PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JUNE 18, 2009

Present: **Mayor Dana Williams; Council members Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson**

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Heinrich Deters, Project Manager; Marin Decker, City Manager Intern; Jed Briggs, Budget Analyst

Maria Vjas and Kyle Cook, Fehr & Peers; David Perkins, High West Distillery (HWD) and Teri Orr and Ginger Tollman, Not Quite Genius Supply Store – Park City Performances (NQG); Pat Drewry-Sanger, Director of Art-Kids

1. Council questions/comments. Roger Harlan spoke about a joint County and City meeting on transportation and members commented on the 125th B-Day celebration. Candace Erickson reported on the legislative policy meeting where a number of topics were discussed including a local RAP Tax, County gas tax, sales tax on food, school funding, redevelopment agencies, franchise fees, impact fees, and gray water use. Jim Hier commented on Peace House and HMBA business. Mayor Williams reported on participating in the Western Governors Conference where several Cabinet members were present. There was a focus on renewable energy and it was a wonderful experience. He thanked Mountain Trails Foundation for arranging morning bike rides for conference attendees.

Pace Erickson referred to a letter to the editor criticizing the way American flags are flown in Park City. He referred to provisions from the usflag.org official website supporting our practices which comply with flag etiquette. He presented a flag to the Council which was flown over the Capitol which will be framed and displayed at the remodeled Marsac Building.

2. WALC traffic calming projects. Henrich Deters stated that staff is seeking direction on the sidewalk on the east side of Comstock. The Mayor further explained that the WALC recommendation was delayed for a year in response to the neighborhood's preference to stripe it first and monitor its effectiveness. Maria Vjas, Fehr & Peers, spoke about the open house held in April and relayed there is more support for sidewalks than no sidewalks. The decision was not unanimous but fits in context with improvements like the trail paralleling SR248, Rail-Trail, Comstock Tunnel, and Sidewinder sidewalk. She emphasized that there is adequate right-of-way, without taking property.

Mr. Deters clarified that in November 2007, the voters passed a $15 million walkability bond and WALC provided a list of projects which was approved and funded by the City Council. Seven specific projects were identified for traffic calming in Prospector and

Park Meadows neighborhoods. In February 2009, the City entered into a contract with Fehr & Peers Traffic and Transportation Consultants to evaluate existing conditions and provide professional recommendations on traffic calming measures. He relayed that on April 21, 2009, a public open house was held to present the data collected to the community and gather public input. On May 13, 2009, Fehr & Peers presented findings to the Neighborhood Traffic Calming Committee. The committee reviewed the information and provided input from a maintenance, transit and operations standpoint.

Kyle Cook, Fehr & Peers, referred to a table in the staff report, discussed the approach of assessing conditions on each street and formulating priorities. Streets include Wyatt Earp, Sidewinder, Comstock, Monitor, Lucky John, American Saddler, and Meadows Drive. Categories include speed limit, average daily traffic, 85th percentile speed, pedestrian and bicycle activity, and designated pedestrian areas. Streets were assigned points, based on criteria, and areas were prioritized accordingly. Comstock Drive and Sidewinder Drive were identified as high needs areas and Mr. Cook encouraged Council to consider applying traffic calming measures at these locations.

Maria Vjas referred to the traffic calming toolbox section described in the staff report and utilized to develop alternatives outlined in the staff report. She highlighted the center island narrowing which constricts the roadway in the middle and perceiving a narrower street encourages drivers to slow down. The center islands are included at important pedestrian locations to function as a pedestrian refuge and/or to remind drivers that they are transitioning into a residential neighborhood. Speed reductions have the ability to reduce the 85th percentile speeds by about 7% and she described speed lumps which are not currently recommended but may be a consideration in the future because of their effectiveness. Raised crosswalks are proposed on Comstock Drive but at no other locations; they are proven to slow vehicles by about 18%. Crosswalks will be textured or colored concrete. Ms. Vjas explained that the word *sharrow* is an abbreviation for shared lanes and the icon is applied on the road when there isn't enough room in the right-of-way to accommodate a full bike lane but it is still a place where bicycling is prevalent and where drivers should be aware of the presence of cyclists. She acknowledged that it is an experimental device but it has been evaluated by federal agencies and will be included in the 2009 update to the Manual on Uniform Traffic Control Devices.

Mr. Deters stated that the first recommended measure is to install a sidewalk on the east side of Comstock Drive and center islands and raised crosswalks at Little Bessie and Ina Avenue. These locations in Prospector were very important to WALC. In response to a question from Joe Kernan, Ms. Vjas explained that with parking retained on the west side and a sidewalk installed on the east side Comstock there is no room in the right-of-way to accommodate a full bike lane and she explained the spacing of the sharrow logos. Members accepted the recommendations.

Mr. Deters pointed out that Wyatt Earp is very wide and is at the entrance to SR248. Staff is recommending that five foot pedestrian paths be constructed on each side of the road with edged stripping, driver feed-back sign on the southbound travel lane and a center island at Kearns Blvd. He continued to recommend colored concrete crosswalks tying the park and the Kearns trail together and installing a curb extension at the northwest corner of the Sidewinder intersection. There were no objections to the recommendations.

Heinrich Deters addressed improvements on Sidewinder Drive including a center island near Gold Dust Lane. Roger Harlan pointed out the necessity of providing enough room for trucks to maneuver around the center island for deliveries to the Grub Steak Restaurant and Mr. Cook thanked him for the information. Ms. Simpsons asked about the cost of the sidewalk and Mr. Deters explained that it is a stand-alone project.

With regard to Monitor Drive, Mr. Deters stated that a center island is recommended just south of the Lucky John intersection by the church. Edge line striping and a driver feed-back sign are also recommended. Members concurred with the recommendations. Mr. Deters continued to explain that Lucky John Drive was another area identified by WALC and one with significant speeding. The recommendation includes edge line striping and a driver feed-back sign. There is no conclusive data to support installing measures on American Saddler and/or Meadows Drive but they will continue to be monitored. Council members complimented the study. Mr. Deters pointed out the maintenance numbers included in the staff report but no concerns were expressed.

3. Economic development grants. Intern Marin Decker explained that $20,000 is set aside annually toward an economic development grant fund. Funding is available for relocation and new business start-up costs only and the unspent annual balances are not carried forward to future years. Criteria includes a sound business plan, unique and innovate business, generate overnight visitors, ability to do business within the City limits for no less than three years, services that enhance lifestyles, direct taxable benefits, fiscal stability and other financial support. She explained that the economic development program committee reviews applications and submits them to Council for final determination.

She noted that High West Distillery is located in the renovated National Garage Building and will sell bottled spirits, food and other merchandise. The distillery requested $11,000 for the relocation of distilling equipment from Salt Lake to Park City and $20,000 for the creation of historic story-telling materials. The other applicant is the Park City Performing Arts Foundation for the Not Quite Genius Supply Store which is a retail store and tutoring center. The retail store funds the non-profit portion and part of a national non-profit group is called 826 National. PCP is requesting $15,000 for start-up costs. Ms. Decker stated that the committee recommended approving a grant for $11,000 to HWD for relocating the equipment and to consider a possible award of $9,000 for historical story-telling. The committee did not recommend an award for the NQG Supply Store, but the City Manager recommends that the City Council request more information before deciding not to grant funds and before granting the additional $9,000. Options are outlined in the staff report including approving the $11,000 to

HWD, or award $11,000 to HWD and $9,000 to NQG, or award the total amount to HWD, or any combination of the above. Special service contracts may also be a funding option for NQG. Ms. Decker emphasized that Council has the final authority in judging whether the application has met the criteria and waiving any technical deficiencies.

David Perkins thanked Council for the opportunity to apply for grant funds and briefly described his request. Jim Hier believes relocating equipment fits well with the criteria but is undecided about the documentary feature, but the business plan is good. He was not sure about the longevity of the NQG Supply Store, but spoke with Teri Orr about his concerns which were satisfied. He is comfortable awarding funds to NQG with a condition that a statement is provided by the building owner that no rent will be charged for a minimum of three years. Teri Orr explained that the owners are out of state at a wedding but she spoke with their daughter who relayed that providing proof of a three year lease at $0 rent would not be a problem.

Mayor Williams commended the historic rehabilitation of the National Garage but expressed concerns about granting funds to a distillery. Another concern is setting precedence in funding moving equipment. He felt HWD should produce the historic story-telling piece itself and not at the expense of taxpayers since it would benefit the business. Jim Hier emphasized that this is a new business and not an existing business which justifies moving expenses as was done for other recipients. Liza Simpson quoted the grant policy which includes equipment relocation and asked for more information from NQG on revenue projections. With regard to a comment about no staffing costs, Ms. Orr explained that volunteers will be needed for the literacy program but PCF will use its staff for this operation and costs will be absorbed by the Foundation. She admitted that the proposal could have been written clearer with regard to a budget but the numbers are there. About $50,000 of merchandise will be purchased for a profit of $100,000. The merchandise is still being designed and will be unique to the NQG Supply Store; it will not compete with any existing businesses.

Candace Erickson pointed out that HWD is a for-profit business. She felt that the NQG Supply Store provides a true public benefit, especially for kids and has a good chance of being successful. A few citizens have contacted her requesting that the grant be denied for HWD because it is a for-profit business already selling its products. Roger Harlan believed the NQG store will fill a void on Main Street and Ms. Orr explained that the retail storefronts are meant to be a portal to get the kids into the tutoring center. The retail is meant to be a for-profit entity that funds the needs of the tutoring center. Roger Harlan stated that he supports a one-time grant to move equipment for HWD.

In response to questions from Joe Kernan, David Perkins stated that he has to move the equipment anyway but the story-telling piece is more dependent on receiving the grant award. Mr. Kernan noted Ms. Orr’s success in running programs and supports the NQG proposal. Jim Hier emphasized that the economic grant program is not designed for non-profits and past recipients were discussed. He continued to explain that the intent is to attract and promote new organizations that contribute to economic development goals. Funding is available for relocation and new business start-up costs only. PCP is not a new business but the NQG Supply Store is a new enterprise for it and incubation type business on Swede Alley has been of interest to Council. The space is donated and Mr. Hier expressed that it seems appropriate to assist the request. The City has already partnered with HWD with regard to the property and funding the relocation of the equipment is logical.

All members indicated their support of awarding $11,000 to HWD for equipment relocation and $9,000 to PCF for opening the NQG Supply Store and tutoring center. Economic development grant contracts will return to Council for formal approval.

4. Special services contract emergency requests. Jed Briggs explained that special service contracts have been budgeted and $18,000 remains. The budget policy provides that organizations can request funding after the deadline in the context of emergency requests. The policy is not clear with regard to a time table and whether all emergency requests should be considered together. Staff is recommending that if there is a surplus, six months after the budget is adopted, notice could be given to applicants to apply for surplus funds. Discussion ensued on the six month waiting period which was explained to promote equitable consideration, rather than providing money on a first come first served basis. Candace Erickson questioned notifying organizations to compete for funds when she understood the group agreed to retain the remaining funds in the event there are emergencies. She is not comfortable with the way the policy is written. Mayor Williams emphasized that the special service contract amount is specified as up to 1%, not a guaranteed 1%, and he doesn't want to create a competition for the *remaining* funds. This is why deadlines were set and he is not supportive of fundamental changes to the policy. The six month suggestion seems to be based on a 1% hard figure. Bret Howser understood that Council was comfortable with the recommended awards and the direction to staff to retain the remaining money for future emergencies, however, some entities heard about that discussion. Staff then realized that parameters needed to be set for emergency requests.

Liza Simpson stated that she is not in favor of setting up additional special service contract processes every six months and is comfortable with the Council determining an *emergency*. She pointed out that an emergency in her mind is not that the award amount is smaller for the year but that services will no longer be provided as was the case with the Recycling Center. Tom Bakaly advised that there used to be a contingency for grants which was earmarked for new grant requests that were not part of the process. It used to be funded up to $50,000 to $60,000 which would be drawn down throughout the year. He acknowledged that the six month approach may not work. Roger Harlan preferred investing remaining funds in new opportunities rather than emergencies. Joe Kernan didn't feel that a lot of structure is necessary and is not certain that 1% is the right percentage. Jim Hier felt that designating an amount up to 1% is necessary and agreed with Mr. Harlan's comments, suggesting that the terms *opportunity* be changed to *extraordinary request* and that *budgeted surplus* be changed to *unallocated funds* in the policy language. Members agreed with the word changes. He is comfortable with the six month time period and there was agreement about striking language about contacting special service contract recipients about a surplus. Ms. Erickson explained that she was on the Council when requests came in on a year-round basis which was difficult to manage. Ms. Simpson suggested policy language, *If there are unallocated funds, extraordinary requests may be considered every six months*.

Pat Sanger, Arts-Kids, referred to her letter to Council, and explained that donations are down to the extent that the Summit County after school fall program is in jeopardy. She acknowledged that it may be time to explore partnering with another non-profit organization so that the program is more sustainable. The City contributes $10,000 per year but Arts-Kids is experiencing a cash flow problem. She spoke about receiving RAP Tax funding and planning fund-raisers. Jim Hier asked what Art-Kids receives from Summit County and Ms. Sanger responded nothing. She added that the $15,000 is a one-time request and she believes that Art-Kids will survive if re-organized. Liza Simpson stated that she needs to review the Arts-Kids application where there is detailed information on how many kids are being served, etc. and Roger Harlan noted that it would be helpful to also receive a budget. It was decided to schedule a decision on this request on July 9.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JUNE 18, 2009

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Library and Education Center on Thursday, June 18, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Brooks Robinson, Planner; Bret Howser, Budget Manager; Polly Samuels McLean, Assistant City Attorney; Planner Kirsten Whetstone; and Thomas Eddington, Planning Director.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Council disclosure - Joe Kernan disclosed that Talisker, Royal Street and The Athens Group are among his recycling customers.

2. Consideration of a Resolution designating Sunshine as a Permitted Use in Park City, Utah – The Mayor read the Resolution into the record, which was requested by Council member Candace Erickson last week. The Resolution was unanimously supported by the City Council.

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

Art-Kids support - Corrine Humphrey, Arts-Kids Board member, stated that she has volunteered and taught for the organization, and relayed the importance of providing affordable art programs for students. She spoke about using cigarette tax revenues to support youth art programs or the City could match citizen donations.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF JUNE 4, 2009

Liza Simpson made a minor correction. Candace Erickson, "I move approval of the work session notes and minutes of the meeting of June 4, 2009, as corrected". Liza Simpson seconded. Motion unanimously carried.

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

1. Consideration of three appointments to the Art Advisory Board for terms expiring July 2011 – The Mayor recommended the appointment of Jeanne Davison, Anita Slevin and Melissa Soltesz. Roger Harlan, "I so move". Candace Erickson seconded. Motion unanimously carried.

2. Consideration of two appointments to the Library Board for terms expiring July

2012 – The Mayor recommended the appointment of Bobbie Pyron and Benjamin Nitka. Roger Harlan, "I so move". Liza Simpson seconded. Motion unanimously carried.

3. Consideration of an Ordinance approving the hotel and residences at Empire Canyon Resort Record of Survey Plat, located at 9100 Marsac Avenue, Park City, Utah - Planner Brooks Robinson explained that staff and the applicant are still working on environmental management elements within Empire Canyon. The Planning Commission forwarded a positive recommendation and asked for further consideration by the City Council of the application of the transfer fee. There are 182 residential units. Discussion ensued on the Wikstrom report which was submitted as part of the annexation where there is no mention of leases and addresses residential units and not the hotel. Liza Simpson expressed her difficulty in accepting the concept of a 999 year lease and Mark Harrington pointed out that the lease represents the first project. The transfer fee is not intended to capture the first owner, but rather subsequent sales. Even though the condominium units are sold on top of the 999 lease, they are still subject to the transfer fee. The lease approach was something not contemplated in the Wikstrom report and Mr. Harrington explained that the purpose of the first capitalization exemption is somewhat irrelevant in the overall analysis.

The Mayor opened the public hearing and with no comments from the audience, closed the hearing and requested a motion. Jim Hier, "I move we approve the hotel and residences at Empire Canyon Resort Record of Survey Plat, as conditioned". Joe Kernan seconded. Motion unanimously carried.

4. Consideration of an Ordinance amending Title 4, Business Licensing, Municipal Code of Park City, Utah – Bret Howser explained that the amendment was discussed last week during work session where the administrative fee would be categorized into a renewal administrative fee and new business administrative fee. The Council decided to set the recovery rate on new business licenses to 40% of the calculated costs. The Mayor opened the public hearing; there were no comments. Joe Kernan expressed that radio news coverage unfortunately implied that business license fees will increase while the vast majority will realized a decrease. Joe Kernan, "I move approval of the business license fee schedule". Roger Harlan seconded. Motion unanimously carried.

5. Resolution adopting a final revised budget for fiscal year 2009 and the budget for fiscal year 2010 for Park City Municipal Corporation and its related agencies – The Mayor advised that this is the final public hearing on the budget and invited public comments. There were none, and the hearing was closed. Roger Harlan expressed his appreciation of the work of the Budget Department staff. Candace Erickson, "I move we approve a resolution adopting a final revised budget for fiscal year 2009 and the budget for fiscal year 2010 for Park City Municipal Corporation and its related agencies". Liza Simpson seconded. Motion unanimously carried.

6. Consideration of an application for a street vendor franchise to sell ice cream by Sergio Ice Cream – Assistant Attorney Polly McLean explained that the City Council has

the ability to grant franchises for street vendors. There is currently one other franchise for ice cream, Dad's Ice Cream, which is running two trucks. The applicant, Sergio Gonzalez, is anticipating running two trucks as well in the afternoons. Criteria for granting a franchise includes considering public necessity, demand of service, pedestrian and vehicular traffic compatibility, competition, and public safety. It was clarified for the benefit of Liza Simpson that Main Street is not included in the allowed areas. Ms. McLean discussed violations and the status of Dad's Ice Cream vending contract. The Mayor invited public input; there was none. Roger Harlan, "<u>I move approval of the application for a street vendor franchise to sell ice cream by Sergio Ice Cream LLC</u>". Liza Simpson seconded. <u>Motion unanimously carried</u>.

7. <u>Consideration of appeals of the April 22, 2009 Planning Commission approval of a Conditional Use Permit amendment application submitted by Deer Crest Janna LLC for the St Regis Resort at Deer Crest - Appellants are Jeri Rice and the Powder Run at Deer Valley Owner Association</u> – Candace Erickson disclosed that her husband works for Stantec who performed some work for the appellant, and stated will recuse herself from participating in the discussion and voting and left the meeting. Joe Kernan and Roger Harlan disclosed conversations with the Mayor about the history of the project and the process.

Planner Kirsten Whetstone stated that the appeal from Powder Run has been withdrawn. The Deer Crest Hotel CUP was originally approved in 2001 and amended in 2005. The controlling document is the May 11, 2005 findings of fact, conclusions of law and conditions of approval. On April 22, 2009, the Planning Commission reviewed an application to amend the Conditional Use Permit to amend Condition of Approval #3 to change the word parking *structure* to parking *lot*. The amendment provides at least seven additional parking spaces on an interim basis at Snow Park. Ms. Whetstone continued to explain that the Planning Commission focused on the CUP criteria outlined in the Land Management Code and needed to find that any impacts for a surface lot as opposed to a parking structure would be mitigated. The proposed parking structure was two levels with units above it in a future phase. The Commission looked at mitigating impacts of the surface lot with landscaping, lighting, finish on the exposed wall, water and oil separator requirements, and identification of snow storage. A public hearing was held and input was considered and the Planning Commission found no unmitigated impacts as the result of the amendment, which was approved on April 22. Ms. Whetstone noted that Condition No. 14 was added with regard to a five year deadline to submit plans for a parking structure and the associated units or request a one year extension.

Thomas Eddington believed that the Planning Commission also felt that within that five year period, it would be likely that the applicant would come back and exercise its development rights on the property for simple economic reasons but Commission members still wanted to establish a time line. Discussion ensued on the potential of the transfer of unit equivalents to another area and Kirsten Whetstone explained that this would require an amendment to the overall CUP which is specific to location of buildings, height, etc. Mark Harrington emphasized that this type of change would require a full review process and it is anticipated that Deer Crest will still build the units there some time prior to five years.

Ms. Whetstone explained that the appeals were received on April 30 and were reviewed by the planning staff. An analysis is included in the staff report and many issues which were raised are not considered germane to the CUP amendment. She advised that Council is asked to determine whether adverse impacts of the amendment have been mitigated. Staff recommends that Council open a quasi-judicial hearing for consideration of the appeal of the Planning Commission's approval of the amendment to the Deer Crest Hotel CUP, consider any input and consider upholding the Planning Commission's decision based on the findings of fact and conclusions of law outlined in the staff report for Appeal A. The Mayor invited the appellant to speak.

Eric Lee, attorney for appellant Jeri Rice, referred to his comments made weeks ago on this matter during public input at a Council meeting and to his brief. With regard to Ms. Whetstone's comment that the issues raised in the brief are not germane to the amendment to the CUP, he asked if the Planning Commission has to limit its review to the narrow issues that are raised by the specific CUP modification application, or can it or should it take the opportunity to review any issue that is of current concern with regard to the CUP issued in 2001. He stated that this is really the question and if the Planning Commission can ignore issues raised by his client Jeri Rice, including issues that deal with existing CUP criteria, this is wrong as a matter of law and as a matter of policy. Mr. Lee pointed out that the developer has offered nothing in its brief before this body to suggest that the Commission's review should be constrained in the way that it argues. Neither the Land Management Code or state code provide that the Planning Commission can't look at any issues that pertain to the entire conditional use permit criteria as opposed to just the narrow issues of an application. This is a project that has essentially been pending for eight and a half years and there have been many changes to the project and surrounding neighborhood. When Deer Crest Janna asks the Council to ignore everything but the content of the modifications to the CUP, you have to ask why.

Mr. Lee emphasized that the Planning Commission concluded that the project is consistent with the Settlement Agreement, which is Conclusion of Law No. 4. The 1995 Settlement Agreement had an outright prohibition of overnight parking at the hotel site. In 2001, it changed without notice to Wasatch County and the Deer Crest home owners. He acknowledged that the home owners may have not been entitled to notice but out of fairness, if the parking and traffic plans are going to be changed, they should have been notified. They were not. In 2001, the City allowed 105 overnight parking spaces at the hotel but recognized that shifting parking from Snow Park up to the hotel could have some adverse impact on the Deer Crest home owners, in particular traffic impacts. Roger Harlan pointed out that the Deer Crest Home Owners Association was notified of the hearing and probably could have easily notified its own membership. Mr. Lee understood that the HOA did not receive notice and the developer of Deer Crest controlled the Association then and controls it now. Mark Harrington interjected that mailed notice to individuals is by its very nature under the Code a courtesy notice, not a legal notice because of that very reason. The City complies with the minimal legal notice required under state code in the published and posted manner and do our best on the courtesy mailed notice.

Attorney Eric Lee relayed that the Settlement Agreement was amended in 2001 to allow overnight parking with the condition that it will not increase traffic on Keetley Road which was never *made*. This is an issue to Ms. Rice whose multi-million dollar house sits above Keetley Road and as a consequence of increased traffic; she believes the value of her house will be diminished. Mark Harrington explained that regulating traffic on this road was not contemplated inward to the development but rather coming from US40 and was the result of the Queen Esther Home Owners Association's objections which was the purpose of not accepting the public road. He asked if Mr. Lee has any evidence that the traffic considerations were aimed at internal owners and not adjacent owners. Mr. Lee stated that he doesn't have any evidence but is relying on the Settlement Agreement language stating that no traffic increase may occur on Keetley Road.

Jim Hier asked for clarification between the Settlement Agreement and the CUP modification in 2001. Eric Lee answered that the original CUP was issued in February 2001 and in March 2001, the Settlement Agreement was amended to allow overnight parking, but there is a reference in the 2001 CUP to the fact that overnight parking will be shifted up to the hotel if the Planning Commission approves it. Kirsten Whetstone referred to the March 1, 2001 action letter including the findings of fact, conclusions of law, and conditions of approval. Findings of Fact 11, 12 and 13 address the traffic study, parking, and overnight parking spaces respectively. In 2001, the Planning Commission considered the traffic study, moving density, and a change in configuration of some of the units. It was clarified that the Settlement Agreement preceded the annexation. Mayor Williams asked if his client is concerned with traffic coming from the Wasatch County side. After a lengthy review of a map of the area, Mr. Lee concurred.

He stated the Settlement Agreement requires a demonstration that Keetley will not be impacted adversely with overnight parking at the hotel. The traffic study is dated December 2000 and predates the condition and does not address overnight parking. The conclusion of law reached by the Planning Commission on this matter is that the project is in compliance with the Settlement Agreement, which is wrong. Joe Kernan felt that the Commission did not find a traffic problem. Kirsten Whetstone referred the March 1, 2001 condition of approval which indicates that the second amendment to the Settlement Agreement approved by the City Council in December 1988 to allow overnight parking found that the traffic did not increase on Keetley. Mr. Lee stated that that fact is unknown. He agreed that it is in the record but it doesn't confirm that as a result of overnight parking at the hotel, Keetley Road traffic will not be increased. The Settlement Agreement indicates that it is a threshold condition to allowing overnight parking at the hotel. He requested a study in February proving that traffic has not increased, but it hasn't been conducted. The hotel operation plan for parking alone demonstrates increased traffic on Keetley as a result of overnight parking.

He emphasized that the City has the right to open the original conditional use approval when there is an amendment. He argued before the Planning Commission that other aspects of the project violate the Settlement Agreement. The developer's traffic circulation plan allows access through the western gate and traffic up from US40 to the hotel site. Compliance with the condition of approval has not been demonstrated. The other issue raised is not being able to obtain the final parking plan and the preliminary plan does not address impacts created by the project. This is not a static process and new impacts will arise.

Mr. Lee stated that Jeri Rice is directly impacted by traffic and the Planning Commission has no basis for assessing traffic impacts when the hotel opens this fall. It was promised a number of times, but never produced by the developer. Deer Crest Janna argues that you can only look at the narrow issues raised by the CUP modification application without any legal or policy justification for its position. By asking the Planning Commission to approve the amendment, Deer Crest Janna opened the doors to trigger the review that makes Ms. Rice's argument relevant. He urged the City Council to determine that the Planning Commission made a mistake in issuing the modified CUP without first insisting with compliance with the CUP criteria, or ask that the Planning Commission's approval be reversed, or direct that the matter be remanded to the Planning Commission for further discussion.

Tom Bennett, legal counsel for Deer Crest Janna, referred to the Mr. Lee's allegation with respect to the idea that a condition was never satisfied for overnight parking at the hotel. It was satisfied in 2001 when the initial CUP was issue which allowed overnight parking for the first time and he read Finding No. 13, "*A total of 105 overnight parking spaces in addition to 50 day spaces are proposed for the Roosevelt Gap site. The amended Settlement Agreement allows the Planning Commission to approve this overnight parking in conjunction with the luxury hotel and upon demonstration that the remainder of the Deer Crest Project has been modified to result in no net increase in traffic. Based on a Sear Brown Traffic and Parking Study, these criteria are satisfied but rely heavily on a guest and employee shuttle system. Without a perpetual shuttle system and perpetual maintenance of a gate system, the condition of no net increase will not be satisfied*."

Mr. Bennett stated that the traffic study said if you park employees and others on the Jordanelle side and if you implement a shuttle system and utilize that, the impact of that shuttle system and bringing people up in groups will mitigate the traffic and therefore there is no net increase. The subject of traffic came up again in 2005 with the modification to reduce the size of the building and another similar finding was made again. He noted that the Settlement Agreement allowed the Planning Commission to approve the overnight parking based on the Sear Brown Traffic and Parking Study where criteria are satisfied. That language was not included in the final action letter because it did not include the findings of fact and this was one of the findings. Mr. Bennett pointed out that when looking back at the minutes of the meeting, the motion approving the modification to the CUP, clearly stated that the findings of fact are adopted as a part of the action, as outlined in the staff report. He argued that conditions were initially satisfied, revisited again in 2005 and nothing has changed since then to invalidate compliance. With regard to the referenced traffic study requested by the Planning Department in 2006, he explained that it was not a full traffic study but a parking study. He referred to emails exchanged between Planner Whetstone and Twin Peaks Engineering who provided the needed information and all of this information has been made available to Mr. Lee in the past. The requirement for the additional parking information was a requirement for the issuance of the building permit. A building permit was issued in February 2007. The staff, in issuing the building permit, was satisfied that what was asked for with respect to parking had been adequate.

The 2006 information contemplated the surface parking lot at Snow Park and a three-phased construction program, and a building permit was issued. However, the language says parking *structure* and the definition of parking structure is so broad, a lot would probably fit the definition, but to avoid any misunderstanding, and at the suggestion of staff, an application was made to change the word *structure* to *lot*. With regard to Mr. Lee's argument that there is no policy limiting the review to the narrow issues of the CUP, Mr. Bennett emphasized that there is a principle called vested rights. The owners are relying on CUPs that date back to 2001, have been amended four times since then, have received a building permit and have spent several hundred million dollars in building the project. To do what Mr. Lee suggests would leave every developer completely at risk. There has to be certainty with an approval and if developers feel they can't make a change without a wholesale review, no one will want to do business here. He strongly suggested that the City Council put the appeal in its proper perspective and the modification to wording has no impact on the traffic. The Planning Commission in reviewing this matter looked at the specific impacts and adopted conditions to mitigate those impacts and that is the only legal scope of review for the application. He hoped that as Council members review the record, they will come to the conclusion that the matter was thoroughly examined and the issues of the impacts thoroughly mitigated with the conditions.

The Mayor understood that guest and employee shuttle services are in place and people are parking at Snow Park. Tom Bennett concurred and added that the parking lot at Jordanelle was approved by Wasatch County; that action was appealed but the decision was upheld. Joe Kernan agreed with the applicant and felt that to reopen every issue relating to the original CUP doesn't make sense. Jim Hier stated that he sat on the Planning Commission in 2001 when the CUP was approved. The traffic consideration from the Commission's standpoint was absolutely the traffic through Solamere and Queen Esther and up to the hotel. The traffic from the hotel down to US40 was of no consideration to the Planning Commission. That is why the whole Snow Park area was contemplated for parking and the funicular. He emphasized that parking has been allowed there for some time and the focus at review was how traffic would be mitigated. Mr. Hier believed that when there is an application for an amendment any issue is fair game to the Commission. Mr. Harrington agreed for the most part, but the crux is in the vesting element in terms of what items have already been fulfilled. Jim Hier stated that the reverse position is that the Commission may opt only to review the particular scope of a change and rely on staff input for information on compliance with all of the remaining conditions that were in effect at the time the original CUP was approved. Conditions of approval are monitored by staff before the issuance of a building or occupancy permit. He stated that he supports staff's position on this matter. Whether the parking is a structure or a lot has no impact on the purpose for the parking and the CUP was very simple. Roger Harlan agreed and stated that it was his own personal experience that the checkpoints in the traffic plan are working in Deer Crest. Liza Simpson agreed with Mr. Hier's comments and expressed that she will uphold the Planning Commission's decision. Joe Kernan, "I move that we approve the Planning Commission's approval of the Conditional Use Permit and deny the appeal pursuant to the recommended findings of fact and conclusions of law for Appeal A". Liza Simpson seconded. Motion carried.

Candace Erickson	Abstention
Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Aye

VI ADJOURNMENT

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

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:30 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Polly Samuels McLean, Assistant City Attorney; Tom Daley, Deputy City Attorney; Phyllis Robinson, Public Affairs Manager; and Mark Harrington, City Attorney. Joe Kernan, "I move to close the meeting to discuss property and litigation". Candace Erickson seconded. Motion carried unanimously. The meeting opened at approximately 4 p.m. Roger Harlan, "I move to open the meeting". Liza Simpson 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

Janet M. Scott, City Recorder