

PARK CITY MUNICIPAL CORPORATION
HISTORIC PRESERVATION BOARD
MINUTES OF FEBRUARY 3, 2010

I hereby certify the copy of Historic Preservation Board minutes of February 3, 2010 are true and correct as approved by the Historic Preservation Board on March 17, 2010. 

BOARD MEMBERS IN ATTENDANCE: Roger Durst – Chair; Ken Martz – Vice-Chair; Dave McFawn, Sara Werbelow, Adam Opalek

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

ROLL CALL

Chair Durst called the meeting to order at 5:04 p.m. and noted that all Board Members were present except for Brian Guyer and David White, who were excused.

PUBLIC COMMUNICATIONS

There was no comment.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Assistant City Attorney, Polly Samuels McLean stated that at the next meeting on February 17th, the HPB would discuss dates for visioning. She suggested that the Board members brainstorm any issues they would like to have discussed at visioning and provide them to the Staff at the next meeting.

Ms. McLean noted that she still needed to do training with the new members.

Board Member McFawn requested that packets be available to the Board members earlier than 48 hours before the meeting. This short time frame does not allow adequate time to review the materials prior to the meeting. He was not opposed to picking up his own packet if it would mean that he gets it sooner.

Planning Director Thomas Eddington stated that the Staff could look at amending their schedules in an effort to have the packets ready by Wednesday rather than Friday. The Board members would have the option of picking up their packet and any packet not picked up would be mailed out on Friday. He offered to work with Staff and update the Board on a proposed policy at the next meeting.

Chair Durst commented on the potential for visioning as they move forward. He had the opportunity to review the purposes that were set up that the HPB is being called upon to perform. Chair Durst stated that the HPB is charged with encouraging preservation to preserve the City's unique character, encourage compatible design, identify and resolve conflicts, and to provide input to the Staff. He did not believe they have taken the opportunity to do that. During the visioning, he would like to talk about making the HPB much more proactive. As a planner in the City he is very concerned about what is happening and the loss of historic legacy. Chair Durst felt there were things the HPB could do to publicize the historic quality and character of the community. He suggested that the HPB could work more with the Park City Historical Society and publicize significant contributions that are made to restoration in the City. He would like to look at setting up a non-profit corporation that could acquire properties and turn them around. He suggested that the HPB could also consider getting involved with Mountain Lands or similar organizations.

Chair Durst expressed concern with the design review process and felt it needed to be more aggressive. He believes the Staff is capable and makes good judgments with regards to ordinances, regulations and Codes, however that is not a guarantee for good design, quality, character and delight in the City. Chair Durst requested that this topic also be discussed during visioning. He encouraged the HPB to be prepared on February 17th to discuss these topics and to make recommendations. He reiterated his belief that those appointed to the Historic Preservation Board have an obligation to become more proactive.

Board Member McFawn was unaware that the HPB was scheduled to meet on February 17th. Director Eddington clarified that typically the next meeting would be March 3rd, however, there was a matter regarding a determination of significance that would be discussed on February 17th.

Assistant City Attorney McLean stated that if the Board members were not noticed and were unable to attend on February 17th, that matter could be re-scheduled to March. Board Member Werbelow stated that she was unable to attend on February 17th. Chair Durst noted that he was advised by Patricia that a meeting was scheduled for February 17th. Director Eddington replied that technically that meeting was scheduled.

The Board discussed meeting dates and determined that the meeting should be left on the schedule for February 17th, in hopes of having enough Board members present for a quorum. Board Member Werbelow would provide her comments regarding the visioning to Patricia prior to the February 17th meeting. Ms. McLean requested that Board Member Werbelow also include the dates she would be available for visioning.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

505 Woodside Avenue – Appeal of Staff’s Determination
(Application PL-09-00778)

Planner Brooks Robinson reported that the item for 505 Woodside Avenue was an appeal of the Staff’s determination for compliance with the design guidelines. Based on information provided by the appellant, the Staff had asked the applicant to obtain a cleaner copy of the 1940 tax photo and to verify previous measurements showing a wall panel at 10 feet. The applicant provided that information at 3:00 p.m. today and the measurement increased the panel size to 15 feet, which was similar to the measurement Kevin King had provided in his analysis. Planner Robinson stated that based on that information, the applicant would amend his application and look at alternative designs. The amended application would then go through the design review process, which requires a new analysis and noticing. Planner Robinson noted that because the applicant intends to amend the application, the appeal on the existing application becomes moot. He spoke with the appellant prior to this meeting and the appellant is in agreement with the process.

Chair Durst asked when the re-hearing might be scheduled.

Assistant City Attorney McLean stated that there would not be a re-hearing unless another appeal is filed. She explained that the project would be re-designed and

reviewed under the Historic Design Review process. If an appeal is filed at that point, it would come back to the HPB.

Work Session Discussion on the Appeal Process

Ms. McLean stated that because time was scheduled to hear the appeal this evening, she suggested that the time could be used to provide the Board with background on the appeals process and procedures. She explained that per the Code, appeals must be made within ten days of a determination by Staff. The Code reads that an appeal must state all the reasons of the appeal. Ms. McLean remarked that the City tries to be fair to all parties and allow everyone the opportunity to provide further input if they have something new to present. However, the HPB has the discretion to determine what evidence they want to consider as part of their determination.

Ms. McLean pointed out that quasi-judicial is a strange term. It cannot be a judicial hearing, since the Board members cannot be turned into judges for a short time to hear the appeal. However, the Board sits in a judicial role and in that role of acting as a judge to determine an appeal, they do have control over what evidence can be considered and what weight is given to specific evidence. Ms. McLean cautioned the HPB not to be overwhelmed by the materials and to use them to evaluate relevancy.

Ms. McLean commented on procedure. She explained that during the appeal hearing, the Staff typically summarizes the issues of the appeal as they are outlined in the Staff report. The HPB would be acting as the Staff and looking at the issues de novo, which means looking at it anew. After the Staff summary, the appellant is allowed to comment on the issues they raised in the appeal, since the burden of proof is on them. The applicant is then given the opportunity to respond to the appellant's comments. At that point the HPB could determine whether or not to allow rebuttals by either party. Ms. McLean noted that generally one rebuttal is allowed per party before the Board members deliberate. The Board can also ask questions and/or request further information or evidence.

Board Member Martz understood the appeal process; however, if the appellant has additional information to present during the hearing, he would like to receive that information and have the opportunity to review it. During the hearing the appellant could give his argument as to why he would like the HPB to consider it. Board Member Martz stated that receiving extraneous information without the benefit of review makes it difficult to determine the actual issues of the appeal. He suggested that information could be presented at one meeting and the HPB could review the facts presented and make their decision at a subsequent meeting.

Board Member Werbelow remarked that another issue is how the data is presented to the HPB. For the first time, she found the flow of this Staff report difficult to understand. She noted that the exhibits referred to in the language did not correspond with the lettering on each exhibit. Before she even reached the new material, she was bogged down by the original report. Board Member Werbelow asked if it was possible for the Staff to synthesize the data or compile a list of summaries.

Ms. McLean stated that when the Staff receives items within the appeal period, they have the ability to analyze the information. The challenge is how to deal with additional information the appellant would like included. Since the appellant is different from the

applicant, the applicant has a due process right to get a decision and not have the matter infinitely continued because of additional information. Ms. McLean remarked that the concern is potentially encouraging the game of providing new information in hopes of forcing a continuation to prolong the decision. On the other hand, she agreed that the information can be overwhelming. Ms. McLean stated that the Staff has the opportunity to analyze the information provided within the deadlines or close to the time of the appeal, which happened in this case. However, after that time, the appellant wanted to include additional exhibits. The Staff included those exhibits in the Staff report for the HPB to have, but they did not have time to analyze that material. From a legal perspective, people have a right to present whatever information they feel is relevant, but the HPB can determine whether or not to consider it if it comes in disorganized or in a late manner.

Board Member McFawn asked if it would be easier for the Staff if the time period was extended from ten days to twenty days for the appellant to submit their issues and all evidence, and not allow additional information to be submitted or presented after that time.

Ms. McLean replied that the LMC reads that there is ten days for an appeal. They could consider amending the LMC to would allow for a different deadline. She reiterated that from a legal perspective, she was uncomfortable saying no to someone who wants to submit additional information. The appellant has a right to submit whatever they want when they are presenting as long as it relates to the issues named in the appeal.

Ms. McLean stated that they could consider revising the internal process and provide the Board members with the Staff report earlier than the Friday before their meeting. She noted that this would not alleviate the problem of an appellant or applicant submitting new information between the time of the packet and the hearing.

Board Member Martz agreed that the Board has an obligation to be expeditious and move the process along for the applicant. Ms. McLean stated that the HPB could take the position of reviewing the material during the meeting and giving it the weight it deserves based on their limited review.

Board Member McFawn thought the evidence should carry the same weight regardless of whether it was provided in advance or during the meeting if it is relevant information.

Ms. McLean stated that if the Board preferred, they could take the position that any material that is not provided to the Staff within the ten day appeal period should be presented at the hearing and not submitted to Staff. She believed that position was legally defensible.

Board Member McFawn referred to the comment that the burden of proof is on the appellant. He asked if that meant that by the time the appeal comes before the HPB, the applicant has everything in order. Ms. McLean stated that for Historic District Design Review the Board is looking at it de Novo, which means they are not giving any deference to Staff. The appellant has the burden to bring forth evidence for the HPB to make a decision.

After asking questions, Chair Durst determined that Larry Meadows, the appellant was present, but he was confused by the conversation regarding the appeal process. He

also clarified that Doug Stephens, representative for the applicant, was present and that Mr. Stephens understood that the appeal had been withdrawn based on an amended application.

Board Member Werbelow felt they should hear from any of the public in attendance this evening.

Chair Durst called for public comment.

Larry Meadows, the appellant, explained that an application was approved and he had sent a letter disputing the application. He believed his letter was ignored and instead was put in the appeal process. Mr. Meadows remarked that his concerns could have been addressed and should not be in appeal.

Ms. McLean advised that the appeal for 505 Woodside should not be discussed this evening, since it may still come back to the HPB in the future. She requested that the comments focus on the appeal process in general as a work session item. The comments and discussion should relate to the best way to handle appeals and the best policy for getting additional information after the ten day period has passed.

Mr. Meadows asked if the application was rescinded or if it is allowed to be amended. He noted that when an application is approved, people have the right to dispute certain issues. He was confused as to why the application could be amended rather than started anew. Ms. McLean stated that the Staff would have to see what the applicant submits as an amendment. She pointed out that generally people are allowed to amend their applications.

Mr. Meadows stated that when an appeal is filed, the applicant is still allowed to amend and modify his plans, which is why the Staff and the Board continue to get new information. He noted that the approval that was appealed was different from the project currently proposed. As the appellant, he felt his appeal was static, but the applicant is still dynamic and a moving target. Every time he identified an issue, the applicant made a change and moved around it. Mr. Meadows believed the process should allow an application to be appealed and a determination made as to whether or not an application is valid. If it is not valid, they should start over. An application should not have perpetual life. If an application is approved and appealed, it should be carried through and a decision should be made.

Mark Kozac, Counsel for Larry Meadows on this project, believed there was a subtle interplay between the issue of when the Staff's analysis is presented, when the applicant's evidence is presented, when the appellant's rebuttal is presented, and when all other rebuttals are presented. Mr. Kozac remarked that there is an interesting interaction between the submission of new information and the legal question of when an application is considered complete. When the application is complete is a magic date because that is the date identified in the LMC for considering an application. Mr. Kozac stated that there is a substantial impact on that issue with the issue of the stages of the appeal. He understood that the Board members were expressing a preference for information in a readily digested form to avoid surprises at a hearing.

Board Member Martz clarified that he would like to see the appeal and the Staff's presentation of that appeal. It might be appropriate to receive additional information that

comes in if the Staff believes it is important. Board Member Martz stated that the time of the appeal hearing is the appropriate time for the appellant to make their presentation and provide additional information. If the information is significant, the appeal should be continued to allow everyone time to digest the information. He felt they should compartmentalize the process to avoid confusion. This would help keep all the information intact rather than having it piecemeal and coming from everywhere.

Planner Robinson stated that the HPB, the Planning Commission, the City Council and the Staff have heard that complaint in the past. Last year the City adopted new guidelines and new LMC amendments under the duties of the Historic Preservation Board and the process for HDDR. He agreed that ten days may not be a lot of time for a neighboring property owner to synthesize all the information. Planner Robinson pointed out that currently the Code reads that once a completed application is received, public notice will be posted and mailed to neighboring properties regarding that application. The Staff has 45 days from the receipt of the application to conduct the design review process and find for compliance. If issues need to be addressed, the Staff could work with the applicant to make changes for compliance or they could just determine non-compliance. Planner Robinson explained that if the Staff finds compliance, the application is again posted and noticed.

Ms. McLean remarked that in the case of an appeal, if the original design is changed, the policy is that the Planning Director would send a summary of those changes to the appellant for their information. If the changes are substantial, that would change the entire design. The Staff determines if the changes are minor. Ms. McLean noted that sometimes the appellant is right and a window or wall may not be in compliance. If the applicant makes that change and it does not change the overall design of the project, it is disingenuous to say that the design has totally changed. Minor problems can be corrected to become compliant with Code. Ms. McLean understood an appellant's frustration if they believed the design was changed, which is why the Planning Director sends a summary explaining the modifications. If the Staff determines that the modification substantially changes the design, it triggers a new 10 day appeal period.

Board Member Martz asked if Planner Robinson had a preference on compartmentalizing the process.

Planner Robinson replied that the Staff would like to receive information from all sides as early as possible so they can analyze the information and present it to the Board. In a design review, the Staff reviews a project against the design guidelines for compliance to make their determination. If they find compliance, an appellant can dispute that decision and present their argument for why they disagree. Planner Robinson felt it was important to have that information upfront. He stated that under the current LMC, they always want to err on the side of providing the information without overloading the Board during a meeting. He pointed out that the Board has the discretion to determine what information is pertinent to accept. Planner Robinson thought it would be helpful for the Board and the Staff to have information in time to be included in the Staff report and for the Staff report to be provided to the Board members in a timely manner.

Ms. McLean stated that because this discussion on appeals was not publicly noticed as an agenda item, she was concerned about getting into too much detail. She suggested that the Board continue taking public comment this evening and continue their discussion at the next meeting or at visioning when it can be noticed.

Kevin King, an architect and designer for Larry Meadows, stated that speaking generally, it appears that the appellant can never win because the deck is stacked against them. He noted that the Staff gets two months to prepare a report and to work with the applicant to make necessary changes. In contrast, the appellant sees the Staff report on Friday and only has the weekend to review the material and respond. Mr. King believed the report gives deference to the Staff, regardless of whether it is de Novo. He felt the Board needed to be proactive in revising the process and clearing up public misconceptions. Mr. King understood that when the HSI was put in place, it was the body of evidence that was established for that building.

Ms. McLean reiterated her request that the Board not take comments regarding 505 Woodside.

Mr. King clarified that he was speaking about all structures on the HSI and not 505 Woodside.

Ms. McLean asked Mr. King to keep his comments strictly on the appeal process.

Mr. King remarked that the process needs to be clarified and followed step by step. He believed that if the Staff could spend time talking with the neighbors they could avoid potential appeals.

Chair Durst closed the public hearing.

Chair Durst reminded the Board that the next meeting was February 17, at which time they would discuss long range projections for the HPB. Board Member Werbelow thought it was important to continue their discussion on the appeal process and to add that to the agenda. She felt it was evident that the matter needed to be further discussed with input from the public. Chair Durst asked that the Planning Department include the appeals discussion on the agenda.

The meeting adjourned at 5:57 p.m.