

PARK CITY MUNICIPAL CORPORATION
HISTORIC PRESERVATION BOARD
MINUTES OF AUGUST 15, 2012

BOARD MEMBERS IN ATTENDANCE: Dave McFawn, Puggy Holmgren, David White, Marian Crosby, John Kenworthy

EX OFFICIO: Thomas Eddington, Polly Samuels McLean, Patricia Abdullah

ROLL CALL

Chair McFawn called the meeting to order and noted that all Board Members were present except for Judy McKie and Kathryn Matsumoto Gray, who were excused.

REGULAR MEETING

Correction of Minutes for March 2, 2011

Planning Director Eddington noted that Page 3 of the Staff report outlined a correction to the Minutes of March 2, 2011 for the Board to consider this evening.

Director Eddington explained that during the HPB Appeal Hearing on March 2, 2011, Board Member Sara Werbelow made a motion on 811 Norfolk Avenue. In that motion, the minutes reflected a comment regarding historic integrity and that innate conditions exist. Director Eddington remarked that the word innate was a typo and incorrect. As part of litigation proceeding in District Court, the HPB hearing of March 2, 2011 was transcribed and the transcript shows that the word stated was actually “**unique**” and not innate.

Based on the transcript and the correct wording, The Staff recommended that the Board correct the minutes to reflect Chair Werbelow’s actual words and intent that “unique” conditions exist.

Chair McFawn pointed out that a quorum is needed to approve a motion; however, only he and David White were on the Board at the time. Assistant City Attorney McLean stated that those who were not on the Board at the time could rely upon the transcript and the minutes and vote on the correction as the Board. Assistant City McLean remarked that the issue was whether the transcript reflects the minutes and to make the minutes reflect what the transcript shows.

Chair McFawn remembered the wording as being unique, and he was comfortable making the correction. Board Member White also recalled the word unique.

Jeff Love, the applicant for 811 Woodside, stated that he had issues to clarify and discuss, and he was prepared to make his comments either before or after the motion.

Chair McFawn informed Mr. Love that he could make his comments under the Public Communication portion of this meeting.

Assistant City Attorney McLean clarified that the correction was a Board issue and not an applicant issue.

MOTION: Board Member White made a motion to CORRECT the minutes of March 2, 2011 as discussed. Board Member Holmgren seconded the motion.

VOTE: The motion passed unanimously.

Approval of Minutes of June 20, 2012

Board Member White noted that he had recused himself from the meeting.

MOTION: Board Member Holmgren moved to APPROVE the minutes of June 20, 2012. Board Member McFawn seconded the motion.

VOTE: The motion passed.

Approval of Minutes of July 18, 2012

Board member White recalled that he was recused from this meeting as well.

MOTION: Board Member Holmgren moved to APPROVE the minutes of July 18, 2012. Board Member McFawn seconded the motion.

VOTE: The motion passed.

PUBLIC COMMUNICATIONS

Mark Kozak, 2490 Sidewinder Drive, stated that he had represented Jeff Love, the applicant, when the original matter came forward on the correction to the minutes. Mr. Kozak was appalled and disappointed with the treatment of this request over the last three weeks. He remarked that the Board vote to correct the minutes was done at his request on behalf of Mr. Love. He made that request after 18 months in court, where Mr. Love prevailed and the City did not. Mr. Love was still waiting for payment of his costs from the City. Mr. Kozak stated that he went to hearings to argue against the City on what was just corrected and what two Board members recounted had occurred. He pointed out that the City attorneys represented to the Court that it never happened. Mr. Kozak stated that although the criteria required and the review of the conditions was mentioned, the HPB rejected that criteria. His client spent tens of thousands of dollars faced with those kinds of misrepresentations to the court. Mr. Kozak thanked the HPB for doing the right thing tonight and he sincerely appreciated it. He also appreciated that the Court saw that it was appropriate to tear up the Board of Adjustment's decision and remand it back to the HPB. Mr. Kozak stated that the reason for changing the minutes was that after 18 months, the court ordered that Mr. Love come back to this step in the process and that the Board of Adjustment proceedings were null and actually illegal.

Mr. Kozak thanked the Board for being forthright in their recollection and for approving the change.

Mr. Love stated that throughout this process he had been before a City Board or Commission five times. Another time was cancelled due to noticing issues. Mr. Love reiterated that the correction was made at his request. The City had not done it on its own. Every time he was involved in this process, he submitted information to be included in the packet. His understanding was that the City attorney censored the information that he asked to have included in the packet for this evening. Mr. Love was amazed that the City Attorney would censor that information.

Assistant City Attorney McLean clarified that she did not know what information Mr. Love was referring to. However, it was moot because this was strictly a time for public communication.

Mr. Love stated that the information was turned in prior to the deadline and it did not make it into the packet. He believed it was not included in the packet because it was critical of Ms. McLean.

Mr. Love wanted to know how the "unique condition" ended up the way it did. In his request he asked that Katie Cattan be present. He emailed his request on Monday and asked again today, but she was not present. Director Eddington replied that Ms. Cattan was unable to attend the meeting due to a family commitment. Mr. Love found that to be a convenient excuse. He had several questions for Ms. Cattan. The first question was that on March 2, 2011, it was very apparent from the transcript, that his approval was based on two separate criteria. The first criteria related to the encroachment issue, and the second the criteria of unique conditions. Mr. Love stated that his reason for putting this on the record was that the appeal window for Ms. Matsumoto-Gray, who was appointed to the HPB after she successfully appealed the HPB decision, as well as the City's appeal window ends at 5:00 on Monday, and neither party had given any indication of what they intended to do. He wanted to insure that both approvals were accounted for if this goes back to court.

Mr. Love felt it was obvious from the transcript that the motion included two approvals. He felt the reason why he missed the incorrect wording was irrelevant. However, he wanted to know how the City missed it because they are the ones who write the Staff reports and are included in the conversation. He recalled that a ten minute recess was called to draft the motion, and he was not privy to what was said. He did hear the motion but he missed the second approval. Mr. Love was amazed that he won the appeal, because in his opinion the Staff report was one-sided. He believed that was how he missed the second approval.

Mr. Love stated that in court, the City Attorney argued to a District Court Judge that the HPB actually overturned their own approval when they adopted the Findings of Facts and Conclusions of Law on April 6th. He asked if the Board changed their mind and decided not to approve the unique conditions. That was a major question because it was argued in court. He was stunned at how the HPB could reverse their decision without any discussion, and that everybody voted that way.

Mr. Love stated that a question for Ms. Cattan addressed the findings of fact that were written in the Staff report that have no relationship to the encroachment issue. However,

she failed to use the word “unique condition”, which left a gray area. Mr. Love read, “Finding of Fact #22, “The HPB stated support for the movement of a landmark structure to create greater spacing between homes as long as the landmark structure is not jeopardized and continues to be a landmark structure in the Park City Historic Sites Inventory.” He read Finding of Fact #23, “Spaciousness of the existing streetscape on that portion of Norfolk Avenue would be lost if another building was built in the permitted three-foot of the existing historic house.” Mr. Love had wanted to ask Ms. Cattan what she meant by those findings of facts. Mr. Love read Finding of Fact #19, “The Chief Building Official did not determine that unique conditions exist to warrant the proposed relocation and the reorientation on the existing site. There are no unique building code conditions on the site. There are a number of homes in Park City which encroach over property lines, which can be mitigated for spacing, fire sprinkler systems, and building materials.”

Mr. Love noted that on July 26, 2012, he met with the current Chief Building Official, Chad Root, and he requested that Roger Evans, who was the Chief Building Official at the time of his appeal, also attend the meeting. In that meeting he asked Roger Evans if he had written that finding of fact. Mr. Evans told him no, that he had never seen it before. He did not write the finding of fact, nor did he agree with it because there was an existing condition on the site. The finding is not a true statement because the Building Department will not issue a building permit over an existing property line. Therefore, if he wanted to renovate that 668 square foot structure as it is, he could not do it because a property line runs under that property.

Mr. Love asked Director Eddington to explain how his application was denied by the Chief Building Official when he had never seen the denial.

Assistant City Attorney McLean stated that Mr. Love could proceed if he wanted to make public comment to the Board that was relevant to the purview of the Board and items that the HPB would be hearing. However, personal questions to Staff or to the Board should be addressed outside of this forum. This forum was for public comment.

Mr. Love had additional comments relative to his application that went before the HPB. Mr. Love stated that one of his appeal issues was that the movement of the house results in superior neighborhood design. According to the Staff report, the Staff agreed with the applicant on the general proposition that the removal of an encroachment while retaining significance of the landmark structure is good practice and results in better neighborhood design; however, the only justification that would allow for movement of historic structures was the four criteria listed under LMC Section 15-11.3-A. The Staff analysis further stated that there are no criteria within the LMC or design guidelines that allow for movement of the home based in improved overall streetscape. Mr. Love understood that to mean that the Staff believed that that moving the house creates a better streetscape, but a better streetscape does not qualify for unique conditions. Based on that interpretation, Mr. Love wanted to know why six weeks later the applicant for 424 Woodside was approved to relocate a house under unique conditions for better streetscape. He asked Director Eddington to explain why he was discriminated against.

Director Eddington replied that the two applications were very different. Mr. Love explained why he believed the two applications were not that different.

Regarding his application, Mr. Love read a statement from Assistant City Attorney McLean's trial brief, "The HPB motion to permit movement of the house was solely based on the encroachment. Board member Werbelow made a motion acknowledging that an encroachment exists at 811 Norfolk Avenue and that easement cannot be achieved." Mr. Love pointed out that Ms. McLean failed to add the second approval, which was the entire motion, and somehow managed to misquote the approval to only address the encroachment issue. In District Court, after Judge Kelley realized there were two approvals, the conversation turned to the idea that the HPB overturned their own approval without any conversation.

Assistant City Attorney McLean stated that the Staff did not need to hear personal attacks. If the Chair wished to have the Staff answer questions, he could direct them to do so. However, this was not an item on the agenda and it was not the correct forum. Mr. Love remarked that after 27 months he wanted an answer to his questions.

Chair McFawn asked if Mr. Love had anything further for the Historic Preservation Board. Mr. Love stated that he was finished and he thanked the Board for listening.

STAFF/BOARD MEMBER COMMUNICATIONS AND DISCLOSURES

No Staff communication was given.

WORK SESSION

Discussion and overview of National Planning Trends

Director Eddington reviewed a slide presentation of National Planning Trends going on around the Country. Walkability was a major component and Director Eddington provided various scenarios to show how far people are willing to walk. The new trend is not based on distance, but rather the quality of the environment. He noted that in the car focus of an American Main Street people will walk approximately three-quarters of a mile. On a basic neighborhood street in the outlying neighborhoods of downtown, people walk approximately one-quarter of a mile. In a suburban neighborhood people tend to walk a tenth of a mile. The lots are larger and it takes longer to go from one view to another view. Director Eddington remarked that the ability and willingness to walk is not as quantitative as it once was. It has become more qualitative in terms of feeling, ambiance and the fabric of the area.

With Sustainability in mind, Board Member Kenworthy wanted to know how they would compromise to get more people around walkable areas. Director Eddington replied that the challenge is the need to create dense environments to motivate people to walk. People hate density and sprawl, but on this issue, density is a better option. Putting things closer and creating visual interest is the motivator.

Director Eddington noted that the United Kingdom is pushing on a bio-diversity action plan and were ahead of the United States in that they do centralized planning. The UK

has a significant coastline that generates a significant amount of tourist dollars and they are looking at protecting that from both global warming and other localized issues.

Director Eddington commented on alternative modes of transportation in New York City. He noted that most American cities are starting to put in bike lanes. It is a great system but some people are uncomfortable with it. New York City is installing cycle tracks, which closes down one lane of traffic and uses parallel parking as a buffer between the cyclist and the movement of traffic.

Board Member Kenworthy stated that he recently read an article in Forbes which stated that a trails system was the number one amenity for new homes. He was surprised to learn that people want to get out of their community or be part of a trails system with their community. He noted that trails surpassed golf courses. Board Member Kenworthy wanted to know where the Park City planners were leaning in terms of people movers, etc. Director Eddington replied that as the Staff updates the HPB on the General Plan they will begin to see more of what might be proposed. He stated that Old Town streets are narrow and were not designed for the modern day automobile. There have been ongoing discussions for many years about whether the roads should be widened and sidewalks added. However, the direction of the most recent discussions has been moving towards narrowing the streets and making them complete streets, and not putting sidewalks in Old Town. Copenhagen has "complete streets" where people walk on the street and the cars maneuver around the pedestrians.

Board Member Kenworthy asked if the City would make more streets one-way. Director Eddington replied that they have talked about one-way streets on some of the east-west connectors to let people loop around if they need to, but one-way streets have not been popular with people who live on one-way streets. The recommendation is for a straight traditional grid pattern and keeping the streets narrow and simple.

Board Member Holmgren favored the idea of narrow streets, but they have to find a way to slow down the traffic. Speed is still a big issue on Main Street and Park Avenue. The problem with one-way streets is that people tend to speed because no one is coming at them in the opposite direction. Director Eddington agreed that the more delineation on a road the faster people will go.

Board Member Kenworthy asked about gondolas and other people-mover proposals. Director Eddington was unsure what had happened with the gondola proposal. He noted that there are definite groups of people for and against the gondola. In the end, it is more appropriate to be working with gondolas and other alternative modes of transportation.

Board Member Crosby asked about potential sites for a gondola. Director Eddington replied that the Brew Pub was the only site mentioned at this point. There is very little capacity to land a gondola at Main Street. Board Member Crosby had heard that the Senior Center on Park Avenue was another potential site. Chair McFawn explained that it was a different transit. Park City was considering working with PCMR on their parking lot to accommodate buses and other transportation. He assumed Board Member Crosby was referring to that, which was completely separate from the gondola.

Open Public and Meetings Act Training

Assistant City Attorney provided annual training per the ongoing requirement of the State Code. The intent is to remind Boards and Commissions of the spirit of the act and why they have public meetings.

Assistant City Attorney McLean remarked that the spirit is to act openly, deliberate openly and make decisions openly. Sunshine Laws require transparency in decision making. Ms. McLean stated that a quorum for the HPB is four members. Any time four Board members are together and they discuss a matter related to HPB that they have the ability to act on, it is considered a meeting. This also includes work sessions and site visits. A meeting is convening. It is not a chance meeting.

Assistant City Attorney McLean commented on emails. She noted that if the Board members correspond through email it could be considered a meeting, and it would not be transparent. It opens the Board up to two exposures. One would be violation of the Open Public Meetings Act. The second is that the Board members could be exposing their email to the Government Records Act, because the public has the right to ask for documents that are used in official business as governmental officers sitting on the HPB. If a citizen makes a GRAMA request, the City would have to look at all their emails to determine which ones would be applicable to that request. Ms. McLean advised the Board not to communicate outside of their meetings regarding HPB business; and not to communicate via email.

Assistant City Attorney McLean stated that Board members are allowed to text another Board member, but not during a meeting. However, she advised them against texting on substantive matters because text messages are also subject to GRAMA. The idea is that all decisions should be made in public.

Assistant City Attorney McLean noted that State Law requires that meetings occur at a regularly scheduled place. The meeting location for the HPB is the City Council Chambers. The only exception is a site visit or if the entire meeting is moved to a new site. The location must be publicly noticed. Ms. McLean stated that a Board member is allowed to participate electronically; however, the HPB needs to adopt a rule to allow for that. She noted that the Planning Commission adopted a rule to allow electronic participation and the City Council also has a policy. Both bodies rarely use it. If the HPB is interested in adopting a policy, Ms. McLean suggested that they take time to discuss the details and set some parameters.

Chair McFawn would like the Board to adopt a policy in the future.

Assistant City Attorney McLean stated that it was unlikely that the HPB would ever have a reason to close a meeting. The City Council is the appropriate body for closed meetings. Ms. McLean remarked that the Open Public Meetings Act requires at least 24 hours public notice on the agenda. She noted that Park City has much longer noticing requirements per the Land Management Code. The public notice is posted in several locations. Park City also has an e-notify link on the website where people can register to receive the agenda and packet for specific meetings.

Assistant City Attorney McLean stated that open meeting means that the Board has the ability to have their deliberations in a public forum. It does not mean that people have the right to comment. As an example, grant applications do not require public comment; but the Board may choose to do so.

Chair McFawn asked if the Board had the ability to shut down public comment if public comment was opened and the public was still speaking. Ms. McLean answered yes, if the comments are not relevant to the matter. She noted that if someone raises an issue that is not on the agenda and would like the HPB to take action, the appropriate approach is to put it on a future agenda for discussion and formal action.

Board Member Crosby understood that if an item was put on the agenda, it would need to meet the noticing requirements for public comment. Ms. McLean replied that it would depend on the item. The Code has certain noticing requirements for items outlined in the LMC. If it was something minor that was not addressed in the Code, it would only require a 24 hour notice.

Assistant City Attorney McLean stated that disruption of a meeting does not have to be tolerated. If someone acts unruly, the Chair has the right to ask them to stop. The Chair also has the ability to put a time limit on each speaker for controversial items where a number of people want to speak. The Chair can also keep people on point during public comment. If a speaker is asked to stop but continues talking, the Chair can interrupt the person and shut them down.

Assistant City Attorney McLean stated that written minutes and recordings are required for all public meetings under State Code. Site visits do not require minutes. The recording must be of the entire meeting and unedited. The minutes are approved by the Board and becomes the official record of the meeting. It is important for the minutes to be reviewed for accuracy before approving.

The Open Public Meetings Act is enforced by the County Attorney and the Attorney General, and violation is subject to a Class B Misdemeanor.

The meeting adjourned at 6:08 p.m.

Approved by _____
Dave McFawn, Chair
Historic Preservation Board