PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
APRIL 3, 2008

Present: **Mayor Dana Williams; Council members Roger Harlan; Jim Hier; and Joe Kernan**

Tom Bakaly, City Manager and Mark Harrington, City Attorney; Denise Carey, Analyst II; Jon Weidenhamer, Project Manager; and Matt Twombly, Project Manager

Absent: **Candace Erickson and Liza Simpson**

1. Council questions/comments. Mayor Williams welcomed the Vail, Colorado delegation visiting Park City and Roger Harlan reported on the Education Foundation teacher awards. Joe Kernan pointed out the generous donations made by Jim Doilney and Mike Barnes toward the award program.

2. Uses at the Farm. Denise Carey stated that the Historical Society requested to use the Farm for its brownbag lunch series in May since the program has been displaced due to the renovation. This request is consistent with criteria in the Farm Master Plan; Ms. Carey discussed the limited number of events allowed to be conducted at the Farm. Joe Kernan believed that educational, recreational and cultural events are appropriate. Council members concurred to allow the use.

3. Trails Master Plan. Jon Weidenhamer explained that trails will be discussed during the budget review, specifically walkability projects or urban type trails, to be funded with the $15 million bond. The Trails Master Plan is a policy tool and walkability projects will now be addressed under this document. Jim Hier suggested that funding options identified in the document be significantly stream-lined and Mr. Weidenhamer agreed. Joe Kernan expressed his support of the framework and adding walkability projects completes the document. There was discussion about getting feedback from the walkability committee on its rationale to prioritize projects.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
APRIL 3, 2008

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 3, 2008. Members in attendance were Dana Williams, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Candace Erickson was absent and excused. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Phyllis Robinson, Public Affairs Manager; and Kirsten Whetstone, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Mayor and Council disclosure - Joe Kernan disclosed that Talisker is among his recycling customers. Mayor Williams stated that he will excuse himself from the discussion on Knoll Estates because the property owner is a client of Coldwell Banker where he is the managing broker.

2. Resolution acknowledging Friends of the Library – The Mayor read the Resolution into the record and presented a framed proclamation to the Friends in attendance. Roger Harlan noted that the Friends of the Library raised over $140,000 for the Library over the years and recognizing the efforts of this group is very appropriate.

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

None.

IV 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 approving a Resolution acknowledging Friends of the Library – Staff recommends approval.

2. Consideration of approving a Service Provider Contract, in a form approved by the City Attorney, for the Police Facility Art Project in the amount of $40,000 – Chief Lloyd Evans expressed his appreciation of the work of the Public Art Board and is very pleased with the selected artist.

Liza Simpson, "I move we approve the Consent Agenda, Items 1 and 2". Jim Hier seconded. Motion carried.

Candace Erickson Absent

Roger Harlan	Aye
Jim Hier	Aye
Joe Kernan	Aye
Liza Simpson	Aye

V OLD BUSINESS *(Continued from a previous meeting)*

City Council call-up of a Planning Commission decision of February 13, 2008 regarding an amendment to the technical report for Empire Pass affordable-employee housing to be provided as required by the Flagstaff Development Agreement, as amended - Talisker Corp. – Tom Bakaly reviewed the history of the call-up action, specifically the appointment of Council members Hier and Simpson to work with the applicant on solutions since the last meeting. Phyllis Robinson explained that the call-up deals with the terms and conditions of a financial guarantee in the event of deficiency in the phasing plan for providing the required number of affordable housing units, consistent with on-mountain obligations. On February 27, 2008, Council members identified several items needing further clarification but confirmed the following. Replacing the term *construction* or *under construction* with *certificates of occupancy* and replacing the reference *to before the next density increment is permitted* to *before the next density increment is allowed.* This allowed the contractors to continue to pull building permits. She explained that the financial guarantee issue was addressed by the committee, which consisted of Council members Hier and Simpson, staff and Talisker representatives who met several times during the past six weeks. The Development Agreement provides that the affordable housing be phased with the development of the resort and the goal of the plan was is providing affordable housing units at a rate in excess of that required by the resort's development schedule in order to mitigate impacts to the community.

Ms. Robinson noted that proposed revisions to the phasing plan are identified as Appendix A in the staff report to reflect the Montage Hotel and the 2007 amendments to the Development Agreement. The last amendment to the housing plan occurred in 2001 and revised development targets. The minimum on-mountain units remains at 25%; 15% is targeted as seasonal or year-round rental units with a preference to be located within the Park City limits, and 60% of the mandatory UAEs are targeted for home ownership with a preference to be located within the Park City limits. The initial rates would be set at 60% of area median income adjusted for household and unit size and rental and for sale units would be set 80% of AMI adjusted for household and unit size. These are details that were memorialized through agreements and deed restrictions but are now consolidated in one document. A status update for each of the housing options will track the number and location of the on-site AUEs and a sequencing strategy and phasing commitment will be identified. She emphasized that there are no additional options added to the phasing plan with the exception of Option K which is to look at additional opportunities, more specifically the Ontario Mine site.

Staff is looking for Council discussion on the recommendations to the amendments of the housing plan. Talisker requested that additional language be added to indicate that the phasing plan and options in the plan are consistent with the City's General Plan and that formal affordable housing submittals be processed in a timely good faith manner. Talisker was advised that the City Council can't make a representation as to compliance with the General Plan. Mark Harrington explained that this is not recommended language; contracts should be separated from the planning process. Associated applications are subject to full code and General Plan review by the Planning Commission. David Smith explained that the intent was not to usurp the Planning Commission process, but to clarify that the options set forth in the Development Agreement are not inconsistent with the General Plan. The Development Agreement has been thoroughly reviewed by the Planning Commission and the City Council and Option K is the only new element on the table. He emphasized that Talisker would like some assurance that Option K, not the submittals, would be considered consistent with the General Plan. Mark Harrington added that the committee was comfortable with a one unit or less shortfall of square footage without penalty if the increment is fulfilled in a future phase. Jim Hier further discussed applying residual fractions to square footage obligations. The potential of the Mine Bench Property was discussed.

Ms. Robinson explained the financial guarantee recommendation that the escrow amount be 150% of the current in-lieu-of fee at the time of the deficiency, which today, would be150% of $160,000 or $240,000. Talisker is requesting a fixed amount but staff is concerned that the fee reflect the current housing market trend. Staff is recommending that the escrow be funded within 45 days of notice of default by the City. This duration may also provide enough time and incentive for the developer to complete the project and she explained the potential role of the Chief Building Official in determining a completion date. The Mayor opened the public hearing.

Bill Hummer, 32 Prospect Avenue, stated that he read the staff report and one of the most glaring concerns is the fact that Talisker is willing to add 20 units and some neighborhood in Park City will bear the brunt of those additional units. He spoke about the Millsite and Marsac Avenue affordable housing sites where 15 units are proposed. He stated that this would increase the density in the Prospect Avenue area by 83%. Affordable housing should not be disproportionately built in one area of the City. He detailed the number and location of the 30 homes in his area.

Denise Kent, 9 Prospect Avenue, felt that all rules will be ignored like every other development in Park City. She referred to 9 Hillside Avenue where historic rules were not applied. She and her neighborhoods disagree with this. There are density, parking, and livability requirements and none will be considered if the Planning Department continues to behave like it has in the past. The neighborhood does not allow high density living and she asked why we would degrade and delete the Historic District.

Ruth Gezelius, Prospect Avenue, stated that once Park City is left with service workers and the wealthy, it will not be a livable community. The issue of paying decent living wages has never been addressed and the middle class is being asked to accept much of the burden of providing low income housing. It won't work because we can't build enough affordable housing. If wages do not increase, the communit6y will not be economically healthy and she felt that the City is on the wrong track. We will be destroying our Historic District by cramming housing. Pushing this developer to solve the problems of the economic situation in town is truly an unfair burden and extremely unfair to the areas impacted by housing that doesn't fit.

Julia Petit, Daly Avenue resident, commented on the language requested by Talisker that the options in the housing plan are consistent with the General Plan. She agreed with the City Attorney's opinion and emphasized that all proposals should go through the process like any other applicant. She objects to any reference to a finding of compliance with the General Plan which should be made by the Planning Commission and/or City Council.

Alex Butwinski, resident, agreed with Candace Erickson's previous remarks that the promise of housing does not equal built housing. He believes that the in-lieu-of fee multiplier should be 200% rather than 150% and that the funding period be set at something less than 45 days, like 15 or 30 days. Mr. Butwinski questioned a number of points in the staff report including the 18 month completion time for a project, Talisker's history of completing a market unit, and including the Chief Building Official in the completion time determination. He advised Council that his preference is Option B, to modify the request, and suggested that this matter be resolved and not continued.

With no further input, the public hearing was closed.

Mayor Williams acknowledged the concerns he is hearing from residents on Prospect and Daly Avenues and was sure that wherever the housing is built, there will be more traffic. Mr. Smith clarified information on Table 8 in the staff report and addressed the 45 day time period for funding the escrow account. He explained that these projects are being controlled and developed by merchant builders and Talisker is not *dialed into* the timing for issuance of the certificates of occupancy. With respect to the $240,000 number, Talisker is under contract with a third party to build units on lower Marsac Avenue contingent on the approval process, but the actual cost to construct is under $180,000 and well under $240,000. For this reason, Talisker would prefer a fixed number. Mr. Smith felt that $240,000 adds a cushion of funding and the City has the authority to shut anything down if there is an issue. With regard to language indicating compliance with the General Plan, Mr. Smith reiterated that the intent is not to usurp the Planning Commission process and the language would only apply to the characterization of the existing options under the Development Agreement. It is not a pre-determination of compliance relative to a specific submittal. With regard to the 18 months designated to complete a project, Talisker's concern is that if there happens to be a shortfall, it is limited to one construction season while two may be needed.

Jim Hier explained that the fee-in-lieu is the difference between market value and the sales price of the affordable unit. It reflects the market and is fairer than establishing a fixed number. He agreed that the provision involving the Chief Building Official should be deleted in its entirety because it is too subjective when the effort is to bring clarity to the document. He felt that the General Plan and due diligence language requests are somewhat redundant and did not support their inclusion. Roger Harlan relayed that he is uncertain whether the $240,000 is the right figure, but is convinced that it should not be lower. He felt that 15 business days, rather than 45 days is more appropriate. Liza Simpson preferred leaving the fee-in-lieu figure at $500,000, but liked the concept of tying it to the current fee-in-lieu amount identified but at 200% in the event of default. She did not buy into the argument that Talisker would not be aware of an impending default and would be far happier with a 15 day funding period. As Talisker goes forward with building the units, she encouraged keeping in mind that Silver Star has set a high standard for affordable housing. Joe Kernan addressed the 10% established for purchased units and Mark Harrington explained that staff is recommending setting a limit as proposed by a Council member earlier and is looking for consensus. David Smith stated that Talisker does not have an issue with this and it was pointed out that types of units can be modified, if the City agrees, as housing is constructed to better compliment the housing market.

Mayor Williams stated that the proposed Marsac Avenue and Daly Avenue sites will be controversial because of the density impacts. The Mine Bench site, however, is already disturbed and it is flat and buildable.

Ms. Robinson clarified that her staff report, specifically Table 9, is a snap shot of existing options and there are no recommendations on the sites. References to Ontario Mill and Daly Avenue represent pending applications before the Planning Commission. Jim Hier pointed out that 200 AUEs are reflected on Table 9 while the obligation is actually 118.9 AUEs; the table represents possibilities and do not represent any approvals. He suggested providing Talisker with notification on certificates of occupancy as they are issued and Mr. Smith believed that if this is in place, Talisker could manage something less than 45 days. Mark Harrington believed that a reporting element could be formulated and identified. David Smith stated that 30 days is the minimum amount of time needed for Talisker to advance funding in an escrow account at a level beyond the construction costs. Mr. Hier stated that he could support 30 days. Roger Harlan described the Silver Star affordable housing component as exemplary and stated that he is not willing to compromise on the 15 working day funding period.

Dana Williams didn't feel that Silver Star and Talisker's affordable housing projects are comparable. Talisker's obligation is so much larger in scope, to the extent of requiring park and rides, and involves close to 6,000 acres of permanently deed-restricted lands. Mr. Hier agreed that the level of complexity is significantly different.

Liza Simpson agreed with Mr. Harlan on limiting the period to 15 days, while Joe Kernan supported 30 days. Dana Williams stated that he is fine with 30 days which represented the majority consensus. Members agreed to delete Paragraph 3 regarding the Chief Building Official and replaced it with a statement that if the required housing is completed within the 30 days, the requirement for meeting the obligation is satisfied through the completion of the unit and funding is not required. This would appear as the last sentence under Paragraph 2. All members agreed. With regard to the fee-in-lieu calculation, Liza Simpson and Roger Harlan believed the amount should be more than $240,000 while Jim Hier and Joe Kernan felt that figure is reasonable. Mayor Williams stated that he is comfortable with the 150% of the cost of construction or at today's standards, $240,000. David Smith commented that although he requested a fixed amount earlier, Talisker is agreeable to the 150%. It was pointed out that residual fraction deficiencies would be added to the obligation of a future phase and Talisker would not be penalized.

Jim Hier, "I move to approve the proposed amendments to the Flagstaff Mountain Resort Affordable Housing Plan and adopt terms and conditions of the proposed financial guarantee with the elimination of financial guarantee Paragraph 3, the inclusion of a statement to allow the completion of an affordable housing unit within the period of performance for posting the funds to negate the requirement for posting those funds, and that in Paragraph 2, the time requirement from the notice of written default to the posting of the monies be changed from 45 days to 30 days". Mayor Williams interjected that the last issue is the 150% of in-lieu-fees and Jim Hier believed that is understood, as written (in the staff report). Liza Simpson seconded. Motion carried.

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

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

Consideration of an Ordinance approving the Knoll Estates (aka Deer Valley Club Estates) Lots 17 and 18 Amended Subdivision Plat, located at 7888 Aster Lane, Park City, Utah – At this point of the meeting the Mayor left the Council Chambers because of a conflict of interest disclosed earlier in the meeting, and Mayor Pro Tem Roger Harlan presided.

Planner Kirsten Whetstone explained that the application is a request for a plat amendment to create two lots on a parcel that was originally two lots but later combined. The Planning Commission reviewed the request and forwards a positive recommendation. She pointed out a letter to the City Council sent by Joe Tesch, counsel for the home owners association, requesting a continuance because of a pending legal matter in court. Mark Harrington advised the Council to hear the argument for the request for a continuance first. If the continuance is not granted, the merits of the application should then be heard. There was discussion about opening the public hearing on the plat amendment since it was advertised. Ms. Whetstone suggested that if the matter is continued that it be to a specific date after the court deliberations contemplated on June 19 and 20, 2008.

Joe Tesch, Esq., explained that the CC&Rs provide that no lot be subdivided. The Planning Commission was advised by Assistant City Attorney Polly McLean to follow the Land Management Code and not the CC&Rs. He read excerpts from the Planning Commission minutes regarding not recognizing private agreements and cited examples of conflicts with declarations and the LMC resulting in exorbitant expense. In order to avoid involving the City, he is litigating the application and asking the Judge to provide a declaratory judgment to enjoin this party from proceeding. He relayed that he obtained a TRO and yesterday, the preliminary injunction hearing was held. Judge Hilder did not grant the injunction but assured the parties that the trial would be scheduled on June 19 and 20. Mr. Tesch argued that the hearing should not be held tonight; it is not a benefit to the community to grant actions in conflict with CC&Rs. This causes people grief and does not gain Council any good will.

He suggested that a process be established requiring an applicant to present a letter of consent from the HOA to the Building Department that the plans conform with associated CC&Rs before the project is allowed to proceed. He stated that although they didn't receive the injunction they received the equivalent by obtaining a quick trial date. The Council should delay review and he added that 20 of the 21 owners oppose this application. Taking action tonight may *tilt* the civil litigation. He read a quote from Steven Jury during the April 2 hearing, *"Furthermore, we went to the City Planning Commission. . .Brooks Robinson, who is the manager of the Planning Department, and reached a qualified opinion from him. . .and it is a qualified one, and he stated that barring some unforeseen unpredictable and highly unlikely set of circumstances, these* *lots could in fact be returned to their original condition with no harm whatsoever to the community or the surrounding environment".* The actions of the City are respected by the court and if the subdivision is approved, it becomes Exhibit 1. He asked that this not be heard tonight and relayed that he may win and the applicant will be enjoined from proceeding.

Thomas Howard, counsel for the applicant, stated that the tone tonight is much different than when this matter was heard before the Planning Commission. Threats were made, including suing the City, and he commends this new approach. The application process has been long and complicated, beginning in September. The position taken by the City is that the LMC must be followed and all recommendations have indicated compliance with the Code. Mr. Howard remarked on Mr. Tesch's spin of the court proceedings yesterday. Originally the home owners came to the court and requested a TRO. They wanted to keep the applicant from proceeding in any fashion but the court refused to do that and issued a TRO until a more complete evidentiary hearing could be held. The restraining order was very restricted; it simply kept the applicant from proceeding with the City on the application. Yesterday, a full evidentiary hearing was held and the Judge denied any motion for a preliminary injunction and stated that it was not his intention to prohibit the City in any fashion from proceeding with its process. In all fairness, there were discussions in which Mr. Tesch expressed concerns about undoing the City's approval in the event the HOA prevails. Mr. Howard suggested that the City complete this process but not allow the plat to be recorded until the final hearing takes place in June. The issue decided by the court is very narrow and addresses whether the CC&Rs have been violated by a re-subdivision and the language is not clear. Given the history of this case and the matters presented to the court, what is constitutes a re-subdivision is quite complicated. Judge Hilder requested additional evidence on the definition and found that if the Council proceeds, there would be no irreparable harm to the home owners since the lot is vacant. Any development could not occur before June and the Judge considered this in not granting a preliminary injunction. Mr. Tesch has suggested that it is not in the community's best interest but the property owner is a resident of the community.

Mr. Howard relayed that at this point in time, the HOA has spent approximately $20,000 in legal fees and his client has spent approximately $5,000. Understandably, he does not want to continue to spend more in litigation fees and would like to know if his request to subdivide is reasonable. Thomas Howard asked Council to consider the Planning Commission recommendation and provide him with a decision on the plat amendment so his client can determine whether or not to pursue further litigation. Mr. Howard explained that the court must decide if the CC&Rs are applicable and if they are clear enough. Another issue is an ancillary claim by the HOA that somewhere in time a promise was made by the previous owner, Joe Cantazero that he would let them have the land as a park forever. Depositions have to be taken and this is not an issue that would be solved by Council members. He asked that Council attach a condition to the approval that the plat not be recorded until the matter is decided by the court.

Mayor Pro Tem Harlan opened the public hearing.

Steve Jury, Coldwell Banker real estate agent, stated that he sold the lot in question. He referred to Mr. Tesch's comments about community interest when in reality it is in Joe Tesch's interest in continuing this cycle of frivolous lawsuits. He already has three strikes against him and with one more, he would be indeed out. Mr. Tesch first argued that is was not a lot and should never have been subdivided and staff found ample evidence that it is a legal lot and the Planning Commission unanimously approved the application. The next argument was that the previous owner granted a park and by the HOA's own admission there is not one piece of paper anywhere that indicates as much. Mr. Tesch then argued that the contract was an oral one, but an affidavit from the previous owner categorically denied the statement and added that he never at any time suggested or implied as much. Now, we're arguing about the CC&Rs which has nothing to do with the City. Mr. Jury insisted that a lot of money has been wasted on this.

With no further comments from the audience, the public hearing was closed.

Jim Hier relayed that the plat map in the meeting packet is not legible making it difficult to make a decision on the application. He felt that there is good cause to remove interior lot lines resulting in one lot because reducing potential density is accepted and can be accomplished administratively. On the other hand, there are very few instances when the Council has elected to subdivide a lot. It doesn't mean that it is prohibited by Code; there are a significant number of instances in Deer Valley were approved density was not built. He believes that the request is substantially different than the configuration of the original two lot parcel. He finds that this is not in the best interest of the City as stated in the ordinance to go forward and approve the subdivision. Additionally, the General Plan suggests reducing density in Deer Valley. He reiterated that if he acted tonight, he would find no good cause to subdivide the property, although no harm would result. With regard to conflicts with CC&Rs, it has been his experience that this does not occur often and it is appropriate that the City not interfere. It is his preference to continue the matter to a date certain, especially if there is no desire for the owner to sell or develop the property in the short term. Mr. Hier also suggested remanding it to the Planning Commission to formulate findings of good cause or denial.

Liza Simpson agreed with Mr. Hier's comments and Joe Kernan preferred to delay his comments until this matter returns. Roger Harlan relayed that he personally visited the lot and takes exception to the argument that approval will result in material harm. The lot is adjacent to a t-intersection and it was his observation that the views from one or two homes above the lot would not be obstructed. Jim Hier, "I move that we continue this item to date certain, June 26, 2008. I would suggest also that should the court continue this that we hold the hearing on that date anyway and decide whether we should go forward with a decision or remand it back and not continue this so that we're at the whim of a court calendar that we have no control over". Joe Kernan seconded. Roger Harlan added that the original plat for Knoll Estates included a specific number of lots which would not increase with the approval of the subdivision. Motion carried.

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

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII 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 4 p.m. Members in attendance were Mayor Dana Williams, Roger Harlan, Jim Hier, and Joe Kernan. Candace Erickson and Liza Simpson were excused. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Jon Weidenhamer, Project Manager; Jerry Gibbs, Public Works Director; Jason Glidden, Marketing Analyst; Pace Erickson, Operations Manager; and Karen Yocum, Recreation Coordinator. Roger Harlan, "I move to close the meeting to discuss property". Joe Kernan seconded. Motion carried. The meeting opened at approximately 4:45 p.m. Jim Hier, "I move to open the meeting". Joe Kernan seconded. Motion unanimously.

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

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.

Janet M. Scott, City Recorder