

Planning Commission Staff Report



Subject: RICHARDS/PCMC ANNEXATION AND ZONING
Date: September 26, 2012
Project Number: PL-12- 01482
Type of Item: Legislative- public hearing and discussion

Summary Recommendation

Staff recommends that the Planning Commission review and discuss the revised preliminary plat as part of the annexation application review, conduct a public hearing, provide staff and the applicant direction on the discussion items identified in this staff report and continue the public hearing to October 24, 2012.

Description

Project Name: Richards/PCMC Annexation
Project Planner: Kirsten A Whetstone, Senior Planner
Applicant: Frank Richards and Park City Municipal Corporation
Location: North of Payday Drive and West of Highway 224
Proposed Zoning: Single Family (SF) and Recreation Open Space (ROS)
Current Zoning: Rural Residential (RR)
Adjacent Land Uses: Thayne's Canyon, Iron Canyon, and Aspen Springs single family subdivisions, dedicated open space, and Highway 224.
Proposed Uses: Seven (7) single family lots (agriculture, raising and grazing of horses, and open space)

Proposal

The applicants are requesting annexation into Park City for two separately owned parcels. The Frank Richards parcel is 13.57 acres with a requested zoning of Single Family (SF). The Park City Municipal Corporation (PCMC) owned parcel is 19.74 acres with a requested zoning of Recreation Open Space (ROS). The properties are surrounded by Park City municipal boundaries and are considered to be an island of unincorporated land within Summit County's jurisdiction. The annexation request includes a preliminary subdivision plat consisting of seven (7) single family lots. The PCMC parcel will continue as an open space parcel.

Background

On February 7, 2012, the applicants filed an annexation petition with the City Recorder. The petition was accepted by the City Council on February 16, 2012 and was certified by the City Recorder on March 1, 2012. Notice of certification was mailed to affected entities as required by the State Code. The protest period for

acceptance of the petition ended on April 1st. No protests from affected entities were filed.

On May 9, 2012, the Planning Commission conducted an initial public hearing and discussed the proposed annexation and preliminary subdivision plat (Exhibit A). The Commission requested information regarding the conservation easement on the PCMC property, the wetlands delineated on the subdivision plat and building pads identified taking into consideration the required setbacks from wetlands, and providing a compatibility analysis for the surrounding neighborhood in terms of house size.

Description

The annexation application was fully described in the May 9, 2012 Staff Report and Exhibits (See Exhibit B). Since the May 9, 2012 meeting, the applicant has prepared a revised preliminary subdivision plat (See Exhibit C). The subdivision plat that was initially submitted with the application included five (5) single family lots.

The revised plat includes (7) single family lots (see Exhibit D). The applicant was not aware that he would not be able to come back at a later time to re-plat the rear portion of the property and that the allowed density would be determined at the time of annexation and subject to restrictions of an annexation agreement, regardless of the designated zoning.

Revised Preliminary Plat

A preliminary plat /phasing plan for the Richards Subdivision was submitted with the petition, proposing a total of five (5) single family/horse properties ranging in size from 1.33 to 7.04 acres for the Richards' parcel. The PCMC parcel is included in the preliminary plat as an open space parcel with no associated density.

The following changes have been made to the preliminary plat:

- Lot 1 (1.33 acres) has been decrease in size to 1.29 acres and no longer includes Lot 10 of Thayne's Creek Ranch 1B (0.31 acres)
- Lot 2 (1.33 acres) has been decreased in size to 1.29 acres
- Lot 3 (1.39 acres) has been divided into two lots- Lot 3 (0.51 acres) and Lot 4 (0.63 acres).
- Lot 4 (7.04 acres) has been divided into Lot 6 (3.48 acres) and Lot 7 (2.86 acres) and an HOA parcel for the existing riding arena (not a separately developable parcel)
- Lots 3 and 4 are not large enough to be "horse property"
- The horse lots (1, 2, 5, 6, and 7) are each allocated a 36' by 36' barn pad site
- Lots 1 and 2 are allowed a maximum disturbance area of 12,000 sf, a maximum height of 33 feet, and a maximum building footprint of 5,000 sf with a total house size of 9,000 sf (including the garage).
- Lots 3 and 4 are allowed a maximum disturbance area of 10,000 sf, a maximum height of 33 feet, and a maximum building footprint of 6,000 sf with a total house size of 7,500 sf (including the garage).

Zoning

The current Summit County zoning for the property is Rural Residential with density for Developable Lands (DL) at 1 unit per 20 acres-base zoning; and Sensitive Lands (SL) at 1 unit per 40 acres (for sensitive lands).

Proposed zoning of Single Family (SF) and Recreation Open Space (ROS) is consistent and compatible with zoning of surrounding single family subdivisions (SF). The open space properties in the surrounding area are zoned Recreation Open Space (ROS).

The proposed SF zone allows 3 dwelling units per acre (40.71 units on 13.57 acres, not taking into consideration undevelopable lands such as wetlands). However the character of the area is more consistent with the Estate (E) zone, where the allowable density is 3 acres per unit (4.52 units on 13.57 acres).

Staff has concerns about Lot 7, both in terms of impacts of development on the City's open space and wetlands and on the pattern of development that lot presents. Staff requested that Lot 7 be eliminated and either zoned or platted as ROS (Recreation Open Space) as a separate parcel owned and maintained by the HOA or as part of Lot 5 or Lot 6. The Annexation Agreement typically will stipulate an allowed maximum density for the property. Staff anticipates this would be the case with this annexation.

The revised plat proposes a total of 7 lots on the 13.57 acres (1.94 acres per dwelling unit or approximately 0.52 units per acre). The previous proposal of 5 units yielded a density of 2.71 acres per dwelling or approximately 0.36 units per acre).

The proposed zoning of SF provides compatible lot and site development parameters, such as building setbacks, as well as consistent land uses, such as no nightly rental uses. Horses are permitted in both zones provided the lot contains at least 1 acre for two horses.

Staff completed a compatibility analysis (Table 1) regarding house sizes in the neighborhood and finds that the proposed house sizes for Lots 1-4 are not compatible with the existing adjacent Thayne's Canyon neighborhood.

Considering lot size and house size restrictions in the neighborhood, comparable restrictions for this subdivision would include: maximum of 4,200 sf footprints for Lots 1 and 2 and maximum of 4,000 sf footprints for Lots 3 and 4 with an added restriction that the floor area of the second floor be less than 60% of the floor area of the first floor. Staff recommends a maximum height of 28 feet with no additional allowance for a pitched roof).

The maximum footprint would include the area of the garage. In terms of the larger lots and comparisons with Iron Canyon and Aspen Springs a ratio of lot size to floor area could be used or a maximum of an be used as well.

Subdivision	Lot sizes	Floor Area/Foot print	Garage	Total Area	Height
Thayne's Creek Ranch II	0.31 acre	3,400 sf- not including garage	600 sf	4,000 sf	28' plus 5' for pitched roof
Thayne's Small	0.20 acre	Not restricted	n/a	Not restricted (approx. 3,000 sf)	28' plus 5' for pitched roof
Thayne's Canyon	0.18- 0.25 acre	Not restricted	n/a	Not restricted (listings range from 2,750 sf to 7,500 sf)	28' plus 5'
Iron Canyon	0.40 to 5.5 acres	Not restricted - 4,000 sf footprint	included	8,000 sf (footprint x 2)	28' plus 5'
Aspen Springs	0.35 to 0.80 4.82 acres ranch lot 1	5,500 sf 8,000 sf	500 sf 500 sf	6,000 sf 8,500 sf	28' plus 5' (some restricted to 30' total ht to ridge)
Richards Lots 1 and 2	1.29 acres	4,200 sf footprint	included	6,250 sf	28' max
Richards Lots 3 and 4	0.51 and 0.63 acre	4,000 sf footprint	included	6,000 sf	28' max
Richards 5 and 6	2.69 and 3.48 acres	4,200 sf	included	6,500 sf	28' max

Table 1.

Existing Uses

The PCMC parcel is dedicated open space (purchased by the City from Frank Richards in 1990). The property is subject to a conservation easement (Exhibit E) and no development or changes in land use are proposed with the annexation or plat.

The Richards parcel includes two houses, a barn, accessory buildings, horse training facilities as well as grassy pasturelands with areas of wetlands, irrigation ditches, and ponds. The property is currently used as a family farm for agricultural purposes,

including the raising and training of horses. The Richards family intends to maintain these agricultural uses on proposed Lots 5, 6, and 7 for the near future.

The existing riding arena would become an amenity for the HOA and would remain on a separate parcel, owned and maintained by the HOA.

Affordable Housing

Annexations are subject to the City's Affordable Housing resolution that requires affordable housing be provided, or fees paid in-lieu, for new residential units at a rate of 15%. Six new units would require 0.9 of an affordable unit equivalent (AUE). The applicant could agree to construct one (1) affordable unit or pay 90% of the in lieu fee for one affordable unit. The applicant has expressed an interest in providing one affordable unit on the property. Details of the affordable housing requirements will be spelled out in the Annexation Agreement

Open Space

The final plat will identify specific building pads for construction of houses and barns and identify undevelopable open space areas. These open space areas could be used for grazing horses, other agricultural uses, as well as preservation of identified wetlands. More than 60% (8.2 acres or more) of the larger lots should be identified as open space, undevelopable area to be consistent with the pattern of development on larger lots in the neighborhood (Iron Canyon and Aspen Springs). Lots 3 and 4 are consistent with the pattern of development along Payday Drive.

The 19.74 acre City owned open space parcel would come within Park City's jurisdiction, and would remain as open space, subject to all of the existing restrictions and agreements. These agreements allow irrigating, maintaining, and grazing on the open space parcel.

Trails

There is an existing sidewalk along the north side of Payday Drive. As part of the public improvements, the applicant has agreed to install a sidewalk along the property to continue the existing sidewalk to Iron Mountain Drive to provide a safe pedestrian trail within the neighborhood and a link to Rotary Park. There is an existing trail along the west side of Hwy 224 and during the winter months a groomed Nordic ski trail is located within the PCMC parcel. This trail will remain. The Trails Master Plan does not call for additional trails in this area.

Wildlife, Wetlands and other Sensitive Lands

The applicant provided information from the Division of Wildlife regarding species of concern located on the property. Wetlands have been delineated and development pads have been identified to be setback 50' or more from these areas, with the exception of the existing houses, structures, and drive. The PCMC property is within the Frontage Protection Area, but no development is proposed. The proposed houses within the Richards Subdivision are located outside of the Entry Corridor Protection Overlay area. Wetlands delineation was provided and is available at the Planning Department. Wetlands are identified on the preliminary subdivision plat.

Fiscal Impacts

Annexation of the proposed area will have positive impact on the property's assessed valuation and additional property tax revenue will be generated. The increase in the number of school children and impact on the school district is neutral to positive in that additional student enrollment brings in additional revenue from the State. The level of enrollment has been fairly flat and additional school age children will not cause negative impacts, such as requiring additional buses on routes, additional school facilities, etc.

Utilities

Utility services are available in the immediate area and Payday Drive. The annexation will not negatively impact these utilities. Sewer service will require a line extension agreement and coordination of utility easements, as this service will likely be from a line that runs north to an existing sewer main adjacent to Lot 7. The Deputy City Attorney is handling the water matters for this annexation. The expectation is that all development in the property will pay the city's water impact fee. The property will also be annexed into the Park City Water Service District, and details regarding water will be outlined in the Annexation Agreement. A final utility plan will be submitted with the final plat for approval by the City Engineer. Approval will be required prior to recordation of the final subdivision plat.

Traffic

Traffic generated from the additional lots will not negatively impact the low traffic volume residential streets in the area. The intersection with Hwy 224 is signalized and can handle the increased traffic.

Historic and cultural resources

There are no historic or cultural resources on the property.

Discussion items

Staff requests discussion of the following items:

1. Does the Planning Commission have input on the changes made to the previous preliminary plat, including providing 2 smaller lots along Payday Drive instead of the one larger Lot 3 and dividing up the larger northern Lot 4 into 2 lots increasing the density from 5 lots to 7?
2. Does the Planning Commission agree with Staff that Lot 7 should be eliminated and either zoned or platted as open space?
3. Does the Planning Commission agree with Staff that dividing Lot 3 into smaller lots is compatible with the development pattern along Payday Drive?
4. Does the Planning Commission have any concerns regarding the location of proposed building pads or limits of disturbance areas for the lots?
5. Staff had previously requested that the northern portion of the Richard's parcel remain as an open space parcel, whether actually zoned or platted as ROS (recreation open space), due to the existing wetlands and proximity to the City's open space parcel?
6. Does the Commission agree with Staff that the proposed house sizes and height restrictions for Lots 1-4 are not compatible with the existing adjacent

neighborhood? Staff requested the applicant consider height limitations of 28' for all of the lots, 4,200 sf footprints for Lots 1 and 2 and 4,000 sf footprints for Lots 3 and 4 with a restriction that the floor area of the second floor be less than 60% of the floor area of the first floor and that the footprint includes the garage, and consideration of a maximum floor area.

7. The Commission requested information regarding the Conservation Easement on the PCMC open space parcel. Staff has provided that information as Exhibit E. Does the Planning Commission wish to include in the annexation agreement, any additional restrictions or stipulations on the use of the PCMC open space parcel?
8. Does the Planning Commission agree that the annexation should achieve a balance between a) maintaining the unique rural/agricultural character of the entry corridor and b) maintaining compatibility with the neighborhood?

Recommendation

Staff recommends that the Planning Commission review and discuss the revised preliminary plat as part of the annexation application review, conduct a public hearing, provide staff direction on the discussion items identified in this staff report and continue the public hearing to October 24, 2012.

EXHIBITS

- Exhibit A- Minutes of the May 9th meeting
- Exhibit B- Staff Report from the May 9th meeting
- Exhibit C- Initial Preliminary plat
- Exhibit D- Revised Preliminary plat
- Exhibit E- Conservation Easement document for the PCMC open space

**PARK CITY PLANNING COMMISSION
WORK SESSION MINUTES
MAY 9, 2012**

PRESENT: Charlie Wintzer, Brooke Hontz, Julia Pettit, Adam Strachan, Nann Worel, Thomas Eddington, Kirsten Whetstone, Polly Samuels McLean

WORK SESSION ITEMS

University of Utah Student Presentation of Wintzer Properties in Bonanza Park

Planning Director Thomas Eddington reported that the City has been working on the Bonanza Park Plan for a number of months. As they began to finalize the concepts for the plan, there was an opportunity to work with Professor Joerg Ruegemer and his students at the University of Utah Department of Architecture to see how they could fit organic development onto some of the existing structures in Bonanza Park. Some of the structures lend themselves well to being redeveloped and utilizing some of their air rights for affordable housing and sustainable housing. The purpose of this work session was to present the University of Utah Architectural Studio that the students had worked on this past semester.

Director Eddington noted that Professor Ruegemer partnered with Charlie Wintzer to look at some opportunities for using the air rights above his storage units on Iron Horse in Bonanza Park for this design studio.

Planner Kayla Sintz stated that this was the start of a great relationship the City hopes to have with the University of Utah on a number of different projects. She noted that the four projects displayed this evening were a sampling of the projects that went to the final jury. She commented on the outstanding work that was done by the U of U students. Director Eddington stated that there were a total of 12 projects with a wide variety of ideas.

Director Eddington introduced Joerg Ruegemer. Professor Ruegemer stated that he is from Germany. In his country they need to be very aware of space and everything is small in density. In Germany it is common to squeeze buildings into six feet wide gaps or to take over existing buildings. He noted that Park City wants to protect their character and keep their density. As more people come in, it is important to use existing spaces in a very smart way. Professor Ruegemer stated that the Wintzer's storage units were designed to withstand a heavy load, which makes them perfect for placing housing on top.

Professor Ruegemer explained that a four-month studio began in January. It was a combination of seminar and studio and the students had to learn how to design energy efficient buildings. Professor Ruegemer explained how the projects were started using a model of the entire Bonanza Park area that was redesigned from their own perspective. As opposed to tearing everything down, the students left everything in place and added to it. Professor Ruegemer stated that the beauty of European cities has grown over many centuries because the structures are not torn down. The existing structures are enhanced and made better.

Four students from the University of Utah presented their own project and answered questions. Each one explained how they designed their project over the storage units under the criteria of affordability, sustainability, livability, and maximizing the use of space. The driving force was

passive strategies and affordable housing.

Director Eddington stated that these students were four of twelve students who were all extraordinary to work with. The amount of thought that went into the projects surprised everyone on the jury, as well as those who attended the two studio sessions. Director Eddington stated that this exercise helped the City recognize things that they sometimes miss as they start looking at a world defined by Code. This was good timing as they continue to work through the Bonanza Park Plan.

Director Eddington thanked Charlie and Mary Wintzer for allowing the students to use their property for this project. Mary Wintzer felt it was a great opportunity since storage units have a bad reputation. For these students to see something new and possible has given everyone else a chance to think outside the box.

Ruth Meintsma wanted to know when these projects would become reality. Director Eddington remarked that it was only a design studio and the projects were designed in theory. However, the City could use these ideas as they move forward with the Bonanza Park Plan and other areas within the community.

Richards/PCMC Parcel – Annexation Petition (Application #PL-12-01482)

Planner Kirsten Whetstone reviewed the request for an annexation of two parcels into Park City. She identified the parcel that is owned by Park City Municipal Corporation and deed restricted for open space. On the west was a 14 acre parcel owned by Frank Richards that they would like to bring into Park City. Planner Whetstone noted that the property is completely surrounded on every boundary by the Park City Municipal Corporation. It is currently considered an island of County jurisdiction. Planner Whetstone stated that the General Plan and the State Code discourages this type of configuration in the City. The property has been sitting as an island for some time and she believed it was created in the late 1980's or 1990's as other pieces were annexed.

Planner Whetstone noted that the requested zoning for the City piece was ROS, Recreation Open Space. The requested zoning for the Richards piece is SF, Single Family, which is consistent with Aspen Springs, Iron Canyon and Thaynes Creek Ranch and the Thaynes Subdivision that surrounds the Park City golf course. Planner Whetstone pointed out that the parcel owned by PCMC would remain open space and no changes would occur. No access was proposed onto the highway or on to Payday Drive. The Richards family was proposing to subdivide the entire 14 acre parcel into five lots, with Lot 1 being a combination of annexation property plus the last 1.3 acre lot in the Thaynes Creek Ranches subdivision that is already in the City. She indicated two additional lots for single family. Lot 5 was for the existing structures and homes. Lot 4 would be for a future home. At this time there are no plans to develop Lot 4 and the Richards' would continue their horse training operations on that parcel. Planner Whetstone presented an overview of the zoning in the area.

Planner Whetstone stated that the affordable housing was based on 15% of any new residential. Since that equates to approximately 45% of an AUE, they could either build an AUE or pay an equivalent amount.

Planner Whetstone reported that there was no open space associated with the Richards parcel per se, other than the building pads would be identified and the remaining land would be left undeveloped and used to pasture horses. There had been some discussion about designating the area to the north as ROS since it is wetlands and cannot be developed.

Commissioner Pettit asked if the property owned by PCMC was purchased as part of the open space bond. Planner Whetstone replied that it was purchased with bonds and dedicated with a conservation easement in 1990.

Planner Whetstone commented on trails and noted that an existing sidewalk runs along the north side of Payday Drive and ends at the end of the subdivision. The Staff would recommend that the sidewalk continue all the way to Thaynes Canyon Drive. Planner Whetstone noted that the property is within the Park City Annexation area.

Planner Whetstone remarked that the applicant had provided significant information on wildlife, wetlands, sensitive lands, physical analysis, utilities, and traffic. Before the next meeting she would verify whether any of the structures qualify for the Park City Historic Sites Inventory. If any do qualify they would be added to the inventory.

Planner Whetstone reviewed the annexation review process. The final decision is made by the City Council following a public hearing and a recommendation by the Planning Commission.

Chair Wintzer clarified that if the property is annexed, it would come back to the Planning Commission as a subdivision plat. Planner Whetstone replied that this was correct. Chair Wintzer felt that questions regarding lot size and similar issues would be more appropriate at the subdivision process. Planner Whetstone remarked that the annexation agreement would guide the final plat. The Staff was thinking that building pads would be identified on the final plat, as well as house sizes and other restrictions. Chair Wintzer understood that the only parcels that would be subdivided were Lots 1, 2 and 3. He questioned why the applicant was not subdivide the entire parcel. He believed it would be cleaner to have it all done through the platting process.

Mr. Richards, the applicant, stated that he uses all the property and he plans to continue his horse operation on the remaining property. He was proposing to subdivide the three lots on Payday Drive at the present time. Each lot would be approximate 1-1/3 acres. The lots are large and whoever buys them could use them as equestrian lots. Mr. Richard remarked that he was not interested in subdividing the back portion at this time.

Chair Wintzer understood the existing use, but it was hard to annex property into the City without having the use defined. It would be easier for the Planning Commission to understand what the final use would be if it was all subdivided at one time. Mr. Richards replied that the use would be what the zone is and what goes on it. Planner Whetstone clarified that the final plat would follow the preliminary. She asked if Mr. Richards was talking about a final plat being in two phases. Mr. Richards stated that it may be four or five years before he is too old to ride and ready to subdivide the back portion.

Commissioner Pettit understood from the Staff report that the selection of the single family zoning designation was tied to the surrounding subdivisions. Even though what seems to be proposed is a much lower density subdivision and configuration, she was concerned that the zoning could allow a much more dense development in that area. Planner Whetstone stated that the intent has always been that there would be no more than five lots, and that would be noted on the subdivision plat. She explained that the SF zone was chosen because of the configuration of setbacks and no nightly rental. It is more consistent in terms of uses and it allows the horses.

Chair Wintzer asked Mr. Richards if he would be willing to annex the property into the City with no more than five lots on the property. Mr. Richards replied that it would not be a problem.

Assistant City Attorney McLean stated that there were a number of legal ways that would provide different levels of assurance. As part of the annexation agreement it could be limited to a certain number of properties such as the five lots currently proposed, and that would limit the density. Plat notes would have to go through the public process to be amended. Conceivably, the Annexation Agreement could go back to the City Council. Both are legislative acts and both could be done. If certain areas are designated to be zoned as ROS within the SF area, that would be another way to show their intention.

Commissioner Pettit stated that another element that may play into this from a developable standpoint was that she did not have a good understanding of the delineation of the wetlands, particularly on Lot 4. In looking at the acreage in the SF zoning, the number could be as high as 51, but that may not be true because of the wetlands.

Commissioner Strachan noted that Planner Whetstone had indicated that there might be historic structures. He was not familiar with this property and asked what those structures would be.

Planner Whetstone stated that there were two houses and some out barns. She was unsure when the houses were built. Mr. Richards stated that one home was built in 1978 and the other was built in 1984. Based on those dates, Planner Whetstone clarified that the structures would not be historic.

Mr. Richards questioned the limitation of the size of the dwelling. When he built the eight homes on Payday Drive fifteen years ago, it took seven hearings and five years to get those approved. People objected to the size of the homes and wanted to limit the size to approximately 2800 square feet. Mr. Richards stated that if he subdivides the property into 1-1/3 acre lots, he would not want to be restricted to 2800 square feet.

Chair Wintzer informed Mr. Richards that the house sizes would be addressed at the subdivision part of the process and not with the annexation. Mr. Richards stated that he may not want to annex if he is not allowed to build decent size homes. Chair Wintzer suggested that Mr. Richards discuss the size of homes with Staff and come to some understanding.

Commissioner Hontz noted that Planner Whetstone could tell Mr. Richards now what size home would be allowed per Code, based on the lot size and zoning. It would give Mr. Richards some understanding of what is allowed, and that could be tweaked at the subdivision. Planner Whetstone stated that in most zones there is not a house size limitation. She explained that the Staff would do

an analysis of the surrounding area to determine a compatible house size. In terms of restrictions, the Staff prefers a limitation on building footprint and let the height, the footprint and the architecture determine the house size.

Mr. Richards asked if the footprint was the same as a build pad. Planner Whetstone answered yes. Mr. Richards stated that he did not have a problem with the size of a building pad, but he might have a problem with the location of the building pad. If someone wants to use the lot for equine purposes, they may want to put the house near the front to allow for pasture in the back or possibly place the house to one side or the other. He understood that they would have to abide by the side yards and setbacks, but to force someone to put their home in the middle of the lot destroys the possibility of using it for horses. Chair Wintzer believed Mr. Richards could work out that issue with Staff. Planner Whetstone agreed. She pointed out that it was a discussion that should occur at the preliminary plat level. Mr. Richards pointed out that he was proposing to sell the lots and it would be difficult if the buyer did not have flexibility in locating their home on the lot. Chair Wintzer opened the public hearing.

Kevin McCarthy, a resident in Iron Canyon, stated that he has been a neighbor of the Richards' for 24 years and he attended a number of the hearings when Mr. Richards was proposing to build on Payday. Mr. McCarthy noted that all the people with small houses across the street have remodeled them into giant houses. His home looks down on the Richards' property and he was anxious to see a nice development.

Chair Wintzer closed the public hearing.

Commissioner Strachan suggested that Mr. Richards should see the Staff's compatibility analysis before deciding to move forward with the annexation. He thought Mr. Richards might be surprised at how restrictive the compatibility analysis may be. The surrounding houses may appear large, but someone who purchases an acre and a third lot may have a broader idea and would want a house much larger than the neighboring homes. If Mr. Richards is considering building homes that are much bigger in size than the surrounding homes, he should know that the size might be restricted if the property is annexed. Commissioner Strachan pointed out that the applicant has the option to decide whether or not to annex into the City, but they should have all the facts before making that decision.

Steve Schuler, with Alliance Engineering, understood that there was a square footage analysis consistent with the Single Family Zone, and asked if that was different from the compatibility analysis. Planner Whetstone stated that it was different from the Historic District where the lot size dictates the square footage. With a new subdivision, lot coverage would be the biggest issue.

Commissioner Strachan pointed out that once a property is annexed into the City there is no way out. Mr. Richards understood that fact, which is why he was concerned about a size limitation. He asked if the compatibility analysis would compare the homes in Iron Canyon. Planner Whetstone replied that the analysis would include Iron Canyon, Aspen Springs and Thaynes. It would also take the larger lots into consideration.

At the request of a neighbor, Chair Wintzer re-opened the public hearing.

Carol Cutter, a resident in the Thaynes Creek area liked the idea of equestrian lots, but she wanted to know what would happen if a buyer did not want to use it as an equestrian lot. She was concerned that someone would build a larger house because they would not need the space for horses. Ms. Cutter noted that the City open space parcel was directly behind her home and she wanted to know how subdividing would affect the rights for animal grazing and the existing activity on that property.

Planner Whetstone explained that a purchase agreement exists between Mr. Richards and the City and this annexation would not change that agreement. There is water that the City uses and Mr. Richards also uses some of that water to irrigate the pasture. He also has the ability to graze horses and cows.

Ms. Cutter asked if the same rights would go with the lots. Planner Whetstone replied that the new lots that would be created were not part of the purchase agreement. The use would remain the same. Mr. Cutter understood that the use would remain for Mr. Richards, but she wanted to know if the people who purchase the additional lots would also have that same use. Planner Whetstone was unsure and offered to look for an answer.

Mr. Richards stated that he has grazed horses and cattle on that land for 35 years. They are stewards of that property and every spring they clean the land and fertilize it and irrigate all summer long. When he sold the property to the City he sold them ten acre feet of water so the property could be kept green and presentable. He believed that was something positive that the City would like to continue.

Commissioner Strachan stated that an easement agreement with the City would allow that to continue. Planner Whetstone would review the purchase agreement with the Legal Department to make sure a new lot owner would have that ability. Commissioner Pettit thought it should be reviewed in the context of Ms. Cutter's question, which was whether or not the same rights afforded to Mr. Richards under his agreement with the City would transfer to the people purchasing the subdivided lots by virtue of their proximity.

From a procedural standpoint and assuming that the annexation gets approved, Mr. Schuler asked about the subdivision process. Chair Wintzer stated that the annexation and the subdivision could be done at the same time if requested by the applicant. As currently presented, if the property is annexed into the City it would come back at a later time for the subdivision. Chair Wintzer reiterated that it would be a cleaner review for the Planning Commission if the subdivision plat and the annexation came in at the same time. Chair Wintzer encouraged Mr. Richards to include Lots 4 and 5 at the same time; however, if he chooses not to do that, he would suggest limiting it to two lots so they could call out the wetlands to determine what areas could be built on.

Planner Whetstone noted that the final subdivision had not been submitted. The annexation process requires a preliminary plat or an MPD, and the review of an MPD or final plat is only supposed to occur if the project is annexed. She asked if there was leeway in the Code for the Planning Commission to review the annexation and the subdivision at the same time. Assistant City Attorney McLean believed it could be done extemporaneously. The annexation should be

scheduled as the first item followed by the subdivision as a separate application. Ms. McLean pointed out that the agenda for this evening only noticed the item as an annexation.

The Planning Commission reviewed the items for discussion on page 9 of the Staff report.

Chair Wintzer requested to see the wetlands designated so they would know which areas are possible for building. Mr. Schuler remarked that Dave Gardner had done a delineation on the Richards property, but the City property was not delineated because it was not for development. Planner Whetstone noted that numerous pages of appendices regarding the wetlands report were not included in the packet but it was posted on the website.

Commissioner Pettit stated that in addition to the purchase agreement, she would like to see the conservation easement and what it entails. She wanted to better understand the relationship between this parcel and the Richards property.

Planner Whetstone would also provide a lot analysis. Chair Wintzer pointed out that placing the houses closer to the cul-de-sac road would be nicer on the entry corridor. If there is an agreement to graze horses, he would like to see that continue. Chair Wintzer stated that the City spent a lot of money obtaining the Osguthorpe Farm and he would encourage equestrian activity.

Planner Whetstone asked if the Commissioners agreed that the proposed zoning designations were appropriate for the parcels and consistent with the surrounding neighborhood and purposes of the Land Management Code.

Commissioner Strachan suggested that the northern portion of Lot 4 may be more appropriate as ROS. He thought they should take a better look at the wetlands designation on the property. From what was shown in the Staff report, he believed much of that property would be restricted for building. The intent is to build on Lots 1, 2 and 3. Lot 5 already has structures on it and Lot 4 is separate and contains all of the wetlands. If Lot 4 or a portion of Lot 4 is zoned ROS, Commissioner Strachan preferred that it be straight legislative zoning as opposed to a plat amendment.

Mr. Schuler pointed out that there are utilities going to the north to access an existing Snyderville Basin sewer line in Aspen Springs. He was unsure if that would make a difference in zoning ROS. Planner Whetstone would look into it.

Planner Whetstone noted that the Planning Department sent over 600 letters to property owners and she had been answering emails and phone calls for two weeks. Most people wanted information, particularly regarding the open space. Planner Whetstone stated that when concerns were expressed, it was primarily from the lots in Aspen Springs that would back to that portion. Everyone wanted assurance that a house would not be built back there. There were no concerns about houses along Payday. If Lot 4 was developed, the preference was to put the house down by the existing lake.

Commissioner Strachan believed that most public opposition would come from those landowners because their views would be obstructed if homes were built in front of them. Appeasing the

neighbors was another reason to support the ROS designation. Mr. Schuler pointed out that designated wetlands would serve the same purpose.

Commissioner Pettit reiterated that she would be comfortable with the Single Family Zone designation, as long as they could limit the number of lots and control density in a way that protects the property from excessive development in the future. Planner Whetstone noted that Assistant City Attorney McLean had offered ways to accomplish that.

Planner Whetstone stated that the Staff would focus on the analysis. In addition, as they write up the annexation agreement and the conditions of approval of an annexation, they would focus on the location of building pads, building heights and design characteristics, mitigation of impacts to wildlife, wetlands or other sensitive lands. They would look at maintaining the rural, agricultural character. They would consider ROS zoning, compatibility with the neighborhood, providing pedestrian amenities and connectivity, compliance with affordable housing and provisions of the utility service and understanding the water component.

Commissioner Pettit commented on where this property is located and the goal tied to maintaining rural agricultural character, and how the current equestrian use of the property follows that goal. Commissioner Pettit asked if there was a way to create an incentive to make it attractive for potential buyers to maintain that agricultural rural use. She preferred to create the carrot versus the stick.

Chair Wintzer asked if the property was too small to zone as agricultural. If 80% of the lot was used to graze horses, a tax break may be the incentive to keep it rural agricultural. Mr. Richards was unsure about the City regulations, but the County requires five acres to maintain a Green Belt status. Mr. Schuler remarked that Green Belt status was one of the reasons for not including Lots 4 and 5 at this time.

Commissioner Strachan thought another way to incentivize people to use those lots agriculturally would be for the City to grant grazing rights under a non-CUP or through an expedited CUP process as part of the annexation agreement. It could be zoned for that use and included in the annexation agreement; and it would run with the land.

Mr. Richards stated that a right-of-way would be maintained on the north side of Lot 2 so people could ride down there and graze their horses. Planner Whetstone thought that raised the issue of public access. She would discuss it with the trails people and report back at the next meeting.

Chair Wintzer commended Mr. Richards for working with the City in the past. He thought annexing the property would be nice for the entry corridor. He encouraged Mr. Richards to continue with the annexation.

Commissioner Hontz thanked Mr. Richards for submitting a complete annexation petition. Because it is such a small subdivision and because the City will have the assurances and protections of plat notes, zoning changes and a subdivision at the same time, that would be reassuring enough for her to move forward in an expedited manner. Commissioner Hontz thought it was important for others to see that when an applicant submits what is required and tries to work with the Staff and the

Work Session Notes
May 9, 2012
Page 9

Planning Commission, things can move as quickly as possible.

Commissioner Hontz stated that she started to look at some of the analysis and she actually had different assumptions. However, because the subdivision is so small, the assumptions that need to be changed would not make a difference in terms of affordable housing or fiscal impacts. She looked forward to having Mr. Richards come back at the next meeting.

The Work Session was adjourned.

Planning Commission Staff Report



Subject: RICHARDS/PCMC ANNEXATION AND ZONING
Date: May 9, 2012
Project Number: PL-12- 01482
Type of Item: Legislative- work session/public hearing

Summary Recommendation

Staff recommends that the Planning Commission review and discuss the annexation application in work session, conduct a public hearing, and continue the public hearing to May 23, 2012 (or June 13th depending on the information requested).

Description

Project Name: Richards/PCMC Annexation
Project Planner: Kirsten A Whetstone, Senior Planner
Applicant: Frank Richards and Park City Municipal Corporation
Location: North of Payday Drive and West of Highway 224
Proposed Zoning: Single Family (SF) and Recreation Open Space (ROS)
Adjacent Land Uses: Thaynes Canyon, Iron Canyon, and Aspen Springs single family subdivisions, dedicated open space, and Highway 224.
Proposed Uses: Five (5) single family/horse lots, agriculture, and open space

Proposal

The applicants are requesting annexation into Park City for two separately owned parcels. The Frank Richards parcel is 14 acres with a requested zoning of Single Family (SF). The Park City Municipal Corporation (PCMC) owned parcel is 19.74 acres with a requested zoning of Recreation Open Space (ROS). The properties are surrounded by Park City municipal boundaries and are considered to be an island of unincorporated land within Summit County's jurisdiction. The annexation request includes a preliminary subdivision plat consisting of five (5) single family lots and one (1) open space parcel.

Background

On February 7, 2012, the applicants filed an annexation petition with the City Recorder. The petition was accepted by the City Council on February 16, 2012 and was certified by the City Recorder on March 1, 2012. Notice of certification was mailed to affected entities as required by the State Code. The protest period for acceptance of the petition ended on April 1st. No protests from affected entities were filed.

Description

Existing Uses

The PCMC parcel is dedicated open space (purchased by the City from Frank Richards in 1990). The property is subject to a conservation easement and no development or changes in land use are proposed with the annexation or plat.

The Richards parcel includes two houses, a barn, accessory buildings, horse training facilities, as well as grassy pasturelands with areas of wetlands, irrigation ditches, and ponds. The property is currently used as a family farm for agricultural purposes, including the raising and training of horses. The Richards family intends to maintain these agricultural uses on Lots 4 and 5 of the proposed preliminary subdivision plat. Lots 4 and 5 total approximately 9.57 acres. Lots 1-3 (approximately 1.33 acres each) are proposed to be developed as single family horse properties. Raising and grazing horses is a conditional use in the SF zone. About 1 acre of the 14 acres would be utilized for a private road off of Payday Drive, proposed in the location of the existing private driveway.

Zoning

The current Summit County zoning for the property is Rural Residential with density for Developable Lands (DL) at 1 unit per 20 acres-base zoning; and Sensitive Lands (SL) at 1 unit per 40 acres (for sensitive lands). Proposed zoning of Single Family (SF) and Recreation Open Space (ROS) is consistent and compatible with zoning of surrounding single family subdivisions (SF). The open space properties in the surrounding area are zoned Recreation Open Space (ROS). The proposed SF zone allows 3 dwelling units per acre. The preliminary plat proposes a density of 2.86 acres per dwelling unit or approximately 0.35 units per acre, exclusive of the City open space acreage. The proposed zoning of SF is provides compatible lot and site development parameters, such as building setbacks, as well as consistent land uses, such as no nightly rental uses.

Preliminary Plat

A preliminary plat /phasing plan for the Richards Subdivision (Exhibit C) was submitted with the petition, proposing a total of five (5) single family/horse properties ranging in size from 1.33 to 7.04 acres for the Richards' parcel. The PCMC parcel is included in the preliminary plat as an open space parcel with no associated density. Lots 1-3 are phase one with Lots 4 and 5 in phase two, in terms of development of the lots for utilities and construction of residences.

Also included in the proposed preliminary plat, but not the annexation plat, is the western most lot of the Thayne's Creek Ranch Subdivision (Lot 10). This 0.3 acre vacant lot is owned by Frank Richards. This lot is within the current City Limits and subject to certain restrictions of the Thayne's Creek Ranch 1B Subdivision plat. The preliminary plat proposes to include this existing vacant lot as part of Lot 1 of the proposed Richards Subdivision to increase the lot area in order to allow horses on the property. Thayne's Creek Ranch 1B Subdivision plat would have to be amended concurrently with the final Richards Subdivision plat to remove Lot 10 in order to combine it with Lot 1 of the Richards Subdivision. Similar plat restrictions should be included on the Richards Subdivision plat to maintain consistency with the neighborhood. Due to the existing house on proposed Lot 5 and the existing density transferred from existing Lot 10 to proposed Lot 1, the annexation and preliminary plat result in an increase of three (3) residential units.

Affordable Housing

Annexations are subject to the City's Affordable Housing resolution that requires affordable housing be provided, or fees paid in-lieu, for new residential units at a rate of 15%. This equates to 0.45 (45%) of an affordable unit equivalent (AUE) for the three new units. The applicant could agree to construct one (1) affordable unit or pay 45% of the in lieu fee for one affordable unit. Details of the affordable housing requirements will be spelled out in the Annexation Agreement.

Open Space

This annexation is associated with 19.74 acres of existing dedicated open space that would come within Park City's jurisdiction, as well as open space associated with Lots 1-5 of the subdivision plat. The final plat will identify specific building pads for construction of houses and barns and identify undevelopable open space areas for grazing horses, other agricultural uses, and sensitive lands. The 3-4 acres of undeveloped land on the north portion of Lot 4 should be identified on the plat as open space, with limited agricultural uses (allowing grazing of horses, growing hay, etc.) to mitigate negative impacts on existing houses in the Aspen Springs neighborhood.

Trails

There is an existing sidewalk along the north side of Payday Drive. As part of the public improvements, this sidewalk should be continued to Iron Mountain Drive, beyond the western edge of the property to provide a safe pedestrian trail within the neighborhood and link to Rotary Park. There is an existing trail along the west side of Hwy 224 and during the winter months a groomed Nordic ski trail is located within the PCMC parcel. The Trails Master Plan does not call for additional trails in this area.

Annexation Expansion Area

The properties are located within the Park City Municipal Corporation Annexation Expansion Area boundary, as described in the adopted Annexation Policy Plan (Land Management Code (LMC) Chapter 8), and are contiguous with the current Park City Municipal Boundary along all boundaries. The State Annexation Code and the City's Annexation Policy Plan encourage the elimination of islands of County jurisdiction.

There is a nearby one acre parcel that is itself an existing island of County jurisdiction created by the Iron Canyon, Smith Farm (Aspen Springs Ranch), and Ross Property (1993) annexations. The property is not owned by Frank Richards or PCMC and it is not contiguous to the Richards Property or the PCMC parcel. Therefore, this parcel is not included in the proposed annexation. The City will approach the owner of this property about an annexation in the near future and will work to complete the annexation of this remaining island of County jurisdiction. The property is land locked in that it has no access to a City Street and no access easement due to a protection strip around the Iron Canyon subdivision that prevents access to Iron Mountain Drive. Resolving the access issue will likely take time and would hold up timely processing of the current application.

Wildlife, Wetlands and other Sensitive Lands

The applicant provided information from the Division of Wildlife regarding species of concern located on the property (Exhibit D). Wetlands were delineated. This information should be used in determining building pad locations and non-disturbance areas. There are no steep slopes or ridgelines on the property. The PCMC property is

within the Frontage Protection Area, but no development is proposed. The proposed houses within the Richards Subdivision are located outside of the Entry Corridor Protection Overlay area.

Fiscal Impacts

Annexation of the proposed area will have positive impact on the property's assessed valuation and additional property tax revenue will be generated. The increase in the number of school children and impact on the school district is neutral to positive in that additional student enrollment brings in additional revenue from the State. The level of enrollment has been fairly flat and additional school age children will not cause negative impacts, such as requiring additional buses on routes, additional school facilities, etc.

Utilities

Utility services are available in the immediate area and Payday Drive. The annexation will not negatively impact these utilities. Sewer for Lots 4 and 5 will require a line extension agreement and coordination of utility easements, as this service will likely be from a line that runs north from Lot 4. The Deputy City Attorney is handling the water matters for this annexation. The expectation is that all development in the property will pay the city's water impact fee. The property will also be annexed into the Park City Water Service District, and details regarding that will be set out in upcoming reports. A final utility plan will be submitted with the final plat for approval by the City Engineer. Approval will be required prior to recordation of the final subdivision plat. Details regarding water and other utilities will be included in the Annexation Agreement.

Traffic

Traffic generated from 3 single family residences will not negatively impact the low traffic volume residential streets in the area. The intersection with Hwy 224 is signalized and can handle the increased traffic.

Historic and cultural resources

Additional information regarding qualifications of any existing buildings for placement on the Historic Sites Inventory will be presented at the next meeting.

Utah Code Annotated (UCA) Section 10-2-401, 10-2-402 and 10-2-403

The annexation petition has been reviewed pursuant to the Utah Code Annotated (UCA) Sections 10-2-401, 10-2-402 and 10-2-403. The annexation petition requirements set forth in these sections of the UCA have been met; including issues of 1) contiguity and municipal annexation expansion area, 2) boundaries drawn along existing local districts, special districts and other taxing entities, and 3) for the content of the petition.

Annexation Review Process

Municipal annexation is a legislative act governed procedurally by Utah state law. Once the annexation petition is filed with the City Recorder, the petition (not the annexation) is presented to the municipal legislative body for acceptance or rejection. Because annexation is a legislative act, the Council has broad discretion to accept or reject the petition. The City Council accepted this petition on February 16, 2012.

Following petition acceptance a 30-day certification review process commences wherein Staff determines whether the petition meets statutory requirements of Utah State Code. Once the petition is certified, notices are sent to all affected entities (special service districts, school districts, County officials, etc.) and a 30 day protest period commences.

If no protests are filed Staff then reviews the petition and provides information and discussion items to the Planning Commission for review. The Planning Commission conducts a public hearing on the matter and ultimately forwards a recommendation to the City Council. The City Council is the final decision maker regarding annexation of land into Park City.

Staff will complete an analysis of the annexation and preliminary subdivision plat per the General Plan and Annexation Policy Plan requirements, considering input from the public hearing and Commission discussion, and will provide the Planning Commission with a staff recommendation at the next meeting, provided that new information is readily obtainable.

Discussion items

1. Is there additional information the Commission would like to see regarding the PCMC parcel? The typical studies for this parcel were not conducted because no development is proposed and no changes are proposed to the current uses.
2. Is there additional information or analysis the Commission would like to see regarding the Richards parcel?
3. Does the Commission agree that the proposed zoning designations are appropriate for these parcels and consistent with the surrounding neighborhoods and consistent with the purposes of the Land Management Code?
4. Does the Commission have input, direction, comments or questions regarding the subdivision, lot configuration, density, access, agricultural uses, or any other items?
5. Are there specific items of concern that Staff should focus on in the analysis and drafting of a recommendation. Staff focus will be on:
 - location of building pads in recognition of the nature of an infill site;
 - building height and design characteristics, such as materials, fencing, landscaping, lighting, etc.;
 - mitigation of impacts on wildlife, wetlands and other sensitive lands;
 - maintaining rural/agricultural character of the entry corridor;
 - maintaining compatibility with the neighborhood;
 - provision of pedestrian amenities and increased connectivity;
 - compliance with affordable housing requirements; and
 - provision of utility services, including water.

Recommendation

Staff recommends that the Planning Commission review and discuss the annexation application, conduct a public hearing, and continue the public hearing to May 23, 2012 (or June 13th depending on the information requested).

EXHIBITS

- Exhibit A- Vicinity Map
- Exhibit B- Annexation Plat
- Exhibit C- Preliminary plat and zoning
- Exhibit D- Annexation application information




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 333 Main Street, 4th Floor, Salt Lake City, Utah 84103-3684
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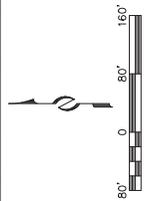
STAFF:
 STEVE SCHUELER

PRELIMINARY SUBDIVISION + PHASING PLAN
 510 PAYDAY AVE.
 RICHARDS PROPERTY

FOR:
 JOB NO.: 6-9-11
 FILE: X:\Thaynes Canyon\dwg\Richards\phase.dwg

DATE: 12/09/11

SHEET
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 OF
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DEED OF CONSERVATION EASEMENT
Richards Ranch (SR 224)

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 24th day of MARCH, 2005, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation having an address of 445 Marsac Avenue, Post Office Box 1480, Park City, UT 84060-1480 ("Grantor"), in favor of the SUMMIT LAND CONSERVANCY, a Utah non-profit corporation having an address of Post Office Box 1775, Park City, UT 84060 ("Grantee").

00730831 BK01688 PG00720-00730
ALAN SPRIGGS, SUMMIT CO RECORDER
2005 MAR 30 10:50 AM FEE \$1.00 BY GGB
REQUEST: PARK CITY MUNICIPAL CORP

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of approximately 20.000 acres (871,200 square feet) of real property located west of SR 224 in Park City, Summit County, Utah, described more particularly at Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property possesses natural, scenic, recreational, and visual open space values (collectively, "Conservation Values") of great importance to Grantee; the people of Park City, and the people of the State of Utah which are worthy of protection; and

WHEREAS, the Property is prominently visible from one of Park City's two entry corridors, namely SR 224; and

WHEREAS, the Property's proximity to Aspen Springs, the McPolin Farm, Willow Ranch, and the Huntsman Gateway open spaces is significant as it is part of a continuous corridor of open space on the sensitive SR 224 entry corridor; and

WHEREAS, at a November 3, 1998 special bond election, Park City voters authorized the issuance of general obligation bonds in an amount of ten million dollars for the express purpose of acquiring and forever preserving undeveloped park and recreational land; and

WHEREAS, the Property was purchased by Grantor using proceeds of the November 3, 1998 special bond election; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to visual open space existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt charitable organization qualified under Sections 170(h) and 501(c)(3) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, which the Parties agree constitute adequate consideration for this agreement, and pursuant to the laws of the State of Utah and in particular Utah Code Annotated, Title 57, Chapter 18, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be maintained forever (predominately) in open and recreational use, protecting in perpetuity its scenic, open and undisturbed character and recreational value, and preventing any use of the Property that may significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to those activities that are consistent with the purpose of this Easement.
- 1.1 **Baseline Documentation.** To establish the present condition of the Property's agricultural, natural, scenic, recreational and/or other conservation resources and the Property's manmade features, so as to make possible the proper monitoring of future uses of the Property and to ensure compliance with the terms of this Easement, the Parties may prepare an inventory of the Property's relevant resources, features and conditions.
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - a. To reserve and protect the conservation values of the Property;
 - b. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
 - c. To enter upon the Property in the case of an emergency as determined by Grantee, in which event Grantee shall notify Grantor prior to entering onto the Property, if possible, or as soon thereafter as is reasonably practical;
 - d. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of

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the Property that may be damaged by inconsistent activity or use, pursuant to Paragraph 6 herein; and

- e. To enforce this Easement by appropriate legal proceedings, after providing Grantor with reasonable notice and reasonable opportunity to cure.
3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are prohibited in perpetuity on the Property:
- a. Construction of buildings, residences, mobile homes, or other structures, or any other permanent improvements for use for human habitation, constructed or placed in, on, under, or upon the Property; and
 - b. Any unanticipated use or activity on or at the Property which would significantly impair the conservation values of the Property, unless such use or activity is necessary for the protection of the conservation values that are the subject of this Easement, in which case such use or activity shall be subject to the prior approval of Grantee, which approval shall not be unreasonably withheld.
4. **Reserved Rights.** Grantor reserves to itself, and to its successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, Grantor expressly reserves the right to:
- a. Use the Property as undeveloped park and recreational land; and
 - b. Construct related amenities.
5. **Continuous Conservation Reserve Program (CCRP).** Part of the property is presently encumbered by a CCRP contract; dated June 1, 2003. The CCRP is a 15- year USDA - Farm Service Agency contractual agreement for the stream corridor that is enrolled is 180' from the stream embankment and the designated land classification is riparian buffer zone. The parties expressly agree that requirements of the CCRP contract are permitted during the CCRP's effective period. Both parties recognize the contract and will honor its terms for its effective period.
6. **Notice of Intent to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Paragraph 4, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement.

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Whenever notice is required, Grantor shall notify Grantee not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question:

- a. in writing; and/or
- b. by electronic notification. Electronic notification is sufficient with proof of receipt.

The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

6.1 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Paragraph 5, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

7. **Grantee's Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. Grantee and Grantor agree to mediate any dispute in a timely manner if the issue of a violation is disputed. If mediation is unsuccessful and Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this Paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantor's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in

addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies not or hereafter existing at law or in equity. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. If Grantee prevails in any action to enforce the terms of this Easement, Grantee's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantor.

- 7.1 **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any right or remedy upon an breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 7.2 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
8. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.
9. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
- 9.1 **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon ten (10) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time charged by Zion's Bank or the maximum rate allowed by law.

- 9.2 **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees arising from or in any connection with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraphs 9 and 9.1; and (3) the existence or administration of this Easement.
10. **Extinguishment.** Grantee shall not voluntarily or willingly allow the extinguishment of any of the restrictions of this Easement, and if any or all of the restrictions of this Easement are nevertheless extinguished by a judicial or other governmental proceeding, any and all compensation received by Grantee as a result of the extinguishment shall be used by Grantee in a manner consistent with the conservation purposes of this Easement.
- 10.1 **Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.
- 10.2 **Amendment.** This Easement, including the prohibited uses and reserved rights, may be modified only by mutual written agreement of Grantor and Grantee. No amendment shall be made that will adversely affect the status of this Easement as a qualified conservation easement pursuant to Title 57, Chapter 18 of the Utah Code, nor Grantee's status as a publicly supported, tax-exempt charitable organization qualified under Sections 170(h) and 501(c)(3) of the Internal Revenue Code and applicable laws of the state of Utah. Any such amendment shall be consistent with the stated purposes of this Easement, shall not affect its perpetual duration, and shall not permit any impairment of the significant conservation values of the Property. Any such amendment shall be filed in the office of the Summit County Recorder.
11. **Transfer of Easement.** If Grantee determines that it no longer is able to perform its obligations or enforce its rights under this Easement, or that it no longer desires to enforce said rights, or if Grantee ceases to exist, or is otherwise prevented from enforcing its rights under this Easement, or if Grantee no longer qualifies as a qualified organization under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), Grantee may convey its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under State statute. Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out. Grantee is hereby expressly prohibited from subsequently transferring the Easement, under any circumstances and whether or not for consideration, unless:

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- a. Grantee, as a condition precedent of the transfer, requires that the conservation purposes which this Easement is intended to advance continue to be carried out;
 - b. The transferee is an organization qualifying at the time of transfer as eligible under Paragraph 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable) and regulations promulgated thereunder; and
 - c. Grantor and/or its successor in interest, at its sole discretion, either selected the transferee or consents in writing to the transfer.
12. **Grantor Transfer of Interest.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
13. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.
14. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows (or to such other address as either party from time to time shall designate by written notice to the other):
- To Grantee: SUMMIT LAND CONSERVANCY**
Attn: Executive Director
Post Office Box 1775
Park City, UT 84060
- To Grantor: PARK CITY MUNICIPAL CORPORATION**
Attn: City Recorder
445 Marsac Avenue
Post Office Box 1480
Park City UT 84060-1480
15. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Summit County, Utah, and may re-record it at any time as may be required to preserve its rights in this Easement.

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16. General Provisions.

- a. Controlling Law. The laws of the state of Utah shall govern the interpretation and performance of this Easement.
- b. Liberal Construction. Any general rule of construction to the contrary notwithstanding this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purposes of Utah statute. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- e. No Forfeiture. Nothing contained herein will result in the forfeiture or reversion of Grantor's title in any respect.
- f. Joint Obligation. If more than one person or entity is the successor or assign of Grantor, the obligations imposed by this Easement upon Grantor shall be jointly and severally binding on each such person or entity.
- g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that ability for acts or omissions occurring prior to transfer shall survive transfer.
- i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

BK1688 PG0727

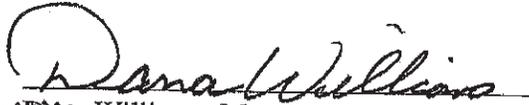
- j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR:

PARK CITY MUNICIPAL CORPORATION



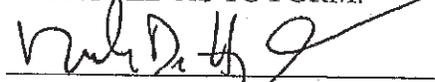
Dana Williams, Mayor

ATTEST:


Janet M. Scott, City Recorder



APPROVED AS TO FORM:


Mark D. Harrington, City Attorney

GRANTEE:

SUMMIT LAND CONSERVANCY


Jennifer Guetschow, Executive Director

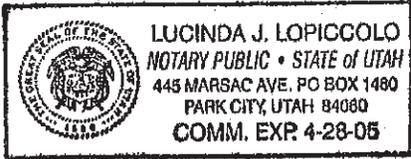
BK1688 PC0723

Corporate Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this 24th day of MARCH, 2005, personally appeared before me Jennifer Guetschow, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn (or affirmed), did say that she is the Executive Director of the SUMMIT LAND CONSERVANCY by Authority of its Bylaws/Resolution of its Board of Directors, and acknowledged to me that said corporation executed the same.

Lucinda J. Lopigcolo
Notary Public



BK1688 PG0729

EXHIBIT A

Beginning at a point West 2403.70 feet, and North 655.95 feet from the Southeast Corner of Section 5, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running Thence East 187.26 feet; thence South 577.14 feet to the North line of Thaynes Creek Ranch Subdivisions as recorded; thence East along said North line 831.89 feet to the West line of State Highway U-244; thence North 21°12' West along said West line 1351.47 feet; thence West 539.30 feet; thence South 0°44'37" East 682.93 feet to the point of beginning;

TOGETHER WITH all of the right, title and interest of Grantor in the right of use in and to 8.34% of the irrigation portion of the water and water rights included in the Weber River Decree Award No. 458 being sufficient water for the irrigation of 3.33 acres, or 10 acre feet, heretofore used for the irrigation of the above described lands, reserving unto the Grantor all remaining rights of the Grantor in and to the use of the water evidenced by the said Award No. 458.

SC 1041-8
PCA 1041-87

Excepting all area within 180 feet of the stream embankment covered in the CCRP Agreement.

Subject to all matters of record.

BK1688 PG0730

SPECIAL WARRANTY DEED
(Richards Property)

THE TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation, authorized to do business in Utah as TPL-Utah, whose principal business address is 116 New Montgomery, San Francisco, CA 94105 ("Grantor"), hereby CONVEYS AND WARRANTS against the Acts of the Grantor only to PARK CITY MUNICIPAL CORPORATION, a municipal corporation and political subdivision of the State of Utah ("Grantee") for the sum of TEN DOLLARS and other good and valuable consideration the following described tract of land in Summit County, State of Utah, to wit:

Beginning at a point West 2403.70 feet and North 655.95 feet from the Southeast Corner of Section 5, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence East 187.26 feet; thence South 577.14 feet to the North line of Thaynes Creek Ranch Subdivisions as recorded; then East along said North line 831.89 feet to the West line of State Highway U-224; thence North 21° 12' West along said West line 1351.47 feet; thence West 539.30 feet; thence South 0° 44' 37" East 682.93 feet to the point of beginning ("Property");

Together with all of the right, title and interest of Grantor in the right to use in and to 8.34% of the irrigation portion of the water and water rights included in the Weber River Decree Award No. 458 being sufficient water for the irrigation of 3.33 acres, or 10 acre feet, heretofore used for the irrigation of the above described lands, being all of Grantor's water rights received from its predecessor in interest.

SUBJECT TO the covenant that the Property shall be restricted in perpetuity to use as undeveloped park and recreational land and amenities.

SUBJECT TO all easements, covenants, restrictions, rights of way and reservations appearing of record as set forth in Exhibit "A" attached hereto, and taxes for the year 1999 and thereafter.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this 27 day of August, 1999.

THE TRUST FOR PUBLIC LAND

By: *Ted O. Harris*

Name: *Ted O. Harris*

Title: *Vice President*

WARRANTY DEED - Page 1

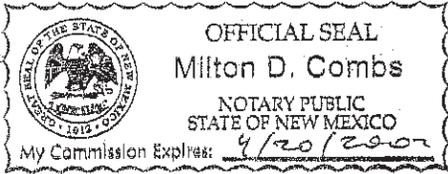
00547538 8x01285 P601140-01142
9-16a
ALAN SPRIGGS, SUMMIT CO RECORDER
1999 AUG 31 09:20 AM FEE \$14.00 BY DMG
REQUEST: FIRST AMERICAN TITLE CO UTAH

aug → 99-05278

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on August 27, 1999, by TEA. O. HARRISON, the VICE PRESIDENT of The Trust for Public Land, a nonprofit California public benefit corporation, on behalf of said corporation.



[Signature]
Notary Public

My Commission Expires:

4/20/2002
(SEAL)

00547638 Bk01285 Pg01141