

**PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UT
OCTOBER 15, 2009**

Present: Mayor Dana Williams; Council members, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Scott Robertson, IT Manager; and Kay Lynn Stafford, Project Manager

1. Council questions/comments. Roger Harlan thanked staff for completing Phase 1 of the Bonanza Drive improvements and opening the road. Liza Simpson indicated that she attended the Visioning wrap-up on Tuesday and advised that the presentation is on-line. Jim Hier reported on business of the Building Code Commission, pointing out that this was his last meeting. He emphasized the efficient practices of the board, the importance of building code legislation, and strongly encouraged that the City remains involved. Mr. Hier noted that he resigned, feeling the appointment should be commensurate with his City Council term, and would like to see someone from the County or the City represented on the board. Candace Erickson reported on the Friends of the Library luncheon. Mayor Williams discussed a visit from a delegation from an island in the South China Sea and commended the *Park Record* for its article written on the gathering.

He acknowledged the efforts of staff in resolving the parking issues on Norfolk Avenue and relayed that he has received complaints about Westgate's aggressive sales tactics. Mark Harrington explained that there is a streamline protocol with police and complaints must go directly to Dispatch first. If that is not done, it will limit the City's ability to cite violations. Mr. Harrington indicated, however, that he will follow up with Westgate management. The Mayor announced that former employee Dave Middleton passed away today.

2. City website presentation. Scott Robinson explained that his department was asked to overhaul the website by improving searching and navigation, allowing for more flexibility, and addressing other issues. The discovery process involved identifying needs and wants and a technology to carry the City through for the next four to five years. It was important to also identify and understand the audience the City is providing services to and how to be a good website neighbor by sharing and directing traffic. He explained that a committee was formed, representing all departments, who helped shape the site which is geared toward the citizen and well as the visitor. A good portion of the Chamber's traffic originates from the City and parkcity.org is a highly ranked listing from a Google search perspective. Mr. Robinson discussed the international hits our site receives and the statistics used to pinpoint relevant information. He discussed new features like maintaining themes, tones, and eliminating data that is outdated.

Project Manager Kay Lynn Stafford explained that the website committee felt it important to increase citizen and employee use of the website. Forty employees will be trained to manage their own department pages to ensure up-to-date and complete information. The three main navigation themes are *Getting Around*, *Employment*, and *Recreation* and a search feature that keeps the user on the City site. The site is ADA compliant, provides a document retrieval element and pop-up notices for emergencies. She showcased the site, navigated to various departments, noting that it is still being developed. Scott Robinson announced that the site will be fully operational the end of November. Ms. Stafford explained the email subscription feature for citizens wanting information or notifications for meetings, etc. Council members were pleased with the new capabilities of the website.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
OCTOBER 15, 2009**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, October 15, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Max Paap, Special Events Manager; Kent Cashel, Transportation Manager; Kathy Lundborg, Water Manager; Brooks Robinson, Planner; and Katie Cattan, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

High West Distillery – Brooks Robinson reported that an occupancy permit will likely be issued to the Distillery by October 23 and he spoke about the restaurant feature of the project.

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

City website – Mike Sweeney encouraged staff to manage data so that it can be retrieved easier by the public and to provide a computer at City Hall for public use on the internet.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 1, 2009

Roger Harlan, "I move approval of the work session notes and the minutes of the meeting of October 1, 2009". Candace Erickson seconded. Liza Simpson abstained as she was not in attendance. Motion carried.

Candace Erickson	Aye
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Abstention

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

1. Consideration of Master Festival License for the Mountain Town Stages Pub Crawl, including a partial closure of Main Street from 7 p.m. to 9 p.m. on Saturday, October 24, 2009 – Max Paap explained that this has been an informal event in the past, but this year the organizer wants to expand the event to the street for the benefit of businesses and visitors and expects 125 participants. The HMBA is aware of the

event and has not expressed concerns. The application is being reviewed as a master festival license due to the request for a temporary street closure, use of City property, and amplified music. The street closure will include the area from 5th Street to 9th Street from 9 p.m. to 10 p.m. Organizer Brian Richards explained that a band will be playing on the Prudential veranda, a band on the bridge overlooking the Town Lift Plaza area, and a musician on the back of a pick-up from 5th Street to the bridge.

The Mayor opened the public hearing; there was no input and the hearing was closed. Candace Erickson remarked that the event is only for one hour and Mr. Richards affirmed that it is only for an hour on the street but the evening portion in establishments is about five hours. Jim Hier, "I move we approve the Master Festival License for the Main Street Music Crawl on Saturday, October 24". Liza Simpson seconded. Motion unanimously carried.

2. Consideration of the First Amendment to Park City Municipal Corporation and Summit County Interlocal Transportation Agreement, in a form approved by the City Attorney – Kent Cashel explained that the document represents seven years of work with the County. Jointly providing transit service began in 2002 on an incremental cost basis where Summit County paid for fuel, drivers and maintenance of the vehicles. In 2005, a proportional operational cost share formula was implemented, but the cost of the capital facility was still unaddressed. With the expansion of the Ironhorse transit facility, the time seemed right to capture the capital cost. Attachment D in the agreement lays out a formula that continues with the cost-share philosophy, taking into account any interest costs incurred in financing the project, and including a component for capital renewal. The agreement includes insurance requirements which are more clearly reflected as well as some minor technical corrections. He stated that the joint transit advisory board and staff believe this amendment is an equitable and efficient way to deal with the cost of the facility and staff recommends approval. The next step is presenting the amendment to the County for ratification.

The Mayor invited public input; there was none. Candace Erickson, "I move we authorize the City Manager to execute an amended Interlocal Transportation Agreement, in a form approved by the City Attorney". Roger Harlan seconded. Motion unanimously carried.

3. Consideration of the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with Jordanelle Special Services District (JSSD) for a term of one year at a rate of \$30,000/month – Kathy Lundborg pointed out the flexibility of the agreement, including a 30 day termination without cause provision and urged approval. The Mayor invited public input; there was none. Liza Simpson, "I move we authorize the City Manager to execute the First Amendment to the Mine Maintenance Agreement, in a form approved by the City Attorney, with JSSD for a term of one year at a rate of \$30,000 per month". Roger Harlan seconded. Motion unanimously carried.

VI OLD BUSINESS (*Continued items*)

Consideration of an Appeal of the Planning Commission's July 8, 2009 approval of a conditional use permit application submitted by North Silver Lake Lodge LLC – appellants, adjacent owner associations represented by Clyde Snow, Attorneys at Law – Mayor Williams explained the format for the hearing and advised that it is not a public hearing and will poll members about taking public input. Next, members will be asked to disclose any conversations about this matter. Staff will then introduce the appeal, followed by the appellants' presentation, Council questions, and then the applicant's presentation. Staff will respond to any questions. He explained that the Council will deliberate and may take action tonight.

Candace Erickson stated that she will excuse herself from the discussion and voting because her husband spoke on behalf of the applicant at a Planning Commission meeting. Liza Simpson, "I move we expand the scope of this (appeal) to include public input". Roger Harlan seconded. Motion carried.

Candace Erickson	Excused
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Aye

The Mayor invited disclosures. Jim Hier stated that Brad and Lisa Wilson, opposed to the project, are longtime friends of his, including business dealings. Since the appeal was filed he hiked with Lisa Wilson and although they crossed the Silver Lake property, there were no discussions with regard to elements of the appeal but rather on trees. In addition, he indicated that he has received multiple emails but did not read them. Liza Simpson disclosed that she received many emails and also hiked with Lisa Wilson to observe tree die-off in the Empire Pass area. Roger Harlan acknowledged that he read a couple of emails. Joe Kernan stated that he also received many emails, but didn't read them when he realized they were regarding the appeal. He also received a couple of phone calls, but didn't discuss anything of substance with regard to the appeal. The Mayor commented that he received emails and spoke to two Planning Commissioners to gain clarification on some issues.

Katie Cattan explained that under the Deer Valley Master Plan, the North Silver Lake parcel is permitted a density 54 units of residential and 14,552 square feet of commercial and support space. The project is regulated under the Deer Valley Master Plan as well as requirements in the RD Zone in the Land Management Code. The Deer Valley MPD outlined the height of 45 feet; with a pitched roof an exception of five additional feet can be granted. She explained that the application was submitted in May 2008 and was approved by the Planning Commission on July 8, 2009. Through a PowerPoint presentation, Ms. Cattan illustrated a diagram of the project with 15 periphery homes where the developer self-imposed a height restriction of 33 feet. The

middle building is 50 feet; there are three central buildings in which there are 38 units and of the 16 periphery units, three are duplexes. There is 74% open space including an adjacent lot and the ski run.

She explained that the first point of the appeal is that the project does not comply with the LMC conditional use permit. Through the Planning Commission review, two major changes occurred in the site plan including increased tree protection and open space, decrease in the footprint, revised internal road system, full analysis of the prior approval, and in-depth analyses of compatibility and existing conditions.

The next piece of the appeal deals with the LMC finding that the project be compatible with the structures in use, scale and mass, and circulation. The use is residential single family with a small portion of support commercial, including a spa and a restaurant. With regard to scale, the 33 foot height requirement was self-imposed for the homes around the periphery and an evaluation was done of the average square footage of the homes in the area. Adjacent properties averaged 4,917 square feet and within the project, the average unit size is 4,227 square feet. The massing moves toward the center making it more compatible on the edge adjacent to the neighborhood. With regard to circulation, she pointed out the funicular serving the largest structure, Building #3.

Ms. Cattan stated that the next appeal point was that mass, size, and compatibility issues will impact the scenic corridors and explained that on two different occasions, the developer presented photos of representations of the viewpoints requested by the Planning Commission. She displayed and discussed the same.

The gross floor area of the entire project increased by 36,193 mainly due to common space and parking circulation improvements. The total building coverage and pavement decreased 18,216 square feet and the final open space calculation is 74%.

Katie Cattan explained that the next point dealt with the CUP criteria as well as scenic vistas, significant vegetation slope retention, and Commissioner Strachan's findings. The Planning Commission went through all of the CUP criteria and the two criteria members struggled with related to the compatibility finding with mass and scale. The minutes reflect the reality that the initial density determined is higher than the other areas in the MPD making the compatibility finding more difficult to make. She referred to a provision in the LMC that the Planning Director can determine the limits of disturbance and require mitigation for loss of significant vegetation. The Planning Director reviewed the plans and determined that the loss of any high quality trees will require the planting of two large specimen trees; second tier trees must be replaced with 1.5 large specimen trees, and the tree and plant protection plan must be followed. Review of the slope retention resulted in two retaining walls. She pointed out that the appeal materials also included Commissioner Strachan's findings.

Ms. Cattan relayed that the next appeal point related to construction phasing. She noted that the Building Department is involved in formulating a construction mitigation plan for projects but at this point, there is not enough information about what time of year the project will be built or the availability of complete building plans. These mitigation plan meetings are open to the public and review of a mitigation plan during the CUP process does not occur because of the reasons cited above.

Another point made in the appeal was that the MPD does not create any property rights that give the applicant a right of an unlimited size for dwelling units or residential condominium units in the project. She continued to explain that the project was required to go through a CUP review and has met the requirements of the MPD, including height as well as open space requirements. These steps do not lead to unlimited size but a determined size. A square footage number is not identified in the Deer Valley MPD but the project complies with the RD zone.

She continued to explain that the next appeal point relates to existing conditions, the reduction in density, vested density under the MPD, and compatibility with surrounding homes. Ms. Cattan illustrated a map and pointed out the density throughout the Deer Valley MPD. North Silver Lake Lot 2B is assigned 54 units; it is the third smallest lot but has the greatest amount of density. All of the projects within the MPD are regulated by the RD zone.

The next discussion point was that the applicant has vested rights under the MPD and she stated that the applicant does have vested rights under the Master Plan and is not subject to adjusting density reallocation. The development is subject to the LMC and the Deer Valley MPD. There was also concern expressed about lockouts, allowed in the Deer Valley MPD, but no lockouts are proposed for the North Silver Lake Project. The appellant suggested a condition of approval prohibiting lockouts, but since they are allowed under the MPD, the following condition is recommended, *"The approved plans do not include lockout units. Any modification of the floor plans to include lockout units will require approval by the Planning Commission"*.

She advised that the third portion of the appeal deals with noticing. She explained that because many owners are second home owners, it is often difficult getting notice to all individuals. Staff complied with all requirements of the LMC regarding noticing for a CUP. All of the documents are public and have been made available to the public throughout this process.

Planner Katie Cattan stated that staff recommends that the City Council deny the appeal in whole. The CUP is approved with the findings of fact, conclusions of law, and amended conditions of approval. The Mayor invited the appellant to comment.

Eric Lee, attorney, explained that the appellants are a group of about 40 property owners in the area and a couple of home owner associations surrounding the project. This is an appeal of the 3:1 vote in favor of the CUP. Three Commissioners did not vote

because one abstained, one was absent, and one recused himself. He stated that Commissioner Strachan not only voted to deny but took the step of drafting detailed, exhaustive findings and submitted those findings into the record. He felt that Commissioner Strachan's carefully considered reasoning highlights the reasons why the decision needs to be reversed. The overriding premise of Commissioner Strachan's position was really quite simple; it was his view that the Planning Commission is empowered by the LMC to insist on a mitigation of detrimental effects before approving a conditional use. It was Commissioner Strachan's conclusion that the Commission was not handcuffed in this case by the 35 year old MPD and focused on the portion of the LMC 15-1-10 which reads, *"If the reasonably anticipated detrimental effects of the proposed conditional use can not be substantially mitigated by the proposal or in a position of reasonable conditions, the conditional use may be denied"*. It identified six areas where detrimental effects from this project have not been mitigated. Mr. Lee indicated that his focus is compatibility but it is worth reviewing the other areas of detrimental effects which Mr. Strachan identified. His findings identify visibility. Mr. Lee stated that this project sits on a knoll and will be very prominent from Main Street, SR224, and other vantage points. He continued to explain that Commissioner Strachan identified some overriding goals and two from the General Plan (1) new structures should blend in with the landscape and preserve the natural views of the mountains and meadows, and (2) new development should be focused in less visible areas. The goal of LMC 15-1-2 says *allow development in a manner which encourages the preservation of scenic vistas*. Mr. Lee believed the vista looking up Main Street should be preserved. Mr. Strachan found that the proposed development fails to blend in with the landscape, as required by the General Plan, and it should be located in a less visible area as required.

Mr. Lee relayed that the second area of concern was traffic but rather than detailing Mr. Strachan's findings, he indicated that the proposed development does not mitigate or address the impacts of traffic. The number of units proposed and the number of people potentially housed in the units will prompt additional traffic which was not addressed by the Planning Commission. He indicated that Mr. Strachan was very concerned about the lack of vegetation protection and particularly focused on the LMC section which reads, *property owners must protect significant vegetation during any development activity*. The development does not mitigate or substantially mitigate the reasonably anticipated detrimental effects of the development and Mr. Strachan's evidence among other points was the fact that of the 544 trees in this project site, 429 have to be removed. Mr. Strachan analyzed the definition of significant vegetation which is a LMC defined term, pointing out this development proposal doesn't address that definition in any way. Saving all significant vegetation is a mandate, not an option. Mr. Lee added that he addressed grading, building mass, bulk and orientation and pointed out that the proposed development has not mitigated the anticipated detrimental effects caused by the mass, the scale and orientation of the proposed development. The project consists of 54 units and 112 parking stalls, 16 detached homes with 26 garages, 38 condominium homes with 86 parking stalls and the entire project has a gross floor area in excess of 356,000 square feet. Mr. Strachan's conclusion was that the square

footage of this project results in a substantial impact that has not been mitigated or substantially mitigated.

Mr. Lee pointed out Mr. Strachan's position on the north building. It is the largest building in the project and the most prominent building from the different view corridors. Mr. Strachan noted that the mass, scale and orientation of the north building has not been mitigated or substantially mitigated. It is five stories and approximately 77,000 square feet. The project has evolved except for the north building and finally, Mr. Strachan concluded that the proposed development is incompatible with surrounding structures in mass and scale and it violates the LMC for that reason.

Eric Lee stated that compatibility is the main issue and the three Planning Commissioners voting in favor of the CUP decided that the project is not compatible with surrounding neighborhoods but it doesn't need to be because its incompatible nature is a vested right. He quoted Commissioner Wintzer as saying "*The compatibility issue will never be resolved*". Due to the approved density, this project could never be perceived as compatible with the surrounding properties. Because of the MPD approval, compatibility could not be achieved and it was not required. Mr. Lee stated that he feels that Commissioner Wintzer and the other two members were wrong on both counts. He stated that Commissioner Strachan noted that compatibility is an absolute requirement. Mr. Lee indicated that LMC 15-2-10(d)(2) says the City shall not issue a conditional use permit unless the Planning Commission concludes that the project will be compatible with the surrounding structures in use, scale and mass. This is mandatory language. Whatever vested rights are associated with this project, if they create incompatibility, this project can't be built. He noted the second problem with Commissioner Wintzer's view relates to what was approved by the MPD. Density is not mandated by the MPD and the word density is used quite loosely in a number of contexts. The word density is not found in the MPD. The LMC defines density in quantitative and qualitative ways. On the quantitative side, the definition refers to number of units which is 54 units. The other component of density is the qualitative side and the LMC points out that density is also a function of intensity of use and types of units. The MPD does not address these qualitative issues and the Planning Commission was required to do so when determining whether this project is compatible with the surrounding area but stopped its analysis with the quantitative component of density.

Mr. Lee relayed that another point unique to the project is that the rights created by the MPD are not static. The developer would have you believe that the compatibility issue was assessed back in the early 1980s when the MPD was approved and it can not be looked at again. This is not true as it is not in the LMC or MPD. Mr. Lee insisted that compatibility must be based on current surrounding properties. This project simply overwhelms the surrounding neighborhoods. He felt that some of the comparisons are misleading. The square footage of the homes in the surrounding neighborhoods includes garages and that is not what is contained in the project units. Multiplying the 54 units by the average unit size of 4,200 square feet results in 228,000 square feet but

the project is 356,000 square feet and the remaining 130,000 square feet is in the garages and common space. If the 54 units are divided into the total square footage of 356,000 square feet, the result is an average unit size of 6,600 square feet not 4,200 square feet. It is misleading to focus on individual unit sizes because the surrounding neighborhoods do not have the mass, scale or density of this project. He stated that the Planning Commission erred by not accounting for the overall project in its compatibility analysis.

Attorney Eric Lee continued that the developer speaks broadly about his vested legal right to the entitlements of the MPD. The truth is that the developer's rights under the MPD are much more specific. Specific rights under the MPD include 54 units and 45 foot building heights with the right to propose any unit size, but the developer has no right to a particular unit size. The Planning Commission had the right and the obligation to look at the unit size in a compatibility perspective. The developer has taken full advantage of the maximum unit number and the building height allowed shoehorning the 356,000 square foot project on 5.9 acres. The developer did not offer a single concession from the absolute limits allowed under the MPD. The Planning Commission did not separate the vested rights from those still within the purview of the Commission. Commissioner Strachan understood this and pointed out the six areas the application failed to satisfy while the other three Commissioners who voted in favor essentially decided that significant access to the CUP review process was taken out of their hands by the MPD. Mr. Lee felt this position is in error and asked that the decision be reversed.

Tom Bennett, legal counsel for the applicant, explained that he and planning professional Doug Clyde have worked with their client throughout the approval process. Doug Clyde stated that the design team includes noted professionals with substantial amount of experience in the Park City area doing work throughout Deer Valley. Through a PowerPoint presentation, he pointed out the location of the North Silver Lake Project which is surrounded on the left by the various Belle developments, adding that the Belmont development actually had more than 50% coverage and had to use a portion of Lot 2D. There are surrounding projects that have substantially greater presence. He pointed out Evergreen and the Stag Lodge.

Mr. Clyde continued to explain that the process began over a year before Planning Commission review, including multiple meetings with various neighbors and home owner associations and many meetings with staff. There was a lot of planning and outreach prior to developing the first plan which is totally compliant with the LMC and the Deer Valley Master Plan and is not dependent on any exceptions to any of the governing documents. The Planning Commission reviewed the plan and asked to see more preservation of trees and vegetation and to loosen up the site plan on the perimeter because the units were too close together. They also wanted more information about the trees on the project site. As a result, an arborist was hired who found 32 high quality trees on the project site and the applicant returned with a plan which addressed tree preservation. Mr. Clyde relayed that the Planning Commission

felt the revised plan was a good start but members wanted to see more trees preserved and another arborist identified another tier of trees with health issues that could potentially be preserved. At that point a third plan was formulated which reduced the periphery units from 21 to 16 and dramatically reduced the road area inside the project, thereby decreasing the amount of impervious surface and providing substantially more open space. The setbacks of the perimeter homes increased to the property line and as the project became tighter, it substantially reduced the footprint and preserved about 114 trees. The tighter design resulted in a dramatic decrease in driveways and paved areas throughout the project. The project went from 21 to 16 perimeter units in an effort to preserve vegetation and the open space went from 68% to 74%. The outdoor recreational facility was moved to the north end of the project where it fronts onto open space; it was formerly placed adjacent to the Belles. He explained that the north building and the associated recreation building fronts onto open space and there are dramatic setbacks from the property line at 80 plus feet. The setback required by Code is 15 to 20 feet.

He emphasized that none of the buildings break height restrictions; the perimeter units are 33 feet and the allowed zone height is applied in the interior only. Mr. Clyde felt that the 33 foot height is complimentary to the zoning in adjacent neighborhoods.

Mr. Clyde stated that not only were trees preserved buffering the project, but the applicant also offered a very aggressive landscape plan which involves planting large specimen trees. The project is configured to provide as much useable and contiguous open space as possible which also preserves some trees. He felt that architecture is an important element when considering compatibility and the project's architects are very familiar with the Park City environment and appropriate materials like native sandstone. Every building in the project dramatically exceeds the requirements of the LMC and Deer Valley MPD with regard to architectural interest with façade and roof shifts. He displayed renderings of the project and the surrounding area. The Mayor asked if Building #3 is the structure visible from the Main Street corridor. Doug Clyde pointed out that some of this project and the Belles are visible but the topography for Building #3 is a full story lower than the buildings behind it. Mr. Bennett referred to a rendering of Building #3.

Mr. Clyde emphasized that a sensitive lands analysis was conducted without exception, resulting in a substantial reduction in road area, an increase in open space and greater separation between the parameter homes. The Belles is separated from this project with a 50 foot ski run, and with its 15 foot rear setback, places the North Silver Lake Project some 80 feet away from the Belles. A wildlife study and mitigation plan were performed which seemed unusual for an in-full project and the planning process for this project has been extraordinary.

Attorney Tom Bennett reiterated that the process has been extensive. The appellant describes the applicant's approach as aggressive but the fact of the matter is that there was an extensive *give and take* over a period of 14 months. With regard to the

standard for approving a CUP, the Code says that a conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. The Code has been amended in the past several years. Mr. Bennett recalled that the Planning Commission used to have a great deal of deference but that is no longer the case. He repeated that a conditional use shall be approved so long as reasonable conditions can be adopted that mitigate impacts. The second thing that is important to note is that this is an appeal and because this is an appeal, the LMC states that the appellant has the burden of proving that the Planning Commission *messed up*. In other words, that the Commissioners were wrong in determining that reasonable conditions were proposed and adopted. The issue of compatibility is a giant issue. He stated that the law is clear about analyzing the issue of compatibility and the analysis has to start with what the vested rights are for the project, emphasizing that there are vested rights with this project. Once the vested rights are established, compatibility must be addressed as well as the types of reasonable measures that should be adopted to mitigate any impact. The MPD established 54 units of residential use, a maximum building height of 45 feet plus an additional five for a pitched roof for a total of 50 feet, 14,250 square feet of commercial space, and there is a specific statement that there shall be no size limitation for units constructed on any parcel provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with the MPD in applicable zoning.

He pointed out that what the appellant suggests is that the fact that compatibility is an issue to be examined in connection with a CUP review, that it opens the door for the Planning Commission to exercise broad discretionary rights in determining the size of a project. Mr. Bennett continued to explain that part of the reason for that is that compatibility suggests a certain amount of subjectivity. It is difficult to define compatibility and so the mitigating factors employed by the applicant are addressed. Mr. Lee's comment that Commissioners admitted that the project can't be compatible is not the case. That is only the case if incompatibility is defined to mean something different. This project differs from surrounding properties in terms of allowable mass, scale and number of units but there are significant factors that have been included in the planning for this project that mitigate the differences between this project and its neighbors.

Mr. Bennett stated that first of all, this project spreads the density over the site instead of centering it all in the middle which was influenced by public input. Secondly, the surrounding perimeter units are comparable in size to the units neighboring them. The analysis that Mr. Lee suggested is wrong and Ms. Cattan's numbers were pulled from property tax records which includes improved square footage. The applicant exceeded the open space requirements, pushing it from 60% to 74%. Fourth, significant architectural design features and building materials were incorporated so that the design and materials are compatible, consistent and in harmony with neighboring properties. Fifth, a carefully designed re-vegetation and landscaping plan has been formulated, also intended for buffering.

Doug Clyde relayed that he has worked on many projects in the Deer Valley area and having 33 foot buildings next to 100 foot buildings is a common land use. None of those projects would ever have been found to be compatible using Mr. Lee's approach. There is a section of the LMC that says the way to mitigate projects which vary in mass and scale, is through careful architecture and site design. Mr. Bennett pointed out that this is important because it is in the same section and he believes that Section 15-1-10(b)(2) means there needs to be an overall finding of compatibility which the Planning Commission reached. It is inaccurate to say that all of the Planning Commissioners felt this was incompatible but approved it anyway. There is a specific finding that the project is compatible in mass and scale.

Tom Bennett continued to state that because compatibility is potentially subjective there are two objective factors that can be utilized. One was mentioned by Katie Cattan in terms of comparing the square footage with neighboring structures and as pointed out, the square footage is about 700 square feet less on average. Additionally, there is some guidance provided from a prior approval. In 2001 a project was approved on this site and although the approval is no longer valid, it is important because there was a specific finding that the proposed units' planning and architectural detailing are compatible with the residential communities in the vicinity in mass, use, scale and circulation.

Doug Clyde displayed a rendering of the previous approval which included 50 foot buildings located against the setback line where the adjacent Belles are located. This plan is not nearly as sensitive as the current application proposed today. Also, the recreational facility was located directly adjacent to the Belles and would have had a maximum impact on those residential uses but has since been moved. He stated that this is a better project because of more open space, less coverage for roads and footprint, and a substantial portion of the project is designed at 33 feet or less.

Mr. Clyde emphasized that much of the mitigation is voluntary and one of the most important elements is sustainability. A sustainability consultant was hired to formulate a plan which was reviewed by the City. The sustainability plan is not green-washing but *doing the hard things*. The Planning Commission liked it and the developer voluntarily agreed to include the effort in the conditions of approval.

Mr. Bennett referred to the criticism that traffic was not addressed, but it was and a traffic study was produced. The conclusion of the traffic report was that there were no significant traffic impacts raised by the project.

Tom Bennett expressed that vegetation is an interesting issue, especially the statement, *no significant vegetation can be removed*. He quoted Section 15-2.13-10, "*The property owner must protect significant vegetation during any development activity... Development plans must show all significant vegetation within 20 feet of a proposed development. The property owner must demonstrate the health and viability of all large*

trees to a certified arborist. The Planning Director shall determine the limits of disturbance and may require mitigation for loss of significant vegetation consistent with the landscape criteria in another chapter of the LMC". Mr. Bennett emphasized that the section does not say that you can not remove any significant vegetation; what it says is that you have to make efforts to preserve it, and you need to establish appropriate limits of disturbance to preserve as much of it as possible, and to the extent that there is a loss of significant vegetation, there must be adequate mitigation. That is what the applicant has proposed. Doug Clyde interjected that he has practiced under that language for many years, and as interpreted by Mr. Lee, nothing would have ever been built in Park City. The way that section of the Code is interpreted is that there is a strict requirement to protect the area outside of the limits of disturbance and that has always been the way it has been applied.

Tom Bennett responded to the comment on the visibility of the project from various vantage points in town and the argument that the LMC basically prohibits anything that can be seen. He read a statement purpose of the Code, *to allow development in a way that encourages the preservation of scenic vistas*. This is a stated purpose but not a specific provision of the Code that is applied to limit development. In this case, the Deer Valley MPD approved by Council provides that significant development can occur on this site as long as there is compliance with the Code. Whatever is built there must comply with the standards of the Deer Valley MPD and is going to be visible in some way from different vantage points in town. Mitigation is key and he spoke about the orientation of the spa building. He stated that he is offended by statements that the developer has *pushed the envelope to the limit* because that is not true. The developer voluntarily lowered heights and produced requested information and the process was interactive with the Planning Commission. Mr. Bennett emphasized that the standard for approving a conditional use is that it will be approved as long as reasonable mitigation is accomplished and the appellant has the burden of proving that the Planning Commission was wrong when it concluded that the impacts of this project have been effectively mitigated.

Doug Clyde expressed his concern with Mr. Lee's comment that the developer made no concessions. Mr. Clyde noted that he has never seen a project that has evolved into such an exceptional plan as a result of an interactive process with the Planning Commission.

Joe Kernan asked if the question at hand is whether reasonable measures were taken to minimize the impacts of the project. Mark Harrington explained that the first consideration is whether the Planning Commission erred with regard to code standards and the second element is the mitigation. The appellants are asserting that certain adverse impacts have not been mitigated and the focus should be on identifying specifically what the adverse impact is and if there is one, whether it has been mitigated. The Mayor invited Planner Cattin to respond to comments.

Katie Cattan referred to the significant vegetation discussion and pointed out that the Planning Director has the authority to formulate a plan to replace vegetation. With regard to density, unit size is not provided for but a maximum of 54 units is specified in the MPD. She continued to explain that square footage numbers were taken from Summit County tax records and Jim Hier stated that it is his experience that the County records do not include garages. The Mayor invited public comment.

Bob Wells, Deer Valley Resort, explained that some of his concerns have been addressed in the packet materials and in the presentation from Messrs. Clyde and Bennett. The site is part of the Deer Valley MPD, first issued in 1977 and vigilantly pursued for over 30 years. The MPD sets forth and controls the development density and parameters for the entire resort. If the questions brought up tonight were brought up ten years ago, Deer Valley Resort would be in a world of hurt because it relies on the land use plan. Deer Valley is a mixed use resort and not just a residential area. The land use plan embodied in the MPD includes a series of development communities. The Silver Lake areas include commercial, leading into relatively high density stacked condominiums, then into townhomes, and then single family. This is exactly what happens in North Silver Lake and it was intentional, not an accident. To take a plan that is incorporated into a MPD and modify it as proposed in the appeal is aborting the very MPD concept governing the project. The Mayor asked if the Belles represent the end of the single family component. Mr. Wells again explained that the center core leads into a lower density of townhomes which is the Belles which leads into estate single family which is Evergreen and Belleterre. The master plan for Silver Lake was processed and approved in 1987 or 1988 and basically set this scenario in place and was accomplished before anybody bought property in North Silver Lake. As each project was developed, buyers had the full opportunity of learning about the master plan, and what the MPD outlined for the development of the area. The land use plan, incorporating Lot 2B was intentional and not an accidental plan and Mr. Wells urged denial of the appeal.

Tom Boone, adjacent property owner, agreed with some of Mr. Wells' comments about the master plan designed with a high density core and leading out to lower density. Seven of the nine parcels have been developed and were originally intended to have 147 units but now have 95 units on 98 acres. He referred to the 54 units and 45 foot height limit for this project but never found a plan for common space which represents 20% of the project. He argued that the common space square footages add to the size of the homes bumping the average size to 5,700 square feet. He felt the project is too massive for the acreage and that the Planning Commission felt bound by the MPD. Although some things were mitigated, the project grew by 36,000 square feet but that information was not presented until the final meeting and he felt that the reduction in height was not a big concession. Unit sizes were smaller 20 years ago on average and the developer is asking for current market-sized units, plus there is a lot of common space. The project is based on a plan written 20 years ago. Mr. Boone stated that the Planning Commission needs to take another look at this because there are areas that

have not been addressed during the process. He noted that he met with the developer two years ago, he relayed at that time that the project would overwhelm the community.

Rob Alday, full-time resident in Silver Lake, believed that the areas of consideration fit within the Deer Valley master plan in mass and scale and are reasonable. The project does fit within the Master Plan; the mass and scale seem to match that of the surrounding areas and the number and size of the units seem to be reasonable.

Dave Milme, licensed Utah architect, stated that he works primarily in SLC and Summit County. He noted that he reviewed the plans and the drawings and acknowledged that he is not familiar with the land use issues but from a visual design standpoint, the architects have done a wonderful job of capturing the character of the surrounding neighborhoods. This is exactly what he would expect to see for development in a resort area like Deer Valley. This is a good design and site plan.

Lisa Wilson, Deer Valley resident, displayed a map of the project to the audience referring to the 73.9% open space calculation and expressing that it is not believable. She indicated that she was not aware that the Council could not read emails on this subject because she has many friends who could not come tonight who emailed Council members. She read the definition of compatibility, *"The characteristics of different uses or designs that integrate with and relate to one another to maintain and/or enhance the context of the surrounding area or neighborhood. Elements affecting compatibility include, but are not limited to, height, scale, mass and bulk of building, pedestrian and vehicular circulation, parking, landscaping and architecture, topography, environmentally sensitive areas, and building patterns"*. Ms. Wilson questioned whether the open space was calculated correctly as well as the height because of the placement of the balloons when the height was analyzed. She distributed photos of the area from 1983 and 1990 to point out the contour of the property and expressed concerns about how much common area will be converted to commercial uses in the future. Ms. Wilson discussed the high number of trees that will have to be removed and used Legos™ to visually illustrate the mass, scale and height of the project and to point out the shortfalls of this plan. Three parking spaces are required for each unit and the project sits on a knoll that can be seen from anywhere in Park City, especially American Flag. She discussed a previous plan pointing out that common area is not defined in the LMC and is a way for developers to achieve more square footage. She believed the 2001 CUP should not have been approved and began to comment on the timing of the application with the 9-11 and the Olympic Winter Games events. The Mayor urged Ms. Wilson to stay on topic and she summarized that she is opposed to huge massive development.

Pam Smith, American Flag second home owner, expressed that although improvements have been made to the project, this project will ruin their outstanding view from their Park City home.

Brad Wilson, adjacent property owner, relayed that the developer has a right to build 54 units at 45 feet on a defined lot size. In order to be compatible, the developer is

claiming that the existing neighborhood has 4,900 square foot houses so the individual condo sizes should be something close to that which is illogical. When 4,900 square foot units are put together in Building #3, it turns out being a 73,000 square foot building with a 72 foot front façade, 200 feet wide. This is incompatible mass and scale which everyone seems to miss. He didn't find that mitigation efforts reduced mass but increased mass and square footage was just shuffled around differently. Every other developer in the area reduced the number of units and elected to increase the size of individual units. There are approximately 529 trees on the site, 429 will be cut down and it will be impossible to screen a 73 foot building with 20 to 30 foot trees. He referred to the Planning Commissioners' statements in the record about compatibility and felt the project should be sent back to the Planning Commission so that compatibility is achieved; 360,000 square feet on six acres is not compatible.

Eric White, appliance distributor, spoke about some of the projects his company is working on. He felt this is an excellent project.

Adam Strachan, Planning Commission, insisted that his findings are not an exhibit to the appellant's letter but part of the minutes. He stated that he is not appearing as a Planning Commissioner but as a citizen supporting upholding the appeal. Mark Harrington advised that he can not remove himself from a process he has already participated in. Mr. Strachan emphasized that this project throughout the process increased in size but the Commission did not receive the final figures until the last meeting. The LMC provides that a CUP approval is conditional, certain uses are not approvable and if detrimental effects can not be mitigated the project should be denied. He believed that Planning Commission members erred when they determined that the MPD tied their hands and did not apply the criteria. They should have reviewed the criteria and made findings. He admitted that the LMC does not require that every tree be replaced but this town protects the environment and this is what keeps Park City unique.

Michael O'Hara, resident, stated that in his 12 years of serving as a Planning Commissioner, he has never seen a Commissioner present a separate set of findings. He hoped that Council will support the Planning Commission and deny the appeal. The MPD has been upheld and the CUP is not discretionary because it is approved if mitigation is reasonable which has been achieved.

With no further comments, the Mayor closed the hearing (later opened) and asked for Council comments.

The Mayor clarified that density for other projects didn't necessarily decrease through the CUP process but that new owners of the projects lessened the density. Liza Simpson understood analyzing compatibility starts with the vested rights rather than with the built environment and the City Attorney agreed but rephrased the concept. He explained that compatibility looks at the proposal regardless of density. The fact that the project has a density number weighs into that in terms of a comparison to those

features of compatibility. The density is qualified to meeting that test and doesn't give it more of a threshold standing. State law has changed since the last approval and a conditional use is considered essentially permitted if its adverse impacts can be mitigated. If adverse impacts are found and can not be addressed by a condition of approval, then the project should be denied and the approval overturned.

Roger Harlan suggested continuing a decision and taking some time to review all of the information and materials presented. Jim Hier commented on the massive size of Building #3 and believed this creates a compatibility problem from a visual standpoint. He referred to questions on the open space percentage and asked that the calculation be verified at least meeting the minimum 60% based on the total existing platted lots. Doug Clyde interjected that the calculation was done by an engineer and checked by him; he is confident that the calculations are correct. Katie Cattin indicated that she calculated the square footage of the buildings but will double-check the open space number. In response to a question from Liza Simpson about remanding the project to the Planning Commission, Mark Harrington advised that members need to specify, at a minimum, what issues Council wants them to consider. Ms. Simpson expressed concerns about the project meeting compatibility criteria especially when units are combined in buildings. She agreed with Commissioner Strachan's findings, especially with regard to the north building, and believes that the Planning Commission erred in not adopting findings for it. She is willing to continue the item but ready to remand it to the Planning Commission at this time for discussion and does not agree that the MPD ties the Commission's hands with regard to determining compatibility. Joe Kernan indicated that he would like to better understand the massing of the project and asked if the 2001 approval is still valid and Mr. Harrington advised that it has expired. Mr. Kernan requested quantitative guidelines with regard to height and setbacks and ways to limit the visual mass.

Jim Hier requested a graphic depiction of the view of the project from Main Street in a bright color like pink and not earth tones. Mr. Bennett clarified that the project will be done in earth tones which is part of the reason it will not be seen. Mr. Hier felt it would be helpful to see the graphics done both ways. Doug Clyde informed members that it is a huge effort to model the rendering and the earth tones are consistent with the LMC. The building will be visible like Stag Lodge. Jim Hier withdrew his request but asked for more clarity on the view from the Main Street vantage point.

Discussion ensued on the planting of the 30 foot trees which are intended to ameliorate the view from the neighborhood. Mr. Clyde pointed out that most of the screening for Building #3 is provided by the trees across the ski run. Mr. Hier clarified that he would like a sharper image and requested the same from the American Flag viewpoint. He expressed that at this point he is unsure if the project should be remanded to the Planning Commission or whether Council should make a final determination. He suggested taking more time to consider tonight's public input as well as the materials submitted and recommended a continuance. Both legal counsel for the appellant and the applicant indicated their preference for a November date.

Mark Harrington advised the public that the Council must avoid ex parte communications on the appeal, including emails. All members should hear the same thing at the same time. He encouraged submitting additional information to the Planning Department so it can be included in the meeting packet. Do not contact the Council directly.

Mayor Williams acknowledged that massing is also one of his concerns. Doug Clyde noted that there are other similar buildings in Deer Valley built and allowed under the same Code and Mr. Hier argued that most of them are not adjacent to residential uses like North Silver Lake and most are not visible from the Old Town or SR224 vantage points. Ms. Simpson expressed concerns about visibility, compatibility, building mass and orientation adding however, that the project is going in the right direction.

Liza Simpson, "I move we continue the North Silver Lake appeal to November 12 and reopen the public hearing (input)". Roger Harlan. Motion unanimously carried.

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

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 3:30 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; and Mark Harrington, City Attorney. Roger Harlan, "I move to close the meeting to discuss property and litigation". Jim Hier seconded. Motion carried unanimously. The meeting opened at approximately 5:15 p.m. Roger Harlan "I move to open the meeting". Liza Simpson seconded. Motion unanimously carried.

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, City Recorder

