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**SALT LAKE CITY
HISTORIC LANDMARK COMMISSION
Minutes of the Meeting
451 South State Street, Room 126
September 19, 2007**

A field trip preceded the meeting and was attended by Commission Members, Paula Carl, Esther Hunter, and Jessica Norie. Planning Staff present were Joel Paterson, Nick Norris, and Janice Lew. A quorum was not present; therefore, minutes were not taken of the field trip.

MINUTES OF THE MEETING

The Historic Landmark Commission and Staff assembled for the meeting. Present from the Historic Landmark Commission were Chairperson Fitzsimmons, Commissioner Heid, Commissioner Carl, Commissioner Haymond, Commissioner Hunter, Commissioner Lloyd, and Commissioner Norie.

Present from the Planning Staff were George Shaw, Planning Director; Cheri Coffey, Deputy Planning Director; Joel Paterson, Planning Programs Supervisor; Janice Lew, Principal Planner; and Nick Norris, Principal Planner.

Lynn Pace, Deputy City Attorney was also present.

Chairperson Fitzsimmons called the meeting to order at 4:07 p.m.

An agenda was mailed and posted in accordance with Zoning Ordinance regulations for public hearing noticing and was posted in the appropriate locations within the building, in accordance with the open meeting law. Members of the Public were asked to sign a roll, which is being kept with the minutes of the Historic Landmark Commission meeting. An electronic recording of this proceeding will be retained in the Planning Division office for a period of no less than one year.

Chairperson Fitzsimmons inquired if all Commissioners had the opportunity to visit sites that would be the subject of discussion at this meeting. The Commissioners indicated they had visited the sites.

COMMENTS TO THE COMMISSION

The Chair opened the meeting to comments from the public which were unrelated to any case that would be heard during the course of the meeting. Seeing as no member of the public expressed the desire to speak, the Chair moved on to the next item on the agenda.

PUBLIC HEARING

As Mr. Pace planned to attend the meeting during the discussion of the minutes, and as he had not yet arrived, the Chair rearranged the order of the agenda and moved to public hearing.

Case No. 470-07-30 KeyBank — a request by KeyBank, represented by Jim Serrine, for a Certificate of Appropriateness for a Major Alteration to a non-contributing structure located at approximately 290 South 1300 East in the University Historic District. The property is located in a Community Business (CB) Zoning District. (Staff: Nick Norris at 535-6173 or nick.norris@slcgov.com)

(This item was heard at 4:07 p.m.)

Mr. Norris presented the application and history of the site. He stated that the applicant was proposing to remove the existing wood siding and replace it with brick and stucco. The renovation also includes adding new trim and awnings to the building. Although the structure is non-contributing, the exterior alterations are highly visible. Therefore, staff decided to have the Historic Landmark Commission review the modifications instead of reviewing the request administratively.

Staff recommends that the Historic Landmark Commission approve the certificate of appropriateness for the exterior alterations of the building located at approximately 290 South 1300 East based on the analysis and findings of facts in the staff report with the following conditions:

1. That the brick being proposed for the facades of the building match the brick in terms of dimensions found historically in the University Historic District, specifically the 1300 East commercial area.
2. That all new windows be consistent in terms of dimension and sash profile with the windows that are to remain in the building.
3. That a separate certificate of appropriateness be issued for any new signage.

(Mr. Pace entered the room at 4:15 p.m.)

Public Comment

Chairperson Fitzsimmons opened the public hearing and invited the applicant to come forward.

Mark Rossiter, Architect, stated that he did not have any additional comments but would be willing to answer questions from the Commission.

The Commission asked for clarification regarding the materials and colors which would be used on the exterior.

Mr. Rossiter stated that the materials would be scored thin brick and stucco. The stucco will be white-tan in color, the brick will be dark sand color, and the fabric awnings

will be dark red. He stated that he did not have a sample of colors, but would be able to supply one at a later date if required.

In response to additional questions, Mr. Rossiter stated that the windows would remain as they are. The rear entrance which was once a drive through still gets significant traffic and will remain unaltered.

Seeing as the Commission had no further questions for staff or for the applicant, the Chair chair asked for comments from the audience.

Seeing no one from the audience who expressed the desire to speak to the matter, the Chair closed the public comment portion of the hearing and moved on to Executive Session.

Executive Session

Motion

In regards to Case No. 470-07-30 Commissioner Carl moved that the Historic Landmark Commission accept staff recommendations and approve the remodel as presented with the condition that the applicant brings a color board material sample to the Commission for final approval.

Commissioner Lloyd seconded the motion.

All voted “aye”. The motion passed unanimously.

Mr. Norris asked in consideration of the distance that the architect would have to travel (from Boise, Idaho), if the Commission would allow him to send a sample through the mail.

Commissioner Hunter suggested a conference call with the applicant after the material samples were received, but Mr. Pace stated that the Historic Landmark Commission did not have an electronic communication policy and therefore, a conference call would not be appropriate.

Chairperson Fitzsimmons stated that, if the applicant wanted to defend his selected materials, he or his representative should do so before the Commission.

The Commission decided to review the proposed materials at the next regular meeting of the Historic Landmark Commission on October 3, 2007. However, Commissioner Heid stated concern as the Commission was requiring the applicant to return with materials for alteration of the non-contributing structure when it has not been required of contributing structures in the past, which has only required a color scheme, not actual material samples.

Commissioner Hunter stated that the structure was highly visible and therefore, felt the request was appropriate.

Mr. Paterson said that it would be within the Commission's purview to have the applicant return to the Commission with the materials and to allow public input.

Motion

Commissioner Lloyd moved regarding Case No. 470-07-30, that the applicant is to present color and material samples to the Commission for the project at the next regular meeting of the Historic Landmark Commission on October 3, 2007.

Commissioner Hunter seconded the motion.

All voted "aye". The motion passed unanimously.

CONSIDERATION OF THE MINUTES

The Chair moved the meeting on to consider the minutes.

As Case No. 470-06-57 was heard at the September 5, 2007 meeting of the Historic Landmark Commission and in response to the length of time the case has been considered, the Commission reviewed the portion of the minutes for September 5, 2007 regarding Case No. 470-06-57.

Ms. Coffey introduced a memo from Mr. Pace which explained that the case was heard by five members of the Commission, which constitutes a quorum. She stated that a majority vote of the assembled quorum is typically adequate to approve a motion; however, a vote of $\frac{3}{4}$ of the quorum present is required to overturn the findings of the Economic Review Panel (ERP). As is the adopted policy of the Historic Landmark Commission, the Chair does not render a vote except in the instance of a tie. On September 5, 2007, there was no tie and therefore, the Acting Chair, who was counted as one of the five members of the quorum, did not vote. Three of the remaining members voted "aye" and one "nay". Three "aye" votes did not constitute a $\frac{3}{4}$ majority of the quorum present and therefore, the decision was not overturned.

Ms. Coffey continued on to state that the outcome of the vote did not seem to reflect the intent of the Commission as they were under the impression that the vote had resulted in overturning the decision of the Economic Review Panel. She stated that there was an option for the Commission to discuss the matter and to ask for legal opinions from Mr. Pace. If the Commission desired to reconsider the case, the only way to have it reheard would be through a motion from a member of the Commission who voted on the side of the prevailing outcome ("nay") to have the case reopened. If the case was not reconsidered, the vote that was made on September 5, 2007, would uphold the decision of the Economic Review Panel.

Commissioner Hunter stated that it seemed odd that as the Commission did not know procedure, the vote of the Economic Review Panel was automatically upheld. If the Commission clearly knew that that was what they were doing, that was one thing, but to not know that there was an issue on the vote and then say that is what stands, that seemed odd.

A short discussion took place where the Commission clarified the statements made by Ms. Coffey as recorded in these minutes. Ms. Coffey stated that the Historic Landmark Commission had the ability to go into Executive Session with the regular recording turned off and discuss the matter with Mr. Pace if he felt it was necessary.

It is noted that before the Commission could move into such an Executive Session, the Historic Landmark Commission would need to approve a motion to do so.

Motion

Commissioner Hunter moved that the Historic Landmark Commission go into Executive Session to discuss questions of procedure.

Commissioner Heid seconded the motion.

Mr. Pace stated that the Commission has the right to close a public meeting in the instance of the following: Items relating to personnel, acquisition or disposition of real property, pending litigation, or to discuss matters of Attorney/Client privilege. In the instance that a motion is made to go into closed session, the Commission would need to explain which one of those instances existed and a roll call vote would be required. The closed session would be recorded separately as the discussion would not be put into the minutes of the meeting or included on the regular meeting record which would be released to the public. The Commission would not be allowed to discuss matters which deviated from the stated purpose of the executive session.

In response to a question from Commissioner Hunter, Mr. Pace stated that procedural questions were not a matter of Attorney/Client privilege and he would be willing to answer such questions in the open meeting. In the instance that a question was posed by the Historic Landmark Commission which would fall into the category of Attorney/Client privilege, he agreed to notify the Commission.

Commissioner Hunter stated that normally the Chair or Acting Chair does not vote except to break a tie, which is in the Rules and Procedures. She wondered if that applied to both regular cases and Economic Hardship cases.

At this point, Ms. Coffey brought forth a point of order as the motion had been made and seconded. She asked if the Commission intended to vote on the motion or if it would be withdrawn.

Mr. Pace stated that the motion was deflected because it did not state why the Commission would go into closed session.

Commissioner Hunter agreed with Mr. Pace's opinion and withdrew the motion.

Mr. Pace went on to state that the Policies and Procedures of the Historic Landmark Commission do state that the Chairperson does not vote except to break a tie, which suggests that the Chair does not otherwise vote, and so it is assumed. He brought the Commission's attention to the email memo which he sent to Ms. Coffey. He stated that the challenge that the Commission must undertake is to determine if the Chair is or is

not a voting member of the Commission. If the Chair is not a voting member, then a quorum did not exist and the meeting should have been dismissed. If the Chair is a voting member, then there was a quorum, and the Zoning Ordinance requires a $\frac{3}{4}$ majority vote of the quorum present to overturn the decision of the Economic Review Panel.

Chairperson Fitzsimmons asked for direction as to how the Commission would go about clarifying that issue.

Mr. Pace stated that the Commission had a right to change their policies and procedures at any time.

Mr. Fitzsimmons then went on to say that it has been the practice of the Commission that, while the Chair does not routinely vote, the Chair does vote from time to time in the instance of a tie, which makes the Chair a voting member.

The ordinance does not mean that the Chair had to vote in favor of the motion. The minutes do state that Mr. Pace asked Acting Chairperson Heid if she was going to vote because he was sensitive to some of these issues. As the Chair was an essential member of the quorum, meaning if five members was required to form the quorum and one of the five was a Chair, who does not vote unless there is a tie must vote on the same side in order for the motion to pass.

In response to a question from Commissioner Hunter, Mr. Pace affirmed that the Commission follows Roberts Rules of Order during hearings by default. He stated that Robert's Rules of Order would allow, but not require the Chair to vote when the vote would effect the outcome. He further stated that he knew the rule and that is why he specifically asked the Chair if she would be voting.

Commissioner Heid, who had been Acting Chair during the subject hearing stated that her response to Mr. Pace that the Chair would not be voting was because she believed a vote from her would invalidate the process because the Chair only votes to break a tie.

Mr. Pace then stated that under the policy of the Historic Landmark Commission, it may not have been possible for the Chair to vote because the policy states that she will only vote in the event of a tie, which did not happen.

Chairperson Fitzsimmons asked Mr. Pace to consider the following scenario: If Commissioner Heid had the ability to vote and Commissioner Carl made a motion to reopen the issue, can the Commission then ask Commissioner Heid which way she would have voted?

Mr. Pace stated that if the Commission were to reconsider the matter, it would come back before the Commission as if no decision had been made and every Commission member who attended the reopened hearing would be allowed to vote (with the exception of the Chair who would only vote in the instance of a tie).

Commissioner Heid asked Mr. Pace if there was any legal precedence whereby the Commission could consider the proceedings of the last meeting and then all of the Commissioners who formed the quorum of the last hearing could cast a vote?

Mr. Pace stated that he did not quite understand the question, but if there was a member of the Quorum who wanted to change their vote, there was a process for that.

The Chair then clarified Commissioner Heid's question: whether it would constitute a change in vote if Commissioner Heid, who as Acting Chair and was standing silent, then attended the next hearing and rendered a vote.

Mr. Pace responded that it appears under our policies and procedures, the Chair does not vote unless it is to end a tie. So what does it mean when a Chair is essential to a quorum and can not vote and then the Ordinance says that there has to be a $\frac{3}{4}$ vote of the quorum present?

He further stated that he left the meeting with the same understanding of the outcome of the vote as the Commission, thinking that the outcome would be determined by the $\frac{3}{4}$ majority of those who voted. But, after the issue was brought to his attention by Ms. Coffey and studying the language of the statute, he came to the conclusion that there must be a $\frac{3}{4}$ vote of the quorum present.

Commissioner Fitzsimmons then asked if in this meeting if the Commission could ask if there was any consideration for changing Commissioner Carl's vote as she was the only member of the quorum to vote "nay" and if her vote changed to "aye" it would result in a $\frac{3}{4}$ majority and the motion to overturn the decision of the Economic Review Panel would carry?

Commissioner Hunter then interjected her concern regarding the possibility of Chairperson Fitzsimmons being in a position of conflict of interest as she understood him to be employed by the firm that represented Mr. Saxey.

Chairperson Fitzsimmons explained that on September 5, 2007, he recused himself from hearing Case No. 470-06-33 and 470-06-57 because he was at that time employed by the firm which represented Mr. Saxey. He reported that as he had now changed his employment and was no longer working for the firm which represented Mr. Saxey, a conflict no longer existed. The Commission agreed that Chairperson Fitzsimmons no longer had a conflict of interest.

Commissioner Pace stated that in comparison to other Boards, the policy of the Historic Landmark Commission only states that the Chair can vote to break a tie, whereas the Board of Adjustment's policy allows the Chair to vote to break or cause a tie, so there is room for re-clarification if desired by the Commission. A revisitation of the policies and procedures could be conducted at a meeting so long as it is listed on the agenda. Once a vote to change a policy or procedure took place, the change would be effective immediately.

In response to a question from the Chair, Mr. Pace stated that the policies and procedures do not address reconsidering a matter. However, Robert's Rules of Order, which the Commission defaults to, does. Under Robert's Rules of Order, Commissioner Carl, as a member of the quorum who voted on the prevailing side of the motion, did have the option to make a motion to have the case reconsidered.

He added that whether or not Commissioner Carl's vote was in the minority did not negate the fact that she was on the prevailing side because a vote to overturn the findings of the Economic Review Panel would require a $\frac{3}{4}$ majority vote of the assembled quorum; this standard was not met and was thereby defeated.

He stated that a motion to reconsider suspends the prior motion and treats the case as if no decision has been made. The Commission would need to allow public testimony, the possible submission of additional evidence, and consider the facts of the case as presented as if no case was heard on September 5, 2007.

In response to a question posed by Commissioner Heid, Mr. Pace stated that the issue was not that of the conduct of the Acting Chair; the Chair acted appropriately when she did not vote. The issue was that there was not enough of the members of the quorum who voted to overturn the Economic Review Panel's finding to carry the motion and the Commission was under the impression that there were.

In response to an additional question from the Commission, Mr. Pace stated that the benefit of rehearing the case would be to potentially allow the presence of more members who could then better reflect the opinion of the Commission. He noted that having more members at the meeting does not guarantee which direction the vote would go.

Mr. Paterson asked for clarification as the ordinance states that the Historic Landmark Commission would consider the findings of the Economic Review Panel and make a final decision. He asked if the vote was considered as the final decision or was the Commission now expected to make a second motion to accept the findings of the Economic Review Panel.

The Chair asked if the question could be bypassed by correcting the minutes to read that the motion did not pass.

Mr. Pace stated that minutes reflect accurately what occurred in the hearing as Commissioner Heid announced the motion carried, because this was what she understood to be the case. However three "aye" votes did not constitute a $\frac{3}{4}$ majority and the decision was not overturned. He stated that the minutes would stand, but the notice of decision would state that after legal review, it was determined that the motion did not pass.

He further stated that he has litigated a different matter where a motion to approve was not carried and the Board did not make a follow up motion to deny. While the City's position was that the motion to deny was not made so the approval was assumed. The judge responded that a motion to approve did not pass and therefore the denial stood.

Ms. Coffey clarified with Mr. Pace that even though a previous court case was lost it did not mean that if this case was heard in court, that the judge would render the same decision.

Commissioner Hunter stated that at the beginning of the hearing, the question was clearly asked and answered that a quorum existed even though the Chair had recused himself and the answer was yes. So the Commission had the understanding that they were authorized to proceed with the understanding that the Chair did not vote.

Commissioner Heid stated that the Commission was unclear about the need for a $\frac{3}{4}$ majority to overturn the findings of the Economic Hardship Panel.

The Chair interjected that this reduction in number might or might not have influenced the outcome of the hearing.

Mr. Pace further explained that the case could not be reconsidered unless a member of the quorum, who voted on the side of the prevailing outcome must first put forward a motion to reconsider the case.

Commissioner Carl stated that her position regarding to the matter had not changed, but as the majority of the quorum present did express the desire to reverse the decision of the Economic Review Panel in the form of a vote, she believed that the case should be reheard so that the opinion of the full Commission could be stated. She further expressed sensitivity to Mr. Saxey's inconvenience as the case had been in the process for a long time and requested that the hearing take place as soon as the Commission could meet while complying with the notification requirements within the Ordinance.

In response to a question from the Commission, Mr. Pace stated that the decision was final as soon as the City issued a written notice of decision.

The Chair asked if the $\frac{3}{4}$ majority of the quorum or simple majority would be needed to have this item reconsidered.

Ms. Coffey responded to a question from the Chair that the ordinance reads that actions of the Historic Landmark Commission are carried by the simple majority.

Mr. Pace stated that he assumes that a simple majority would be needed, but he had not researched that question.

Ms. Coffey reminded the Commission, that even if they did not vote to ratify the minutes, if they wished to reconsider the case, a motion must be made at this meeting of the Historic Landmark Commission as it is the next meeting following the hearing of the case.

In response to a question from Commissioner Hunter, Mr. Pace stated that the Ordinance stated that decisions by the Historic Landmark Commission were final when

made. State law requires a written notice of decision. Ratification of the minutes does not change whether a decision is final or not.

Ms. Coffey informed the Commission that the Findings and Order letter fulfilled the Utah State law requirement for a written notification.

In response to a question from Ms. Lew, Mr. Pace stated that as reconsidering the case would involve a public hearing, stating that the hearing would be held at the next regular meeting of the Historic Landmark Commission and modifying the agenda would not meet the noticing requirements. The meeting would need to be noticed fourteen days in advance of the hearing.

As the intent of reopening the case would be to allow more Commissioners to consider the case and state an opinion, forgoing a public hearing would not allow the purpose to be served. It is reasonable to assume that the applicant and possibly members of the public would want to submit additional evidence, especially as the Commission told the applicant that his evidence was lacking.

Commissioner Hunter stated that the Commission was not re-deciding the evidence at the hearing, but instead looking at what the Economic Review Panel had done in regards to their initial instructions from the Historic Landmark Commission and their deliberation. It was only because the Land Use Appeals Board stated that the Commission could consider new information which was delivered in a packet at 4:00 p.m. the afternoon of the hearing.

Mr. Pace reminded Commissioner Hunter that the motion was based upon an option that the applicant's information did not address. The Commission said that the applicant had addressed option 1 but had not addressed option 2 and based its vote to overturn the decision of the Economic Review Panel upon its failure to address that possibility. It was not that he submitted that information late; it was that it only addressed one possibility and the Commission wanted information addressing the second. If the case is reopened, the applicant will undoubtedly bring information to address that second option.

Motion

Commissioner Carl made a motion regarding Case No. 470-06-57 that the Historic Landmark Commission reconsider the decision of the Historic Landmark Commission and reopen the case to public hearing.

**Commissioner Hunter seconded the motion.
All voted, "aye". The motion passed unanimously.**

Motion

Commissioner Carl made a motion in regards to Case No. 470-06-33 and 470-06-57 that the Historic Landmark Commission schedules an interim meeting to reconsider and rehear the case on the third Wednesday in October.

Seconded by Commissioner Haymond.

Commissioner Hunter suggested that the motion be amended to limit the number of cases which could be heard that night.

All voted “aye”. The motion carried unanimously.

In response to a question from the Commission, Mr. Pace stated that the minutes were heard at this meeting as there was some sensitivity to time so that Mr. Saxey would have a chance to appeal. Given that the matter will now be reconsidered, the Commission has the option of approving the minutes at this meeting or waiting until the next hearing of this case because there will not be a final decision made until that time.

The Chair stated that Mr. Saxey would be notified of the decision and asked the will of the Commission regarding the minutes.

Motion

Commissioner Heid stated that the minutes were accurate as they stood and moved to approve the minutes of Case No. 470-06-57 of the September 5, 2007, meeting of the Historic Landmark Commission.

Commissioner Carl seconded the motion.

Commissioner Hunter stated that she had two items regarding the minutes, the first was about Pioneer Park and the second was concerning what constitutes the record.

Commissioner Hunter further asked what constituted the record in regards to this case. She read from the minutes as it quotes section 21A.10.030 of the Zoning Ordinance (Public Hearing Procedures, item i.2, F. Record of Public Hearing or Meeting) The Record: The minutes, tape recordings, all applications, exhibits, papers and reports submitted in any proceeding before the decision-making body or officer, and the decision of the decision-making body or officer shall constitute the record.

When asked for clarification by the Chair, she responded that she was trying to get clarification that any time that a case was appealed to the Land Use Appeals Board (LUAB), was the recording considered part of the record?

Mr. Pace stated that the answer was yes, but under state law the official record of what transpired is the minutes. The Historic Landmark Commission is asked to approve the minutes to ensure that the minutes accurately reflect what transpired in the meeting. It would be unrealistic to require the Commission to spend two to three hours listening to the recording of the Economic Review Panel when there are written minutes which summarize the meeting for the same reason that, he assumed, the Land Use Appeals Board did not listen to that recording.

Commissioner Hunter asked if the decision gets appealed to the Land Use Appeals Board, would these minutes then be a part of what gets appealed to the Land Use Appeals Board.

Mr. Pace stated that yes; the minutes were part of the record.

Commissioner Hunter asked to amend the minutes to reflect that the actual recording be part of the record if this case goes to appeal. She stated she did not know if she should make that as part of the approval of the minutes or make it a separate record.

Mr. Pace responded, that stating that the recording is part of the record; however, it is different to direct the Land Use Appeals Board to review the recording.

Commissioner Hunter stated that she is asking for the recording to go forward as part of the record if the case is appealed. She asked for direction as to whether she should make that statement during this meeting or if she should wait until the next hearing.

Mr. Pace responded that the Commission has every right to request that a recording of the proceedings be forwarded to the Land Use Appeals Board because it is part of the record. He stated that he Historic Landmark Commission does not have the authority to require the Land Use Appeals Board members to listen to the recording.

Ms. Coffey asked if the Commission submits a verbatim transcript of the September 5, 2007 meeting, how the transcripts are were weighed in comparison to the minutes which are ratified.

Mr. Pace stated that the minutes are the official record. He has argued cases where the minutes differ from the transcript but he court uses the adopted minutes as the official record. In regards to LUAB's review of this case, they refused to look at the transcript, but that was only because the transcript was not forwarded when the documents were originally submitted as part of the record. When it was reheard, the transcript was submitted, but what was submitted was viewed as new evidence and therefore the Land Use Appeals Board refused to accept the transcript.

Commissioner Hunter stated that she is trying to make the actual discussion as part of the record.

Mr. Pace suggested that Commissioner Hunter was actually saying that if one of the cases heard before the Historic Landmark Commission is appealed; the Historic Landmark Commission would like the recording or transcript of the discussions and deliberations made by the Commission to be forwarded as part of the record. He stated this is really instruction to Staff to ensure this happens.

Commissioner Hunter stated that she understood that such instruction would be separate from the minutes. In response to her question as to when the instruction would be made, Mr. Pace stated that she just did. He further stated if she wanted to make a motion to that effect, she could.

The Chair brought the discussion back to the motion on the minutes.

(See the Motion on page 11 of this record.)

Commissioners Haymond, Heid, Hunter, and Norie voted “aye”, Commissioner Lloyd abstained. The motion carried unanimously.

Motion

Commissioner Hunter made a motion that the transcript or recording be submitted as part of the record to the Board which would hear the appeal.

A discussion followed which resulted in the Commission arriving at the understanding that even with a motion made the Commission is actually making a recommendation to Staff to include the recording or transcript of the meeting part of the record which could then be reviewed by the Land Use Appeals Board.

Commissioner Haymond seconded the motion.

RESTATED

Any time there is an appeal to the decisions of the Historic Landmark Commission that the official record would include what the City Ordinance actually states but is not used currently. In 21A.10.030 of the zoning ordinance the record constitutes the minutes, tape recordings, all applications, exhibits, papers and reports submitted in any proceeding before the decision-making body or officer, and the decision of the decision-making body or officer shall constitute the record. That could be either a recording and or substituted by a transcript.

Commissioner Haymond stated that he accepted the motion as restated.

All voted “aye”. The motion passed unanimously.

The Commission then entered a discussion regarding the scheduling for rehearing Case No. 470-06-57. Mr. Pace stated that the hearing was to be scheduled as quickly as possible and that the meeting could be rescheduled for another time so long as the noticing requirement was met.

Commissioner Hunter stated that she wanted to bring up a concern regarding the motions made for Pioneer Park in the September 5, 2007 meeting.

Commissioner Hunter stated that the minutes for that item were not being considered in this meeting. If they had been, she would be able to bring the item up for reconsideration. She wondered if she would be able to bring the item up in October or would the issue need to be considered in this meeting.

Mr. Pace stated that he did not know the answer to her question but that he would get the answer.

The Chairperson declared a break at 5:27 p.m.

The Chairperson called the meeting to order at 5:31 p.m.

Mr. Pace stated that after consultation, the City Attorney's office had determined that the Pioneer Park issue could be reconsidered at this meeting or at the meeting when the minutes are approved. Commissioner Hunter noted that Commissioner Carl had agreed to bring the matter up at the appropriate time.

Commissioner Carl stated that she would bring it up when the minutes are up for ratification.

WORK SESSION

Mr. Pace led the discussion. The following is a list of topics that were discussed during the work session:

AUTHORITY OF THE HISTORIC LANDMARK COMMISSION

State Law

The State enabling statute gives the City the authority to regulate historic properties. The Historic Landmark Commission is allowed to regulate historic properties because it is in the public interest to give the public an understanding of a broad sense of history. That is why the City focuses more on the exterior primary elevation, which can be seen from the street. The City does regulate the entire exterior, but the primary focus and most stringent regulation is on the area that is viewed from the street. The City does not regulate the interior of structures.

The City standards are the National Register Standards. The State of Utah regulations are stricter and they are the entity from which homeowners might get tax credits. The State regulates the interior as well as the exterior of structures.

FINDINGS AND MOTIONS

Deviation From Staff Findings

The Commission is free to disregard Staff recommendations, but then Commissioners are expected to analyze those standards and come up with specific findings to justify the decision.

It is more important for the Commission to make a decision that is solid rather than making a decision where they do not feel comfortable. If the Commission finds themselves in a position where they do not agree with staff recommendations, but they do not feel that they are ready to make a motion, they might want to consider tabling the decision to give them more time to come up with a solid motion rather than make a motion which is not easily defensible.

A delay is incurred when an item is tabled which can prove costly and difficult for the applicant. But, if the issue is substantive, then the Commission might consider the delay necessary. If the issue is simply to polish the motion, take a break or consult with staff during the meeting to see if the Commission could come to a conclusion that night.

A motion might include the statement: Based upon the record, staff report and evidence presented tonight. If there was a specific item upon which the decision is being made, it would be good practice to highlight it. An adequate reason needs to be provided to justify the decision.

Clarity of motions (what needs to be included)

It is necessary to be specific when making motions. If a broad ranging discussion took place before the motion was made, the motion needs to specifically address the portion of the discussion which led to the motion. An example might be to say, "It doesn't meet the standard (insert reference to standard) for this reason (state basis for the motion)."

Staff reports can be prepared which do not offer a recommendation and they could list alternative findings with a plausible conclusion. However, alternate findings may diminish the ability to defend a decision.

It would take more time to prepare a staff report with alternate findings and defeat the purpose of getting an opinion from the professional planning staff. A possible solution would be to bring the Commission along a path which led to the staff recommendation. Staff and the applicant work closely together in the attempt to assure that the proposal meets the guidelines before the case is presented to the Commission. Staff might be able to walk the Commission through that process to give them more information upon how the staff arrived at its recommendation.

The Commission viewed the new staff report format favorably. They indicated that getting more information in a summary format was helpful and offering opposing motions in the report might prove beneficial.

Most applicants want to get through the process as quickly as they can. Many do not know the ordinance and they work closely with staff to get their project to comply with the ordinance so that they can hopefully get a favorable recommendation from staff. Bringing the applicant to the Commission too early in the process can materialize in frustration and delays and eliminate this consultation with staff.

The Commission wondered if the creative ideas of some applicants were being cut off when the applicant was directed by staff to comply with the ordinance rather than being given the opportunity to present the idea to the Commission earlier in the process. However, they came to the conclusion that some applicants have submitted alternatives at their hearing so that the Commission could consider more than one option with the understanding that the applicant has a plan, but would comply with the direction of the Commission.

They also concluded that they believe the ability of the applicant to consult with staff prior to the Historic Landmark Commission review is very beneficial and provides better customer service and a more efficient process.

The staff report provides the standards for review. When a Commissioner reads the staff report, they should make notes as to why the proposal does or does not comply and then come up with findings which support that opinion. If the verbal presentation

from the public brings forth information which shows the Commission that the proposal does not meet the standards listed in the staff report, the Commission should then discuss that issue.

There are times when staff and the Commission might have a difference of opinion regarding the standard; in that case a discussion should also take place.

Ensure Rational Nexus Between Request and Conditions

Any conditions imposed by the Commission must be roughly proportional and there has to be an essential nexus between what the applicant is requesting and what the Commission is requiring.

An extreme example where the rational nexus would be lacking, would be if the Commission were to approve a project based on the applicant making a large donation to the City's general fund.

An example of a rational nexus is to require rain gutters as a condition of granting approval to replace a foundation after the original foundation deteriorated because of water damage due to the house lacking gutters. The approval could be conditioned upon the applicant installing rain gutters to prevent future damage to the foundation. A rational nexus would not exist if the Commission made the condition for approval that the applicant would also replace the wood trim around the windows. There is not a connection between the foundation and the original wood trim.

The Trolley Square proposal included a condition to include a walkable history tour as compensation for loss of a portion of public view of historic structures and moving some historic structures, the applicant agreed to develop the tour. Mr. Pace stated that if the applicant volunteered to incorporate the tour, there was not a problem.

Mr. Pace stated that he has not seen a dollar figure fixed to loss of a public interest such as a view or historical asset.

Clarification of Actions

Tabling or Continuing an agenda item are virtually the same thing. If a public hearing has been held and the Commission wants to table the item for the sole purpose of deliberation, and if at the time the item is tabled, a date for the rehearing is specified then the noticing requirement would be met. If the item is tabled with the intent to open the hearing again, then the 14 day noticing requirement must be met.

Executive Session

Staff's Role: At the discretion of the Chair, Staff does not usually speak during the Executive Session or deliberation, unless solicited by the Commission and then it is usually to ensure the Commission understands the issues, regulations and technical and procedural requirements of making the motion.

Clarification from Applicant: The applicant or public does not speak during the Executive Session. The input from these groups would come during the public comment portion of the meeting. If additional information is needed from the applicant, the Chair will close

the Executive Session and open the public hearing to ask the applicant for clarifying information. At the time that the hearing is reopened to public comment, the Chair should give specific direction for input from the applicant. The audience is also allowed an opportunity to speak at this time. The applicant is then allowed a chance to rebut any public comments which may have been made before closing the public comment portion of the hearing and moving back into Executive Session.

RESPONSIBILITY OF THE COMMISSION

Conflict of Interest:

A conflict of interest must be avoided to keep the integrity of the process. A good way to judge whether a conflict exists is to look at it from an objective point of view of an outsider and whether a reasonable person may perceive a conflict of interest. In the instance of a conflict, the Commissioner should disclose it to the Commission during the course of the meeting prior to hearing, and leave the room while the matter is being discussed.

Ex-parte Communication

The applicant, public, and Commission are entitled to hear all of the evidence. This includes email, phone conversations and other types of communications, as well as all forms of documentation. A problem will arise if part of the basis for the decision a Commissioner makes is heard in private. Hearing evidence outside of the meeting deprives the applicant, public, and fellow Board members the opportunity to hear all of the evidence. It also denies the applicant the opportunity to respond to the evidence.

In the instance that a Commissioner is approached by the public, the Commissioner should ask the public to attend the hearing and to share the information in the meeting. If a Commissioner unwittingly becomes involved in ex-parte communication, the Commissioner should disclose the incident to the Board.

There is also a difference between the legislative and executive branches in this matter. The Historic Landmark Commission is part of the executive branch which is charged with implementing the regulations. Therefore, ex-parte communication is not allowed. The legislative branch sets policy and therefore the law allows more leeway for this type of communication.

Importance of Attendance at meetings – quorum

The Commission is currently composed of nine members. Five members constitute a quorum. If there are not enough members to compose a quorum, then the meeting can not be held. Therefore, it is very important that Commissioners attend the meeting at notify staff quickly when they can't attend.

Review of Staff Reports

Commissioners should read the Staff reports prior to the meeting. It is good practice to make notations in the report for later reference.

Refrain From Subjective Comments

Comments should be limited by the scope of the guidelines, regulations, or other

criteria. Personal comments motivated by preference, belief, desires, likes or dislikes are not appropriate in the context of the public meeting.

OVERLAPPING JURISDICTION

Final Say — what board has final say when criteria is similar for different boards

All of the Boards which will hear the case will have an equal say in the proposal and must make a finding on the criteria. If the boards have similar criteria, both boards must make a finding on their respective criteria and one board is not necessarily required to defer to another.

Process – Which board reviews project first?

Typically the Board of Adjustment will hear the case first; however, the order can differ from case to case and where a procedural regulation occurs will be listed in the Zoning Ordinance.

OPEN MEETINGS LAW

Training Requirement

State law requires that a Board such as the Historic Landmark Commission is to be trained once a year regarding the open meetings law.

A hearing cannot be held unless there is at least a quorum assembled. Anytime there are five or more assembled members there is a quorum. While a chance encounter is not a meeting, no discussion of issues can take place.

Noticing

- The State of Utah requires a 10 day notice for public meetings. Salt Lake City requires a 14 day notice for public hearings, therefore the 14 day notice is required.
If a meeting does not involve a public hearing, a 24 hour notice is required.
- Notices are posted in three different public places.
- Matters which are not on the agenda can be raised so long as no final action is taken. Examples of acceptable subjects can include: Report of the Planning Director, Scheduling, or Follow up items.
- Topics for discussion should be listed on the agenda if the discussion will move the Commission forward, even though decisions are not made.
- At times, in the case of an emergency, a meeting can be called even though the typical noticing timeline is past. It must be a real emergency. They are held in the instance of exigent circumstances such as a demolition scheduled before the noticing requirements could be met.

The remedy of the violation of open meeting laws would be to invalidate the decision made. Violation of the law invites a lack of credibility on the Board and the City and a sense of fairness would be discredited.

Meetings are open to the public unless closed; meaning any member of the public can attend. It is good practice to notice a closed session ahead of time, but it is not necessary. A 2/3 vote is required to close a meeting.

The general reasons for closing a session:

- Personnel matters
- Acquisition or disposition of real property
- Pending or threatened litigation (Mr. Pace noted that an actual statement which threatened litigation must be made by party. A perceived threat of litigation is not adequate.)

The discussion is confidential and the discussion must be limited to the purpose for which the meeting was declared closed. A participant's disclosure of the discussion within a closed meeting equates to a waving of the right to keep the contents of the meeting confidential.

Records of Meetings

All meetings are recorded, but under state law, the official record is the minutes. Make sure the record is accurate. A closed meeting will be recorded, but the record of that portion of the meeting is not open to the public. It can be opened by court action.

Minutes are taken on a field trip if there is a quorum. If a substantive discussion takes place during dinner it would need to be noted in the minutes as well.

Field trip

Due to liability issues, the public is not allowed to travel with the Commission but can meet the Commissioners at the planned stops to hear the information discussed.

Electronic Meetings

There is a state statute which allows an electronic meeting to be held, so long as the board has adopted policies to do so. Mr. Pace stated that he believed that the Historic Landmark Commission does not have such a policy.

Precedent

Applicants need to be treated in a fair and equitable fashion. Generally similar things need to be treated similarly. But, by definition, not all properties are the same. They are unique. When dealing with real property, it is appropriate to treat parcels differently if there is a good reason to treat them differently. The action must be specifically justified.

When using the block face as a guide to determine whether a proposal meets the standards, the ordinance must be looked at carefully, sometimes it states that the block face should be used as a guide, sometimes it references the character of the neighborhood.

Mr. Paterson stated that the preservation standards reference the streetscape and a broader context while the compatible infill standards reference the block face.

Emergency Meeting

Though discussed earlier in the meeting, Mr. Pace did remind the Commission that an emergency meeting can be held, but it must be a real emergency.

Unchallenged Comments

For the purposes of procedural clarification, Ms. Coffey asked Mr. Pace if the Commission did not object to a statement made during a hearing, did the omission equate to an acceptance of the statement as fact. Mr. Pace stated that it did not.

Ms. Coffey stated that, in the interest of time, the scheduled discussion of the role of the Historic Landmark Commission in the Preservation Plan and of the application process could take place at another time.

REPORT OF THE PLANNING DIRECTOR

Mr. Shaw distributed an updated organizational chart of the Planning Division.

OTHER BUSINESS

Ms. Coffey stated that at the meeting of the Historic Landmark Commission on August 23, 2007, the Commission agreed that there was a need for an additional meeting to wrap up the preservation plan discussion. She suggested that a lunch meeting in October would serve this purpose. Detailed notes of the meeting on August 23, 2007 will be provided to the Commission prior to that meeting.

There being no further business, Commissioner Carl moved to adjourn the meeting at 7:08 p.m.

David Fitzsimmons, Chairperson

Kathryn Weiler, Secretary