is enough funding in the contingency to cover the Women's Athenaeum's request but not the Friends of the Animal; it is difficult to consider requests outside the budget cycle.

4. **Prospector parking.** Kent Cashel introduced Shelly Weiss, Sally Elliott, and Jim Totara who all worked on this issue, beginning in late September. At that time, Jim Totara strongly encouraged that there be no overnight parking restrictions along Sidewinder Drive, in particular, so that there be parking available for businesses. In the meantime, staff met with representatives of the Prospector Property Owners Association, local residents, Mountainlands Community Housing Trust, and Aspen Villas Apartments to formulate a plan. It is recommended to implement a four month test program for no overnight parking on Sidewinder. Aspen Villas agreed to work with the City to reconfigure its parking lot to gain additional spaces, which could amount to as many as 20 spaces. In

addition, the Prospector Home Owners Association tentatively agreed to allow a permit program involving 50 spaces in Lot J during restricted hours. The parking pass would be set at a nominal fee. There was discussion about pedestrian walkways in the area. Mr. Cashel added that Mr. Christensen from the Marriott was also part of the group who feels he has adequate parking in his garage and was more concerned with placing time restrictions on Sidewinder than no overnight parking. The primary user groups were involved in creating a solution which requires the cooperation of all interests.

The City Manager referred to recent correspondence from Sally Elliott to the City Council suggesting restrictions be expanded to the residential area, and Mr. Cashel emphasized that this is not part of the recommendation and needs to be comprehensively reviewed to determine if it is warranted, has broad support, and associated costs.

Ms. Erickson asked staff to monitor the costs of implementation, particularly enforcement costs. Ms. Bodell believed enforcement is key to the success of the problem and encouraged Ms. Elliott to monitor and report any displacement of parking to the residential areas in Prospector as a result of this proposal. There was discussion about the need for public input on the restricted residential parking concept.

5. Review of regular meeting. See regular meeting minutes.

Prepared by Janet M. Scott

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
NOVEMBER 8, 2001**

I ROLL CALL

Council member Candace Erickson called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, November 8, 2001. Members in attendance were Peg Bodell, Candace Erickson, and Jeff Mann. Mayor Brad Olch and Council members Roger Harlan and Fred Jones were excused. Staff present were Toby Ross, City Manager; Mark Harrington, City Attorney; and Jerry Gibbs, Public Works Director.

II PUBLIC INPUT

Council member Erickson invited the public to comment on any matter of City business not scheduled on the agenda. Hearing no comments, the public input session was closed.

III COMMUNICATIONS FROM COUNCIL AND STAFF

Peg Bodell referred to a letter from Tom Carlson opposed to the Olympic lighting plan for Main Street. Ms. Erickson reported that a majority of business owners signed up for the lighting at last week's Main Street Merchant meeting and there were no negative comments. Ms. Bodell felt that some Old Town residents believe the scheme is not in character with the Historic District. Mark Harrington added that the size of the lights is scaled down and the look is more attractive than the illustration originally presented to Council. The City Manager added that the Chamber will allocate public celebration funding to this project.

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF OCTOBER 11, 2001 AND OCTOBER 18, 2001

Hearing no omissions or corrections, Ms. Erickson requested a motion to approve. Jeff Mann, "I move to approve the minutes as written". Peg Bodell seconded. Motion carried.

Peg Bodell	Aye
Candace Erickson	Aye
Roger Harlan	Absent
Fred Jones	Absent
Jeff Mann	Aye

V CONSENT AGENDA PUBLIC HEARING

1. Ordinance amending Title 8, Chapter 7, Section 2 of the Municipal Code of Park City prohibiting the possession, use and delivery of drug paraphernalia as defined by the Criminal Code - Mark Harrington explained that this is a housekeeping matter. Approval brings the Park City Code consistent with state code. Hearing no comments or questions from the Council or the audience, the public hearing was closed.

2. Ordinance approving an amendment to the Record of Survey Plat for Town Pointe Condominiums located at 1000 Park Avenue, Park City, Utah - Planner Kevin LoPiccolo explained that approval of the plat amendment will reconfigure an existing unit to add a handicap accessible unit. The project currently complies with accessibility requirements but the owner elected to add another ADA unit, changing the density from 41 to 42 units. Ms. Bodell asked if the owner was approached to construct a bus shelter and Mark Harrington explained that there needs to be a nexus between this action and increased transit demand. She stated that she would appreciate this being suggested to the owner because there is a real need at that location for a bus shelter. Hearing no further comments, Candace Erickson closed the public hearing.

VI CONSENT AGENDA

Jeff Mann, "I move to approve Consent Agenda Items 1, 2 and 3". Peg Bodell seconded. Motion carried.

Peg Bodell	Aye
Candace Erickson	Aye
Roger Harlan	Absent
Fred Jones	Absent
Jeff Mann	Aye

1. Massage Express lease at the Racquet Club - See staff report.

2. Ordinance amending Title 8, Chapter 7, Section 2 of the Municipal Code of Park City prohibiting the possession, use and delivery of drug paraphernalia as defined by the Criminal Code - See staff report and public hearing.

3. Ordinance approving an amendment to the Record of Survey Plat for Town Pointe Condominiums located at 1000 Park Avenue, Park City, Utah - See staff report and public hearing.

VII NEW BUSINESS

Authorization to staff to enter into a surplus water purchase agreement with the Jordanelle Special Service District to annual receive up to 500 acre feet of water for the next five years - See staff report. Jerry Gibbs pointed out that the April 1 date has

been changed to May 1 to provide additional time for JSSD to process the agreement but he understands that all dollar amounts will remain the same as the draft in the packet. Agreement negotiations have been occurring over three years. The City is obligated to design and install a water line connecting both systems which is slated in July 2002. Staff is considering a route through the ski run and one to the Rosewood Hotel on Deer Valley Drive. Jeff Mann, "I move to approve Item 1 under New Business". Peg Bodell seconded on the condition that Council is approving the provisions of the agreement as presented and discussed tonight. Motion carried.

VIII ADJOURNMENT

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

* * * * *

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 4 p.m. Members in attendance were Peg Bodell, Candace Erickson, and Jeff Mann. Mayor Brad Olch, Roger Harlan, and Fred Jones were excused. Staff present were Toby Ross, City Manager; and Mark Harrington, City Attorney. Peg Bodell, "I move to close the meeting to discuss property acquisition". Jeff Mann seconded. Motion carried.

Peg Bodell	Aye
Candace Erickson	Aye
Roger Harlan	Absent
Fred Jones	Absent
Jeff Mann	Aye

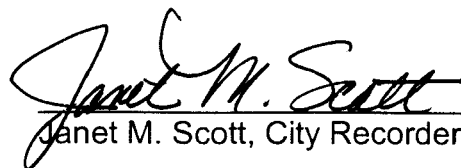
The meeting opened at approximately 4:45 p.m.

* * * * *

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

Prepared by Janet M. Scott




Janet M. Scott, City Recorder

DATE: November 8, 2001
DEPARTMENT: Capital Management and Budget
AUTHOR: Mark Christensen
TITLE: Friends of Animals and Women's Antheneum Special Service Contract Requests
TYPE OF ITEM: Informational

SUMMARY RECOMMENDATION: The Special Service Contract Sub Committee Recommends that a Special Service Contract for the Friends of Animals and Women's Antheneum not be approved by Council at this time.

DESCRIPTION

A. Topic: Special Service Contract Requests from the Friends of Animals and the Woman's Athenaeum.

B. Background: The Friends of Animals has submitted a request for a Special Service Contract requesting \$8,000 to fund two programs offered by the Friends of Animals organization. The first program would continue to offer free spaying and neutering services to low income residents. This program is in part subsidized by the Silver Creek Animal Clinic through its volunteer efforts and Summit County Animal Shelter. Friends of Animals are requesting \$3,000 to help with this program.

The second program request is targeted at reducing the local feral cat population through a capture and release program. The proposed request would fund the capture, medical treatment, and sterilization of these feral cats. These animals would then be reintroduced into the feral colonies. This program will require \$5,000 and its intended impact will be the gradual reduction of the feral cats in the community. (Contract Request Attached)

The Women's Antheneum, a non-partisan and non-denominational women's volunteer service organization, has submitted a request for \$300 to help fund the Annual Girl Graduate Tea, help sponsor the Mountain Mentor Program Dinner celebration, and help to sponsor a sophomore student at the Hugh O'Brian Youth Leadership seminar. (Contract Request Attached)

C. Analysis: Currently, the Unspecified Contract account has \$3,353 available for Council special service contracts. The Sub Committee has reviewed these requests and is recommending that they not be funded at this time. With the uncertainties associated with the economy and the upcoming Olympic Games the Sub Committee feels that although these are notable requests, funding is not possible at this time. The Sub Committee feels that these requests should be resubmitted in the Spring and reviewed as part of the budget process with other special service contract requests. The groups are encouraged to resubmit requests in March of 2002 to be considered as part of the budget process although the sub committee does not guarantee funding will be available at that time.

- D. **Department Review:** OCMB, Special Service Contract Sub Committee, City Manager

ALTERNATIVES

A. **Accept the Sub Committee Recommendation:** Council Could accept the recommendation of the Sub Committee and deny funding at this time. This alternative offers the greatest flexibility for future funding requests.

B. **Reject the Sub Committee Recommendation and Approve Funding:** With \$3,353 available in the Council Unspecified account, Council could reject the Sub Committee recommendation and authorize funding up to \$3,353 for one or both requests. This option would deplete the available fund balance and limit future funding requests.

C. **Continue the Item:** Council could continue the item and request additional information from these groups prior to making a final decision.

D. **Do nothing:**

SIGNIFICANT IMPACTS: The recommendation of the Sub Committee is similar to the "Do nothing" and "Continue the Item" request. Since it is unlikely that additional funding will become available for this request "Continuing the Item" will have the same impact as accepting the recommendation of the Sub Committee or "Do Nothing." These options will allow the greatest latitude to address future funding requests.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: The health concerns for the Friends of Animals request are legitimate however funding this request at this time may limit the ability of Council to fund future requests. If Council modifies the Sub Committee recommended action, Council should specify the funding level they wish to pursue for this contract.

The Women's Antenaem request will aid the goals of the organization which may benefit the community at large. The request is rather small in comparison with other requests however the subcommittee felt this request should be addressed as part of the budget process. Delaying funding now with no guarantee of future funding may limit this organizations' goal for these events.

RECOMMENDATION: The Special Service Contract Sub Committee recommends that the Council not approve funding for these requests.

Attached:
Friends of Animals Request
The Woman's Athenaeum Request



Summit County

Friends of Animals

P.O. Box 682155 • Park City • Utah 84068 • 435-649-5441

September 27, 2001

Tom Bakaly, Assistant City Manager
Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060

Dear Mr. Bakaly,

In 1997, the Park City Council awarded Friends of Animals a grant of \$4,500 towards our "Spay/Neuter" program. The program has proceeded with overwhelming success and we are writing to request further support.

Although the program took longer to establish than first anticipated, we have now contracted with local veterinarian Dr. Randall Barbe of the Silver Creek Animal Clinic. He provides spay and neuter services to our organization at a 50% reduction from the normal retail price. We are then able to offer these services free to low income residents who would otherwise not spay or neuter their pets, adding to the over population problem in Park City and Summit County.

During 2000 we contributed towards the cost of spaying or neutering 495 owner's animals at a cost of \$15,500. This does not include the 276 animals we rescued from the Summit County Animal Shelter, sterilized and placed in permanent homes. The County has continued to support our efforts by waiving the \$10.00 fee normally charged for animals at the shelter. We are asking the Park City Council to match this with a grant of \$3,000.

We are in the process of organizing an additional program to deal with the problem of increasing numbers of feral cat colonies in Park City. Colonies exist at Park City Mountain Resort, Park City Cemetery, Snowflower Condominiums and on Empire Ave. Each year we field calls to rescue litters of kittens from each of these areas, which we tame and place in permanent homes. To reduce the increasing numbers of kittens we propose trapping the adults, working with Dr. Barbe to sterilize and release back to the colony. Studies have shown feral cat's life spans to average 4 years, so with the inability to reproduce, the colonies will decline quickly. Our concern is the health and well being of these unwanted animals, but they also pose a public health hazard. We are also requesting your support in this endeavor and ask for an additional grant of \$5,000 to cover expenses for not only sterilization, but other veterinary costs to ensure these adult animals are healthy before being released.

Thank you for your support of our organization's efforts. Please do not hesitate to call if you have questions. We would be pleased to meet to discuss our programs and this request.

Sincerely,

Sandra Morrison
Sandra Morrison for the Board of Trustees

7

October 15, 2001

Park City Council Members
Park City Municipal Corporation
P.O. Box 1480
Park City, UT 84060

Dear Park City Council Members,

The Woman's Athenaeum club of Park City is proposing to receive funds for the service's it provides to the Park City community.

The Woman's Athenaeum was started in 1897 by Park City miners' wives, and is the oldest women's organization in Park City. It is part of the General Federation of Women's Clubs, which is the world's largest and oldest non-partisan and non-denominational women's volunteer service organization in the world. The General Federation of Women's Clubs focus on six different areas: the arts, conservation, education, home life, international affairs, and public affairs.

The Park City Woman's Athenaeum has hosted the annual Girl Graduate Tea for senior girls and their mothers at Park City High School since 1946. The Woman's Athenaeum also annually sponsors the Hugh O'Brian Youth Leadership Seminar Award which is awarded to the outstanding sophomore student at Park City High School.

The following is a sampling of our programs:

International Affairs: For the past three years we have hosted a celebration dinner for all of the participants of the Mountain Mentors Program.

Education: Host annual Girl Graduate Tea at Park City Highschool.

Facilitate Woman in the Workplace Panel for Park City Highschool students. This will be a panel presentation by professional woman in various fields discussing their careers.

We invite and encourage all interested women in Park City to attend and meet once a month. A majority of the money raised by the Woman's Athenaeum is used to set up the Annual Girl Graduate Tea, to sponsor the Mountain Mentor Program dinner celebration, and to sponsor the sophomore student at the Hugh O'Brian Youth Leadership Seminar. Our proposal for funding would include a request for \$300.

Thank you for your consideration. Please call with questions 655-0841.

Annmarie Buoscio

Annmarie Buoscio
8945 N. Cove. Dr.
Park City, UT 84098

DATE: November 8, 2001
DEPARTMENT: OCMB, Public Works
AUTHOR: Mark Christensen, Budget & Grants Manager
Kent Cashel, Transportation Director
TITLE: Prospector Square Parking
TYPE OF ITEM: Informational

SUMMARY RECOMMENDATIONS: Council Should authorize staff to implement "No Overnight Parking" on Sidewinder Drive and "2 Hour" Parking restrictions on Gold Dust Drive in conjunction with actions taken by Aspen Villa and the Prospector Square Property Owners Association.

DESCRIPTION:

A. Topic: Parking Issues in the Prospector Business Core

B. Background: On September 27, 2001, Staff presented a managers report to Council that identified Prospector Square Property Owners Association's (PSPOA) parking concerns in the Prospector Business Core. (Memo Attached). PSPOA's concerns stem from "on street" parking in the prospector area but are particularly focused on Sidewinder Drive. Over the past three years Staff and Council have been approached by members of the Prospector Square Property Owners Association's wanting the City to limit overnight and long term parking on Sidewinder Drive.

C. Analysis: Parking resources in the Prospector Square business area are a combination of public street parking and privately owned parking lots. Street spaces make up a small proportion of the total parking in the area. Staff estimates the proportion is approximately 20% (280 spaces /1400 spaces).

Given the high percentage of private parking in the Prospector business core it seems logical that any effective solution to parking issues in the Prospector Square business core will require the cooperation and assistance from the management of these private lots as well as the multifamily housing units in the area.

Parking issues on Sidewinder Drive are complex issue driven by multiple factors. In an effort to achieve a comprehensive solution Staff met with representatives from the Prospector Square Property Owners Association, Aspen Villa, and residents from the Sidewinder Drive in an effort to address these parking issues. As a result of the meeting several solutions were identified and are recommended by the group as a comprehensive temporary solution to these parking issues.

The group agreed to the placement of "No Overnight Parking" from 2- 4 am. Signs will be places on both sides of the street on Sidewinder Drive from Kearns Blvd to Gold Dust Lane. It is anticipated that this will remove residential on street parking. In addition, the

City will place "2 Hour" parking restrictions on Gold Dust Lane in an effort to encourage vehicle movement on that street during business hours from 11am - 8 pm.

The Prospector Square Property Owners Association has agreed to request permission from its managing board to sell 50 Overnight Parking Permits in Lot J to residents of Aspen Villa for a nominal price. This permit would have limitations placed on it but it would provide a parking alternative to residents in Aspen Villa. This permit would be a temporary permit for a trial period of four months. At the end of that time a more permanent solution will need to have been reached by all parties.

As part of this agreement Aspen Villa will be required to reconfigure its current parking to make available as many spaces as possible. There are conflicting reports on the potential spaces that may be available however it is estimated that as many as 20 space could be created further reducing the demand for off site parking.

Additionally, it is recommended that a comprehensive parking study be completed after the Olympics to address parking issues on this section of the street. The purpose of this study is to address only the immediate parking needs of Sidewinder Drive from Gold Dust to Kearns not the overall parking needs of the larger Prospector area.

D. Department Review: Police, OCMB, City Manager, Public Works

ALTERNATIVES:

A. Implement "No Overnight" and "2 Hour" Parking Restrictions: This option would place signs "No Overnight Parking" restrictions on Sidewinder Drive from Kearns to Gold Dust Lane on both sides of the road. It would also place "2 Hour" parking restrictions on Gold Dust Lane. The incremental cost of this option is \$14,500 and will be completed in conjunction with actions taken by PSPOA and Aspen Villa. This is a trial program that will last approximately 4 months from when all parties have completed their part of the agreement. It will also include a Parking Study of Sidewinder Drive as it relates to this temporary solution. This is Staff's recommendation.

B. Council Hybrid Alternative: Council Could reject al or a portion of this recommendation and offer other possible solutions. This is not recommended as there are several components to this solution and altering the agreement may cause the other parties to reject their participation in a solution.

C. Continue the Item: This option would not alleviate the problem and may disrupt the agreement reached between the various parties involved.

D. Do Nothing:

SIGNIFICANT IMPACTS: Parking in the Prospector area is a multifaceted issue with many user groups involved. This solution reached in this agreement is one that address the many issues and offers a cooperative temporary solution that brings all parties to the table.

Staff feels that this is an important first step in addressing the long term parking issues of this area.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

RECOMMENDATION: Council should direct Staff to implement "No Overnight" parking restrictions on Sidewinder Drive and "2 Hour" parking restrictions on Gold Dust Lane in conjunction with actions taken by Aspen Villa and PSPOA as part of a four month trial period.

October 31, 2001 Prospector Parking

Meeting Participants:

Paul Christensen- PSPOA
Steve Zorin- Resident of Sidewinder Drive
Jim Tutora- Prospector Business Owner
Reg (Need whole Name)
Dean Barrett- PSPOA
Sally Elliot- Resident of Sidewinder Drive
Rick Ryan- Police Department
Jerry Gibbs- Public Works Director
Tom Bakaly- Assistant City Manager
Brian Anderson- Parking Services
Kent Cashel- Transit and Parking Director
Mark Christensen- Budget and Grants Manager

Not in attendance but participating in solution:

Shelly Weiss- Aspen Villa

DATE: November 8, 2001
DEPARTMENT: Legal Department
AUTHOR: Joseph Solga
TITLE: Proposed Amendments to the Municipal Code of Park City
("MCPC") updating Title 8, Criminal Code.
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Hold a public hearing and adopt the proposed ordinance which updates Title 8, Chapter 7 of the Park City Municipal Code.

DESCRIPTION:

A. Topic.

The Municipal Code of Park City ("MCPC").

B. Proposal.

Recommended amendment to the MCPC which updates Title 8, Chapter 7 regarding the use and possession of drug paraphernalia.

C. Background and Analysis.

Park City's current ordinance regarding drug paraphernalia only applies to the delivery of drug paraphernalia, not to their use and possession. This has the potential of hampering the prosecution of those who are found with, and using, drug paraphernalia, but not distributing it. Possession of drug paraphernalia is one of the most frequently cited offenses in Park City, and the proposed amendment would aid in prosecuting and securing convictions in this area.

The proposed amendment is a mirror of the Utah state statute which makes it unlawful to possess and use such paraphernalia as well as to deliver and distribute it. The amendment also clarifies the sentencing classifications and brings them into agreement with the Utah state statute..

D. Significant Impacts

Failure to amend the Code may lead to challenges of convictions for possession of drug paraphernalia based on the ambiguity of the current ordinance. Currently, Park City is prosecuting possession of paraphernalia under state law rather than City ordinance.

E. Alternatives

1. **Approve the revisions to Title 8, Chapter 7 of the Municipal Code of Park City.**
This is the recommended action.

2. **Modify the Ordinance.** If after public input and discussion the Council desires further changes, it should direct staff accordingly.

F. **Staff Review**

The Legal Department and the Park City Chief of Police have reviewed this matter. Prosecutor Thomas Daley recommended the changes and reviewed the ordinance.

G. **Recommendation**

Approve the revisions to Title 8, Chapter 7 of the Municipal Code of Park City.

AN ORDINANCE AMENDING TITLE 8, CHAPTER 7, SECTION 2 OF THE MUNICIPAL CODE OF PARK CITY PROHIBITING THE POSSESSION, USE AND DELIVERY OF DRUG PARAPHERNALIA AS DEFINED BY THE CRIMINAL CODE.

WHEREAS, Utah state criminal law has been updated; and

WHEREAS, Amendments made to the Utah Code Annotated, Title 76 (1999) require an update of Title 8 of the Municipal Code of Park City to ensure compliance with state standards; and

WHEREAS, The City Prosecutor has recommended the update to Title 8 of the Municipal Code of Park City;

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

SECTION 1. Title 8, Chapter 7, Section 2 is hereby deleted and replaced by amended Title 8, Chapter 7, Section 2, as follows:

8-7-2. POSSESSION OF DRUG PARAPHERNALIA

(A) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body in violation of the Utah Controlled Substances Act. Any person who violates this subsection is guilty of a class B misdemeanor.

~~(A)~~(B) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance, ~~as defined in Section 8-7-1,~~ into the human body in violation of the Utah Controlled Substances Act. Any person who violates this subsection is guilty of a class A misdemeanor.

~~(B)~~(C) ~~It is unlawful for any person eighteen (18) years of age or over to deliver drug paraphernalia to a minor.~~ Any person 18 years of age or over who delivers drug paraphernalia to a person under 18 years of age who is three years or more younger than the person making the delivery is guilty of a third degree felony.

~~(C)~~(D) It is unlawful for any person to place in this state in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement is to promote the sale of drug paraphernalia.. Any person who violates this subsection is guilty of a class B misdemeanor.

~~(D)~~(E) Drug paraphernalia used possessed or delivered in violation of this section shall be subject to seizure and forfeiture to the city.

SECTION 2. This ordinance shall take effect upon publication.

PASSED AND ADOPTED this 8th day of November, 2001.

Date: November 8, 2001
Department: Community Development Department
Title: Amendment to Record of Survey
Type of Item: Administrative

Summary Recommendations: Staff recommends that City Council approve the proposed amendment to the Record of Survey to Town Pointe Condominiums, based on the Findings of Fact, Conclusions of Law and Conditions of Approval.

A. Topic

Applicant: Town Pointe LLC
Location: 1000 Park Avenue
Proposal: Amendment to Record of Survey
Zoning: HCB- Historic Commercial Business District
Adjacent Land uses: Residential, Commercial, Bike Trail, City Park, Hwy 224
Project Planner: Kevin LoPiccolo
Date of Application: September 19, 2001

B. Background Information

The Planning Commission reviewed the request for an amendment to the Record of Survey at their October 10, 2001 meeting. The Commission continued this item due to confusion on whether or not the project needed an additional unit in order to comply with the American Disabilities Act.

The project does comply with all disability requirements, but the applicant has requested to add one additional unit that would be held under common ownership by the Town Pointe Homeowners Association.

Staff has included a memo from the Building Department (Exhibit D) to clarify the requirements on having an accessible unit. The Planning Commission at their October 24, 2001 forwarded a positive recommendation to the City Council to amend the Record of Survey to accommodate one additional accessible unit to the Town Pointe condominium project.

C. Analysis

The applicant is requesting a change in the approved Plat to provide one additional unit for handicap accessibility. Unit 103 in building "C" is reducing their floor area from 1,619 square feet to 1,155 square feet. A separate suite will be created within unit number 103 to accommodate a handicap suite, and will be held in common by the Town Pointe Homeowners Association. Unit 106 (handicap suite) will be 464 square feet. The additional unit will increase the approved unit count from 41 units to 42 units, but will not be sold under separate ownership. The applicant is requesting this change in order to satisfy any potential conflict that could arise if the Town Pointe condominium units were put into the rental pool. The handicap suite would assure that the project would have at least one

handicap unit available under these circumstances. One parking space is required for the Handicap Suite since its less than 600 square feet. Town Pointe was approved with a total of 162 parking spaces, allocating 84 parking spaces for Town Pointe Condominiums and 78 parking spaces for Park Station. The total floor area, building mass and architectural design for the project remains the same.

D. Department Review

The Staff Review Committee have reviewed this application and find it to be consistent with all requisite city development codes. The City Attorney's office will review the plat and CC&R's before recordation.

E. Public Input

Property owners within 300 feet of the project were notified on September 27, 2001. The property was properly posted and legally noticed. As of the date of this report, staff has not received any public input concerning this application.

F. Summary and Recommendation

Staff recommends that the City Council adopt an Ordinance based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

Findings of Fact

1. The property is zoned HCB, Historic Commercial Business District.
2. The Planning Commission forwarded a positive recommendation for an amendment to the Record of Survey to the City Council at their October 24, 2001 meeting.
3. The City Council adopted an ordinance approving the Subdivision of a metes and bound parcel into one lot of record at their November 9, 2000 meeting.
4. The project complies with the Uniform Building Code requirement for handicap accessibility.
5. The applicant has elected to construct one additional handicap unit to be owned in common by the Association.
6. Section 1103.1.9.3 of the Uniform Building Code requires Multi-unit dwellings containing more than 20 dwelling units to have at least 2% but not less than one Type A accessible unit.
7. The additional unit requires one parking space since it is less than 600 square feet.
8. The Town Pointe site provides a total of 162 parking spaces.
9. The facts discussed in the Analysis section are hereby incorporated herein.

Conclusions of Law

1. The use as conditioned is consistent with Park City General Plan, Land Management Code, and State law regarding subdivision plats.
2. There is good cause for this Amendment.
3. Neither the public nor any person will be materially injured by the approval of the plat, subject to the conditions of approval. Approval of the subdivision does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval

1. The City Attorney and City Engineer will review and approve the final form and content of the Record of Survey and Declaration of Condominium for compliance with State law, the Land Management Code, and the conditions of approval prior to recordation of the plat.
2. This approval shall expire within (12) twelve months from the date of Council approval, unless this plat amendment is recorded prior to the date.
3. The Conditions of Approval from the City Council November 9, 2000 meeting(Exhibit "C") continue to this approval.

Exhibits:

- A. Record of Survey
- B. Location Map
- C. Ordinance (Conditions of Approval)
- D. Memo from the Building Department
- E. Draft Ordinance

AN ORDINANCE APPROVING AN AMENDMENT TO RECORD OF SURVEY PLAT FOR TOWN POINTE CONDOMINIUMS LOCATED AT 1000 PARK AVENUE, PARK CITY, UTAH

WHEREAS, the owners, Town Pointe, LLC, a Utah limited liability company, of the property at 1000 Park Avenue, Park City, Utah and to be known as Town Pointe Condominiums, have petitioned the City Council for approval of an amendment to the Record of Survey; and

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

WHEREAS, on October 24, 2001 the Planning Commission held a public hearing to receive public input on the proposed amendment to the Record of Survey and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, a financial guarantee for all public improvements is necessary to ensure completion of these improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner.

WHEREAS, it is in the best interest of Park City, Utah to approve the Record of Survey;

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

SECTION 1. FINDINGS OF FACT. The above recitals are hereby incorporated as findings of fact.

1. The property is zoned HCB, Historic Commercial Business District.
2. The Planning Commission forwarded a positive recommendation for an amendment to the Record of Survey to the City Council at their October 24, 2001 meeting.
3. The City Council adopted an ordinance approving the Subdivision of a metes and bound parcel into one lot of record at their November 9, 2000 meeting.
4. The project complies with the Uniform Building Code requirement for handicap accessibility.
5. The applicant has elected to construct one additional handicap unit to be owned on common by the Association.
6. Section 1103.1.9.3 of the Uniform Building Code requires Multi-unit dwellings containing more than 20 dwelling units to have at least 2% but less than one Type A accessible unit.

7. The additional unit requires one parking space since it is less than 600 square feet.
8. The Town Pointe site provides a total of 162 parking spaces.
9. The facts discussed in the Analysis section are hereby incorporated herein.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for the above-mentioned subdivision plat and that neither the public nor any person will be materially injured by the proposed subdivision plat.

1. The use as conditioned is consistent with Park City General Plan, Land Management Code, and State law regarding subdivision plats.
2. There is good cause for this Amendment.
3. Neither the public nor any person will be materially injured by the approval of the plat, subject to the conditions of approval. Approval of the subdivision does not adversely affect the health, safety and welfare of the citizens of Park City.

SECTION 3. PLAT APPROVAL. The subdivision plat, known as Town Pointe, is hereby approved as shown on Exhibit A, with the following conditions:

1. The City Attorney and City Engineer will review and approve the final form and content of the Record of Survey and Declaration of Condominium for compliance with State law, the Land Management Code, and the conditions of approval prior to recordation of the plat.
2. This approval shall expire within (12) twelve months from the date of Council approval, unless this plat amendment is recorded prior to the date.
3. The Conditions of Approval from the City Council November 9, 2000 meeting (Exhibit "B") continue to apply to this approval.

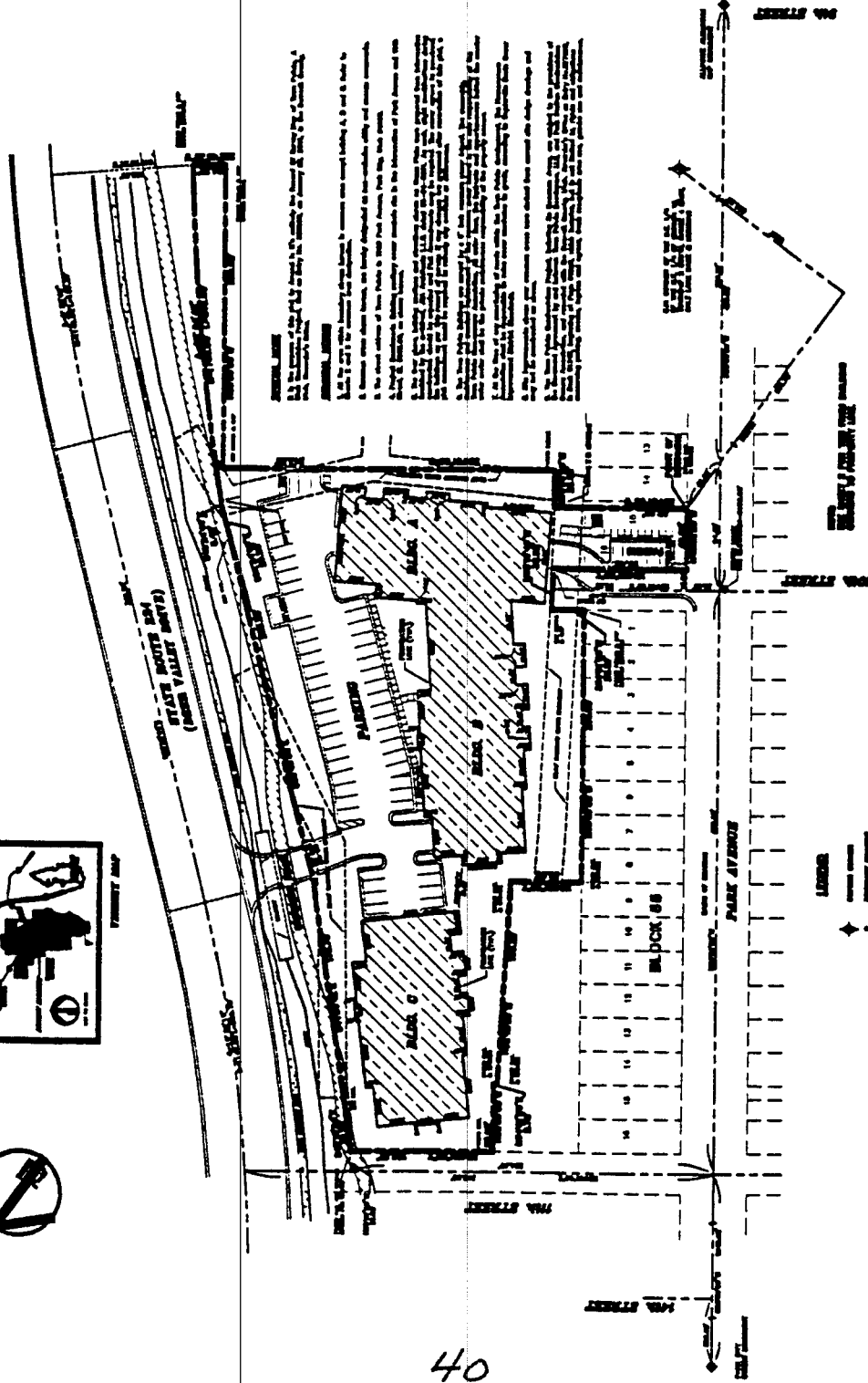
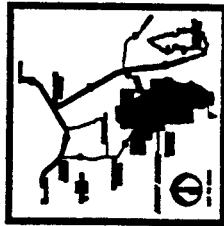
SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 8th day of November, 2001

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:



- LEGEND
- Dashed line
 - Dotted line
 - Solid line
 - Solid line with dots
- 7/22/01

THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS THE PROPERTY OF THE JACK JOHNSON COMPANY AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF THE JACK JOHNSON COMPANY.

THE JACK JOHNSON COMPANY
1000 MAIN STREET, SUITE 100
PARK CITY, UTAH 84301
PHONE: (435) 243-1111
FAX: (435) 243-1112

THE JACK JOHNSON COMPANY
1000 MAIN STREET, SUITE 100
PARK CITY, UTAH 84301
PHONE: (435) 243-1111
FAX: (435) 243-1112

THE JACK JOHNSON COMPANY
1000 MAIN STREET, SUITE 100
PARK CITY, UTAH 84301
PHONE: (435) 243-1111
FAX: (435) 243-1112

FIRST AMENDED PLAN TOWN POINTE A UTAH CONDOMINIUM PROJECT SITING AT 1000 MAIN STREET, PARK CITY, UTAH IN THE UNINCORPORATED AREA OF DISTRICT NO. 1 FOR THE PURPOSES OF A FUTURE PLANNING AND DEVELOPMENT OF THE PROJECT.

EXHIBIT 1 OF 4



RECORDED

BOOK NO. _____ PAGE _____

DATE OF RECORD _____

DATE OF RECORD _____

DATE OF RECORD _____

AS TO FORM

FORM NO. _____

DATE _____

DATE _____

BY ATTORNEY

DATE _____

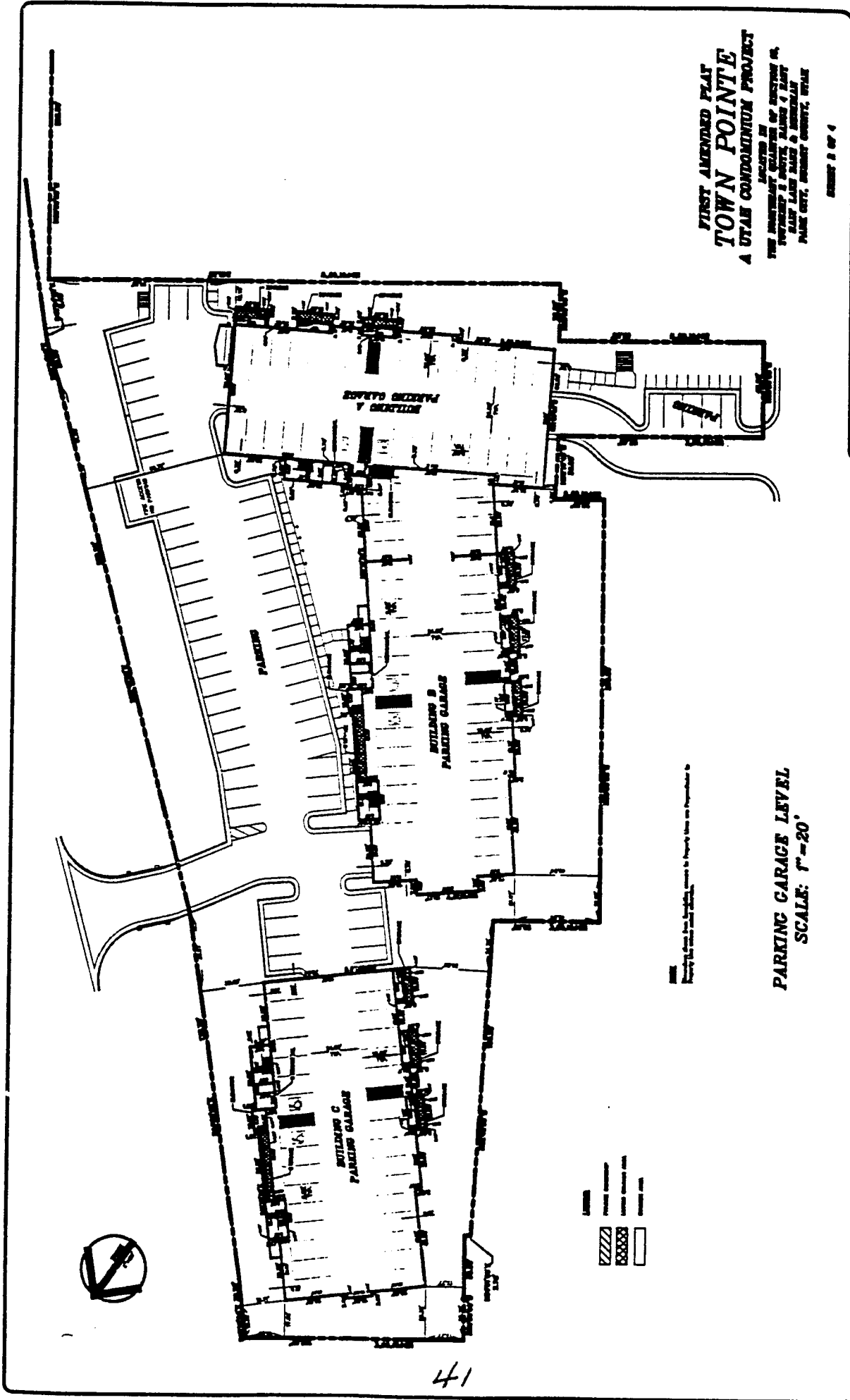
A. Record of Survey

CITY ENGINEER

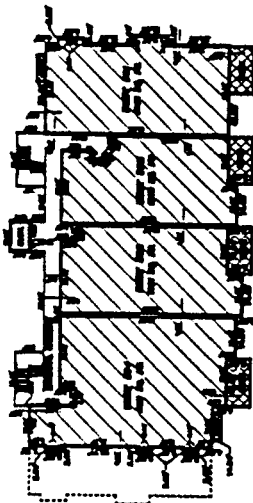
REVIEWED FOR COMPLIANCE WITH
UTAH CONDOMINIUM ACT AND
LOCAL ORDINANCES AND
APPROVED FOR RECORDING
ON THIS _____ DAY OF _____

CITY COUNCIL

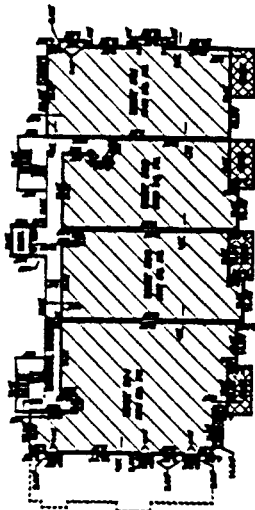
APPROVED TO THE CITY OF PARK CITY
ON THIS _____ DAY OF _____



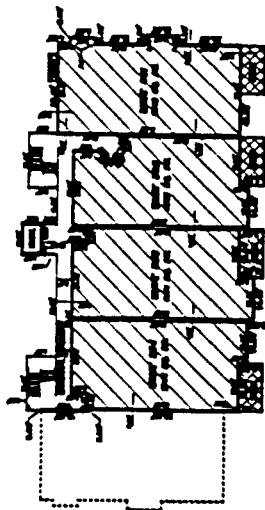
42



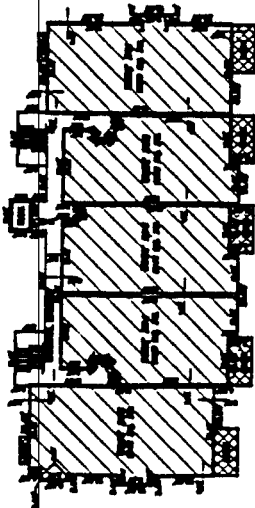
BUILDING 'A' THIRD FLOOR



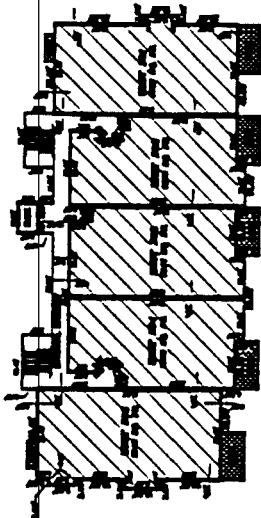
BUILDING 'B' THIRD FLOOR



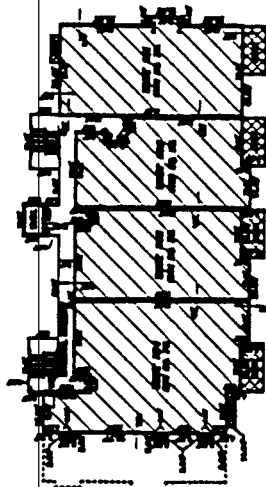
BUILDING 'C' THIRD FLOOR



BUILDING 'A' SECOND FLOOR

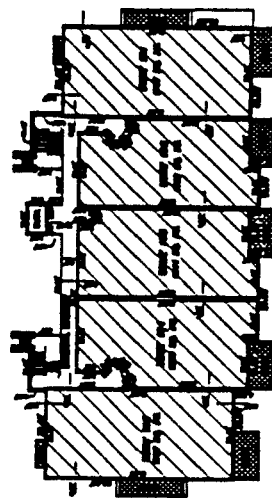


BUILDING 'B' SECOND FLOOR

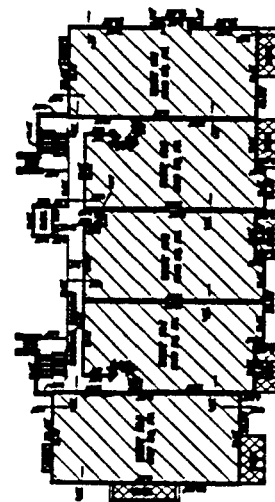


BUILDING 'C' SECOND FLOOR

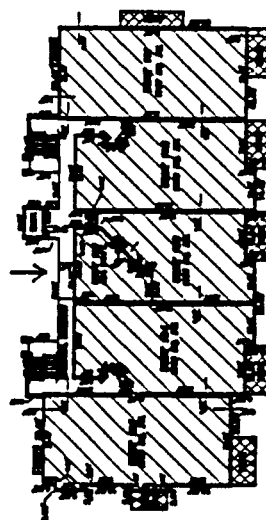
Unit 106 - Handicap accessible



BUILDING 'A' FIRST FLOOR



BUILDING 'B' FIRST FLOOR



BUILDING 'C' FIRST FLOOR



FIRST AMENDED FLAT
TOWN POINTE
A UTAH CONDOMINIUM PROJECT

LOCATED IN
THE IMMEDIATE VICINITY OF EXISTING FLAT
TOWNPOINT & HOTEL, ALONG A FLAT
FLAT LANE, FLAT & HARBORVIEW
FLAT CITY, HARBORVIEW, UTAH

EXHIBIT 8 OF 4

SCALE: 1"=20'

RECORDS

DATE	FILE	DATE	FILE

DATE FILED IN THE TOWN OF



177 1st St. S. SALT LAKE CITY, UT 84111

1. ANALYSIS
2. SUMMARY

1000 Park Ave

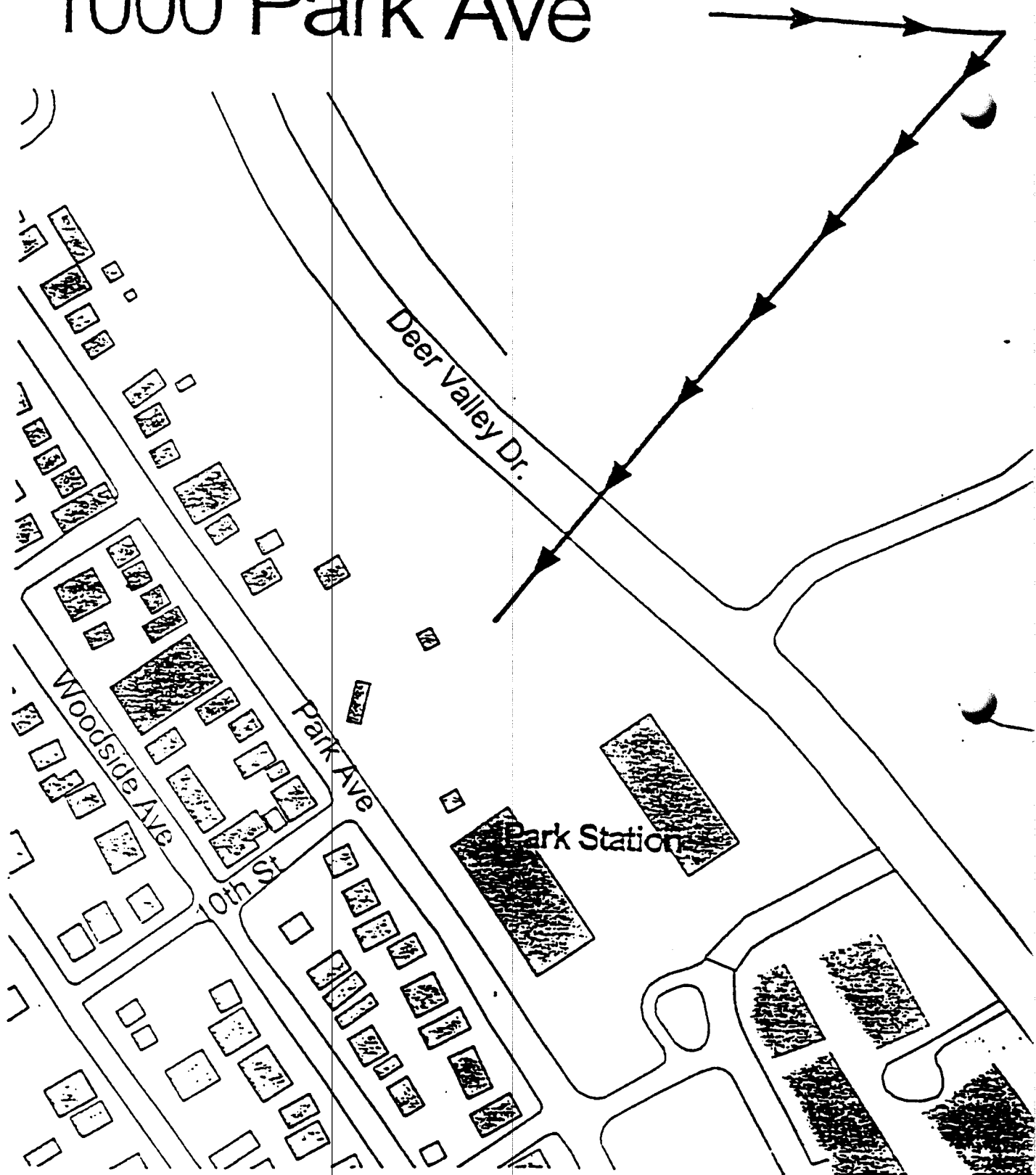


Exhibit "B"
Location Map





Ordinance No. 00-57

**AN ORDINANCE APPROVING THE FINAL SUBDIVISION PLAT FOR
TOWN POINTE SUBDIVISION LOCATED AT 1000 PARK AVENUE,
PARK CITY, UTAH**

WHEREAS, the owners, Town Pointe, LLC, a Utah limited liability company, of the property at 1000 Park Avenue, Park City, Utah and to be known as Town Pointe Condominiums, have petitioned the City Council for approval of a final Subdivision; and

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

WHEREAS, on October 11, 2000 the Planning Commission held a public hearing to receive public input on the proposed final Subdivision and forwarded a positive recommendation of approval to the City Council; and

WHEREAS, a financial guarantee for all public improvements is necessary to ensure completion of these improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner.

WHEREAS, the proposed final Subdivision allows the owner to sell ownership interests to other parties;

WHEREAS, it is in the best interest of Park City, Utah to approve the final Subdivision;

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

SECTION 1. FINDINGS OF FACT. The above recitals are hereby incorporated as findings of fact.

1. The property is zoned HCB, Historic Commercial Business District. The property is within the Frontage Protection zone and is subject to a Conditional Use Permit.

C. Ordinance (Conditions of Approval)

2. The proposed Subdivision is for a metes and bounds parcel to create a single lot of record to accommodate the construction of three buildings comprising of 41 multi-family units, a driveway and parking lot.
3. The Planning Commission forwarded a positive recommendation for a subdivision to the City Council at their October 11, 2000 meeting.
4. A Building Permit for construction of the final building will not be issued after September 30, 2001.
5. The proposed plat changes the type of ownership of this property to condominium ownership.
6. The Historic District Commission at their August 7, 2000 meeting forwarded at their a positive recommendation to the Planning Commission finding the proposal in compliance with the Historic District Design Guidelines.
7. The location of this project is visible from Highway 224, the Aerie Subdivision and Old Town.
8. The proposed density is 41 units on a 2.3 acres.
9. The applicant agrees to realign and widen the bike trail to adhere to the City's Master Trail Plan prior to a building permit for residential construction.
10. Utilities are available to sustain the anticipated property uses. Detailed utility and construction plans for the project will be submitted to the Community Development Department and utility/service providers for review and approval or denial.
11. Based on plans submitted on October 2, 2000, the project has preliminary approval from the Building Official in regards to fire and emergency access requirements, by virtue of a fire protection plan which addresses alternative methods of code compliance, such as provision of type 13D fire sprinkler systems, alternative access, fire separation of structures, and non-combustible roof materials.
12. All vehicular circulation occurs on-site and through the underground parking structures for each building. Significant vegetation exists on the property which buffers the bike path and parking lot from Deer Valley Drive.
13. A financial guarantee for all landscaping and public improvements is necessary to ensure completion of these improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner.
14. The applicant has agreed to provide a final landscape and revegetation plan for approval or denial by the city Landscape Architect/Arborist.

15. The subject property is located adjacent to City Park. City Park will be a primary public gathering site during the 2002 winter Olympic Games. Construction of the project poses potential impacts to the public safety and use of City Park.

16. The applicant stipulates to providing a Construction Management/Olympic Mitigation Plan is required in order to protect and minimize the on and off-site vegetation, and provide a timeline for trail realignment and an outline for how Town Pointe will mitigate its construction activities prior and during the 2002 Olympic Games.

17. The Planning Commission has taken this action based upon revised plans that were submitted to the Community Development Department on October 2, 2000.

18. The facts discussed in the Analysis section are hereby incorporated herein.

SECTION 2. CONCLUSIONS OF LAW. The City Council hereby concludes that there is good cause for the above-mentioned subdivision plat and that neither the public nor any person will be materially injured by the proposed subdivision plat.

1. The proposed project complies with all requirements outlined in the Land Management Code, Sections 1.13, 7.2, 8.8 and Chapter 15.

2. Off-street parking and the internal circulation system are adequate for the project and meet the requirements of the Land Management Code.

3. The proposed project is consistent with all CUP/FPZ and Subdivision requirements found in the Land Management Code.

4. The use as conditioned is consistent with Park City General Plan.

5. There is good cause for the amendment.

6. Neither the public nor any person will be materially injured by the approval of the plat, subject to the conditions of approval. The plat does not adversely affect the health, safety and welfare of the citizens of Park City.

7. Any effects in difference in use or scale have been mitigated through careful planning and / or conditions.

SECTION 3. PLAT APPROVAL. The subdivision plat, known as Town Pointe, is hereby approved as shown on Exhibit A, with the following conditions:

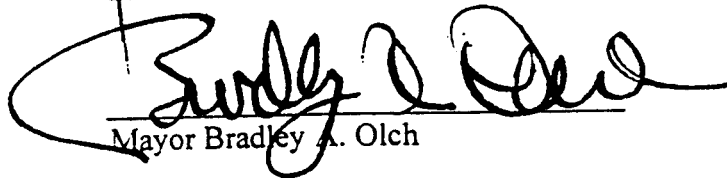
1. All Standard Project Conditions shall apply (Exhibit "B").

2. A final plat or record of survey shall be submitted to the City for review and approval or denial and shall be recorded at the County prior to issuance of certificate of occupancy for any unit. Conditions, Covenants, and Restrictions for this project shall be submitted to the City Attorney for review and shall be recorded at the time of plat recordation.
3. The Developer shall provide a detailed Construction Management Plan (CMP), prior to issuance of any building permits, that addresses at a minimum the following:
 - a.) A construction staging, storage, circulation and parking plan.
 - b.) The developer shall instruct respective contractors that there is to be no wash out of concrete trucks on-site landscape areas. Further, the developer shall identify acceptable off-site dirt storage and disposal sites, obtain written permission by the owner and post a financial surety, to the satisfaction of the City, that will provide for the rehabilitation of the said storage and disposal site.
 - c.) Any temporary parking signs, subject to Public Works Director and City Engineer approval, shall be addressed in the CMP.
 - d.) The applicant shall comply with applicable Utah Air Quality standards, regarding dust mitigation, and with any applicable Utah Water Quality standards and shall provide any necessary permits or evidence of compliance prior to issuance of building construction. Park City does not guarantee or monitor compliance with these standards.
 - e.) The applicant shall agree that construction will cease during the duration of the Olympic 2002 games from February 8 - 28, 2002.
4. The applicant will not be issued a Building Permit for the framing of the final building unless commencement begins prior to September 30, 2001. If a Building Permit is not issued prior to this date, a Building Permit will not be issued until the completion of the Olympic games.
5. A utility and grading plan satisfactory to the City Engineer shall be submitted and approved. On-site storm runoff detention is required. All water lines, fire hydrants, and appurtenances behind the master water meter shall be the private maintenance responsibility of the property owners.
6. A financial guarantee, for the value of all public improvements, landscaping, and trails to be completed, shall be provided to the City prior to condominium plat recordation. All public improvements shall be completed according to City Standards and accepted by the City Engineer prior to release of this guarantee
7. This approval shall expire within (12) twelve months from the date of Council approval, unless this plat amendment is recorded prior to the date.

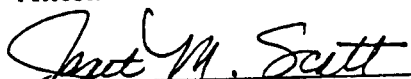
SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

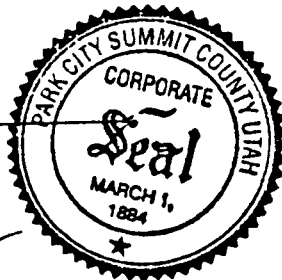
PASSED AND ADOPTED this 9th day of November, 2000

PARK CITY MUNICIPAL CORPORATION

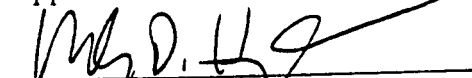

Mayor Bradley A. Olch

Attest:


Janet M. Scott, City Recorder



Approved as to form:


Mark D. Harrington, City Attorney

MEMO TO KEVIN LOPICCOLO
SEPTEMBER 11, 2001

Kevin, this memo is concerning the handicapped dwelling unit at the Towne Pointe project.

Section 1103.1.9.2 of the Uniform Building Code, talks to requirements for "Hotels, lodging houses and congregate residences", or rental type units. This section calls for a certain number of "accessible" units depending on the total number of units in the project.

Section 1103.1.9.3 of the Uniform Building Code talks to "Multi-unit dwellings" or ownership type units. This section calls for a certain number of units to be built as type A dwelling units depending on the total number of units in the project.

The rental units and the ownership units have different requirements for numbers of accessible units and types of units that are needed.

In either case, a certain number of handicapped units are required. The problem, in a project like this, is that if they are built and sold to comply with section 1103.1.9.3 or ownership type use, and then the owner of a unit decides he wants to rent his/her unit out on a nightly or weekly basis, then the requirements change from one section of the code 1103.1.9.3 to another section of the code 1103.1.9.2. At this point in time if someone calls this owner and asks to rent his/her unit and they require handicapped access, then this owner must be able to provide this. This would mean that every unit that ever wanted to go into the rental pool may need to be handicapped accessible. This is not feasible. Therefore one way of complying with this requirement is to have 1 or more units on the site, that are owned in common, that the owner of the unit that is being rented can say, "My unit is not accessible, but there is a unit in the project that is available".

Yes, it would be legal to build and sell these units as the plans presently show them, but if any one of the owners would want to put his/her unit in a rental pool, they would need to be able to provide a handicapped unit that would be available to a handicapped person.

Also keep in mind, when the ADA folks come and visit our sites, they seem to be checking them by just asking if a handicapped unit is available on the project. This project does have one required type A unit. However the person that buys this unit may not and does not need to put this unit in a rental pool. Therefore there may not be a handicapped unit available.

The option of having a unit in common with all owners, seems to be the cleanest system.

Richard Carlile

D. Memo from the Building Department

DATE: November 5, 2001
DEPARTMENT: Recreation Services
AUTHOR: Kathy Kelly, Recreation Services Manager
TITLE: Massage Express
TYPE OF ITEM: Lease

SUMMARY RECOMMENDATIONS:

Approve a one year Massage Express lease.

DESCRIPTION:

A. Topic:

Approval of lease for space within the Racquet Club for Massage Express.

B. Background:

Massage Express has been leasing space at the Racquet Club since 1993. They occupy a space which contains three small massage rooms and a small entry. They have been an excellent tenant, providing an upscale product, submitting rent in a timely manner, and staying connected with the Racquet Club staff.

Massage Express's lease has called for rent of 20% of gross receipts, with an \$8,000 yearly cap. There is also a guaranteed minimum monthly rent of \$300.

The new lease has an increase of 6.25% to the yearly cap, for a new cap of \$8,500.

The previous lease gave the tenant right of first refusal should the City decide to rent the space to another entity. This lease gives no option of first refusal to the tenant, to make it consistent with other City lease agreements.

C. Analysis:

The increase in rent is consistent with other city owned properties.

D. Review:

This lease has been reviewed and approved by the Departments of Finance, Legal, and City Manager.

ALTERNATIVES:

A. Establish a set monthly rent instead of revenue sharing.

B. Increase the cap on the revenue sharing.

C. Discontinue the lease.

D. Do an RFP for a new tenant.

SIGNIFICANT IMPACTS:

Establishing a set monthly rent instead of revenue sharing could change the relationship between Massage Express and the Racquet Club. Currently we have an interest in each other's success.

The maximum cap of \$8,500 per year is an equitable amount for the space.

The space is not currently needed for other programming and customers are pleased with the product.

**2001-2002 LEASE AGREEMENT BETWEEN PARK CITY MUNICIPAL CORPORATION
AND MASSAGE EXPRESS FOR SPACE AT THE
PARK CITY RACQUET CLUB**

THIS AGREEMENT is made by and between the PARK CITY MUNICIPAL CORPORATION ("Landlord") and MASSAGE EXPRESS, L.C., a Utah limited liability company ("Tenant") to set forth the terms and conditions under which Tenant will lease certain property owned by Landlord in Park City, Utah. The parties agree as follows:

1. **Property.** The property affected by this Lease consists of four rooms on the east end of the Park City Racquet Club building (**See Exhibit 1 attached hereto**), having a street address of 1200 Little Kate Road, Park City, Utah.

2. **Term.** The Lease shall consist of one 12 month term. The term is to begin on September 1, 2001, and terminate on August 31, 2002, unless terminated earlier as provided herein. The property being leased is currently surplus municipal space, but may be required for municipal or other purposes by Landlord. Landlord may terminate this lease upon three months prior written notice to Tenant if the space is required for municipal or other purposes. No option of first refusal is given to Tenant.

3. **Rent.** The parties agree that rental shall be twenty percent (20%) of gross receipts from Massage Express at the Racquet Club for the 12 month term with an \$8,500 yearly cap. Gross receipts shall include revenues from massage, massage classes and the sale of related retail products. Receipts shall be collected by individual massage therapists but the Racquet Club shall collect all payments made by credit card. Tenant agrees that each client will sign in at the Racquet Club front desk before receiving massage therapy services. Tenant will provide Landlord with a weekly tally of number of clients served and revenues received.

(a) **Minimum Guaranteed Monthly Rental.** The minimum guaranteed rental for the space shall be Three Hundred Dollars (\$300) per month.

(b) **Percentage Rental.** For each and every month during the lease term, Tenant shall pay twenty percent (20%) of gross sales per month as rental. Gross sales shall be calculated by the parties on a monthly basis and payment remitted within thirty (30) days at the end of each month.

(c) **"Gross Sales"** as used herein is hereby defined to mean the total amount in dollars of all sales, whether for cash or on credit, or services and all other receipts of whatever nature from business conducted in or from the Leased Premises, whether by Tenant or others including all orders taken or received whether delivery is to be at another location or at the Leased Premises and whether such sales be made by means of merchandise or other vending devices in the Leased Premises. Gross sales shall include vending machines but shall not include any sums collected for any sales, use, or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly on sales to customers and paid by Tenant to such governmental authorities.

(d) Financial Statements Within fifteen (15) days of the close of each quarter, Tenant shall furnish landlord with quarterly sales tax returns.

4. Signage. Exterior signage shall be permitted for this use at the Racquet Club and must be approved by the Planning Department. Tenant shall also be entitled to install interior signage with the prior written consent of the Landlord as to size, colors, content, locations, method of installation and materials. Tenant is responsible for all costs of signage and installation. Signage shall be removed at the termination of the lease, and the premises restored to their original condition at Tenant's sole expense.

5. Substituted Premises. The Landlord reserves the rights, without Tenant's consent, on thirty (30) days' written notice to Tenant to substitute other premises within the Racquet Club complex, as it now exists or as it may be added to or remodeled in the future, provided that the substituted premises contains at least the same square footage as the present premises, contains comparable improvements and is made available to Tenant at the then current rental rate for such space.

6. Utility Services. Landlord shall be responsible to pay for utilities, including natural gas, electricity, sewer and water for the leased space. Tenant shall be responsible for its own outside telephone line. Telephone extension and Racquet Club main line shall be provided by Landlord. Janitorial and security service, if used, shall be provided by Tenant.

7. Use of the Premises and Advertising. The premises shall be used only for the purpose of professional massage therapy, massage-related training and classes, and the sale of massage-related products. Tenant shall not pursue operations other than those sanctioned by the Utah Board of Professional Licensing. Landlord, by and through the Leisure Services Director shall review and approve all advertisements prior to publication or broadcast.

8. Rent Commencement Date. This Lease shall commence on September 1, 2001, and the term of the Lease shall begin on that date.

9. Tenant Improvements. The space is being leased to Tenant in a completely finished state. Electrical work is complete and complies with local and state codes and ordinances. The space is heated and plumbed. Any additional interior finish 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 except for trade fixtures commonly used and removed in the retail business, such trade fixtures are set forth in *****Exhibit 2*****, attached hereto.

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. Tenant agrees to pay all reasonable costs incurred by Landlord in the defense or discharge of any liens on the property.

11. **Insurance.** Landlord is not obligated to provide insurance on the contents of Tenant's space, nor insurance that would protect Tenant against public liability from injuries to persons on the leased premises, as defined in paragraph 1. Tenant shall, at Tenant's expense, carry a policy of general liability insurance, including professional liability, in an amount of at least One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000.00) per incident or occurrence. Landlord shall be named as an additional insured on each policy. A certificate of insurance with a thirty (30) day cancellation notice provision shall be provided to Landlord on or before the lease commencement date, and maintained continuously during the term of the lease. In addition to the liability insurance set forth above, Tenant will procure and keep in force, fire and extended coverage insurance upon its leasehold improvements, furniture, furnishings, fixtures and equipment to the full insurable value of the same and will furnish the Landlord with evidence that such coverage has been procured and is maintained in full force and effect during the term of this lease. Tenant may carry whatever other insurance Tenant deems appropriate. The parties agree that Tenant's sole remedy in the event of business interruptions, fire, windstorm, or other loss from hazard shall be its own insurance and Tenant will have no action against Landlord.

12. **Assignment/Sublease.** This lease may not be assigned or the premises sublet without the advance written consent of Landlord. Landlord's consent will not be unreasonably withheld.

13. **Remedies.** In the event 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 this 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 or otherwise cure the default within ten (10) days, or quit the premises within an additional five (5) days;

(b) Landlord may permit 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 here, 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 the lease entirely.

Unless the 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 in writing.

In the event that Tenant is in violation of some provision of this lease, other than the payment of base rent or additional rent as described above, Landlord shall be entitled to maintain an action for specific performance or injunctive relief, or upon written notice, to give Tenant thirty (30) days in which to cure the violation or breach of performance. If the breach continues after the expiration of the thirty (30) day notice period, Landlord may exercise any and all remedies available at law or equity, including re-entry and taking possession of the premises, or re-letting the premises for Tenant's account.

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

If to Landlord:
Assistant City Manager
Park City Municipal Corp.
445 Marsac Avenue
P.O. Box 1480
Park City, Utah 84060

If to Tenant:
Massage Express
c/o Pam Anderson or Aldena Brown
P.O. Box 680013
Park City, Utah 84068

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

16. **Maintenance.** 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, light fixtures, janitorial service resulting from tenant's use, and glass maintenance (both cleaning and replacement in the event of damage) which is within the leased premises or solely serves the leased 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.

17. **Access to Other Space.** 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, at a time which is mutually agreeable to both parties.

18. **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 retail 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 or monies are received for so leasing, or that Landlord may not lease to a private entity, either under existing state and federal law regulation or future state and federal law regulation.

19. **Increased Insurance Risk.** Tenant will not permit said leased premises to be used for any purpose which would render the fire insurance on the building on the premise 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.

20. **Care and Repair of Premises by Tenant.** Tenant has inspected the premises and accepts it as is 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 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 Park City Racquet Club Building as Tenant may require 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.

21. **Payment of Taxes and Other Assessments.** Tenant shall pay all business fees or sales or other taxes assessed on the operation of its retail sales business.

22. **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, within a reasonable amount of time, 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 occurrence of such damage or destruction.

23. **Surrender of Premises.** 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.

24. **Holdover.** Should Tenant holdover 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 and/or percentage of gross sales as provided for herein.

25. **Indemnity.** Tenant covenants and agrees to indemnify, hold harmless and defend the Landlord, its agents and employees, from all fines, suits, claims, demands and actions of any kind including attorney's fees and nature by reason of any and all of its operations hereunder and agrees to assume all the risk in the operation of its business hereunder and is solely responsible and answerable in damages for any and all accidents or injuries to person or property.

Tenant agrees to indemnify, save harmless and defend Landlord, its agents and employees, from all claims, damages, demands, actions, costs and charges, including attorney's fees, arising out of or by reason of any of its agents' or employees' acts or omissions hereunder, or the operation of Tenant's business.

26. **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.

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

28. **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.

29. **Days and Hours of Operation.** Tenant will have the leased premises open for

business at least five days per week. Tenant shall be open for business a minimum of eight (8) hours per day. The hours of operation shall be coordinated and agreed to in writing by Tenant and the Leisure Services Director as Landlord's agent. Tenant may close at its discretion during slow periods for remodeling or vacations. Closure by Tenant shall not result in any waiver or reduction in rent due.

30. **Type of Operation**. Tenant will maintain and operate the massage therapy in a professional manner and will keep the leased premises in a safe, clean, orderly and inviting condition at all times. The business is to be operated in conformance with all federal, state and local laws, ordinances and regulations.

31. **Tenant's Independent Massage Contractors**. Tenant will agree to retain active, qualified, competent, experienced and licensed independent contractor at the store to supervise the operations. All independent contractors are the authorized agents of the Tenant and represent and act in behalf of the Tenant in complying with or violating the terms of this Lease. Tenant's independent contractors will be professional, courteous, efficient and neat in appearance.

32. **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 herein before provided.

33. **Costs and Attorney's fees**. The Landlord and Tenant each agree that in the event of any dispute or litigation involving this lease or the recovery of the premises herein, the prevailing party shall be entitled to all costs of suit, including reasonable attorney's fees.

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

DATED this 8th day of November, 2001.

DATE: November 8, 2001
DEPARTMENT: Legal
AUTHOR: Jerry Gibbs
TITLE: JSSD Water Supply Proposal
TYPE OF ITEM: Contract Authorization

SUMMARY RECOMMENDATIONS: Authorize staff to enter into a surplus water purchase agreement with the Jordanelle Special Service District to annually receive up to 500 acre feet of water for the next five years.

DESCRIPTION:

A. Topic: Jordanelle Special Service District (JSSD) Water Sales Agreement

B. Background: JSSD was formed to provide water service for 5,000 to 7,000 units to be developed around the Jordanelle Reservoir and in the Deer Crest area. JSSD has leased water from UPMC, Salt Lake City, Midway Irrigation, and Utah Water Company, all of which have water rights in the Ontario Drain Tunnel. The water from that tunnel drains directly into the JSSD treatment plant. and can be used in the Weber River drainage.

City staff has been looking at the Jordanelle Reservoir as a possible water supply for Park City since 1995. The following is a list of advantages and disadvantages.

Advantages

- ◆ The JSSD encompasses Deer Crest.
- ◆ The JSSD infrastructure is less than 2,000 feet from our water system near Snow Park. A short connection above the Snow Park Lodge which would cost about \$200,000.
- ◆ JSSD water would serve the Deer Valley area requiring less pumping from the Park Meadows/ Prospector Area.
- ◆ JSSD has surplus capacity to meet our short term water needs.
- ◆ A connection would allow JSSD water to be substituted for Spiro bulkhead water during lower demand.
- ◆ A connection would provide emergency water
- ◆ Opportunity to improve Wasatch County and Park City relations.
- ◆ JSSD is required to meet the same State and Federal drinking water standards.
- ◆ A low minimum takedown which means limited exposure.

Disadvantages

- ◆ There may be some Provo/Weber Basin political barriers or concerns.
- ◆ If the groundwater is recharged, our need for this water may be minimal.
- ◆ This would be considered as an Inter-basin transfer of water rights

Psomas Engineering, which represents JSSD, approached Park City in early 2001 with an interest in providing water to Park City under a short-term agreement. A proposal was discussed but never finalized.

C. Analysis: The use of this water presents a relatively low-cost means of obtaining water in the short-term while the Rockport Project discussions continue. The Rockport Project will not be completed for at least three to five years after the execution of all necessary agreements.

The proposal includes:

- ◆ 1000 g.p.m. maximum capacity
- ◆ June through September time of use
- ◆ Take or pay on the first 100 ac-ft
- ◆ Maximum yearly takedown of 500 ac-ft
- ◆ Price is \$1000 per ac-ft if requested by April 1
- ◆ Price is \$1350 per ac-ft if not requested by April 1
- ◆ Park City is responsible to design, build and obtain any easements to construct a connection between the systems

However, there are a number of issues that JSSD will need to be resolved prior to physical water being provided:

- ◆ State Engineer approval of a water rights change application
- ◆ Approval of the interconnect design
- ◆ Execution of a Contract/Interlocal agreement
- ◆ Construction approval

The JSSD board will be meeting on Monday November 8 to review the draft contract. Staff will provide an update to council on the results of the meeting.

D. Department Review: The City Manager, Public Works Director and the Deputy City Attorney have been involved in the negotiations.

ALTERNATIVES:

A. Authorize staff to enter into an agreement with JSSD to purchase surplus water.
This is the staff recommended alternative

B. Continue to negotiate and bring a final contract for council approval

C. Discontinue negotiations

SIGNIFICANT IMPACTS: The connection would guarantee a supply of water to meet our needs until the Weber Basin project is completed. An emergency supply of water could be made available to Park City

RECOMMENDATION: Authorize staff to enter into a surplus water purchase agreement with the Jordannelle Special Service District for 100 acre feet of water and \$100,000 annually as take or pay to a maximum amount of 500 acre feet of water annually for the next five years at a rate varying between \$1000 and \$1350 per acre foot.

