

PARK CITY MUNICIPAL CORPORATION
HISTORIC PRESERVATION BOARD
CITY HALL – COUNCIL CHAMBERS
MINUTES OF MARCH 2, 2011

BOARD MEMBERS IN ATTENDANCE: Roger Durst, Ken Martz, Dave McFawn, Brian Guyer, Sara Werbelow, David White,

EX OFFICIO: Tom Eddington, Katie Cattan, Kayla Sintz, Polly Samuels McLean, Brooks Robinson, Patricia Abdullah

WORK SESSION – Review of Design Review Team and Pre-Application Process

Board Member Werbelow had attended three design review team meetings and provided the Board with an update based on her observations. She noted that in those three meetings a large variety of applications came before the DRT, which included an addition to a non-historic building in the Historic District; an addition to a very prominent Main Street Historic Building; a garage under a historic home; and a complete reconstruction.

Board Member Werbelow reported that the design guidelines and the LMC are the general mechanism for the DRT meetings. The meetings are very structured and with each application the team goes through the design guidelines and discusses any implications related to the guidelines. She found it very helpful to see the guidelines being utilized as the key analysis, and noted that the guidelines are applied differently to each specific application. She used the prominent Main Street historic structure as an example of a rigorous application of the guidelines. There was some discussion on materials regarding the addition and the importance of having a visually subordinate addition, and what the delineation could look like.

Board Member Werbelow reiterated that the key factor for her was to witness the design guidelines in play. She recalled that the guidelines were created as a fluid document with the ability to evolve. Board Member Werbelow did not have specific recommendations this evening regarding the design guidelines, and she looked forward to attending future DRT meetings.

Board Member McFawn asked how determination on the guidelines or the LMC is reported back to the applicant. Board Member Werbelow explained that the project planner sends the applicant a follow-up letter identifying the applicable guidelines. The information is clearly provided and the Design Review Team is available to assist the applicant.

Chair Durst closed the work session and opened the regular meeting.

REGULAR MEETING

ROLL CALL

Chair Roger Durst called the meeting to order at 5:02 p.m. and noted that all Board Members were present except for Brian Guyer who arrived late.

ADOPTION OF MINUTES

Minutes of November 3, 2010

MOTION: Board Member McFawn moved to ADOPT the minutes of November 3, 2010. Board Member White seconded the motion.

VOTE: The motion passed unanimously.

Minutes of December 1, 2010

MOTION: Board Member McFawn moved to ADOPT the minutes of December 1, 2010. Board Member White seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There was no comment.

STAFF/BOARD MEMBER COMMUNICATIONS AND DISCLOSURES

Planning Director Thomas Eddington, stated that the Staff had prepared a matrix of all the historic district design approvals and the status of each one. The matrix was included in the Staff report beginning on page 29. He noted that the Board had seen previous iterations of the list, but this was the first time the HPB had seen the list this comprehensive and formalized. Director Eddington asked if the list was helpful and whether the Board had ideas for what the Staff could do to update the matrix each time they see it. Director Eddington suggested that the Staff could identify approvals that take place each month in a certain color to easily recognize the current approvals.

Director Eddington clarified that everything on the current list that was highlighted in blue was a historic district design approval based on the old design guidelines. Everything not in blue was approved under the new guidelines.

Board Member McFawn liked the idea of grouping and suggested grouping minor and major projects. He thought color coding was helpful.

Director Eddington encouraged the Board to contact him or Patricia Abdullah with suggestions and comments prior to the next meeting. He thanked Patricia for putting the list together.

Chair Durst noted that 164 properties were listed, 41 of which were pending review. He wanted to know the difference between a review pending and a full review pending. Director Eddington stated that a review pending may indicate that the Staff is waiting for additional or revised information from the applicant. Chair Durst noted that three properties listed were owned by the City. He asked about the City's obligation with regards to those properties. Director Eddington replied that the City would be required to submit an application, the same as any project.

Ms. Abdullah clarified that pending full review means that the application was submitted and they are waiting on a full submittal package. The pending full review would occur first.

Planner Kayla Sintz reported that the City Council would be interviewing potential HPB members the next day from 4:00 p.m. to 5:50 p.m. Interviews would also be conducted the following Thursday. Planner Sintz noted that there were 13 applicants.

PUBLIC HEARING/DISCUSSION ITEMS

1101 Norfolk Avenue - Grant (Application #PL-11-01195)

Planner Katie Cattan reported that the applicant for 1101 Norfolk had requested a continuation to the next meeting.

MOTION: Board Member Werbelow moved to CONTINUE 1101 Norfolk Avenue to April 6, 2011. Board member McFawn seconded the motion.

VOTE: The motion passed unanimously.

811 Norfolk Avenue – Appeal of Historic Design Review (Application #PL-11-01198)

Planner Cattan reviewed the appeal for 811 Norfolk Avenue regarding the Staff's determination of non-compliance with the design guidelines for historic districts and historic sites. She noted that the Staff report included a letter from Dina Blaes, as well as a copy of the streetscape. Planner Cattan referred to page 54, fourth paragraph, fifth line, and corrected south side yard to read, north side yard.

Planner Cattan stated that the home is located at 811 Norfolk Avenue and has landmark status. The only outstanding issue with the Planning Department is whether or not the home could be moved. The Planning Staff denied the movement of the home, and that decision was appealed by Jeff Love, the applicant. She noted that Mr. Love had attached other issues to the appeal that were outlined in the Staff report; however, she first wanted to focus on why moving the home was denied.

Planner Cattan read from the LMC section related to relocation and/or re-orientation of a historic structure. She noted that the intent was to preserve historic and architectural resources in the City and to place limitations on relocation and/or re-orientation of historic buildings or historic sites. Planner Cattan read from the Historic District Design Guidelines, "Re-location and/or re-orientation of historic buildings can be considered only after it has been determined by the Design Review Team that the integrity and significance of the historic building will not be diminished by such an action...." She noted that the application is a landmark structure and based on the current design, the DRT made findings that it would remain a landmark structure after recent changes were made. Planner Cattan further read, "...and the application meets all the criterion of the side bar to the left." The first criteria was only if a portion of the historic building encroaches on an adjacent property and an easement cannot be secured. The Staff

believed that criteria was not met because Mr. Love owned the entire property at one time and could have required an encroachment agreement.

Planner Cattan noted that in the letter from Dina Blaes dated May 25, 2010, Ms. Blaes notes that the applicant stated a preference for selling off part of the property, a legal lot to the north. In that case moving the house could be considered, but must still meet the requirements of the LMC so as to not result in the loss of designation and the requirements of the design guidelines. Planner Cattan pointed out that Ms. Blaes indicated that the third point was the only one that could be considered under the circumstances, which states that the Planning Director and Chief Building Official determine that the unique conditions warrant relocation on the existing site. Ms. Blaes did not believe the request met points 1 and 2 of the guideline.

Planner Cattan referred to a letter she had written, dated May 19, 2010, in which she stated that if the lots are not owned by the same person and an encroachment exist, and if the owner of the home at 811 Norfolk cannot secure an easement, then relocation of the existing home may be considered. She believed her letter was clear in saying, "if it is not owned by the same person..." Planner Cattan stated that it was never brought to her attention prior to the time of purchase that the lots would be owned by one person and then sold off separately without an encroachment agreement. Because the Staff did not have all the accurate information during the pre-application period, they found that the encroachment criteria was not met.

Planner Cattan read the second criteria, "If relocation of the building on to a different site is the only alternative to demolition." She pointed out that this was not the case because the home could remain on the site and not be demolished. Planner Cattan read the third criteria as previously stated in the letter from Ms. Blaes. The third criteria could apply, but Ms. Blaes did not believe the criteria appeared to be met. However, they still needed an official consensus from the required administrative officials. At that point a complete application package had not been submitted for a full design review. Once they received a full application, the Staff reviewed it against the three criteria for relocating a home. The Planning Director and the Chief Building Official particularly looked at the streetscape and found nothing more unique than other properties in the surrounding areas.

Planner Cattan reviewed the property and the characteristics of the lots. She noted that the historic home sits on Lots 2 and 3 and encroaches three feet on to Lot 4. Lot 4 and a three-foot portion of Lot 5 were sold. Therefore, the home now encroaches onto to Lot 4.

Planner Cattan showed the spacing that would occur without movement of the home. She noted that originally the Staff said that a 6 foot area would be required between the two homes. After clarification from the Building Department, if a home encroaches over a lot line and the homes are closer than 3 feet, firewall maintenance is required. If the homes are on their own property, the requirement is 3 feet from the property lines. Planner Cattan stated that based on current conditions, if the home at 811 Norfolk is not moved, the property at 817 Norfolk could be as close as 3 feet to the landmark structure. If the home is moved, the 3 foot side yard would be required for Mr. Love and another 3 foot side yard would be required for the property owner at 817 Norfolk.

The result would be 6 feet of space between the structures.

Planner Cattan pointed out one area where an exception could be made, but the Staff could not make a finding that it was unique, or that the Planning Director and Chief Building Official determined that meeting conditions warrant the relocation or re-orientation of the existing site. Planner Cattan explained that one reason it was not found to be unique was that the new construction would have to comply with the spacing and follow the guidelines. She reiterated that the information submitted by the applicant was no longer 100% correct because the design for 811 Norfolk has change. There is inadequate spacing between 811 and 817 Norfolk and it would not meet the guidelines for a historic design for 817 Norfolk. Planner Cattan emphasized that 817 Norfolk was not part of the appeal this evening.

Planner Cattan reviewed the streetscapes and again commented on the one area the Staff had determined not to be unique. She noted that the Board could dispute that determination in their discussion this evening.

Planner Cattan explained that the HPB was reviewing this appeal de Novo, which means they should conduct their review as a fresh look for the first time. The Staff was available to provide additional information and additional documents if necessary. Each Board Member had been provided with a copy of the design guidelines.

Mark Kozak, legal counsel representing the applicant, stated that no one had discussed disclosures per the City Ethics Code. He pointed out that if any Board Member has had communication regarding this application with anyone, they are required under the Ethics Code to make that disclosure part of the record. If it was written communication they are required to submit that writing into the record. Oral communication should be written down and submitted as part of the record. Mr. Kozak stated that Mr. Love is entitled to a disinterested set of eyes on this question. It is unfair to him as an applicant if prior discussion on this project had occurred with third parties, to which Mr. Love was not privy. Through disclosure, Mr. Love has the opportunity to address the content of those discussions. Mr. Kozak noted that failure to comply with the Ethics provision is a Class B misdemeanor.

Mr. Kozak explained that the substance of the appeal deals with the encroachment issue of moving the landmark site home. He understood that the Staff was satisfied with the rest of the application. Mr. Kozak noted that this was a quasi-judicial hearing, which means that the Board applies the law to the facts. The application specifies what the applicant would like to do with his property. Alongside that is the LMC that guides and governs the way property is treated in Old Town. Mr. Kozak stated that the HPB has the task of applying the Land Management Code to the facts. The City Council has the authority to make any law they want, and the applicants try to work under the Code as written. Everyone has the opportunity to come into town and purchase property with an expectation of what can be done with that property by reviewing the LMC. Mr. Kozak stated that Mr. Love was a contract purchaser and was still under a due diligence period when he first met with the City about what he could do with this property.

Mr. Kozak remarked that Park City is a small, active community. A lot of influence is exerted and there is interest in most decisions. He stated that the courts have spoken to this and they call it public clamor. The courts have said that the proper time for public clamor is when the City is legislating new rules and regulations. That is the appropriate time when the City should give the greatest consideration to public commentary. Mr. Kozak stated that the courts have also said that public clamor has the least role in

situations when the Code is being applied to specific facts. In this particularly case, the HPB is the appropriate body to look at that situation, and not the public.

Mr. Kozak stated that there was no presumption that the Staff was right in their decision. The applicant had omitted from the presentation a list of items they were unhappy about in terms of how the application was handled and prosecuted. They believed that on the merits of their application, they were in a position to strongly justify what they wanted to do. The first reason was that it complied with the LMC and the second is that it constitutes good design and a real sense of historic values.

Jeff Love, the applicant, referred to a comment Planner Cattan made that he believed was in error. Planner Cattan referred to Ms. Blaes' letter and the reference "not the case here" under criteria one. Mr. Love noted that the comments were written from the application that was submitted on May 13th, 2010. At the May 19th pre-HDDR, he disclosed that there had been a change in the packet. In his opinion, the statement was inaccurate because it was based on the submitted packet, but not the information disclosed on May 19th. Mr. Love stated that a number of things occurred in the review that he believed needed to be fixed, but they were not appropriate to be discussed this evening.

Mr. Love read from page 64, the Staff's analysis of one of the appeal items. "The Land Management Code requires that the HPB review whether the application meets the design guidelines and Land Management Code. The HPB determination is independent of Staff's decision. The HPB shall conduct an original independent proceeding on the Historic District Design Review. The HPB needs to determine independently what facts the evidence supports and whether the facts meet the criteria to allow for movement of the house." Mr. Love reiterated that the issue for discussion this evening was only movement of the house. Other issues would be addressed at a later date by either the HPB or the City Council.

Mr. Love provided a history of how the process occurred. He stated that at 811 Norfolk and 817 Norfolk are two buildable lots, regardless of whether or not the historic house is moved. That fact is not disputed by Staff. He believed this was very relevant towards creating a better design and better streetscape for the entire neighborhood. Mr. Love noted that the pre-application was submitted on May 13, 2010 and a pre-application meeting was held on May 19th. He was out of town and participated via a conference call. However, Jonathan DeGray, the project architect, was present at that meeting, as well as one Staff from the Building Department and four Staff from the Planning Department. At the beginning of that meeting he disclosed that there had been a change in the application and conveyed to the Staff that he was purchasing the entire property. He also conveyed that another person was purchasing Lot 4 and the south three feet of Lot 5. Mr. Love believes that information is supported by Dina Blaes' comments at the bottom of the Post Meetings Notes and Post Meeting Comments, which states, "Applicant stated a preference for selling off part of the property, legal lot to the north." Mr. Love noted that her comment further states, "In that case, a move of the house could be considered, but must still meet the requirements of the LMC." Ms. Blaes further states that she visited the site and in her opinion, if the house remained intact, it could still meet the guidelines. Mr. Love noted that the Staff has determined that if the HPB allows him to move the house, it would still meet the guidelines and still maintain landmark status. He believed that fact was very important. Mr. Love felt it was unfortunate that Planner Cattan had not heard his disclosure in the May 19th meeting.

Mr. Love stated that following the May 19th meeting, Planner Cattan provided him with Staff notes for his review. On May 25th he was given a copy of Dina Blaes' staff note for review. He noted that it has always been Planner Cattan's position that he did not correctly convey his intention for the property. Mr. Love believed the problem was simply a matter that Planner Cattan had not heard his comment or she did not understand it. He was absolutely certain that he conveyed it. Mr. Love pointed out that even if Planner Cattan had not heard his disclosure on May 19th, she had the opportunity to read Dina Blaes' comments on May 25th. Mr. Love stated that a second DRT meeting was held on May 26th. He and Mr. DeGray were both present with five Staff members. A total of seven City Staff attended one or both DRT meetings. Mr. Love stated that they walked the property, discussed the movement, and talked about putting a basement under the home. After the second DRT meeting, there was no follow up Staff reports or additional comments.

Mr. Love read language from the design guidelines regarding relocation and/or reorientation of intact buildings, as read earlier in the meeting by Planner Cattan. Mr. Love stated that because the house could be moved and still maintain landmark status, he believed his application met all three of the criteria. Jonathan DeGray would further demonstrate compliance with the criteria in his presentation, as well as problems that could arise if the building is not moved.

Mr. Love referred to page 59 of the Staff report and read the Staff comment, "There are many examples of encroachment throughout town. The Building Department has been consistent in its policy to clean up any encroachments prior to issuing a building permit, by requiring a provision and an encroachment agreement or the movement of the structure so an encroachment would no longer exist." Mr. Love pointed out that he is unable to obtain an encroachment agreement. This is why he believes the third criteria would apply in this case.

Mr. Love stated that with respect to an encroachment agreement, it was clearly conveyed to Staff that the buyer of Lot 4 and the south 3 feet of Lot 5 would not give an encroachment agreement, and position has not changed. He noted that the Staff report contains an affidavit from Mr. Ludlow stating that he will not give an encroachment.

With respect to the pre-application requirements, Mr. Love referred to the LMC regarding the pre-application conference. The language indicates that the purpose of the pre-application is to identify potential impacts that may require mitigation. He referred to page 21 of the Historic District Design Guidelines, which states that, "The design review team will discuss the proposed project with the applicant so all parties have an understanding of the general scope of the project. The DRT will discuss the potential impacts of the project and identify issues that will require special attention or mitigation on the part of the applicant". Mr. Love reiterated that prior to purchasing the property, two DRT meetings were conducted and seven City Staff members attended one or both meetings. At no time did any of the City Staff mention an easement or an encroachment issue. In addition, none of the Staff reports or the letter from Dina Blaes mentioned any special attention or mitigation requirements in his application.

Mr. Love stated that in the pre-application meeting on May 19th he clearly stated that he did not own the property but it was under contract. He also believed it was clearly stated that the heirs of Ruth Staker owned the entire property. It was also stated to Staff that

when any application was made by himself and Mr. Ludlow, the properties would be legally split. The Staff was aware that the property was owned by one owner and when the application was made there would be two separate owners. The Staff also knew from the May 19th meeting that Mr. Ludlow would not grant an easement.

Mr. Love referred to page 52 of the appeal packet, the first paragraph and last sentence. The sentence read, "The Staff Planner provided the applicant with feedback based on the understanding that he was only purchasing Lot 3 and the northern portion of Lot 2 under Tax ID 138". Mr. Love stated that this was not a true statement. He noted that in the Staff report Ms. Cattan raised issues of moving the house, the basement, and the garage. He clarified that the garage completely sits on Lot 4 and the south 23 feet of Lot 5. Therefore, the Staff provided him with information on the entire site.

Mr. Love noted that following the first pre-application meeting, Dina Blaes stated that the applicant had stated a preference for selling off part of the property, legal lot to the north. Mr. Love emphasized that he clearly expressed his intentions, and he believed that was supported by Ms. Blaes' statement. Ms. Blaes had further stated that the house could move as long as it was intact, it was not re-oriented, it was not raised and it was not moved forward.

Mr. Love noted that the Staff report contained a letter he received from Staff on June 17, 2010, after he purchased the property and sold Lot 4 and the south three feet of Lot 5 to Rod Ludlow. The letter said that he had not provided accurate and complete information at the pre-application. He disputed that because he had fully disclosed everything he intended to do. He believed the Staff did not like the fact that he purchased the entire property and sold a portion, and therefore, said he created the encroachment issue. Mr. Love reiterated that the Staff knew that one person owned the entire property and they also knew that when application was made, two different people would legally own portions of that property. He found it puzzling because it implies that the Staff would be comfortable if the heirs of Ruth Staker had sold Rod Ludlow the property, but it was an issue that he sold it to Mr. Ludlow. He could not understand the difference. Mr. Ludlow legally purchased the property and it should not matter who he purchased it from. Mr. Love pointed out that if there was a reason why it mattered, the Staff had ample time to raise their concerns.

Mr. Love read Finding of Fact #14 in the Staff report, "An easement could have been secured for the encroachment of the historic house when the applicant sold Lot 4. An encroachment permit could have been obtained at the time of the sale." Mr. Love questioned why he would obtain an encroachment agreement when he had been through two DRT meetings and the encroachment was never mentioned as an issue. Without reason, he would not voluntarily do an encroachment agreement because it negatively impacts the value of his property and the property owned by Mr. Ludlow. It would also negatively impact the design of both houses.

Mr. Kozak restated their position and noted that it has never been disputed that there are two lots of record and one home, with the entitlement to have two homes. How well the homes can be designed and whether the application complies with the LMC is up to the HPB. Mr. Kozak stated that to the extent that the applicant has endured death by administrative paper cuts on this application, he asked the HPB to look at the substance of what is being proposed this evening.

Jonathan DeGray spoke about design issues and explained the benefits of moving the house. In addition to the streetscapes included in the Staff report, he provided three additional streetscapes based on the information they had on hand. Mr. DeGray stated that the variables in the streetscapes become an important aspect of the designs of the two homes. The first streetscape showed the existing home at 811 Norfolk being moved over 6-1/2 feet and the proposed home at 817 Norfolk. Mr. DeGray noted that the design application for 817 Norfolk is currently on hold pending review and determination of whether the home at 811 Norfolk can be moved. The design presented is preliminary and the Staff had already generated a preliminary report. Mr. DeGray stated that distance between the homes was 6-1/2 feet in the first scheme shown. The second example showed 3 feet of separation and a house jogging behind it. It creates a very tight appearance between the two homes and light would not be visible between the two buildings. In the final example, the homes were 6 feet apart, including the encroachment of 3-1/2 feet of the existing home at 811 Norfolk on to the property to the north. Mr. DeGray noted that this example would generate a home that is 15-1/2 feet wide. Based on language in the Staff report this evening, the third example may not be applicable.

Mr. DeGray pointed out that the widths of the homes on the top example followed a pattern of between 25, 24, 22, 32 and 35 feet, which is a pattern that appears to be desirable under Section B.1.7 of the design guidelines. He read, "regardless of lot frontage, the primary façade should be compatible with the width of surrounding historic buildings. The greater width of the structure should be set back significantly from the plane of the primary façade". Mr. DeGray explained that moving the house at 811 Norfolk back on to its own property and removing the encroachment, would set up the rhythm on the street that is desirable under guideline B.1.7. It is also reflected under B.1.8, referencing buildings constructed on lots greater than 25 feet wide. He noted that the Lot at 817 Norfolk is 28 feet wide. Mr. DeGray remarked that by moving 811 Norfolk on to its own lot and removing the encroachment allows the building on 817 to be a width that is in keeping with the other homes on the street. Showing an example where the house at 811 Norfolk was not moved, the width of the building on 817 Norfolk is 18 feet at best. Subsequently, if they are held to a 6 foot side yard setback, the building would only be 15 feet wide and totally out of character with the street.

Mr. DeGray requested that the HPB consider criteria B.1.7 in regards to the rhythm of the street and buildings along the street, and how that might apply to exception 3 in the guidelines, which allows the Planning Director and Building Official to make a special exception in this case.

Board Member Martz asked if the top rendering was part of the application before the last DRT meeting. He recalled a meeting where some of the issues were mitigated. Mr. DeGray replied that the example showing the home being moved was the plan that was accepted by Staff. He stated that the plan shows that the building would retain landmark status.

Chair Durst asked if both houses were designed by Mr. DeGray. Mr. DeGray answered yes.

Mr. DeGray and Mr. Love presented photos showing examples of existing homes where the homes are approximately 3 feet apart or less. Mr. Love believed the photos demonstrated that a better design is having more space between the structures.

Board Member White had a question on the different designs regarding movement of the house and retaining the landmark status. Mr. DeGray stated that the question was whether or not they could retain landmark status if the house was moved. They went through a design review that determined it would maintain landmark status. Planner Cattan clarified that the only part of the application that had not been approved was the movement of the home. Mr. DeGray clarified that the Staff denied the movement based on the technicalities outlined in the Staff report.

Mr. Love stated that Sandra Hatch did the conditions report for the house, and she is also a contract employee for the City. When the first denial came on December 1st and it was appealed, he hired her to review the Staff analysis. It was Ms. Hatch's professional opinion that if the house moves it would retain its landmark status. In turn, the Staff determined that with the modifications that were made, the house would maintain landmark status if it is moved.

Planner Cattan clarified that the current plan reviewed by Staff would retain its landmark status. If the HPB upholds the decision that the house cannot be moved, the Staff would need to re-evaluate the design looking at view of the house in its current location because more of the addition would be exposed. She noted that the applicant is aware that the design would need to be re-evaluated.

Board Member Martz asked if there had been any follow-up or re-evaluation from Dina Blaes since her letter dated May 25, 2010, with regards to the process that has taken place since that time. Planner Cattan replied that Dina Blaes had participated in meetings and helped with the process, but she had not provided further written comments.

Board Member Werbelow wanted to know the Staff's recommendation regarding the encroachment if there had only been one owner. Assistant City Attorney, Polly Samuels McLean, stated that from a legal standpoint, there was no encroachment issue when the property was owned by the Staker's because the entire property was owned by one owner. The encroachment issue came up when Lot 4 and a small portion of Lot 5 were sold. The encroachment issue relates to Lot 4, which is owned by a different person. Ms. McLean pointed out that the HPB was looking at this de Novo and their evaluation is the same scope as the Staff. If the Board sees other design issues relevant to a historic district design review, it is within their purview to raise those issues. Ms. McLean reiterated that the HPB was looking at this application anew. The history can give it context, but they need to look at it as though they were seeing it for the first time. The Staff's opinion is irrelevant because the HPB needs to determine whether or not movement of the house meets the criteria.

Assistant City Attorney McLean emphasized that movement of the house was the sole issue for the HPB to consider. Aside from that issue, the Staff believed that all other criteria of the guidelines had been met. The Staff did not believe the house could be moved under the requirements of the Land Management Code. Ms. Mclean stated that Mr. Kozak was correct in saying that public clamor should not affect the decision. The HPB should evaluate public comment for any evidence based on facts.

Mr. Love stated that in doing a title history they determined that Lot 3 was sold to a gentleman named Jones on April 23, 1889. He stated that the Sanborn Fire Maps shows a house on Lot 3 in December of 1889. It appears that the lot was purchased

and a home was built, but Mr. Jones did not own Lot 4. The house that was built encroached on to Lot 4 from its origination. Mr. Love stated that the encroachment existed until 1905, when Elizabeth Jones purchased Lot 4. He was uncertain of the relationship between Mr. Jones and Elizabeth Jones. Mr. Love stated that in his opinion, the current situation with the property is very similar to when it was originated in 1989.

Assistant City Attorney McLean clarified that from a legal standpoint, someone cannot give themselves an encroachment agreement. Encroachment only becomes an issue when the properties are occupied by separate parties.

Board Member White stated that from past experience, when a piece of property is sold and there is more than one lot, the standard City procedure was to first do a plat amendment to erase any property lines that exist within the property. He understood that Mr. Love purchased the property with the intent of selling off a portion, but he questioned whether Mr. Love should have gone through a plat amendment to erase the property line, which would have eliminated the encroachment.

Assistant City Attorney McLean replied that if the Staker's had tried to put an addition on the home when they owned it, the City would have required them to do a plat amendment to cure the encroachment by removing the lot line. Ms. McLean clarified that Lot 4 is a legal lot of record and the owner has the right to build a dwelling on that lot. The City addresses encroachment issues when there this a property line by either requiring an encroachment agreement, a plat amendment, or allowing the home to be moved.

Mr. Love stated that doing a plat amendment to remove the encroachment was not an option because it would create an unbuildable lot for Mr. Ludlow. The house encroaches 3-1/2 feet. If the lot line is moved 3-1/2 feet, Mr. Ludlow's lot becomes 24-1/2 feet, which is unbuildable.

Chair Durst opened the public hearing.

Jim Steinman, a resident on Norfolk Avenue, stated that if Mr. Love was allowed to move the house, he would be able to build two very nice livable structures. He noted that the Staker is no longer livable by a contemporary American Family. Mr. Steinman is a resident at 1100 Norfolk and the property line is off by a foot or more. Everyone on the block has that same situation. Mr. Steinman stated that property lines have nothing to do with where they built houses and placed fences many years ago. He supported moving the structure.

Sandra Morrison, Park City Historical Society Museum, felt the issue came down to the fact that the house would still retain its landmark status if it is moved. She noted that the City spent two years working on an inventory and deciding which structures were landmark and which ones were significant. This home was given landmark status because it retains its significance and its historic presence beyond most other structures. Ms. Morrison thought it was important to understand that the home at 811 Norfolk was put on the inventory at landmark status because it covered more than one lot and was built by someone with enough money to own more than one lot. Being owned by the Staker family provided additional history. Ms. Morrison encouraged the City to think about historic preservation as more than just retaining facades or portions of facades,

and think back to the initial discussion. Park City is a unique place and because of its uniqueness, historic homes are listed on the National Register of Historic Places as a mining town. It is the sum of all that makes Park City unique. In addition to facades, it also encompasses yards, fences, garages, and the entire history of the property. Ms. Morrison commented on the provision in the Code that made the home a landmark, and a separate provision that prohibits moving landmark structures. Moving it even slightly changes its sense of place and how they see history. It is important not to lose the full feeling of what life was like in Park City as you walk down the street. Ms. Morrison was surprised to hear Mr. Love say that the Staff did not tell him that he needed an encroachment agreement. She felt that information should have come from the real estate agent or others involved with the purchase. Ms. Morrison urged the HPB and the Staff to make sure the landmark status would not be affected if the house was moved.

Jim Steinman stated that he has lived in Park City 40 years and one of the many discussions over the years was that Main Street in reality was historic. However, when the old shacks in Park City were talked about, he recalled a statement that "none of the buildings were exactly what you would call historic, but maybe as a whole". At that time the whole was 150 or 160 whole buildings that had not yet been modified into what they are now. He stated that the historic neighborhood he lives in is not even a bad caricature of a historic district and he was unsure what they are even maintaining.

Katherine Matsumoto-Gray, a resident at 823 Norfolk, addressed the issue of retaining landmark status if the house is moved. She pointed out that the criteria for considering relocation of a historic house is that the significance would not be diminished and that it meets the items in the sidebar. Ms. Matsumoto-Gray agreed with the Staff evaluation that the application does not meet the criteria in the sidebar and that an encroachment agreement could have been secured at any point as a condition of the sale. She thought it was obvious that Mr. Love was aware that the encroachment existed because he brought that issue to the meeting when they discussed whether or not the house would be allowed to move. Regardless of who ultimately purchased the property, she believed there were ample opportunities to resolve the encroachment issue.

Katherine Matsumoto-Gray focused on the determination of significance if the house is moved. She read from page 4 of the guidelines regarding historical significance. Landmark sites have structures with the highest level of importance and not only convey the history of Park City, but are also physical representations of Park City's past influence in shaping a region and a nation. Park City's significant sites have structures primarily of local importance and define the fabric of historic Park City and reflect the communities past development patterns. Mr. Matsumoto-Gray argued that the location of 811 Norfolk is significant in conveying Park City history and the community's fabric and past development patterns. She believed that relocation of the house would diminish the significance of the site. Where it currently sits tells a uniquely Park City story. Ms. Matsumoto-Gray provided a brief history of the land and previous owners. She pointed out that the significance of 811 Norfolk lies not only in its structure but also in its story. Because of its history, she believes the home will lose its landmark status if it is moved, whether or not it meets the sidebar criteria. Based on the historic district guidelines, landmark sites and their associated buildings and structures must retain their historic integrity in terms of location, design, setting, materials, workmanship, feeling and association as defined by the National Parks Service for the National Register of Historic Places. Ms. Matsumoto-Gray stated that 811 Norfolk cannot maintain its landmark status if the location, setting and feeling are changed.

Chair Durst left the public hearing open for rebuttal following the applicant response to public comment.

Mr. Kozak referred to the comment that movement of the house in and of itself would remove it from landmark status. He noted that the landmark inventory was adopted February 4th, 2009. Those criteria are the same criteria currently in affect. If movement of the house in and of itself is grounds for losing landmark status, the Miner's Hospital would not be on landmark status. Mr. Love named other important sites such as the Whiskey Distillery and 802 Park Avenue. He stated that there were multiple examples of structures that were moved and still retained their landmark status. Mr. Kozak noted that those structures were moved under the current LMC and Mr. Love was entitled to that same consideration under Equal Protection of the Law.

Mr. Kozak thought this movement was unique because he was one of the first to have an objective criteria for wanting to move the house a specific distance. The objective is to cure the encroachment and there is objective sense for making this request.

Mr. Love was surprised by Ms. Morrison's comments since, the museum is a landmark structure and a considerable addition to the back changed that structure substantially.

There was no further public comment.

Chair Durst closed the public hearing.

Board Member McFawn thanked Mr. Love for his application and the public for taking time to express their comments. Board Member McFawn referred to page 57 of the Staff report, second paragraph, and the discussion of things such as arms length transactions, and why Mr. Ludlow was using an email address that matched Mr. Love's. He noted that no one had mentioned those issues this evening. His interpretation of the Staff report was that there was no arms length transaction when the northern lot was sold. Board Member Werbelow stated that it was a legal transaction and she did not believe it was relevant to this appeal. Board Member McFawn replied that if there was no arms length transaction, then it was not an actual equivalent of the sale. Board Member Werbelow explained that the property was transacted for \$200,000 and it was a legitimate real estate transaction.

Board Member White asked if it would still be possible to build a home on Lot 4 if the house at 811 Norfolk is not moved. Planner Cattan replied that Lot 4 is a legal lot of record and is still a buildable lot. However, any design would have to comply with the design guidelines. If the applicant were to include the 3 foot portion within their design, it would require a plat amendment.

Board Member White pointed out that the spaciousness of the existing streetscape would be lost if another structure was built next door to the existing historic house, because the site plan shows only three feet between the existing house and the proposed new house. If that could happen, he preferred to see the house moved, as long as it retained its landmark status. Board Member White thought a wider space between the two houses would be much more appealing.

Board Member Martz stated that the reality is that the house and the site will be impacted by the new addition, whether or not the home is moved. His preference would be to restore the house as is and keep it as a museum, but that is not reality. The applicant has gone through the process for the home at 811 Norfolk and regardless of a move, it will still maintain its landmark status. He understood the issues and how this came about, but the events happened as they did and the HPB now needs to make a decision. Board Member Martz agreed with Board Member White that if they cannot keep things as they are, it is better to move the house and establish a better streetscape, and still maintain landmark status.

Planner Cattan wanted to make sure their comments were within the framework of the criteria. If they support movement of the house, she asked that they also explain which criteria it meets.

Board Member Martz stated that he did not want to violate any of the criteria, but the HPB was asked to look at it anew and those were his comments.

Board Member Werbelow felt the HPB was charged to look at the facts, and the fact is that an encroachment exists today. In her opinion, why the applicant did not obtain an encroachment agreement was not relevant. The question is whether there is a mechanism to address that issue. She believed the mechanism was criteria one of the LMC, "A portion of the historic building or structure encroaches on a adjacent property." That criteria helps in her decision. She then needs to get comfortable with how it affects the landmark status. The definition of landmark has a list that includes, "retains its historic integrity in terms of location, design, setting, materials, workmanship, feeling and association." Board Member Werbelow stated that location is one of the criteria in that list. She appreciated the design feedback and history, however, the HPB was asked to look specifically at the encroachment issue and not the design per se. In looking at the aesthetics of the lot, it looks to be a more balanced presentation with the home being relocated. Board Member Werbelow had concerns about precedent setting, but she did not believe precedence would be an issue because this particular ability to relocate a home is already in the Code. They were not establishing new criteria that did not already exist in the LMC. Board Member Werbelow advocated the relocation under the criteria mentioned, however, her concern was how to make sure the home is not damaged if and when the home is moved.

Brian Guyer agreed that the encroachment exists as a matter of fact, and that is the issue to be considered. Whether or not the structure contributes to the feel of the neighborhood is not part of the decision. He found it difficult to separate the two issues, but he had to follow the facts.

Chair Durst stated that assurances that the integrity of the existing structure would be protected if it is moved, is the purview of the Planning and Building Departments. There would be continual inspections and both departments would make sure the integrity was not been compromised in any way.

Chair Durst noted that they were talking about two criteria under the guidelines. One is landmark significance, which they established would not be compromised. The second is historic integrity and whether it can be sustained with this proposal to rebuild on the site. He did not believe that could be measured prescriptively and it is the judgment the

HPB was called upon to make. In his personal opinion, Chair Durst believed the integrity had been sustained.

Chair Durst pointed out that the HPB had four options. They could deny the appeal, approve the appeal with conditions, continue the hearing, or approve the application as presented.

Assistant City Attorney McLean summarized that the HPB was focusing on the first and the third criteria. She understood from their comments that two Board members felt there were unique conditions due to the rhythm of the street and the streetscape. Ms. McLean noted that the Staff would need to make findings to support that decision and the decision needs to be based on the criteria. Ms. McLean understood that two people agreed that there was an encroachment and they considered the fact that an easement could not be secured. Regarding Board Member McFawn's comment regarding an arms length transaction, Ms. McLean stated that the HPB could evaluate that fact in terms of whether the information meant an easement could or could not be secured.

Assistant City Attorney McLean requested that the Board members frame their motion to relate to the criteria and be specific in terms of whether they believe one or both of the criteria apply.

Planner Cattan stated that if the HPB makes a motion to approve, she wanted to know how the conditions of the design review would play into the approval. Ms. McLean replied that part of the motion would be that if the HPB determines that the movement of the house can occur, the conditions of the design that was submitted in January and approved by the HPB under the historic district guidelines would apply. Any other conditions relevant to preserving the historic fabric should be deferred to Staff.

Board Member Werbelow clarified that the motion should refer to the specific date the application was approved to make sure all of the changes made in the application would carry. Ms. McLean stated that they should refer to the plans dated January 13, 2011 as the specific date. Board Member Durst understood that the HPB would only be approving movement for 811 Norfolk, and that their decision would not have any relation to 817 Norfolk. Ms. McLean replied that 817 Norfolk was a separate issue and would require its own process.

Ms. McLean emphasized that the HPB should refer to Staff for additional conditions. The issue for the motion is the movement of the house. Mr. Kozak assumed the applicant would be subject to conditions that are normally found in every approval by stipulation. Board Member Werbelow favored the idea of incorporating the third condition regarding the streetscape and visual impact as articulated by Board Member White.

Chair Durst called for a ten minute recess to draft language for a motion.

The meeting was resumed.

MOTION: Board Member Werbelow made a motion acknowledging that an encroachment exists at 811 Norfolk Avenue and that an easement cannot be achieved. Because the relocation as proposed does not otherwise compromise the landmark

status or the historic integrity, and that unique conditions exist, the January 13th, 2011 proposal is approved. Board Member White seconded the motion.

Board Member McFawn cautioned the Board to consider what could occur in the future. As more properties are sold, he believed they would see more applications resulting from people who do not check their property lines because lots can be sold without easements.

VOTE: The motion was approved 5-1. Board Member McFawn voted against the motion

Meeting adjourned at 7:20 p.m.

Approved by _____
Roger Durst, Chair
Historic Preservation Board