PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JULY 11, 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 11, 2002.

AGENDA

Work Session

4:15 p.m. Council questions/comments
5:00 p.m. City Park Master Plan revisions
5:30 p.m. Review of regular meeting
Neighborhood Traffic Management Program and Traffic Calming Policy
Other meeting questions/questions
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 MAY 23, 2002

V RESIGNATIONS AND APPOINTMENTS

Appointment of Kent Cashel as the City's representative on the Park City Fire Protection District

VI CONSENT AGENDA PUBLIC HEARINGS

1. Ordinance approving a condominium conversion for the property located at 1765 Sidewinder Drive, Park City, Utah

2. Ordinance approving a six month extension of a plat amendment to add a metes and bounds parcel to 3198 American Saddler Drive (Lot 4) and add a metes and

bounds parcel to 3204 American Saddler Drive (Lot 3) and amend the Risner Ridge Subdivision, Park City, Utah

3. Master Festival License for Dining on Main Street - HMBA

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3. Master Festival License for Dining on Main Street - HMBA

5. Approval of encroachment agreement at 875 Main Street for the Main Street pedestrian bridge

6. Resolution adopting a Neighborhood Traffic Management Program and Traffic Calming Policy for Park City, Utah

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 **(motion to continue to July 18, 2002)**

IX NEW BUSINESS

1. Determination on validity of timing on the submission of an appeal of the Planning Commission action of June 12, 2002 approving the MPD for April Mountain

2. Authorization to staff to enter into a construction contract for the Middle School pipeline replacement

X ADJOURNMENT

Posted: 07/0802
See parkcity2002.org

PARK CITY WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JULY 11, 2002

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

Tom Bakaly, Assistant City Manager; Mark Harrington, City Attorney; Myles Rademan, Public Affairs Director; Pace Erickson, Streets Manager; Kent Cashel, Transportation Director; Bob Johnston, Leisure Services Director; Colin Hilton, consultant; and Jerry Gibbs, Public Works Director

Dean Schulman, Chairman Parks and Recreation Board

1. **Council questions/comments.** The City Council agreed to meet on Monday, July 22 at 3 p.m. to review its strategic plan. Jim Hier reported that three Planning Commissioners were selected to serve on the Quinns Junction planning task force and a positive recommendation is being forwarded on the zoning of Sunnyside from RD to SF. He continued that he received an email correspondence about April Mountain, and answered it without associating the issue with an appeal. Mark Harrington advised to distribute both emails to Council, and enter them into the record if appropriate. In response to a question from Fred Jones about ex parte communications, Mark Harrington explained that due process constraints of an appeal are meant to ensure that everyone has the benefit of all comments and there is no individual lobbying by appellants. In Mr. Hier's instance, he probably should have disclosed that he shouldn't comment on a quasi-judicial hearing; but on legislative matters, it is appropriate to accept comments from the public but they should be disclosed on the record. The Council calendar was discussed. Fred Jones suggested that Council follow-up on the annual City Manager's bonus and the City Attorney's evaluation and schedule time for personnel on next week's agenda. Ms. Erickson complimented the volunteers involved with the success of the 4th of July celebrations. There was discussion about trash on construction sites, enforcement efforts, and cleaning up stream corridors. She continued that it may be a good idea to have a discourse on the City's responsibilities with regard to maintaining the Seniors Center.

Myles Rademan reported on the progress of the entry corridor task force who is planning improvements honoring the Olympics and a $350,000 landscaping project at the Richins County Building has been approved by the County. A consolidated signing program may include Olympic pictograms on rocks, welcome signs, and an event board at the Utah Olympic Park. Council will have an opportunity to review the concept. Kay Calvert thanked Chief Evans for quickly organizing a *Neighbors Helping Neighbors* Outreach Program. With regard to Sunnyside, she emphasized that notifying people of meeting changes more than 24 hours in advance would be appreciated. Jim Hier expressed his confusion as he attended the Planning Commission meeting where Sunnyside was reviewed. Ms. Calvert clarified that the residents expected it to be scheduled on the July 18th City Council meeting but it was moved. Pat Putt clarified that when the Planning Commission is finished deliberating, it will probably be scheduled before Council, probably in early August.

Mayor Williams thanked the Public Works Director for installing speed humps in the Prospector area. He asked if there is a way for Deer Valley to keep the Olympic tower flags flying without violating the Sign Code. Myles Rademan explained that next week, Council will be reviewing Olympic legacy projects and Deer Valley flags will be addressed. The Mayor shared his correspondence from the week. There was discussion about modifying a Chamber/Bureau ad geared toward young men age 17 - 25. In response to questions from Peg Bodell, Kent Cashel explained the *pay parking* stencils on the curb between meters on Main Street in the hope to better inform visitors. She felt that people will complain about the signing and Mr. Cashel explained that many visitors, not familiar with pay and display, get frustrated and this is an attempt to mitigate those complaints. Pace Erickson explained that there is no policy on artificial flowers at the cemetery; live flowers are collected and removed after they die. The artificial flowers are not removed. The Mayor emphasized that there is a lot of information available for the Old Town Assessment Study which should be utilized and not duplicated.

2. City Park Master Plan revisions. Bob Johnston reported that staff, the Fire Department and EMTs have been working on a helmet safety program at the skate park. It was decided to hand out t-shirts to safe riders. He gave the Mayor a sample and indicated that he would provide shirts to Council members who would like to hand them out.

He continued that the Parks and Recreation Board has been working on a master plan for three years, which was adopted a year ago. The Board had objectives including creating a safer park which functions better for users. Another objective was the skate park and to improve the children's play area. Features of the plan include expanding basketball and sand ball opportunities, improving the bandstand, and developing a stronger pedestrian connection between the south end of City Park and the Library and Education Center campus to Empire Avenue. The architect, Design Workshop, divided the park into five areas: team sports in the north end, family area with playground at the core, urban style park by the skate park, cultural area in the south end, and the stream identified as the riparian spine. Mr. Johnston stated that the Parks and Recreation Board prioritized the projects into three phases and by illustration of a map, described the location of various activities. It is proposed to move the tennis courts in the north to the Library and Education Center campus and move basketball between the drilling and mucking competition and skate park. In Phase 1, it is desired to install landscaping for shade here. A dog park is addressed in the south end responding to recent Council direction. Mr. Johnston continued that the Board would like to redevelop the Recreation Building and the surrounding to make it more appealing and perhaps a install a water amenity. Phase 2 looks at parking and traffic calming by way of bulb-outs across Park Avenue. Phase 3 focuses on the Library and Education Center and the campus which could accommodate an portable amphitheater. However, it would involve altering the hillside which may improve the sledding. The neighbors were invited to a public hearing before the Board and generally the feedback was positive; staff is seeking some guidance from Council.

Chair Dean Schulman commented that the Board's goal is to make City Park more responsive to current community needs and in the process to make the interface among the different park users more harmonious. The proposal is very preliminary in nature and conceptual. The Board's reaction to the dog park was generally favorable by using an underutilized area to segregate off leashed dogs from other users. The amphitheater and move across the street was supported as it freed up primary areas in City Park for more intense uses. Design Work Shop's recommendation to move the tennis courts was not favored by the Board as it seemed like an unnecessary cost. There was a suggestion to move the basketball court to the north end of the Education Center campus to avoid potential conflicts with the court and the skate park. The Board also made an effort to separate different activities based on age and character of usage. There was some support to eliminating volley ball altogether, moving it to the Racquet Club and perhaps expanding basketball in that location. Mr. Schulman solicited Council's input for direction to the Board to again revise the plan so it can move forward.

As a patron for 20 years and a property owner on Sullivan Road, Peg Bodell stated that she is very familiar with the elements of City Park. She felt the tennis courts are in good condition and can't support moving them and favors the cultural tie-in with the amphitheater. The one-way streets are good and she suggested an access from Deer Valley Drive that is one-way as well, into the back of Miners Hospital. She asked about the demonstration garden which is neglected. Bob Johnston explained that maintenance is staff intensive and the Parks Department has suggested reducing or relocating it. Ms. Bodell agreed and felt that the Garden Club might like to take it on as a project. She also directed staff to contact the Arts Council to submit a public art plan. She pointed out that the area behind the 7-11 is an eyesore and needs to be cleaned up. One-way streets would accommodate 45° parking and many more cars. There is property on Park Avenue for sale and there may be an opportunity to obtain more space for the park. Ms. Bodell preferred to see active uses along the stream corridor rather than passive and is pleased to see benches. The plan should be longer term than five years. She reminded everyone that there are many adjacent neighbors and property values will go down if the City is not sensitive to their concerns. Isolating activities is understandable but she warned not to segregate families and suggested bleacher type seating at the skate park. Planting trees will also be helpful.

Candace Erickson stated that she attended the hearing and heard the public input. She is not supportive of locating of the basketball courts by residences or moving the tennis courts. Improvements to the Recreation Building are needed as is shade by the skate park. Mr. Johnston discussed the scale of the amphitheater which is small and the purpose of reducing the demands of the bandstand. This project is in Phase 3 and there will be further opportunities for input from the public, technicians and performers. Ms. Erickson stated that she did not feel strongly about the dog park in the south end and expressed concern about owners being in control of their dogs at all times. In response to a question from Council member Erickson, Bob Johnston advised that if the tot lot fence is installed now, if it can be reused in the future. Jim Hier felt that Ms. Bodell's comments are valid and agreed that the costs associated with moving the tennis courts should be reconsidered. He supports the narrowing of Park Avenue and the connection to City Park, and would like to see this addressed in Phase 1. He stated that he is strongly in favor of the dog park. It is a good opportunity for the community and especially Old Town. Peg Bodell concurred but asked if there is a barking problem associated with the parks and Mr. Hier commented on the successes of other parks and believed that dogs bark more when on a lease. There was discussion about the unfenced dog park at Trailside Park where there is a free area for dogs to run, interact and play frisbee. Blocking off the road behind Miners Hospital and making traffic one-way north and south may be a good traffic calming solution. Fred Jones concurred on the tennis courts and agreed with Mr. Hier and Ms. Bodell suggestion to study one-way and blocking the road, especially if it provides more room if concerts remain in their current location. He is hesitant to start cutting up the field in the campus area by way of an amphitheater. The size of the location for the dog park in the south end doesn't appear to be adequate and it may be more appropriate to have picnic tables there. Maybe not all uses can be accommodated in City Park and some activities could be moved to the Racquet Club or other areas. Ms. Calvert agreed that there is probably too much in the plan and felt that the south end is a good place for a dog park. Her concern about installing art there is that the location is somewhat remote and it would be enjoyed more at Miners Hospital.

Council member Jones interjected that he would like to see the Park City landscaping and Mawhinney lot projects in Phase 1. Perhaps not moving the tennis courts would free a funding option for improving this area. Ms. Calvert also supported the connection and bulb-outs on Park Avenue and felt it will be a benefit for residents. Jim Hier emphasized that he is not in favor of additional curb cuts on Deer Valley Drive to provide access to City Park from a different direction. In response to a comment from Ms. Erickson about moving volley ball to the Racquet Club, Bob Johnston explained that this would consolidate play on grass courts for preliminaries and sand for final tournaments and help staff manage the events easier. This move is also supported by the Police Department. Another option is moving volley ball to Trailside Park, but it has been a good event for the City and we hosted 150 teams last week.

Mayor Williams stated that he is in favor of maintaining the tennis court location and pointed out that the design of the drain in the north end area should be streamlined as it takes up too much room. Basketball in the drilling and mucking area next to the skate park is not a problem for him. He questioned the effectiveness of the dog park and losing the space to another use. The location is confined and too close to the stream and the Mayor suggested that perhaps there are areas on trail systems that could be leash free. He strongly supported fencing the tot lot as soon as possible and understood the concerns from Park Avenue residents who never imagined tennis courts adjacent to their properties. Maintaining the Library and Education Center as an open field with no designated uses is a good thing and he would like concerts to remain in the bandstand at City Park. The Mayor supported improvements to Park Avenue in Phase 1 which may be effective in deterring truck traffic. Peg Bodell asked if the Senior Center property could be also be addressed by the Parks and Recreation Board.

3. Review of regular meeting.

Neighborhood Traffic Management Program and Traffic Calming Policy. Colin Hilton, consultant, referred to the presentation last week where Council directed staff to formulate an administrative policy and draft language is included in the staff report. This provides a structured involvement by citizens requesting traffic calming, a more formal review process for staff as well as allowing greater ability to focus resources on traffic problem areas. The policy was authored by the Public Works Director three years ago, and Mr. Hilton recommended that it be titled *The Traffic Calming Policy* with traffic calming procedures within the document. It reflects minor changes, including the inclusion of a section on communication protocol, and naming a Traffic Calming Traffic Manager; he reviewed Council alternatives on this matter. He added that he has recently received several requests from neighborhoods who would like the program initiated. The Mayor supported the program. He likes the concept of neighborhoods being involved and determining their own destinies and feels it is well thought out. Kay Calvert agreed but felt there should be defined dates for programs and someone to manage the program. Mr. Hilton stated that he is the Project Manager. Ms. Calvert reiterated that there should be hard dates to evaluate the job we're doing. Mr. Hilton described the two-phased process prompted by requests. She again suggested formulating a definite schedule and providing Council with regular updates. Mr. Hilton described the benefits of having a point person which will be an immediate improvement. Mr. Hier explained that this is a policy to allow citizens to petition for some action and defines a procedure which until now has been informal. It generates its own time line. There was discussion about five interested neighborhoods and the design of the median on Holiday Ranch Loop Road and its effect on narrowing the pedestrian lane.

In response to Ms. Calvert's comments, Jerry Gibbs explained that there are some simple solutions to requests and staff will respond quickly. There are other requests involving chicanes, medians, bulb-outs, etc. which take more time to analyze. He further explained that people initially wanting speed bumps may learn that they don't want them in front of their houses because they are noisy and this is part of the education process contemplated in Phase 1. Many of the solutions may be mutual but staff would like to offer a wide range of options and work with the neighborhood. Ms. Bodell felt that involving people is great and emphasized the importance of promoting the program. She felt that residents should be given some sort of time line. Mr. Gibbs responded that that is the purpose of the first meeting with technical staff; identifying the issues and projecting solutions. Ms. Bodell stated that she would like the *editorial* about stop signs removed; other things like speed limit signs are not addressed at this scale and she suggested neighborhood announcement signs. For instance, *Welcome to our Neighborhood* would alert motorists they are in a residential zone and this could be added as a passive control. Jerry Gibbs commented that he detailed the use of stop signs, because it is the most misunderstood and misused of the traffic calming devices. It is not intended to exclude stop signs as a solution but merely to provide information on warrants. Ms. Bodell insisted that the language be eliminated and to provide stop sign information during the first meeting. After discussion, Council concurred. In response to Fred Jones about moving ahead with adopting the policy tonight, Mr. Hilton indicated that he feels comfortable that he has captured the changes discussed. Mark Harrington recommended that Item 6 be removed from the Consent Agenda, give direction on specific changes in the motion, and delegate the Mayor to execute the resolution pursuant to Council's direction so it doesn't have to come back to Council.

April Mountain appeal process. The City Attorney explained that this appeal is limited as it pertains to the timeliness of submitting an appeal on the MPD approval by the Planning Commission. This is not a hearing, but a determination of the timing of the petition. The plat is scheduled tonight, but all three parties have stipulated to continue to the Council meeting on July 18, 2002 so that it can be heard in tandem with the CUP appeal, if forwarded from the Planning Commission. If public is present who can't attend the meeting on July 18th, the City Attorney advised that it would be appropriate to invite their testimony.

Other meeting questions/comments. With regard to the Main Street bridge encroachment, the City Attorney emphasized that the planning process for this project is complete and has received CUP approval. Any opportunity for the Council to call-up the CUP has passed. This is just a review of an encroachment permit pursuant to the City's right-of-way encroachment policy that is administered by the City Engineer.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JULY 11, 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 11, 2002. Members in attendance were Dana Williams, Peg Bodell, Kay Calvert, Candace Erickson, Jim Hier, and Fred Jones. Staff present were Tom Bakaly, Assistant City Manager; Mark Harrington, City Attorney; Ray Milliner, Planner; Brooks Robinson, Planner; Alison Butz, Special Events and Facilities Manager; Kathy Gammel, Water Manager; and Colin Hilton, consultant.

II PUBLIC INPUT

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

1. City Park Master Plan:

Gary Pinnell, 1102 Park Avenue, stated that he is here to comment on the City Park Master Plan, specifically the south end proposed for a dog park. This is a prominent entrance to the park and more space is needed for an adequate facility. He supports passive uses at this end which could be a quiet landscaped sitting area, creating a buffer from the skate park and other active uses. Another option could be an attractive climbing rock as a buffer. He also pointed out a 20 foot encroachment of Sullivan Road on his property and would like that considered when improvements to this end begin this summer. Mr. Pinnell also suggested under-grounding utilities or at least installing the conduit and installing a water feature in the south end. He supports moving volley ball to the Racquet Club and liked the bulb-outs on Park Avenue.

Puggy Holmgren, Park Avenue resident, indicated that she was at the public hearing on the City Park Master Plan. Her biggest concern continues to be the speeding on Park Avenue and is pleased to learn of the traffic calming policy, but is in favor of stop signs and cross walks. There have been injuries to pedestrians and dogs because of speeding cars and the speed limit probably should be lowered. Even the City buses appear to be speeding.

Ed Brophy, resident, suggested putting the tennis courts where basketball is proposed and basketball across the street. There is some room on the west side of the bike path which could be considered for the dog park.

2. Road cuts - Belt Route - Richard Roberton, 7980 Juniper, stated that he purchased a unit at Town Pointe and described the difficulty in making a left hand turn to

travel north on the belt route from the project and lower Main Street. He suggested that the speed limit be reduced near these areas to 25 mph but understood it is a state highway. Tom Bakaly responded that staff continues to talk with UDOT about jurisdiction of the road and the City Engineer will help him with contacts. Mr. Roberton added that he would like to suggest a joint landscaping buffer project with owners of Town Pointe and UDOT.

Mayor Williams invited anyone in the audience wanting to speak on the April Mountain appeal, who can't be here for the hearing next week. Hearing no further comments, the public input session was closed.

III COMMUNICATIONS FROM COUNCIL AND STAFF

Peg Bodell thanked the Chief of Police for the PSAs on trails. The City Attorney explained that he is co-sponsoring a citizen participation workshop for public hearings with CARG which is scheduled Wednesday, September 4. He will be sharing his thoughts on providing effective public hearing testimony on planning matters.

IV WORK SESSION NOTES AND MINUTES OF MAY 23, 2002

City Recorder, Jan Scott, recommended that the minutes be continued. A recording error occurred on the 23rd, and the attorneys on the Evergreen Subdivision matter were afforded an opportunity to edit the draft. Peg Bodell, "<u>I move to continue</u>". Kay Calvert seconded. <u>Motion unanimously carried</u>.

V RESIGNATIONS AND APPOINTMENTS

<u>Appointment of Kent Cashel as the City's representative on the Park City Fire Protection District</u> - Fred Jones, "<u>I move to appoint Kent Cashel as the City's representative on the Park City Fire Protection District</u>". Peg Bodell seconded. <u>Motion unanimously carried</u>.

VI CONSENT AGENDA PUBLIC HEARINGS

1. <u>Ordinance approving a condominium conversion for the property located at 1765 Sidewinder Drive, Park City, Utah</u> - Ray Milliner explained that the applicant received a timeshare approval about a year ago which expired. Since no units were sold, he has decided to convert the units to condominiums and staff recommends approval. Hearing no comments from the Council or the public, the public was closed.

2. <u>Ordinance approving a six month extension of a plat amendment to add a metes and bounds parcel to 3198 American Saddler Drive (Lot 4) and add a metes and</u>

bounds parcel to 3204 American Saddler Drive (Lot 3) and amend the Risner Ridge Subdivision, Park City, Utah - Planner Brooks Robinson explained that this is a request for a six month extension to record the plat. Part of the Council action a year ago was denial of a zoning change request with regard to a sports park. The City has stayed enforcement action on the sports court until the Utah Private Property Ombudsman holds a hearing on July 17. Hearing no public input, the public hearing was closed.

3. Master Festival License for Dining on Main Street - HMBA - Alison Butz explained that she was approached by the HMBA about an idea for dining outside on Main Street. The Master Festival License applies for the ability to place seating on the Main Street sidewalk in front of certain outlined restaurants. It is proposed to use the sidewalk as a seating area, and reroute pedestrian traffic into the adjacent parallel parking space. The Building Department was contacted with regard to redirecting pedestrians and Mr. Ivie suggested placing signs on both ends which states that the handicap accessible route would be maintained on the sidewalk and to notify a server. The restaurants have agreed to this requirement. Ron Ivie further recommended placing reflective tape on the curb to alert pedestrians to the curb. The application is for four weekends, July 19, August 9, August 23 and September 6 and the HMBA has indicated that if this is successful, they may pursue an amendment to Code next year to allow dining on the sidewalk during the summer. By allowing restaurants to expand their seating area, is in no way a license for sidewalk sales. For the benefit of Jim Hier, Barb Clark of the HMBA explained that every restaurant was invited to participate. Fred Jones pointed out that dining on Main Street was contemplated in the Main Street Action Plan and one of the concepts was putting the dining in the parking spaces so the sidewalks remain open. It would be interesting to test. He also suggested some type of a platform which would eliminate risks of stepping off the curb. The barricades should enhance Main Street and not look like a construction detour so the idea is given a fair chance. Ms. Butz explained that since this is a short term event, the DABC would not extend the restaurant's license unless it is directly adjacent to the front door. An amendment to state law would be required to serve seating in the parking space. Ms. Clark explained that picket fencing will be used and the structure will be reinforced with water barricades. Ms. Butz corrected the tabulation of fees in the staff report. There was discussion about loss of revenue from paid parking, and Ms. Bodell expressed that she supports waiving fees this year and views this as seed money. She challenged the restaurants to be creative with their fencing and added that a pedestrian boardwalk may work if dining remains next to the door. There was discussion about designating a number for participating restaurants. Jim Hier expressed concern about taking parking away from Main Street and potential complaints from other merchants. Barb Clark stated that the membership was surveyed as well as other associations and she didn't hear much concern about the loss of parking, but it was raised. Peg Bodell agreed with Mr. Hier and felt there has to be a fine balance. Kay Calvert felt that in order for the event to be successful, as many as 20 restaurants probably need to participate on the street. Ms. Clark added that the HMBA is trying to come up with ideas to bring energy to this part of town and found this

recommendation in the Downtown Action Plan. Fred Jones suggested that events over 20 restaurants would come back to Council for approval. Kay Calvert requested an update after the first two are held. Peg Bodell encouraged the HMBA to arrive at ideas that don't take away parking.

There was an update on the Farmers Market and Ms. Clark felt that participation will increase when the produce vendors come on line. There is some funding left in the project budget, which will be used to market it. Customers have indicated that parking is inconvenient which she felt is more of a perception issue. Vendors would like to remain at the flag lot but would like to adjust hours from 3 p.m. to 7 p.m. rather than closing at 6 p.m.

VII CONSENT AGENDA

Alison Butz stated that a Condition 4 can be added to Item 3 that *there will be a maximum of 20 participants. If the applicant wishes to exceed that number, Council review is required*. Jim Hier, "<u>I move to remove Item 6 from the Consent Agenda so that we can make a modification suggested in work session and vote on it separately</u>". Fred Jones seconded. <u>Motion unanimously carried</u>. Fred Jones, "<u>I move to approve Consent Agenda Items 1 through 5 with the modification to Item 3, as so noted</u>". Kay Calvert seconded. <u>Motion carried unanimously</u>.

1. <u>Ordinance approving a condominium conversion for the property located at 1765 Sidewinder Drive, Park City, Utah</u> - See staff report and public hearing.

2. <u>Ordinance approving a six month extension of a plat amendment to add a metes and bounds parcel to 3198 American Saddler Drive (Lot 4) and add a metes and bounds parcel to 3204 American Saddler Drive (Lot 3) and amend the Risner Ridge Subdivision, Park City, Utah</u> - See staff report and public hearing.

3. <u>Master Festival License for Dining on Main Street - HMBA</u> - See staff report, public hearing and motion.

5. <u>Approval of encroachment agreement at 875 Main Street for the Main Street pedestrian bridge</u> - See staff report and work session notes.

6. <u>Resolution adopting a Neighborhood Traffic Management Program and Traffic Calming Policy for Park City, Utah</u> - See staff report, work session notes, and motion.

The City Attorney suggested that Council move to approve Item 6 pursuant to the changes noted in work session with direction to the Mayor to review the final resolution prior to signing. Jim Hier, "I so move". Fred Jones seconded. Motion carried unanimously.

Ed Brophy, resident, complained about the lack of enforcement of handicap parking. The 25 mph speed limit sign on the round-about to Deer Valley Drive is behind the bushes, the speed sign at the town bridge needs to be replaced, and the sign at the compactor in Swede Alley should be moved to a more visible location.

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 **(motion to continue to July 18, 2002)** - Fred Jones, "I move to continue to July 18". Peg Bodell seconded. Motion unanimously carried.

IX NEW BUSINESS

1. Determination on validity of timing on the submission of an appeal of the Planning Commission action of June 12, 2002 approving the MPD for April Mountain - Mark Harrington explained that Council has the unpleasant task of formulating a preliminary motion on a jurisdictional question of whether an appeal was timely filed and therefore, whether Council has jurisdiction to go forward and hear the appeal or not. This is a serious matter as Council members are weighing the appellant rights of some citizens and if Council supports staff recommendation, you would be closing those rights. Case law regarding due process to appellants is *generous* and supports due process opportunities. On the other hand, Council must consider the due process rights of the applicant who has equal due process rights and relies on both published standards and disclosure dates on appeals just as much as the other side has the right to adhere to the appeal rights afforded by those same standards. This is a balance and in that effort, Mr. Harrington disclosed that he contacted both parties to propose hearing this determination, the pending CUP appeal, and final plat for April Mountain on July 18, both attorneys declined to entertain that process.

He continued that Council may question the severity of submitting an appeal four days date, but there are statutory and case law authorities that require these dead lines to be strictly followed. There is no provision that allows staff to waive them or amend by stipulation and this is why the City Council must make this decision. The City Attorney added that the staff report is based on what he believes is a clear reading of the statute and follows the practice of the City. He thanked both parties for working together with the City on scheduling this today and consolidating the plat and appeal on the 18th .

Joe Tesch, attorney for Aerie Owners Association, disagreed that the ten day *clock starts ticking* when the vote is taken. He referred to an instance tonight where a motion was made to approve a policy at the discretion of the Mayor as amended during work session, which is unrecorded. There was a situation tonight where the City Recorder acknowledged a recording error. The decision tonight isn't about April Mountain, but Council is seated like an appellate court and it must live with this determination. He continued to describe confusion to the public when the Council deliberates on findings and conditions and they are adopted and amended during the meeting. This would mean that without the benefit of the minutes, the ten day appeal time period begins at the vote and that is an impossible burden for any citizen. Mr. Tesch, read from the ordinance, *"The appeal must have a comprehensive statement of all of the reasons for the appeal, including specific provisions of law, if known, that are alleged to have been violated by the action taken"*. The appellant should not be stuck with the burden of understanding what happened verbally without having approved an executed minutes. He read his supplement memorandum regarding the timeliness of appeal. The section of the Code dealing with Planning Commission action states *the minutes of the meeting are public record and shall be available within a reasonable time after the meeting.* A subsection provides that all decisions of the Planning Commission shall be provided in the minutes. Mr. Tesch stated that they're required written findings; the findings may be prepared separately but must be incorporated into the minutes. If there are no minutes, there is no action until the minutes are approved and that the action takes place. With regard to the staff report, he referred to Section 15-6-3(F) *Planning Commission Action* of the LMC. He read the provision, . . .*"To approve an MPD, the Planning Commission will be required to make the findings outlined in Section 15-6-6. . . Any appeal of a Planning Commission action will be heard by the City Council in accordance with Section 15-1-18"*. Mr. Tesch continued that the City Attorney argues there is a finding of fact section in the general definition section which should be applied here. That isn't so. Simple contract interpretation takes you to 15-1-18 and only 15-1-18. Section 15-1-16(E) states *"Timing. All Appeals must be made within ten (10) calendar days of the Final Action. . ."*. Section 15-1-18(M) *Finality of Action. Final Action occurs when the deciding body has adopted and executed written findings of fact and conclusions of law"*. They are therefore adopted when the minutes are approved and when the minutes came before the Planning Commission last night, they were approved and executed on July 10. No official action could have occurred prior to that time.

Mr. Tesch stated that there is an argument presented by the City Attorney that this final action section was intended to only address action in appeals. Subsection 15-1-18(N) reads *"Reconsideration. The City Council, and any Board or Commission, may reconsider at any time any legislative decision upon an affirmative vote of a majority of that body. The City Council and any Board or Commission, may reconsider any quasi judicial decision upon an affirmative vote of a majority of that body at any time prior to Final Action. . ."*. If the action was the vote, the vote in the meeting and not the approval of the minutes and execution of the findings of fact, there is no reconsideration time possible. It is inconsistent and impossible that the Final Action is the vote and still be consistent with the minutes. He continued that the only way this can be read in fairness and consistent with ordinances, is to say that Final Action is the approval of minutes. Reconsideration can not occur on a verbal action considered to be a Final Action; it can't be done. Mr. Tesch emphasized that his appeal was timely and the only issue is whether it was right in the sense there is no Final Action to appeal from since last night. In his appeal, he has asked that any subsequent appeal be incorporated so there is some way of going forth. When minutes are prepared, Mr. Tesch believes they are circulated and very often revised and changed. To suggest that a citizen should have the obligation to somehow anticipate what the minutes are going to say is a very impractical burden. The Mayor clarified that work sessions are recorded and there are detailed notes of the meeting.

City Attorney Harrington stated that he was glad that he brought up the recording error because it brings up the point of the complexity of the issue of finality. The action at the meeting was consideration of an ordinance for Evergreen Subdivision and that approval became final on the day Council adopted it. This is defined by state statute regulations and there is a further step that the ordinance is effective upon publication. Enactment has nothing to do with the minutes and that ordinance can not be amended by adoption of minutes, so Mr. Tesch is wrong on that point. Mr. Harrington emphasized that he wants to make this very clear because it is relevant to the point in which this section can't mean what he says in terms of execution of minutes. The Evergreen ordinance is executed, published and is completely separate from the status of the minutes. Final Action is a defined term and designated by capital letters in the definition chapter, so the definition chapter does apply to Chapter 15. Both sections need to be read consistently because they both apply and he quoted 15-15-8.7., *"Final Action. The latter of the final vote or written decision on a matter"*. In its most literal sense, if you buy Joe's argument about execution on every item in order for it to be appealed after the fact, when could you have a final vote on the matter, if it's appealable. Mr. Harrington stated that the chairperson would have to executive findings beforehand which is nonsensical. Additionally, there are several matters that are clearly appealable to either the Planning Commission or the City Council which don't have executed formal findings, i.e., grants are adopted by motion. If Mr. Tesch's position is supported, every single action of the City would have to provide written and executable findings subsequent to the vote.

Additionally, minutes can take as long as two months after the meeting in some cases. The City Attorney stressed that minutes are a record of the meeting and a record of the actions taken at the meeting. They're not the action of the meeting and this is an important distinction. Otherwise, if decisions weren't final until the adoption of the minutes, the logical extension would be that the Building Department couldn't issue permits until a decision was final. There could be a potential two month delay from the vote to approve a project and the execution of the minutes, and it just doesn't make sense.

He acknowledged that this is a very confusing matter. There were three items pending before the Planning Commission, final plat, MPD and CUP and to make it more complex, the Commission made a motion to recommend a rezone during the same meeting. He didn't believe the appellant understood that when the Commission acted, that this review wasn't coming to City Council and that is probably why the Aerie Owners Association waited. No one asked for clarification until 14 days later and now bear the burden of not asking that question right after the meeting. The City Council does not have the authority to change the text of an ordinance by way of amending the minutes. With regard to finality of action, the City Attorney stated that the staff report was executed written findings. It was an original document and remained unchanged, executed by the staff person, and adopted by motion. In this case, there were no changes. The staff report was available at the meeting and adopted with no change. There is no code requirement for the *action letter* which is a courtesy letter summarizing action to the applicant. Mr. Harrington believed that the delay in producing the letter may also have contributed to the appellant's ability to raise this matter. Usually, it is sent two or three days after the action and there is no issue, but the planner was on vacation after the meeting and it didn't go out until about a week later. Again, in a legal sense, we view this not to be relevant. The inconsistency between (M) and the definition of Final Action in the definition section needs to be read in tandem. He described in detail the creation of the sections on finality of action and reconsideration which resulted in the 1997 denial of the Town Lift Bridge and its subsequent reconsideration. These sections were crafted with very specific language for appeals and requires written executed findings. With regard to section (F) Planning Commission Action, there is mention of findings of fact, etc. but no mention of minutes. Mark Harrington reiterated that the findings were voted upon at the meeting, unchanged and that is the reason the staff has taken this position. In response to a question from Peg Bodell, City Attorney Harrington explained that a written decision is the findings of fact, conclusions of law, and conditions of approval adopted by motion and are physically available at meeting where they are adopted.

Bruce Shapiro, attorney for April Mountain, reminded the Council that the final plat and appeal of the CUP will be before Council next week. In its many reviews of cases dealing with finality of action, the Supreme Court views final action when no more arguments can be made, and when the rights or obligations have been determined or if legal consequences will flow from that agency action. They look to see if the action is preliminary, procedural or intermediate. None of those occurred here. He read the motion and decision, "*The Commissioners then moved to approve the revised April Mountain Master Plan development based on the findings of fact, conclusions of law, and conditions of approval, outlined in Pages 206 to 217 of the staff report*". The motion was seconded and passed unanimously. Mr. Shapiro stated that that sounds pretty final to him. Subsequently, the final plat was reviewed and approved by the Planning Commission. This is another action supporting finality of action. Mark Harrington interjected that the Commission did not approve, but forwarded a positive recommendation. Mr. Shapiro acknowledged the distinction and continued that the minutes are a record of the meeting. This project has been under review for years with many opportunities for public input.

Joe Tesch argued that Section 18-1(M), final action is defined and you don't have to go anywhere else. The suggestion that this would not apply to an ordinance doesn't make any difference because an ordinance is legislative not a judicial action, as is this matter before Council. The fact that the findings were not changed during the meeting doesn't make any difference, because you would not be able to definitively look at those and file a comprehensive appeal until you had the minutes. In this instance, the findings do not address nightly rentals and the City holding up the developer for a while isn't unreasonable. Ten days is the shortest amount of appeal time he is aware of; 30 days is more common. Mr. Tesch felt that the suggestion that a due process violation could occur is *bunk* and a scare tactic. He stated that it is ridiculous to suggest that they made a mistake in filing the appeal. Not all of the issues of the MPD can be raised in the hearing on the CUP and final plat next week. Regardless of whether the MPD becomes vested, all of the issues should be open for debate on July 18.

Bruce Shapiro reiterated his argument and referred again to the specific pages outlining the findings in the Planning Commission's staff report. The Council must treat everyone equally, and ten days is ten days and consistency needs to be applied. Mark Harrington added that Council call-ups are also quasi-judicial and 15 days are afforded to enable a two week period in case a meeting is canceled to ensure an opportunity to formally call an item up. These time periods are calculated from the date of the vote and never from the date of the minutes. Secondly, Mr. Tesch's allegation that the issues of the MPD will not be address is not accurate. He pointed out the substantive features of the appeal, i.e., the ability to comment on nightly rentals, access is clearly a plat issue, the BLM lease relates to access and the development agreement. Mr. Tesch alleges that information was inadequate and not available for review. He read Section 15-6, *"The development agreement shall be ratified by the Planning Commission, signed by the City Council, applicant, and recorded with the Summit County Recorder. The development agreement shall contain language which allows for minor administrative modifications to occur without revision to the agreement. The development agreement must be recorded within six months of the date the project as approved by the Planning Commission or the Planning Commission approval shall expire".* He again submitted, that the approval date is the date of the vote and the six months would run from that date. The minutes are meant to be a contractual representation of the final action.

For the benefit of Fred Jones, Joe Tesch explained that *Final Action* occurs when the deciding body has adopted hand executed written findings of facts and conclusions of law. There is a different standard for appeals and that is what should be applied here. It is unlikely that findings are signed at the meeting or staff executing staff reports and argued that minutes are signed. Jim Hier stated that there are written findings of fact, conclusions of law, and conditions of approval that are not modified at the time of the vote. That is the final document and in his mind is the execution of the document as defined in the vote. The final action definition applies universally unless modified, and it is his interpretation that subsection (M) of the appeals process was there not to redefine final action of the Planning Commission but to define the final action for the appeals process. Otherwise, there is no definition but the general definition of the finality of the appeals process. If findings are modified they would be executed later, which occurs frequently with the Planning Commission when the affirmative vote is subject to the additional conditions. There may be a time between the vote and the written decision when there is consensus for a reconsideration and he didn't feel this is inconsistent with the two definitions of Final Action. In response to a question from Mr. Tesch regarding verbal changes, Mr. Hier believed they would be amended and not final until then.

In response to a question from Joe Tesch about undocumented public information, the City Attorney explained that minutes are evidence of the meeting and are admissible. He referred to allowing testimony from the appellants on the issue of nightly rentals because it is part of the meeting record, but not really part of the decision. In response to a comment made by Joe Tesch, Jim Hier clarified that he believed the staff report is rewritten before final action. Mr. Tesch asked how a citizen would know when that would be done. Mr. Harrington expressed that in his mind, the point is moot since there were no changes to the written findings for April Mountain but believes that to the extent that the Commission is directing staff to make changes and votes, that is the final vote even though there is a modification at that time. The direction to make changes and come back to Council is not a final vote even if voted to approve. If the language is unclear and there is direction to come back, it is not final until it is ratified by the City Council. Peg Bodell noted that motions are made specifically and referred to an instance tonight when staff came back with changes to a Consent Agenda item. This is typical and the process is clear to her but she expressed interest in staff looking at the 10 day appeal period. It may be that it should be longer, but it is specified in the Code as 10 days. Fred Jones understood that subsection (M) Finality of Action deals with the appeals section. Kay Calvert noted that the staff report with findings were readily available at the Planning Commission meeting. Mayor Dana Williams added that any body can modify findings and conditions. The City Attorney again explained that the vote is the final action unless staff is directed to bring the amended findings back before the Board.

Jim Hier made a motion to support the staff recommendation and Peg Bodell seconded. There was discussion about including language that the City Attorney bring back findings next week. Jim Hier amended his motion, "I move that we direct staff to come back to us with findings of fact and conclusions of law which support the contention that this appeal was (submitted) beyond the allowable time period". Peg Bodell seconded. Motion carried unanimously.

2. Authorization to staff to enter into a construction contract for the Middle School pipeline replacement - See staff report. Kathy Gammel explained that staff is

seeking authorization to enter into a construction contract with Wasatch Engineering in an amount not to exceed $158,150. This project will repair sections of the line in Park Meadows and Prospector Square and is scheduled to be completed by August 24. The Mayor asked if the City is required to accept the lowest bid. The City Attorney explained that public improvements are required to have a bid process under state statute and the City must accept the lowest responsive bidder, however, some contractors are disqualified by not meeting *responsive* criteria. Ms. Gammel stated that Wasatch Engineering was verified to be totally responsive and qualified in its ability to take on this project. In response to a question from Jim Hier, Colin Hilton added that this contractor has never worked for Park City but has for other municipalities and oversaw the Salt Lake City 9th West Reconstruction Project, involving six miles of water pipe line. For the benefit of Kay Calvert, staff explained that references are also checked. Colin Hilton commented that there is an easement that is currently being negotiated with a property which would reduce the project cost. Fred Jones, "<u>I move to authorize staff to enter into a contact to the lowest qualified bidder, Wasatch Engineering Construction in the amount of $158,150 to construct a replacement water line between Treasure Mountain Middle School well house, Park Meadows and Prospector Square</u>". Peg Bodell seconded. <u>Motion carried unanimously</u>.

X ADJOURNMENT

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

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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

Janet M. Scott

Janet M. Scott, City Recorder

CORPORATE PARK CITY SUMMIT COUNTY UTAH MARCH 1, 1884