PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
AUGUST 4, 2011

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

Tom Bakaly, City Manager; Mark Harington, City Attorney; Katie Cattan, Planner; and Phyllis Robinson, Public Affairs Manager

1. City Council questions/comments. Liza Simpson thanked staff for improving the parking structure area. RAB met this week about the MARC and the board is planning an open house; there will be construction at Rotary Park in September to add a barbecue station. She attended the Lodging Association meeting. Cindy Matsumoto reported on the Chamber meeting where the new visitor center was discussed as well as a marketing update. Dick Peek expressed appreciation to the Kimball Art Center for making Art Festival access passes easy to obtain for residents. The Mayor reported that the Coalition of Governments did not meet because there wasn't a quorum.

He suggested that a parking exemption be considered for performances at Silver Star and pointed out that the wide width of Three Kings Drive could accommodate parking. He explained that his band played there last week and a number of people received parking tickets. Mark Harrington suggested that applicants apply for a special event license providing an opportunity to create a parking plan for performances.

2. General Plan update. Katie Cattan stated that she has been working with a number of staff members on housing statistics which show an increased gap in affordability over the years. The medium price of units sold over the past ten years increased dramatically. She noted that the Summit County median household income has increased but not substantially. She was unable to obtain information on Park City from the state and data is from HUD; Rhoda Stauffer is working on a housing assessment update and trying to extract those numbers. HUD identifies 30% of AMI for housing and for low income at or below 50% AMI. Ms. Matsumoto asked if the average cost in a primary residential neighborhood can be identified as opposed to an area consisting of second homes. Phyllis Robinson explained that the Board of Realtors numbers do not generally include second home neighborhoods for housing costs. Ms. Cattan displayed a housing map differentiating primary and second homes by color. She explained that the trends and distribution of affordable housing will be addressed in the General Plan.

Requiring on-site employee housing was discussed. About 15% to 16% of the population lives and works here and about 50% live within Summit or Wasatch Counties leaving 50% of the population commuting to and from the Valley. She pointed out that the Planning Commission wanted to know how many residents commute to Salt Lake for work. From 2000 to 2010, the permanent population increased by only 187 or 2.5%. There was an increase in vacant housing over this duration and in 2000 35% of our homes were occupied by primary residents and in 2010 30% but a significant amount of housing was built. Vacancy trends will be compared with Building Department information.

Katie Cattan pointed out that the average house size has increased over time. Staff inventoried permits issued in 1990, 2000 and 2010 based on the taxable area of the home. In 1990 113 single family homes were being built as opposed to 19 in 2010. She emphasized that the population is aging. In 1990, 3.3% were seniors, in 2000 4.5% and in 2010 8.64% of the population are 65 years or older. She pointed out some housing goals:

- Provide a variety of housing options to meet the socio-economic needs of the people who live and work here.

- Preserve Park City's character by providing diverse housing types.

- Balance primary and secondary home ownership. This prompted discussion about identifying the appropriate percentage for a resort community. Phyllis Robinson commented on the trend of attracting new residents around the time of the 2002 Olympics because Park City is more affordable than other resort economies. The City's revenue stream and delivery of services also heavily rely on the balance between second home and primary residence property taxes.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
AUGUST 4, 2011

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, August 4, 2011. Members in attendance were Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Michael Kovacs, Assistant City Manager; Katie Cattan, Planner; Max Paap, Special Events Manager; Matt Cassel, City Engineer; Polly Samuels McLean, Assistant City Attorney; Chad Root, Chief Building Official; and Mark Harrington, City Attorney.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

None.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF JULY 14, 2011 AND JOINT WORK SESSION NOTES OF MEETING OF JULY 7, 2011

Liza Simpson, "<u>I move that we approve the work session notes and minutes of the meeting of July 14 and the joint work session notes of the meeting of July 7, 2011</u>". Cindy Matsumoto seconded. <u>Motion unanimously carried</u>.

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. <u>Consideration of a Resolution adopting retention and classification schedules for certain records maintained by Park City Municipal Corporation pursuant to the Utah Governmental Records Access and Management Act and replacing Resolution No. 33-08 in its entirety</u> – Mark Harrington clarified that the embedded state code sections illustrated in the draft ordinance should have been removed and he provided Council options for adoption.

Joe Kernan expressed interest in discussing retention schedules and pointed out that many of the analyses provided to members during budget are valuable and many documents are scheduled to be destroyed within three to five years. He understood physical constraints for storing paper but with the opportunities of storing information electronically, he felt it makes sense to save more documents if there is not a specific reason to throw them away. He couldn't think of a down side of keeping documents longer but was unsure if there would be resulting legal consequences or burdensome GRAMA requests.

Michael Kovacs indicated that IT has just updated the management team on storage and because files are so large today, it becomes a cost issue on the back-end server system. Mr. Harrington interjected that the City is at or exceeding capacity with regard to paper and off-site storage is needed. He explained that the proposed Ordinance is promulgated by the state and cities have to adopt it as written unless the state approves requested changes from a municipality, which it has done for this draft. If other changes are made, the same process has to be followed. Mr. Harrington advised that adoption is not time-sensitive and he recommended continuing it to another meeting where the Records and IT Staff can answer questions about budget and current storage challenges for paper and electronic files. Mr. Kernan expressed interest in holding a work session and has some specific records in mind. Joe Kernan, "I move we remove this from the Consent Agenda and continue it to a date uncertain". Liza Simpson seconded. Motion unanimously carried. In the interest of saving time, Ms. Simpson requested that Mr. Kernan relay his specific concerns to staff before the meeting.

2. Consideration of an amendment to an encroachment agreement for Treasure Mountain Inn, 255 Main Street, Park City, Utah – Liza Simpson, "I move that we approve Consent Agenda Item No. 2". Cindy Matsumoto seconded. Motion unanimously carried.

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

1. Consideration of an Ordinance approving the 1159 Empire Avenue Condominiums Record of Survey located within Lots 5, 6 and 7 in Block 27 of Snyders Addition to the Park City Survey, Park City, Summit County, Utah – Planner Katie Cattan referred to public input relating to this project. The application was received in March 2011 for a four-plex which sits on three lots of record. Units are less than 1,000 square feet. The HR District property is non-conforming because it is a four-plex and it does not meet some setback and footprint requirements. Originally, staff recommended denial to the Planning Commission but the Commission found good cause in the fact that the smaller units could be sold separately creating more affordable units in town through an adaptive reuse. With that direction, staff brought back findings for approval and the Planning Commission unanimously forwarded a positive recommendation for the plat. The Mayor expressed concerns about the structure being torn down at some point and a larger one constructed. Mark Harrington explained that the size of the building would be addressed with a new application. Ms. Cattan added that because it is a legal non-conforming building, it would have to be rebuilt within one year. Cindy Matsumoto disclosed that she knows the applicant. Liza Simpson stated that she received an email from Brian VanHecke and Kyra Parkhurst on this matter and believed other Council members were emailed as well. Joe Kernan stated that he is comfortable supporting the recommendation of the Planning Commission. The Mayor opened the public hearing. With no input from the audience, the public hearing was closed.

Alex Butwinski favored continuing this item in order for staff to analyze the potential of the property. Dick Peek asked if the four lots could be sold separately. Ms. Cattan advised that the parcels would not meet the minimum lot requirements for four but would meet three under today's Code. Mr. Butwinski asked if the condominium plat is vacated if the lots automatically revert to three and the City Attorney responded no.

The City Attorney suggested adding another condition so that new owners are put on notice that upon vacation of the plat Council retains the ability to address maximum footprint and/or lot size. Katie Cattan suggested a possible condition *that upon vacation of the condominium plat, the City Council retains the right to address maximum footprint and lot size*. Mark Harrington added wording *to ensure neighborhood compatibility in accordance with the zoning in effect at the* *time*. Ms. Matsumoto asked how close it is to other condominiums and Katie Cattan advised that 12th Street is the beginning of the RC Zone which is multi-use. Cindy Matsumoto stated that she feels comfortable moving forward as the property is surrounded by condominiums.

Liza Simpson, "I move that we approve the 1159 Empire Avenue Condominium Record of Survey located within Lots 5, 6 and 7 in Block 27 of Snyders Addition with an additional condition of approval that notes the City Council shall reserve the right that upon a condominium vacation to analyze lot size and footprint based on neighborhood compatibility, based on the zoning at the time". Cindy Matsumoto seconded. Motion unanimously carried.

2. Consideration of a Master Festival License for the Harley-Davidson 2011 Summer Ride, as conditioned, to be held on August 27, 2011 at the Brew Pub parking lot and portions of public parking on Main Street – Max Paap described the application which was presented to the HPCA. Participation is estimated at around 450 but is weather-dependent. The application is being reviewed as a MFL because of the attraction of large crowds and the request to use City Park. Organizer Ron Brown described the game format intended to get people on Main Street for the day. Discussion ensued regarding the Park City Police escort from Salt Lake City to town. The Mayor opened the public hearing.

Andy Beerman, HPCA, stated that the group is very supportive of this event, despite the short notice. He pointed out that a reception is catered and the HPCA encourages organizers to use vendors and food service already available on the street.

With no further comments, the public hearing was closed. Dick Peek, "I move we approve the Master Festival License for the Harley-Davidson 2011 Summer Ride, as conditioned, to be held August 27 in the Brewpub Parking Lot". Alex Butwinski seconded. Motion unanimously carried.

3. Consideration of an Ordinance vacating a portion of the McHenry Avenue Right of Way and authorizing the Mayor to execute a quit claim deed in a form approved by the City Attorney, to sell an approximate 85 by 10 foot section of the McHenry Avenue right-of-way to the Owners of 525 Rossi Hill Drive and accept and to enter into an easement agreement which allows for continued public use of this vacated portion of the right-of-way – Petitioner Bill Tew – Liza Simpson stated that she has known Bill and Pam Tew for three years and has met with them frequently regarding the Echo Spur road and wall. She has had no discussion with them about the encroachment issue.

Matt Cassel explained that staff recommends that the Council hold a public hearing on the vacation of a portion of McHenry right-of-way and also enter into an easement agreement for the same piece of land. On May 5, 2009, a complaint was made against 525 Rossi Hill and three violations were found including setbacks, encroachment and size of the home. After many meetings, in December 2010 a diversion agreement was finalized and entered into by all parties. The diversion agreement addresses the setbacks, encroachment and house size violations. The encroachment and house size issues have been satisfied and the setback violation issue is to be considered tonight. Mr. Cassel stated that the owners had the proposed portion of vacated McHenry appraised and have petitioned the City Council to vacate that property. He discussed the public notice process and receiving positive feedback from the neighborhood. Council must decide if there is good cause for the vacation and whether the public interest or any individual will be materially injured by the proposed vacation. The Mayor asked about the response letters and Polly Samuels McLean indicated that State Code requires the petitioner to send a notice of vacation and a request for consent to all property owners within 300 feet or to people that use the street as a right-of-way. The Mayor opened the public hearing.

Mary Wintzer, 320 McHenry Avenue, expressed concern that the vacation sets a dangerous precedent *that leaves many Old Town neighborhoods vulnerable to a wave of arrogant power that says I'll do what I want with City property and ask for forgiveness later*. She alleged that former Chief Building Official Ron Ivie made a home owner remove the roof off of his house because it was too high. Nine years ago City Engineer Eric DeHaan helped them fight a new neighbor who was determined that their Rossi Hill Park should become his front yard because he had maximized his house. For the last two years, they have battled a family over 4th Street which is a path to Main Street which has been used by Rossi Hill for over 25 years. Ms. Wintzer stated that to sell a City street to Mr. and Mrs. Tew opens the door further for all these folks who believe that rules do not apply to them. Half of the houses on McHenry were required to provide setbacks off of dedicated McHenry to build their homes. They could have had larger houses if they decided not to obey the setback rules. The developer who purchased the house across the street from her must also setback from dedicated McHenry when he builds and is interested in what happens tonight. Mary Wintzer indicated that Mr. and Mrs. Tew had a surveyor, architect and a contractor and one or all of them made this mistake and they are responsible and should have insurance to pay for the correction. She asked the Council to only consider an easement and not to sell the land. The cost to tear off the side of the house and rebuild within the setbacks would be substantial and many communities would ask these owners to do this. If the cost of the easement were even half of what it would take to rebuild, that would be a bargain. Ms. Wintzer reiterated that Old Town is vulnerable and many people want every square inch to build on if they can get it. Old Town does not have a HOA to protect it and because of that, residents rely on the City Council.

Bill Tew, petitioner, explained moving here with his wife after retirement, hiring architect Kevin King and contractor Jason Moore, and meeting with the planning staff. As the home owners, they are ultimately responsible but they relied on the professionals who were hired to guide them through the process. At every point, the City came out and inspected the house and signed off. When the complaint was filed there were allegations that they remodeled the house after the building permit was issued which was not true or substantiated. They did not mislead anyone about the property lines. It boiled down to a bunch of people making a mistake; there was no intent to deceive and suing the architect or contractor is not realistic. As a property owner, he paid his fees and had the right to expect that his house would be inspected and if there was something wrong with it, the City would let him know. That clearly did not happen. Mr. Tew stated that there is no value in trying to apportion blame or point an accusing finger because we will never know exactly how this house got to where it is and can only speculate. If Council accepts the proposal, he will have paid about $25,000 which he feels is punishment enough and asked members to seriously consider the fact that mistakes were made by all parties and this seems like a reasonable way of solving the problem.

With no further comments from the audience, the public hearing was closed.

In response to a question from Ms. Simpson, Mr. Tew explained that $25,000 represents the cost of the appraisal, legal fees and the proposed $5,200 for the property. He stated that he doesn't know the exact square footage of his property assessed for property taxes purposes. Cindy Matsumoto stated that she shares Ms. Wintzer's concerns about setting a precedent of using McHenry Avenue as a new lot line. Mark Harrington didn't feel this situation is setting a precedent because it is unique and explained that Ron Ivie recommended using a diversion agreement through the City's Prosecutors Office. The diversion agreement was agreed to, executed by all parties, and signed off by the judge. He explained that the judge's approval offers an individualized determination in terms of the result and this is the last piece that needs approval to fulfill the diversion agreement. These circumstances are distinguishable and there is a policy for street vacations which are evaluated by criteria. He stated that this is an imperfect situation with an imperfect solution but he has no concerns that it will create a legislative precedent for future street vacations. Matt Cassel added that at the time the petition was received, his office actually received three informal requests to help with proposed setback issues.

Ms. McLean pointed out that Council is being asked to vacate a portion of the street, determine the sales price and to accept the easement back for the right-of-way. She explained that the easement provides space so the building complies with the ten foot setback requirement. The house would not be considered a legal non-complying structure and would not receive the benefits of the designation in the event it burned down. It would not be able to be rebuilt as it is today, and would have to comply with the plat notes and other issues that have come to light. In response to a question from Ms. Matsumoto about benefitting from the easement, Ms. McLean explained that a new house could be located there but the footprint would have to comply with the plat note which is 2,200 square feet. Cindy Matsumoto favored the property reverting back to the City and Mr. Harrington explained that it would be a material change to the agreement.

Ms. Simpson stated that she wants some assurance from everyone that there are now procedures in place that will ensure that this will not happen again and that plat notes are followed. Chief Building Official Chad Root explained new procedures for following special conditions and pointed out that inspectors are often looking for life safety and structural issues. The inspectors involved in this circumstance have been reprimanded and there is now a policy that if there are no plans on-site, inspections will not occur that day. Liza Simpson felt this should have been caught at plan check and Mr. Cassel noted that staff is also working on improving communications between departments, and planners must see a project through to the end. The planners will also perform intermediate inspections to ensure that projects comply with the plat. Mr. Root stated that the Building Department will be the last to sign off after Engineering and Planning.

Alex Butwinski stated that $5,000 is an incredibly great deal for Mr. Tew. He questioned the relevancy of comps from Bountiful and Duchesne and whether the public is materially affected if the property is sold that cheaply. He suggested that the City order its own appraisal. Mistakes have been made on both sides and the price for the easement should be fair. Mr. Butwinski commented that he shares Ms. Wintzer's concerns about people doing things and then asking for forgiveness. Mayor Williams also felt that local comps should have been used and some of the information is from 1998. He is okay with the vacation and wants to close the matter but expressed he has a problem with the appraised value.

Cindy Matsumoto believed that the Tews did not do anything purposely and people do make mistakes. She supported proceeding with the vacation and looking at the sales price. Bill Tew explained that he was asked by the City to obtain an appraisal and the City provided him with four names and he chose one. At that particular time there had been no lot sales on Rossi Hill and the property is land-locked. Joe Kernan suggested appraising the property with and without the strip. The appraiser may determine that having an extra 800 square feet of yard increases the value substantially. The City is partly responsible for the problem

Ms. Simpson pointed out that members would not even be having this conversation if there wasn't a badly executed construction project on the Tew's property line. The complaint that opened this entire issue was directed at the Tews because they were complaining to the City about violations on the Echo Spur Project. The Mayor referred to the appraisal and adjustments devaluing the property. Bill Tew stated that part of the value of the land is use. It is a 10 foot strip of land that is land-locked on three sides that can't be built on, it is not wide enough to be a park, and there is a 20 foot drop-off on the other side. He stated that he cannot speak to the adjustments but if this piece of land were put up for sale, he predicted that no one would find that it has any value because there is nothing you can do with it. He is unsure about the right amount but the value needs to reflect this. The Mayor felt there is a value to the community in losing part of publicly owned property but agreed that cost is subjective. The Mayor pointed out that the appraiser began with a valuation of $21,000 but because of utilities, etc. it was reduced by 75% which is a *reach* for him. Liza Simpson agreed with the Mayor and asked for clarification on the deducted value of the easement.

Alex Butwinski believed the citizenry is owed another look at what the property is worth and if approved, this piece will add significant value to the salability of the property. There is a willing seller and a buyer and the City should be getting a fair price; he felt $6 per square foot is almost insulting. Ms. Simpson stated that she understands his concerns but felt it would be better to determine what is fair without conducting another appraisal. She again addressed the value of the easement. The Mayor concurred that dragging this issue on for a few more months may not be productive.

Dick Peek stated that the plans were evaluated incorrectly but ultimately approved by Planning and Building and the house was built. Changes and decisions were made despite the plans and he understood that building inspectors are more focused on the integrity of structures and meeting code requirements. However, he feels the situation needs to be corrected. The approved set of plans probably does not meet the conditions of the plat, but the structure should be changed to the approved plans. If there needs to be additional modifications, a plat amendment could be processed. He stated that he disagrees with the diversion agreement approach because it doesn't return the building to the approved set of plans. Mr. Peek agreed that the valuation is too low.

Alex Butwinski again referred to the applied discounts and stated that he has little confidence in the assumptions made in the appraisal. He is okay with a negotiated number tonight but the right way to go is conducting another appraisal. The Mayor acknowledged that appraising this strip of property is a challenging task and he personally would like to close the matter. In his mind, $21,000 is the value of the property. Discussion ensued on the perceived benefits to Mr. Tew.

Mark Harrington clarified that approval is not making the property legal. The agreement estoppels further prosecution and the property does not obtain legal non-conforming status so there cannot be further additions or expansions and all future changes will have to comply with the Code. He felt it appropriate that members are struggling with this matter but there are a number of options. Council could obtain technical information from a second appraisal, arrive at a negotiated price as a group, or direct staff to research internal information for comps, like the

Colman Parcel. The functional change here deals with the boundary line. It is not giving additional rights to the owners because the City is retaining all public use on the portion of property. He emphasized that this is a boundary line adjustment to effectuate compliance, nothing more, nothing less. It is going to be very difficult to obtain an objective comparison for this situation. The policy for purchasing the Colman Parcel was discussed. In response to a question from Alex Butwinski about the purpose of the easement, Mark Harrington explained that the City wants to retain the right-of-way and all of the public uses afforded. Mr. Butwinski pointed out that the strip is basically 15 feet above the street level and asked what public use is likely to be needed there. Mr. Harrington stated that you just never know; there could be future stairs, retaining walls or a new technology that needs a special tower in the location. Because public space is so limited in Old Town, the City avoids giving up any public uses. Mr. Butwinski proposed that the property owner would have to maintain any improvements on the property like a retaining wall but Mr. Harington clarified that the City would accept public improvements in a right-of-way situation. Liza Simpson interjected that the Council has the discretion to sell the property without an easement but it would be a major shift in philosophy.

Mark Harrington noted that this is not the first time members discussed this issue and this has been a long process. When the alternatives were evaluated, part of the strategy was to get the parties as close to whole as possible. In this particular instance, that means the City would retain as much right and use of our right-of-way as possible and obtain as much compliance on the property as possible. The minimum action necessary is moving a line to fix the setback while retaining all public rights, no more, no less and this is the strategy that Ron Ivie tried to employ when negotiating the terms of the diversion agreement.

Bill Tew indicated that they have been working with the City for a year and a half. He would like this resolved tonight but the price seems to be an issue. He has done everything asked of him. The Mayor stated that he would also like to have this resolved tonight and is not interested in spending more money for an appraisal. The Summit County valuation was again discussed and Mark Harington pointed out that because it is a condominium, there will be a percentage value attributed to a common area and he felt the County valuation point is fairly irrelevant. Cindy Matsumoto asked how staff felt about the price and Polly McLean explained that the decision is up to City Council.

Ms. Simpson suggested a price of $10,500 which is 50% of $21,000. Liza Simpson, "<u>I move that we approve vacating a portion of McHenry Avenue right-of-way and authorize the Mayor to execute a quit-claim deed, in a form approved by the City Attorney, to sell approximately 85 x 10 foot section of McHenry Avenue right-of-way to the owners of 525 Rossi Hill Drive and accept and enter into an easement agreement which allows for continued public use of this vacated portion of the right-of-way and the price to be $10,500</u>". Joe Kernan seconded.

Alex Butwinski felt that is not the right number but could support $21,000. He suggested using the $21,000 and the $5,000 numbers which total $26,000 and divide it in half for a price of $13,000. Cindy Matsumoto felt the City is getting a fair price for the property and she does not want to hold up this process any longer over a few thousand dollars. She stated she supports Ms. Simpson's motion. Dick Peek asked if the house was destroyed if it could be rebuilt as is and the Mayor stated no. Mr. Peek suggested adding a note on the plat stating that Park City retains the first right of refusal to purchase this parcel for $1. Polly McLean stated that she drafted the quit claim deed which includes deed restrictions that specify that the property had to remain with Unit 1 on the condominium plat and if the owners tried to sell it, it would revert back to the City for $10. Motion carried.

Alex Butwinski	Nay
Joe Kernan	Aye
Cindy Matsumoto	Aye
Dick Peek	Nay
Liza Simpson	Aye

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 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Michael Kovacs, Assistant City Manager; Tom Daley, Deputy City Attorney; Polly Samuels McLean, Assistant City Attorney; and Mark Harrington, City Attorney. Liza Simpson, "I move to close the meeting to discuss litigation". Alex Butwinski seconded. Motion carried unanimously. The meeting opened at approximately 3:45 p.m. Liza Simpson, "I move to open the meeting". Joe Kernan 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

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