PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JANUARY 8, 2009

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

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Bret Howser, Budget Manager; Shelly Hatch, Finance Analyst; Ron Ivie, Chief Building Official; Thomas Eddington, Planning Director; Matt Cassel, City Engineer; Kent Cashel, Transportation Manager

Brandon Thorpe, Ward Engineering and Bryce Ward, CRSA Associates

Dina Blaes, Preservation Consultant and Julia Petit, Planning Commissioner

1. Council questions/comments. Liza Simpson thanked Diane Foster and Crystal Ward for organizing a diverse and contributing group from the community to work with the Brindle Group on our carbon footprint. She also expressed appreciation to the Streets Department for clearing the entrance to the dog park which has been getting a lot of use. Candace Erickson reported on the Recreation Advisory Board meeting, specifically the remodel of the Racquet Club. She is pleased that VCBO is listening to input which is reflected the design. The dog park group is organizing a fund raiser for March 25 to acquire accessories for the park. The Mayor remarked on the productive meeting with the Brindle Group and the swearing-in ceremony for the new County Council. The grand opening of the remodeled high school was held this week and the School District applied for a Silver Leed certification for the project. The Mayor noted that he and Sally Elliott spoke to the Board of Realtors about City and County business. Roger Harlan commented on the high school dedication and the Planning Commission meeting where the Treasure Hill Project was discussed.

2. Business license amendments – nightly rentals. Bret Howser explained that a problem with interpreting the Code was brought to staff's attention with regard to licensing nightly rentals. In the past, the City has been issuing one business license to each property management company or business license holder rather than licensing each nightly rental premise and this practice prompted code enforcement issues. The Municipal Code specifies that each location should be licensed and a letter was sent in October informing property management companies that the City would now be issuing a separate license for each property. He explained that concerns were expressed by licensees about the $46 administrative fee being charged for each separate property and creating a financial hardship. Staff met with representatives from the lodging industry and it was decided to meet with Council on this issue to discuss options before licenses are paid this year.

Mr. Howser explained that all businesses are charged a $46 fee for administrative services. The administrative fee is created to recover the cost of the business license program and some code enforcement costs. Service enhancement and festival facilitation fees are also assessed, but are not in question. He explained that the issues involve the financial impact of charging property management companies for each property. However, there are problems with code enforcement and inspections that arise from not having a separate license for each location. Ron Ivie emphasized that the ordinance requires licensing per location and it is important to have contact information, especially in the event of an emergency. In many instances condominium building units may be managed by a number of property management companies. He felt that perhaps a license could be posted on units to identify properly licensed units because it is currently confusing to the public. Mr. Ivie stated that he fully supports enforcing the ordinance as written. In response to a question from Candace Erickson, Mr. Ivie indicated that 1,000 inspections were conducted in 2008 of new stock not units holding occupancy permits unless its management has changed. It is typical that the inspector visits the unit at least twice.

Jim Hier felt that the administrative fee should be adjusted if a property owner switches property management companies in the middle of the year. He stated that he favors not charging this year and performing a comprehensive analysis to arrive at an appropriate fee which is described as Option C in the staff report. The fee would be charged in 2010 and nothing would be recaptured for 2009. Bret Howser explained that staff is not proposing to collect $46 per location but only the administrative fee for each property management company this year. However, each location will have a business license with property management company information. Discussion ensued about the number of property management locations that are not licensed and out-of-state property management companies without a physical office in the City.

Bret Howser polled members about whether there should be separate licensure for each location and if so, whether to defer or waive the fees for 2009. The recommendation is to issue separate licenses this year, but to defer a decision on the fees until they are analyzed to determine the amount and if fees should be waived altogether for 2009. Roger Harlan pointed out the complexity of tracking nightly rental units especially when owners change management providers. Mr. Howser believed that separate licensure will actually help staff keep current with changes. Jim Hier pointed out that property management companies are already required to submit a list of units and believed that the City should collect the same amount in fee revenue as it did last year. Candace Erickson stated that she was unaware of the festival fee charged per bedroom and felt it appropriate to study related fees and allow some opportunity for the property management companies to talk with their clients about potential increases.

There was discussion about requiring companies to provide all pertinent information. Ron Ivie felt this recommendation is a sensible approach acknowledging that fees will need to be analyzed so that they're equitable and clear. Ms. Simpson discussed the 10 day requirement for the City to inspect nightly rentals and felt that the property management companies should be required to provide access; Mr. Ivie acknowledged the importance of cooperation. The Mayor encouraged involving representation from the lodging community in the fee analysis and Mr. Howser stated that staff will work together in arriving at an equitable distribution of costs. Mr. Ivie voiced his commitment to the process.

3. Hillside Avenue reconstruction update. Matt Cassel explained that on October 2, the design contract was approved for the Hillside Avenue reconstruction project but before the preliminary design is completed, Council requested reviewing it. He pointed out that there has been a lot of discussion on the project among staff members, but there is no staff consensus on the width of improved Hillside Avenue. Kent Cashel, Transit Department and Ron Ivie, Chief Building Official and Fire Marshal, favor a wider road section while the Planning Department, the traffic management and walk-ability group prefer a narrower street.

Brandon Ward noted that the design reflects input from staff and through illustration of renderings described the location and configuration of the road. The project consists of widening the road, which requires constructing a retaining wall system and a guardrail or barrier to provide roadside safety. Pedestrian access and a parking area at the bottom of the intersection are elements that need to be addressed by Council. The proposed parking area can accommodate about nine vehicles and paving it and building a small retaining structure along the stream would improve the intersection.

Mr. Ward explained that the Hillside Avenue retaining wall is proposed to be a concrete two-tiered terrace structure; the design provides some opportunities for aesthetics and visually breaks up the elevation of the wall. The rendering shows a road section of 20 feet and the uphill side will have a sidewalk or some type of graded shoulder or buffer between the existing structures and the roadway. The downhill side will have a guardrail with curb and gutter to protect the wall. He displayed additional illustrations of the retaining wall reminiscent of the mining era. In response to a question from the Mayor, Mr. Ward stated that Hillside Avenue is currently in failure mode. A schematic of the parking area was displayed and he explained the benefits of delineating access and egress within the intersection area. There will be enough room to accommodate the operation of the trolley. Matt Cassel interjected that before the final design is approved, the required turn-around radius will be determined.

Mayor Williams shared concerns from the neighborhood that improved Hillside Avenue not become a bypass route for trucks from Main Street or Marsac Avenue and asked about staff's perspective about the width of the road. Mr. Cassel stated that each department has different interests. Ron Ivie prefers a minimum 20 foot width which is a Fire Code requirement and needed to provide access for emergency vehicles. The width of Hillside Avenue is currently 14'17". Mr. Cassel explained that the neighborhood seemed to be split evenly on the preferred width of the road. He added that resident Peter Marth was comfortable with 20 feet and was more concerned about installing signs prohibiting commercial vehicles. Mr. Ivie stated that 20 feet is the minimum allowed under the Building Code. Under the Fire Code, It could easily be argued that Hillside provides secondary emergency access for Swede Alley and Main Street. He emphasized that 20 feet is the absolute minimum and if City standards were applied, the road would be much wider. A road built below standards may also create potential liability. Mr. Ivie added that 20 feet represents a balance of interests and he urged Council to support the minimum width requirement. He further clarified that the pavement width, including the curb on one side will be 20 feet, and the actual asphalt section will be 30" short of 20 feet, but is still considered the paved surface. The sidewalk is an add-on. Matt Cassel explained that his recommendation is to bring a sidewalk off the road near 9 Hillside Avenue and only for a short distance. The walkway would be covered so when snow is pushed off the road, it is safe for use. Constructing stairs to Main Street are proposed because it seems most pedestrians walking Hillside Avenue are headed to Main Street. Options include running the sidewalk along the road, fitting the sidewalk along the old Grant Avenue right-of-way, or running it through the two retaining walls to Old Town. Ron Ivie expressed that from a safety standpoint and considering the requirements for walk-ability, the street is too steep for a sidewalk adjacent to the asphalt. Locating it away from the road seems like a better alternative to reduce conflicts. Liza Simpson pointed out challenges in acquiring easements for access through old Grant Avenue. Candace Erickson indicated that she favors the stairs and Tom Eddington stated that this is the preferred option of the Planning Department; the width of the road is the only feature where there is not consensus. Matt Cassel agreed and clarified that the retaining wall design and paved parking area will need to be finalized by Council members.

Council discussed the current historical use of the intersection area being used for resident parking and Kent Cashel advised that typically parking adjacent to a park is prohibited during certain times of the day to discourage long term parking and/or storage. Jim Hier pointed out that if it is paved, it will need to be plowed and regulated and this is a huge change from the existing scenario. Joe Kernan felt that the area should be treated like neighborhood streets which are used for parking and regulated accordingly. He feels this is an amenity the residents would like to keep. Liza Simpson observed that most people parking there are residents of upper Main Street and suggested that they may be eligible for resident parking privileges in the China Bridge Parking Structure. Mr. Cashel explained that they are not eligible but felt that most upper Main Street residents use the Sandridge Avenue lots which are more convenient.

Roger Harlan felt it worthwhile to pursue the Grant Avenue right-of-way walkway and emphasized the importance of providing an adequate turn-around radius for the trolley. Mayor Williams expressed concerns about creating a formalized parking lot and believed regulating it may not be popular with residents. He felt the intersection area is used more than the Sandridge lots for parking. There was discussion about regulations and Liza Simpson suggested regulating parking like the Library lot where people are allowed to park overnight except for one night a week to allow for snow removal. This would solve the storage issue. Ron Ivie emphasized that from an environmental standpoint, the informal parking area is located in the waterway and it should be paved to contain contaminants. He pointed out that people can not legally park unless it is on a hard surface and he recommended that the area be improved. Mayor Williams stated that constructing a parking lot for this particular park is not logical since most park patrons will be walking there and the parking lot will be used by the residents. Matt Cassel explained that it was not intended to be parking for the park.

Candace Erickson felt that the retaining wall looks massive and asked if it needs to be two tiered. Mr. Ward explained that the design of the retaining wall is contingent on the final width of the road. The wall could be 15 to 20 feet tall and the idea of breaking it up into two smaller walls is a proposed visual solution. Ms. Erickson asked if the lower wall could be planted to screen the upper wall but was unsure if plant material would undermine the integrity of the structure. Brandon Ward felt it is possible as long as the vegetation can be maintained. The Mayor confirmed that the historic wall will not be altered in any way.

Thomas Eddington explained that preference for a narrower road was based on traffic calming approaches implemented by many communities. Eighteen feet without striping seems like a good width so from a visual perspective Hillside Avenue basically becomes a shared road. Liza Simpson added that information provided at the open house revealed there are many historic towns with narrow roads who manage to provide fire protection by acquiring the correct equipment. Discussion ensued about the narrow width of improved Prospect Avenue but that it serves different users and is not considered a secondary fire emergency access for Main Street. Ron Ivie reiterated that as a compromise, the paved rolled gutter is included in the road width to meet the minimum standard. Ms. Simpson favored not striping for traffic calming reasons and for compatibility in the neighborhood. Mayor Williams expressed the goal of keeping trucks off of Hillside Avenue. Mr. Ivie emphasized that this street has never been used as authorized construction mitigation but acknowledged that from time to time a delivery truck travels on Hillside. Matt Cassel spoke about the type of signs contemplated to regulate type of traffic. All members agreed to the 20 foot width including a rolled gutter.

Mr. Ward explained that the guard rail will be close to the travel way and suggested that a raised gutter provides more correction to the driver, protecting the guard rail. Members still agreed with a 20 foot width including a rolled gutter, no striping, and the installation of signs. The Mayor raised the question of paving the lot at the intersection. Jim Hier felt that a decision should be made now whether it is paved or not and emphasized the risk of parking cars on a pervious surface. Members decided to pave it. Liza Simpson asked for information on maintenance costs relating to both the historic trail and the stairway options.

3. Historic Sites Inventory. Thomas Eddington explained that staff is in the process of amending the Land Management Code to reflect landmark and significant status. The Planning Commission forwarded an unanimous positive recommendation last night. Dina Blaes stated that on October 2, the City Council directed staff to prepare amendment language and added that the changes are not radical. The amendment will replace the list of significant properties with an historic sites inventory. The list consists of buildings, structures and sites. Site is not a defined term and accessory structures are not specifically listed as eligible for consideration in the designation process in the current LMC.. The historic sites inventory approaches properties in a more comprehensive fashion and would consider accessory structures as a contribution to the significance of the entire site. The amendment will clarify that any owner or the Planning Department may apply for a hearing before the Historic Preservation Board to determine significance with the assumption that as surveys are conducted on a regular basis more structures may be discovered.

She explained that the current Code draws directly from nationally recognized standards but they are difficult to administer and apply. It is recommended to incorporate the nationally recognized standards but in a way that is clearer and more in keeping with what people who work in preservation will understand. She emphasized that property will have to meet criteria; it has to be significant, demonstrate historic integrity and be at least 50 years old unless it has achieved significance in the last 50 years. The existing LMC contains many *and/or statements* which is confusing. In response to a question from Jim Hier, Ms. Blaes explained that the Planning Commission last night recommended that properties not be limited to 50 years if there is significance. She explained that the language is not very different but clearer; the existing Code requires historic integrity and significance and the proposed LMC will require historic integrity, significance and age. She explained that the definition for integrity will include the words *feeling and association* as defined by the National Park Service for the National Register of Historic Places. Location, design, and setting are not defined terms in the current Code and are all requirements of the list. Ms. Blaes indicated that 99% of the buildings in Park City are going to be based on the mining era. The definition of *dissimilar* was discussed and Ms. Blaes described examples of dissimilar locations. Candace Erickson commented on the historic home moved from

Coalville to Doc Holiday in Prospector and expressed concerns that it would not be protected because of it being relocated to a dissimilar location. Ms. Blaes admitted that this house is in question because of the problem of not having any photos of it in Coalville. She strongly encouraged members to formulate a comprehensive policy and not one based on one or two emotionally charged examples.

Julia Petit, Planning Commissioner, agreed with Ms. Blaes that standardized criteria should be applied even with the risk of losing houses that do not meet the criteria. She noted that the Commission did not specifically discuss examples based on definitions. Candace Erickson stated that she has no issues with the landmark sites but she believed that creating a second tier would broaden qualifications to capture more buildings. Ms. Blaes noted that she understands the desire to broaden the policy but warned not to threaten the credibility and strength of the preservation program. Joe Kernan suggested expanding the second tier so that it includes everything and felt that a date may be a better standard than years, like the beginning of the ski industry. Ms. Blaes stated that this was discussed at length at the Planning Commission meeting who wanted the ability to go less than 50 years because of the potential loss of early ski industry structures. Language will be included in the draft for the public hearing with the standard *50 years old or has achieved significance within the last 50 years.* If someone argues significance, a reconnaissance level survey would be conducted of early ski industry properties, then intensive level surveys on the buildings to begin to develop an argument in favor of the A-frames, truncated A-frames. Joe Kernan expressed his goal of being able to appreciate more old homes even those not meeting criteria. Liza Simpson felt the program should be rigorous enough so it is a real preservation plan standing up to scrutiny and easily understood. She suggested a compromise by changing the wording to say *meets two of the criteria listed below (a), (b) or (c)* and asked the extent of the impacts of her recommendation. Ms. Blaes explained like all preservation plans, the LMC is one only component. At the Planning Commission meeting last night, there was discussion about high land costs discouraging preservation. She described huge additions on small historic structures or using inappropriate building materials.

With regard to Liza Simpson's suggestion, Ms. Blaes explained that it would be very difficult to apply one or two of three criteria. The second tier provides that the building must be at least 50 years old unless it has achieved significance within the last 50 years, it would require that the structure retain its essential historical form which will be defined in the Code. A structure would not be considered in its essential historical form if there is a change in the roof pitch, addition of upper stories or removal of upper stories outside the historic period, moving it to a dissimilar location, or additions that significantly obscure the structure, and it must still be significant. The Centennial House is a landmark because of its early mining era attributes and significant sites are seen as more than buildings, making up the fabric that gives Park City its broader overall historic character. She strongly urged members not to omit criteria because the farther the City moves from some recognizable preservation approach, the more the preservation program is undermined. In response to a question from Joe Kernan, Ms. Blaes advised not to use preservation as a tool to control the size, scale and mass of new development because they are two totally separate issues. *If it is historic, say it is historic; if it meets the criteria, say it is and fight for it and try to create incentives to keep it*. If it doesn't, it's not contributing to your program and what should be there is compatible in-fill that is going to actually compliment what is already in the historic neighborhood. She discouraged saving structures because of the fear of what could be built in its place. Liza Simpson understood the Doc Holiday example does not fit in this category. Joe Kernan acknowledged Ms. Blaes' expertise in preservation which the average citizen may not understand.

She urged members not to focus on the Doc Holiday home because it is still being assessed. The historic residence was prominently placed in Coalville but it may be determined that Prospector is not a dissimilar location. The focus is broadening the definition of historic significant sites which are at least 50 years old that retain an essential historical form associated with local history. The Historic Building Inventory was adopted by the HPB in 2007 and the new inventory includes the same information but further define some as landmark, some as significant, and additional sites that will be both significant and landmark. In addition, the 16 to 18 mining structures and buildings on the resort property will become part of the inventory. Some are landmark and some are significant sites. The proposed LMC amendments will include criteria for removing a site from the Historic Sites Inventory, which is important because currently there is a process but no criteria. There are no intensive level surveys on each of the buildings and she strongly recommended that the City begin the work on this project to better protect Park City's historic stock. Jim Hier suggested modifications to draft definitions.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JANUARY 8, 2009

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Library and Education Center on Thursday, January 8, 2009. Members in attendance were Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Katie Cattan, Planner; Jacquie Mauer, Planner; Bret Howser, Budget Manager; Brooks Robinson, Planner

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Liza Simpson thanked Public Works personnel for clearing the parking lot and entrance to the dog park.

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

None.

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF DECEMBER 18, 2008

Roger Harlan, "I move approval of the work session notes and minutes from the meeting of December 18". Jim Hier seconded. Motion unanimously carried.

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")*

Consideration of a Resolution establishing a regular meeting date, time, and location for meetings of the City Council of Park City, Utah for 2009 – The Mayor requested a motion to approve. Roger Harlan, "I so move". Liza Simpson seconded. Motion unanimously carried.

VI RESIGNATIONS AND APPOINTMENTS

1. Consideration of the appointment of Mayor Pro Tem and Alternate Mayor Pro Tem – Liza Simpson, "I move to appoint Candace Erickson Mayor Pro Tem and myself Alternate Mayor Pro Tem". Joe Kernan seconded. Motion unanimously carried.

2. Consideration of the appointment of a Member and an Alternate to the Employee Transfer and Discharge Appeals Board – Jim Hier, "I move we appoint Candace

Erickson and Liza Simpson as the Council representatives to the Employee Transfer and Discharge Appeals Board with Joe Kernan as the Alternative". Roger Harlan seconded. Motion unanimously carried.

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

1. Consideration of an Ordinance approving the Four's Company Replat, a re-subdivision of Lots 26-29 and a portion of Lots 25 and 30, Block 73, all of Lot A of the 187 Daly Avenue Replat, Millsite Reservation, located at 161, 167, 173, and 187 Daly Avenue, Park City, Utah – Planner Katie Cattan explained that the request is to clean up lot lines between the above-mentioned properties. The application was approved by the Planning Commission who forwards al positive recommendation to Council. The Mayor opened the public hearing; there were no comments, and the hearing was closed. Jim Hier, "I move we approve the Four's Company Replat as conditioned in the staff report". Candace Erickson seconded. Motion unanimously carried.

2. Consideration of an Ordinance approving the Fisher Amended Subdivision, a replat of Lots 17 and 18, Block 74, located at 118 – 124 Daly Avenue, Park City, Utah – Ms. Cattan explained that the owners of the property acquired a portion of vacated Anchor Avenue providing an additional 15 feet. The Planning Commission asked that vacated Anchor Avenue be hatched on the plat and a note be added that the hatched area will not be included in future footprint calculations. As a result, no additional square footage would be added to the structure and the plat will clearly show the creation of one lot of record for ownership. The Mayor opened the public hearing; there were no comments. The public hearing was closed. Jim Hier, "I move we approve the Fisher Subdivision amended plat as conditioned by the Planning Commission and the staff report". Roger Harlan seconded. Motion unanimously carried.

3. Consideration of an Ordinance approving the 1910 Prospector Avenue Office Condominiums Record of Survey located at 1910 Prospector Avenue, Park City, Utah – Planner Jaquie Mauer stated that staff finds good cause for the condominium conversion record of survey, separating the building into three commercial units for office space, to allow the individual sale of the units, and the removal of the lot line between 23b and 23c, bringing the location of the structure into compliance. The Mayor opened the public hearing and with no input, closed the hearing. Liza Simpson, "I move that we approve the 1910 Prospector Avenue Office Condominium Record of Survey based on the findings of fact, conclusions of law, and conditions of approval as found in the draft ordinance. Jim Hier seconded. Motion unanimously carried.

4. Consideration of an Ordinance amending Title 4, Licensing, Section 4-2-23, Fee and Tax Payments, Renewals and Penalty, of the Municipal Code of Park City to defer payment of the administrative fee for lodging business licenses until 2010, and to allow for refunds of lodging administrative fees already paid – Bret Howser stated that this was discussed at length during work session where staff was directed to proceed with

separate licensure for nightly rental units and to charge one $46 administrative fee to each property management company as has been done in years past. Council also directed staff to study the fee structure as part of the budget process in the spring and formulate recommendations regarding amendments to the program. He read a modification to the draft ordinance to reflect Council direction, *For the 2009 billing period due January 1, 2009, each local representative will be charged one $46 administrative fee for a lodging license. If multiple $46 administrative fees have been paid prior to January 8, 2009 a refund will be issued for the amount of the administrative fee greater than $46.* It was clarified for the benefit of the audience that the fee for each unit has been waived and not deferred, however, each property management office location will be charged the $46 administrative fee. An analysis of the fees will be conducted by staff and representation from the lodging community and that assessment will be due 2010. The Mayor opened the public hearing.

Teri Whitney, Lodging Association, expressed her appreciation to the City for involving lodging representation in the process. She felt it is important for lodging to be in compliance. She appreciated Council's decision to waive the fees for 2009 and explained challenges in collecting deferred payments. There was discussion about the potential to cross-reference data for better tracking. She encouraged holding onto licenses until all pertinent information is provided to the City by the management company.

Joe Kernan, "I move we approve the Ordinance with the amendments that Bret (Howser) described". Liza Simpson seconded. Motion unanimously carried;

5. Determination of compliance with Section 15-1-18 of the Land Management Code regarding Final Action, Timing, and Form of Appeal of a written request submitted by Jamie Thomas on November 17, 2008 to appeal the Steep Slope Conditional Use Permit approval of the Marsac Avenue Affordable Housing Project, located at 100 Marsac Avenue, Park City, Utah rendered by the Planning Commission on October 22, 2008 – Planner Brooks Robinson explained that the City Council has the final authority on the administration of the Land Management Code. On October 22, the Planning Commission approved ten steep slope conditional use permits and concurrently with that action forwarded a positive recommendation to the Council on the subdivision with written findings of fact and conclusions of law supporting the approvals. He stated that Council reviewed the subdivision earlier and remanded it to the Planning Commission to be heard concurrently with the steep slope CUPs.

Mr. Robinson explained that an appeal was received by the Planning Department ten days after the City Council approval of the subdivision, but significantly after the final action by the Planning Commission on the CUPs. In accordance with the LMC 15-1-18, final action of a Planning Commission action must be received ten days which did not occur in this instance. He stated that there is no basis in the LMC for claiming that the timing period for appealing a Planning Commission action begins after the City Council approval of a concurrent subdivision. It is not the intention to discuss the merits of the appeal itself tonight, but if Council decides the appeal was submitted in a timely manner, an appeal hearing can be scheduled. It is staff's recommendation to deny the request for an appeal based on timeliness and the fact that the Council would not have jurisdiction to hear the merits of the appeal. Findings of fact, conclusions of law and an order dismissing the appeal are recommended to be accepted by Council members.

Jamie Thomas, appellant on behalf of the Ontario Court Driveway Association, expressed his confusion about language in the staff report because he is described as the applicant rather than the appellant. If he is the applicant, he should have been notified about this meeting. If not, then why is he named as the applicant? The Mayor explained that the Council is being asked to make a decision on whether the appeal petition was submitted in a timely manner, and this deliberation has nothing to do with the merits of the 100 Marsac Avenue Project. Mark Harrington emphasized that Mr. Thomas is not the applicant and the wording in the staff report is a grammatical error. Mr. Thomas stated that his being in attendance is a coincidence because he did not know this was scheduled tonight. He thanked the Mayor for advising Peter Barnes about the agenda at 8 a.m. this morning who then brought it to his attention. Otherwise he would not have had this opportunity to raise these questions.

Mark Harrington disagreed and stated that he informed him personally that staff had no jurisdiction to dismiss the appeal on its own and that he could withdraw the appeal or it would be scheduled for City Council to determine if the submittal was timely.

Mr. Thomas stated that an email from Polly McLean sent on Wednesday, November 26, 2008 at 9:44 a.m. read *I have received your appeal and reviewed it, however, pursuant to LMC Section 15-1-18, appeals must be made within ten calendar days from the final action. Final Action is the latter of the final vote or written decision on a matter. Final Action on the CUP approval occurred in front of the Planning Commission on October 22, 2008. If you wish to schedule this before City Council, you may however, Legal will recommend to them that they lack jurisdiction and your appeal will be denied on that ground. If you wish to withdraw your appeal, we will refund your application fee in full. Please let me know how you would like to proceed as soon as possible but please no later than December 10, 2008.*

On Wednesday, December 3, 2008 at 5:13 p.m., Ms. McLean further wrote, *I wanted to confirm that you received my email below.*

On Tuesday, December 9, 2008, 3:16 p.m., he responded, *Please be advised that we are withdrawing our appeal under protest. Legal has already predetermined the appeal before going to Council. Further, could you please explain how the Planning Commission had jurisdiction to approve ten steep slope CUPs before the lots existed or how they had jurisdiction to approve an MPD when LMC 15-6-2 specifically disallows it.*

Mark Harrington insisted there was another response but Mr. Thomas said he had not received another response. He added that this speaks to the process where Legal had predetermined the request for an appeal and so they withdrew the appeal. He found out third-hand today that they were named as *applicants* to the consideration of timeliness and that his name was individually listed as the representative. The reason he believes the appeal is valid was that the LMC clearly says Final Action is defined by Section 15-15-1.90, *the latter of the final vote or written decision on a matter*. A CUP can not be approved or finalized without a subdivision in place. The CUP was approved by the Planning Commission on October 22. Final action on the subdivision was approved by the City Council on November 6, 2008 which was the Final Action, making the CUP valid. The appeal was submitted on November 17, 2008 which is ten days, including the weekend, from November 6, 2008. Mr. Thomas insisted that they couldn't appeal before then because Final Action had not been taken.

In response to a question from Liza Simpson about why this matter is before Council, Mark Harrington stated that the withdrawal of the appeal was conditional (under protest) and staff did not have the ability to accept a conditional withdrawal. He understood that tonight's meeting was clearly communicated and he recommended that Council follow staff's recommendation. Mr. Harrington further explained that the withdrawal was recommended so that the appellant could recover the appeal fee. Jim Hier recalled that MPDs and CUPs are approved by the Planning Commission before plat recordation. Mark Harrington stated that this is typical but not always the case, but all actions are separate. Mr. Hier believed that the statutory time for submitting an appeal of a Planning Commission decision is ten days; this was received past the ten days and the appeal is not valid. He questioned why this is even before Council. Liza Simpson was surprised to learn that *under protest* is considered a legal condition and Mark Harrington reiterated that because that language was used, staff could not accept the withdrawal.

Roger Harlan, "<u>I move approval to dismiss an appeal by the Ontario Court Driveway Association on an action by the Planning Commission which took place on October 22, 2008 pursuant to the draft Order</u>". Joe Kernan seconded. <u>Motion unanimously carried</u>.

Mayor Williams asked if staff contacted Mr. Thomas with the actual date of the meeting and Mr. Robinson indicated that he would have to refer to Polly McLean's email to Jamie Thomas. The Mayor did not question Council's process but is concerned that adequate notice was not given. Mark Harrington understood that the date was confirmed with Mr. Thomas' attorney. Mr. Thomas stated that is inaccurate and his attorney has nothing to do with this matter whatsoever.

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 3 p.m. Members in attendance were Mayor Dana Williams, Candace Erickson, Roger Harlan, Jim Hier, Joe Kernan, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; and Mark Harrington, City Attorney. Roger Harlan, "I move to close the meeting to discuss property and litigation". Joe Kernan seconded. Motion carried unanimously. The meeting opened at approximately 3:45 p.m. Liza Simpson, "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