PARK CITY COUNCIL WORK SESSION MINUTES
SUMMIT COUNTY, UTAH
MARCH 29, 2012

Present: **Mayor Dana Williams; Council members Andy Beerman; Alex Butwinski; Cindy Matsumoto; Dick Peek; and Liza Simpson**

Tom Bakaly, City Manager; Polly Samuels McLean, Assistant City Attorney; Mark Harrington, City Attorney; Heinrich Deters, Trails Coordinator; Diane Foster, Interim Assistant City Manager; Tommy Youngblood, Special Events Coordinator; Jon Wiedenhamer, Economic Development Manager; Francisco Astorga, Planner; Kent Cashel, Transportation Manager

Cheryl Fox, Director of Summit Lands Conservancy (SLC); Alison Butz, Director of Historic Park City Association (HPCA); and Kevin Valaika, owner of Shabu

1. Annual open meetings law training. Polly McLean explained that the law is also referred to as the Sunshine Law and the spirit of the Act is making deliberations in public so that the public feels confident in government. The Act applies to anyone conducting the public's business including appointed board and commission members who also receive this training. She emphasized that a quorum is a meeting which is three Council members, including the Mayor because he can vote in the case of a tie. Discussion ensued on this point. Mark Harrington interjected that Council cannot hold two on two meetings with the intent of circumventing the Act by getting consensus. Ms. McLean stressed that the spirit of the Act is open deliberation and pointed out that a chance social meeting is not considered a meeting.

Ms. McLean stated that Council members cannot deliberate through email. Andy Beerman relayed that ULCT Attorney David Church has a different interpretation on emails. Mr. Church feels emails are fine because they are static communication but not chat room or Skype which are dynamic. Mark Harrington stated that he disagrees with that interpretation. Polly McLean added that emails are subject to GRAMA requests. There was discussion about obtaining personal emails and Mark Harrington explained that these could be requested but a judge would examine the hard drive and decide which communications are public and which are private. Ms. McLean strongly encouraged members to limit City business to City accounts and that the Mayor announce where Council is going to socialize after a meeting. Electronic meetings are permitted.

The reasons for closed session were addressed. Mark Harrington interjected that Council can close for personnel where personal characteristics might be discussed and deliberated upon in closed session, considering the individual's privacy. This is an instance with competing private interests but the decision or vote must be made in public.

Ms. McLean stated that a meeting must be noticed at least 24 hours in advance and an annual meeting notice posted at the beginning of the year. She stated that the Council airs on the side of letting people speak on a matter but if there is no requirement for a public hearing, the audience has the opportunity to watch the Council deliberate but not necessarily to participate. Minutes and a recording of the meeting are required. Ms. McLean emphasized the importance of minutes as they are the official record of a meeting. Emergency meetings have certain criteria. If there is a violation of the Act, the Attorney General or County Attorney will enforce provisions. The bottom line is getting back to the intent of the law and recognizing its importance by conducting business publicly and making sure the citizenry is represented and is heard.

2. Council questions and comments. Alex Butwinski referred to the “nits” discussion during Visioning. He felt issues were never really resolved, specifically a consistent process for meetings. Ms. Simpson commented on the interagency meeting where the legislative session, the Shakeout, and trail safety/emergency response were discussed. The working group will return to the interagency group with regard to solutions for trail conflicts and emergencies.

Cindy Matsumoto reported on the Chamber Board meeting where education initiatives were addressed. She commented on the event survey conducted last summer where patrons at events responded. Fifty percent of attendees indicated they came to Park City because of the event and 75% were inclined to return to Park City because of the event calendar. Summer visitors spend approximately $200 per day and 90% are from Utah. Ms. Matsumoto emphasized that events drive our economy.

Andy Beerman stated that he attended a BOSAC meeting during the week which focused on the cemetery and a conservation easement on the PRI Parcel. He also attended the Planning Commission meeting where members continue to make improvements to the Quinns Junction annexation.

Dick Peek commented on the poor sound quality associated with the electronic meeting last week and parameters for electronic meetings were relayed by the City Attorney.

Mayor Williams advised that Mayor Becker’s Office is organizing a conference call next week with other mayors in the state on a proposal for an Olympic bid but cannot participate because of a conflict. It was decided that Dana Williams and Andy Beerman will be Olympic liaisons for future meetings and Mr. Beerman will cover for the Mayor for the conference call.

3. Open space easements. Heinrich Deters asked if Council wishes to provide a stewardship endowment for existing or future conservation easements and if Council would like to place additional conservation easements on existing or future open space parcels.

SLC is currently under contract with the City until June 30, 2012 to provide monitoring, stewardship services, and possible new easements on parcels (PRI, Round Valley, Hope, Gambel Oak, etc.). A RFP for these services is proposed to be issued in May or June.

He referred to a letter from SLC outlining its desire to have an endowment in place. Factors include the uncertainty of future funding in a political climate and the uncertainty of funding the requests through existing sources such as the open space account which can vary from year to year. Council should consider the long-term cost savings that an endowment can provide versus a short-term financial impact to existing sources. He stated that finally, the Council should consider privatization of funds and real costs the City incurs annually from maintenance of open space which includes weeds and future commitments, like mine hazard mitigation or a wetlands restoration. Due to potential costs, staff is recommending that Council identify endowment costs as part of future parcel acquisitions rather than impacting existing funding sources.

Ms. Simpson asked for clarification between stewardship and monitoring. Mr. Deters explained that monitoring is walking the property and identifying physical characteristics and stewardship involves monitoring activities on the property and following-up on violations which could incur a variety of costs. Currently, the City meets with SLC on a monthly basis on reported incidences. Ms. Simpson recalled having this discussion in relation to the legal defense fund where it was concluded that the City Attorney's Office was basically acting in that capacity for currently held easements. Mr. Harrington interjected that his office defends the City's interests and is not acting as SLC's attorney, although interests may be mutual in most instances. However, he questioned what happens when the City and SLC disagree over enforcement and/or how SLC funds its own legal defense against the City or another party.

Diane Foster described stewardship as an umbrella. SLC is the steward with responsibilities including monitoring and responding to infractions. Mr. Beerman confirmed that the purpose of this endowment is for monitoring and not the legal defense fund. Alex Butwinski pointed out that the endowment does not fund maintenance; Heinrich Deters agreed and clarified that maintenance is provided through the existing open space account. Ms. Foster added that maintenance is performed by City staff or a contractor.

Mr. Butwinski referred to Cheryl Fox's comment in her letter about easements being overlooked, but he felt the likelihood of this is very low because they are recorded. Ms. Foster agreed with his statement. He asked why some parcels have deed restrictions while others do not because they add another layer of protection. Heinrich Deters explained that properties are dealt with on a case-by-case basis. Currently, staff makes sure that the property is perpetually deed-restricted but it may have been different ten years ago. Mark Harrington explained that property cannot be deed restricted retroactively. He believes there are only three small parcels that are not deed-restricted, some of which were not directly negotiated by the City.

Cindy Matsumoto acknowledged that properties have different layers of protection but ultimately, it is good to have a third party monitoring them. She felt staff can do some of that, but a third party provides legitimacy and there are no guarantees about future political decisions. For these reasons, she felt the City should have a stewardship for open space properties and believes the community would want the ability to sue to protect open space. Diane Foster pointed out that with property that is protected by bond language and a deed restriction but not a conservation easement, the community could still sue and there could still be third-party monitoring. Ms. Matsumoto felt redundancy is important because open space is one of the most valuable assets of the City; it preserves our lifestyle and economy. Andy Beerman agreed. The community has supported conversation easements for protection in the future and the stewardship fund makes sense in the event of a conflict. An independent fund would continue to support services provided by a land conservancy.

Liza Simpson separated the issues, monitoring, stewardship, and conservation easements. She understood the endowment runs with the land and not with SLC. Heinrich Deters explained that the endowment would be managed by the PC Foundation. Mark Harrington interjected that in cases where the conservation easement was deeded to SLC it was in perpetuity unless SLC ceases to exist or the deed is assigned.

Diane Foster explained that SLC was funded through the grants process but because the amount varies every year, it seemed more appropriate to move to a regular contract which is subject to the City's procurement policy. The term of the last contract was three years, expiring on July 1, 2012 for renewal, so the service will be bid. Mayor Williams questioned the reasoning for issuing a RFP especially when an endowment is established. Mark Harrington explained that the contracts with SLC are not written that way so they would have to be amended in an open process. Mayor Williams felt that the organization holding the easement should do the monitoring and have the ability to legally defend the easement. Ms. Foster believed that a contract for holding a $1.5 million endowment would have to go to bid according to the City's policies.

Tom Bakaly explained that the contract with SLC was based upon monitoring for a three year period. Ms. Foster expressed that if another agency is selected the conservation easement could be reassigned. Mark Harrington described the existing contract as a hybrid as it addresses monitoring but not an endowment. The service contract refers to the conservation easement and he asked Council members if conservation easements should be amended to include an endowment. Mr. Harrington felt this is the real request although SLC is trying to repackage it through a more palatable contract element utilizing some flexibility by going through the third party group. Mayor Williams reiterated his feelings about considering another organization. Tom Bakaly clarified that SLC was initially selected under a competitive bid process for a contract with a three year period and this needs to be bid.

Dick Peek felt there could be parameters on the trust held by the PC Foundation and the trustees in the future could make decisions based on the contract. Tom Bakaly stated that this approach takes the matter to the next level because the City is not involved in how the properties are monitored in perpetuity. It provides safeguards that it will happen but it also removes the City from decisions by funding it.

Andy Beerman felt the purpose of a conservation easement is to take it out of the City's hands. Mark Harrington disagreed; the purpose of the conservation easement is to provide additional protection consistent with it being in our hands. This is a huge policy distinction. He explained that there are reasons why bond language may be inconsistent with an interpretation of a third party conservation easement. The terms of those should be very consistent unless the Council consciously makes the use more restrictive by granting the easement. Being too restrictive may be a violation of the bond because bond language may allow recreation use, for example. He emphasized that conservation easements are best done at time of acquisition. The public is buying the right, not the land conservancy.

Cheryl Fox interjected that a land conservancy ensures that today's interests are guaranteed into the future. Mark Harrington clarified that SLC is receiving the same enforcement right that the City has so it is an assignment of the same interest. The right was not sold or bought; it is an assignment which is the difference. Diane Foster pointed out that the bond language to purchase the PRI Parcel allows for recreation. The conservation easement is narrowing what recreation can be placed on it and an argument can be made that the bond language is not being upheld. Ms. Fox added that conservation easements are negotiated in detail and there may be conservation values that the bond did not articulate and that the community is interested in preserving. In those situations, the conservation easement can clarify uses.

Mark Harrington felt that there is agreement of a case-by-case determination at the time of purchase when everyone has the same opportunity to determine under what terms and restrictions the property is being acquired. The costs can be considered at this time. The problem with deeding conservation easements after the fact, is that the interest base and the environment changes. He encouraged Council members to be cautious. Everyone agrees with the principles but there are interest groups who want to use the property for certain purposes. Restrictions on the property should be done within the bond at a Council public policy level and not defined by one group by contract after the fact. He emphasized that a conservation easement is meant to be forever and he urged cautiousness.

Liza Simpson believed all open space bonds should provide for a stewardship which she understood runs with the property. She would like more information on managing the endowment in-house as opposed to having PC Foundation holding it. Mr. Beerman asked if establishing a stewardship fund could jeopardize the bonds. Mark Harrington stated that if it is tied to a permanent conservation easement with limited restrictions that are different than the bond, there is at least an argument. The devil is in the details and he doesn't have contracts before him. He is more concerned about the legal tie to the conservation easement. Future councils cannot be bound with appropriations and the endowment can be problematic if not funded upfront. Ms. Foster emphasized that there is currently no funding source for an endowment.

Alex Butwinski felt the Council needs more time to review this. He felt it reasonable to issue a RFP at least for monitoring services.

Cheryl Fox explained that annual site visits represent one small part of stewardship. The point of stewardship is to protect the properties and conservation values that the community has enumerated. The organization holding the easements has to monitor them anyway and the Council could decide not to issue a RFP.

A continuance was discussed. Mayor Williams agreed that open space purchases should have a conservation easement placed on them at the time of acquisition. Liza Simpson stated that she needs more time to understand the endowment and Ms. Fox explained the role of the PC Foundation. Tom Bakaly advised that staff will proceed with the RFP process and return with a discussion about the endowment during the budget process.

4. Master Festival License code change and venue use guidelines. Tommy Youngblood relayed that the process began in 2009, recognizing the increase in event activity and potential community impacts. The goal is to balance a dynamic calendar while ensuring positive economic return. There are currently 66 events scheduled in 2012, totaling 120 days which represents four months of activity. Staff typically receives two to three inquiries per month on new events. He noted that the staff report frames some of these questions and solutions and many departments are involved. The fee resolution addressing special events is slated for action on the regular agenda.

He pointed out that *small scale community event* is now defined. Council wanted staff to help smaller events like Young Riders. Ms. Matsumoto stated that she has been involved in the Historic Home Tour over the years which never applied for a permit. She was concerned about the 300 attendance number and how it would affect small events, specifically fund-raisers. Mr. Youngblood explained that small scale community events do not have many regulations because they should be facilitated. She asked if 300 is a good number and Mr. Youngblood indicated that if attendance is estimated over 300, then special event criteria is applied. Ms. Matsumoto expressed concern about asking small event organizers to produce $2 to $4 million in insurance and he explained this is the standard. Mark Harrington interjected that the City can assist organizers in obtaining insurance for small events through the City's provider and most established non-profits have insurance.

In response to a question from the Mayor, Mr. Youngblood explained that all MFLs must be approved by the City Council while special and small scale events are administrative approvals based on criteria.

Mr. Youngblood clarified that applicants often use the umbrella of special events to avoid noticing requirements for tents and other temporary structures required under the CUP process. Special event licenses have also been issued for selling merchandise in parking lots. Staff feels that this practice is better regulated through zoning and use guidelines which have provisions for allowing this use or activity. He believed that the event process should not be used in this manner. Jon Weidenhamer elaborated on these types of activities and commented that staff believes the planning process is a better approach because it gets to the underlying use. He emphasized that staff would like to get away from an exemption based approach. Ms. Simpson believed that if a tent is put up at the Park Meadows Country Club for the whole summer, for instance, it should probably go through a planning process with a more thorough review than a weekend use.

Mr. Bakaly indicated that when this returns, the broad policy discussion can be framed regarding the trade-offs between creating business opportunities that support economic vitality while ensuring that the Code is being followed and not subverting zoning. It is both an opportunity and loophole situation.

5. Main Street dining parking fee. Francisco Astorga explained that this discussion relates to the parking fee and the request from HPCA for 15 additional free parking days. Council requested that staff provide an analysis relating to the parking fee charged for the pilot Main Street dining program. In 2010, a total of three decks were installed and all fees were waived by Council and in 2011 nine decks were charged $300 per 20 linear feet. In order for the Transportation Department to break even on the parking program, it is recommended that the fee be increased from $300 to $550 per 20 linear feet for 2012.

Dick Peek understood that in 2010, the City agreed to 24 free days; 2011, 35 free days and 50 free days are requested for 2012 by the HPCA. He asked if the merchants experienced an actual boost in business on free parking days. Alison Butz explained the agreement between the Park Silly Sunday Market, HPCA and the City. When parking fees were increased on Main Street from $1 to $1.50, concessions were made regarding free parking. The HPCA tries to tie free parking with promotional efforts and she hoped that there will be an increase of sales on Main Street but admitted it is more of a *warm and fuzzy feeling.*

Ms. Simpson recognized that part of the reason for raising dining fees is to fund parking because the system should not operate in a deficit. Alex Butwinski felt the fees for dining were too low from the onset. Kent Cashel explained that the rate increase forecasted that revenues would be increased by $160,000 per year. Of that amount, $40,000 was to go to the PSSM, $40,000 contributed to the HPCA, $40,000 for enhanced parking and transit marketing for Main Street and $40,000 was left as a cushion for the City. He advised that the City is using the last $40,000 toward free parking days. The goal set for the parking program in 2003 was that it breaks even and he detailed calculations.

Andy Beerman felt this is a good compromise and agreed with staff's recommendation. He asked that next year, 2009 data be included to create a base line. Mr. Cashel explained that 2009 was left out because the increase in rates was not in effect and including it would have skewed the information. Cindy Matsumoto also supported the increase in dining fees and free parking days.

Kevin Valaika, Shabu, asked what will happen next year with regard to dining fees. If fees continue to increase, decks will be less attractive to business owners. Mayor Williams believed fees may be reviewed every year.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 29, 2012

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, March 29, 2012. Members in attendance were Dana Williams, Andy Beerman, Alex Butwinski, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Sayre Brennan, Public Works Inspector; Brooks Robinson, Transportation Planner; Tommy Youngblood, Special Events Coordinator; Kent Cashel, Transportation Manager; Mat Evans, Planner; Polly Samuels McLean, Assistant City Attorney; and Mark Harrington, City Attorney.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

1. <u>920 Empire Avenue demolition</u> – Sandra Morrison, Park City Historical Society, read a letter into the record regarding the demolition of 920 Empire Avenue (shed at rear of property) on March 20, 2012. She approached the Planning Department regarding the proposed demolition but was told there is no appeal process. There was no opportunity for public input. She read the report from the consultant but believes her research paints a different picture of its history but the fact that she wasn't given an opportunity to present this information is of concern. Once a historic building is gone, it is gone forever and a more open policy should be encouraged. Ms. Morrison urged Council to amend the Land Management Code to allow the Historic Preservation Board to nominate structures and sites to the Historic Sites Inventory and asked that there be a public input component to any future demolition in the Historic District. Having the HPB review demolitions seems to be the obvious solution.

2. <u>Empire Avenue reconstruction</u> – Kyla Parkhurst, Empire Avenue resident, stated that she represents a group of residents on Empire Avenue. The process for the reconstruction began with Fehr & Peers sending out a survey but it was very vague and limited. She believed sidewalks were voted down because people thought that all parking would be removed. However, the diagram showing sidewalks also shows parking. Ms. Parkhurst felt that other options could be presented and considered. A question to residents could have been about widening the street to accommodate more traffic and increase speeds in order to provide another corridor for traffic from the base of the mountain to Main Street which seems like the goal of the project. Residents should have been asked if they want to lose three to four feet of frontage. Another option is using the street width but adding gutters to both sides of upper Empire connecting to the gutters on lower Empire. She stated that she measured Park Avenue which could be duplicated on Empire with 3'10" sidewalks, 2.5' gutters, and 16' for traffic and parking. There are other options that haven't been presented and the survey should not be the only determinant. She read an excerpt from the City's Neighborhood Traffic Management Plan regarding goals and did not feel this has been considered at all in the reconstruction plans. The Plan indicates that arterial street traffic will not be directed over neighborhood streets, which is not the case here. Ms. Parkhurst stated that she wants to work with the City and the consultant to make Empire Avenue is a narrower and safer street. Someone is going to get killed on the street because there are no sidewalks for pedestrians.

Sayre Brennan explained that the City's Neighborhood Traffic Management Plan is a separate program but Empire Avenue has been through two phases of it regarding traffic calming and cut-through traffic and the next step is to submit a petition to the City with at least 25% of the neighborhood signing. One of the main reasons for working on the street is because the water line is in dire need of replacement. The reason staff decided not to recommend sidewalks is because of the results of Survey Monkey; out of 93 households contacted, 63 responded and out of those, 71% said no to underground conduit, 28% said yes. For a sidewalk on the uphill west side of Empire, 65% said no to a sidewalk while 24% said yes. This was the basis for not recommending a sidewalk. As far as street width, Empire Avenue varies from 20 feet to 25 feet. The project is going to be narrowing the actual asphalt to 22 feet with 2.5 feet of curb and gutter adding five feet which makes it 27 feet. A portion of the 22 feet will be dedicated to on-street parking with no net loss of parking, leaving about 18 to 20 feet of actual drivable surface which cannot be any narrower based on the Fire Code.

Ms. Parkhurst asked if Mr. Brennan disputes her measurements of Park Avenue and upper Woodside Avenue at 15 to 16 feet for traffic. Mr. Brennan clarified that Norfolk varies between 15 to 20 feet and upper Park Avenue is one-way in the winter which is why it has a sidewalk. He pointed out that sidewalks were not supported by Norfolk Avenue residents. Ms. Simpson added that parking was lost on upper Park Avenue. Sayre Brennan reiterated that this plan has no net loss of legal parking. In response to a question from Tom Bakaly, he explained that open houses were held in February and March and a third one is planned once a contractor is selected in late April or early May. Construction is estimated from mid-May to mid-September.

Cindy Matsumoto discussed conflicting opinions of residents on Norfolk Avenue and believed more discussion may clarify expectations. Mr. Brennan emphasized that 97 properties were contacted through a variety of methods, and 93 responded. Sixty-seven percent of the 93 respondents indicated they did not want sidewalks or conduit.

Ms. Parkhurst stated that the Survey Monkey questions were leading and confusing and felt residents should have received something more informative. Mr. Brennan disagreed and again pointed out that 67% is overwhelming and two open houses were held where Ms. Parkhurst's concerns could have been raised. Kyla Parkhurst continued to complain about the survey and felt people would have voted differently if it was clearer.

Tom Bakaly interjected that the goal of the City is to gain consensus opinion on the street which is why the survey and open houses were conducted. He felt that a work session can be held on this matter although 67% is very high and there doesn't seem to be a geographic issue like there was on Norfolk Avenue.

Andy Beerman asked if people can park on the sidewalks. Mr. Brennan felt that parking on sidewalks defeats the purpose of sidewalks. He added that the NTMP process indicated that speeds and volumes are low on Empire Avenue and it is recommended to mix vehicles and pedestrians. Ms. Parkhurst continued to argue her street width measurements. Ms. Simpson stated that she would have to see overwhelming support by the neighborhood to support sidewalks and agreed that having pedestrians walk in the street makes it safer most of the time. Cindy Matsumoto commented on the disappointment of Norfolk Avenue sidewalks turning into parking pads and/or an area for snow storage.

IV VISIONING SESSION MINUTES OF FEBRUARY 9 AND 10, 2012

Andy Beerman made a grammatical correction and Dick Peek asked that Pace Erickson's comments on the enterprise fund be expanded. Liza Simpson, "I move we approve the Visioning Session Minutes of February 9 and 10 (as corrected)". Alex Butwinski seconded. Motion unanimously carried.

V NEW BUSINESS

1. Consideration of authorization to staff to execute a Grant Contract with the Federal Transit Administration in the amount of $1,875,000 for the construction of seasonal housing – Brooks Robinson, Transportation Planner, explained that the request is for Council to authorize the grant with the FTA. In response to a question from Andy Beerman, he explained that a transfer of $375,000 is proposed to cover interior costs.

Liza Simpson, "I move to authorize staff to execute a Grant Contract with the Federal Transit Administration in the amount of $1,875,000 for the construction of seasonal housing". Dick Peek seconded. Motion unanimously carried.

2. Consideration of an Ordinance approving the 269 Daly Avenue plat amendment, located at 269 Daly Avenue, Park City, Utah – The Mayor opened the public hearing; there were no comments from the audience. Andy Beerman, "I move to continue the Ordinance approval for 269 Daly Avenue to April 26th". Liza Simpson seconded. Motion unanimously carried.

3. Consideration of a Resolution amending Section 8, Recreation Services and Facility Rental Fees; Section 9, Ice Arena and Fields Rental Fee Schedule, adding Sections 10.4 Bleachers, 10.5 Banner Installation; 10.6 Parks Cleanup, labor and equipment; 10.7 Public Safety; 10.9 Parking Reservation Fees; 10.10 Barricades; 10.11 Dumpsters; 10.12 Streets Equipment and Materials; 10.13 Materials; 10.14 Personnel; 10.15 Application Fees; 10.16 Public Parking Lot Use; 10.17 and Trail Use fees and repealing and replacing Resolution No. 30-11 in its entirety - Tommy Youngblood pointed out that these fees have not been updated for over eight years and the City Council has established a 100% cost recovery goal. Current waivers represent 25% of overall fees collected but it works well. Fee waivers for non-profits outside the School District boundaries were discussed but no changes were made with regard to policy. Alex Butwinski asked if there has been any reaction to the proposed increases and Mr. Youngblood stated that he has not received complaints. He answered a number of questions ranging from dumpster fees, arriving at a fee, and installing banners. The low grass cut, priced at $1,000 was explained and Mr. Youngblood added that many of these fees for services were charged by the City but not included in the fee resolution. Kent Cashel further explained the specialized equipment and treatment of the fields needed for a low cut. The Mayor invited public input, there was none.

Liza Simpson, "I move we approve New Business Item No. 3". Alex Butwinski seconded. Motion unanimously carried.

4. Consideration of an Ordinance approving the 920 Norfolk Avenue plat amendment, located at 920 Norfolk Avenue, Park City, Utah – Mat Evans explained that the request is to combine four and a half existing lots into three new lots. The property has a historic home

which straddles two lots. If the plat is approved, those property lines disappear and the Planning Commission recommends approval.

Dick Peek pointed out an error in the findings with regard to the stated side yard setback which was corrected by Mr. Evans. Dick Peek, "I move we approve the 920 Norfolk plat amendment according to the Findings of Fact, Conclusions of Law and Conditions of Approval as found in the Ordinance as amended (with a numbering correction and correction to Finding No. 4 and No. 9 regarding the side yard)". Andy Beerman seconded. Motion unanimously carried.

5. Consideration of an Ordinance approving the 543 Woodside Avenue plat amendment, located at 543 Woodside Avenue, Park City, Utah – Planner Mat Evans explained that the request is to combine two lots into one lot. An existing historic home straddles the lot lines and the plat amendment will erase the lines to create one new legal lot. The owner is proposing an addition to the home and both staff and the Planning Commission recommend approval. Dick Peek pointed out the separate unit in the back of the property and Polly McLean understood that it is not considered a dwelling because it doesn't have a kitchen.

The Mayor opened the public hearing; there were no comments. Dick Peek, "I move to approve the 543 Woodside plat amendment according to the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the Ordinance". Alex Butwinski seconded. Motion unanimously carried.

6. Consideration of an appeal of the Planning Commission's decision to deny the request for a Conditional Use Permit for a proposed Nightly Rental at 60 Sampson Avenue. Appellant - Jan Maltby, represented by Jones Waldo - Mark Harrington invited questions or comments regarding the scope of the appeal from members but stating that the hearing will be de novo. The Mayor invited staff to speak.

Mat Evans explained that Council will be acting as a quasi-judicial body in a de novo appeal of the Planning Commission's decision to deny a Conditional Use Permit for a nightly rental at 60 Sampson Avenue. The house is a 3,800 square foot single family dwelling and located within the Historic Residential Low Zoning District where nightly rentals require a CUP. The home is considered significantly historic on the Historic Sites Inventory and a history of improvements was outlined.

He stated that the matter came before the Planning Commission on January 11, 2012, the request was denied by a 3:2 vote and staff was directed to bring back findings denying the CUP. The Planning Commission found that CUP Review Criteria #2, 4, 5, 6 and 14 of the LMC could not be mitigated which are outlined in detail in the staff report. The Planning Commission also made additional findings and found parking at China Bridge as unreasonable and that Sampson Avenue is a narrow 12 foot roadway that functions as a one-way street.

On February 22, 2012, the Planning Commission voted 4:0 to ratify the findings to deny the CUP. Section 15-1-10 of the LMC outlines the conditions that the Planning Commission considered when it reviewed the CUP and the Commission found that Criteria #2, 4, 5, 6 and 14 could not be mitigated and denied the CUP. Mr. Evans stated that the applicant has appealed the decision in writing which is included in the meeting packet. Staff is recommending that the City Council uphold the Planning Commission's decision to deny the CUP request for the nightly rental based on the Findings of Fact, Conclusions of Law and Order that the appeal be denied in whole.

Alex Butwinski expressed that the Planning Commission may have based its decision on perception rather than evidence. For example, Criteria #2 cites the narrow street as being problematic when there are other houses on the street who use the street and with Criteria #4, emergency access, the same idea holds true. He questioned the belief that just because it is a nightly rental, it will require more emergency use. He has never seen any evidence proving that point. Criteria #5 specifies two parking spaces for four bedrooms which almost seems capricious and he didn't understand Criteria #6 regarding internal circulation problems. *Internal circulation* was interpreted as circulation on Sampson Avenue. Mr. Butwinski again cited that there are other homes on the street. With regard to the finding on emergency access, he questions why it would be difficult for 60 Sampson but not the other homes on the street. The requirement for contracting with a property management company to nightly rent was discussed.

Mr. Evans explained that there isn't a separate set of conditions to consider. The 15 criteria established in the Code are the only things that can be considered and nothing in the LMC requires proof of hiring a property management company. Cindy Matsumoto asked about other nightly rentals in the area and Mr. Evans directed her to the analysis in the staff report where 11 nightly rentals are identified.

Andy Beerman stated that he is very familiar with the area and is sympathetic to residents because it is a nice community. He acknowledged that Sampson Avenue is surrounded by nightly rentals that face the exact same problems that have been allowed. Unless the LMC is changed to limit nightly rentals, it doesn't make sense to single out one application. He felt Ms. Maltby's strongest argument is the parking constraint. After looking at the house, in addition to the garage, he felt three cars can be easily parked in the driveway. Mat Evans explained that staff has to use the legal definition of a parking stall when calculating parking requirements.

With regard to the Code requiring local property management, Mark Harrington explained that the City licenses nightly rentals under the Municipal Code in addition to the land use requirements in the LMC. The Municipal Code requires a local representative but doesn't necessarily require an on-site manager.

Dick Peek believed the impacts of this use were anticipated in the HRL Zone by making nightly rentals a CUP; in other zones in Old Town, it is an allowed use. Sampson Avenue is uniquely narrow which he feels may be difficult to access for a visiting renter. A finding that the nature of the street cannot be mitigated is not unreasonable in this case.

Attorney Eric Lee, representing owners Jan and John Maltby, felt that Council understands the issues at hand. The three Planning Commissioners voting against the application were candid about their feelings about nightly rentals in the Historic District which are reflected in the minutes. He referred to quotes from opposing members of the Planning Commission including Adam Strachan expressing that *he believes the LMC should be amended to only allow nightly rentals on the streets that immediately surround Main Street. Chairman Wintzer believed that nightly rentals take away from a neighborhood and changes the nature of that neighborhood. He was unsure what could be done now since it is a conditional use in the zone per the LMC. Chairman Wintzer personally thought that the Planning Commission should look at changing the* *requirements in the LMC even though it would not apply to this application. Commissioner Hontz appreciated the public input this evening because it validates the negative impacts she sees and lives with every day as an Old Town resident*.

Mr. Lee suggested that maybe it is time to re-evaluate whether short-term rentals approved as a conditional use, should be allowed in the Historic District and there are, of course, many competing issues to be analyzed. There is a need to accommodate our visitors who are the economic life blood of this community and on the other hand, there is the need to consider the desires of the permanent residents of this town and residential neighborhoods. He believes, however, that those kinds of competing policy issues are not the role of the Planning Commission to resolve, at least not in this context. Quite frankly, it is not the City Council's role tonight either, because members are sitting as an appellant body and looking at whether there is evidence in the record to support what the staff originally concluded which was a finding of no unmitigated impacts.

Polly McLean pointed out that a conditional use is an allowed use as long as the impacts can be mitigated. Mr. Lee believes the evidence in the record demonstrates convincingly that the planning staff got it right originally; there are no unmitigated impacts associated with this particular piece of property which has to be the focus. The broader or policy perspective is not what should be decided upon tonight. If Council views this matter properly, the reasonably anticipated impacts are fully mitigated and to the extent they are not, his clients are prepared to accept any reasonable condition that the Council may propose.

For example, the Maltbys have a local property manager and are willing to include this arrangement as a condition of approval. He indicated that they are willing to include a condition that no more than two cars be brought to the home at any given time and limit the number of people who rent their home. It is their intent to rent it out six to eight weeks a year to offset expenses associated with the property but are in the area all of the time. This is their home and the Maltbys have an interest in making sure that the property is maintained and that their neighbors are happy. No one but Carol Sletta is here tonight to complain about the use. Eric Lee stated that if there are any reasonable problems brought to the attention of the Maltbys, they are absolutely willing to address those problems as conditions of the CUP.

John Maltby pointed out that the property has access from King Road in the event emergency vehicles need to get to Sampson Avenue.

The Mayor opened the public hearing.

Carol Sletta, 135 Sampson Avenue, stated that she will not rehash her concerns raised at the Planning Commission meeting of January 11, 2012. She spoke about a drunken intruder at her home during Sundance who fell asleep and urinated and her couch. She alleged that people are renting their homes but not pulling a CUP. Nightly renters don't know how to park and navigate their cars and cars parked in a driveway but sticking out into the street could cause problems for snow removal. She has seen fire vehicles stuck on the turn from King Road to Sampson Avenue. Sampson Avenue is an Old Town neighborhood that is part of the historic character of Park City and she would like it maintained as a neighborhood.

She read a letter from Mary Wintzer (wife of Planning Commission Chairman Charlie Wintzer) into the record. Ms. Wintzer requested that the Council uphold the Planning Commission's decision to deny the nightly rental request for 60 Sampson Avenue. Nightly rentals chip away at our neighborhoods and create hardships for all full-time residents. Visiting renters are just passing through and create issues such as noise, extra cars and impaired plow access. If our small town character is to be preserved, City officials need to support full-time residents in Old Town; we cannot do it alone.

Ms. Sletta suggested that the LMC be revisited for Old Town neighborhoods, specifically Sampson Avenue, to change the CUP process for nightly rentals.

Ruth Meisma, resident, referred to Mr. Lee's letter in the meeting packet and believed that the access from King Road could never really be emergency access during the winter because of a huge snow berm and King Road is not plowed. The property has access to ski runs but it is kind of a long walk and will not discourage car trips. She disagreed that short term nightly rentals produce less traffic than seasonal or long term rentals and elaborated on this point as a Woodside Avenue resident and questioned this as a fact. She pointed out that the staff report indicates there are 11 nightly rentals in the area but Finding of Fact No. 8 says there are no legally established nightly rentals on Sampson Avenue so the nightly rentals are on King Road and Ridge Avenue. The requirement for two off-street parking spaces should be four because it is a party situation. She clarified at length her comments in the Planning Commission minutes about her negative experiences with cars associated with nightly rentals on Woodside Avenue. She felt that the provision regarding the applicant adding conditions is very vague. A nightly rental at 60 Sampson Avenue will only create problems and will impact people's lives. Ms. Meisma referred to the City's snow removal priorities and concluded that Sampson is a primary street for clearing snow because it must be plowed. She discussed winter driving knowledge of local residents at length and spoke about being a landlord. Sampson Avenue is different than other Old Town streets with nightly rentals.

Matt Mullen, 1009 Norfolk Avenue, expressed that having the government randomly telling people what they can or cannot do with their properties is very scary. His neighbor to the back is a monthly renter and to the side is a nightly rental. The long term rental is a huge nightmare for him while the nightly rental unit is a good fit. Decisions should not be made on personal beliefs without consideration of the Code.

Mr. Lee agreed with Mr. Mullen's comments about making generalizations. This is a conforming application for a nightly rental, as a conditional use, in this zone. There may be problems with Sampson Avenue but they are not problems created by the Maltbys or by their application and under these circumstances, it has been demonstrated that there are no unmitigated impacts.

The Mayor closed the public hearing.

Alex Butwinski agreed with Messrs. Lee's and Mullen's comments that opinions lead to the denial. He pointed out that in theory the Maltbys could have five cars there which is a problem anywhere in Old Town and residents can do that anytime they want. He thanked the applicants for agreeing to additional conditions. He did not see a reason to uphold the Planning Commission decision to deny the nightly rental.

Cindy Matsumoto asked Mr. Peek to clarify his previous comments. Dick Peek stated that Sampson Avenue is a uniquely narrow, difficult-to-navigate, hard-to-access street which was anticipated when the HRL Zone was created by making nightly rentals a conditional use. He did not believe traffic can be mitigated which is a reasonably anticipated detrimental effect of a nightly rental use which is a quasi-business use of the residence. The nightly rental map survey shows that there are no nightly rentals on Sampson Avenue. Based on the conditional use criteria, it is a reasonably anticipated detrimental effect that can't be mitigated and he will vote in favor of upholding the Planning Commission's decision.

Liza Simpson agreed that Sampson Avenue is a uniquely narrow street. She did not believe that Criteria #2, 5, 6, and 14 can be mitigated. The conditional use process is appropriate because it provides a higher standard of review and approving a CUP application is not a given. She pointed out that there are no nightly rentals on Sampson Avenue or the steep stretch of King Road. While she is sensitive to the applicants' needs and comments made about basing decisions on opinions, part of her opinion is based on living in Old Town for over 20 years with nightly rentals. There are some that are great and others that are not, but in her experience they increase traffic due to maintenance and unfamiliarity with the neighborhood. Ms. Simpson stated that she will uphold the Planning Commission's decision. The location of the house makes it inappropriate for a nightly rental use.

Ms. Matsumoto acknowledged that she is conflicted on this matter and would like to expand the discussion to adding conditions to mitigate impacts. Andy Beerman expressed that living in Old Town is complicated and unmitigated impacts can be found in half the streets in town. He didn't find the findings terribly strong and he is inclined to grant the appeal and overturn the Planning Commission's decision.

Liza Simpson appreciated the appellants' willingness to limit the number of renters or cars to mitigate impacts but her problem is enforcing the conditions. She is leery of creating mitigation solutions that are not enforceable despite best intentions.

Alex Butwinski countered that if there are four seasonal residents living there, there would be four vehicles and it is unfair to generalize and hold the Maltbys to a different standard than everyone else.

Alex Butwinski, "I move we grant the appeal for 60 Sampson Avenue". Mark Harrington asked if Council would like a mitigation plan offered by the appellants added in the motion and Mr. Butwinski felt it should be included. Mayor Williams understood additional conditions include hiring a local property manager and having no more than two cars on the property. Mark Harrington explained that staff can return with amended findings and an enforcement discussion. Alex Butwinski, "<u>I move to grant the appeal subject to prepared findings based upon either disagreement that conditions cannot be mitigated or proposed mitigation alternatives to be proposed by the appellants</u>". Cindy Matsumoto seconded. <u>Motion carried</u>.

Andy Beerman	Aye
Alex Butwinski	Aye
Cindy Matsumoto	Aye
Dick Peek	Nay
Liza Simpson	Nay

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, Andy Beerman, Alex Butwinski, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Diane Foster, Interim Assistant City Manager; Thomas Eddington, Planning Manager; Joan Card, Environmental Regulatory Specialist; Jim Blankenau, Environmental Regulatory Specialist; and Jason Christensen, Environmental Regulatory Counsel; and Mark Harrington, City Attorney. Liza Simpson, "I move to close the meeting to discuss property and litigation". Andy Beerman seconded. Motion carried unanimously. The meeting opened at approximately 4 p.m. Liza Simpson, "I move to open the meeting". Andy Beerman seconded. Motion unanimously carried.

The City Council met again in closed session following the adjournment of the City Council regular meeting. 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. The meeting adjourned at approximately 9:30 p.m.

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

Janet M. Scott, City Recorder