

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JULY 18, 2002**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, July 18, 2002.

AGENDA

Closed Session

3:45 p.m. Property acquisition

Work Session

4:20 p.m. Council questions/comments
4:50 p.m. Review of regular meeting
 Ordinances - plat amendments/news racks
 Fence award and cleaning contracts
 Other meeting questions/comments
5:20 p.m. Olympic legacy
5:50 p.m. Break

Regular Meeting

6:00 p.m.

I ROLL CALL

II PUBLIC INPUT

III COMMUNICATIONS FROM COUNCIL AND STAFF

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF JUNE 6 , 2002 AND JUNE 20, 2002

V CONSENT AGENDA PUBLIC HEARINGS

1. Ordinance approving a plat amendment to combine Lots 4 and 5 of Block 27 of the Snyder's Addition, located at 1117 Norfolk Avenue, Park City, Utah into one lot
2. Ordinance approving 157 Park Avenue lot line adjustment to combine the southerly ten feet of Lot 15, and all of Lot 14 in Block 1 of the Amended Park City Survey, into one platted lot located at 157 Park Avenue, Park City, Utah
3. Amendment to Fidelity Investments Park City International Jazz Festival Master Festival License

4. Ordinance amending Title 14, Chapter 6, Section 7 of the Municipal Code regulating News Rack locations within Park City's Historic District

VI CONSENT AGENDA

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2. Ordinance approving 157 Park Avenue lot line adjustment to combine the southerly ten feet of Lot 15, and all of Lot 14 in Block 1 of the Amended Park City Survey, into one platted lot located at 157 Park Avenue, Park City, Utah
3. Amendment to Fidelity Investments Park City International Jazz Festival Master Festival License
4. Ordinance amending Title 14, Chapter 6, Section 7 of the Municipal Code regulating News Rack locations within Park City's Historic District
5. Authorization to staff to enter into a contract with Mountain States Fence Company for replacing the cemetery fence and entrance gates in an amount not to exceed \$94,215
6. Authorization to staff to enter into a two-year contract with Resort Commercial Property Management for janitorial services in an amount not to exceed \$81,100 per year

VII NEW BUSINESS

1. Findings of fact and conclusions of law rejecting the appeal of the Planning Commission action of June 12, 2002 approving the MPD for April Mountain for failure to timely file the appeal
2. Appeal of Planning Commission June 26, 2002 approval of April Mountain Conditional Use Permit for 39 condominium units

VIII PUBLIC HEARING

Ordinance approving a final subdivision plat known as the April Mountain Subdivision, located on Mellow Mountain Road, Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah

IX OLD BUSINESS

1. Ordinance approving a final subdivision plat known as the April Mountain Subdivision, located on Mellow Mountain Road, Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah

X ADJOURNMENT

**PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JULY 18, 2002**

Present: Mayor Dana Williams; Council members Peg Bodell, Kay Calvert, Candace Erickson, Jim Hier; and Fred Jones

Tom Bakaly, Assistant City Manager; Mark Harrington, City Attorney; Gary Hill, Project Manager; Pace Erickson, Streets Manager; Rick Lewis, Community Development Director; Myles Rademan, Public Affairs Director; Patrick Putt, Planning and Zoning Administrator; Jerry Gibbs, Public Works Director; and Rick Lewis, Community Development Director

Bill Brown, Olympic volunteer

1. Council questions/comments. Peg Bodell reported on the Historical Society's volunteer luncheon and relayed that it is the 100th year anniversary of the infamous mine explosions where 34 members of the community were lost. Fred Jones disclosed that he received a phone call from Jan Wiling urging support of the Olympic Look Tower at the Olympic Plaza, adjusted to the height limit, and some consideration given to the City maintaining the white lights on Main Street. Bob Wheaton also contacted him urging support of the Olympic flags at Deer Valley. He complimented Park City Mountain Resort on a great job in finishing the Town Bridge with landscaping and walkways.

Candace Erickson reported that she attended the Parks and Recreation Board's public hearing on the City Park Master Plan. Those comments will be capsulized and a revised plan will be before Council shortly. There was also discussion on locations for trail heads and the fencing for the tot lot; this area of City Park is anticipated to be improved next year. The Parks and Recreation Board brought up cost and efficiency issues associated with incorporating the fence project next year when other improvements are scheduled. Ms. Erickson stated that she informed them that she takes the public seriously and is inclined to have the fence installed this year. She also advised that she believes that the Council is committed to building this fence yet is sensitive about City Park funding and perhaps could fund it with another source. Peg Bodell felt there is greater public interest in neighborhood tot lots rather than expanding the play area in the park, however, this is a separate topic. She supported installing the fence immediately and urged reconsideration of the expansion of the tot lot. Jim Hier agreed but added there is another public play area in Prospector and Ms. Bodell explained that perhaps play ground equipment could be installed at various locations like the Library and Education Center campus or Rotary Park to serve more citizens. In response to a question from the Mayor, Tom Bakaly explained that the cemetery fence was bid separately from the tot lot and the *other fence account* is the source for the cemetery fence as well as other fences in town. The Parks and Recreation Board requested that this project not be funded with City Park funds at this time but a transfer could be made at a later date. Staff was directed to proceed with the tot lot fencing project.

In response to a question from Kay Calvert about inappropriate behavior by individuals cruising Main Street, Chief Lloyd Evans explained that there are no regulations covering cruising, but there are ordinances addressing noise and lewd conduct. People should report the offense to the Police Department as soon as possible. Mayor Williams shared his mail from the week and discussed his first meeting of the recycling task force. There's a goal to have a plan within two months that involves BFI and the independent recycling agencies in a program which could be implemented County-wide. The Mayor presented a birthday present to Assistant City Manager Tom Bakaly.

There was discussion about the County Commission approving the interlocal agreement for the planning of Quinns Junction which will be coming back to Council for approval on August 1. Mr. Lewis explained that a professional consultant will most likely be hired to facilitate the process.

2. Review of regular meeting:

News racks ordinances. Gary Hill explained that when the Kimball Art Center was remodeled for the Olympics the intended news racks for that location were moved to the sidewalk in front of Zooms. Additionally, there have been requests from business owners and newspaper vendors to take one of the sets of racks by the Brew Pub and install it on the other side of the street. The proposal is to relocate this set at the Main Street Mall; both locations are defined and reflected in the ordinance. Peg Bodell felt the Zooms rack obstructs the sidewalk and it was explained that it complies with setback requirements. She felt it is worthwhile to contact the Kimball Art Center now that there is available space to accommodate a news rack. Council concurred to continue this to the meeting of August 1 so the draft ordinance location changes are defined.

Cleaning contract. Kay Calvert pointed out the great disparities in the bids for the contract and asked if the City has used Resort Commercial Property Management before. Pace Erickson explained that this company has performed well on its contract with the City for two years. The difference in numbers is probably a result of trying to analyze a contract as large as the City's because of the number of facilities and it's difficult to envision how much it takes to maintain the buildings. He pointed out the variety of events and uses of City facilities and expectations of tenants and event holders.

Fence award. Troy Daley explained that this project was bid a second time and the City received four bids. Mountain States Fence Company was the lowest bidder and staff made sure that every specification could be met as outlined in the RFP.

3. Olympic legacy.

Myles Rademan referred to his staff report which includes a variety of ideas which don't necessarily preclude other concepts. Peg Bodell asked for a list of legacies already in place and Myles Rademan explained that well over \$100 million

has been allocated toward infrastructure at the Utah Olympic Park along with highway improvements. The transit center, round-about, telecommunications improvements and Olympic Welcome Plaza are also products of the Olympics, but there is interest in more visible mementoes. PCMR and Deer Valley are very interested in maintaining the Olympic Look Towers installed at the resorts. Staff is working on recognition plaques which will be placed around town and at the resorts and the Chamber/Bureau will be producing a walking tour brochure as there are many requests from visitors about information on key Olympic locations. Mr. Rademan continued that a banner program has been proposed where banners could be displayed every February to mark the anniversary of the Olympics. He added that Pro Graphics created the huge building and bus wraps and are working on legacy concepts with other venue cities. There could be more signs in town and he referred to the permanent Main Street lighting program. The City has been approached by Jonathon Bronson who is a bronze sculpturer. His work is estimated at approximately \$80,000 and a sponsor would have to be identified.

Mr. Rademan asked for feedback specifically on the towers, lighting and flags. The Board of Adjustment denied the look tower recommended for the Olympic Welcome Plaza for a height variation. He explained that the tower can be cut down if that location is still preferred and there are other sites that were proposed several weeks ago. The Mayor suggested that the tower be moved from the center of the plaza back north toward the Cottonwood trees. Bill Brown discussed alterations to the tower by way of reducing the height which will change the look slightly but is a possibility. He discussed the Seiko clock feature in the plaza which is set by satellite. Myles Rademan added that even if the tower height is lowered and located in the center of the plaza, it will have to go to the Planning Commission for conditional use permit review because it would be located in the frontage protection zone. If it is moved to the north, it will not be in the FPZ and Jim Hier felt it would fit in that location with modifications. Fred Jones agreed but requested a schematic plan. In response to a question from Jim Hier, Pat Putt explained that flags are regulated through the Sign Code and property owners are allowed up to three flagpoles. Any amendment to the Sign Code would be reviewed by the Planning Commission. Mr. Putt added that the Olympic Welcome Plaza was approved as a conditional use permit and the underlying zone is GC. The Snowcreek portion of the site is part of an MPD where a height exception can be granted if it meets specific narrow criteria.

Peg Bodell stated that she is willing to consider legacy projects but is not willing to *short-change* the process. Myles Rademan commented that projects could go through the normal channels and get denied or Council may have to create provisions for Olympic legacies in the Code. Jim Hier felt that flags at PCMR and Deer Valley are appropriate and associated amendments should be made to the Code. Mr. Putt added that the Sign Code is reviewed on an annual basis by the Planning Commission and this is scheduled next month. Additional Olympic legacy language could be added for that review. There was discussion about submitting an application to the BOA and the Legal Department researching a variance option. Fred Jones stated that under the current Code,

these Olympic legacies would not be allowed, and the Council should consider amendments which should be narrowly defined for the resorts. Ms. Erickson interjected that there is no harm in it being reviewed by BOA and Mr. Jones added that he is not in favor of going to the BOA. Ms. Bodell felt that following the process and going through the BOA may result in a better project. Mr. Hier felt that it is inappropriate to make a special exception in the LMC to allow a 65 foot tall Olympic legacy tower at PCMR. Mark Harrington advised that this is not what staff would recommend; cities can not make use variances for exceptions. The proposal is to legally create a narrowly defined permitted use category or administrative conditional use permit category. Most jurisdictions exempt municipal projects in all zones, but staff is recommending a much more narrowly defined permitted use language. There could be specific criteria added, much like the City's practice in facilitating ski operations. Pat Putt acknowledged expressed concerns about process and pointed out our current planning tools for processing special exceptions or variances. The criteria used is extremely limited in scope; for instance, a variance requires demonstrating hardship associated with the height. If Council is also concerned about opportunities for public input, there could be additional legislation crafted outlining a public process before the Planning Commission and City Council.

Mayor Dana Williams stated that all of the calls he has received about the lighting on Main Street was to change it back to the old lighting scheme over the street, except for the HMBA. He relayed an incident where an individual was burned by a light socket. Kay Calvert felt the project is too costly. Jim Hier commented on his concerns about the on-going costs and additional demands on staff for maintenance on privately owned buildings. Ms. Bodell relayed that she received many calls as well but the negative recommendation from the Historic District Commission carries a lot of weight with her. Ms. Erickson noted her surprise at the associated high costs involved with lighting Main Street and is also compelled to support the HDC's recommendation. Fred Jones agreed with Mr. Hier's comments.

Council members supported to proceed with designing banners. There was discussion about displaying them during the anniversary of the Olympics, but Ms. Erickson felt that they should be hung all winter season. Myles Rademan stated that he will come back to Council with designs. Peg Bodell explained that the banner project is something that the community can be involved in and encouraged staff to promote that; the sculpture should involve a task force. She continued that the Olympic legacy effort seems *piecemealed* and unbudgeted and a plan could be formulated by a task force where some of the ideas from the original Olympic celebrations document could be incorporated. A matrix of benefits to the community should be utilized so the process is more objective. It may be better to focus on the Utah Olympic Park before the City spends money on things here and there that won't have an impact. She suggested a celebration day or week that draws tourists back to town; many of these proposed projects are insignificant. Ms. Calvert disagreed; sometimes little things have a big impact and *we're going from analysis to paralysis* on this issue. Bus wraps were discussed, and Jerry Gibbs explained that the joint

transit committee is looking at bus graphics which will be coming to Council shortly. Myles Rademan added that he will invite Pro Graphics to a meeting. Kay Calvert stated that there should be committee to review the sculpture project and associated fund-raising. Rick Lewis commented that there has been a lot of interest expressed by art galleries to display sculptures on the new bulb-outs on Main Street, at no cost to the City. Discussion ensued about signing the Olympic Welcome Plaza and initiating discussions with UDOT for signs on I80 and US40.

Prepared by Janet M. Scott

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JULY 18, 2002**

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, July 18, 2002. Members in attendance were Dana Williams, Peg Bodell, Kay Candace Erickson, Jim Hier, Fred Jones, and Kay Calvert. Staff present were Tom Bakaly, Assistant City Manager; Mark Harrington, City Attorney; Jonathan Weidenhamer, Planner; Derek Satchell, Planner; Alison Butz, Special Events Manager; Kirsten Whetstone, Senior Planner; and Patrick Putt, Zoning Administrator.

II PUBLIC INPUT

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

Joe Frasier, Sandstone Cove resident, requested staff be directed to require Sandstone Cove contractors to allow vehicle access down the street, access to the fire hydrants, and room for a vehicle to turn around at the cul-de-sac.

Barbara Frasier, stated there has been occasion when she has not been able to access her driveway due to the construction vehicles parking in the cul-de-sac. Ron Ivie reported he gave direction to the contractor today and if there is further non-compliance the construction vehicles will be towed, recommended the residents work through the Police Chief or himself instead of confronting the contractor or workers to avoid further escalation.

Scott Dancie, representing AT&T, reported the company is currently in the process of upgrading the cable system in Park City that will allow extensive high-speed cable internet, cable and local phone service to all areas of the City; during the construction they have run into a few problems and number of water lines, nothing intentional; reported he met with Eric DeHaan's office to hopefully avoid any more problems; noted AT&T's video service franchise tax is paid to the City, whereas satellite dish services do not pay.

Francis Umlauf, requested any time before AT&T or other service begins work they coordinate with the streets department first to see whether they are planning to slurry the street before the digging up of the street.

Monty Coates, representing the Chamber of Commerce, thanked Council for looking at the Olympic legacy projects, reaffirmed how important even the little things are, hear it

daily from visitors how they want and expect to see more, feel like they are in an Olympic city, this is an advertising and marketing opportunity.

Denny Law, Aerie resident, stated residents do not get their landscaping bond back until landscaping is completed; received notice that the water rates are going to be raised punitively for people who use quite a bit of water, feels the water allocation should relate to the area of the lot, established landscaping will either be watered an exorbitant price or will die; feels water rate increase should be rolled back and the rates put in proportion to the area of the lot; has zero-scape landscaping, water every 3 days, next water bill will be over \$800.

III COMMUNICATIONS FROM COUNCIL AND STAFF

Councilmember Bodell reported over the last couple of weeks it has been brought to her attention that the issues with the altercations on the trails could be solved if you just use her as a decoy. In the spirit of serving the people, would like to volunteer her services.

Peg reported she received a letter from Mark Moffet and inquired how the police department was proceeding with that matter. Chief Evans explained the procedure used to address a letter of complaint concerning officer conduct or use of force, or misconduct of arrest powers. First it is acknowledged to the complainant that the complaint was received and will be investigated thoroughly. A thorough investigation is directed to be conducted by the Lt.'s office who investigates the circumstances, obtains statements, and completes a thorough and complete investigation as to the allegation. Once that investigation is completed he reviews it, draws up a conclusion and finding, and then provides discipline if warranted or makes a substantial finding to the complainant of why, what, who or how, and offers additional assistance if needed.

Peg inquired what is the general time period for the process. Chief Evans responded they try to complete an investigation within a 30 day period, with exception of extenuating circumstances that cause it to go further. Peg Bodell requested Council be advised of the conclusion and Officer Evans responded a copy of his letter and investigation summary will be provided.

Councilmember Bodell inquired what the recourse was for a citizen if they are not satisfied with what the City is doing. Chief Evans responded there is not an official recourse, however, his standard practice is if an individual is in disagreement with his findings on a case or the action taken, the City Manager reviews the issue and acts on the appeal, usually we come to some mitigation; stated he was happy to report to this point he has not had to go to the City Manager to mitigate his findings.

Councilmember Hier reported last Tuesday night Chief Evans conducted his first neighbor to neighbor meeting in an attempt to initialize more proactive neighborhood watch type activities; stated the meeting was not well attended however, Chief Evans and his staff

did an excellent presentation; expressed hope as these programs extend throughout the rest of the year there is improved public participation. Chief Evans commented it was the first meeting and more program meetings will be held throughout different areas of the community each month.

Councilmember Jones commented in regard to Aerie resident Denny Law's issue concerning the water rates; suggested Mr. Law contact the water department for review of the situation.

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF JUNE 6, 2002 AND JUNE 20, 2002

Councilmember Bodell requested minute corrections as follows: Page 3, sentence needs completion where it reads 'at this point there has not transpired'; Page 5, first paragraph, requested addition of 'Council agreed to a suggestion by the Mayor for \$21,000'; Page 7, sentence 'no staff present was present' needs correction.

Hearing no other omissions or corrections, the Mayor requested a motion.

Peg Bodell moved to approve the minutes as corrected. Fred Jones abstained from approval of June 20, 2002 due to absence. Jim Hier seconded. Motion carried 4-0, Bodell, Hier, Erickson and Calvert voted Yes; Jones abstained.

V CONSENT AGENDA PUBLIC HEARINGS

1. Ordinance approving a plat amendment to combine into one lot Lots 4 and 5 of Block 27 of the Snyder's Addition, 1117 Norfolk Avenue, Park City, Utah.

Hearing, having been advertised as required by law, was opened by Mayor Williams. Planner Jonathan Weidenhamer presented an overview of the application submitted by Carl Weaver and Jill Dunlap and staff recommendation to hold a public hearing, consider public input, and approve the plat amendment combining Lots 4 and 5 of Block 17 of Snyder's Addition into one lot, located at 1117 Norfolk Avenue. Planner Weidenhamer reported a public hearing and review by the Planning Commission was held on July 10, 2002; no public input was received and the Commission voted unanimously to forward a recommendation to approve the application.

Mayor Williams invited the public to comment. Hearing no public input, the public hearing was closed.

2. Ordinance approving 157 Park Avenue lot line adjustment to combine the southerly ten feet of Lot 15, and all of Lot 14 in Block 1 of the Amended Park City Survey, into one platted lot, 157 Park Avenue, Park City, Utah.

Hearing, having been advertised as required by law, was opened by Mayor Williams. Historic Planner Derek Satchell presented an overview of the application submitted by Ruth Drapkin for Amos E. Madanes, and staff recommendation to hold a public hearing, consider public input and approve the proposed Lot Line Adjustment to combine the southerly ten feet (10') of Lot 15 and all of Lot 14 in Block 1 of the amended Park City Survey, into a single lot, at 157 Park Avenue, and outlined the conditions of approval. Planner Satchell reported a public hearing and review by the Planning Commission was held on July 10, 2002, and the Commission voted unanimously to forward a recommendation to approve the application. Reported the reason for tonight's City Council hearing is the applicant was unable to submit the required consent letters from the adjoining property owners.

Councilmember Hier inquired concerning the balance of Lot 15. Planner Satchell responded the remnant of the northerly portion of Lot 15 is under the same ownership as Lot 16, a different property owner.

The Mayor invited public input; hearing none, Mayor Williams closed the public hearing.

3. Amendment to Fidelity Investments Park City International Jazz Festival Master Festival License.

Special Events Manager Alison Butz presented the proposed amendment to the approved Master Festival License application for the Fidelity Investments Park City International Jazz Festival, for review and consideration of approval. Alison Butz reported staff recommends approval of the amendment to include music in Miners Park on August 18th from 11:00 am until 2:00 pm, based on the conditions of approval as outlined in the staff report.

The Mayor opened the public hearing and invited public comment; hearing none the public hearing was closed.

4. Ordinance amending Title 14, Chapter 6, Section 7 of the Municipal Code regulating News Rack locations within park City's Historic District.

Council concurred to continue this item to August 1, 2002. Councilmember Jones moved to remove Item No. 4 from the Consent Agenda and continue the item until August 1, 2002. Candy Erickson seconded the motion. Motion carried unanimously.

VI CONSENT AGENDA

Councilmember Jim Hier moved to approve the Consent Agenda with the exception of Item No. 4. Fred Jones seconded the motion. Motion carried unanimously.

1. **Ordinance approving a plat amendment to combine into one lot Lots 4 and 5 of Block 27 of the Snyder's Addition, located at 1117 Norfolk Avenue, Park City Utah (See staff report and public hearing).**
2. **Ordinance approving 157 Park Avenue lot line adjustment to combine the southerly ten feet of Lot 15, and all of Lot 14 in Block 1 of the Amended Park City Survey, into one platted lot located at 157 Park Avenue, Park City, Utah (See staff report and public hearing).**
3. **Amendment to Fidelity Investments Park City International Jazz Festival Master Festival License (See staff report and public hearing).**
4. **Ordinance amending Title 14, Chapter 6, Section 7 of the Municipal Code regulating News Rack locations within Park City's Historic District. Continued to August 1, 2002 (see Consent Public Hearing No. 4 above).**
5. **Authorization to staff to enter into a contract with Mountain States Fence Company for replacement of cemetery fence and entrance gates; amount not to exceed \$94,215.**
6. **Authorization to staff to enter into a two-year contract with Resort Commercial Property Management for janitorial services at City buildings; amount not to exceed \$81,100 per year.**

VII NEW BUSINESS

1. **Findings of fact and conclusions of law rejecting the appeal of the Planning Commission action of June 12, 2002 approving the MPD for April Mountain for failure to timely file the appeal.** (Also refer to staff report, work session notes)

City Attorney Harrington presented the findings of fact, conclusions of law and order denying the appeal of Planning Commission decision on June 12, 2002 to approve April Mountain MPD for review, approval or modification. Clarified Finding No. 8, saying that the majority, if not all the Appellant's objections, can be raised in the review of either the final subdivision plat matter or the CUP appeal, is not a basis for rejecting the appeal, the finding only addresses the underlying original claim of Mr. Joe Tesch, counsel representing Aerie Owners Association, that equitable relief or fairness, regardless of the law for the

technical components, requires hearing of the MPD appeal. The City Attorney noted at the last meeting, Council comments reflected disagreement with Mr. Tesch's claim, that the process can still go forward and some of the MPD issues could be heard at the time the CUP and subdivision matters are addressed and the fairness is preserved. However, addressing certain MPD issues at that time does not allow the entire MPD to be reopened. This action in terms of disposing of the MPD appeal is final.

Councilmember Erickson moved to adopt the findings of fact, conclusions of law and order denying the appeal concerning April Mountain MPD. Fred Jones seconded the motion. Motion carried unanimously.

2. Appeal of Planning Commission June 26, 2002 approval of April Mountain Conditional Use Permit for 39 condominium units.

City Attorney Harrington referred to requests by Mr. Tesch to hear the public hearing of the subdivision plat first in order to hear the majority of the public testimony and eliminate duplication which will be included by reference into the CUP appeal, and that the CUP appeal hearing be opened to include matters other than the record, so comments do not have to be sorted between relative to the plat hearing or appeal, and allow Council consideration of recent public input although not part of the Planning Commission hearing record. He reaffirmed this is not a consolidation of the two issues, they are two different matters and the subdivision plat is not an appeal, Council was forwarded a positive recommendation by the Planning Commission. Historically Council has applied this standard and is the reason CUP appeals are heard by City Council and not before the Board of Adjustment as provided by the state code; prior Council's determined because CUP's and MPD's often raise complex and inter-related issues, as this one does, Council would be the more appropriate body to hear those appeals which was expressly provided for in the Municipal Code as required by the state code. Council has consistently refrained from keeping a judicial closed public record and has made the decision to open the record and allow people to speak at the meeting outside of the hearing. Municipal Code Section 15-1-18 states that the review of the appeal is limited to the record unless Council by motion opens it, which is the request of Mr. Tesch.

Bruce Shapiro, counsel for the applicant, agreed and requested the public hearing for the final subdivision plat be addressed first and public comment taken at the subdivision plat hearing be used as information for the CUP appeal to eliminate duplicate public input; affirmed there are two separate matters before the Council.

Mr. Tesch concurred with Mr. Harrington's assessment, stated he wanted to clarify the code concerning the admission of new issues.

Councilmember Bodel made a motion to move the public hearing concerning final subdivision plat for April Mountain Subdivision ahead on the agenda before the matter of the CUP appeal. Jim Hier seconded the motion. Motion carried unanimously.

Councilmember Erickson moved to accept additional testimony for purposes of the CUP appeal and incorporate this testimony by reference from testimony received during the final subdivision plat public hearing. Motion seconded by Jim Hier. Motion carried unanimously.

(See Appeal of April Mountain CUP continued below)

VIII PUBLIC HEARING

1. Ordinance approving a final subdivision plat known as the April Mountain Subdivision, located on Mellow Mountain Road, Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah. (Also refer to the staff report and work session notes)

Kirsten Whetstone, Senior Planner, introduced the final subdivision plat for 31 single family lots and three development parcels for 39 condominium units for the proposed April Mountain subdivision plat, identified the zoning and adjacent land uses, and presented the property description. Reported on June 26, 2002, the Planning Commission held a public hearing on the final subdivision plat and found it consistent with the April Mountain MPD and the Commission forwards a positive recommendation to approve the plat with conditions as presented. Reported the Commission made a number of findings and conclusions on the subdivision plat, the primary one being they found the subdivision as conditioned consistent with the Park City Land Management Code, the Park City General Plan, and the amended April Mountain MPD, which was approved by the Commission on June 12, 2002. Planner Whetstone noted the initial MPD approved in 2001 consisted of 54 single family lots and a condominium parcel for up to 15 condominium units; the current amended MPD lowered the road down the hill, is a more clustered plan, some of the lots were eliminated for open space, and consists of 31 single family lots and 39 condominiums.

Planner Whetstone presented the proposed findings of fact, conclusions of law, and conditions of approval, and staff recommendation for public hearing, review and consideration of the Planning Commission's approval the April Mountain subdivision plat based on those findings, conclusions and conditions; noted the plat reflects the City Engineer's redlines and pointed out location of trails dedicated as public access trails and connection to existing trails in the City open space to the west of the property.

Henry Sigg, representing April Mountain Development L.C., presented a site map depicting the layout of the project, road, open space and trails, and architectural exhibits

with structural material and color information. Stated the town homes are similar in materials, size and price as a single family homes, will not encroach on ridgelines and are hidden from view. Understands nightly rental is an issue of concern to adjacent property owners, however, if RD zoning is an issue, it should be looked at City-wide.

Hearing, having been advertised as required by law, was opened by Mayor Williams. The Mayor invited the public to comment.

Ms. Whetstone presented for the record a summary of three letters received today, as follows: Rob Slettom wrote in support of nightly rentals stating nightly rental programs located away from ski areas are generally 10-13% enrollment and are seasonal; Kim McClellan, representing Deer Valley Lodging, wrote in support of nightly rentals; and Nick Caravaglia, representing David Holland Resort, wrote in support of nightly rentals stating based on his experience nightly rentals have little impact on the neighborhood and do not negatively impact property values.

Frances Umlauf, expressed concern about loss of wildlife habitat and loss of migration trails, and opposition to sidewalks and ice melt.

Ann Daniel, Hearthstone resident, referenced her letter, expressed opposition to the project size and inquired about water availability to support it. City Attorney Harrington explained many years ago this is one of the few projects that paid into a water special improvement district that provided for construction of an Aerie tank based on a City analysis and zoning density for this property of 190 units. The City down-zoned the property lowering the approved MPD to 149 units, then the property was rezoned a second time and applied the sensitive lands Ordinance which further reduced the density to the current 70 units. Ms. Daniel responded that still does not answer her question where the water will come from, stated it was not good planning on the part of the City to balance growth of the City with environmental and especially water concerns, what was paid for 15 years ago does not apply to the current drought and water situation; expressed concern about traffic and Aerie overgrowth.

Carol Honeywell, Aerie resident, expressed concern about the effect to current wildlife and lack of study of the impact the development will have to their habitat, traffic, access, danger of Aerie Drive during the winter.

Denny Law, expressed concern about the use of Aerie Drive during the winter by nightly rental visitors.

Dean Schulman, President of the Aerie Owners Association, affirmed arguments expressed by their counsel Joe Tesch in his brief are a reflection of the personal concerns of a number of the residents, specifically concern with nightly rental, condominiums, destruction of wildlife habitat, and orderly maintenance and administration of trails. Feel

none of the concerns have been adequately addressed in the April Mountain development plan. Have signatures of over 100 neighborhood residents opposed to the plan.

Diane Mellon expressed concern about lack of wildlife habitat report and comprehensive wildlife map of the area, and opposition to the brief amount of time for project review and approval, condominiums, nightly rental, sidewalks, lack of harmony with adjacent properties. Stated the two homes identified at the last Planning Commission meeting as failing to meet City requirements should be eliminated from the project. Stated she has found out the prior developer met with the City Council without a public hearing in 1986 and changed the development area from Estate to Residential Development (RD) zone. Reported she has spoken to and received letters in opposition to the condominiums and nightly rental from Mike and Rita Kennebrew, Shardel Riley, Lou and Debbie Moreno, Sandra Orsborn, Michael and Kathy Lee, Susan Monahan, Wendy Lavitt, Karen Fields, David Berry, Bruce and Laura Raile, Chuck Hayes, Paul Seinfeld, Joseph and Nancy Motto, Jim Klopman, Joan and Bill Thompson.

Kevin Damon, past President of Aerie Owners Association 1997 to 2000 and Management Committee 1997 to 2001, thanked Mark Harrington for acknowledging the difficulty in following the sections and subsections of this complicated project; commented in regard to the City's credibility in handling cellular antennae's and a building height violation currently happening on Aerie mountain; expressed strong opposition to condominiums and nightly rental on April Mountain, noted zoning discrepancies, and expressed concern about future development of the Kearns-Tribune and Gambel Oaks parcels with increased densities resulting from this project.

Bernard Nussbaum, Aerie Management Committee member, expressed opinion there were differing definitions for 'adjacent' and 'contiguous' according to Oxford's Dictionary, pointed out the proposed project and the Aerie are in the same neighborhood and not compatible; stated the findings and conclusions addressing compatibility and habitat impacts are inadequate. Mark Harrington clarified that the findings and conclusions presented for adoption tonight were from a prior hearing on a different point, there are no findings or conclusions for this matter except for the plat which findings and conclusions were forwarded to Council by the Planning Commission. Mr. Nussbaum expressed strong opposition to nightly rental. Planner Whetstone stated the areas that are contiguous were never considered to be adjacent, staff review embraces all areas they feel to be affected by the project and staff worked hours with Kevin Damon who is not adjacent to the project.

Bill Thompson, Mellow Mt. resident, referenced his letter, noted the proposed Lots 1, 2, and 3 of April Mountain are directly adjacent to his property and those three lots will appear to be within the Aerie subdivision; expressed opposition to nightly rental in the April Mountain subdivision and supports the single family aspect of the project.

Susan Monihan, stated if the project is not compatible with the neighborhood, she cannot support it.

Joe Markham, Aerie resident, inquired concerning the developers experience and financial gain with this project; expressed opposition to sidewalks and expressed concern about the quality of project, affect on wildlife and traffic.

Henry Sigg, representing April Mountain Developers L.C., referred to the site map and noted Aerie subdivision is surrounded by Estate (E) and Residential Open Space (ROS) zones, noted undue negative attitude toward condominiums, townhomes and twin homes and pointed out the City's makeup is based on those types of dwelling, multi-family dwellings are located extensively in Deer Valley and all around the City; noted Aerie properties encroach on ridgelines and there are no wildlife trails in the Aerie subdivision.

Carol Honeywell inquired about build-out time and stated she would prefer incremental construction. Planner Whetstone responded the infrastructure and road will be built in the first phase, then single family lots sold and built out; condominiums will probably be constructed then sold. Noted one of the conditions of approval for the subdivision plat is that a construction mitigating plan would be required and she is certain trucks would not be allowed use of Aerie Drive in the winter. Clarified the Aerie subdivision plat does not dedicate any open space or trails; those components may be present on Aerie Mountain but not in the subdivision.

Joan Thompson, Mellow Mountain resident, expressed concern about traffic, Deer Valley Drive and Mellow Mt./Sunnyside intersections, impacts of nightly rental.

Joe Tesch, representing the appellants, presented comments pertaining to both plat and CUP appeal. Emphasized the Aerie Owners Association consists of 98 lots, 109 voting citizens to a large extent permanent residents. Sunnyside subdivision is doing everything possible to eliminate nightly rental there; Hearthstone is zoned for nightly rental however CC&R's say lots will be used only for single family purpose and no time-share or nightly rental use allowed in the subdivision. All neighboring areas are opposed to nightly rental on April Mountain due to the incompatibility, disruption, and there is concern about transient use. Nightly rental is not an issue that is zone oriented, it stays consistent with use, not zone. Neighboring areas are not nightly rental, April Mountain may have to deal with restrictions that may be allowed otherwise in the zone. Similarly there is no compatibility with multi-family use except Sunnyside, it could not be said nightly rental and multi-family promotes neighborhood compatibility or is consistent with use, and noted 15 to 20 citizens have submitted letters in opposition to both uses. Stated town is composed not only of resort based dwellings that benefit the economy, but permanent residential residences also. Pointed out a number of myths. That the project is better than what is was; noted the project was vested under the old plan until July 11 when the underlying

MPD was amended, now there is no vested right and the City has bargaining power. Another myth is that the project was great because it is providing access to Gambel Oaks; there is already access pointing out state law states if you use a road for ten straight years it becomes a state highway. A third myth is that nightly rental and multi-family currently exist in the area; it only exists in Sunnyside. Stated Aerie Road will not be able to handle nightly rental use, barely handles current permanent residential use, unfamiliar visitors will be a serious hazard. Referred to exhibit from last MPD approval in 2002, and stated what is being abandoned includes loss of the current roads accessing Solamere and Hope parcels which will be turned into lots, the other fork access is a temporary easement and terminates if the BLM lease terminates, noted if the Hope parcel wants to fence its property then can cut citizens off forever and the City will accept it unless Hope pays April Mountain, cannot understand the reason for giving up the right-of-way existing currently. Stated the Gambel Oaks access is being given up for a dense development and City sidewalk. Stated Council may not ignore its own Ordinance and citizens expect Ordinance enforcement in regard to a habitat study, pointing out Municipal Code Section 15-2.21-3A, sensitive area analysis and determination states 'Any applicant for development must produce a sensitive lands analysis performed by a qualified professional(s) that identifies and delineates all the following features and conditions: (7) Wildlife Habitat Areas. A map depicting all wildlife habitat areas, as defined by the Wildlife Habitat Report at Section 15-2.21(3)(B)(8)', noted the impact to animal corridors and habitat has not been studied as required. Stated the subdivision plat should not be approved because a habitat study has not been done and project may be doing severe damage which can be avoided. Stated the right-of-way and easements should be looked into closely, the project has no benefit to public access. In regard to the MPD, the project went from 15 to 39 condominiums from the last approval and it was not necessary.

Bruce Shapiro stated that the MPD appeal was denied and should not be addressed, the plat and CUP appeal were being discussed tonight. The arguments heard were spoken in general terms, with no specific reasons why the plat does not meet the findings of the MPD and he has not seen evidence that shows that the wildlife is an issue. In 2002 when the prior MPD was approved, wildlife was not an issue. In review of the final plat requirements, there were no arguments that related to the plat and a lot of discussion re MPD type issues. The plat was revised in 2002 to address concerns by the City, open space was increased, density was decreased, a more community-type environment was created. This is not a zoning hearing, the project is zoned RD. No study has been made to determine if multi-family dwellings cause any more problems as single family dwellings, there is mixed use in the project, and the units are expensive. There are no statistics that multi-family units cause any more use, in fact it was found multi-family units are used approximately 60 days out of the year in Park City and have a less of a use and cause less traffic than single family units. Multi-family units have management companies to oversee the management of the property and it is a more controlled environment. The Planning Commission summed up the project and issues and it was approved. The 109 residents had no prior opposition to nightly rental and the petition is incorrect on that point. The

project conforms with the Land Management code, zoning regulations and is designed to meet open space requirements for the area. Although Aerie is concerned the project will have a substantial impact on its subdivision, the distance from the nearest Aerie subdivision unit to the nearest April Mountain multi-family unit is 1/3 of a mile. Aerie is trying to impose their values on the April Mountain neighborhood, whose residents should have the opportunity to install their own values and ideas, their own destiny and decision concerning zoning and nightly rental. Nightly rental has no consistent problems, disturbance reports from the police department were reviewed and showed disturbances were found primarily at Main Street and no consistent pattern in any surrounding City areas, however, single family homes had more problems than multi-family units. Ordinances are in place, the project is not doing anything against the LMC in regard to the trail system, which was approved by the Planning Commission in the MPD process. There has been no credible evidence given why the plan should not be finalized. Stated he has confusion in regard to the roads and where the issue is coming from that the project is taking away access and right-of-way. This needs to be determined by a court of law, evidence taken, and until a court of law determines there is an actual road there, a dedicated road for public use, there is not a dedicated road. What the developer has agreed to do is to give a defined access available to the public to get the public to Gambel Oak park. Citizens are getting access through public dedication which is 50 feet wide and defined. Noted the hearing has combined the plat and CUP together, they are two completely separate issues, one based upon the recommendation of the Planning Commission and the other based on an appeal. Upon review of all of the requirements of the final plat, he has not seen any evidence or testimony tonight that shows that the plat as it is drawn is in conflict with any LMC provisions, any plat provisions, or anything that is outlined with the already approved and finalized MPD by the Planning Commission. Everything is consistent.

Joe Tesch stated he only has a brief technical point and that is the road exists as a road on the first day of the eleventh year. As with Center Creek Road and Lake Creek Road, even if not platted they are a prescriptive use, highways by use and the law of the land is not that they do not exist until a court says they do. They exist on the first day after ten years are up and they only get litigated after somebody tries to cut them off.

Hearing no further comments, the Mayor closed the public hearing. City Attorney Harrington inquired if there were any questions of staff on the plat.

Councilmember Hier requested an explanation concerning the habitat study which as he recalls is part of the MPD process. Planner Whetstone responded that is now a requirement of any MPD, however, the previous MPD of which this was an amendment to, was submitted prior to that LMC amendment which added requirements concerning wildlife to the Municipal Code. Further explained when the original MPD was submitted, the Planning Commission made a determination of density under the Ordinance and a sensitive lands analysis was conducted in March, 2001 based on the submittal, and an

analysis of determination based on the entire sensitive lands issue was done when there wasn't a requirement for wildlife study at that time. When this MPD amendment came forward, the Planning Commission discussed it and said the determination made actual findings that met the sensitive lands, there was a range of density based on the sensitive lands Ordinance and finally that this new amendment was one unit more than the approved MPD, wasn't significantly different, and well within the density that came out in the analysis.

Councilmember Hier stated he just wanted to clear up that the wildlife habitat study is now required, however, was not required to be done when the amendment was addressed. City Attorney Harrington responded that was correct. There was a conscious decision by the Planning Commission that it was not necessary.

Councilmember Calvert inquired if the Planning Commission arbitrarily chose which codes they can put to old MPDs. City Attorney Harrington responded, no, the day of applicability of the LMC is determined at the date of the application and in this case there was a complete application that preceded the adoption of the subsequent change to the LMC. The Aerie folks are accurate that there was a delay between the initial application and the amendment, however, as long as that application remains active as is defined in the Code, which this one undisputedly was, it carried that vesting date and not subject to future LMC amendments unless they are made retroactive by City Council upon adoption. In order for the Planning Commission to determine that initial application was no longer active and void they had to go through a formal process which is outlined in the Code and that was not done.

Councilmember Calvert asked Joe Tesch when the habitat study concern was brought to the attention of the Planning Commission. Mr. Tesch responded it was argued in open session, during the public hearing before the Planning Commission and it does apply. The City does not have the right to waive the law, they just decided to give this guy a break.

Councilmember Hier stated he recalls that there is a compatibility definition or description in the LMC and inquired if that was available. City Attorney Harrington responded it was available, however, before he reads it the point is "compatible" does not say or equal "same" which was a point made by some of the Planning Commissioners as they were refuting some testimony.

Zoning Administrator Putt stated that the definition section of the LMC states the defined term 'compatible' or 'compatibility' as 'Characteristics of different uses or designs that integrate with and relate to one another to maintain and/or enhance the context of a surrounding area or neighborhood. Elements affecting compatibility include, but are not limited to, height, scale, mass and bulk of building, pedestrian and vehicular circulation, parking, landscaping and architecture, topography, environmentally sensitive areas, and building patterns.'

City Attorney Harrington stated for clarification from earlier testimony concerning the definition of 'adjacent', the code specifically states that a non-defined term shall be defined by Webster's New Dictionary, not Oxford's, and is defined as 'not distant, nearby, having a common border, immediately preceding or following, synonymous with adjoining, contiguous, abutting.'

Administrator Putt also noted 'multi-family' has been discussed by both sides and clarified that the term was defined in the LMC as a building that contains 4 or more dwelling units, duplex is defined as containing two units and single family no more than one unit. As part of this application there is a potential for three types of dwellings, single family, duplex and provision for multi-family units which would go through a separate CUP process. Councilmember Calvert inquired if duplexes were allowed in Single Family (SF) zone. Patrick Putt responded duplexes must be identified on a subdivision plat at the time of approval as being a duplex lot. Under allowed uses in the SF zone, a duplex dwelling is only permitted on lots designated for duplexes on an official subdivision plat. Councilmember Jones stated if this was under SF zone instead of RD zone, these condominium parcels would be required to show individual lots for the duplexes, that would be the difference but they would still be allowed. Pat Putt affirmed that was correct.

Mayor Williams stated he had a concern in regard to the definition of the 'use' of the area as compared to the 'zone', that there is an interpretation of what the 'use' is and he is concerned about how the term 'use' is being used in this case. City Attorney Harrington responded the question applies more to the CUP appeal because that is where the use is determined as opposed to the plat. Clarified that the nightly rental use is not currently applied for. There is no vesting or approval of nightly rental use by approving the MPD or the CUP or the plat. Nightly rental is a use which is applied for by the individual property owners through the Finance Department, through a specific permit system as provided in the Municipal Code. That is why staff recommended if nightly rental is an issue that needs to be addressed, as an alternative take away the permitted use by a zoning amendment, then that would be applicable to this development and any future development in the zone.

Mayor Williams inquired if this group has the right to say this project will not have nightly rental. Attorney Harrington responded that they did and that is why there is confusion where there is the authority to consider the validity of a permitted use within an MPD and Joe Tesch is correct in making that point. However, the burden shifts, if the underlying use is permitted then it is strongly presumed to be compatible and allowed. This is an allowed use in this zone. However, Mr. Tesch is correct in that if there were in fact density bonuses and those were arranged in a site plan that the Planning Commission or City Council determined had impacts beyond that which were anticipated by virtue of making that an allowed use. For example, had there been density bonuses beyond the underlying zoning which Joe had said that if the Hope parcel had acres and applied in the E zone for that many units they could have the nightly rental. That is the case here. The underlying zoning is 3 to 5 units per acre and you have over 70 acres here. You are at less

than 1 unit per acre, so we are way below that which sort of contradicts what he stated before. But had there been some density on the border of the project, say next to a SF property with back yards right there, I could see where the Planning Commission could make findings that said you are allowing four buildings of nightly rental that otherwise in a site plan that otherwise wouldn't typically be allowed but for the discretion that the MPD provides.

Mayor Williams commented in a couple of weeks they might do just that because they might be turning another neighborhood into SF and their backyards will be abutting. Attorney Harrington stated the Planning Commission considered that argument and that is why they clustered the duplexes in the interior first and left the single family units on the perimeter achieving reduction in the number that would be adjoining those borders. Compared to the prior MPD, there was much greater density of single family up on that hill and that goes to Commissioner Zimney's point that there was no finding of non-compliance. It was a very confusing point made by Commissioner Erickson in that he was trying to justify why he had changed his vote and ultimately approve this, because only he had objected earlier to the underlying sensitive lands determination, based on a finding that two of the units, as he determined, did not apply to the additional view points, not the statutory ones, only the SLO Ordinance defines certain view points which you have to make an analysis for ridgeline violation. By virtue of the MPD, the Planning Commission did an additional burden by delineating and further protect the public by doing some additional determinations. In Commissioner Erickson's original determination, two units broke one of those additional determinations, however, one was eliminated and one corrected by dropping some height, so Commissioner Erickson was essentially saying 'where I had originally determined it violated, I now feel it is at least mitigated.' It was not a finding of non-compliance with the SLO Ordinance. The uses applied for are the single family lots and the duplex units. What the neighbors are asking Council to do is prescribe a future use that may be applied for, which if you make these super findings of non-compatibility, you could do. Planning Commission did consider this, however, said 'No way, we don't see it.'

Mayor Williams stated it was his understanding the Planning Commission believed this decision would be much better made by the City Council. Attorney Harrington responded no, the Commission did consider it because it was a very important distinction. This action is an approval of a project based on existing code. Council does not have some of the leeway represented this evening; there is some, but not to the degree represented. Stated the developer is entitled to due process as well, and entitled to rely on specific provisions of allowed or prohibited uses or reasonable conditions or findings in the process.

Mayor Williams inquired how Council determines exactly what those are. Attorney Harrington responded they are in the record that Council is reviewing, but where that differs from the General Plan recommendations the Commission made is the Commissioners

viewed there are big issues in the City as a whole by virtue of the nightly rental and agreed in order to forward a positive recommendation Council consider a rezone application of this area to SF zone. That is a legislative act and that is where the 109 citizens petition is absolutely relevant. They do not need to cite specific criteria or standards that are violated one way or the other. They can say 'we support' or 'we don't support' because that is a legislative act that Council makes for the general health, safety and welfare of the community and consistent with the General Plan. Those are your two findings on a rezone and that is why it is easier to change the zone in many respects but Joe Tesch is right on the other end. It opens your global can of worms because it effects other RD zones and will open the door for people who are objecting to an RD zone other than just this particular applicant and other issues because it may have ramifications. Council cannot spot zone an area, which an argument can be made if you are taking away a permitted use that is otherwise permitted by the zoning, that in effect a spot zone. However, Council does have sufficient leeway by virtue of an MPD provision that findings could be made, although he believes they simply were not there in this case and believes the Planning Commission made that determination as well. It did not have to be reflected as a finding of fact because that use was not being applied for. That Commission discussion is clearly on the record in the minutes. He stated in defense and fairness of the Aerie home owners, at that time the project was first approved the project developer was going to prohibit nightly rentals in the CC&R's, however, and whether that would have gone forward cannot be validated.

Planner Whetstone stated this plat relies on an MPD that was approved with no restriction on nightly rental so this plat is coming forward and the Planning Commission is recommending it be approved because it is consistent with the MPD that was approved on June 12. The parcels for the CUP were then approved by the Planning Commission and those are the question of the appeal.

Councilmember Calvert inquired concerning the two other issues that were raised by the homeowners, one of which was the traffic study, noting the City has been wrong before on community traffic issues. Planner Whetstone explained this project's density was taken into consideration in the City's streets master plan, and the City Engineer reviewed the plat, staff reports and made statement or finding that the streets servicing the project were sufficient to handle the traffic. As far as anybody from this project going all the way through the development to go down Aerie Road, a sign could easily be installed there that says in inclement weather use Mellow Mountain Road. Future density was taken into consideration when the round-about was designed and developed, and traffic studies were completed for Deer Valley Drive, through the round-about, signals, to Hwy 224.

Administrator Putt presented a brief description of a portion of the application process prior to coming before the Planning Commission for a work session or a public hearing, an interagency staff review meeting is held where members of the Community Development Department, Public Works, Engineering, and utility provider representatives

review projects that are coming forward, specifically for things like potential traffic or volumetric design problems with streets, and at that point in time initially identify existence of any problems associated with that particular application, certainly traffic. Stated this particular project had gone through a minimum of at least three interagency meetings for a review.

Councilmember Calvert stated over the last few months a number of concerned citizens have come before Council with legitimate problems that were revisited and conclusion made a serious problem was not caught; that is the concern with this project. Planner Whetstone reported Mellow Mountain Road was designed and built to sustain the future density of April Mountain, which at that time was almost three times the density proposed with this project, provide for a second point of access, and we are inviting the public up there with access to a City park.

Councilmember Calvert noted the concerns of a number of people that already live in the area, and inquired what will be done to at least ensure the roads are going to adequately serve the needs and address the fear of people that they are going to have bad accidents; inquired if two-way traffic was allowed on Aerie Road during winter. Planner Whetstone responded two-way traffic is currently allowed. Administrator Putt responded the way this is addressed is through the review of the subdivision plat and the requirement for the streets design that goes through the review by the City Engineer and in this particular case the existing road, Mellow Mountain Road, meets or exceeds existing engineering standards as required by the streets standards and the plans that we have and the Ordinance that we have here in the City. Again, its design and its configuration was predicated on the amount of density that would ultimately be serviced by that road. The question that you would have to answer is does the road meet the current engineering standards, the answer to that is yes. Was the road when it was designed at its inception, designed to accommodate this amount of density, the answer to this question is yes. And that's spelled out in the streets master plan as Ms. Whetstone had referenced. Is this a situation where we have an historic street in old town that's substandard in size or doesn't meet the grades, or doesn't meet the curvature requirements, the geometry associated with that - in those particular cases I think those would be valid questions, but in this particular case we have a road that was established, built, constructed, designed to meet not only the City's standards for road construction but accommodate the density that we have.

Mayor Williams commented he realizes the roads were designed for it, and it may be that nightly rentals actually creates less traffic, as these units tend to sit empty a large amount of the time, and permanent residents could make several day trips. Pointed out hundreds of pages have been submitted to Council and time is needed for review.

Motion by Councilmember Jones to continue the plat to a date uncertain. Motion seconded by Councilmember Calvert. Motion carried unanimously.

Councilmember Hier clarified Commissioner Erickson voted against the plat amendment, his reason for voting against the plat amendment was that he did not think the amount of consolidation of space within the new plat design was sufficient to justify one more unit, it did not have anything to do with SF or RD, it was that in his opinion, the overall reconfiguration of the plat did not justify the addition of one more unit. The rest of the Planning Commission found opposite of that, that the reduction in overall area density of the plat was sufficient to justify the one additional unit. Secondly, that motion went forward. Then there was a separate motion made to request City Council review of the SF zone for that particular area based on the steepness of the access road and concurrently look at all other RD zones to see if steep roads would be sufficient to justify a rezoning to SF.

IX OLD BUSINESS

1. **Ordinance approving a final subdivision plat known as the April Mountain Subdivision, located on Mellow Mountain Road, Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Park City, Utah.**

Continued to a date uncertain - see the foregoing April Mountain final subdivision plat public hearing.

VII NEW BUSINESS (Continued)

2. **Appeal of Planning Commission June 26, 2002 approval of April Mountain Conditional Use Permit for 39 condominium units.**

Planner Whetstone reported this is the appeal of the Planning Commission's June 26, 2002 action approving the April Mountain Conditional Use Permit, a quasi-judicial issue. Staff is recommending Council discuss the issues of appeal, hear from the appellant, applicants, and neighbors, and consider the Planning Commission's action to approve the CUP based on the approved MPD. Referred to allegations included in the staff report on page 4 and stated that in regard to the nightly rental issue, the Planning Commission considered that to be more of a zoning issue. Reported a substantial number of petitions were received, that the Planning Commission found citizens seemed to be signing the petition that they were opposed to a change of no nightly rentals, that nightly rentals were now being permitted when nightly rentals were not being permitted in the previous MPD and it was clarified by the Commission when the original MPD for April Mountain was approved it did not restrict nightly rentals, and the Planning Commission never made a condition of approval and didn't make the findings. The CUP in this case is for 39 single family and condominium units, there are seven individual units similar to Bald Eagle which are single family condominiumized houses, and 32 duplex units in 16 buildings, that would be condominiumized to allow individual ownership of each side. The Planning Commission approved this conditional use and the standard they used in

determining whether the application was consistent with the LMC is contained in specific criteria listed on pages 3 through 5 on the staff report. A condominium plat must be approved before construction of the condominiums and identifies CC&R's and any restrictions that may apply to the condominium project. The Planning Commission looked at impacts on environmentally sensitive lands, slope retention, determined this complied. The Commission reviewed the conditional use and believed it consistent with the LMC and MPD that was approved, approved it with the findings of fact and conclusions of law and conditions of approval as presented.

City Attorney Harrington clarified concerning the sidewalks that the code provision in the subdivision section states sidewalks shall be included within the dedicated non-pavement right of way of all roads unless an alternate location has specifically been approved by the Planning Commission. He recalled there was some discussion by the Commission on whether to have sidewalks or not and they determined it was more appropriate to have them for maintenance and due to roadway concerns. Planner Whetstone pointed out the additional trail coming from the Aerie Heathstone area which was a condition of approval by the Planning Commission recognizing the preference of the Aerie residents for a trail instead of a sidewalk.

Councilmember Bodell noted this information is different that what was assumed earlier, looks like a trail is accommodated to the north and also accesses the south, so there is no reason to go into the April Mountain subdivision and use these sidewalks for people who are just using the trails for recreation. City Attorney Harrington pointed out that would be true except for the access to Gambel Oaks through the middle is its most direct route. Peg Bodell expressed opinion you would not want to cut across there and stay on the sidewalk because you have access on the north that will take you there directly and faster to the Hope parcel and then across the Hope parcel to the Gambel Oak parcel; requested staff review that because it makes a difference. City Attorney Harrington pointed out for the record, the BLM is requiring vehicular and pedestrian access shown from the road to Gambel Oak and that would be shown on the trail map as the primary access as required.

Councilmember Jones inquired if the CUP is for the form of ownership as condominium is a form of ownership, not a type of unit. Planner Whetstone replied the CUP is for the duplex units. Mark Harrington stated if there were not going to be condominium there would be different setback firewall considerations that would be relevant to the CUP.

Councilmember Hier stated the beginning sentence says as a condition of approval the condominium portion of the MPD was required to be reviewed and approved as a CUP prior to issuance of a building permit for the condominiums so that the Planning Commission could review the configuration and the arrangement of the development within those areas of the plat that were designated as the condominium section, they required

this to be a CUP. Subsequent to the plat filing which further defines the location. Planner Whetstone stated it is her understanding the applicant has a plan to put condominiums there; those units were approved by the Commission specifically to these drawings and layouts.

Councilmember Calvert inquired if the developer can make the decision to change the condominiums into single family if he so chooses, however, could not change the single family lots and into condominiums. Mark Harrington responded neither, once the applicant has the plat approval, that is what it is, if they wanted to change it they would have to go back and replat.

Mr. Shapiro pointed out the MPD has been reviewed and approved, this is an appeal of Conditional Use Permit which Planning Commission has decided. If there are issues concerning the Commission's findings of fact and conclusions of law on the CUP, they would like them disclosed at this time, once this is platted the project does not change, an offer of settlement was made to ensure the project will not change later on, that was one of the issues, and this is an appeal. The MPD has been done, appealed, next step is district court if they want to do that on the MPD. Things just keep getting mixed up here.

Councilmember Hier stated as a matter of procedure, staff has answered all of the point by point items that Mr. Tesch has put out in his appeal. If there is a part of staff's responses Mr. Tesch would like to address, that he feels is not appropriately responded to or does not meet the concern, it should be heard at this time. City Attorney Harrington stated for the record, Mr. Tesch's prior comments in the plat hearing addressed many of those in a different manner and are incorporated at this point.

Joe Tesch asked Council to reconsider their decision not to allow the appeal of the MPD, for the reason the arguments made to you was that all of the MPD issues could be raised on these two appeals. Indeed in your decision to not accept the MPD appeal, paragraph 8 states 'the majority if not all of appellants objections and the city applicant defenses can be properly raised pending review of the final subdivision plat and the timely filed appeal by the CUP for the project'. Tonight the City Attorney and the applicant have said that is not true, that the only issues before you are whether or not the CUP and the subdivision is consistent. Mayor Williams responded he wished the appeal had been made a timely fashion and this argument would not be made right now, however, that is not the Council's problem, everyone is in agreement and understands the fact the appeal was filed four days beyond the deadline.

Mr. Tesch stated that he did, and heard what Council said that night which is why he did not immediately go to the district court. It was even put in the findings why the appeal was not accepted that all of the same issues could be raised tonight, now the opposite is heard. The issue is whether or not it is consistent with that MPD and the MPD cannot be discussed. Stated they were fooled, and maybe Council was also. Stated he

would like to discuss MPD issues - traffic. Stated the pad was not there when the overlook was approved; however, Council approved a bad road that no one in the world would permit because there was a lawsuit and it was settled and the City said as a result of that lawsuit, the overlook subdivision will be recommended for approval whether or not the road met City code, and it didn't. Mellow Mountain Road may but the other way you have access and the realistic way for access is on the Aerie and that is why a traffic study needs to be done. In regard to the sidewalk issue, tonight it is stated the sidewalk is not a trail, however, the Planning Commission was told the sidewalk was part of the trail system, and the Planning Commission decided it was part of the trail system. With regard to the misconception of no nightly rentals and the prior approval, why would the issue come up if the developer said he was going to deny in the CC&R's. The CUP Ordinance or MPD Ordinance states if you want nightly rental the developer must declare it in the application. Clearly that statement that you must declare when you apply, suggesting that you get it automatically is belied and denied by that requirement. The City has a right to consider it and deny it, that is why there is a requirement to declare it. Requested anything else he has stated be incorporated. He stated he was astounded by some government speak that suggests that the sensitive lands Ordinance that existed at the time the amendment was filed can be waived. Stated this project was hustled through, short cuts were taken, assumptions were made, and it is time to stop that and go back and do the job the ordinances require.

City Attorney Harrington clarified that the MPD issues could be 'raised' through one of the two processes before Council tonight. He stated he believed there has been some overstatement of reliance on the MPD as at the last meeting he went through point by point in which venue each argument Mr. Tesch has listed in his brief could be raised and he still stands by that statement. There may be a SLO density determination back in June that he would argue in defense to staff and the applicant regardless of whether Council was considering it in the context of the MPD appeal or the Cup appeal. So by virtue of so raising that issue, that the wildlife report was not required or that there was not a substantial change from that original sensitive lands density determination is applicable, the defense is applicable in the CUP appeal as well. Just because it is part of the underlying MPD does not negate it, because that was a prior action that was not even subject to the appeal of the MPD because there is an appeal period that ran from the SLO determination as well. When you apply for an MPD you do not apply for the use, but the CUP Ordinance says expected ownership patterns which include certain things shall be considered. He expressed the opinion he believes it an overstatement to say it is required, that the applicant must specify it and therefore cannot apply for it. The Ordinance reads 'expected ownership and management of the project as primary residences, condominiums, time-interval ownership, nightly rental, or commercial tenancies', and he believes the intent of the developer in declaring that would probably meet that burden, believes there is a differentiation between the permitted use that is being overlooked by the appellants.

Councilmember Calvert inquired where the issue regarding the habitat study or the maintenance of the road as it is today would come up. Attorney Harrington responded it would be addressed under your CUP criteria, the CUP was filed under the current code, and incorporates the defined term "environmentally sensitive lands". While Council and the Commission could have gotten to wildlife issues there, it is not a required submission for them to consider it. They must consider the impacts of the project as it relates to environmentally sensitive lands, like a mini SLO review that would provide the Commission and Council the ability to require the Wildlife Study, but to Bruce Shapiro's point, the Planning Commission determined that it was not required. Council is reviewing whether the Commission determination was appropriate or not based on the information at hand.

The same stands true for the traffic issues. Typically Council looks at whether the Planning Commission correctly applied the proposed development to the code and whether they made sufficient findings based on that criteria and traffic and safety that are in there. Council would typically defer to the Planning Commission findings unless something was found to the contrary, and in that event ask for evidence of that specific area that is going to change the determination and then direct staff. The process could be somewhat prolonged because if Council determines the remedies could be handled certain ways the Planning Commission could be requested to more specifically address that concern, or a contrary finding or condition of approval that addresses the concern but will allow the approval to go forward could be made, or the Council could deny.

Councilmember Calvert inquired if additional review and information concerning the traffic and wildlife issues could be provided to Council in order to make an educated decision. Attorney Harrington responded that is in line with the Mayor's point that additional review is necessary, suggested once the factual inquiry and hearing of the arguments is completed, continuance is probably the next step unless there is Council consensus to give a specific direction one way or the other or information is requested. However, he believes Council is in a deliberative mode, needs to go through and digest the information and input presented, read everything received, double check the code sections. A tremendous amount of information has been presented from all the parties and Council could not really be better prepared, everyone made excellent arguments, and it is incumbent on Council to decide. Contrarily, as in the past often Council has been able to quickly decipher through the matter affirmatively or negatively and may not want to delay. He pointed out there is no meeting next week and it would be two weeks before coming back. If there is no direction given to staff tonight, a third meeting will be necessary for staff to come back with findings and facts.

Councilmember Jones pointed out Council has a tremendous amount of information before them, a substantial amount received tonight both from testimony but also written. From a process standpoint he inquired if it is possible to get to a point tonight where they have received all the information from the appellants and project proponents, where they do not get handed other input two days before the next meeting or during the next meeting. Attorney Harrington responded that the public hearing has been closed on the plat and the

plat has been continued to a date uncertain. The CUP could be closed and continued, however, recommended each party, not the public, be allowed a limited rebuttal and last say, to address any new information from staff that may be disagreed with or objected to; it would be appropriate to reserve a limited opportunity for each party to address the Council at the next meeting based on any new information.. However, the parties should not be preparing anything written at this point, although if they feel the necessity to do so they should probably verbalize that at this time.

Mayor Williams noted Kay Calvert will be absent the 1st of August, the next meeting would be the 8th.

Mr. Shapiro pointed out the Planning Commission process went on a very long time and the developer also has some rights too; there should be some decisions made soon because this is very expensive, the Planning Commission held a lot of public hearings, and this is an appeal process, think issues could be limited to traffic and habitat.

Councilmember Erickson stated she also had a concern about neighborhood compatibility; noted she found in the the Planning Commission minutes it was a unanimous vote, Commissioner Erickson voted on approval with the condition that the area be rezoned consistent with the single family neighborhood and applications for single family zoning on the basis it was found the road grade is inadequate. Planner Whetstone reported the Commission took that action in two motions, one to approve the MPD and the second motion to recommend rezoning review.

Councilmember Bodell noted all the information Council is asking for is from staff, clarification of the City's Ordinances and historical facts, does not see the need for any additional written information from the appellant and applicant; it is appropriate to set a date for response from staff and direct staff to also provide that information to the applicant and appellant counsel for verbal response at the next meeting.

Motion by Councilmember Calvert to continue the April Mountain CUP appeal to August 8, 2002.

Councilmember Hier inquired if the matter could come for Council discussion on August 1st instead of waiting two weeks. Attorney Harrington replied if Kay is going to attend the subsequent meeting and vote, she would have to review the work session minutes and tape to apprise herself, that is typically what was done in the past. He advised Council as Judges they could go into closed session to deliberate but given the issues co-mingled with the plat and high public interest, he would not recommend closed session. He expressed the opinion to keep the matter in a formal appeal setting, not a work session.

Motion by Councilmember Calvert to amend her motion and continue the April Mountain CUP appeal to August 1, 2002. Motion seconded by Councilmember Hier. Motion carried unanimously.

Attorney Harrington suggested Council comments or requests for information be submitted to the Mayor by Monday to allow response in time for the August 1st packet; a response will be provided by the next Monday before the meeting. Council concurred.

X 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 3:45 p.m. Members in attendance were Mayor Dana Williams, Peg Bodell, Candace Erickson, Jim Hier, and Fred Jones. Kay Calvert was excused. Staff present were Tom Bakaly, Assistant City Manager; Mark Harrington, City Attorney.

Peg Bodell moved to close the meeting to discuss property disposition. Fred Jones seconded. Motion carried unanimously.

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The meeting for which these minutes were prepared was noticed by posting at least 4 days in advance and by publication in a local newspaper two days prior to the meeting.

Prepared by Cindy LoPiccolo

Cindy LoPiccolo, Deputy City Recorder