PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
NOVEMBER 17, 2011

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

Tom Bakaly, City Manager; Mark Harington, Sharon Bauman, Election Officer; Clint McAffee, Water Manager; Chad Root, Chief Building Official; Richard Carlile, Building Inspector; Heinrich Deters, Trails Manager; Nate Rockwood, Budget Analyst; and Bret Howser, Budget Manager

Board of Canvassers
Election Officer Sharon Bauman stated that a canvass must be held following the Municipal Election and the official results have been received from Summit County which include early voting, absentee ballots and the provisional ballots which were verified as acceptable for counting. The final totals are as follows:

Andy Beerman	870
Anne Bransford	300
Dick Peek	879
Liza Simpson	794

She reported that Andy Beerman, Dick Peek and Liza Simpson are certified as duly elected for the office of City Council for four year terms beginning on January 1, 2012. Ms. Bauman added that Park City has 5,544 registered voters and 1,082 cards voted but 2,865 votes were cast because everyone had the ability to vote for three Council members and not every voter voted for three. She urged members to review the report and adopt the Resolution certifying the official canvass report. Alex Butwinski, "I move we approve the canvass for the Municipal Election held on November 8, 2011". Joe Kernan seconded. Motion unanimously carried.

Work Session

1. Council questions/comments. Joe Kernan reported that Summit County is looking at issuing a RFP for recycling services and will be making decisions on the scope and funding the program. Liza Simpson stated that at the Friends of the Farm meeting, additional interpretive signage was discussed including stations with QR codes for smart phones and iPads. She felt it would be useful to consider these new technologies and applications for signage throughout the City and to familiarize other boards with these products. Ms. Matsumoto felt it worthwhile to pursue and Ms. Simpson suggested that signs be discussed during Visioning. Cindy Matsumoto stated that she attended the Peace House and Habitat board meetings this month and both are stronger financially from a year ago. Dick Peek relayed that he attended the HPB meeting where the historical significance of various buildings for the Historic Sites Inventory were discussed. The Post Office, 450 Main Street, was added as a significant site and some Grant Avenue houses built in the 1970s were removed from the list. Liza Simpson congratulated the PC Foundation on a very successful event. The Mayor disclosed that he received an email from Robert Neumeister concerned about the issuance of the remaining walkability bonds and felt the Council should hold off on proceeding. He received a number of calls on the Occupy Park City permit.

2. Water impact fee update. Clint McAffee stated that during the September 29, 2011 meeting, Council requested that staff provide an update on impact fees. Kathy Lundborg wrote a manager's report for the meeting of October 13th and this session is intended to clarify any issues. The water impact fee is assessed on a square foot basis and the amount per square foot charged is dependent on the size of the property. Some fees are very clear, like restaurants, where specific amounts are listed per added square foot but others are a little more complicated and are calculated with the help of other sources like the Utah Department of Drinking Water. If an applicant feels the fee is unreasonable, an independent fee calculation can be considered and the City Manager has the authority to adjust the fee. Mr. McAffee advised that the bulk of the proposed changes are housekeeping matters. The ordinance changes the square feet per occupant from seven to fifteen which greatly reduces the amount of the fee. This is consistent with the way staff has been charging in the past. Other code references are being updated to reflect the current 2009 IBC.

Staff is working on a major code update which will take a bigger look at the methodology used to calculate fees involving moving away from the square foot calculation method and moving toward a fee per fixture unit calculation. For example a toilet might be rated .5 and a sink might be .6 and there will be a methodology to calculate how many fixture units are being added to a structure or installed in a new building. Cindy Matsumoto liked the fixture approach because of the trends in building more bathrooms in houses. He explained the process in amending impact fees. First, the capital facilities plan which outlines the infrastructure needed to meet future demand is updated. When the costs are determined the fees are assessed to the remaining development. The majority of the cost is bringing in additional water and there needs to be enough water at peak day demand rate. The fixture method is anticipated to be applied to residential and commercial. Joe Kernan commented that the fixture calculation would not create fees for expanding outdoor decks and he encouraged to waive fees administratively if fees aren't changed before next summer season. Tom Bakaly stated that fees can be waived administratively but the whole amount has not been waived since there is uncertainty about the methodology. Joe Kernan supported not charging fees for outdoor dining. Chad Root explained that there may be some additional charges for outdoor dining based on requirements in the Building Code like requiring a certain number of toilets. Mayor Williams detailed Wahso's dilemma of paying a $5,000 water impact fee for adding ten seats on its existing deck which concerned him because it seemed anti-business. Richard Carlile explained that the City will be charging more for the commercial fixture units because the fixture unit counts in the codes are different for commercial and residential.

Joe Kernan stated that this seems to be going in the right direction but asked members if staff should be directed to not charge a fee for additional toilets prompted by outdoor decks because he doesn't feel there is an increased demand for water and outdoor dining should be encouraged. The Mayor stated that he is not comfortable with the suggestion because the issue is more complex. He is pro-business but there has been a philosophy for new growth to pay for itself and Joe Kernan stated that he supports new growth paying but new dining shouldn't because it adds no demand on water. In response to a question from Alex Butwinski, it was pointed out that the temporary outdoor decks were not required to provide additional fixtures. Mr. Kernan suggested that the deck not be counted in a new building calculation for the water impact fee. Cindy Matsumoto pointed out that many times when the outdoor decks are packed the interiors are empty so decks might not have an impact on water. It is hard to tell, but staff should conduct its analyses first.

Clint McAffee explained that one of the goals of moving to fixture units is to simplify the process and make assessments more consistent. An exception may be complicating the process somewhat. The Mayor pointed out that revenues may be a lot less on a fixture basis. Mr. McAffee explained that adopting a fee based on projected demand and actual use is compared with the projected rate. He pointed out that decks add capacity to a restaurant and Mr. Kernan repeated his argument that decks do not increase capacity. Richard Carlile emphasized that all impact fee structures have been based on peak day demand and those numbers are used to set the rates. The Mayor pointed out the significant amount of money the City has spent on infrastructure, buying water rights, etc. He is looking forward to the analysis which will add information to the deck discussion.

Clint McAffee explained that fees will be presented for adoption by July 1. Staff is currently working with Deer Valley and Wahso on adjusting assessed water impact fees last summer relating to their decks.

3. Review of Walkability GO Bond. Heinrich Deters asked if members desire to fund the remaining identified walkability projects. Staff is recommending issuing the remaining $7.1 million of the $15 million bond. He relayed that 27 of the 36 projects have been completed and any outstanding funds from the bond have been spent, including $200,000 for the Bonanza Project and $130,000 for the Phase 1 design of Dans to Jans. In 2012-13, a $500,000 project is scheduled to widen pathways including Poison Creek. The second phase of Dans to Jans is also slated and the first phase of design and has a time line of June 2012. Liza Simpson discussed the challenge of accommodating the variety of users on the Poison Creek trail and Mr. Deters discussed other smaller projects. Construction of Dans to Jans improvements is scheduled in 2014. In response to a question from Dick Peek, he explained that some trails will be scheduled for construction in 2012 and others in 2013.

Alex Butwinski pointed out that the proposal is to borrow $5.2 million now but those proceeds are not planned to be spent until 2014 and there may be an arbitrage issue. He suggested that this be continued for six months and make a decision then. There are a couple hundred thousand dollars committed to projects and he suggested that those be temporarily funded by the CIP. The results of the $130,000 study should be available before committing to bonding for the balance of walkability. Mr. Butwinski stated that he is a 100% advocate for and supporter of walkability but times have changed since the bond was approved which passed narrowly.

Bret Howser explained that if this is delayed for six months, the bank qualified status is lost. If a city issues less than $10 million a year, there are certain other buyers who are eligible to bid resulting in a better rate. Next year it is anticipated that water and other bonds will be issued. Bank qualified status represents about 20 basis points, costing the taxpayers more money. Consultant Dave Miner explained that bank qualified is an attractive tax exempt feature for banks. In 2011, the City will qualify but probably not in 2012 because of the bonds totaling over the $10 million limit. Twenty basis points over 15 years represents about 2.5% of the amount borrowed, or $75,000.

Nate Rockwood displayed a table illustrating interest rates over the past five years and the current historic low rate. The first scenario is borrowing $7 million now over 14.5 years; the rate estimated is 2.75% and the annual cost is just under $600,000. Pushing this out three years with no idea of what the rate would be but assuming 3.55% which is the average of the past five years, the annual cost is $641,000 and the annual difference is about $35,000. The total difference for the life of the bond is about $500,000. The third scenario is bonding for $2 million now and bonding for the remainder in three years which ends up with a total difference of about $365,000 and the additional costs of issuance. He acknowledged that no one can predict what the rates will be in six months; they might not change much but the bank qualification is gone. Joe Kernan asked if there is a downside to borrowing early and Mr. Rockwood explained that if three years go by without spending bond proceeds, the negative arbitrage costs come into play. Alex Butwinski noted that waiting provides more time to complete projects and his preference is to continue the discussion for six months. At that point, there will be some knowledge gained from the study and the Council will have better information. In response to a question from Joe Kernan, Mr. Howser explained that cities cannot make money on the borrowed bond money while not spending money on projects and arbitrage is paying out any excess interest profits.

Tom Bakaly stated that if the bond goes forward, assessments would not appear on tax bills until next year and the City would gain the benefit of locking in rates at a historic low. He felt it is a matter of priorities of projects and waiting six months will cost more because of the bank qualified feature. Liza Simpson acknowledged that if the bond doesn't go forward that the City will be about $1 million short for walkability projects. She proposed that if the bond isn't issued until 2013, money could be borrowed from the CIP Budget so that projects can continue to move forward. The amount of money that was set aside for the Dans to Jans Phase was an absolute guess by the walkability committee. While she understands the argument for bonding now, she also understands the argument for waiting and again reiterated that the cost for the Dans to Jans project is unknown. Mr. Bakaly pointed out that the project is slated in two and a half years and the City would have bond money set aside for it and a contingency, rates are at a historic low, and the assessment wouldn't hit tax rolls for a year. Staff feels the Council should issue now but recognizes concerns relating to potential impacts in not knowing the breath of the project before issuing. There may also be a desire to speed up some of the projects that might help will traffic issues. Joe Kernan again stated that he supports staff's recommendation and Mr. Bakaly noted that if the Council waits it is likely that residents will pay more in property taxes. Heinrich Deters added that the construction bids for projects have been coming in very low which have brought projects in under budget. This was debated and Alex Butwinski again suggested that the Council wait six months. The Mayor expressed that he would like more information on the status of OTIS projects and the state of sidewalks in town. Existing infrastructure should be addressed and he would like to review walkability projects together. Tom Bakaly advised that currently OTIS is not funded and walkability funds could not be used for OTIS. The whole walkability program would have to be reprioritized to use those funds for OTIS projects which must be pedestrian in nature and most OTIS projects are streets.

4. Pre-visioning budget workshop. Bret Howser explained that the sessions will address the 2013-14 biennium budget process. The staff report provides some information for the discussion and the technical team has been working on projecting revenues and proposing funding levels for the upcoming budget biennium. It is better to involve Council earlier and more often throughout the process. The budget process now mimics a RFP process where departments will bid for different programs so staff needs to know the levels of service expected by Council members. Staff is seeking initial strategic direction to help develop the bids and assist the results team to determine whether the bids are in line with Council's vision. Eventually, staff would like to turn the direction from the three scheduled discussions into eight biennium strategic plans for each of the outcome areas which include seven Council goals plus a public safety outcome area. Mr. Howser explained that the strategic plans will be presented in conjunction with a long term strategic plan and drafts will be available at Visioning to make sure staff is on track. This discussion is not a final decision or the last time the programs will be discussed; it is initial direction. It is not a comprehensive study on levels of service but will present associated data in context with regard to the outcome areas. There is a lot information which is better to disburse earlier and Council members will be provided the staff reports a week earlier. Managers should have a good idea of what they are bidding on from Council direction.

Mayor Williams expressed that he is having trouble with the concept as he did last year because he has no comprehension what reduced or enhanced levels mean. Mr. Howser directed members to the project list and survey information. The outcome areas up for discussion today are preservation, Park City character, world-class multi-seasonal resort community, and open and responsive government. Joe Kernan found it difficult to determine which programs are high cost and low satisfaction, for instance, and Mr. Howser explained that on the 15th a work session will be held specifically on the survey and staff can hone in on those areas where performance is relevant. Mr. Kernan felt it would be helpful to target areas that require more attention and Alex Butwinski agreed. Tom Bakaly pointed out that the survey reveals that the quality of life is very high which begins to establish context for general areas of long-range planning. It is more of a philosophical discussion and in order to support high quality of life, Council would probably want to consider its commitment to long-term planning. The survey is a snapshot of Park City and a comparison to other cities.

Cindy Matsumoto pointed out Park City's good scoring on the survey and believes the citizens want the Council to maintain levels of service. Her initial direction is to remain the same on most things. With regard to preserving character, funding may be needed to protect the status of Main Street's historic designation and this may be an additional project. Bret Howser stated that this is a good example of the sort of direction staff is seeking. Liza Simpson agreed. Tom Bakaly acknowledged that this is a whole new way of looking at things. He understands from members that long-term planning is a high priority and senses it rates as an elevated level this year but as goals are accomplished, its ranking may change.

Joe Kernan suggested that a low level employee track contractors and costs and Bret Howser explained that that service would fall under open and responsive government. Dick Peek recommended that managers describe the current level of service. Discussion ensued on items members know will be elevated. Joe Kernan again described his compliance officer idea to monitor contractors which would save the City money in the long-run. Tom Bakaly noted that Joe's suggestion could be bid. The Mayor began going through the project list and Liza Simpson suggested that members review the list on their own and return their results to the Budget Department next week in an effort to get caught up. Cindy Matsumoto interjected that public dialog is important with regard to budget discussions.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH,
NOVEMBER 17, 2011

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, November 17, 2011. Members in attendance were Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Bret Howser, Budget Manager; Heinrich Deters, Trails Manager; Kirsten Whetstone, Planner; Phyllis Robinson, Public Affairs Manager; Shelley Hatch, Business Licensing Analyst; Mat Evans, Planner; and Thomas Eddington, Planning Manager.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

None.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF NOVEMBER 3, 2011

Liza Simpson made a correction to the minutes clarifying that the HPB will review how the process went on a disassembly or reconstruction not review the application itself. Liza Simpson, "I move we approve the Work Session Notes and Minutes of the meeting of November 3rd (as corrected)". Alex Butwinski seconded. Joe Kernan abstained as he was not in attendance.

Alex Butwinski	Aye
Joe Kernan	Abstention
Cindy Matsumoto	Aye
Dick Peek	Aye
Liza Simpson	Aye

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

1. Consideration of a Resolution authorizing the sale and issuance of up to $7,175,000 general obligation bonds of the City in one or more series; and providing for related matters – Budget Manager Bret Howser referred to the work session discussion. If the Council feels confident that $7.175 million will be spent on walkability projects, it is staff's professional opinion that it will never be cheaper for the taxpayers than to bond

for it now. If members are not confident that $7.175 will be spent on remaining projects, some alternative approach should be considered. If the City borrowed $7.175 million today, the rate would be about 2.75% or $600,000 in annual debt service. If the City borrows three years from now, the rate would probably be in the vicinity of 3.55% and there would be no guarantee that the bond would be bank qualified. He explained that *bank qualified* allows banks more flexibility and results in better rates. There is probably no better time to borrow than now, but if there is a chance that the City will not issue and spend the full amount, he suggested bonding for a smaller amount like $5 million and writing off the other $2 million of approved general obligation debt which represents a substantial savings to taxpayers. Mr. Howser displayed a chart of potential projects with estimated costs. In response to questions from Ms. Matsumoto about expenditures to date, Heinrich Deters explained that about $330,000 has been committed. Discussion ensued on borrowing from the CIP and paying it back with bond proceeds. Bret Howser noted that on a $500,000 primary residence, the assessment will be about $24 per year. Unfunded projects were discussed. Ms. Simpson asked that if the next phase of study for the Dans to Jans Project is too expensive are there walkability projects that the bonded money could be used toward. Mr. Deters said there are but staff would return to reprioritize projects. The Dans to Jans Project is estimated at $4.1 million and if the project is less for some reason, $2 million could be allocated to other projects. The Mayor invited public input.

Tom Fey, resident, referred to the $600,000 in annual interest costs and asked about amortization and other bond obligations. He asked what he is paying in taxes on the bonds.

Consultant Dave Miner explained that total general obligation debt service, including this bond, principal and interest is about $5 million a year for about 14 years. If the full $7 million is issued it would include $43 million of principal and about $9 million in interest. The Mayor pointed out that the open space bonds, for instance, retire in two or three years.

Tom Fey pointed out that the City is telling citizens that they have $50 million of obligations for generations and suggested cutting back and not spending all of it.

Cindy Matsumoto understood that the cost on the $50 million is $5 million. Dave Miner explained that if the full bond issue is added to outstanding bonds the total is $43 million of principal and about $9 million of interest. The annual payment is about $5 million a year and all of the bonds will be paid off in 14 years and some sooner. Tom Bakaly pointed out that outstanding bonds are reflected in property tax bills; the $7 million issuance would not be assessed until next year.

The Mayor asked members what they want to do and Alex Butwinski stated that he prefers waiting six months. Losing the bank qualified status was addressed and Mr. Howser believed it represents about $100,000 over the life of the bonds. Mr. Butwinski clarified that he wants to wait six months to consider issuing but that is not guaranteed.

Joe Kernan stated that he personally wants to spend $7 million on walkability which is the most important capital investment in the community and is comfortable with staff's recommendation. Ms. Matsumoto believed the big question is going forward with walkability and wondered if the community still holds it as a high priority. She understood moving ahead with projects because of good interest rates and competitive bids and it is hard to second guess what the citizens would do now. She hasn't heard any complaints about walkability projects (except for Bonanza) and agreed with Mr. Kernan that we probably should move ahead. Mr. Butwinski could not see any significant downside with waiting until an engineering study is available for the Park Avenue project and it may take until 2013 or 2014 to have a realistic plan. He is in favor of looking at this again in six months and Cindy Matsumoto stated that she is okay with this position as well. In the end, the City will probably spend the money.

Liza Simpson pointed out the many walkability projects that didn't receive funding which makes her comfortable with moving ahead with bonding now. It will ultimately save taxpayers in the long-run and the City is committed to the projects which benefit the entire community. There is an upside with being able to move ahead and move faster on projects. Alex Butwinski noted that with regard to getting projects done faster, the City already has internal project management limits. Ms. Simpson believed that some of those resources will be freed up shortly. Dick Peek suggested that in consideration of unknown interest rates, arbitrage risk, burden to taxpayers, and unknown soil issues that designing, planning and budgeting projects should be done first and then borrow. In addition, the City will have to deal with UDOT because of Park Avenue.

Alex Butwinski, "I move that we continue this discussion until six months or so until we have the engineering information from the study commissioned to Fehr & Peers". Joe Kernan seconded. Motion unanimously carried.

2. Consideration of an Ordinance approving the Park City Heights Phase 1 Subdivision located at Richardsons Flat Road, Park City, Utah – Planner Kirsten Whetstone explained that Phase 1 consists of the 20 townhouse units that satisfy the affordable housing obligation for the IHC medical center and includes four market rate cottages lots, a park, HOA clubhouse, open space, support commercial parcels; streets, easements and a parcel for future multi-unit affordable housing. This includes all of the Park City Heights land with the exception of the 24 acre parcel on the north side of Richardsons Flat Road. The conditions of approval, the MPD and the Park City Heights annexation agreement will continue to apply which are noted on the plat. Ms. Whetstone stated that on October 26, the Planning Commission voted to forward a positive recommendation to the City Council. There was no public input. The Mayor opened the public hearing; there was no input and the hearing was closed. Liza Simpson, "I move we approve an Ordinance for the Park City Heights Phase 1 Subdivision located at Richardsons Flat Road". Alex Butwinski seconded. Motion unanimously carried.

3. Consideration of approval of a Purchase Agreement with Ivory Development

LLC, in the amount of $15,500,000 and in a form approved by the City Attorney, selling the City's undivided co-tenancy interest and Boyer Park City Junction LC's interest in 195 acres of unimproved land within the Park City Heights Master Planned Development, as well as one other unimproved parcel within the same MPD wholly owned by Park City Municipal Corporation – Phyllis Robinson stated that this matter has been legally noticed for a public hearing in accordance with state statute. She introduced Patrick Moffat from The Boyer Company and Chris Gamvroulas from Ivory. The process began two years ago this month when the City acquired a 50% interest in the Park City Heights Project with Boyer as equal co-tenants in the project. The property was annexed and the project went through the MPD process with the Planning Commission. The Phase 1 plat has just been approved.

She explained that in November, the City received a purchase offer for the entire project. The project was initially designed for 317 units and she displayed the revised site plan approved by the Planning Commission at 239 units. The City was not involved to make money but had specific municipal purposes, the first being reduction of the overall density. The first site plan had a total of 317 units. It was reduced to 303 units prior to annexation and the final plan is 239 units. The market density has been capped to 160 units, one-third of the project is designated as affordable housing, and the IHC employee housing units are incorporated into the project as well. Ms. Robinson indicated that the City, as co-owner of the project, waived its review authority to a third party should that be necessary, in order to play a proactive role in the development. The City's final goal was to recover the investment in the project which is $5.5 million for land costs and through the purchase agreement, the full investment will be recovered. The City elected to take 40 market units off the table in lieu of any additional proceeds that could come to the City.

Phyllis Robinson stated that Ivory Development is the buyer at a purchase price of $15.5 million. Upon closing, Ivory will pay $5 million and the rest will be owner-financed with a guarantee from Ivory Land over the next couple of years. This project will be consistent with the MPD approved by the Planning Commission and the City will pursue a special assessment bond for the infrastructure which will be publicly dedicated. The targeted closing date is as soon as November 22, 2011. From the structure of the sale, the balance would be paid in three annual payments of $3.5 million. The Boyer Company would receive the remaining proceeds following the repayment of the land costs to both parties of approximately $3.7 million.

The special assessment bond is tied directly to the project to pay for the infrastructure. In the event of default, there is an outside chance that the City would step in to cure that. The repayment of the bond is structured so that each phase would be tied to the infrastructure. The first phase would be about $500,000 so the entire $9 million would not be issued at one time. There is a three year cap on the repayment of those proceeds and as each building permit is pulled, a prorata share is repaid with an outside three year window. Ms. Robinson continued that the outstanding note between Ivory Development, The Boyer Company and Park City is that while there is a promissory note and a deed a trust, a guarantee is also being offered by Ivory Land.

Chris Gamvroulas, President of Ivory Development, stated that he was initially involved with the IHC units early in the process six years ago. As a company, they understand the goals and have been involved in the design guidelines and the philosophical principles relating to sustainability, affordability, walkability, and accessibility. Ivory Homes is the parent company and Ivory Development is an affiliate company like Ivory Land. Ivory is a privately-held company with one owner and the largest home builder in the state of Utah over the past 24 years. He stated that Ivory has been debt-free since 2009 when other companies found themselves in trouble. Ivory will close nearly 500 homes this year. One of the reasons Ivory is successful is the offering of programs which will be a real benefit here like helping people with their credit scores so they can qualify for loans. He explained the three year lease back guarantee and smart move advantage programs available. Ivory has many tools in its toolbox, and it is a financially solvent company and will work hard with City staff to implement its policies. Mr. Gamvroulas pointed out that many photographs featured in the Design Guidelines actually are built Ivory product. He pointed out the beautiful upscale Ivory homes at Red Ledges; these designs will lend themselves well to the homestead lots. Ivory has a large depth of products, services and people to be able to implement the goals of this project and is uniquely qualified. He complimented both Phyllis Robinson and Pat Moffat. Ivory has signed the agreement and he urged Council to approve the purchase agreement. The Mayor invited public input.

Mary Wintzer, resident, explained that Tom Fey had to leave the meeting but asked her to inquire about the $3.7 million residual going to Boyer but not shared with the City. The Mayor explained that the density was reduced by 40 units and rather than take a profit, the City decided to make the project smaller. With no further input, the public hearing was closed.

Pat Moffat stated that on behalf of The Boyer Company, the partnership with Park City has made the project better and he specifically thanked Phyllis Robinson.

Alex Butwinski confirmed that in the unlikely event of default, the City gets the property back. Ms. Simpson asked that in the event the MPD is reopened and an appeal filed, is the Council the appeal authority. Mark Harrington advised that it would be best to retain the hearing officer because of Council's underlying interest. Mr. Gamvroulas stated that Ivory is seeking to get a return on its investment which is one of the main reasons it will not default and it has no intention of opening the MPD. Ivory has every intention of making a profit as they are a for-profit business. Joe Kernan, "I move we approve the purchase agreement with Ivory Development". Alex Butwinski seconded. Motion unanimously carried.

4. Consideration of an Ordinance amending Sections 4-1-1.20, 4-2-16, 4-2-21(D), 4-3-9, and creating Section 4-1.1.22 of the Park City Municipal Code to clarify how temporary businesses and gifting are regulated during the Sundance Film Festival –

Phyllis Robinson indicated that this was discussed by Council on November 3, 2011. She referred to a letter from the HPCA expressing some concerns and suggestions and has met with officers to better understand their recommendations. Sara Pearce from Sundance is also here to participate. One of the goals was to develop a definition for gifting which is a defined term which distinguishes displaying goods with the hope of future orders versus giving away an item in exchange for promotion or other future use considerations. Gifting is an active process. The HPCA is asking for some clarity that providing a brochure, for instance, is not gifting. The engaging in business definition was expanded to include gifting which requires a business license. A company needs to obtain an appropriate business license if gifting products are physically present. The HPCA has asked that a vendor/exhibitor be able to represent multiple companies at one booth. As proposed, each vendor in a location must have a Utah tax identification number and pay the appropriate fees. The HPCA is looking for clear code language that is easy to understand and enforce that allows businesses to rent their spaces. The Utah sales tax number is important for sales tax distribution and for tracking vendors.

Ms. Robinson pointed out two different types of venue licenses including the convention sales hospitality license which is used for trade shows. If merchandise is displayed but not sold at the location, an individual business license is not required but if products are sold at the trade show, an individual license is required. Dick Peek described a situation of making sales through a computer at trade shows and Ms. Robinson determined that a sale is occurring which requires a license. The other convention sales license is new and described as Type 2 which allows an umbrella organizer account for vendors at a single address. Each vendor would have to pay applicable fees of $250. This licensing is not applicable to retail space. Ms. Matsumoto felt this is punitive to retail space. Phyllis Robinson explained the proposal is a fix for 2012 and acknowledged that more work is needed on the ordinance. The Code is currently written to address assembly space, hotel, and/or restaurant space and create a Sundance venue but the ability to put an assembly use in retail space is not available. Up to this point, staff has not received direction to pursue a temporary licensing policy.

Mark Harrington stated that he would not describe this as penalizing retail and pointed out that the Code is specifically written from a policy perspective to not allow temporary licenses but on a piecemeal basis, the Code has been amended to be more flexible. It began with opening up convention sales for an alternative festival during Sundance and other activities and was enlarged again for the Olympics and other assembly uses. The City then began to receive requests to use alternative spaces such as retail. Without completely overhauling licensing, the only avenue was to require applicants to obtain a full business license and swap out uses while occupying the space. He emphasized that it is within the Council's ability to revisit the broad policy issue but it is extremely complicated and has ramifications and other impacts that may be unwanted if procedures are over-simplified. Staff has committed to return with the issue early next year and the proposal tonight is a patchwork remedy. It addresses direction from Council resulting from the appeal last summer and it may be confusing in the context of the Code but it is the best staff can do with the short time frame prior to the Festival. He encouraged Council to revisit the retail issue but now might not be the right time. There are state code requirements for adjusting licensure and fees which have to be study-based and there is not enough time to engage a consultant to conduct the entire process in time to recommend new fee structures that are based on new classifications. These proposed changes are presented by virtue of the last work session discussion and state requirements are beyond the City's control. Mr. Harrington emphasized that staff is fully engaged to return with a broader policy discussion on temporary licensure including the retail issue.

Joe Kernan supported Alison Butz's simplified language on the 4-3-9 paragraph to adapt the Olympics paragraph but relate it to Sundance and open up all uses in venues and asked if it would work. Mr. Butwinski understood it would create a temporary umbrella category for a gallery or broaden the definition of assembly just for Sundance. Mark Harrington pointed out that what seems like simple short-term solutions like allowing additional signage on sidewalks on Main Street, etc. have ramifications if not analyzed. Although this may seem bureaucratic and complex, enabling an overall land use change even for a short period of time requires careful deliberation. There are ramifications in terms of enabling that sort of substitution in direct competition with existing businesses that may have long-term impacts. The resulting vitality may not be what Council's wants for existing businesses or the MFL holder. Proceeding with a broad-based temporary license that can be applied to all structures, including retail, should be done cautiously because it may have big ramifications and staff is not prepared to address them tonight. It is such a big change that it should not be done under the cause of simplicity. It should be done deliberately. Mr. Harrington advised the better course is to enable what we've been enabling, fix the things we know are broken, and proceed cautiously because of impacts.

He recalled getting Festival activities out of residential neighborhoods, consciously bringing them to Main Street and managing the change. Consideration has to be made on limiting how much space can be shifted over and still address parking and other impacts. There is a carrying capacity issue of how much assembly use can be put on Main Street and staff has no basis to estimate a limit and as proposed, the City has no ability to say "no". He continued to explain that the fee base is differential. Converting retail to assembly by buying a year-round license has worked fairly well in terms of not over-burdening the entire Street. Certainly from a policy perspective, the City Council can go the other way. He summarized that the recommendation is to take baby steps and fix the problems identified by members. It may not seem complicated, but staff believes it is more than just a reclassification issue.

Joe Kernan felt that simplicity also helps staff by having a convention license available to businesses and a fee that includes vendors and brands under it. The organizer can obtain a license early before the event and eliminate coming in at the last minute adding additional vendors. He felt it benefits the MFL holder by having the convention license available to everybody. Mark Harrington stressed that this is not staff's perception. Further enabling more license swap-outs creates a lot more work and some of that will always be last minute because it is the nature of the beast. He referred to Ms. Simpson desire to look at lead-in times for licensing and creating alternative fee structures to incentivize getting people in earlier. Fees have to be tied to actual costs and determined through study which will be accomplished. Joe Kernan again referred to the Olympic paragraph, inserting Sundance and keeping the language in the ordinance. Mark Harrington responded that Council has the ability to do that, but it is not staff's recommendation because of potential negative impacts on the Festival.

Phyllis Robinson relayed that concerns raised by Council members Kernan and Matsumoto are similar to comments from the HPCA as far as having the blanket umbrella organizer apply for retail as well. She spoke about three vendors in one retail space, each requiring a business license but perhaps only requiring one inspection per location. Another suggestion is that if someone is not selling but gifting, not being required to have a Utah tax identification number. What is before Council this evening is in response to solving the gifting piece. She spoke about long-term goals including continuing to work with all of our stakeholders to ensure a friendly licensing system and one that is protecting the Sundance Film Festival brand as well as protecting the health, safety and welfare issues for guests. Staff will explore a fee study to ensure that fees cover impacts.

In response to a comment from Cindy Matsumoto, Mark Harrington explained that expanded assembly use would have to be managed in conjunction with an incentivized fee structure and other tools. He pointed out that retail spaces are not necessarily built for assembly use and do require more extensive renovations and inspections, which is why staff is recommending an additional fee structure to capture those costs. Making it too easy to swap out further exacerbates the problem. Staff recommends a complete overhaul because it will be better prepared to manage it and address the customer service element rather than just opening the door in hopes that it goes okay. He emphasized that this Festival is too important to the community to take a blind step.

Liza Simpson understood that Jonathan Weidenhamer was going to return with a definition for gifting but other issues are too big and need a longer timeframe. She felt that too much is being crammed into this discussion before it is fully baked. She questioned amending the convention section regarding charging sales tax on the convention floor. Tom Bakaly believed this was raised during the appeal as it related to gifting and staff heard from Council that gifting was doing business and the current Code could be clarified. Staff heard direction to come back and clarify that gifting was doing business and there would need to be an individual license for each vendor. He stated that staff opened the door by proposing an umbrella approach and now there is a request to expand this to other uses. This was not staff's intent or what Council directed. He felt that the expansion idea is at cross-purposes with the original direction of trying to get greater accountability at the individual level. Expanding it to retail may be different than Council's original policy direction. It comes down to policy and he asked members if they want to facilitate greater opportunities for vendors which may undermine the Festival or have clarity as to what constitutes gifting and individual licenses. Mark Harrington addressed convention licensing for conventions with exhibits. Joe Kernan relayed that two years ago, the Code was interpreted differently and he supports allowing everyone the ability to sell their space during the Festival. The Mayor invited public comment.

Alison Butz, HPCA, believed that everyone has the same “wants” but the mechanisms and time lines differ. The group wants clear and enforceable regulations. The City should have the ability to shut down an operation for non-compliance and businesses should have the ability to rent their space. Businesses that do not do well during Sundance would have an opportunity to recover costs. She felt there are plenty of businesses that do well during Sundance and are not going anywhere because of Code changes. The HPCA felt from the last discussion that there were commitments to return with the ability to do an umbrella license not just for assembly use but also for retail, including galleries. She spoke about tracking vendors with other ways than requiring a Utah tax identification number. There needs to be more clarification with regard to booth vendors versus brands. Mark Harrington and Alison Butz engaged in an exchange about each brand being licensed.

Shelley Hatch illustrated scenarios by comparing them to a store effect or mall effect. The store effect is like a gift basket with a grocery store representing all of those products. A mall effect has individual booths that have been sublet which is what happens at Sundance. She emphasized that retail is a B use and not licensed on a temporary basis; it requires a full business license. Mr. Kernan interjected that he is not concerned about winging it like we have over the years. Mark Harrington stated that the City has not allowed this activity in retail before. Mr. Kernan felt the City has not prepared the necessary ordinance for the business community to move through the process in a comfortable manner and prefers to rely on the City’s current ordinances.

The City Manager believed that opening it up to retail will create temporary competition will full-time businesses. Mr. Harrington pointed out that that is one of many considerations. Temporary uses have incremental impacts on the Street and the neighborhood which should be measured. He discussed not anticipating the scope of the street artist lawsuits and defending those lawsuits became incrementally more difficult because of all the expressed activity allowed by exceptions and special temporary permits on the street. If the City had held the line and denied outside commercial activity or swapping, it would have been much easier to defend the City. Every time something is enabled, the City loses a little bit of ability to deny or regulate the things we don’t want. Joe Kernan stated that Ms. Butz has taken the position to include retail and her membership is mixed but all interests must be considered. ‘

Alison Butz stated that retail space in the past has been able to have other businesses come in during Sundance. Since this has happened in the past, it could be easier on a number of levels. One umbrella license provides more accountability for assembly and retail. She asked that this return to Council sooner rather than later and that unaddressed issues be discussed in March.

Sara Pearce, Sundance Institute, stated that she is in agreement with the HPCA on a number of points including easy to understand regulations, enforcement of the code, and protection of the Festival community. She stated that sponsorship is good and cautioned not making a decision now that may hurt everyone. Talking about this again in March is a good idea. One of the biggest concerns is the timing issues and being able to control and manage activities. She agreed with Ms. Butz on the umbrella license idea and accountability. Ms. Pearce expressed concerns about charging brands which will need to be clearly defined. Stella's situation as an official MFL sponsor was discussed.

Cindy Matsumoto asked how the City can make it easier for Sundance and its sponsors. Ms. Pearce noted that the City has good codes but they are not always enforced, like types of events, overcrowding, and inappropriate signs. Mark Harrington spoke about broadening regulations during the Olympics so other uses could go into restaurants on Main Street. The City could not control the ambush marketing in the internal private spaces. Temporary businesses have the same rights as any other year-round business, no more and no less. When Sundance private parties were being prohibited in Deer Valley, expanding capacity on Main Street beyond the hotel and restaurant categories was needed. It seemed better to deal with associated impacts on Main Street. He believes it is time for a comprehensive relook.

Bill Malone, Director Park City Chamber/Bureau, expressed that Sundance is an important opportunity for businesses. Some do well and others not so well, but it is important to have the flexibility of being able to sublease if necessary.

Alex Butwinski referred to other code provisions which may minimize adverse impacts. The City Attorney explained that the Olympic strategy actually worked really well. It wasn't a free for all and there was good control of the Street. The City adopted over-crowding regulations to address temporary locations. However, he described one Film Festival year when things got out of control and the City was unprepared to address the scope of activity that year. He didn't feel that Council should over-facilitate retail during such a short window when it can be better addressed comprehensively in conjunction with some incentives. Some of this will be self-regulating in the private sector.

Mike Sweeney, businessman and property owner, stated that he is supporting the HPCA's position and has ten years of experience of permitting Main Street locations. Each business facility on Main Street has a limited capacity of the number of people allowed in the space. There is a capability of increasing occupancy to a certain level subject to the Building Department's determination. There are three inspections which he detailed. He felt that restaurant and retail buildings should be charged the same price for permits. Sundance has gone out of its way to try to make it work and there should be a simple solution for the permitting process.

Liza Simpson acknowledged the City Attorney's comments about losing Main Street.

She felt the market will self-regulate to a certain degree but Mr. Sweeney's comments changed her mind about renting non-assembly space. There is an enforcement resource issue and adding 15 to 20 more locations to inspect may be problematic and should be addressed at a later date.

Dick Peek stated that he supports staff's recommendation and he doesn't want to see Main Street go away every year and made a motion to adopt the ordinance (which did not pass). Ms. Simpson seconded and agreed with Mr. Peek but is interested in discussing this further. Alex Butwinski pointed out that if this ordinance is adopted today, the plan is to return again to consider the revisions and possibly more changes. He suggested creating an Olympics/Sundance paragraph knowing that it will be reviewed in a few months in a holistic manner. He feels it is unrealistic to think Main Street will be overrun if there are permits for retail. If Council goes with staff's language, Liza Simpson suggested striking the individual Utah tax identification numbers. Mark Harrington provided alternative language. Cindy Matsumoto expressed that she understands both positions but is concerned about Sundance.

Ms. Butz felt the definition of gifting, for instance, could be easier to understand and less wordy. Ms. Hatch believed it is written that way to distinguish between activities at trade shows versus gifting. Joe Kernan expressed that he prefers Ms. Butz's definition.

Mark Harrington pointed out that there are people trying to exploit loopholes in certain codes to do certain things. The proposal is drafted to capture those expressed activities and make it as simple to understand as possible. This is an effort to promote some accountability and public safety by having a uniform manner to license and is not a perfect solution because this section was not written for this activity. It is a patchwork which was incrementally expanded to allow more and more commercial activity in our commercial core. Policy goals have never been clarified. He suggested enabling what are easy fixes.

Andy Beerman, HPCA, believed that this is more of a resource issue than a Code issue. He doesn't feel the ordinance is ready for adoption and hopes Council will consider continuing this item. Many gallery and retail spaces are already rented and it will probably take more resources to process these applications.

With no further comments, the public hearing was closed. The motion did not pass with Councilmembers Butwinski, Kernan and Matsumoto opposed. Alex Butwinski, "I move to accept the language proposed by the HPCA regarding Sundance specifically 4-3-9". Joe Kernan seconded but a vote never taken on this motion.

Including the gifting definition was debated. Liza Simpson suggested adding gifting to the paragraph on engaging in business without the wording at the end of the paragraph. Mark Harrington encouraged members to direct staff to return with an ordinance for public hearing since this will be a different draft. Tom Bakaly understood that members want to change retail and asked why they aren't addressing that specifically. The policy question is balancing creating business opportunities without harming Sundance and that needs to be stated to move forward in an ordinance. Mr. Butwinski explained his motion to consider that Council will look at this again and he agrees with Mr. Kernan regarding giving business owners the opportunity to recover their potential lost income when Sundance is here by having the ability to bring in a couple of businesses under their umbrella license for this year. Mr. Bakaly stated that the original direction was to clarify gifting. He understood members want to expand the ability for business opportunity in retail areas. Mr. Butwinski agreed. Mr. Bakaly noted that it seems contradictory. Cindy Matsumoto interjected that licensing provides some control and Liza Simpson pointed out that if they are meeting the Code, the City will have not have the ability to deny. She prefers to wait on deciding on retail because some of the public input was about the HPCA partnering better with Sundance on the issue of mix.

Mark Harrington advised that temporary licensure greatly reduces fees unless the square footage is so small that it is less than the flat fee, and staff is recommending going the opposite direction. Shelly Hatch explained that convention sales licenses are $265. Business licenses include the HPCA assessment of $243, an administration fee of $95 (includes inspection), plus .330 times the square footage which is significantly more money. Ms. Matsumoto indicated that she didn't hear objections from Sundance who wanted to make it easier for businesses. Ms. Simpson stated that she is not opposed to consider adding retail spaces to the assembly type use, but she is concerned that Council is not doing it with enough forethought.

Sara Pearce stated that Council should just *let it go*. Leave the Code as is and try to beef up enforcement this year and return in March and fix it. She relayed that Jon Weidenhamer isn't here to represent what he wrote.

Tom Bakaly interjected that the only question now is licensing gifting which is what Council determined relevant but waived fees when it heard the appeal. The Mayor stated that members upheld the position on the appeal with direction to move ahead with individual licensing for gifting and asked members if that policy has changed. Alex Butwinski and Joe Kernan stated that their positions have changed. Tom Bakaly pointed out that staff's interpretation of the Code will require individual licenses for gifting and there will be no umbrella for assembly properties. What staff heard during the appeal on gifting was that staff changed the interpretation of the Code and the licensing process was different than what was done before. There was a determination that gifting was doing business and therefore requires a license. If the Code is not amended, it is important to clearly communicate what the City intends to do related to gifting and clarifying the Rules of the Road could be a way to accomplish this. He suggested working on an umbrella license administratively. Discussion ensued between members and Mike Sweeney who claimed that vendors do not have booths or individual spaces. Tom Bakaly stated that this is not about simplicity and clarity it is about facilitating more business in retail properties during Sundance. Without a change to the Code, individual licenses will be required in retail locations. Ms. Simpson suggested that when this is reviewed again that assessing the HPCA business fee for each vendor should be addressed. Alison Butz stated that she agrees with Sara Pearce's comments and the suggestion of establishing an umbrella license administratively.

Joe Kernan, "I move we continue this discussion until March or a date uncertain". Cindy Matsumoto seconded. Motion unanimously carried.

5. Consideration of a Resolution amending Section 4.3 Convention Sales related fees and replacing and repealing Resolution No. 30-11 in its entirety - The Mayor opened the public hearing; there was no input. Liza Simpson, "I move we continue the Resolution amending Section 4.3, Convention Sales, to March". Alex Butwinski seconded. Motion unanimously carried.

VI OLD BUSINESS

1. Consideration of an Ordinance approving the Snowcrest Condominium Plat Amendment located at 1530 Empire Avenue, Park City, Utah – Planner Mat Evans explained that the request is to drop the name "hotel" from the plat and the proposal does not affect any physical changes to the building. Dropping the hotel name helps with financing issues and the Planning Commission recommends approval. The Mayor opened the public hearing.

Rhonda Sedaris, property manager, encouraged members to approve the request. With no further comments, the public hearing was closed.

Dick Peek, "I move that we approve the amended plat according to the findings of fact, conclusions of law, and conditions of approval as stated in the attached Ordinance". Liza Simpson seconded. Motion unanimously carried.

2. Consideration of extending the Letter of Intent on Treasure between Park City and the Sweeney Family (MPE Inc.) - Thomas Eddington explained that the recommendation is to continue and return on December 1 to allow for continued negotiations. Any outcome does not preclude the regulatory process for the review of the CUP or MPD. The Mayor opened the public hearing. Hearing no input, the Mayor asked for a motion to continue to December 1. Dick Peek, "I so move". Liza Simpson seconded. Motion unanimously carried.

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

None.

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 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, Dick Peek, and Liza Simpson. Staff present was Tom Bakaly, City Manager; Diane Foster, Sustainability Manager; Andy Beerman, Council-elect; Thomas Eddington, Planning Manager; Matt Cassel, City Engineer; and Mark Harrington, City Attorney. Dick Peek, "I move to close the meeting to discuss litigation, property and personnel". Joe Kernan seconded. Motion carried unanimously. The meeting opened at approximately 3:50 p.m. Cindy Matsumoto, "I move to open the meeting". Liza Simpson 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, City Recorder

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