**PARK CITY COUNCIL MEETING**
**SUMMIT COUNTY, UTAH**
**JULY 21, 2011**

## I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at a special time at approximately 5 p.m. at the Marsac Municipal Building on Thursday, July 21, 2011. Members in attendance were Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Kirsten Whetstone, Planner; Kayla Sintz, Planner; and Katie Cattan, Planner.

## II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

Transfer of development rights and accessory uses - Lisa Wilson, Park City mom, stated that she emailed the Planning Department about the transfer of TDRs and learned that they can be transferred to the Deer Valley parking lot. She attended meetings, reads the Park Record and wasn't aware of this. In the staff report on Treasure Hill written about a year ago, there is 600,000 square feet of vested rights. The Mayor corrected her that it is 419,000 square feet. She understood that transferred unit density is regulated by the new Code where accessory uses are allowed. Lobbies, locker rooms, etc. do not count toward commercial square footage. Even though the lobby space is not counted as commercial, The Montage can charge up to $40,000 to hold the prom there. If Treasure density rights are moved over to the parking lots, there will be a lot of additional square footage beyond that. If the density is going to increase in the Deer Valley Master Plan, there needs to be a public process to amend the Master Plan and she asked that the public be notified.

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

Liza Simpson, "I move to approve the work session notes and minutes of the meeting of July 7th". Cindy Matsumoto seconded. Motion unanimously carried.

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

1. Consideration of an Ordinance approving a condominium conversion for 1159 Empire Avenue, Park City, Utah – The Mayor opened the public hearing; there was no input. Cindy Matsumoto, "I move to continue the condominium conversion for 1159 Empire to August 4th". Liza Simpson seconded. Motion unanimously carried.

2. Consideration of an Ordinance approving the 929 Park Avenue plat amendment located at 929 Park Avenue, Park City, Utah – Kirsten Whetstone explained that the request is to combine two standard Old Town lots with two adjacent remnant parcels or the back 25 feet of lots that are adjacent but located on Woodside Avenue. An historic house sits across the lot lines. The Planning Commission conducted a public hearing, continued the item to obtain more information from the applicant, reopened the public hearing and now forwards a positive recommendation. Approval was conditioned that the building footprint be reduced from the 1,888 reached by using the formula outlined in the LMC and reducing it to 1,688 square feet. The applicant consented to the reduction in footprint. In response to questions from Ms. Simpson, Kirsten Whetstone explained that no substandard lots will be created on Woodside Avenue. The average house size in the area is 1,625 square feet but the Planning Commission considered the condominiums in the area and the applicant's willingness to reduce the house size. Moving the historic home back to its original location after construction was discussed. The Mayor opened the public hearing; there was no public input and the hearing was closed. Joe Kernan, "I move we approve New Business Item No. 2". Cindy Matsumoto seconded. Motion unanimously carried.

3. Consideration of Resolution establishing the Historic Preservation Board's Annual Preservation Award Program – Kayla Sintz stated that although Roger Durst is no long on the Historic Preservation Board, he was instrumental in creating this project. The High West Distillery has been selected as the award recipient this year and each year a different artist will be selected by the subcommittee to depict the property. It is the intent that the art work would be displayed in the Marsac Building. The owner and the architect will be presented with a plaque to coincide with this year's Historical Society's home tour program. Mr. Durst felt that the program will bring awareness to the community and publicly thanked Ken Martz for his participation. The presentation to High West is scheduled on August 18.

Liza Simpson thanked them for creating the program and including the Historical Society in the process. She liked the expansion of criteria including in-fill development, new construction, excellence in preservation, sustainable preservation and embodiment of historical context and connectivity on-site. The Mayor opened the public hearing; there were no comments from the audience and the public hearing was closed. Dick Peek, "I move we adopt the Resolution for the Historic Preservation Board's Annual Preservation Award". Liza Simpson seconded. Motion unanimously carried.

4. Consideration of an appeal of the Planning Commission's June 8, 2011 denial of an appeal of the administrative extension of the Conditional Use Permit for the North Silver Lake Subdivision Lot 2B and the North Silver Lake Lodge Development - appellant Lisa Wilson, represented by the law firm Miller Guymon – The Mayor explained that Council has the discretion to expand the scope of the appeal or strictly adhere to the grounds of the appeal. He described the order of presentations, including questions and public input. Liza Simpson, "I move we limit the review of this appeal to

the grounds of the appeal and not open it up to other issues". Alex Butwinski seconded. Motion unanimously carried.

The Mayor requested disclosures from members. Cindy Matsumoto disclosed that Lisa Wilson brought information about different lot numbers to her and she briefly looked at the paperwork. Alex Butwinski stated that as the Council liaison to the Planning Commission meeting, he heard the appeal at that level. Dick Peek indicated that he received a phone call from Brooks Leader his lumber salesman who asked him about his opinion on North Silver Lake. He told him what his (quasi-judicial) role would be and that he couldn't talk about it. Liza Simpson stated that she hiked the area with Lisa Wilson three years ago. She received a number of emails on this issue but after reading the subject line, did not read them. Joe Kernan had nothing to report. The Mayor stated that he received emails over the past week and every one of them contained inaccurate information about the project. He invited staff to speak.

Planner Katie Cattan stated that on March 3, 2011 the Planning Department received a request for an extension of the conditional use permit for North Silver Lake. Planning Director Thomas Eddington reviewed the application and on April 20, 2011, the CUP extension was approved. Lisa Wilson appealed staff's decision and on June 8, 2011, the Planning Commission reviewed the appeal. She explained that in order to receive an extension of a CUP, there is criteria in LMC Section 15-1-10(g) *the Planning Director may grant an extension of a conditional use permit for one additional year when the applicant is able to demonstrate no change in circumstances that would result in unmitigated impacts or that would result in a finding of non-compliance with the Park City General Plan or Land Management Code in effect at the time of the extension request. Changes in circumstances include physical changes to the property and surrounding.* She added that the conditional use permit extension application that staff received included the exact same set of plans approved the prior year so there was no change in the plans and there was no change in circumstances to the property or the surroundings. Accordingly, the Director approved the extension.

Ms. Cattan stated that during the appeal reviewed by the Planning Commission, and part of the appeal tonight is that an error was made in Finding of Fact No. 9. Appellant Lisa Wilson brought it to her attention during the extension review by staff and Ms. Cattan stated that she then put it in the analysis of the original Planning Director report and the change was made. Lot 2b should have read Lot 2d which was a typographical error made by staff. The Planning Commission ruled to uphold the Planning Director's decision because the error was not deemed substantial and would not change the outcome of the Director's decision. It did not change the circumstances of the site or the original CUP. She pointed out that the calculation for open space remained the same and Finding of Fact No. 8 clearly states that the open space is in Lot 2d. She emphasized that the main point of the appeal focuses on the typographical error and whether the process was conducted properly. There were no questions from Council members.

Matt Muir, attorney for Lisa Wilson from the law firm Miller Guymon, referred to submitted materials that were extensive and he indicated that he will try to keep his presentation within the scope of the appeal. He displayed a concept drawing from the developer of a North Silver Lake Lodge lot and the open space area which consists of Deer Valley terrain and ski runs which sit to the side of the lot. He pointed out the open space areas, the North Silver Lake Lodge Lot 2b and Bellemont which is 2a. He relayed that Ms. Cattan pointed out the main basis of Ms. Wilson's appeal and he displayed the original CUP which was approved by the Council on appeal about a year ago. He referred to Findings of Fact No. 8 and 9. Finding of Fact No. 9 stated that the Bellemont Subdivision was allowed to utilize Lot 2b, the NSL lot toward its open space requirement. He referred to Findings Nos. 8 and 9 in the extension of the CUP approved by staff in April 2011, which has been changed to read that Bellemont is allowed to use Lot 2d, the Deer Valley terrain and ski runs, for its open space requirement. He displayed the plat. The original CUP had open space moving from the open parcel into NSL Lodge and then into Bellemont. There is an overarching standard with regard to this decision found in the Springfield City Utah Supreme Court Case which states *if a municipality's land use decision is arbitrary, capricious, or illegal, it will not be upheld*. Mr. Muir stated that what they are specifically interested in tonight is whether this modification of the CUP is legal and what the Supreme Court means by this. Did it comply with the law that applied to it the applicable legal requirements? What were the legal requirements applied to this CUP? He emphasized that first it must comply with the Deer Valley Master Plan and relayed discussions at a Planning Commission in 2008 reiterating that it is the governing document. He explained that the 8th Amendment to the Deer Valley Master Plan in 2001 addresses NSL and Lot 2b, the terrain and ski runs to be used for open space which is 4.03 acres. He read Footnote No. 6, *This parcel has been platted as open space with the open space applying to the open space requirement of Lot 2b.* Lot 2b is the NSL Lodge lot and he pointed out that there is no mention anywhere of open space being allowed to be transferred to Bellemont. This carries on throughout all of the Master Plan amendments and into the recent 11th Amendment that open space can be used for the NSL Lodge only which is the governing law which specifies that the modification to the CUP is illegal. He again referred to Findings of Fact Nos. 8 and 9. Finding No. 8 says *this parcel has been platted as open space with the open space applying to the open space requirement of Lot 2b.* In other words, the open can be applied to the NSL Lodge lot, nothing else. Finding of Fact No. 9 is *no good* because you cannot use 2d for Bellemont. Matt Muir explained that this is important because Bellemont was never allocated any open space. The 1997 CUP for Bellemont does not mention any open space being transferred and was done without a public process with public hearings. It is unknown how much open space is available in 2d to be used by any project at this point because it hasn't gone through the public process.

Mr. Muir stated that there is a very long history of City documents in which it was never mentioned that this kind of an open space transfer could be done. The CUP was discussed at least four times at Planning Commission meetings, three City Council meetings, and numerous staff meetings and the *so-called typo* was never found. All the way back to November 2001, in these Planning Commission minutes it says that in 1997 when the Bellemont project was approved, a subdivision plat was filed that created a four acre open space parcel north and below Lot 2b. Two acres were pulled out of Lot 2b and put into this open space parcel with the proviso that the open space parcel acreage could be credited to the open space requirement of Lot 2b. He stated that Ms. Wilson feels very strongly that the residents in the neighborhood have a right to know exactly what is going on with the open space in the area. He believed that one of the main goals of Park City's development code and the Deer Valley Master is to make sure neighborhoods get good open space and some of the choicest land should be reserved for open space to be enjoyed by the residents. He felt they are now thrown into chaos and this illegal modification to the CUP has created this situation. Mr. Muir suggested that it be vacated, remanded and the open space allocation should be put out in front of the public so there is input on the calculations and exactly where it's going.

He indicated that this is outside the scope of the appeal but referred to Finding No. 18 which states that some work will be done by July 1, 2011 or the permit would be void. Ms. Wilson feels strongly that the soil was not capped or vegetated and the site is still an unsightly pit in the ground. He reiterated that the modification was illegal because it is contrary to the Deer Valley Master Plan which is the governing law and he asked the Council to vacate it and send it back for further proceedings.

Lisa Wilson stated that we have a very clever developer who has a very clever counsel and spoke about the confusion about the appeal fee and wondered how Mr. Bennett found out about that information. She referred to the 2009 discussion at the Planning Commission meeting about who is allowed to use the ski runs or terrain as open space and since that time the Findings of Fact showed that the NSL Lodge parcel is the site used for Bellemont. She spoke about the many meetings held where the Findings of Fact remained the same using the hotel site for Bellemont open space. Everyone here had a chance to read it. When she caught it, she was told that it was a typographical error and referred to the Brent Bateman's, State Ombudsman Office, letter with a different value and also highlighted the fact that 2b was the open space for Bellemont. She explained that she then started asking Mr. Bateman about the use of the hotel site and how he calculated the open space but he wouldn't talk to her anymore. If Lot 2b is used as the open space for Bellemont, the open space calculation is incorrect. Staff then just switched it. No one knows that the ski runs are being credited as open space except the Planning Department. There is nothing in the Deer Valley Master Plan that specifies that Bellemont can use ski runs as open space or that the Planning Commission can allow developers to use Deer Valley ski runs and terrain as open space for hotels and other developments. Other than City Hall, she doesn't know of anyone that realizes that Deer Valley Resort property is used as open space to aid big developers which is bad for the City and it is illegal.

Richard Lichtenstein, owner/representative for Regent Properties, believed that the re-vegetation was quite extensive and more than was originally planned and it was the opinion of City staff that re-vegetation is completed. He noted that Mr. Bennett will speak to Mr. Muir's points and the staff report has done more than an adequate job. He commended the staff for the effort in getting the report together twice. The standard of review is quite clear and he respectfully requested that the Council uphold the Planning Commission's decision which upheld the Planning Director's determination to grant an extension.

Tom Bennett, counsel for the applicant, believed there is only one issue that ought to be addressed in the appeal and that is whether the Planning Director and the Planning Commission made an error in deciding to extend the CUP for a period of one year. The appellant has the burden of proving that to Council. The LMC is very clear on the standard for the extension of a CUP which may be extended for a period of an additional year by the Planning Director if there has been no change in circumstances which has created either an unmitigated impact or a change of circumstances that has resulted in a violation of the LMC or of the General Plan. He pointed out that the staff report states that there have been no changes in the development plan for the property, in the LMC or the General Plan regarding the project, or the neighboring properties. The Planning Director and the Planning Commission rightfully concluded that the standard for obtaining a CUP extension was met and the extension was granted. The appellant has not even raised an allegation contesting the satisfaction of the standard. He acknowledged that the Lot 2b / Lot 2d error should have been recognized by a number of people sooner, but the fact of the matter is, that it doesn't make a difference. The findings are a recitation of past history which is important to have on the record. Whether the quarter of an acre came from Lot 2b or Lot 2d doesn't matter because it doesn't impact the calculation of open space for Lot 2b. A quarter acre was taken out of Lot 2b for Bellemont, all four acres of Lot 2d are available to use for open space, the calculation would come out exactly the same, and the open space would be 70.6%. Mr. Bennett commented that the appellant makes it sound as if Finding of Fact No. 9 was actually doing something, as if it were actually transferring some open space over to the Bellemont project, which is not the case.

He emphasized that Bellemont was approved 14 years ago and it's done, built and over. The open space requirement was met. His GRAMA request for all of the information on the approval of Bellemont revealed that the developer was requesting that a quarter acre be transferred from Lot 2d and he agreed that the final decision approving Bellemont, there is not a specific statement that anything came from 2d or that any extra open space came anyplace else. In consideration, one would conclude that Bellemont met the open space requirement without getting any extra open space from anywhere, but again he is not sure but it doesn't have any impact on the approval for Lot 2b. He stated that Mr. Muir brought up the point that the Deer Valley Master only refers to Lot 2d being used as open space for 2d. He is not sure it says that but it may be because at that point the 8$^{th}$ Amended Deer Valley Master Plan was adopted in 2001, Bellemont was already built, and the only lot entitled to use the balance of the open space from Lot 2d would have been Lot 2b. There has been talk that the public has been tricked by this and he displayed the 1997 replat of Lot 2 North Silver Lake Subdivision done in connection with the Bellemont approval, specifically Note 2 which states *pursuant to the North Silver Lake Master Plan Development Amendment portions of Lot 2d are allocated to Lot 2a (which is Bellemont) and 2b for the purposes of open space calculation.* There seemed to be an understanding that a portion of 2d could be allocated to Lot 2a, Bellemont, and there has never been any indication anywhere that more than a quarter acre was sought for additional open space. Mr. Bennett truly felt that it was just a typographical error and that it doesn't matter. There is no harm, foul, error or reason to turn the decision over because of identification of a typographical error. He hoped that the Council focuses on the issue at hand, whether it was proper or improper for the Planning Director and the Planning Commission to approve a one year extension of the CUP. Mr. Bennett stated that he believes the appellant has not met the standard of proving otherwise and encouraged denial of the appeal.

Planner Katie Cattan interjected that when she was initially assigned to the project she researched the NSL parcel and found the note about the quarter acre from Bellemont. It was not in the Deer Valley Master Plan and she let the developer know that a quarter acre had already been utilized and they would not be able to utilize that in their calculation. After doing all the math on the open space for one of the appeals, the Council requested that she go back and check our open space calculation and at that point, she calculated every footprint of the buildings within the project. Ms. Cattan explained that she took out .25 from the 4.03 of Lot 2d. It was a typo and the .24 came out of Lot 2d. Ms. Cattan clarified that she made an error in one staff report after that in the Findings of Fact. The Mayor invited public input.

Mont Sudden, resident of Belle Harbor and representative of the Association, expressed that residents have the impression that the density of this new project is significant and changes the nature of the community.

Kay Floyd stated that he was surprised Mr. Bennett said that it doesn't matter because it does matter. There is harm. The re-vegetation is not adequate and he is surprised that the City says it is. It seems strange that the City is trying to protect the surrounding area by putting a lot of money into Round Valley but at this point in time, Council is not doing much for them as far as Treasure Mountain. Council is dropping the ball. *If Chuck Hollingshead were dead right now*, he would be ashamed of the Mayor. The switch in the open space at this point in time is a critical situation for area residents and all citizens. For the applicant to say that there are other factors and for the Planning Commission to roll over and pass a renewal is not right and he asked the Council to consider the Planning Commission appeal.

Dan Postal, Evergreen, asked Council to look at the vegetation. He stated that no one ever received notification about anything. Everyone has to understand what the open space is and how it is being used between the parcels. If there is a mistake, we need to go back to square one and start over so that the people who live there truly understand what's going on.

With no further input, the hearing was closed and the Mayor invited rebuttals.

Matt Muir stated that regardless of whether there has been a change in circumstances, the City is not allowed to give out a permit that contains illegal provisions that conflict with the governing law. This modification conflicts with the Master Plan which might need to be amended. It should be made clear with public discourse and public hearings which hasn't happened and they were not allowed to say much at the Planning Commission hearing. Mark Harrington asked if he agreed that Finding of Fact No. 9 as written in 2010 or as allegedly corrected, can modify what occurred in 1997 in approving Bellemont. Mr. Muir agreed.

Lisa Wilson stated that *Condition of Law No. 5* says the Planning Commission did not error and she is confused as to why we're even discussing a typo because the Planning Commission by *Condition of Law No. 5* can not use the typo explanation as an excuse. Condition No. 5 says the Planning Commission did not error. You can't use it as an excuse and either way he said that the math doesn't matter. That's how this whole thing started; she did the math. If you look at the parcel, the NSL parcel is 5.96 acres. Lot 2b for NSL is 3.78 acres, the open space left on NSL Lot 2b is 124799 or 70.6% open space. It changes when Lot 2b is used for open space for Bellemont because you have to add a quarter acre more and it changes the value to 68% open space. She stated that she only read it once and noticed the mistake the first time and did the math.

Katie Cattan clarified that Ms. Wilson said Lot 2d is 3.78 acres, but it's 4.03 and becomes 3.78 without the quarter acre. Ms. Wilson stated that the Findings of Fact says that the hotel site is allowed to use 3.78 acres of open space. It never said anywhere that the NSL Hotel is able to use 4.03 acres. Mayor Williams referred to the current application noting that the site contains 70.6% open space including the remainder 3.78 acres of open space on Lot 2d.

Ms. Wilson insisted that the hotel site is only able to use 3.78 acres out of the Deer Valley ski runs, they are not able to use 4.03 acres according to the Findings of Fact and you can't keep it just in the Facts here, because it doesn't fit. You have to do the math.

Cindy Matsumoto stated that she agrees with the Planning Director and the Planning Commission extending the CUP. Alex Butwinski emphasized that typos happen all of the time, In response to a question regarding the remainder issue of whether 4.03 or 3.78 is germane, Mark Harrington stated that it is irrelevant if Council agrees with staff and believes it is a typographical error. Dick Peek expressed that he did not believe staff erred. Alex Butwinski, "I move that we deny the appeal of the Planning Commission's June 8, 2011 denial of an appeal of the administrative extension of the Conditional Use Permit for the North Silver Lake Subdivision Lot 2B and the North Silver Lake Lodge Development - appellant Lisa Wilson with the Findings of Fact, Conclusions of Law and Conditions of Approval outlined in the staff report". Liza Simpson seconded. Motion unanimously carried.

## VI ADDITIONAL DISCUSSION – AGENDA ITEMS

None.

## VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned and a joint work session with the Planning Commission convened at 6 p.m. on the topic of redevelopment.

## MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 2 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Michael Kovacs, Assistant City Manager; Jon Weidenhamer, Economic Development Manager; Phyllis Robison, Public Affairs Manager; Diane Foster, Sustainability Manager; Steve Brown, Consultant; and Mark Harrington, City Attorney. Liza Simpson, "I move to close the meeting to discuss property and litigation". Joe Kernan seconded. Motion carried unanimously. The meeting opened at approximately 4 p.m. Liza Simpson, "I move to open the meeting". Dick Peek 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

PARK CITY SUMMIT COUNTY UTAH CORPORATE Seal MARCH 1, 1884

Janet M. Scott, City Recorder