PARK CITY COUNCIL WORK SESSION MINUTES
SUMMIT COUNTY, UTAH
SEPTEMBER 27, 2012

Present: **Mayor Dana Williams; Council members Andy Beerman; Alex Butwinski; Cindy Matsumoto; Dick Peek; and Liza Simpson**

Diane Foster, Interim City Manager; Mark Harrington, City Attorney; Pace Erickson, Operations Manager; Kent Cashel, Transportation Manager; Matt Cassel, City Engineer; Ken Fisher, Recreation Manager; and Craig Sanchez, Director of Golf

1. **Council questions/comments.** Andy Beerman congratulated Council and staff on the extension of the Lower Park Avenue RDA. He attended a Wasatch Canyon stakeholder meeting hosted by Salt Lake County and the Tourism Summit on mountain transportation. Mr. Beerman also attended the Planning Commission meeting where the proposed LMC amendments and Richards Annexation were discussed. He reported that Habitat for Humanity received platinum LEED certification on its Marsac Avenue project.

Cindy Matsumoto reported on the Library Board meeting. The state has designated Park City quality library status again and has awarded $15,000 for the digital media lab. The Annual Library Luncheon is scheduled Tuesday, October 16. She shared Chamber Board business with members and noted that the poor condition of Main Street was brought up, including stickers on the street and signs and unattractive trash cans. Pace Erickson explained that the trash cans are from the Olympics and showing age and will be replaced. The street and signs can be pressure-washed to remove the stickers but within three days, the stickers are back. It is a continual problem. He explained that power washes are done twice a year. Diane Foster stated that staff will return to Council in a work session or in a manager's report. Ms. Matsumoto stated that she has been receiving a number of emails about the proposed Kimball Art Center expansion; other members noted that they have as well. She understood that the Planning Commission is deciding if it should become a MPD area and Ms. Foster felt the question is whether a MPD is allowed in this zone.

Dick Peek indicated that Habitat for Humanity received a good review report from its accountants. The Marsachome received LEED platinum status and four candidates are being considered as owners of the Marsac home currently under construction. The Overall Ball fund-raiser will be held on October 13 at The Yard."

Alex Butwinski agreed that the trash cans should be replaced. The HPCA is formulating position papers on its concerns for the City. He relayed his good wishes to Pace Erickson who is retiring.

Mayor Williams reported that the SBWRD is working with PC Heights on refunds. He had breakfast with David Ure to discuss joint planning and suggested that a meeting with the City and County be scheduled after the election. He encouraged members to be proactive in communicating with County Council members.

Mayor Williams stated that Pace Erickson exemplifies what is *good* about Park City Municipal Corporation. He spoke about Mr. Erickson's unique abilities and on behalf of the City Council and presented him with a framed print of the McPolin Farm.

Staff communications:

Transportation Steering Committee - Kent Cashel stated that he received a request from UTA for an elected official to serve on a transportation steering committee. He explained that Mr. Beerman represented the City on the Mountain Transportation Study and one of the major findings from that study was that the current transportation mode is inefficient and impactful. The canyons and wildlife should be protected and the resorts should prosper. The next step is taking that information and integrating it into an environmental project which could be federally funded. He explained that the steering committee will be making recommendations on modes of transportation and may meet for up to two years. It is anticipated that the committee will meet monthly and will be charged with assigning projects, determining goals, establishing subcommittees, setting the schedule and milestones for the project, and securing funding for an ultimate project. Mr. Cashel felt that Park City will likely be a terminus and there is an opportunity to shape this element.

The Mayor recommended Andy Beerman who voiced his interest in serving on the committee. Liza Simpson volunteered to be an alternate and all members supported the appoinments.

Dana Williams further asked that the Council examine natural gas buses and biofuels and Mr. Cashel noted that the fleet is coming into a replacement cycle which would be a good time to look at options. Andy Beerman expressed interest in considering smaller vehicles and Kent Cashel agreed that this issue can also be addressed.

Empire Canyon reconstruction project – Matt Cassel reported that Empire Avenue will not be completed this year and the City is working with the contractor to get the project at a good point to resume next spring. Everything is in except for the water line between 9th Street to Manor Way. The roadway will be surfaced and landscaping and driveway issues still need to be worked out. A neighborhood meeting is planned on October 9. Mr. Beerman asked if the project could be completed if the weather stays nice and Mr. Cassel felt it is better to end the project for the year at a good phase. Liquidated damages total $1,000 a day.

Memorial Wall Project – Ken Fisher explained that this project is ready to go out to bid. RAB approved the design and Council has been updated on the project through a manager's report. Members were supportive of the project moving forward.

3. Engagement survey. Because of time limitations, Craig Sanchez did not give a presentation but referred to his staff report and asked if there were questions. Mr. Butwinski suggested that the 2005 benchmarks be updated. Mr. Sanchez emphasized that the numbers were really solid this year; there were 305 respondents. Every department and/or team member are contacted to encourage distribution. Andy Beerman asked if there is retention data and how Park City compares to other cities. Mr. Sanchez stated that he will follow-up. In response to a question from Liza Simpson about participation from employees without computers, Craig Sanchez stated that it is pretty good. Public Works has a computer in the break room, for instance and the response was excellent.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
SEPTEMBER 27, 2012

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, September 27, 2012. Members in attendance were Dana Williams, Andy Beerman, Alex Butwinski, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Diane Foster, Interim City Manager; Mark Harrington, City Attorney; Kirsten Whetstone, Planner; and Mat Evans, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Liza Simpson encouraged the public to see the Scarecrow Festival at the McPolin Farm.

Dick Peek disclosed that he worked with the previous owners of 429 Woodside Avenue and recused himself when the item came up before the Planning Commission and he is working with an attorney in the Tesch Law Office on an issue that is unrelated to this land use application.

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

None.

IV MINUTES OF MEETINGS OF AUGUST 23, 2012 AND SEPTEMBER 13, 2012

Alex Butwinski stated that he relayed a minor correction on the August 23rd minutes to the City Recorder. Alex Butwinski, "I move we approve the minutes of the meetings of August 23rd and September 13th, as corrected". Liza Simpson stated that she will abstain from voting on the minutes of September 13th. Cindy Matsumoto seconded. Motion carried.

	08/23	09/13
Andy Beerman	Aye	Aye
Alex Butwinski	Aye	Aye
Cindy Matsumoto	Aye	Aye
Dick Peek	Aye	Aye
Liza Simpson	Aye	Abstention

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

1. Consideration of a construction contract for the Silver Quinn Pathway Paving Project Contract with Morgan Asphalt in the amount of $200,849, in a form approved by the City Attorney - and

2. Consideration of a Resolution amending and replacing Resolution No. 20-07, adopting Affordable Housing Guidelines and Standards for Park City, Utah – Liza Simpson, "I move we approve the Consent Agenda". Andy Beerman seconded. Motion unanimously carried.

VI OLD BUSINESS

Consideration of the Ridge Outlook Subdivision, located approximately at 200 Ridge Avenue, Park City, Utah – The Mayor opened the public hearing and with no comments from the audience requested a motion to continue to October 4, 2012. Cindy Matsumoto, "I so move". Dick Peek seconded. Motion unanimously carried.

VII NEW BUSINESS

1, Consideration of a Real Estate Purchase Contract with Green Park Co-Housing LLC for the purchase of 1450 and 1460 Park Avenue in the amount of $400,000, in a form approved by the City Attorney – The Mayor opened the public hearing; there was no input. He requested a motion to continue to October 4, 2012. Alex Butwinski, "I so move". Cindy Matsumoto seconded. Motion unanimously carried.

2. Consideration of an Ordinance approving a plat extension for 333 Main Street, Park City, Utah - Planner Kirsten Whetstone explained that the request is to extend an approval of a condominium plat, which was approved on August 11, 2011. Due to ownership issues, the plat was not recorded within one year and the Code requires City Council approval to extend the approval. This property is the Main Street Mall and the condominium space is not residential. The extension requested is August 7, 2013. Discussion ensued on the property sale not yet closing. Mark Harrington explained that the Planning Department has an acknowledgment of sufficient interest statement on file which will be verified before signing the Ordinance. The Mayor opened the public hearing; there was no comment.

Dick Peek, "I move we extend the 333 Main Street Condominium Plat based on the findings of fact, conclusions of law, and conditions of approval as stated in the draft Ordinance". Liza Simpson seconded. Motion unanimously carried.

3. Consideration of an Ordinance approving a plat amendment for 429 Woodside Avenue, Park City, Utah – Kirsten Whetstone explained that the plat amendment proposes to combine an adjacent metes and bounds remnant parcel located behind 429 Woodside Avenue and 429 Woodside which is located on Lot B of the Elder Park Subdivision. The combination would result in one lot of record for an existing single

family house that is a significant historic structure and is currently under construction for an addition. The remnant parcel is zoned HR-1 and is surrounded by the Sweeney Master Plan open space. There is a limited amount of development that can occur on this 6,853 square foot parcel and the owner has stipulated to that condition. The Planning Commission reviewed this application at three meetings and a couple of conditions were added. If an additional structure is proposed that exceeds 660 square feet of floor area then a steep slope conditional use permit is required. Typically, it's 1,000 square feet or more of floor area. The plat itself limits the footprint to 660 square feet. Combining the new lot would have allowed more than 2,000 additional square feet of footprint but the plat itself restricts the addition to 270 square feet for the existing house. If the 270 square feet is not used for the house it goes away and is not allowed to be added to an accessory structure. The building in the back is limited to an 880 square foot building area and a 660 square foot footprint. She understood the applicant will seek a conditional use permit.

She suggested a wording change to Finding No. 16, "Any future construction that is greater than 1,000 square feet in floor area requires a conditional use permit" to read "*In the HR-1 Zone, construction of more than 1,000 square feet of floor area on a slope of 30% or greater requires a conditional use permit with review by the Planning Commission".* The Planning Commission forwarded an unanimous positive recommendation. Ms. Simpson asked why the Planning Commission meeting minutes were not included; Ms. Whetstone explained that they were not approved yet. The Mayor opened the public hearing.

Attorney Joe Tesch complimented the planning staff and Planning Commission for tightening down the project. Under the current formula, 1,200 square feet would have been allowed but as a public benefit, his client agreed to reduce it to 170. Ms. Whetstone discussed the owner allowing access to an adjacent owner on a portion of his property. Mr. Tesch believes this represents providing two Old Town open space lots.

Dick Peek, "<u>I move we approve the 429 Woodside plat amendment as shown in Exhibit A, based on the findings of fact, conclusions of law, and conditions of approval with the amendment the Finding of Fact No. 16, as amended by Kirsten</u>". Alex Butwinski seconded. <u>Motion unanimously carried</u>.

4. <u>Consideration of an Ordinance approving a plat amendment for 811 Norfolk Avenue, Park City, Utah</u> – Cindy Matsumoto stated that she is recusing herself from the next two items because of a conflict of interest and left the meeting.

Planner Mat Evans explained that the proposal is to combine one and a half lots into one lot. He referred to an email distributed to the City Council which was omitted from the staff report. The property has an existing landmark home which encroaches onto the adjacent property. The house received approval through Historic District Design Review to move the structure six and a half feet and the applicant is openly requesting an addition to the rear of the existing landmark structure. Mr. Evans pointed out that this is a double-frontage lot onto Norfolk Avenue and Crescent Tram. The new addition will have access from Crescent Tram. He stated that the Planning Commission voted 2:1 on September 12, 2012 to forward a positive recommendation to the City Council according to the findings of fact, conclusions of law and conditions of approval. The proposal creates a 3,700 square foot lot; it meets the minimum lot size which is 1,875 square feet. The HDDR anticipates an addition to the home which is below the minimum footprint. The maximum footprint allowed is 1,270 square feet and the applicant is proposing 1,258 square feet for the addition.

Dana Williams asked if the Planning Commission addressed the email from Mary Whitesides and Mr. Evans explained that members took it under consideration but didn't discuss it.

Attorney Mark Kozak explained that lot combinations are provided for by state law if there is good cause. Good cause is not defined in state law but defined in the Land Management Code. He feels they satisfy a couple of the criteria for good cause as it resolves existing issues and non-conformities, promotes sustainable design, utilizes best plan design and practices, and preserves the character of the neighborhood. He understands that there are a lot of people dissatisfied with Mr. Love's request which is contrary to fact. The Historic Planning Board has addressed this issue and its members are the City's historic experts. They made an expressed finding that what Mr. Love has proposed is consistent with good historic planning criteria and practices.

Mr. Kozak emphasized that this application is not before Council today. There seem to be a lot of people trying to mix up these two application processes and decide on one based on feelings about the other one. The other one has concluded. The historic experts said, we like it. The good cause criteria speak to those historic values and it is their belief that they have superior historic design and that the record agrees with that. He stated that there was opposition in that process. Ms. Whitesides participated in the other proceeding but did not disclose that her principle interest was in her non-existing view shed easement she was seeking to protect. He applauds her candor but this is irrelevant because there is no such thing as an implied view shed easement in the state of Utah. It is either expressly given by a neighbor, or it is not. He stated that Ms. Whitesides enjoys no such view shed easement.

Attorney Kozak referred to the Planning Commission meeting. Ms. Whitesides' letter was presented to the Commission but they never received a copy. That is not proper due process and the law recognizes our due process rights. He acknowledged that there was no ascertainable injury resulting from this but it is bad practice and he hoped that the City would address this in the future.

Two of the Planning Commission members were also quite candid with their comments and they object to what was said and the values and bias the comments represent. The first was Commissioner Strachan. The Mayor interrupted Mr. Kozak, asking if this is germane to the plat amendment action. Mr. Kozak stated yes, this is the Planning Commission's recommendation to the Council. Dick Peek interjected that the Planning Commission forwarded a positive recommendation. Mr. Kozak acknowledged a positive vote from Commissioner Strachan and Jack Thomas but when Mr. Strachan voted he announced he was regrettably approving it because he looked as hard and long as he could and couldn't find any way to vote against it. That was the extent of his comments and Mr. Kozak stated that he is unsettled as a taxpayer and a representative of Mr. Love that that is the greeting they get on something as simple as a lot combination.

Attorney Kozak alleged that Ms. Hontz chose to vote on the HDDR application and stated she will vote no because she opposes moving the house. Mr. Love pointed out that that application is not before her and her response was*, that was not what I meant*, and then proceeded to vote against us without any reasoning or explanation. Mr. Kozak stated that he wants this on the record because this is the one and only opportunity to voice that objection.

He stated that the Planning Commission, Historic Preservation Board, and Board of Adjustment have no adopted rules on procedures, or no adopted rules of evidence. This concerns him because that absence creates situations like this. Those comments by Commissioners were made after the applicant's presentation and there is no rule on interrupting and correcting the malfeasance. With respect to Ms. Whitesides' letter, she wasn't even there and he asked what weight should it be given? These proceedings are not governed by procedural or evidentiary rules and having something in place would benefit everyone.

Mr. Kozak felt there is an estoppel issue here. Opposition to this plat amendment, based on feelings about what happened in the HDDR proceeding should not be allowed. They received an approval by the HDDR and if anyone wants to address historic issues, that is the forum and it is improper to bring them to Council. The Historic Preservation Board has acted and for Council to contradict the decision speaks to the doctrine of estoppel. Mark Harrington explained that the Council is required to accept the HDDR decision, as approved.

Mr. Kozak stated that it has come to his attention that as Mr. Love attends these meetings that the police have been in attendance. He alleged that he has been at meetings where he had to calm people down in dealing with this case but it has been people losing their tempers with Mr. Love and not the other way around. He hoped there is not a sense to discredit Mr. Love by characterizing him as so unhinged that police protection is needed. Jeff Love stated that an officer was at the Board of Adjustment meeting and Polly McLean called an officer into the Planning Commission meeting two weeks ago because he made public comment. Mr. Kozak recalled that the same thing was done with respect to Kevin King and it concerns him that people who have genuine disputes with the City are being characterized as unstable or unsafe. This is not a good thing for any of us.

Jeff Love explained that the application process started on May 19, 2010 with the HDDR and hopefully tonight concludes the approval process. Judge Kelly, Third District Court, on July 20, 2012 signed the Order in his favor reinstating the Historic Preservation Board's decision. This is where the process changed for him. Since July 20, he has reached out to the Mayor and the City Council twice and has asked that his application process be independently reviewed and investigated because he believes misconduct occurred. His request has been denied twice. His second request was made at the encouragement of Mayor Williams.

Mr. Love stated that if the process is independently investigated, he will waive his right to sue the City and the Mayor asked him to put it in writing. This was done but he never received a response from the City and on August 25, 2012 the Mayor felt comfortable enough to read a response from his iPad to his August 14 request. The letter was never sent to them and the one item that really stuck in his mind was the City Council was going to again deny his request to have this independently investigated because he had failed his burden of proof to show that any misconduct had occurred. He stated that he has never been given the opportunity to convey the issues he has and asked how has he failed his burden of proof when he was never given the chance. On July 20, after Judge Kelly ruled, the Mayor was nice enough to make time for him at City Hall with Attorney Mark Harrington for an hour and 45 minutes and he conveyed his issues and showed evidence that misconduct occurred. After that meeting, Mr. Love stated that the Mayor relayed his support to conduct an independent investigation. If he directly conveys his concerns and the Mayor supports an investigation, he feels he has met his burden of proof.

Mayor Williams felt there is a nuance here. He stated that he supported the idea of bringing it to the City Council but he does not have the authority to make the decision. Mr. Love stated that Mayor Williams is the only person on Council that he has had the opportunity to convey all of the issues he has. He reiterated that the Mayor supports this being investigated. The only other person present at that meeting is Attorney Harrington. Mr. Love felt that Mr. Harrington conveyed his information to the City Council and the problem is that he is one of the individuals that he is accusing of misconduct. If that is the case, there is a conflict of interest.

Jeff Love commented that since July 20, they have gone to two other boards and commissions. The first one was approximately 45 days ago and it was back to the Historic Preservation Board. The purpose of the meeting was to correct the minutes from the original meeting because the minutes were mis-transcribed. The transcript showed that the motion from that meeting had been mis-transcribed and unfortunately it was a rather large mistake. Prior to that meeting, he asked planning what the deadline was to submit his information to the packet to support this change. He was told Thursday at 5 p.m. and Mark Kozak supplied five pages of information. When he checked the packet on Monday morning, their submittal to the packet was not included. The Legal Department had decided not to include it. He stated that he does not appreciate his attorney's time and his information being censored from a meeting.

When they went to the meeting, they were not allowed to make comment on the approval of the minutes. He was allowed to make public comment during public input and he had several questions for staff which they refused to answer. He alleged that Ms. McLean advised staff not to answer his questions, which he finds inappropriate.

Mr. Love explained that they went to the Planning Commission two weeks ago for review of his plat amendment application. He had specific questions about the staff report and again staff refused to answer his questions. The first time that he made a request to Council to have an independent review, he did receive a response from the City but the last paragraph says, *While we recognize that you disagree with the outcomes of various land use decisions, you have raised no evidence of actual misconduct, corruption or discrimination. Most, if not all of the issues you raised, could have been addressed in the course of public administrative application processes or subsequent litigation which are now all final*. Jeff Love emphasized that he has a number of questions that he would like answered and asked if he could ask them tonight. If not, when and where can he get answers.

Mayor Williams stated that the plat amendment is on the agenda and this discussion is way off topic. Mark Harrington clarified that his questions deal with how other applications were handled. Mr. Love expressed that he keeps on being told that this is not the right forum for these questions and asked where is the right forum. Mr. Harrington advised that if he is in disagreement with those administrative decisions, they should have been addressed at the time. He felt that Mr. Love is the only one raising them and not in the context by which the body is about to make a decision so he doesn't understand how it is relevant in the decision before this body.

Mr. Love stated that he thinks his questions are relevant but nobody wants to know the truth. Nobody cares to find out what the truth is. That's the bottom line. Mayor Williams acknowledged that he and Mr. Love have talked about this a lot but this is not what is in front of Council or the venue to decide that. Mayor Williams stated that he is never going to apologize for what somebody thinks. People serving on boards are human and Mr. Strachan's job, for instance, is to interpret the Land Management Code and he did. This is not germane to the business in front of Council but he asked about the right forum.

Mark Harrington explained that a hearing would be up to the manager or the Council, depending upon the alleged misconduct. Mr. Love has other avenues legally available to him under the Municipal Code or State Code and can pursue those to his full rights. The City has offered to have an independent review and after agreeing to a meeting where he would look at some material, Mr. Love decided not to have the City Attorney look at the material. Mr. Harrington stated that he is as confused as Mr. Love.

Jeff Love stated that this is really simple. From the very beginning, he wanted to be independently investigated. Throughout the course of the last 29 months, with the exception of the Historic Preservation Board, every time he has gone in front of a board, commission, or departments, he has always received opposition. Every time. It is interesting that over the course of the last 29 months, there have been two occasions where he has been able to get an outside third party independent review of this and that was the Utah Property Rights Ombudsman and Third District Court. Both of those times, the decisions were favorable to him. It is odd that both times he is able to get this issue outside of the control of the City, the decisions are favorable to him. Within the City's purview, there is always opposition. *Doesn't that strike you as a little odd?*

Diane Foster explained that since there are allegations against the City Attorney, she is working with Deputy Attorney Tom Daley on this matter. The City is following state law and they will be receiving a response within the appropriate time frame. Mr. Foster understood Mr. Love has a question relevant to the application and she urged him to ask it.

Mr. Love referred to the analysis section of the staff report and read the sentence, *If a historic structure exists across a property line, either an encroachment agreement must be recorded or the historic home must be relocated to remove the encroachment*. He felt this has been the crux of the whole last two and a half years. He emphasized that this language appears in the old staff reports written by Katie Cattan She writes in her report that two options to resolve the issue exist, one is within the control of the City, and one is not within the control of the City. If the adjacent property owner will not grant an encroachment agreement, then there is only one way to resolve this issue which is relocating the historic structure. He is confused that he spent the last two years and a lot of money going through the process and eventually having to sue the City to be allowed to move the house. He estimated that the City, over the course of the last two and a half years has probably spent upwards of $100,000 of man hours fighting him to prevent him from moving the house. Mr. Love reiterated that he is confused why this staff report says that you must move the house when in fact, he had to sue the City to get the right to move the house and enforce what was said in the staff report. He doesn't understand the contradiction and asked that it be explained to him.

Mark Harrington admitted that he did not write the sentence either and it may be over-simplifying the Planning Department's position. Mr. Love interrupted, noting that the Building Department cannot issue a building permit over an existing property line. Mr. Harrington stated that the third scenario is the Planning Department's determination of a non-conforming use. What is missing from the sentence is that you are expanding or doing something that requires a building permit. If you are not doing that, you don't have to move it.

Jeff Love disagreed. He stated that he cannot renovate the existing house as it sits now and it is not habitable. Mark Harrington emphasized that the Planning Department could approve the maintenance to an existing structure in the existing location without a building permit. Mr. Love did not agree since the house is inhabitable. Mr. Harrington explained that the non-conforming section of the Code provides the Planning Department that ability but Mr. Love's application is to move the house.

With no further comments or questions, Dick Peek, "I move we approve the 811 Norfolk Avenue plat amendment and approve the same based on the findings of fact, conclusions of law, and conditions of approval as found in the Ordinance". Liza Simpson seconded. Motion unanimously carried.

5. Consideration of an Ordinance approving a plat amendment for 817 Norfolk Avenue, Park City, Utah – Mat Evans explained that the application requests combining an Old Town lot with a portion of another lot resulting in one buildable lot. The applicant has an existing garage which is a landmark structure. It has been deemed a dangerous building and will have to be rebuilt and made a part of the HDDR process. It is proposed to construct a new home on the combined lot which is 2,340 square feet. Minimum lot size is 1,875 square feet and meets the criteria for a lot in the HR-1 Zone. The Planning Commission reviewed the application, took public comment and voted 2:1 to forward a positive recommendation based on the findings of fact, conclusions of law, and the conditions of approval.

Attorney Mark Kozak stated that he represents Rod Ludlow, the owner of 817 Norfolk. In this case, the plat amendment is preceding the HDDR and has an existing encroaching structure which this plat amendment cures. He asked that his comments on the 811 Norfolk plat amendment be referred to for this application. The Mayor opened the public hearing; there were no comments and the public hearing was closed.

Andy Beerman understood that the garage would be reconstructed but not enlarged. Mr. Evans agreed and added that since it is a historic structure, it would not count against the footprint of the single family dwelling. Mr. Beerman asked if its status would be maintained and Mr. Evans stated that if reconstructed properly, it would retain its status. Mr. Peek understood that 811 Norfolk would need to be moved off this property before plat recordation or an encroachment agreement executed. When the garage is rebuilt, he asked if it can remain in the City's right-of-way. Mat Evans relayed that he is not sure the application for the HDDR contemplated moving the garage back out of the encroachment. Jeff Love explained that the garage encroaches in the City's right-of-way approximately 12 to 14 inches on the eastern side. Mr. Ludlow's design application is based on the encroachment continuing to exist so the garage is in the same location. Mark Harrington explained that this is different than 811 and the garage encroachment can continue by virtue of historic right or an encroachment permit with the City which can be worked out during the building permit process and the final approval. The Mayor mentioned that if the City doesn't give him an encroachment permit, he will have to move the garage. Mark Harrington emphasized that the right-of-way is not a lot and the right to reconstruct the historic structure does not need to be included in the conditions of approval.

Andy Beerman, "I move we approve the 817 Norfolk Avenue plat amendment according to the findings of fact, conclusions of law, and conditions of approval as outlined in the Ordinance". Dick Peek seconded. Motion unanimously carried, The Mayor acknowledged that at some point, a remedy should be reached because this is not going away. Dick Peek interjected that if it is properly noticed and placed on an agenda, then he would be happy to discuss it. Mr. Harrington advised that the Council has a number of opportunities within its control. Performance issues are encouraged to be addressed by the City Manager. Formal complaints about other issues are handled by the Legal Department, but the applicant felt he should not be involved and the complainants took advantage of another avenue and filed a complaint under a different ordinance which has a different scope.

Mayor Williams wants to make sure that the Council members have enough information and members supported meeting on this matter which may be held in closed session. Closed is not required but depends upon review of pending litigation and an outside attorney can make that decision. In response to a question from Alex Butwinski about what is pending, Mr. Harrington explained that the City has a complaint filed under the Housing Discrimination Ordinance which is pending and the other correspondence received from Mr. Love. Ms. Simpson asked who is conducting the investigation. Diane Foster stated that she is working with Tom Daley on the issue and will provide an update to Council. Ms. Simpson did not consider Mr. Daley as *outside* counsel. Ms. Foster further clarified that Mr. Kozak has been informed that the City will be providing a response on October 4, 2012 and is proceeding in accordance with state law on this issue.

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 3:45 p.m. Members in attendance were Mayor Dana Williams, Andy Beerman, Alex Butwinski, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Diane Foster, Interim City Manager; Jonathan Weidenhamer, Economic Development Manager; Bret Howser, Special Projects Manager; Brooke Moss, Human Resources Manager; and Mark Harrington, City Attorney. Andy Beerman, "I move to close the meeting to discuss personnel, litigation, and property ". Liza Simpson seconded. Motion carried unanimously. The meeting opened at approximately 5:20 p.m. Alex Butwinski, "I move to open the meeting". Cindy Matsumoto 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

Janet M. Scott, City Recorder