

**PARK CITY COUNCIL WORK SESSION MINUTES
SUMMIT COUNTY, UTAH
DECEMBER 6, 2012**

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

Diane Foster, Interim City Manager; Mark Harrington, City Attorney; Heinrich Deters, Trails and Open Space Project Manager; Trails; Joan Card, Environmental Regulatory Affairs Manager; Jim Blankenau, Environmental Regulatory Program Manager

1. Council questions/comments. Councilman Dick Peek reported the Historic Preservation Board denied an appeal for 205 Main Street and awarded the annual Historic Preservation Award to Washington School Inn. He relayed a conversation with Sandra Morrison, Director of Park City Historic Museum regarding future storage needs of the museum. At his suggestion, Ms. Morrison submitted a letter to Council outlining those needs. Mr. Peek polled Council members to determine support for directing staff to engage in a conversation on storage needs and possible solutions for the Museum. Council members all supported continuing the conversation. Interim Manager Diane Foster indicated Staff would return with a discussion about building options, defined needs for both physical space and volume of space, potential options and possible public private solutions. Regardless of the long-term solution the Museum will have to move out during the renovation. Mr. Peek noted the Museum has money allocated in their budget to move the items currently in storage.

Councilman Andy Beerman attended the Olympic press conference hosted by Governor Herbert and Mayor Becker announcing Utah's desire and readiness to bring the Olympics back to Utah in the future. He also attended Park City Municipal employee's holiday party. Mr. Beerman relayed his experience with an idling taxi driver at Fresh Market who refused to park the car and turn it off. He stressed that the City needed to either do a better job of educating the public on our idling ordinance or it needs to enforce it stronger and put some teeth in it. Fresh Market is a public parking lot and they have not submitted an alternative plan so they fall under the City's ordinance. Council members agreed to further discussion about consequences if the education element isn't successful.

Councilwoman Simpson attended the Lodging Association luncheon, Summit County Health Department meeting and the Recreational Advisory Board meeting. Ms. Simpson also attended the Fire Board meeting and noted that Robbie Beck and Jim Bacon are retiring from the Board.

Mayor Williams shared a conversation he had with a local physician in Park City regarding the lack of a twenty-four hour pharmaceutical business in town. Mayor Williams suggested, and Council supported, further dialogue among local pharmacies to discuss how they might work together to provide 24 hour service.

Mayor Williams also addressed the topic of the future of broadband in Park City and would like to facilitate a discussion that includes community members. Council members indicated they would be interested because it was very important to the economic future of Park City. Interim Manager Foster suggested that she, Phyllis Robinson, Jonathan Weidenhamer and Scott Robertson develop ideas and return to Council for study session. Mayor Williams suggested including interested citizens in the Council discussion.

2. COSAC (Citizens Open Space Advisory Committee). Heinrich Deters, Trails and Open Space Coordinator, explained that recent passage of the one-half percent Additional Resort Cities Sales Tax provides an additional funding source for open space. Staff is recommending creation of COSAC IV and seeks Council's direction regarding terms, residency, and composition of the Board. Council members confirmed that Cindy Matsumoto and Andy Beerman would be liaisons.

Mr. Deters explained that past committees had comprised not only an at-large application process, but inclusion of the following groups: Mountain Trails Foundation, Summit Land Conservancy, Basin Open Space Advisory Committee, Chamber Bureau, Board of Realtors, Recreation Advisory Board, Planning Commission, and Council members. Mayor Williams suggested inviting participation from Utah Open Lands. Council members supported his suggestion. They agreed that five at-large positions was sufficient and expressed a preference for residency. All members will have voting privileges, although the two Council liaisons would not vote.

Council Member Liza Simpson request a minor modification in the fifth *whereas* of the resolution regarding the funding source by inserting "*a portion of*" prior to which will provide an ongoing funding source.

3. Blue Ribbon Commission on the Soil Ordinance and Soil Disposal Options. Joan Card, Environmental Regulatory Affairs Manager and Jim Blankenau, Environmental Regulatory Program Manager reviewed the Park City Soil Ordinance and the challenges of the economic and environmental effects on Park City and surrounding areas. The Ordinance, for purposes of this discussion has two cornerstone requirements: 1) a 6-inch clean soil cover or "cap" to minimize exposure within the Soil Ordinance Boundary; and, 2) any soils that are excavated from within the boundary must be taken to an approved facility.

Between 2005 and 2010, Richardson Flat was that approved facility; however, in May, 2010, EPA and the mine company notified the City that the repository was no longer available for soils coming from the Park City Soil Ordinance Boundary. The City engaged with EPA and the mine company and was able to reach a temporary solution for city-generated soils but was not ultimately able to reach a resolution on long-term plan for soils coming from the Soil Ordinance Boundary for additional municipal soils and privately generated soils.

Ms. Card explained Staff believes this is a challenge the community faces as a whole, and recommends the creation of a Blue Ribbon Commission on Soil Ordinance and Soil Disposal Options. Staff envisions a multi-faceted community task force charged to: 1) understand and evaluate the environmental and economic challenges presented by Park City's mining legacy; 2) explore possible changes to the Park City Soil Ordinance; 3) explore soil disposal options; and 4) make recommendations to Council that balance public and private interests and that will inform future Council directions.

Ms. Card noted Staff envisions a workgroup of 12 to 14 members representing broad sectors of the community ranging from government, environmental, health, business, commercial, real estate and construction interests, and ski resorts and mining industries. She noted the commission would address topics such as: soil ordinance purpose; soil ordinance boundary, soil ordinance standards, "de minimum" exemption, disposal needs

and options and public private partnerships. The effort should result in an educated, well-vetted, public process, and a report that will inform the municipality and the community as a whole, and facilitate Council direction on the topic in the future.

Ms. Card explained Staff envisioned a four to six week timeline with weekly meetings beginning after Sundance through early spring, and a report and recommendations to Council in April. Council Member Simpson asked if there was a reason to present the recommendations in April. Staff envisioned people investing a lot of time for a short period of time and Staff was willing to work with Council on a timeline. Council Member Butwinski noted that rationale had worked very well with the Walkability program.

Ms. Card explained it was a true "Blue Ribbon Commission" and Council would be asked to reach out into the community to select people who would be important to this process. She explained it would be a public process and Staff would work closely with the group to provide background and educational information. Council was supportive of appointing a Blue Ribbon Commission and supported a quick timeline.

4. Risner Ridge Open Space Parcels. Trails and Open Space Manager Heinrich Deters explained that Summit Land Conservancy was asking for the granting of conservation easements on approximately 53 acres of city-owned open space property near Risner Ridge. Cheryl Fox, Executive Director of SLC, joined Mr. Deters during the presentation and discussion.

Council Member Alex Butwinski disclosed that he owns property in Risner Ridge.

Mr. Deters explained the City acquired several platted open space parcels in the Risner Ridge area via the Quarry Mountain Master Planned Development agreement. Additionally, a 7.83 acre parcel was acquired from Arnold Industries via a development agreement associated with Park Meadows and the American Saddler waterline. Some of the lots were protected with deed restrictions prohibiting building while others were not. Staff has been working with Summit Land Conservancy and Risner Ridge Homeowners Association representatives to identify options to ensure the open space remained undeveloped. The Risner Ridge HOA, with assistance from Summit Land Conservancy, collected 143 petition signatures supporting the permanent preservation of the Risner Ridge open space parcels through the use of conservation easements.

Mr. Deters explained Staff's position that granting conservation easements on parcels with existing restrictive covenants such as deed restrictions was redundant. Further, Staff finds that conservation easements should be considered at the time of the property's acquisition, where all relevant parties can agree upon the process to preserve specific conservation values.

Mr. Deters used the comparison of chocolate versus vanilla ice cream to describe deed restrictions versus conservation easements noting that both instruments can be used to protect open space. Deed restrictions are widely used through the planning process when a development has obligations towards open space. Conservation easements are most often

utilized to preserve open lands with specific “natural values”, while providing the grantor tax benefits.

City Attorney Mark Harrington emphasized they are not instruments of the same purpose and are completely different. The grantor of a deed is a new owner of a property and the original owner is the beneficiary of the deed restriction in that they don't want the property any more, but want to ensure that future uses are consistent with open space purposes. With a conservation easement, the owner wants to retain ownership of the property and want to take the benefits of removing the ability to develop it for certain purposes and insure long-term protection of the property.

He explained the City cannot require conveyance of a property interest to a private entity during an exaction process and this distinction is relevant because part of the parcels were acquired in that development process. The City can only exact things for the public benefit and cannot require conveyance of a property interest to a private entity, even a non-profit, during an exaction process. He further explained that a conservation easement was not a management agreement, it was the conveyance of a property interest to another entity; further, one cannot hold an easement if it is the fee owner. That is a merger of title and extinguishes the easement.

Mr. Deters explained Staff's recommendation was a middle ground option which would place deed restrictions to the two Eagle Pointe parcels that are platted open space but do not currently have deed restrictions and would place a deed restriction to the American Saddler waterline parcel. Staff suggested the citizens who were willing to place money for the conservation easement might provide those funds to Summit Land Conservancy for stewardship or new acquisitions.

Summit Land Conservancy Executive Director Cheryl Fox explained the neighbors approached them to ask for a conservation easement and they felt if the neighbors were willing to fund the stewardship endowment it seemed to make sense. She stated conservation easements are meant to last forever and to protect certain conservation values. The open space, recreational access, view sheds across Park Meadows and the wildlife habitat are important conservation values they would be willing to protect and believe easements are the best tool. She stressed they sent out 255 mailings and received 143 positive responses. She requested direction from Council.

Cindy Matsumoto expressed particular concern about the 10 acre parcel because it linked areas of Quarry Mountain and Round Valley and provided parking, trailheads and enhanced wildlife migration. She did not feel it would set precedent for other parcels because it is contiguous with the City's large open space parcels.

Ms. Fox pointed out the McPolin farm lands were purchased with the City's General Funds and held for nearly ten years before being protected by a conservation easement

City Attorney Mark Harrington clarified that past Council policy direction had a range of options for protecting open space, but moving forward the intention was to use conservation easements only on properties acquired with bond money.

Interim City Manager Diane Foster interjected that deed restrictions are a valuable tool that provides permanent protection to the parcels. From Staff's perspective, it is redundant to spend additional funds to add a level of protection in a community that is very committed to open space. Staff has provided a recommendation that provides the same protection the neighbors' are seeking from a third party.

Council Member Andy Beerman asked how a deed restriction could be overturned for economic hardship. Ms. Fox explained that if an owner were allowed to sell the property, use the money, and do something else of benefit for the City, a court of law would approve removal of the deed restriction.

City Attorney Harrington argued there may be ways to argue how to get relief from a deed restriction, but they are so extreme that is a huge oversimplification. The deed restriction is actually stronger than a conservation easement because the consequence isn't purely financial. Ms. Fox stated there was some sketchy provenance on some of these parcels and the reversionary interest that could benefit and hold one to a deed restriction was not there.

Mr. Harrington concurred that was a valid point and encouraged legislation at the State level to provide long-term enforceability of public forfeiture to a public entity. He was fully supportive of trying to create long-term ways to ensure third party enforceability and there are ways to do that short of a conservation easement. When a long term priority is wilderness, or preservation as is, conservations easements are a good tool. When the priority is to allow a balance of recreation use and mixed uses that are hard to forecast or define now, how specifically you define them is what governs that down the road. He stressed they were all on the same page and Heinrich's statements that we were talking about flavors of ice cream was perfect. Staff is not opposed to conservation easements but wants them to be done deliberately and consciously, knowing that they may create imitations that were not intended at the time the property was acquired.

Council Member Beerman noted Staff cautioned against placing conservation easements on inappropriate parcels such as these. He felt they represented a large piece of land, were in a wildlife corridor, and contiguous to existing open space parcels that seemed to fit the criteria. Mr. Deters commented that conservation easements were often used on large parcels of wilderness where uses and prohibited uses could clearly be defined. When you introduce many people and many uses into open space, it must be managed strongly and that management can be difficult when there is a conservation easement on it.

Council Member Cindy Matsumoto commented the new source of funding would not contain bond language and she encouraged Staff to consider that in the future. Attorney Harrington explained that was why, in this situation, Staff supported extending the deed restrictions to all the parcels and using the same language consistently.

Council Member Liza Simpson supported the deed restrictions. She expressed frustration by the discussion about conservation easements, funding, monitoring, endowments and ensuring that it is self-sustaining. She requested a study session with COSAC to discuss a strategic open space plan that further defines where wildlife corridors are and specific conservation easements that could be placed in different areas so we have rationale, deliberative methods for placing a conservation easement on a specific parcel. She wanted to have full understanding going forward of not only paying for the conservation easements, but understanding how we are going to pay for continued monitoring.

Council Member Dick Peek also supported deed restrictions and agreed that a long term strategic discussion would be beneficial. Council Member Alex Butwinski concurred.

Mayor Williams favored a third party check on land that the government owns. Although he felt there should be a conservation easement, he was willing to support extending the deed restrictions and having the dialogue with COSAC.

Attorney Harrington encouraged an open policy level discussion and felt they could separate acquisition from long-term protection. The use of the phrase open space is widely misunderstood by the community and this is about public trust. The City holds lands for public trust and is trying to ensure that the trust is not broken, and that we are managing the property consistent with appropriate public uses.

Interim City Manager Diane Foster summarized that Council has directed Staff to extend the deed restrictions on the parcels. There were still questions about extending the third party enforcement to Summit Lands Conservancy on those deed restrictions. Attorney Harrington suggested they wait to do it in conjunction with that discussion because Summit Land Conservancy will have to decide whether they want to do it based on their internal obligations and responsibilities. They may not want to do that if it doesn't give them the tools to do it effectively.

Ms. Fox stated that Conservations Easements are a tool that has been used effectively. There is a stronger team protecting your open space when there is a third party holding the conservation easement and Summit Land Conservancy knows how to use that tool. Many neighbors support this and are eager to hear Council's direction. The City could proceed with deed restrictions and learn something new, or utilize known practices. She agreed with the need to have discussions about ongoing stewardship for other parcels in the future; however, the neighbors have agreed they will fund this stewardship. If Council opts to place deed restrictions on the parcels, she would have to take that discussion back to the SLC Board.

Mayor Williams restated Council's direction for Staff to move forward with deed restrictions and stressed that discussions about easements will continue. Council members have requested that conversation to be a COSAC priority when it is reconstituted.

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I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at 6 p.m. at the Marsac Municipal Building on Thursday, December 6, 2012. Members in attendance were Dana Williams, Andy Beerman, Alex Butwinski, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Diane Foster, Interim City Manager; Mark Harrington, City Attorney; Clint McAfee, Water Manager; Jessica Winderl, Paralegal; and Lisa Rogers, Paralegal

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Water Manager Clint McAfee announced that the Quinn's Junction Water Treatment Plant received a Project of the Year award from The American Council of Engineering Companies, Utah Chapter, in the Water and Wastewater Division. This is based on the innovative application of new and existing technology, future value to engineering profession, social, economic and sustainable design features, complexity and basically exceeding the client's needs. The Mayor requested a work session update on the latest turbine technology.

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

There was no public input.

IV NEW BUSINESS

1. Consideration of authorization of the following Insurance premium payments for the 2013 City Insurance placement covering a one-year period January 1, 2013 through December 31, 2013 in a form approved by the City Attorney

a) \$127,188.00: Premium payment to States Self-Insurers Risk Retention Group, Inc. ("States") for public entity broad form excess liability insurance (including General Liability, Employment Practices Liability, Automobile Liability, Law Enforcement Liability, *Terrorism Risk Insurance Act** and Public Officials Error and Omission Liability);

b) \$4,276.00: Premium payment to States Self-Insurers Risk Retention Group, Inc. ("States") for Potable Water Treatment Operations insurance supplement;

c) ~~\$171,012.94~~ \$153,762 Premium payment to Workers Compensation Fund ("WCF") for workers compensation insurance;

d) \$111,352.00 Premium payment to Affiliated FM ("Affiliated") for property, boiler and machinery insurance; and

- e) \$32,166.00: Premium Payment to Zurich's for Cyber Liability.

Paralegals Jessica Winderl and Lisa Rogers introduced Patti Bouman from Marsh USA. Ms. Winderl explained the renewal process which includes providing our broker, Marsh USA, with information such as updated property schedules for the City, fleet schedules, payroll, etc. so they can seek bids in markets applicable to the City's needs.

Ms. Winderl explained the City is self-insured up to \$250,000 and in the past has used States Self-Insurers Risk Retention Group, Inc. for public entity broad form excess liability insurance.

States also provided a quote for Potable Water Treatment Operations. Staff recommends remaining with States for both policies. Staff also recommended selecting Affiliated FM for property, boiler and machinery insurance.

Patti Bouman, Marsh USA, explained the National Council of Compensation and Insurance had reclassified some payroll which resulted in a revised price for the City's Workers Compensation Fund. The premium has been reduced to \$153,762.

Ms. Winderl explained that cyber liability is a new area of insurance which is becoming relevant for organizations who store sensitive information on computers. They obtained a quote from Zurich's for \$32,166 and recommend securing this protection. Scott Robertson explained every state has different laws associated with responding to data breaches and if the City does not meet those requirements the insurance covers the liability associated with not meeting the regulatory compliance component. Ms. Bouman explained the insurance covered notification costs as well as actual injury to other parties.

Alex Butwinski, "I move to authorize Insurance premium payments for the 2013 City Insurance placement covering a one-year period January 1, 2013 through December 31, 2013 in a form approved by the City Attorney". Liza Simpson seconded. Motion unanimously carried.

VI ADJOURNMENT

With no further business, the regular meeting adjourned. The Mayor announced that members of Council would meet at Butchers and no public business would be conducted.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:00 p.m. Members in attendance were Mayor Dana Williams, Andy Beerman, Alex Butwinski, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Diane Foster, Interim City Manager; Mark Harrington, City Attorney; Heinrich Deters, Trails and Open Space

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Project Manager; Jason Glidden, Marketing Manager; Tom Daley, Deputy City Attorney; Clint McAfee, Water Manager; and Brooke Moss, HR Manager. Liza Simpson, "I move to close the meeting to discuss personnel, property and litigation". Alex Butwinski seconded. Motion carried unanimously. The meeting opened at approximately 4:45 p.m. Andy Beerman, "I move to open the meeting". Alex Butwinski 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 Sharon C. Bauman, Senior Recorder/Elections

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Sharon C. Bauman CMC, Deputy City Recorder

