PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
FEBRUARY 1, 2007

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Max Paap, Special Events Manager; Phyllis Robinson, Project Manager; Eric DeHaan, City Engineer; Seth Atkinson, Budget Analyst; and Gary Hill, Budget Manager

Blake Chambliss, affordable housing consultant

1. Council questions/comments. Joe Kernan expressed his appreciation of the solutions reached regarding the Delta Airlines negotiations. Marianne Cone thanked the Water Department staff for their help with her frozen water pipes which has been a problem throughout town. In response to comments from Marianne Cone regarding Sundance's Thursday concert, Max Paap explained that the concert was moved from Saturday to Thursday night, and is considered *a gift* to the community. Ms. Cone commented on the large number of attendees from Salt Lake and Mr. Paap acknowledged that entertainment was geared toward a high school audience, recognizing there were problems. Mr. Paap explained that Sundance may consider a better way to *give back to the locals* for future festivals, which would be preferred by the lower Main Street merchants. Ms. Cone suggested considering the *Best of the Festival* event for the locals and suggested that it be two days rather than one, because it is so popular.

Jim Hier noted that he attended the Summit Land Conservancy meeting on Tuesday where the conservation easement language was rejected on the annexation parcel at PCMR. A set of criteria was adopted setting forth parameters for review. Candace Erickson commented on her working experience during Sundance. She spoke about working with the ULCT on potential legislation and explained a concern voiced by Recycle Utah on the rising costs of the hazmat collection. Insa Riepen will be addressing the Council and other entities about contributions to cover this service. She asked if she could attend Habitat for Humanities' meetings, recognizing that a liaison role has not been established with this non-profit. Council members supported her request. Mayor Williams spoke about participating on a public policy environmental panel the end of the month and invited other members to attend.

2. Affordable housing – City-owned properties. Phyllis Robinson introduced consultant Blake Chambliss. She explained that staff is looking for direction from Council on proceeding with an RFP for three City-owned parcels, Snow Creek 9B, Park Avenue Fire Station and the Pechnik Parcel. Through illustration of a slide presentation, Ms. Robinson discussed the eight acre Snow Creek parcel, located behind the new police facility. Mr. Chambliss provided footprint illustrations, taking into account setbacks and site constraints and Stantec has performed some preliminary geo-technical studies to determine potential infrastructure costs. She stated that initial estimates for off-site and site infrastructure costs could support an affordable housing product and felt this option is worth pursuing. She disclosed that all of the site plans are strictly illustrative, the purpose is estimating density and infrastructure costs and do not represent a desired design or layout. The City has not sought entitlements nor received any at this point. Ms. Robinson explained that the parcel is zoned RDM which permits eight acres per unit and with an affordable-MPD overlay could be 20 units per acre. The footprint designs include between 12 and 48 units, depending upon the site design. Potential layouts were illustrated, including single family homes. The geo-technical information supported initial concept studies for a variety of configurations. She stated that staff is recommending pursuing an RFQ or RFP. She continued to explain the number of developers with outstanding affordable housing obligations and anticipated interest in this approach. She asked if Council would support considering this and if the ratio would be 1:1 or something less. It is staff's recommendation that it not be 1:1 and perhaps for every one affordable unit equivalent, the credit would be half, acknowledging that the City has the land. Ms. Robinson asked Council if it would consider contributing the underlying land to the project in some form of a land trust or other long term deed restriction to remove the land cost equation and achieve a more affordable product. Council members have discussed affordable home ownership and this site represents an opportunity, either on a single family or townhouse type of model. She anticipated placing some owner/occupancy restrictions later on the project and asked if it is desired to solicit alternate uses for the site in the bidding including seasonal housing.

Jim Hier preferred that the City construct affordable housing rather than using it to fulfill a developer's obligation because it could decrease the potential number of affordable opportunities in town. He supported contributing the underlying land and placing owner/occupancy restrictions on the sales so that the project doesn't become rental property. He didn't feel it helpful to explore seasonal housing needs because he feels the City's obligation is to meet the needs of residents of the community not businesses. Ms. Erickson stated that she agrees with Council member Hier on point one and suggested that one or two units be identified as property the City could retain a first right of refusal option. She continued to explain that she doesn't care if a couple of units are offered at market price so that the project has a mix and is not negatively perceived as an affordable housing complex.

Marianne Cone believed seasonal housing should not be built on this parcel and supported a mix of condominiums and houses. She suggested perhaps offering these units for sale to other employees of entities like the School District. Ms. Robinson explained that when Silver Meadows was constructed, the School District was contacted but declined to an offer to partner in the project. However, District employees would qualify under local preference options. There was discussion about a 99 year lease option which is basically a land trust, separating the improvement from the parcel. Ms. Robinson explained that buyers purchase the structure and the product is a collective community land trust. Ms. Cone felt that if a City-owned parcel is sold to a developer, it should be at market value. Joe Kernan agreed that the City should build the housing itself and contribute the land to make the project more affordable. He supported owner/occupancy restrictions and offering units to the School District. He felt that the City should focus on for sale stock, not seasonal housing. Roger Harlan supported comments made and strongly agreed that the City not provide seasonal housing; he would like more information on the land trust concept. He urged the elimination or reduction of home owner fees associated with condominium type projects. Mayor Williams expressed basic agreement, and does not support using this property to fulfill a developer’s requirement. He is willing to contribute the land to enhance the project’s affordability and is fine with owner/occupancy restrictions. With regard to the term, *essential employees*, he believed that all positions are essential to this town. Dana Williams noted the importance of promoting diversity and a neighborhood feeling. The design should *go out of the box* so that it is a showcase development. Because of the likelihood of young families occupying the housing, he suggested providing a green common area. The City has an opportunity to make a statement.

Phyllis Robinson asked Council if it would like to include the Park Avenue Fire Station in an RFP. Staff is encouraged that all three parcels fit within the parameters of the LMC with regard to existing zoning requirements. Roger Harlan observed the steepness of the Pechnik Parcel compared to the other parcels and there was discussion about this parcel not being available until the summer of 2008 when the Holiday Ranch fire station is operational. She asked about alternative uses on the site and seasonal housing. Jim Hier felt it appropriate to conduct an RFQ and RFP for the property. He has the same concern with the Snowcreek Parcel, where he favors a for sale project built by the City. Seasonal housing prompts a number of management problems but he would consider a rental option. Phyllis Robinson acknowledged that seasonal housing could require on-going monitoring. There was discussion about providing surface parking and the difficulties and expense of building an underground garage in a flood plain. Marianne Cone felt staff should proceed with an RFQ and encouraged open space as part of the project. Candace Erickson also did not support seasonal housing on the site and pointed out the large vacant lot behind the house. Joe Kernan felt this parcel should go through the process and that it not be seasonal housing. Owner/occupied housing will provide for a stronger sense of community and he believed there are already a fair number of rental units available. Mr. Harlan believed that seasonal housing prompts potential challenges relating to management and maintenance. He felt that this parcel and the Snowcreek site may provide an option for growing families. Ms. Erickson stated that she is not in favor of someone buying a unit with no intention of living there and then renting it, which defeats the affordable housing initiative. The housing needs to be owner/occupied. Dana Williams expressed his agreement with comments made and feels that seasonal housing needs to be addressed by the major employers in town.

Phyllis Robinson continued that in 1999, the City acquired the Pechnik property for $205,000. The site is zoned HRL with minimum lot sizes of 3,750 square feet which would allow for a two lot subdivision, accommodating up to four units with an affordable housing-MPD. One option is selling the property at fair market value and allocating the sale proceeds to other affordable housing projects. Blake Chambliss discussed the constraints of the lot, including its small size and steepness, and requiring the inclusion of part of platted and unbuilt Marsac Avenue. He described a three story structure providing for a garage, living area, and bedroom area. Building four units requires substantial structural work and excavation, adding about $30,000 per lot in costs. However, two units may result in better compatibility with the scale of existing dwellings in the area and would provide for better drainage. The Pechnik property is a metes and bounds parcel which would need to be subdivided. Jim Hier suggested marketing the property as one lot for one unit, so the density is minimal. It's not important to maximize the return on this and elements of the development could be deed restricted. Mr. Williams agreed with Mr. Hier. Candace Erickson questioned how readily the sales proceeds could be allocated to an affordable housing project. Tom Bakaly understood Council direction to be that rather than including this piece in the RFQ with the other two properties, to return with geo-technical information. Marianne Cone and Joe Kernan indicated that they would like it also included in an RFQ. Jim Hier cautioned that the property has inherent limitations and suggested gathering more data before soliciting proposals so that it is better defined.

Mayor Williams agreed with Ms. Erickson's points but felt that affordable housing revenue could be used for enhancements to other associated projects. Candace Erickson agreed with Mr. Hier about obtaining geo-technical information first, and other members then concurred with that approach.

3. Potential use of Aerie Drive Parcel. Phyllis Robinson explained that this 4.58 acre parcel was purchased from Royal Street in September 2005 with a deed restriction that the property could only be used for open space or affordable housing. In June 2006, staff recommended to City Council that the land not be purchased with affordable housing funds, but with open space bonds and protecting the land as open space. Council asked staff to analyze development potential for affordable housing on the site before making a final determination of funding source. She explained that Blake Chambliss was contracted to conduct a third party analysis and his findings are outlined in the staff report. If open space bonds are used, the parcel is permanently restricted and if Council wishes to reserve the option for development for future councils, another revenue source must be identified.

Mr. Chambliss relayed that parcel is located on a steep slope and the LMC prohibits access from a road in excess of 10% grade. There is no access from Aerie Drive with the possible exception of the section of road where Aerie Drive meets Deer Valley Drive if there is an adequate front setback. Housing would need to be located 45 to 50 feet above the intersection which translates into 45 to 50 feet of driveway, which would have to be cut into the hillside. Through a slide presentation, Mr. Chambliss displayed a rendering of the project and explained the need for retaining walls. He felt that the parcel could accommodate one dwelling but not affordable housing because of related significant costs of construction. Joe Kernan invited architect Craig Elliott to make some comments.

Craig Elliott explained that he walked the site with Mr. Kernan and acknowledged that he didn't apply LMC conditions. He agreed that accessing it in the lower area is not a good idea and cost prohibitive and suggested providing for access higher up on the site where there is more space. He suggested that if there is a way to build, to request that developers arrive at an acceptable concept.

In response to a question from Jim Hier, Eric DeHaan stated that Aerie Drive's grade is 14.85% which will not comply with provisions of Park City's Subdivision Ordinance. The parcel would need to go through the subdivision process. The two houses above the site are accessed from a 10% grade section. He added that the Aerie is a sensitive area where there was a fatal traffic accident, and the subdivision process may prompt concerns in the neighborhood about the City following its own ordinances. The reason this land has remained vacant is likely because of its constraints with the 10% grade requirement for access. Jim Hier stated that he would like to review this further in a couple of weeks. It was clarified that a zone change is not necessary. Joe Kernan believed that there might be creative solutions for the site, and Ms. Robinson pointed out infrastructure costs could range from $300,000 to $400,000 and asked if the City would be willing to cover those costs. It will be a challenge to create a project within the affordable housing parameters; an affordable housing-MPD provides the ability for the Planning Commission to recommend a density bonus of up to 20 units per acre.

Joe Kernan envisioned bungalows or cottages on the site available at under market value prices. Mark Harrington interjected that the City must meet the letter of the law and advised Council that it can not amend the Code for the benefit of developing one particular property. Jim Hier believed that the Board of Adjustment would be involved in ruling on access from a 14% slope. Access in the lower area is dangerous and not acceptable. He questioned if it is feasible to identify an access point that complies with the LMC. Eric DeHaan stated that in his opinion there is no way to serve this property with a safe driveway. Joe Kernan asked if there is a way to bring portions of the Aerie Drive up to the 10% standard or to realign it, making the road safer for the neighborhood. Tom Bakaly explained that if the City is willing to cover the infrastructure costs to accommodate development, the property becomes affordable. Council member Kernan strongly believed that there are creative solutions to these challenges.

Phyllis Robinson explained that staff is requesting direction in the event another funding source for the purchase needs to be identified for review during the upcoming budget process. Jim Hier felt it would be great to have affordable housing on the site, but is not willing to commit to the infrastructure costs. Realigning Aerie Drive could cost in the millions. He asked for an estimate of the cost of creating a compliant access point and that staff return to Council in a couple of weeks, so a final determination can be rendered. Candace Erickson liked the idea of the look of bungalows or cottages there, but is strongly opposed to making an exception for the City. Joe Kernan asked that once the costs are provided that an RFP process begin; Jim Hier felt that decision can be made once staff returns more information.

4. Legislative updates. Seth Atkinson explained that HB233 is a new bill which the ULCT is opposed to, which is designed to invalidate all geological hazards and wildfire protection ordinances, including construction on steep slopes. It also opposes the Governor's geological hazards task force recommending greater enforcement of local land regulation. Gary Hill explained the ULCT policy committee took a strong position on Monday to oppose HB282, sales tax on food. There is no support to try to explore a buy-out option. Concerns include perceiving this is the first step toward removing sales tax on food and the impact to the communities is too significant. For instance, passage would result in a $17 million state-wide reduction in funding for transportation. He is hopeful that there may be more success in the Senate to oppose this initiative. Jim Hier felt this bill may impact other communities more significantly than Park City. He felt the charge should be shouldered by those communities rather than using City resources. Mr. Hill noted that not everyone shares that opinion and the bulk of staff's time has been used to educate others about potential impacts, recognizing that it will affect Park City with the loss of $500,000 to $600,000 in funding. Mr. Hill feels this effort is necessary because if other cities are not informed, it is likely that the bill will pass. Candace Erickson believed the City needs to uphold its pledge to the ULCT to oppose this bill and personally offered to work with other cities to oppose the legislation.

There was discussion regarding a bill prohibiting running as a non-partisan candidate on the County level; the Mayor asked that Park City formally oppose this bill. Gary Hill acknowledged Council direction rendered on SB41, forms of government. The bill was considered on Monday and passed with amendments, however at the Legislative Policy Meeting later, a subsequent recommendation was proposed to consider this by a task force because there is so much internal debate on the issues. The policy committee voted overwhelming to support this approach which was appreciated by ULCT. Candace Erickson discussed the benefit of more time to work with other cities on a unified position. Mr. Atkinson reported that HB105 proposes authorizing local police departments to enforce federal immigration law, and the City Council unanimously opposed this bill.

5. Liaison appointments – roles and protocol. Kent Cashel asked that Council review the draft protocols for task forces outlined in his staff report. During the Visioning Session in January, Council asked for direction from staff on procedural matters enabling more than two members to attend task force meetings. The open meetings law requires that all meetings be noticed. Another question raised was dealing with public input, and he recommended that these task force meetings be held similar to work sessions where there is typically no public input, and that should be clarified for the benefit of the public. Task meetings are open to the public and must be recorded. Accommodations need to be provided upon request to comply with ADA requirements. Liaison roles remain the same but creating non-liaison roles is a new concept which enables the member to attend meetings as an observer and not actively engage in the meeting. Task force liaisons are charged to report back to Council members.

He citied the transportation task force with the School District as an example of a governmental task force where agencies work together to solve an issue or make recommendations on a topic. The noticing and conduct of meetings is straight forward. The role of the inter-agency task force is not recommended to be modified. The new section addresses the non-liaison concept providing consistent guidelines for implementation. The City Council supported staff's recommendation.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 1, 2007

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, February 1, 2007. Members in attendance were Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Tom Daley, Deputy City Attorney; and Brooks Robinson, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Candace Erickson stated that she is employed by Park City Mountain Resort and her husband does some consulting for a firm doing work for Talisker. Joe Kernan disclosed that Royal Street, Deer Valley, Talisker, and PCMR are among his recycling customers. Jim Hier stated that his wife works for PCMR.

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

Vision of Old Town - Jim Totora stated that he has lived in Old Town for 33 years and has watched it grow. He commented that in the past he had no neighbors but now there are a variety of families that live there full and part time. He understands that Ms. Cone believes people are leaving Old Town because of the proliferation of second homes. He would not want that to happen either but pointed out that in the late 1980s and early 1990s Old Town was *falling apart*. His kids now have other kids in the neighborhood to play and he feels it is the best it has ever looked. He urged Council not to change regulations for the Historic District.

IV CONSENT AGENDA PUBLIC HEARINGS *(items listed will be open for public hearing prior to consideration for adoption or rejection; hearings may also be continued by vote of the Council)*

Continuation of hearing on consideration of an Ordinance approving the 255 Deer Valley Drive Replat, an amendment to Lots 7, 8, 22 and 23 on Block 66 of the amended plat of the Park City Survey – Brooks Robinson explained that this is a request to plat four Old Town lots into two lots; an existing duplex straddles the property line. The Planning Commission forwards a positive recommendation and there was no public input at that public hearing held on January 10, 2007. The title report reveals five parcels; the applicant has agreed to quit-claim the *ghost* parcel to the City to resolve the internally conflicted title. The Mayor opened the public hearing, and hearing no comments from the audience, closed the hearing.

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")*

Marianne Cone, "I move that we approve Consent Agenda Items 1, 2, and 3". Candace Erickson seconded. Motion unanimously carried.

1. Ordinance approving the 255 Deer Valley Drive Replat, an amendment to Lots 7, 8, 22 and 23 on Block 66 of the amended plat of the Park City Survey – See pubic hearing and staff report.

2. Cooperative Corridor Preservation Agreement with UDOT for SR248 – See staff report.

3. Street Lighting Agreement with UDOT for Street Lighting at the Park City High School Crosswalk on SR248 – See staff report.

VI OLD BUSINESS *(continued items with presentations and/or anticipated detailed discussions)*

Consideration of an Ordinance approving the United Park City Mines/Park City Mountain Resort Annexation Agreement and amending the Official Zoning Map – Planner Brooks Robinson referred to the meeting packet containing the development agreement, annexation agreement, and an ordinance approving the annexation. There have been a number of discussion points and the staff report is an attempt to describe modifications to the development agreement, the background on the annexation agreement, and the update from PCMR on financial issues. The conservation easement, acceptable to the City was not acceptable to the Summit Land Conservancy contemplated as the third party holder of the easement. He stated that the applicant has been advised to find another entity to hold the conservation easement with the same language.

The subsequent water agreement was discussed at the last meeting where there was discussion of alternatives. Other possible options have been suggested from the time the meeting packet was prepared, but it is still staff's recommendation to place the responsibility of obtaining a discharge permit for the Judge Tunnel to the mining company.

David Smith, attorney for Talisker, expressed that a lot of progress has been made on Paragraph 7 in the water agreement. He explained that Talisker is proposing that the determination of permanent responsibility is decided by an independent third party selected by a state or federal agency or the courts. He emphasized that United Park City Mines will assume 100% of its responsibility if determined by the third party with no dollar amount cap. In the interim between the time a determination is made by an independent party, there are protections in place for the City. He explained that if the City is required to obtain the permit, UPCM will assume 50% of the cost of the permit up to a maximum of $750,000 until the time the determination of permanent responsibility is made. This provides an interim economic protection to the City. Mr. Smith continued that in the meantime, UPCM will work diligently with the City to implement a solution which obviates the need for the permit. If UPCM is identified as the responsible party, it will assume the obligation.

Deputy City Attorney Tom Daley explained that the biggest distinction is agreeing to taking the permit up front or agreeing to reimburse the City if an agency requires a permit before a determination is reached internally. The indemnification language distributed to Council earlier today and the proposal that neither the City nor Taliskser would seek a permit for three years concerns him. Mr. Smith explained that this was proposed because of statements from the Department of Environmental Quality that a permit might not be required and an indication from EPA that it is not inclined to take enforcement action. *Why stir the pot if it is not necessary?* He encouraged continuing to work together to implement a solution. In the meantime, if a permit is required, there is a solution. Tom Daley acknowledged a letter from the DEQ dated August 2006 stating that it is not anticipated that a permit is required at this time. Joe Kernan commented on the possibility of the permit issues resurfacing in ten years. Tom Daley explained Talisker's proposal is that if this happens before a determination is made internally, the City would buy the permit and be reimbursed 50% of the cost by Talisker up to $750,000. Mr. Smith stated that is not quite accurate and explained that either party will have the ability to request a determination at that point, but in the interim if the permit becomes a requirement, then Talisker steps in with 50% of the costs up to $750,000. This agreement would also provide for retroactive reimbursement.

Tom Bakaly asked if there is should be a provision from the mining company that if something happens in 20 to 30 years from now unrelated to this discharge that they take some responsibility. Mark Harrington explained that UPCM needs to assume liability for impacts resulting from mining which is the fundamental sticking point. Staff feels strongly about this and is the reason for recommending Alternative 1 which places 100% responsibility on Talisker. David Smith confirmed for the benefit of Jim Hier, that Talisker takes exception to the new indemnity language and in place of the indemnity they are proposing the third party determination mechanism. Mr. Smith distributed a redlined version of Paragraph 7. Jim Hier asked if the Deputy City Attorney has other concerns. Mr. Daley stated that any money contributed by Talisker under this scheme becomes part of the capital contribution in the agreement so the City will be reimbursing it through seven equal payments. If liability winds up with the City, the City reimburses

Taliskser for the money spent in pursuing these options. Mr. Daley emphasized the number of drafts exchanged after the packet was distributed and the only element remaining the same is Option 3, where the balance of the water agreement is silent on the permit issue. Mayor Williams re-opened the public hearing. There were no comments.

Marianne Cone did not believe that state or federal agencies would exempt the Judge Tunnel portal *perpetually* as worded. Tom Daley explained that even if there is internal agreement, no one knows the landscape in 20 to 40 years from now. He stated that the real difficulty is negotiating a water deal in a public meeting. The Mayor again invited the audience to speak. Brooks Robinson reminded the Council that the CUP and MPD are being processed by the Planning Commission and these actions can be appealed or called-up by the Council.

Bob Wheaton, President and General Manager of Deer Valley Resort, described the complexity of the project. He pointed out that the Council goals displayed in the Council Chambers include transportation, parking systems, community amenities, events, and economic development. He emphasized that this project encompasses all of these top priorities. The Montage Hotel is significantly superior to the condominium project originally approved for the site.

Marianne Cone agreed that The Montage is a better choice than condominiums and if Council was just considering land use as a part of this approval, it would be a lot easier for her. The Mayor closed the public hearing.

Roger Harlan asked if there is case law addressing the length of time a governmental agency can be held accountable. Mark Harrington explained that the problem is ancillary impacts from an environmental activity that then interacts with a municipal water system and the potential responsible party for is no longer present. Often, the regulatory agency will seek to hold the public body accountable because it exists and the situation relates to its water system. He emphasized that the City intends to cooperate with the EPA, TMDL and watershed groups in mitigating any impacts. However, the City is unwilling to assume liability with other potential responsible parties and pass the burden to the community because it may be a more efficient process. There are so many unknowns with the Judge Tunnel and mining and reclamation activities. Mr. Harrington stated that it is prudent to hold Talisker responsible on a long-term basis. There has been a lot of progress on the agreement, but he feels we need to plan for any contingency.

David Smith stated that Talisker is concluding a lengthy process with the EPA and this mitigation project is a success story. Rather than pursuing a broad-based indemnity, he recommended having the courts and/or agencies decide and Talisker will live by the determination. Mandy Scully explained that they are willing to go to a third party, but the reason Talisker believes that the City carries responsibility is because it is the beneficiary of the water. Dana Williams responded that the City is also the beneficiary of the lead, arsenic, cadmium, and zinc in the water resulting from mining operations. Mr. Smith again discussed agencies or courts rendering a determination. Marianne Cone felt that the City taking responsibility is unfair to the public. Tom Bakaly discussed the 30 day window to record the annexation plat from the date of approval and suggested approving the annexation agreement contingent upon water being addressed within that time period and if resolution can not be reach, the water agreement will return to Council. Mayor Williams asked if there are other outstanding issues.

Jim Hier felt that Option 3 (staff report) doesn't define a resolution to the water issues and understood the City Managers suggestion of 30 days to resolve the water. Mr. Bakaly explained that if water is not resolved in 30 days, the annexation approval is null and void and asked for Council direction on this issue.

There was discussion about the flurry of recent drafts of the water agreement after the staff report was distributed creating confusion David Smith explained that the nature of the indemnity drafted is not something United Park can agree on and he believes the solution is the third party independent determination with regard to the discharge permit. Brooks Robinson described the location of the conservation easement area for Marianne Cone. Mayor Williams further explained that Summit Land Trust felt there was not enough value on the property to accept the easement because of mine waste. SLT was concerned about accepting any liability for remediation. Mark Harrington clarified that there will be 30 days to either obtain another holder or work out language acceptable to SLT. If those changes are substantial, the Legal Department would return to Council to review and approve those modifications. Doug Clyde, consultant, added that Talisker will maintain its environmental clean-up responsibilities in the Silver King area and Dave Smith stated that Talisker is still the property owner. There is also indemnity language included for the easement holder.

Candace Erickson explained her confusion in understanding the corporate structure. When the Flagstaff development is built out and the mining company goes away, who assumes the obligations assigned to UPCM; is it passed on to Talisker? Mandy Scully emphasized that UPCM would not be dissolved and David Smith stated that he can't imagine the dissolution of the entity. Joe Kernan interjected that he is pleased that the Silver King area will be reclaimed. Mayor Williams pointed out that Talisker could sell its properties tomorrow. Mr. Smith commented that they are bound by a number of extraneous documents that would not allow that to happen. There was consensus that the easement language is acceptable and the City Attorney noted that the holder must be a third party, unless the Council wants to amend the agreement so the City is the conservation agent.

There was discussion about the wording of the motion, specifically Option 3. Mark Harrington referred to the ordinance in the packet, and recommended an amendment to the draft development agreement to replace the last sentence on Page 116 with "*The 2007 Agreement shall include No. 7 as distributed by the Deputy City Attorney, unless otherwise agreed by both parties by February 15, 2007*". Tom Bakaly clarified that the Council will be agreeing to everything in the agreement except water and if there is not agreement on water by February 15, the 30 days will expire. The City Recorder suggested providing for a different effective date in the Ordinance allowing for more time. Mark Harington responded that the City has done that on one occasion but the state statute is not clear if this is permissible. The applicant assumed that risk and there were no protests and he clarified that the date of adoption is preferred.

Mandy Scully pointed out that Talisker can not accept Tom Daley's version of No. 7 and was confused how the process would work. Mark Harrington explained that if the Council adopts the motion as suggested and if Talisker accepts No. 7, staff would not return. If that doesn't happen, Talisker needs to propose a water agreement acceptable to the City Council by February 15. The Mayor hoped something could be worked out in two weeks. David Smith clarified that the annexation would not be effective unless the water issue is resolved.

Jim Hier, "<u>I move that we approve the UPCM Annexation at PCMR, the amendment to the Park City Zoning Map, the amendment to the Flagstaff Development Agreement, as conditioned or amended in the packet, subject to the amendment regarding the 2007 water agreement with the amendments as proposed by staff earlier today, Item No. 7 (a) through (f), unless otherwise approved or modified between now and the expiration of the agreement time period</u>". Joe Kernan seconded. <u>Motion unanimously carried</u>.

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 2:30 p.m. Members in attendance were Mayor Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; and Mark Harrington, City Attorney. Joe Kernan, "<u>I move to close the meeting to discuss property and litigation</u>". Jim HIer seconded. <u>Motion carried unanimously</u>. The meeting opened at approximately 3:50 p.m. Jim Hier, "I move to open the meeting". Joe Kernan seconded. Motion unanimously carried.

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

Prepared by Janet M. Scott

Janet M. Scott, City Recorder