

**PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
APRIL 15, 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; Jon Weidenhamer, Economic Development Manager; Thomas Eddington, Planning Manager; Ken Fisher, Recreation Manager; and Diane Foster, Sustainability Manager

1. Council questions/comments. Cindy Matsumoto reported on the Library Board meeting and encouraged the public to apply to serve on the Library Board as there are upcoming vacancies. She reported on attendance projections for the new charter school discussed at the School Board meeting and the Peace House's fund-raising efforts. Candace Erickson explained that four candidates have been selected in the recruitment of a new Health Department Director. She commented on the ULCT conference in St. George where there was an opportunity to meet with both Senator Bennett and Congressman Bishop who were speakers at the event. There was an interesting session on the proliferation of social networking and the potential impacts of blogging. She felt that the City will need to get a handle on networking tools like Facebook and Twitter which are being used by many towns. Liza Simpson reported on a productive meeting with the HMBA. Alex Butwinski agreed and commented on his trip to Santa Fe which reminded him of how well Park City *does resort*. Joe Kernan discussed attending an informative meeting with the Police Department on its annual report. The Mayor commented on a renewable energy conference at Utah State in Logan where Senator Hatch was the keynote speaker. Salt Lake City received a good response for its bid to host the Republican Convention in August 2012. He spoke about sending a *care package* filled with Park City goodies to former Governor Jon Huntsman who is serving as ambassador to China. He thanked Tyler Poulson for his work on the City's application for the Mayor's Innovative Project Award and commented on the luncheon he attended at Utah Valley College. A thank-you dinner was held for the Armstrong Family this week.

2. Quarterly goal update. Tom Bakaly highlighted proposed formatting changes including providing more information on the status of items in certain instances. He acknowledged that there is some confusion on *pending* and *in-progress* items, noting that *pending* typically means that the City is waiting for some direction outside the City. Scheduling a meeting before July with the Historic Preservation Board was raised by the Mayor who suggested that the joint session be separate from a Board or Council meeting. Ms. Simpson expressed concerns with the timing of a preservation plan for 1450-1460 Park Avenue because of the potential of demolition by neglect. For the benefit of Liza Simpson, Ken Fisher described working with Summit County on amending its animal control ordinance to recognize off-leash areas like dog parks.

3. Carrying capacity – market analysis survey. Jon Weidenhamer emphasized that this concept is not new and explained that the analyses measure impacts changing the experience with regard to infrastructure and amenities. He felt this information will be useful in developing a plan for the Lower Park Avenue RDA and understood the goal to be maximizing and diversifying the tourism economy while mitigating impacts. The scope is limited to the two redevelopment areas, including Main Street and LPARDA, which includes half of the Bonanza Park District and the three signalized intersections. The HMBA has been concerned about regional commercial competition and the City has been considering conducting a market analysis for Main Street for some time. He pointed out that the staff report contains details on both the carrying capacity and market analysis studies. The plan would be to complete the studies by the end of the fiscal year with budgeted funds.

Mr. Weidenhamer explained that the study for carrying capacity will consider existing amenities and services to meet peak visitor demands, limiting factors in capturing additional market share, the net impact of any strategies to limit or slow growth, and the specific environmental impact of any RDA project. In response to a question from Cindy Matsumoto on the recommendations of the market study, Mr. Weidenhamer explained that it will reveal the effectiveness of our existing commercial retail mix and provide suggestions for the optimal mix which will be helpful for Main Street and the PCMC resort.

The Mayor felt other commercial areas should be included like Snow Creek and Prospector, recognizing that they are not destinations for tourist shopping. Liza Simpson agreed and expressed that the City should be as holistic as possible and asked why the studies are limited to the two RDAs. Jon Weidenhamer explained that one reason is the availability of RDA funding. The Mayor suggested waiting until the studies can be comprehensively performed and asked what the City wants to gain from the studies.

Candace Erickson believed that it is a new business owner's obligation to be familiar with the local market and to identify a need. She asked the purpose of the City conducting the studies and wondered like the Mayor, what the City is trying to accomplish. She referred to initial discussions on carrying capacity relating to defining the number of people who can be in town at one time before our roads, water, or other infrastructure fails. Afternoon grid-lock was specifically addressed which affects residents. Ms. Simpson stated that she shares the same concerns but for the tourists as well and monitoring the experience is important. She suggested partnering with the Chamber especially if the studies are conducted City-wide.

Diane Foster pointed out that the City would be obtaining information on economic, community and environmental failure points. While the resorts are looking at individual carrying capacity, this information is unique to the community. Ms. Erickson reiterated that the City should have partners on the project. She pointed out the level of residential in the proposed study area and feared that the consultant may recommend

changing the zoning to more commercial uses. Setting parameters for the consultant in advance may be wise. Alex Butwinski asked how the base data will be compiled, for instance, sales tax information may be available but the consultant may not know how to import it in the analysis. From an economic development standpoint, this information might be helpful to the Economic Development Manager to know what is lacking and it is helpful for everyone to target failing indicators.

The Mayor asked for feedback from Council on limiting the studies to our two RDAs. He stated that he supports this project being done at some point but it is not his top priority, especially if there are funding issues and he prefers to wait to perform a City-wide study. Mr. Butwinski agreed that it may not be a good idea to rush into the studies except to determine the scope of the study and to explore partnerships with the resorts. He believed the Council should be looking at performing the studies collectively. In response to a question from Candace Erickson, Mr. Weidenhamer indicated that he doesn't know what the increase in cost will be for City-wide analyses.

Tom Bakaly referred to a sales tax analysis done years ago which was sectioned in districts. The project could be bid to include all or individual districts. The City wants some of the data, which would be better to have sooner than later and the district approach may be more appealing to potential partners. He urged Council to keep the project moving. The Mayor asked the benefits of gaining information by district. Mr. Bakaly again mentioned attracting partners in different districts. The sales tax study was broken down by upper Deer Valley, lower Deer Valley, Snow Creek, Prospector, Lower Park Avenue, and Park City Mountain Resort. This approach provides information about a district and how it compares with the rest of the City. He again suggested bidding the City as a whole and by districts as well as setting parameters for the consultant.

The Mayor believed information on supply and demand in the real estate market and over-building a type of stock would be helpful and Ms. Erickson pointed out that all complete applications have to be reviewed in any event. Ms. Simpson added that the applicant could be advised that it may not be a good idea based on the data. The Mayor felt the studies will reveal a lot of useful information that can be shared with the community. Joe Kernan supported studies that are useful to the Council and other boards and commissions in decision-making. This could include decisions on improvements to public roads, amenities, transportation, etc. Funding a study to provide information to others is generous but he felt a study geared toward City decisions is more appropriate. Mr. Bakaly expressed that the market study could be broader or City-wide; carrying capacity relates to behavior.

Liza Simpson agreed with Ms. Erickson's comments about setting parameters and felt that it is partially addressed in the draft bid. She suggested adding language about existing residential and/or historic residential. Jon Weidenhamer pointed out that planning staff will be meeting with the consultant on a regular basis. Cindy Matsumoto expressed concerns that the plan does not include Holiday Village, NOMA or Snow

Creek which are commercial areas used by many locals. Mr. Weidenhamer explained that the RDA includes the three main signalized intersections which addresses infrastructure concerns and seemed like a balance. Candace Erickson felt that if Main Street and PCMR are studied, Prospector is a logical addition. Identifying Vail as a comparable town was discussed and Jon Weidenhamer described its successful unique marketing strategies.

Cindy Matsumoto stated that she likes the idea of pursuing a market study and trying to bring diverse businesses into town. Liza Simpson suggested looking at three years' data rather than the past two for better economic samplings. The Mayor pointed out that Park City has always experienced a large turn-over of new businesses regardless of good or bad years. The three critical elements are carrying capacity, marketing and vision.

Mr. Weidenhamer discussed the benefit of surveying the Main Street market relating to the redevelopment of the Main Street Mall. He felt Main Street is a destination area and doesn't really compete with Redstone. The Mayor disagreed and felt County residents are going to Redstone rather than Main Street and there is an economic impact. He suggested that the RDA areas be addressed first and that staff meet with the Chamber and the resorts. Ms. Erickson discussed marketing Main Street as a destination for locals to shop and some retailers have figured out how to make that work. Main Street is not just a destination for visitors and discussion ensued on making that a goal. Ms. Simpson agreed that Main Street is not strictly a tourist destination for a shopping and/or dining experience.

Jon Weidenhamer understood that Council would like the geographical areas bid separately and together and to integrate visioning so quality of life is not lost. Discussion ensued on the significant amount of information the City has already accumulated through studies that should be made available to the consultant to save time and money. Candace Erickson indicated that she is not very interested in the carbon footprint element and Liza Simpson felt that removing it will save dollars. Tom Bakaly felt confident about the ability to adjust the contract accordingly.

4. Review of regular meeting – nondiscrimination ordinances. There was no discussion on these items.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 15, 2010**

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, April 15, 2010. Members in attendance were Dana Williams, Alex Butwinski, Candace Erickson, Joe Kernan, Cindy Matsumoto, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Michael Kovacs, Assistant City Manager; Kirsten Whetstone, Planner; and Thomas Eddington, Planning Manager.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

III WORK SESSION NOTES AND MINUTES OF MEETING OF APRIL 1, 2010

Joe Kernan, "I move we approve the April 1st notes and minutes". Candace Erickson seconded. Motion unanimously carried.

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

None.

V CONSENT AGENDA (*Items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items"*)

1. Consideration of approval of Richardson Flat Park and Ride Lease, in a form approved by the City Attorney - and

2. Consideration of the transfer of property known as Snow Creek Cottages, located at 2061 Snow Creek Drive, Park City, Utah from Park City Municipal Corporation to the Redevelopment Agency of Park City, Utah - and

3. Resolution proclaiming the month of April as Fair Housing Month in Park City, Utah - Joe Kernan, "I move we approve Consent Agenda Items 1, 2 and 3". Liza Simpson seconded. Motion unanimously carried.

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

1. Consideration of an Ordinance relating to unlawful discrimination in employment practices based on sexual orientation and gender identity and creating Chapter 16 within Title 4 of the Municipal Code of Park City, Utah – Michael Kovacs explained that Items 1 and 2 mirror Salt Lake City's ordinances, reflecting a lot of research and compliance with federal guidelines. The City received mixed input from the business community but an endorsement from the Chamber. The Mayor opened the public hearing.

Bill Malone, Chamber Executive Director, stated that the Board unanimously supports Council's adoption on both nondiscrimination ordinances. He requested that if the ordinances are amended, that the Chamber be provided adequate time for review and input.

Melissa Davidson, resident, stated that she supports the ordinances and felt that Park City should set an example for the rest of the state.

With no further input, the public hearing was closed. Liza Simpson, "I move we approve an Ordinance relating to unlawful discrimination in employment practices based on sexual orientation and gender identity and creating Chapter 16 within Title 4 of the Municipal Code of Park City, Utah". Candace Erickson seconded. Motion unanimously carried.

2. Consideration of an Ordinance relating to unlawful discrimination in housing practices based on sexual orientation and gender identity and creating Chapter 17 within Title 4 of the Municipal Code of Park City, Utah – Michael Kovacs relayed that the housing ordinance is somewhat more complicated because it also addresses financing, lending practices, etc. but mainly deals with fair housing. The Mayor opened the public hearing.

Brandi Bulken, Equality Utah, thanked Council for considering both ordinances which is a statement to the rest of the state that you appreciate all residents and believe in fairness.

With no further comments, the public hearing was closed. Alex Butwinski, "I move we approve an Ordinance relating to unlawful discrimination in housing practices based on sexual orientation and gender identity and creating Chapter 17 within Title 4 of the Municipal Code of Park City, Utah". Joe Kernan seconded. Motion unanimously carried.

The Mayor added that he personally feels the ordinances do not go far enough and was frustrated with being forced to comply with federal guidelines; he specifically mentioned the provision for a special class. However, he felt that if the City adopted stronger ordinances, there would be repercussions at the state level. He hoped that there will be federal amendments in the near future and assured Mr. Malone that the Chamber will be kept well informed on these matters.

VII OLD BUSINESS (*Continued items*)

1. Consideration of an Ordinance amending the Land Management Code of Park City, Utah, revising Section 15-1-18(C) regarding the option of appointing a hearing officer to hear certain appeals of Planning Commission decisions – Mark Harrington noted that although several issues were raised last week during the hearing, staff is not recommending any additional changes. Primary issues include forming a panel rather than designating one individual which was discussed by the Planning Commission. The cost of a panel will be more and proceedings may be lengthier but hearing officers are cognizant of keeping to the scope of review. With regard to opening up appeals to public input, the current Code has not been changed to require public hearings and he encouraged the provision to be consistent throughout the Land Management Code. As a matter of practice, Council consistently provides an opportunity for public input for appeals. With regard to accountability, staff believes Council is more accountable and responsible with the ability of pursuing solutions in an enabled negotiable role and staff recommends proceeding with the ordinance as proposed. Mr. Harrington explained that if this is approved, an action will follow next week to appoint a hearing officer if and when an appeal is filed sometime in the future. Once the Council engages in an owner role in negotiations, it can't go back to the prior process. In terms of the call-up authority and other pragmatic issues, staff is committed to improving long-term appeal processes, but many issues raised by the public currently exist regardless of the hearing officer process. In response to a question from Liza Simpson regarding requiring public hearings, Mark Harrington recommended that exact verbiage be crafted tonight if there is consensus which would affect three sections. The Mayor reopened the public hearing.

Mary Cook, Homestake resident, acknowledged that she has not been following this closely but warned Council of what happened in New London, Connecticut over a redevelopment project. In 1998, the City Council abdicated its authority and responsibility to an independent decision-maker, and the matter has been litigated for ten years. People were paid but lost their homes and no development has occurred to date.

Mark Harrington explained that the case doesn't directly apply to the hearing officer matter, but it is something to be aware of in terms of limitations of governmental redevelopment authority relating to private property rights. He noted that the New London case was a condemnation issue and the state's legislation protects citizens in Utah from this happening.

Mary Cook continued to state that it is (hearing appeals) the Council's job; it is your community and your job to find resolutions that work for the entire community. Treasure Hill is less of an issue for her because it doesn't displace any present home owners, but the next one probably will and that is one you need to worry about.

John Stafsholt, 633 Woodside Avenue, referred to his written input submitted this week and his public comments last week. His main objections are limiting call-up authority and inserting unelected hearing officers to replace the Council's voices. He acknowledged strong positive and negative positions for the hearing officer. Public input should be guaranteed. The hearing officer option should only be used in extreme cases and if it is used for Treasure Hill, it should be understood that it is an extreme and unique case. After Treasure Hill, it may never be needed again. He indicated that a hearing officer would be valuable and appropriate for appeals of City projects and in the rare case where due process or conflicts of interest exist. These should be minimal or non-existent and the hearing officer should be used as a last resort. The big danger of appointing a single hearing officer is corruption. Utah Code provides for a multi-person board which is important for impartiality. Mr. Stafsholt urged changing the proposal from one hearing officer to a three person board of appeals. He didn't think a panel would cost that much more especially if a single hearing officer brings in staff. He doesn't necessarily believe that a narrow scope is a good thing and a panel might provide a more complete review. He discussed competency and corruption.

Brian Van Hecke, THINC, felt the implications of this amendment is significant and will have a dramatic effect on the future of our town. He asked members how confident they feel this will work because the proposed development would destroy Old Town living as we know it today. He pointed out that the citizens may not agree with the decision of the hearing officer.

Mayor Williams relayed his support of Council's ability to talk with the Sweeneys on Treasure which he can't do now because of process. If the process is not changed, he envisioned that the project would be denied and a judge would make the final decision. He stated that something will probably be built on Treasure Hill because the owners have property rights. Both Council and the hearing officer must make decisions based on the Land Management Code regardless of personal feelings or whether the City gets sued. He stated that he is nervous about this too but it allows the ability to work toward alternatives for the project.

Alex Butwinski explained that there is no way to predict how this will go, but it is better to try to negotiate than to just acquiesce. Liza Simpson again discussed the responsibility of elected and appointed officials to base decisions on the Code.

Brian Van Hecke believed that many decisions that significantly affect Park City are subjective and authority shouldn't be given to one person. He alleged that Planning Commissioner Mick Savage's brother is a listing agent for one of the homes on the Hill and asked if there is a conflict of interest. Make sure that the vetting process is thorough and he encouraged taking public input whenever possible even for negotiations.

Candace Erickson reiterated that Council can require public input. Mark Harrington discussed a number of ways the public could be involved. Any change to the CUP

would have to be approved by the Planning Commission where a public hearing must be held. All avenues have mandatory components and a myriad of opportunities depending on staff initiatives and Council can provide direction that the expectation is high that we would look toward every opportunity to ensure on-going public participation. The Mayor interjected that any alternative either has to go back through Planning Commission or some other public process. Mr. Van Hecke reiterated his comments.

Lisa Wilson, resident, expressed that a hearing officer may be a good solution for Treasure but asked about the future. She felt this concept is counter to everything that she teaches her children about civics and understood this all came about because someone accused the Mayor of being biased. She felt being biased is good. A quasi-judicial role as opposed to a judicial role allows members some latitude to have bias. She explored descriptions for appeal authorities for other cities and none addressed bias. Everyone has some kind of bias. She asked if Council will review and approve Treasure and the Mayor responded that it has already been approved in 1985. Mark Harrington clarified that there likely will be processes for plat amendments which are reviewed by both the Planning Commission and City Council.

Ms. Wilson questioned whether the Council will still be accountable as elected officials. The quasi-judicial role is important and she would appreciate it if the Council didn't quit. The Mayor responded that he takes offense to the comment because this approach is not quitting and he pointed out that Ms. Wilson certainly has the right to elect others. There may likely be other applications for a hearing officer for City-owned projects. The idea that members are abdicating their responsibilities is wrong; the idea is to discuss things with the applicant that can't be addressed because of the parameters of process. If the project continues under the current process, the decision will ultimately be made by a judge. Part of the essence of a small town is the ability to talk to each other. The City Attorney stated that a judge would not agree with her position on bias and felt that this is a more accountable approach for elected officials.

Lisa Wilson asked if it is possible for the Mayor to negotiate and allow the rest of the Council to hear appeals. Mark Harrington explained that the problem is that no one Council member or the Mayor or the staff can obligate or negotiate with tools that their council hasn't authorized. The Council fulfills both executive and judicial responsibilities but can only perform one role at a time. When members are hearing an appeal, they are deliberating collectively in a judicial capacity. The hearing authority alternative removes them from that role and substitutes someone else so that Council members or liaisons can fully enable themselves in the legislative capacity to proceed with negotiations. Ms. Wilson asked if one member could voluntarily recuse himself from hearing an appeal to negotiate and Mr. Harrington advised that the member would have no authority without direction of the rest of the Council and that is the problem. Ms. Wilson felt the Council should be focusing on the toolbox rather than this and Mr. Harrington explained that normally the Council does, but this is an extremely unique situation. This is the exception rather than the rule and hopefully this process will be

used rarely and only by virtue of the trigger points identified, i.e., due process or City project; he encouraged the Council to interpret those instances very narrowly. This is not meant to be a wholesale change and staff is committed to refine the ordinance in the future, if necessary. Ms. Wilson continued to express confusion about why the ordinance is necessary but felt there should be a panel instead of just one person and hearing officers should be from this town. She urged considering the ordinance as a test and to not use it often.

Craig Elliott, resident, disclosed that he is performing architectural work for the Sweeneys and the City. He stated that he agrees with Mr. Stafsholt's thoughtful comments and spoke about his experience with City projects, specifically Snow Creek Cottages which was appealed. He felt that the Council has always taken its quasi-judicial responsibilities seriously but supports this ordinance. There is nothing worse than reactive government and this approach allows the opportunity to be proactive which he feels the citizens want.

Barbara Gural, 267 Ranch Iron Road, believed that putting all of the Council's power in one person will change the whole complexion of Park City. She suggested holding a referendum on the project. Mark Harrington explained that referendums are limited to legislative matters.

In response to comments from Mary Cook, Mark Harrington emphasized that the processes remain the same except for specific appeals when a hearing officer can be used. Ms. Cook argued that this is a very different process which should be monitored in the long run and warned not to change the entire process for one project. Candace Erickson clarified that the ordinance does not change the process, but gives the Council the option to use it in unusual circumstances. Ms. Cook alleged that the only time it will be used is when an uncomfortable decision has to be made by Council. The Mayor stated that this has nothing to do with discomfort. For the benefit of Ms. Cook, the Mayor and Ms. Erickson reiterated the reasoning for the ordinance and Mark Harrington discussed the status of the Treasure project, and again detailed the reasoning for the ordinance and the role of the hearing officer.

Kirsten Whetsone interjected that the hearing officer is intended for appeals only, not other reviews. The project itself is still in the Planning Commission process and all processes are the same for the Planning Commission. If the event the Planning Commission's approval is appealed, it would go to the hearing authority. Mark Harrington added that the New London case was totally different. Ms. Cook continued to argue her points and the Mayor reiterated the reasons relating to negotiation ability.

Jim Hier, resident, disagreed with the ability to negotiate argument. The City has the ability to negotiate right now and the ability to be sued and the ability to be sued while negotiating. He stated that Council negotiated on PC Heights and the only time the Council doesn't have the ability to negotiate is when an appeal has been filed which is the crux of the issue. The City tried to negotiate over the last three or four years, but

the Sweeneys were not amenable. There wouldn't be so much concern over this matter if the Sweeney's legal counsel had not written the letter to the Mayor suggesting he recuse himself. He didn't believe that the statement *we can't negotiate* is true. We can negotiate. He felt that a hearing officer eliminates the strongest lever Council has which is the final vote on the project. Council will end up in a defensive mode should the hearing officer come up with an opinion not favored by Council. Mr. Hier stated that this is a lousy idea and he would want to vote on the project if he was a Council member because of knowledge base.

Mark Harrington explained that the assertion that a regulatory final approval could ever be a lever in negotiation is the exact reason why Council needs to do this. Applicants are entitled to development approval if they meet the Code. With regard to PC Heights, Council was acting in a legislative capacity and annexations provide more flexibility than other processes. He acknowledged that Mr. Hier is somewhat correct that members always having some measure of negotiation on development proposals, but there are more opportunities for risk. Mr. Harrington emphasized that solutions for Treasure will be unique and not similar to other negotiations in the past.

Jim Hier argued that mitigation, which is a requirement of a CUP, is not detailed in the LMC and results in a subjective analysis conducted by the Planning Commission on applications. Mark Harrington disagreed. Lisa Wilson expressed her confusion because Jim Hier has been on Council for so long.

Mike Allred, resident, asked if Dana could recuse himself and be appointed to negotiate in certain situations. Mark Harrington replied no. Mr. Allred stated that the fear is an outsider shaping our community as opposed to elected officials. He discussed the benefits of negotiation and if the hearing officer approach can accommodate that, he can support the amendment, but it makes him nervous to give an outside party that much authority.

Kevin King, resident, felt that the Treasure Project is part of the pattern of growth in Park City and our outlook should change, acknowledging that no one likes it. We are reacting and trying to rewrite the law around one project. He did not feel it appropriate that the City partner with The Boyer Company and approve our own projects which present a huge conflict of interest. Government's role has become grey and the public's, developer's and government's roles should be clarified. Everyone has rights but there should not be a hearing authority or creating law around something which makes members uncomfortable. The only thing the government should be looking at is the Code which is health, safety and welfare. He stated that members will never make everyone happy. Treasure has been on the books for a long time and is part of the PCMR Master Plan. The City needs to bring the bed base downtown. Construction will increase traffic but once Treasure is built, it will be like any other project. The Mayor asked that Mr. King remain on topic. Mr. King stated that he is concerned about abuse to the developer. If Council is considering appointing someone local, he is interested in serving on a panel and hoped that matters can be reviewed objectively. He encouraged

not spending taxpayers' dollars on a more confusing and conflicting process. Keep the current process in place.

Richard Sheinberg, Woodside Avenue resident, believed it is likely that this will be adopted. He pointed out that almost every appellate board has more than one decider and since a hearing authority will not be used often, suggested that a panel be appointed rather than a single hearing officer. Often people reach different conclusions when analyzing the facts to the standards. His first preference is for the Council to hear appeals but he urged consideration of a panel if a hearing authority is pursued.

With no further comments from the audience, the Mayor closed the public hearing. Joe Kernan emphasized that the Council's role is very limited when hearing appeals. Additionally, the elements of an appeal on Treasure could be extremely complex and legal expertise is valuable. However, he didn't perceive the Council abdicating its power to the hearing officer because the hearing authority's charge is to apply the Code as it relates to elements of an appeal. Mr. Kernan felt that the legislative role and the ability to negotiate is a better solution to the community where Council members have more of an impact on the future.

Alex Butwinski didn't feel there is anything to negotiate at this point since no one knows what will be approved by the Planning Commission. This is the same process and the hearing officer has to abide by the same standards as Council in his decision-making. There may be some different interpretations but that same possibility exists if Council members hear the appeal. He's heard from the public that the Council was elected to make decisions and this is what they are doing right now. This is a really difficult decision and many citizens have talked to him about it. Giving up his vote on an appeal is a way to gain negotiation abilities and far outweighs the status quo in his mind.

Liza Simpson felt that if having a hearing officer or panel produces the best outcome, she must support it. This is the first time members have realized the possibility of being proactive, rather than reactive, and to lead rather than respond. She acknowledged that the approach makes many people uncomfortable, as it does Council, but felt strongly that the City has to move forward with this to move ahead. She agreed with Dana Williams about the expectation that a negotiation will result in nothing being built is unrealistic. By adopting the amendment, the Council is doing exactly what they have been called upon to do and shaping the community by making this decision. Ms. Simpson stated that she is open to considering a panel but not because of the threat of corruption.

Candace Erickson stated that the hearing officer is an opportunity for the City's progress. She referred to the awkwardness of being the developer and the appeal board on the Snow Creek Cottages project and there are other possibilities in the future. However, she has a lot of faith in the competence of the Planning Commission.

Cindy Matsumoto understood that the Council needs to make a decision now, before a Planning Commission decision. She has no problem with a panel as opposed to a single hearing officer and it is not a given that a hearing officer will be needed if an appeal is not filed. The Council wants an outcome that the citizens and developer can agree upon without a hearing office. She trusts the Planning Commission and pointed out that using a hearing officer would be rare.

Liza Simpson agreed with Ms. Erickson's comments on the Snow Creek Cottages appeal. Alex Butwinski believed it important that the hearing officer be directed to take public input. All members agreed and Mark Harrington indicated that this requirement can be easily inserted. Cindy Matsumoto felt that the public will feel better about a panel and Liza Simpson interjected that cost should not be a major consideration. Mark Harrington advised that the authority must be decided and identified in the ordinance; there is no right or wrong way in appointing a panel as opposed to a single hearing officer. He detailed suggested language in three sections. Joe Kernan agreed that cost should not be an overriding concern with regard to the panel option as long as the decision is solid. He hoped the search would be manageable to find people who can work well together. Discussion ensued on the ability of the City or a citizen with standing taking the appeal decision to court. All members supported the three member appeal panel option.

Joe Kernan, "I move we approve the Ordinance amending the Land Management Code regarding appointing an appeal authority as a panel with the modifications Mark (Harrington) described along with the modifications related to requiring public input described earlier". Alex Butwinski seconded. Motion unanimously carried.

2. Consideration of an Ordinance amending the Land Management Code of Park City, Utah revising Sections 15-2.3, 15-6, regarding development regulations for Master Planned Developments in the HR-2 District and clarification of support commercial and meeting space within Master Planned Developments – Ms. Whetstone explained that Council first held a public hearing on this on April 1, 2010 and continued it to provide additional time for review. A neighborhood meeting was held on the amendment to the HR-2 District and the Planning Commission held three to four public hearings and made several revisions based on public input. There are several vacant lots on the east side of upper Park Avenue. The west side is residential and the east side is used primarily for support of adjacent Main Street businesses. Ms. Whetstone explained that better designs may result if there is an opportunity to apply a master planned development process. A MPD can also be used to mitigate impacts but requirements need to be tailored to this specific area, but it is hoped that exceptional designs will result consistent with the HR-1. Incentives include providing an opportunity for an increased commercial space across the zone line into the HR-2 as long as it is below the grade of Park Avenue in the basement of a residential structure. The types of structures allowed in the HR-2 are single family or duplex. She noted that this concept was discussed before and pointed out the flexibility a MPD review offers.

In response to a question from Candace Erickson, Ms. Whetstone confirmed that if the Main Street Mall wants to build residential, it would have to be houses on the Park Avenue side. She emphasized that goals include encouraging historic scale, eliminating vacant lots, decreasing visual impacts of garages, and decreasing in back of house space. Preserving historic structures and designing compatible contemporary structures are also elements of the amendment. Some commercial or retail is allowed in the basement provided it ties into a Main Street parcel but density can not be transferred to the HR-2. Candace Erickson referred to the solutions created for the No Name Saloon so it complied with the Building Code and asked about other Main Street businesses; Tom Eddington understood that everyone is compliant.

Kirsten Whetstone pointed out that the other topic is support commercial space for hotels or condominiums reviewed as part of a MPD. The intent is that the additional 5% support commercial space be based on the residential units, which are based on gross floor ratio and that language was removed. Support commercial and meeting space does not utilize unit equivalents for residential or commercial but is based on the floor area of the approved residential unit equivalents and not gross floor area. Discussion ensued on the distinction between support commercial space and meeting space, and analyzing the 5% support commercial allowance.

Ms. Whetstone pointed out a few minor wording changes and the definitions for compatible and neighborhood compatibility. Joe Kernan spoke about the difficulties in interpreting compatibility and Mr. Eddington explained that it is not just looking at the house next door, but looking at surrounding homes. Ms. Whetstone agreed that there is no formula and Mr. Kernan emphasized that it's difficult to get two reasonable people to arrive at the same conclusion with regard to compatible mass, size and height while architectural elements may not be as challenging. Mr. Eddington felt that both are equally difficult and explained that whenever the Planning Commission reviews compatibility it asks for a streetscape which details the scale and rhythm of an area. Setbacks determine much of the volume. Ms. Whetstone discussed adding green building references which are not reflected in the draft. The Mayor opened the public hearing.

Craig Elliott, architect, felt that a lot of work has gone into this proposal and he attended Planning Commission hearings. He encouraged allowing a residence club in the HR-2 as a conditional use. He described the residence club as a limited time share which really reflects ownership not use and nightly rentals are already an allowed use in the area. It is not a timeshare and offers another alternative for ownership encouraging repeat use by the same people.

Mike Sweeney, business owner and developer, believed that neighborhood should be defined because it is more than the streetscape or the adjacent houses. There are many different neighborhoods in Park City, i.e., Old Town, Aerie, Deer Valley, etc., and the geographical boundary can be defined but neighborhood should be described. Mayor Williams pointed out that one definition would not fit all. Mr. Sweeney explained

that the Code should be easy to understand because it is important for the City to remain competitive in attracting economic development. Mr. Sweeney indicated that he will draft a definition and the boundaries for Park City neighborhoods.

Ms. Whetstone added that this information ties into the research associated with the General Plan. Ms. Erickson believed that streetscapes are useful in making decisions about compatibility and there was discussion on the differences in neighborhoods even when they are geographically close to each other.

Mary Cook, Homestake HOA, spoke about the popularity of second floor properties at Homestake Condos because of the mountain views.

With no further input from the audience, the public hearing was closed. Possible residential development of the Main Street Mall Park Avenue property through a MPD process was discussed. Residential and commercial condominiums were described. Liza Simpson asked why the Planning Commission removed residence clubs. Mr. Eddington believed that members felt the area would be more residential without the residence club option, but nightly rentals are a permitted use in the zone, and residence club is an ownership type, not a use. The Mayor understood both sides.

Ms. Erickson did not support allowing residence club in the area because the concept may diminish the opportunity for full-time resident living. Joe Kernan stated that he supports fractional ownership from a tourism and economical standpoint. Liza Simpson stated she is more inclined to trust the Planning Commission's decision. Mr. Kernan commented on property owners enjoying the many benefits of living close to Main Street but not tolerating its impacts. He felt that additional parking should not be required as a part of outdoor dining which should be promoted but felt that granting a height exception will negatively affect neighboring properties. Ms. Whetstone explained that the provision he is referring to is general MPD language for height and does not apply to the HR-2 Zone where a height exception is not permitted.

Liza Simpson, "I move we adopt the amendment to the Land Management Code regarding Sections 15-2.3 and 15-6 (including the corrections handed out by staff)". Alex Butwinski seconded. Motion unanimously carried. It was explained that staff is analyzing the 5% percentage and the Ordinance will remain at 5% until a change is warranted and recommended.

VIII ADDITIONAL DISCUSSION – AGENDA ITEMS

None.

IX 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 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; Steve Brown, Contractor; Tom Daley, Deputy City Attorney; Michael Kovacs, Assistant City Manager; and Mark Harrington, City Attorney. Liza Simpson, "I move to close the meeting to discuss property and litigation". Alex Butwinski seconded. Motion carried unanimously. The meeting opened at approximately 4 p.m. Cindy Matsumoto, "I move to open the meeting". Candace Erickson seconded. Motion unanimously carried.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott, City Recorder

