

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
AUGUST 31, 1995**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, August 31, 1995.

AGENDA

Work Session

- 3:15 p.m. Council questions and comments
Review of regular meeting
- 3:35 p.m. Plat amendment questions/comments
- 3:55 p.m. Frandsen subdivision and vacation of right-of-way
- 4:45 p.m. Sexually oriented businesses ordinance
- 5:00 p.m. Council compensation
- 5:30 p.m. Other meeting questions/comments

Regular Meeting

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

1. Council integrity/demand for City Attorney resignation/conflict of interest
2. Conflict of interest

III MINUTES OF MEETING OF AUGUST 24, 1995

IV PUBLIC HEARING

1. Ordinance approving an amendment to the amended Park City Survey, Lots 8, 9 and 10, Block 24 located at 540 Main Street, Park City, Utah
2. Ordinance approving amendments to Lot 6 Willow Ranch Subdivision and Lot 10 McLeod Creek Subdivision located at 2647 Meadow Creek Drive, Park City, Utah
3. Ordinance amending the final plat of Hidden Meadows located at Solamere Drive, Park City, Utah

4. Ordinance approving the Frandsen Subdivision; being a replat of a portion of Lot 8 and Lots 9, 10, 11 and 12, Block 21; and a portion of Lots 7 and 8, Block 22 of the Snyder's Addition of the Park City Survey; and including a parcel known as SA-222, located at 1445 Woodside Avenue; and including the Woodside right-of-way located adjacent to these parcels from 1437 to 1439 Woodside Avenue
5. Ordinance amending Chapter 9, Title 4, Licensing, of the Municipal Code of Park City, Utah to regulate sexually oriented businesses

V CONSENT AGENDA

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2. Ordinance approving amendments to Lot 6 Willow Ranch Subdivision and Lot 10 McLeod Creek Subdivision located at 2647 Meadow Creek Drive, Park City, Utah
3. Ordinance amending the final plat of Hidden Meadows located at Solamere Drive, Park City, Utah
4. Resolution waiving building, planning and development impact fees by the City Council of Park City, Utah for the construction of school facilities in Park City, Utah in the estimated amount of \$389,375
5. Authorization to staff to enter into contract with Chance Coach for the purchase of a compressed natural gas trolley in an amount not to exceed \$280,000
6. Authorization to staff to enter into contract with Kendall & Sons Roofing for roofing of the Racquet Club in an amount not to exceed \$83,780

VI NEW BUSINESS

1. Ordinance amending Chapter 2 and Section 15.1 of the Land Management Code to create a new lot line adjustment process
2. Ordinance increasing the elected and appointed officials' compensation and adopting travel and meeting expense guidelines
3. Ordinance approving the Frandsen Subdivision; being a replat of a portion of Lot 8 and Lots 9, 10, 11 and 12, Block 21; and a portion of Lots 7 and 8, Block 22 of the Snyder's Addition of the Park City Survey; and including a parcel known as SA-222, located at 1445 Woodside Avenue; and including the Woodside right-of-way located adjacent to these parcels from 1437 to 1439 Woodside Avenue

VII COMMUNICATIONS FROM COUNCIL AND STAFF

VIII ADJOURNMENT

Posted: 8/28/95

Note: It should be noted that the entries under Public Input occurred during the meeting; they appear here on the agenda for reference purposes.

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
AUGUST 31, 1995**

I ROLL CALL

Mayor Brad Olch called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, August 31, 1995. Members in attendance were Brad Olch, Ruth Gezelius, Roger Harlan, Lou Hudson, Shauna Kerr, and Leslie Miller. Staff present were Toby Ross, City Manager; Pat Putt, Planning and Zoning Administrator; Kirsten Whetstone, Planner; Meg Ryan, Planner; Eric DeHaan, City Engineer; Mark Harrington, Assistant City Attorney; and Jodi Hoffman, City Attorney.

II PUBLIC INPUT

The Mayor invited the public to comment on any matter of City business not scheduled on the agenda.

1. Council integrity/resignation of City Attorney - Chris Smart, resident, stated that he has concerns about the Frandsen proposal but not directly related to the application. He emphasized that no matter what he has to say, the City Council is not capable of listening to him or taking new input. He felt that this City Council is recalcitrant and not willing to take new information from private citizens who are not in the City's employ. He found the Planning Commission to be interested in new information from citizens and felt that at least this part of government worked. Mr. Smart wished that the City Council had the professionalism and open-mindedness that the appointed Planning Commission has, because as a citizen he receives more respect from them than he does from the Council. Mr. Smart stated that he gets a bad feeling dealing with the City Council and its staff and noted that dissent is the center of democracy. He stressed that the Council's staff does not like dissent and this elected body, for the most part, is a rubber stamp for its own staff. There are some notable exceptions, one of which was the Main Street flowers. Mr. Smart alleged that the Council meets twice a month and asked how the Council expects to govern by showing up only twice a month. In the early 1980s when Mr. Smart was a reporter for the *Park Record*, the Council met four times a month whether or not they had to vote. He asked what has happened to Council's own agenda of priorities and how much of it has been acted upon, indicated that it is in the bottom of the City Manager's desk and Council has forgotten about it because he's the one that sets the agenda not the Council. Mr. Smart commented that staff tells the Council how to vote. This is not governance but acquiescence. He felt that staff does everything it can to stifle dissent and it is his assertion that the conflict of interest allegation brought forth by the City Attorney is nothing more than an attempt to stifle dissent and it is his assertion that if the City Attorney can't cite the code that shows a direct conflict of interest which under Utah law is a financial conflict, then the City Council will have to agree that this is nothing more than an attempt to gag Leslie Miller and stifle dissent so that the staff can clear off this nasty Frandsen matter and move on to something more important.

Mr. Smart continued that if there is a conflict of interest here, let's cite the code and the case law. If the City Attorney can't cite the code and the case law, then it is going to appear to be a deliberate act by the City Attorney to interrupt the First Amendment rights of Leslie Miller and interrupt her sworn duty to the taxpayers to vote on this matter. He did not feel that there is case law to defend this. If it is true that the City Attorney deliberately misrepresented the law to keep her own client from speaking and voting, he didn't know how the Council could trust Ms. Hoffman. He pointed out that next time it could be another Councilmember. Mr. Smart stated that if this City Attorney has deliberately misrepresented the law in order to gag her own client, then the Council must dismiss her forthwith and that's for starters. He continued that the Council should also file a bar complaint. This is the most serious allegation that Mr. Smart could make against the City Attorney and he stated that he does not do it lightly. He asked Council to cite the case law and the code and to tell him that there was not a deliberate attempt to keep this individual from talking and voting on this matter, because it is in writing. It is up to the City Council to act. This is not fair government and it is time for the Council to take back the government. If the Council doesn't ask for the resignation of the City Attorney, it will catch up everyone because she is freelancing with the law. He accused Ms. Hoffman of opening the Council's mail and disposing of correspondence she doesn't want the Council to read. He stated that the City Attorney works in private unilaterally to undo agreements made by the previous city council. Mr. Smart stated that there is a growing feeling in the community that this staff is out-of-control and the Council's is rubber stamping its agenda. He suggested that the Council demand the resignation of City Attorney Jodi Hoffman and that Council bring in a management consultant immediately. Mr. Smart stated that as a body, the Council is dysfunctional and the staff is not operating in good faith.

2. Conflict of interest - Ray Johnson, former Councilmember, stated that during his City Council office he was employed by the Greater Park City Company and many times he did not vote and recused himself whenever there was related business. Under a careful reading of the law, he did not have to do that because he only held 8% of the stock, not 10%. He asked Ms. Miller to also take the high road and not vote on the Frandsen issue in order to give the rest of the Council an opportunity to vote "no".

III MINUTES OF MEETING OF AUGUST 24, 1995

Ruth Gezelius, "I move approval of the Minutes of the meeting of August 24, 1995 as presented". Lou Hudson seconded. Motion carried unanimously.

IV PUBLIC HEARING

1. Ordinance approving an amendment to the amended Park City Survey, Lots 8, 9 and 10, Block 24 located at 540 Main Street, Park City, Utah - Pat Putt, Planning and Zoning Administrator, explained that this application is for a lot line plat amendment for eight lots combining them into one lot. This application was prompted by the April 1995 approval of an eight

foot addition on the Masonic Building which will remove common interior lot lines and also memorialize pedestrian easements and sidewalk right-of-way deeded over the last several years. This complies with the Land Management Code and has been duly noticed and advertised. This plat amendment will resolve the 18" encroachment of the Elks Building on the property by adjusting the lot lines. Approval is recommended; see attached staff report. For the benefit of Robert Jarvis who represented the Elks, Mr. Putt explained the encroachment.

With no further questions or comments from the Council or public, the public hearing was closed.

2. Ordinance approving amendments to Lot 6 Willow Ranch Subdivision and Lot 10 McLeod Creek Subdivision located at 2647 Meadow Creek Drive, Park City, Utah - Planner Kirsten Whetstone explained that the proposed ordinance would amend two subdivision plats with the intent to create one lot in McLeod Creek to accommodate an addition to the existing house which would conform with setbacks. The house size is compatible with surrounding residences and Ms. Whetstone relayed that she has spoken to the home owners association and adjacent neighbors and did not believe that there are any outstanding concerns.

With no questions from the Council or the public, the public hearing was closed.

3. Ordinance amending the final plat of Hidden Meadows located at Solamere Drive, Park City, Utah - Meg Ryan explained that the request before Council is a boundary revision and an amendment to the Hidden Meadows final plat approved earlier this year. The boundary revision deletes approximately 4.9 acres of open space from ROS Parcel 4 and moves that to Phase 2. This was a request from the applicant due to a title dispute. Approval is recommended with the conditions outlined in the staff report. For the benefit of Roger Harlan, Ms. Ryan described the open space areas.

With no further comments or questions from the Council or the public, the public hearing was closed.

4. Ordinance approving the Frandsen Subdivision; being a replat of a portion of Lot 8 and Lots 9, 10, 11 and 12, Block 21; and a portion of Lots 7 and 8, Block 22 of the Snyder's Addition of the Park City Survey; and including a parcel known as SA-222, located at 1445 Woodside Avenue; and including the Woodside right-of-way located adjacent to these parcels from 1437 to 1439 Woodside Avenue - Ruth Gezelius disclosed that she will not be voting on this issue; she has no conflict of interest to her knowledge in connection with this applicant, but has had a relationship wherein she was an employee, without any financial interest, for a business known as Park City Kis, which was owned by Howard E. Wallack who rented space from Mr. Frandsen at 421 Main Street from 1986 to 1993. She continued that she has never had any personal or legal contractual arrangements nor has she ever had litigation with Mr. Frandsen, but based on this remote

connection and the apparent conflict of interest issue, stated that she will not participate in the public hearing or in voting. Ms. Gezelius clarified that she participated in the work session on planning related issues that she didn't feel were discussed at the Planning Commission.

Planner Kirsten Whetstone, through illustration of slides, described the current configuration of the lots and the area of right-of-way relating to the proposal. The ordinance would create a three-lot subdivision and lots would have access from Woodside Avenue. A five foot right-of-way and ten foot snow storage easement are proposed to be dedicated, as well as an historic facade easement for the historic building on Lot A and a tree preservation easement for evergreen trees and maple trees. There are box elder trees and shrubbery that would create a natural buffer for the subdivision which will be considered when a site plan is submitted.

Ms. Whetstone continued that the subdivision proposal for these three lots meets the requirements of the Land Management Code and state law and staff finds that the consolidation of the six existing lots to three lots is in the best interest of the City, because there is a significant decrease in the density. She pointed out that there was a potential of 35 hotel units or condominiums. The proposal maintains the residential character of the neighborhood, the historic structure is restored and preserved, significant vegetation is being preserved and the ownership and property lines are resolved as are access and traffic problems. The Planning Commission held a public hearing on July 26 and forwarded a positive recommendation to Council on this subdivision request. Three people spoke; two opposed and one adjacent neighbor in favor.

Ms. Whetstone added that the proposal for vacation of right-of-way complies with the Land Management Code and state law and the City Engineer has indicated that it is unlikely that the reserved right-of-way would ever be needed for a street or to accommodate utilities in the future. According to state law, if a municipality is not using right-of-way for public purposes, it can be petitioned to be vacated, and if vacated, is deeded to the adjacent property owner(s). The City has three options for this property (1) to be used as right-of-way for roads and utilities; (2) to reserve it for future right-of-way; or (3) to vacate it. Ms. Whetstone emphasized that the City does not have the option to use the property for development for housing because it is not a parcel of land but rather right-of-way set aside for public purposes. Although the Planning Commission is not empowered to take action on the vacation, it asked that its concerns be relayed to the City Council. Ms. Whetstone clarified that those included the size of the right-of-way, the value of the property, the ownership of the house, and the precedent established; all of which are outlined in the staff report. The planning staff supports the vacation with conditions and believes that the public interests are maintained.

With no questions from the Council, the Mayor opened the floor to the public.

In response to a question from Chris Smart regarding compensation for the right-of-way, Jodi Hoffman explained that the proposal includes conditions of development that staff has

concluded has value to the City and to the community in excess of the monetary amount. The staff has also evaluated the monetary value of this land if the Council decided not to place development restrictions on the property, which would leave it as RC and allow 35 hotel units. As described, the limitation of house size on the back lot, the restoration of 1439 Woodside, the historic preservation facade easement of 1439, the dedication of right-of-way adjacent to the paved prescriptive Woodside Avenue, and the dedication of the snow shedding and tree preservation easements, Ms. Hoffman explained that staff has effectively negotiated a significant down-zone of the property which would be beneficial to the community in lieu of cash.

Jodi Hoffman explained for the benefit of resident Ray Johnson that municipalities "sell" their interest in the right-of-way not the fee title. This is either done by determining that the right-of-way has little or no value and may go for "\$10 or other good and valuable consideration", or if it will enhance the development of property, it can be sold for market value. Ms. Hoffman continued that it depends on the features of a proposal and the City has sold property under a statutory vacation process over the years under a variety of circumstances and prices.

The Mayor invited public comment.

Chris Smart, resident, distributed photographs of the site and pointed out that a tree has been removed. He stated that he lived at 1439 Woodside until 1994 and clarified that Mr. Frandsen has alleged that Mr. Smart was evicted, but Mr. Smart clarified that he resided there until his lease expired. He stated that he has no financial interest in 1439 Woodside, except that he is a taxpayer and voter in Park City. He questioned the concern regarding Mr. Frandsen's due process rights as he was before the City Council ten years ago and denied. When this was litigated, the court found that the City did not have to give or sell this land to Mr. Frandsen. Mr. Smart insisted that Mr. Frandsen has had due process. He felt it fair to sell Mr. Frandsen the property at market value which he felt is valued at \$250,000, but it needs to be public. If Mr. Frandsen has a title to the house, let him present it. Mr. Smart stated that the Council cannot undo Judge Billings' ruling in saying that it is his property. He reiterated that if Mr. Frandsen can produce a title to the house, the Council should sell him the property at fair market value which would be \$100,000 per lot. He felt that it is not up to the County Recorder to decide ownership of the house, because Frandsen has been paying taxes on it. He felt that Council should be publicly clear that they are giving the house to him. He discussed a tree that Mr. Frandsen removed at 1439 Woodside Avenue and questioned the agreement to the tree preservation easement. Mr. Smart stated that the staff has tried to keep the Council and the public from knowing how much land is involved. He stressed that this is the size of two City lots and to call it right-of-way is absurd. He felt that the Council's constituents would be served if the City received fair market value.

Alan Frandsen, applicant, stated that he cannot respond to Mr. Smart's comments because he is "off the wall". Mr. Frandsen stated that he has been paying taxes and is the fee title owner of the house. He stated that he is not selling the property, but rather improving the boundary

lines which have clouded the title. This action will help adjacent property owners in the future and he thanked Council for its consideration.

Craig Smith, former Assistant City Attorney, stated that he represented the City in the Frandsen litigation in the 1980s. He described the platting of Park City in the 1800s and the resulting inaccuracies of the survey and added that many streets are not located in the platted right-of-way and the mining companies in the early days allowed people to pay taxes on improvements which were not located on fee property. Mr. Smith stated that Mr. Frandsen approached the City asking for the vacation of the right-of-way, but at that time Frandsen had a potential buyer for this and other property to build a condominium on the site. The City Council considered the application and chose not to vacate because it was concerned about the density of the condominium project. Mr. Frandsen then brought a lawsuit to quiet title, and at the time, the improvements were not an issue of interest. Judge Billings granted the City's request for summary judgment and held that the City did not have to vacate the right-of-way. Mr. Smith commented that if a Councilmember has personal feelings and biases that there may come a time when they may get to a point where the process itself is endangered by participation by a Councilmember. That is a decision that each person on the Council needs to make, and that is not unique to this situation. He emphasized that it is Council's job to make policy and he is committed to a full and fair hearing on this issue, even though he and Alan Frandsen have probably not gotten along well over the years because of litigation with the City. Mr. Smith concluded that only by getting all the facts on the table can everyone's rights be respected.

Jodi Hoffman interjected that there has been a concern that this is a very large chunk of right-of-way and somewhat unprecedented and pointed out that the right-of-way runs through about five or six homes. Eric DeHaan, City Engineer, agreed that there are numerous structures, several of which, are almost entirely within platted streets in Park City. The City Engineer discussed the history of several platted streets and pointed out that platted First Street was vacated in its entirety in the 1960s and 1970s as there were three homes within that right-of-way. Other examples are on Sandridge Avenue and Marsac and in all those cases, the rights-of-way were deeded by the City to various property owners. He discussed the conveyance of a portion of platted Norfolk where the Empire Condominiums are located. Mr. DeHaan commentd on the numerous minor encroachments of private improvements in the public right-of-way.

Joe Tesch, attorney and Planning Commissioner, stated that there is another opinion about Ms. Miller's conflict of interest which he has researched. He commented that he and Mr. Smith have discussed this matter and Mr. Smith is aware of his opinion which has to with speculation of what a court might do, not what a court in this state has ever done, or any laws in the state as they currently exist. He stated that no one sits on a city council without a personal interest in everything that occurs and to hang a legal opinion on that concept is something he wouldn't do. Shauna Kerr pointed out that Mr. Tesch abstained on this matter at the Planning Commission meeting, because he disclosed a conflict of interest. Mr. Tesch clarified that he asked Alan Frandsen if he would be uncomfortable ruling on the application and Mr. Frandsen indicated that he would.

With no further comments or questions, the public hearing was closed.

5. Ordinance amending Chapter 9, Title 4, Licensing, of the Municipal Code of Park City, Utah to regulate sexually oriented businesses - Assistant Attorney Mark Harrington explained that this public hearing is at the request of Planning Commissioner Joe Tesch, who has requested that the City Council reexamine the policy behind having a sexually oriented business licensing procedure altogether. This ordinance relates only to the licensing procedures; the zoning and conditional use permitting has never been decided and is pending before the Planning Commission and a separate issue. If Council decides to keep the sexually oriented business licensing, there should be a directive to the Planning Commission to expedite the review process as it has been in excess of six months. Mr. Harrington warned that there is some risk of exclusion because of that delay.

Joe Tesch explained that this is not a legal argument, but a policy argument. He stated that he is not here as a Planning Commissioner, but as a member of the community and as a board member of the Arts Council and Park City Performances. He noted that he is not a libertarian but believes in good government and without that, the ability to govern ourselves by conscientious people ensures the freedoms protected by our government. He did not believe that there is a market for sexually oriented businesses and felt that this law is a strong censorship, in his opinion, and is moralistic. The law assumes that the exposure of the human body is wrong, or otherwise wouldn't be defined. He emphasized that the ordinance is very broad and "kills" First Amendment rights and it is moralistic. Mr. Tesch stressed that obscenity is already forbidden without this law as is ludeness and putting a limitation on the kind of expression, art, and speech has already been found by the Supreme Court to have value and merit. He continued that Park City is not like the rest of Utah as it is much more diversified and when he looked at the law and saw that we are trying to be like West Valley City, or Sandy, it concerned him. Mr. Tesch discussed censorship in various cities in Utah and discussed losing First Amendment rights with this ordinance.

Mr. Tesch discussed the writings of Milton regarding free speech and quoted Justice Holmes regarding the free exchange of ideas. He felt that being moralistic is oppressive and that the people of Park City are not used to this. He then quoted Justice Brandeise on free speech. Mr. Tesch discussed Joanne Collins, a former council member, and her position on free speech which was that you learn by education and you don't withhold information. Mr. Tesch warned against limiting First Amendment rights and this ordinance "chills" what happens in the artistic community. He alleged that it will foster lawsuits and felt that the law will inhibit art organizations from showing certain films or displaying art and Park City will become like other towns in Utah. He didn't think that the law protects children as that job should be left to parents. Mr. Tesch felt that the passage of the law was overreacting to a business license application. He pointed out that Park City has gone 111 years without this law, and it is not needed here because there is no market for sexually oriented businesses. He discussed in detail the history of Michael Angelo's Last Judgment and the unfortunate censorship of that great work of art.

Jim Murphy noted that Mr. Tesch quoted a number of Supreme Court decisions and Mr. Tesch also commented on how wonderful they were, however, he reminded the public that the Supreme Court also made the Dred Scott decision. He stated that he is a retired police officer and school teacher and assured Council that sexually oriented businesses feeds it way to the children.

Mike Andrews stated that he is a member of the Arts Council and is a believer in the freedom of expression and the importance of the First Amendment. As an educator he is concerned about the impact of obscenity on our children, both pornography and violence. It is difficult to balance the right of free speech and the right of a society to protect its children who are not old enough to make good judgments. He believed that as a community, we have an obligation to protect our children, however, and urged Council to revisit the ordinance because he believed that the language is much too broad.

Vicky Perry, Thaynes Canyon resident, voiced her confusion with Mr. Tesch's comments about the arts as it was her understating from meeting with legal staff that this ordinance would not regulate the arts and its purpose is strictly to regulate businesses that no one wants. She stated that she has polled people and there was no support for sexually oriented businesses in Park City. She emphasized that she does not want the ordinance "loosened", and again discussed her confusion.

City Attorney Jodi Hoffman clarified that the ordinance addresses permanent businesses in Park City that fall under the definition of a sexually oriented business. Legal staff tried very hard to define sexually oriented businesses in a manner that would not affect any of the goals of the arts community as presently imagined. However, the one area that could be improved is the definition of adult theaters and staff has asked Mr. Tesch what items in the ordinance concerned the arts community so it would not affect them. However, Mr. Tesch was not interested in doing that but rather bringing the larger public debate about whether Park City is the kind of place that is going to regulate these things at all, which is a policy matter. Ms. Perry responded that the Park City of the 1990s belongs to families and Park City is portrayed that way. She believed that certain types of businesses should be prohibited based on the values of a community. Ms. Hoffman clarified that that this is a business licensing ordinance; Mr. Tesch has characterized this as something that criminalizes behavior and it doesn't do that. If a business falls within the definition of a sexually oriented business, it must obtain a license. The Planning Commission is currently reviewing what zones in the City are appropriate for these types of businesses, has had one public hearing on this and will likely schedule hearings in the future.

Mark Harrington addressed comments on the City's ability to exclude businesses based on morality and emphasized that that is not an option for Park City and this is not intended nor written as a moral law; it is written as an ordinance regulating the secondary effects of a particular type of business. Mr. Harrington added that staff did not conduct extensive research on resort communities but pointed out that Seattle is a leader in this area of regulation and has not

damaged its arts community. He felt it possible to narrowly define sexually oriented businesses in a manner which would distinguish them from legitimate protected First Amendment speech.

The Mayor suggested that if members of the art community find specific areas in the ordinance which should be addressed, their comments are welcomed.

Duane Reehunt, resident, referred to Mr. Tesch's comment that there is no market for sexually oriented businesses so we should throw off restraint and see what happens. He reminded the public that this is the type of community that attracts outside businesses and urged the City Council to keep the law in place.

Patty Fellows, resident and former School District Transportation Director, felt it foolish to loosen the ordinance and let these businesses come in as it impacts the children. She explained a situation at the Elementary School where pornography was found. She applauded the City Council for adopting the ordinance and commended them for doing a good job.

Diane Rhinehart stated that she is on the board of several art organizations. She continued that she does not want sexually oriented businesses in the community but feared that with the law someone could sue her for art work displayed in her salon, because she holds a business license. She urged Council to make the ordinance specific.

Catherine Henney, President of the Arts Council, stated that as a mother she wants her children given the opportunity to be exposed to art. She felt that the ordinance needs to be tightened up so the arts community is protected and freedom of speech is extremely important in theater and films. She felt there is a bigger problem with violence than sexuality. The ordinance is too broad. The Mayor asked that she get together with staff to work on language amendments.

Paul Sincock, resident, felt that the 58 page ordinance could be reduced to four pages and should be simpler. He felt that sexually oriented businesses should be restricted as much as possible but he does not want to restrict artistic freedom and expression. He is very concerned and suspicious of First Amendment rights being abridged and there should be as much public input as possible. He discussed slowly taking away people's rights without them being aware of it and supported involving the arts community in reevaluating the ordinance.

Dell Fuller, citizen, artist and parent, commented on his concern about legislating morality as morality has to be dealt with on a personal level, and imposing this on others is fundamentally wrong.

Brook Grant, resident, stated that he was impressed with the adoption of the ordinance. People want to be free without taking responsibility and Council did the responsible thing by adopting the ordinance and that took courage. He hoped that Council maintains its position.

As a university professor he supports the arts, but felt that the Council should stick to "the higher path".

Joe Ellis, pastor, emphasized that religion, church and arts do not conflict. If it weren't for the church, much in the arts wouldn't exist. He pointed out that the argument has suddenly shifted as initially the arts council was against any ordinance and now they are asking that it be tightened up. He suggested that if the ordinance is reexamined that not only should there be a voice from the arts council but other representatives from the community. As a pastor, he would like to be a part of that decision-making process. Pastor Ellis added that it appears that everyone is fundamentally agreeing and emphasized that there is a big distinction between pornography and the arts and the two worlds are miles apart. He described the operators of sexually oriented businesses as people who are corrupt, greedy, and cruel and believed that the ordinance is right on target. He pointed out that Park City has changed dramatically and to say that over our 110 year history, we have never needed this ordinance is not good logic. He believes that the ordinance separates the arts and pornography and that the ordinance represents the direction of the community.

With no further comments, the public hearing was closed.

V CONSENT AGENDA

Leslie Miller disclosed that she will be abstaining from Item 3, as she has been contracted by Blue Ledge Corporation. Ruth Gezelius, "I move approval of Consent Agenda Items 1 through 6, as presented". Shauna Kerr seconded. Motion carried

Ruth Gezelius	Aye
Roger Harlan	Aye
Lou Hudson	Aye
Shauna Kerr	Aye
Leslie Miller	Aye, Abstention Item 3 only

1. Ordinance approving an amendment to the amended Park City Survey, Lots 8, 9 and 10, Block 24 located at 540 Main Street, Park City, Utah - See following staff report.

2. Ordinance approving amendments to Lot 6 Willow Ranch Subdivision and Lot 10 McLeod Creek Subdivision located at 2647 Meadow Creek Drive, Park City, Utah - See staff report.

3. Ordinance amending the final plat of Hidden Meadows located at Solamere Drive, Park City, Utah - See staff report.

4. Resolution waiving building, planning and development impact fees by the City Council of Park City, Utah for the construction of school facilities in Park City, Utah in the estimated amount of \$389,375 - See staff report.

5. Authorization to staff to enter into contract with Chance Coach for the purchase of a compressed natural gas trolley in an amount not to exceed \$280,000 - See staff report.

6. Authorization to staff to enter into contract with Kendall & Sons Roofing for roofing of the Racquet Club in an amount not to exceed \$83,780 - See attached staff report.

VI NEW BUSINESS

1. Ordinance amending Chapter 2 and Section 15.1 of the Land Management Code to create a new lot line adjustment process - See attached staff report. Shauna Kerr, "I move approval of the Ordinance amending Chapter 2 and Section 15.1 of the Land Management Code to create the new lot line adjustment process". Ruth Gezelilus seconded. Motion carried unanimously.

2. Ordinance increasing the elected and appointed officials' compensation and adopting travel and meeting expense guidelines - Roger Harlan stated that he could support increasing compensation by 2% this year and then following the pay plan but could not also support in addition to a stipend, paying a portion of the premium for private insurance coverage equal to the cost of City single health insurance coverage if arrangements can be made with the private carrier. If arrangements cannot be made increase compensation by the amount of City single health insurance coverage (approximately \$155/per month). Ruth Gezelilus suggested that motions be separated.

Shauna Kerr, "I move that we approve Option 2 which is an increase of 2% this year and then follow the pay plan guidelines, which has been the previous Council's direction". Roger Harlan seconded. Motion unanimously carried.

Shauna Kerr, "I move to approve Option 3 which is in addition to a stipend, that single health coverage would be provided at the City's expense as a part of the compensation package in addition to the compensation we just approved, with Option 5 that in the event the Councilmember cannot transfer to the City's coverage and the premiums cannot be paid to the alternative carrier then that Councilmember would be entitled to that dollar amount as an additional compensation". Leslie Miller seconded. Motion carried.

Ruth Gezelilus	Aye
Roger Harlan	Nay
Lou Hudson	Aye
Shauna Kerr	Aye

Leslie Miller

Aye

Ruth Gezelius, "I move to increase the compensation for the Planning Commission, Historic District Commission and Board of Adjustment \$100, \$60, and \$40 (respectively)". Shauna Kerr seconded. Motion unanimously carried.

3. Ordinance approving the Frandsen Subdivision; being a replat of a portion of Lot 8 and Lots 9, 10, 11 and 12, Block 21; and a portion of Lots 7 and 8, Block 22 of the Snyder's Addition of the Park City Survey; and including a parcel known as SA-222, located at 1445 Woodside Avenue; and including the Woodside right-of-way located adjacent to these parcels from 1437 to 1439 Woodside Avenue - See public hearing comments. Ruth Gezelius disclosed that she will be abstaining from voting on this, as detailed during the public hearing.

Leslie Miller stated that this has been a very emotional meeting and clarified for the record her intent in raising questions on this application a month ago. Her intent was to bring information to this decision that she viewed as important as it is a public piece of property. She referred to a comment made by Ms. Hoffman who stated that she has never seen her spend so much time or interest on an issue, and pointed out her involvement in the Carl Winters issue which was a piece of public property that the Council tried to give to a developer in exchange for other sorts of public benefit. Ms. Miller noted that she worked good and hard on that, which launched her into public service. She felt that the intent has been clouded by the personal bias of the City Attorney who has not been able to substantiate the legal claim of conflict of interest. Ms. Miller was forced to find an alternative opinion that tells her otherwise. Ms. Miller continued that aside from losing her trust as a result of personal and political motivation clouded by the legal issue, she walks away from this feeling "poisoned" as there is nothing worse than somebody putting words in your mouth or telling her how she feels or telling her the cause of her behavior when she feels comfortable with herself. Ms. Miller stated that she felt violated by those that she expected would be here to protect her and has legal opinions that warrant her feelings. She felt it was one thing to be misrepresented in the press based on speculation, but in her heart she stated that she brings no more bias to this decision than her fellow Councilmembers bring to other decisions and could list one after another. She discussed the appointment of real estate professionals on the Planning Commission, and her concern of setting the stage for conflicts of interest. Ms. Miller stated that the memo she received from the City Attorney was threatening and that she did not have a problem disclosing a conflict of interest as her life is an open book. She continued that she agreed that there was a potential conflict of interest two years ago when she was a tenant of Mr. Frandsen, however, the situation is very different and she has separated herself from the house. The purpose of her participation in the discussion of this issue was to bring information that would help protect the public's interest as well as explain the intent of Mr. Frandsen's application. She stressed that she does not have a vendetta, is not the one filing lawsuits against him, and doesn't want to punish him and wanted everyone to know that, as it has been characterized differently which is offensive to her. While she resents the imposition of somebody's else's "truth", and because the public has been tarnished with

misinformation, misrepresentation and mischaracterization, that there is no way that by voting, she can serve any purpose to the community which is unfortunate because of what she has to offer regarding information which could be beneficial. That opportunity is gone and this disturbs her greatly, and she stated that she will be recusing herself from the vote and hoped that this type of scenario is never permitted to happen again, because it is not right.

Shauna Kerr personally thanked Ms. Miller for bringing up the compensation issue for this public right-of-way and pointing out the features of the area and felt more comfortable in making a decision with the expertise Ms. Miller has brought to Council's attention. She added that the decision before Council is to make a planning and zoning decision and a policy determination. A right-of-way is a fee determinable which means that the land is used so long as it has a public purpose; it is a determinable fee and the City doesn't own it as fee title. It has a right of reverter to the adjacent property owners and Mr. Frandsen is the adjoining property owner. In consideration of the public benefits negotiated for the reduced density, restoration of the house including the facade, and the preservation of vegetation, Ms. Kerr felt that there has been a fair exchange and didn't feel like the Council is giving away the public's property, and is vacating the City's right-of-way to the rightful owner. Shauna Kerr, "I move approval of the Ordinance approving the Frandsen Subdivision being a replat of a portion of Lot 8 and Lots 9 and 10, etc. with the additional conditions onto the staff report, including the maple trees as trees that we're saving, the staff report just refers to conifers. I think the maple trees are significant and should be added as well and in addition the box elder trees on the rear part of the parcel which would provide a very effective buffer for the houses between the commercial uses up to the parking lot and would also perhaps be an incentive on the Empire side from snow shedding onto this lot, and I think that it is significant vegetation there and I would request that we also add those box elder trees along the westerly border of the property as part of the preservation agreement as well. Also, if in fact it is determined that the shed behind the structure at 1439 is a historic shed, I think we should also condition it that that structure be restored and saved as part of this project". Lou Hudson seconded in consideration of the conditions of approval. Roger Harlan stated that he has examined a map, indicating many rights-of-way that the City has vacated, and this is application is not unusual and agreed with the public benefit factors. Motion carried.

Ruth Gezelius	Abstention
Roger Harlan	Aye
Lou Hudson	Aye
Shauna Kerr	Aye
Leslie Miller	Abstention

VII COMMUNICATIONS FROM COUNCIL AND STAFF

Myles Rademan announced a candidate orientation meeting to be held Wednesday, September 20 at 3:30 p.m. He invited Council to the final meeting of the Leadership 2000 on September 18 from 7 p.m. to 9 p.m.

VIII ADJOURNMENT

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

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MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:50 p.m. on Thursday, August 31, 1995. Members in attendance were Mayor Brad Olch, Ruth Gezelius, Roger Harlan, Lou Hudson, Shauna Kerr, and Leslie Miller. Staff in attendance were Toby Ross, City Manager; Jodi Hoffman, City Attorney; and Mark Harrington, Assistant City Attorney. Leslie Miller, "I move that we break into closed session to discuss my concern and the issues inherent to this particular application (Frandsen Subdivision and vacation of right-of-way)". Shauna Kerr seconded. Motion unanimously carried.

The meeting opened at approximately 4:30 p.m.

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

Prepared by Janet M. Scott

Janet M. Scott
Deputy City Recorder



**PARK CITY COUNCIL WORK SESSION
SUMMIT COUNTY, UTAH
AUGUST 31, 1995**

Present: Mayor Brad Olch, Roger Harlan, Lou Hudson, Shauna Kerr, Ruth Gezelius, Leslie Miller, Toby Ross, Jodi Hoffman, Kirsten Whetstone, Mark Harrington

1. **Council questions and comments.** Roger Harlan reported on the Miners Hospital Advisory Board and the Snyderville Basin Recreation District meetings. Lou Hudson pointed out the importance of supporting this bond issue. Shauna Kerr recommended that the Council write a letter to the editor regarding Park City's physical limitation in its topography in providing space for fields. Ms. Gezelius preferred just encouraging people to vote in the Basin. Leslie Miller felt that it is obvious that the Council supports this and noted that the Council has already passed a resolution of intent at its last meeting. Discussion ensued regarding the Planning Commission meeting; Ruth Gezelius suggested that staff be directed to pursue acquisition of the Gamble Oaks parcel for a park. The City Manager explained that the City could not acquire the property until the mineral rights are relinquished.

Leslie Miller felt that the Council should meet at least three times a month. Toby Ross responded that Council has been meeting at that frequency; however, because of the SummerTour, there were two weeks where no meetings were held.

2. **Review of regular meeting.** See regular meeting minutes and attached staff reports. With regard to the Frandsen Subdivision, Leslie Miller noted that Council received a protected memo less than 24 hours ago, which contains some information which requires a response from her or perhaps from her attorney. She recommended that this matter be continued until she has an opportunity to respond and stated that the memo contains inaccurate information which may bias the Council's objectivity on this issue. Ms. Miller stated that she would like her personal lawyer to attend the closed session meeting. Roger Harlan indicated that he would like the matter discussed this evening. Lou Hudson felt everyone should have an opportunity to defend a position as there are serious ramifications. The Mayor stressed that Council is voting on a recommendation from the Planning Commission on a vacation of a right-of-way and felt comfortable that it is reviewed today. Shauna Kerr pointed out that this is a subdivision and vacation of right-of-way; the conflict of interest issue is not scheduled on the agenda and she would prefer to continue with the business at hand. Ms. Miller responded that the information in the protected memo relates to the agenda item and although the conflict issue isn't scheduled, it should be on the agenda because it relates to her participation in this very important decision. Ms. Kerr emphasized that Ms. Miller's participation is her own determination; it is not on the agenda for the Council to decide. Ms. Miller stated that there has been a recommendation in the legal packet which she feels seriously misrepresents the facts as it pertains to her participation in this particular issue and to other related issues referenced in the packet. She highly suggested that Council break into a closed session and discuss the contents of the information. Lou Hudson asked if these were tied together. Ms. Hoffman relayed that it has always been her recommendation that it is Leslie's decision with regard to whether or not she perceives she has a conflict of interest or whether or not she perceives the public will view that she

is impartial. The City Attorney added that it would not be possible for Ms. Miller's lawyer to participate in a closed session. The decision with regard to the subdivision doesn't relate to the protected memo. Ms. Hoffman continued that the memo has to do with the factual information upon which she based her decision that Ms. Miller has a conflict of interest. The City Attorney pointed out that there were inferences recently that there were no factual bases for her legal opinion regarding the conflict of interest. Ms. Hoffman emphasized that it is up to Ms. Miller as to whether she votes on this decision and stated that she did not care. Ms. Miller insisted that the protected memo upsets the voting status of this body and does affect the Frandsen Subdivision application before them. She stated that the City Attorney "ambushed" her and now her fellow Councilmembers are not giving her an opportunity to respond to her voting status on this matter. She again requested a closed session and reiterated biasing Council on this issue and a future issue. Ms. Miller demanded an opportunity to respond to the protected memo.

Ms. Hoffman felt that there are valid reasons to close and the Council convened in closed session. See regular meeting minutes.

Prepared by Janet M. Scott