PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JUNE 24, 2010

Present: **Mayor Dana Williams; Council members Alex Butwinski, Candace Erickson, Joe Kernan, Cindy Matsumoto, and Liza Simpson**

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Michael Kovacs, Assistant City Manager

Snow Creek Cottages Ribbon-Cutting Ceremony - Prior to Work Session, Council and Staff met on site for a ribbon cutting ceremony and celebration for the Snow Creek Cottages project.

Council questions/comments. Candace Erickson noted the Mayor and most Council members had attended a quarterly breakfast with the Park City School District. The Chamber Board has reported that increasing tax revenues have allowed them to reinstitute most of their programs. Summit County is creating an ordinance that would allow municipalities and public entities to operate off-leash locations (dog parks) that are regulated by the entity's guidelines. Finally, the County Board of Health has received and reviewed new applications for the Director position and hopes to conduct interviews soon. Liza Simpson thanked Jan Scott for inviting Marilyn and Roger Harlan's daughters to the skate park dedication on June 27th before the City Summer Picnic. Alex Butwinski reported that Planning Commission approved a name change for the Bonanza Park area and ratified the development agreement for the Racquet Club project. Joe Kernan attended the Coalville 3rd Annual Pig Roast.

Mayor Williams had attended the Concert in the Park as well as a memorial service for Brenda Smith. He reported that Park City lost one of its true greats in the passing of Mel Fletcher and services for him would be on Sunday in Oakley. He had participated in a series of water, MIDA and EPA meetings.

Public Art Advisory Board recommendation-Kimball Art Center Sculpture - Assistant City Manager Michael Kovacs reported that the Public Art Advisory Board had reviewed a request to accept and move the Kimball Art Center Olympic Sculpture to public property. They voted to forward a recommendation to City Council to deny the request to accept the sculpture.

Following the art board meeting, local property owner Mark Fischer contacted staff and was willing to move the sculpture to his property in the Bonanza-Park District. He proposed placing the sculpture near the Maverick Store at Kearns Boulevard and Bonanza Drive. Council members expressed appreciation of his interest and encouraged him to move forward with the regulatory process since the location is subject to Frontage Protection Zone regulations. Manager Bakaly asked Council whether they would like to see it go on public property if there were issues that could not be resolved. Some Council members felt it was not appropriate to spend the amount of money that would be required for the City to move the structure. They encouraged Mr. Fischer to proceed through the regulatory process. In response to a question about fee waivers, Manager Bakaly suggested that Mr. Fischer begin the regulatory process and Council could discuss fee waivers in the future if necessary.

Council adjourned work session and conducted interviews for four positions on the Public Art Advisory Board.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JUNE 24, 2010

I ROLL CALL

Mayor Williams called the regular meeting of the City Council to order at 6:00 p.m. at the Marsac Municipal Building on Thursday, June 24, 2010. Members in attendance were Dana William, Alex Butwinski, Candace Erickson, Joe Kernan, Cindy Matsumoto and Liza Simpson. Staff present were Tom Bakaly, City Manager; Mark Harrington, City Attorney; Max Paap, Special Events Manager; Matt Twombly, Parks Project Manager, Heinrich Deters, Trails Coordinator, and Roger McClain, Water Project Manager.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

There were no communications or disclosures.

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

There was no public input.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF JUNE 10, 2010

Liza Simpson, "I move approval of the work session notes and minutes of the June 10, 2010 meeting". Alex Butwinski seconded. Motion unanimously carried.

Alex Butwinski	Aye
Candace Erickson	Aye
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

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

1. Consideration of a Master Festival License for the KPCW Back Alley Bash, as conditioned, on July 2, 2010 to be held on the Town Lift Plaza - Mayor Williams disclosed his band was performing at the event and Candace Erickson disclosed she is employed by Cole Sport who sponsors the event. Max Paap reviewed the application submitted by Community Wireless for its annual fundraising music event on the Town Lift Plaza. The event has been changed to July 2nd to align with the KPCW's 30th Anniversary. The Special Events Team focused on minimizing impacts on neighbors in the Town Lift Area and determined that parking for the event was sufficient. Mayor Williams opened the public hearing. There was no input and he closed the hearing.

Cindy Matsumoto, "I move approval of the Master Festival License for the KPCW Back Alley Bash, as conditioned, on July 2, 2010 to be held on the town Lift Plaza". Joe Kernan seconded. Motion unanimously carried.

Alex Butwinski	Aye
Candace Erickson	Aye
Joe Kernan	Aye

Cindy Matsumoto	Aye
Liza Simpson	Aye

3. Consideration of a Resolution celebrating KPCW's 30th Anniversary and proclaiming June 28 through July 4, 2010 as "KPCW Week" in Park City, Utah - Mayor Williams read a resolution proclaiming "KPCW Week" in Park City, Utah.

Liza Simpson, "I move approval of a Resolution celebrating KPCW's 30th Anniversary and proclaiming June 28 through July 4, 2010 as "KPCW Week" in Park City, Utah". Candace Erickson seconded. Motion unanimously carried.

Alex Butwinski	Aye
Candace Erickson	Aye
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

2. Consideration of a construction contract, in a form approved by the City Attorney, with Silver Spur Construction LLC in the amount of $774,740 for the Holiday Ranch Loop Pathway project – Trails Coordinator Heinrich Deters explained the Holiday Ranch Loop project was a priority identified by the Walkability Committee and the scope included an 8 foot wide separated asphalt path from Little Kate Road to the McLeod Creek Trail, as well as a six foot concrete sidewalk from the McLeod Creek Trail to SR-224. The roadway will be narrowed, with new rolled gutter the entire length. Storm drains will be installed to tie into the Little Kate storm drain improvements and sections of curb will be replaced as part of the storm drain improvements. He added that drought tolerant landscaping is planned for the buffer between the roadway and the trail and street trees will also be placed in the buffer.

In response to the published Request for Proposals, Staff received five bids and Staff determined that Silver Spur Construction was the lowest responsible bidder with a bid amount of $782,539.69. Alternates were included for irrigation pipe and the Water Department chose to use reinforced pipe that resulted in a $7,800 savings, so the total contract is $774,740. Construction is scheduled to begin in mid-July with completion by mid-October.

Mayor Williams opened the public hearing and closed it upon receiving no comments.

Alex Butwinski, "I move approval of a construction contract, in form approved by the City Attorney's Office, with Silver Spur Construction LLC in the amount of$774,740 for the Holiday Ranch Loop Pathway project". Liza Simpson seconded. Motion unanimously carried.

Alex Butwinski	Aye
Candace Erickson	Aye
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

Liza Simpson requested a brief discussion about whether Council needed to receive copies of all contracts in their packets. City Attorney Harrington suggested that if Staff is recommending entering into the City's standard contract, they should include the scope of work in the staff report. Manager Bakaly clarified Council's direction that they no longer wanted to receive copies of full contracts; they just want the scope of work to be included with staff reports.

4. Consideration of two appeals of the Planning Commission's April 28, 2010 approval of a conditional use permit application for the North Silver Lake Lodges Project, submitted by North Silver Lake Lodge LLC-appellants Lisa Wilson, individual, and adjacent owner associations represented by Jones Waldo, Attorneys at Law

(a) Staff presentation and scope of appeals
(b) Appeal 1- Appellant Eric Lee's presentation
(c) Appeal 2- Appellant Lisa Wilson's presentation
(d) Applicant's presentation
(e) Possible action on Appeal 1/Eric Lee
(f) Possible action on Appeal 2/Lisa Wilson

Councilor Candace Erickson recused herself due to her husband's participation in the application representing the North Silver Lake project and left the meeting.

Mayor Williams outlined the process: Council will vote to decide whether or not to expand the scope of appeal to allow public input; Staff will introduce the appeal followed by questions from Council; the two appellants will present their appeals; the applicant and developer will make a presentation; all parties may have reserved opportunities to respond; and, finally, Council will deliberate and take action on the appeals.

Liza Simpson, "I move to accept public input". Alex Butwinski seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Recused
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

Planner Katie Cattan stated the remanded North Silver Lake Lot 2B Conditional Use Permit was approved by the Planning Commission on April 28, 2010 and two separate parties had appealed this approval: Eric Lee and Lisa Wilson. The North Silver Lake Subdivision Lot 2B is permitted for a density of 54 residential units and 14,552 square feet of commercial and support space under the Deer Valley Resort Master Plan Development. The original CUP was reviewed by Planning Commission on five occasions in 2008 and 2009. Following the July 8, 2009 approval, neighboring property owners appealed the permit and Council, at its meeting of November 12, 2009, remanded the CUP to Planning Commission with direction to review three specific items. Planning Commission reviewed the remanded items and after discussing the project at two work sessions and two regular meetings in 2009 and 2010, approved the revised conditional use permit on April 28, 2010.

Planner Cattan reviewed the three specific items Council included in their remand order: 1) the height, scale, mass and bulk of Building 3 shall be further reduced to meet the Compatibility standard; 2) further specificity regarding a final landscape plan and bond with consideration for Wild Land Interface regulations shall be reviewed and/or further conditioned; and 3) construction phasing and additional bonding beyond public improvement guarantee shall be required.

Building 3 was redesigned which resulted in a 25% reduction in square footage. It was reoriented on the site, provides greater stepping of the building, less exposure of the basement floor; and separated into two buildings, Buildings 3A and 3B. With these changes, Planning Commission found that it had been reduced to meet Compatibility.

The Landscape Plan referenced in remand item 2 was updated to comply with a tree mitigation plan and will require that any one high quality tree that was removed would be replaced with two 20'-30' trees and any second tier trees would be replaced with one and one-half 20'-30' trees.

To address Construction Phasing and additional bonding referred to in remand item 3, additional conditions were approved to require that the Building Department approve a phasing and bonding plan to ensure site restoration in conjunction with building phasing beyond the public improvement guarantee; and, collection of a bond at the time of CUP approval to ensure that existing impacts of the site will be repaired at the time of CUP expiration or extension. These conditions specify that financial guarantees include revegetation of the perimeter enhancement, capping for new disturbances and previous disturbances, and cleanup of all staging areas on the site.

Planner Cattan summarized the first appeal from Eric Lee who represents local residents in the area of the project. He references the Commission's failure to address the construction phasing plan as specified in the Council remand. He asserts the Commission improperly delegated responsibility to the Building Department and did so with language that offers no direction regarding mitigation measures to be required in the construction phasing plan. And, further, that the Commission erred in characterizing the construction phasing plan as a site restoration scheme.

Planner Cattan Katie explained she had listened to recordings of the November 19, 2009 City Council meeting which clarified that Council had not asked for a completion bond. Council members specified that the intent was to ensure that throughout the stages of construction, if it were to be abandoned, the City would be able to restore the site to a visually acceptable level. Additionally, Council wanted to make sure that the project would be staged and that the Building Department should manage bonding to ensure site restoration with phasing stages. The Chief Building Official also recommended that a condition be added to mitigate existing impacts on the site. Conditions of Approval 17 and 18 addressed these issues.

Mr. Lee also submitted a supplemental appeal letter appealing the condition of approval regarding lockout units, which had been discussed during the City Council remand, but had been omitted from the Planning Commission approval on April 28, 2010. Staff agreed with the appellant and added Condition of Approval 19 that no lockout units are permitted with this approval.

The second appeal from neighborhood residents, Brad and Lisa Wilson, included eight items, three of which were not applicable to the remand. Ms. Cattan reviewed each of the points and provided Staff's response to each.

1) Ms. Wilson stated the April 28, 2010 Planning Commission meeting was not properly noticed and notification was not posted on the parcel for 14 days prior to the planning meeting. Staff complied with the Land Management Code noticing matrix throughout the review and courtesy

mailings to owners within 300 feet, publication in the Park Record and posting on the property occurred 14 days prior to the hearing. The April 28th meeting was a continuation from March 10, 2010 and no secondary courtesy noticing is required when items are continued.

2) The Wilsons stated the April 2001 8th Amendment to the Deer Valley Master Plan changed the 60% open space requirement defined in the DVMPD for the North Silver Lake Zone and nearby owners were not notified that this could adversely affect them. Staff noted the time to appeal the 8th Amendment expired in 2001.

3) Mr. and Mrs. Wilson stated that Land Management Code changes increased the square footage of North Silver Lake Lodge beyond what was defined in the Code at the time it was platted. Staff explained this was not applicable as it refers to a previous application, not the application under review.

4) The Wilsons argued the North Silver Lake Lodge was not compatible with the existing area. Staff noted the only building subject to the remand was Building 3. As discussed, there had been a 25% reduction in square footage, reorientation on the site, greater stepping and separation of the buildings, as well as less exposure of the basement level.

5) Ms. Wilson stated the number of existing natural trees after construction would be significantly less than the developer represented. Staff referred to the mitigation plan that l requires tree replacement of each high quality tree with two 20'-30' trees and replacement of second tier trees with one and one-half 20'-30' trees. In addition, a condition of approval was included to require a bond covering the cost of the landscape plan.

6) The Wilsons pointed out that lock out units were prohibited under the previous CUP approval, but that had been changed and would allow a potential of more than 54 additional rentable units for the hotel. Staff noted that issue had been identified at the April 28, 2010 public hearing and a condition of approval was added to reflect that language so no lockout units are permitted within this approval.

Council Member Kernan questioned the possibility of future owners applying to amend that condition. Ms. Cattan explained they would have to reapply for a conditional use permit in order to include lockout units in this project. She noted they are allowed by the Deer Valley MPD. Attorney Mark Harrington stated that Council's action would prohibit them in this project; however, there was no way to prevent future applications to amend the CUP.

7) Mr. and Mrs. Wilson stated there was not a phasing plan to complete the project. Staff stated Conditions 10 and 18 under which the approval expires within a year if no building permits were issued, and the requirement for phasing and bonding plans to be approved by the Building Department, have addressed this.

8) The Wilsons state the North Silver Lake area was platted in 1987 or 1988 and property owners were not notified when plat amendment changes were made in the zone. Staff explained this referred to a previous application was not applicable to the remand.

Council members had no questions and Mayor Williams opened the floor to Appellant 1, Eric Lee.

Eric Lee, Jones Waldo, representing owners of neighboring properties and homeowners associations in the area, stated the main focus of the appeal was the Commission's failure to address the construction phasing plan as specified in Council's remand. A project of this magnitude, in a mature single-family neighborhood, had the potential to materially disrupt the lives, use and enjoyment of neighboring property owners. They believe the Planning Commission did not follow Council's directive to review and approve a construction phasing plan. Instead, they delegated responsibility to develop a specific construction phasing plan to the Building Department and did so without providing direction regarding the impacts Council felt needed to be addressed.

Mr. Lee stated the applicant argued that the Commission's decision did not require the Building Department to review and approve a plan, but to address a plan. Additionally, the applicants argue that the Commission's decision to delegate to the Building Department met the spirit of your remand order. He felt the focus of that argument was too narrow and didn't address the Council's finding that construction phasing and bonding was necessary to mitigate visual and construction impacts of the conditional use permit. In addition, he felt the Planning Commission erred by characterizing the construction phasing plan as a site restoration scheme. He believed Council's direction to address unmitigated adverse impacts of the conditional use had not been addressed. He and his clients encouraged review of a phasing plan by the Planning Commission in a public process that gave the public the right to appeal the conclusions if they were not satisfied.

He requested that Council again remand the issue to the Planning Commission with specific instructions to identify visual and construction impacts that construction of this project will create on surrounding neighborhoods and create a plan at the Planning Commission level that addresses those impacts. He outlined suggestions to address the unusual situation of a large project being built in the middle of a mature residential neighborhood: 1) each phase should be stand-alone; 2) once construction begins on a phase, it must be completed within a specified period of time; 3) evidence of financial resources should be provided; 4) construction should begin with the perimeter structures to buffer neighbors from high density core, unless entire project is constructed in one phase; and, 5) mitigation of any substantial time between phases should include removal of all construction fences, trailers, materials, etc.

Appellant two, Lisa Wilson, stated she had filed a complaint with the State Ombudsman regarding this project. Ms. Wilson reported that her family had been travelling and had just returned to Park City.

Mayor Williams cautioned Ms. Wilson that the issues on appeal that can be discussed were noticing, compatibility, trees, lockout units and the phasing plan. He noted the lockout issue had been addressed.

Ms. Wilson stated the property was not noticed for the required 14 days and she had submitted photos taken before the April meeting showing that the sign was not properly posted. She reported this to the Planning and was surprised that Planning Commission approved the project without proper noticing. She had spoken to property owners who had not received mailed notice, not only for these hearings, but for previous reviews of the project as well. She informed KPCW of this and she and another neighbor participated in a KPCW interview about this project. She felt the developer intentionally and consistently left adjacent property owners off the mailing list.

Regarding the reduction in size of Building 3, she distributed building plans for a large home near her property to illustrate its size as well as the ski bridge, or causeway, in the center of the home and the amount of vegetation that had been removed from the site. Although the developer suggests there are three buildings on the property, it is all one building depending on the way the causeways work, and is not compatible with the neighborhood. The neighborhood is made up of single family homes, and Deer Valley consistently decreased densities on various parcels. Because there are no multi-family structures in North Silver Lake, she questioned how such a large building could be considered to be compatible in height, scale, mass and bulk. From Main Street it will look like one building and one won't see the gaps between buildings.

Ms. Wilson felt that beginning the construction on the perimeter of the project was extremely dangerous. She commented on the City's experience with Treasure Hill that had been built in increments over the years to maintain property rights and was now a problem. She asked Council not to create a problem for future City Council's and requested that they deny the project.

Doug Clyde represented the applicant, along with architect John Shirley and attorney Tom Bennett. Mr. Clyde explained that following the remand instructions from Council, they returned to Planning Commission to test their revised concept and then converted it to detailed plans, which were reviewed in subsequent meetings with the Planning Commission. The visual simulation dramatically shows that the project is much smaller.

Architect John Shirley commended the client for being willing to take a fresh look and redesigning the building. He noted they had reduced the mass of building three by 25% and had split it into two buildings to break up the impact. A subterranean portion of the project will house common area, spas, ski lockers, etc. Because the building was moved down the hill, it reduced the number of stories. Elimination of the ski funicular provided an opportunity to plant more trees to screen the building from the open space below. Doug Clyde pointed out that the new design stepped back, with a maximum of four stories, and because of the way they reoriented it on the site, visual impacts from Main Street have been substantially reduced.

Mr. Clyde addressed the landscape plan and noted the redesigned project provided substantially more opportunity to provide vegetative screening. He noted their simulation was done with trees as they would be planted; they did not attempt to project new growth.

Mr. Clyde clarified for Councilor Kernan that the photograph from Main Street was taken from street level just below the pedestrian bridge on Lower Main.

Tom Bennett, attorney for the applicant, commented that Building 3 had been dramatically redesigned to reduce and meet the compatibility standard as directed by the remand. He addressed the appellant's argument for requiring the Planning Commission to impose a phasing plan. He noted the Planning Commission followed the City's standard practice and addressed the issue by adoption findings of fact and conditions of approval relating to phasing and bonding and making it clearly the responsibility of the Building Department to monitor final decisions on phasing and bonding. He stated that although there are provisions in Master Planned Development approvals for imposition of phasing plans, there is none in the Conditional Use Permit process. He appreciated the appellant making suggestions for phasing plans, and addressed examples of why they do not work. Phasing plans are dependent on many variables and, for example, requiring the completion of one phase before beginning the next may not make sense in times of economic boom. Those decisions are very personal and are the inherent right of the property owner. Regarding the proof of financial ability to perform, he was unsure the City wanted to assume the role of judging an applicant's financial ability to develop a project.

One appellant requested that the project be built from the outside in, while the other appellant disagreed, which highlighted problems with the government and the public trying to settle on a phasing plan. The applicant was willing to rely on the resources of the Building Department in requiring appropriate mitigation for the phased construction to minimize impacts on neighbors.

Katie Cattan introduced Interim Building Official Roger Evans who was present to respond to questions regarding the Building Department and construction mitigation phasing plans.

Attorney Harrington stated that the Building Department has utilized a quasi-public process for construction mitigation plans and phasing plans for large projects such as Flagstaff. Mr. Evans explained that developers typically submit plans for the entire site, not individual buildings, and Building issues separate permits in order to track progress, issue Certificates of Occupancy and release limits of disturbance fees, which are a cash bond. Planning had incorporated Ron Ivie's suggestions to ensure that mitigation issues were covered if the project was not completed.

Mr. Harrington asked whether it would be useful to build in an opportunity for a series of courtesy neighborhood meetings to get additional input at the time the Construction Mitigation Plan was approved. He asked whether the Building Department would want them to require a specific plan, or include further conditions or parameters regarding phasing, and bonding if Council determined that the Planning Commission appropriately implemented their direction. Mr. Evans indicated they could hold neighborhood meetings to review the plans and discuss mitigation measures.

Councilor Cindy Matsumoto asked how long empty foundations were allowed to sit in a project. Mr. Evans stated the Building Department was reviewing old permits and had plans to remediate abandoned foundations. Building permits are good for 180 days as long as work is progressing, and developers can request extensions to keep the project in place. Ms. Matsumoto clarified that each building would be bonded, which would provide money for remediation if the project stalled. Mr. Evans stated they collected a cash bond which can be used to mitigate sites.

Mark Harrington clarified there was a one year CUP approval with an opportunity to request an additional one year extension through the Planning Commission, and there was also the building permit process.

Attorney Bob Dillon asked if pulling a building permit for a foundation vested a CUP or whether plans for the entire structure must be submitted in order to receive a foundation permit. City Attorney Harrington stated that pulling the first permit does vest the Conditional Use Permit; however, it can still be cancelled for inactivity if there was subsequent failure to keep the permit going.

Roger Evans explained that developers pull the footing and foundation permits first because they aren't required to pay impact fees at that time; however, the Building Department does not issue footing and foundation permits until they have reviewed the entire plan. Once they pull the footing and foundation permit they have 180 days to pull the full permit or go through extension process.

Mr. Dillon stated these structures would be part of a condominium project and asked whether they were required to file their Condominium Plat and Declarations prior to obtaining building permits. Mark Harrington explained that, while there are certain sites that have lot lines and code issues that would prevent the permit from being issued, in this case they have the lot of record and it was likely not an issue. The Condominium Plat is not recorded until the project is completed.

Mr. Dillon questioned allowing a developer to start without knowing that they would comply with the Conditional Use Permit and suggested that if construction plans were sufficient to obtain a building permit, they should be sufficient to create the condominium map for the portion of the project they want to build. Mr. Harrington explained that building plans were complete prior to obtaining footing and foundation permits, but noted there were almost always in-the-field amendments to every building plan of this size and it was preferable to have the condominium plat come in after the fact. Mr. Dillon clarified that they would not be able to sell anything until the plat was recorded.

Council Member Butwinski prompted a discussion about burden of proof for noticing. Attorney Harrington explained there had to be reasonable evidence on the record, and Council had made a finding of fact that there was not. He noted they received competing testimony and none regarding the noticing prior to the March 2010 meeting. Mr. Butwinski confirmed that the Planning Department maintains a mailing list along as well as a copy of the notice letter. Ms. Cattan explained that the applicant provides stamped, addressed envelopes accompanied by a list from a title company and Planning does not check the list. Courtesy notices are not re-sent when a project is continued, although Planning posts the property and publishes again in the newspaper and website.

Tom Bennett, attorney for the developer, indicated they would be willing to engage in neighborhood meetings for each phase of the construction mitigation.

Mayor Williams opened the hearing for public input. There was none and he closed the hearing.

Eric Lee referred to Mr. Bennett's comments and felt the concept of neighborhood meetings to review construction mitigation and phasing plans was sound. However, they were looking for that at the Planning Commission level because they are the body within City Government charged with addressing adverse impacts on a neighborhood. Also, there is no appeal process associated with a neighborhood forum with the building department and the neighbors have no recourse if their concerns are not taken into consideration. Mark Harrington clarified that although the meetings were not appealable; any staff action was appealable to the Planning Commission.

Mr. Lee addressed the necessity of requiring a phasing plan at the onset of the project as opposed to allowing the developer the flexibility to make those decisions as the project progressed. The developer must recognize that the neighbors have concerns and we believe that a permit should be issued only if the adverse impacts are adequately mitigated. They did not receive the mitigation plan they should have and think the project needs to go back.

Lisa Wilson commented about phasing plans and shared that the Deer Crest Homeowners Association is going to require bonding for all buildings due to a number of uncompleted homes. She hoped the City would require bonds so they are not left with the eyesore of unfinished construction.

Mayor Williams requested that Council discuss each appeal separately and opened the discussion regarding Appeal One.

Joe Kernan was comfortable with the Building Official making an administrative approval of the construction phasing plan, but suggested having conditions related to public input, whether it is neighborhood meetings or something more formal. Liza Simpson agreed, but felt the Building department understood the best way to move projects forward. She was comfortable adding conditions of approval if necessary. Council members expressed a preference for informal meetings and Mark Harrington suggested adding language to Condition 17 that required a neighborhood meeting at each phase prior to Building Department action.

Alex Butwinski believed height, mass and scale had been reduced to improve compatibility and landscaping plans had been sufficient addressed. Regarding the phasing plan, the City uses bonding as a mechanism to ensure the phasing was followed and the project was completed. He relayed a question from Planning Commissioner Peek regarding whether bonding was used to return the site to vegetation or to move the project forward. Roger Evans explained the Building Department would determine where they were in phasing, and the bond would be adequate to address a solution.

Regarding the requirement for an applicant to provide proof of financial wherewithal, Mr. Butwinski noted there had been no precedent either in the Code or past practice. Mr. Harrington explained that annexations required an economic profile; however, in this context it would be highly unusual. He added that the City does not have an institutional basis to make the necessary analysis in terms of what constitutes financial viability, and he would not recommend it.

Mark Harrington clarified for Liza Simpson that if Council amended Condition of Approval 17 and add a condition regarding lockout provisions, they were granting the appeal in part, denying the appeal in part, and providing direction to Staff to return with findings.

Liza Simpson, "<u>I move that Council deny Appeal One in part, and uphold the appeal in part, and amend Condition of Approval 17 with language that addresses that a meeting with residents to gather input be held before Building Department approval is given at each phase of construction; and with changes as outlined in the Staff Report regarding lockout units."</u>

Attorney Tom Bennett questioned that it was being characterized as denial in part. He felt the appeal was denied subject to the modification of Condition 17 to add a requirement for community meetings as part of construction mitigation process. Attorney Harrington explained the appeal was upheld in part because of the lockout component. He stated new findings and conditions would be ratified by Council and thirty days for district court appeal would run from that final approval. Tom Bennett clarified that, if the motion passed, the appeal would be denied and Council would receive a set of findings and order at the next meeting.

Joe Kernan seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Recused
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

Mayor Williams requested discussion regarding Appeal Two. Council Members concurred that the Planning Commission had mitigated all applicable items and they did not see any merit in the appeal. The project had been greatly improved and all issues that were applicable in the appeal had been mitigated by the Planning Commission.

Returning to the burden of proof for noticing, Mr. Butwinski clarified that the Planning Commission felt they had necessary proof to find that the notice requirement was filled. Mark Harrington responded they clearly did and noted there was no allegation of improper legal notice for the first meeting, but there was an allegation regarding mailed notice for the second hearing and the fact that the posted notice fell down prior to the second hearing. He explained that mailed notice was problematic because it was a courtesy attempt to reach those who do not read the newspaper or the City's website.

Cindy Matsumoto stated the process had resulted in a better project. She stated Lisa Wilson had been part of that and thanked her for her commitment.

Joe Kernan "I move that Council deny Appeal Two." Alex Butwinski seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Recused
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

There were none.

VII ADJOURNMENT

With no further business, Mayor Williams adjourned the meeting at 8:30 p.m.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at 2:00 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Candace Erickson, Joe Kernan, Cindy Matsumoto and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Tom Daley, Deputy City Attorney; Jason Christensen, Legal Intern; Kathy Lundborg, Water Manager; Diane Foster, Environmental Manager; Craig Sanchez, Golf Manager; and Linda Tillson, Library Manager. Liza Simpson "I move to close the meeting to discuss personnel, property and litigation." Joe Kernan seconded. Motion unanimously carried. The meeting opened at 3:15

p.m. Liza Simpson "I move to open the meeting." Alex Butwinski seconded. Motion unanimously carried.

Sharon C Bauman

Sharon C. Bauman CMC, Deputy City Recorder