

Summary Minutes
City of Sedona
Historic Preservation Special Commission Meeting
Vultee Conference Room, 102 Roadrunner Drive, Building 106, Sedona, Arizona
Monday, September 28, 2015 – 3:00 p.m.

1. Verification of notice, call to order, Pledge of Allegiance, roll call

Chair Unger confirmed the meeting was properly noticed, called the meeting to order at 3:00 p.m., and led the Pledge of Allegiance.

Roll Call:

Commissioners Present: Chair Brynn Burkee Unger, Vice Chair Ann Jarmusch and Commissioners Allyson Holmes, Charlie Schudson and Steve Segner. Commissioner Jane Grams was excused and one position is vacant.

Staff Members Present: Warren Campbell, Karen Daines, Audree Juhlin, Robert Pickels and Donna Puckett.

Council Members Present: Mayor Sandy Moriarty

2. Commission and Staff announcements

Warren Campbell announced that at the Jordan Historical Park, there were some continuing plumbing issues with the sink in the main cabin, and they found that the pipe from the sink out had collapsed, so they had to do some plumbing repairs. It did not affect the house, and they were able to patch it in under the front patio and take it to the sewer line. They are already out to the asphalt with minimal damage. They even tunneled the new pipe under the sidewalk to avoid a difference in look, and the work should be completed by the end of the week. Additionally, they were able to do it when it didn't impact any events.

Commissioner Segner indicated that he and Allyson had discussed having a recognition party at El Portal sometime next year; however, Chair Unger noted that is on the agenda for discussion.

Chair Unger announced that next year's Historic Preservation Conference is set for June 8th - 10th at the Crowne Plaza Hotel in Phoenix, and they are calling for entries to make presentations. This is something we have always attended, and "Preservation Next" is what they are calling it, so they are looking into the future. You can review the website, but they end the call for presentations sometime in November. They go from saving the structures of old buildings and converting the interiors to archeology sites, and they usually have a theme, but a lot of things fit into that theme, and Kathy Levin did a presentation once in Flagstaff at one of these.

Commissioner Segner announced that on Friday there is a fundraiser for SPAC, Sedona Performing Arts Center, and the city has been gracious in providing a \$15,000 grant to start Phase I and Phase II. In Phase II, they are going to try to raise \$30,000 that will go into a fund so any local charity or non-profit that wants to use SPAC will get 50% off of the bill, so it is a simple program and they have already raised about \$10,000, but he wants to raise another \$20,000, so there will be an event at El Portal and he has brought in seven Verde Valley artists, including Annette Jennings and her husband, and we will be firing pottery for demonstrations in the middle. There will be food, wine and beer, and then just bring your checkbook. He doesn't think people realize that when the SPAC was built, it was lacking about \$200,000 in infrastructure. First, he wants people to start using it, and then next year, he wants to ask for grants. He has contacted NAU, and they are going to work with them, and once a list of what is needed is prepared, he is going to go to the different colleges and ask for those things.

3. Approval of the August 10, 2015 minutes

Chair Unger asked of a motion to approve the minutes of August 10, 2015.

MOTION: Commissioner Segner so moved. Commissioner Holmes seconded the motion. VOTE: Motion carried four (4) for, zero (0) opposed, and one (1) abstention. Commissioner Schudson abstained, because he was not present for the entire meeting; Commissioner Grams was excused, and one position is vacant.

4. Public Forum: For items not listed on the agenda within the jurisdiction of the Historic Preservation Commission – limit of three minutes per presentation. Note that the Commission may not discuss or make any decisions on any matter brought forward by a member of the public.

Chair Unger opened the public forum and having no requests to speak, closed the public forum.

5. Discussion regarding communications between City staff and the Commission concerning open meeting laws

The Chair noted that this item was put on the agenda by Commissioner Schudson, who indicated that he would like to take about 10 minutes to offer a presentation with some preliminary remarks and commentary. He stated that he is not here to attempt to accuse, embarrass, expose or anything of that sort. He is hoping to provide some helpful comments that will enable us to identify a serious problem and hopefully find some constructive ways to address that.

Commissioner Schudson indicated that he would speak for himself as a Commissioner and what he is saying certainly reflects some thoughts others have expressed to him, but it would be up to each individual to decide to what extent he or she would like to share some of their concerns that have been shared individually or privately.

The Commissioner noted that he has had the opportunity to serve on many boards of directors, and when he started doing that for non-profit organizations, he was advised to read a book and it told him of concerns that were really unknown to him. The book tried to explain the nature of a board in a non-profit organization, and to explain that certain boards are either staff-driven or member-driven, and some are in-between, and it was helpful to understand that his expectations might be unrealistic and if he were to serve as a board member for a non-profit organization, he had to identify if the organization was board-driven or staff-driven or a hybrid. The only thing on which every commentator agreed was it is important to identify the differences and come to an understanding of what the organization is, so a board member doesn't expect to have certain responsibilities in a staff-driven organization that aren't going to be there.

With that as background, Commissioner Schudson thought it would help to contrast that to a commission. This is a citizen commission; it is not a board of directors on which members should be asking that fundamental question -- are we board member-driven or staff-driven or some hybrid? That is not what this is. Throughout the literature on governments, non-profits, organizations, etc., no where can one locate anything that ever suggests that a citizen commission is staff-driven. Staff-assisted yes, staff-influenced yes, staff-advised yes, staff-enlightened yes, and frequently commissions are saved by input from staff, saved from their own good intentions and ignorance. With a citizen commission, there is a very important potential role for staff, but it is quite distinct from what we would find in a non-profit organization's board of directors. So with that, it is not surprising that virtually every citizen commission has a staff liaison or something of that nature to advise commissions, help bring issues to their attention, guide them and correct them as needed, .but no where do we find a citizen commission properly acquiescing, relinquishing its mandated, statutory or historic authority to appraise issues independently, set an agenda and try to navigate the waters in pursuit of its goals.

Commissioner Schudson then stated that in roughly five years of his work on two city commissions, he has felt that our commissions are well-served by wonderful citizens and well assisted by superb city staff, and he doesn't consider Audree to be an exception to that; he considers her to be an exceptional person who is in the ranks of those who render endless hours of dedicated thoughtful service to so many, including this commission. He also wants to be candid and constructive in his comments, and he believes that we have become disjointed, and that staff serving this commission has lost its way and lost an understanding of its function, and he will offer specific examples, knowing full well that in some instances he certainly knows what he is talking about and in others he certainly does not know what he is talking about, and in some others there is probably a mix. He shall try to distinguish fact from opinion, apologizing in advance of an area where he just might be wrong, and this is information that he would only offer in the presence of those involved, so they in turn have a chance to say he is way off base, so he will be careful to try to explain why he thinks the staff-commission relationship has come to be fatally flawed, and why that has pretty much doomed the work of this commission, unless it succeeds in making a proper adjustment of the commission-staff relationship and understanding of open meeting laws.

The Commissioner stated that he presents this today not as a legal argument, this is not a part of law. It can get as formal as anybody needs it to be; he doesn't need it to be formal, but there are some specifics. The incident that led him to have such concern about this and feel that enough is enough; this has become enough to suck the energy out of this Commission and certainly suck any further desire he has to serve on the commission, unless we reach a correction.

Commissioner Schudson indicated here is how it came about. On March 9th, we had a commission meeting, and he among others was surprised that Audree brought something to them that he didn't anticipate, and it was related to defining our mission or, he can't remember just what it was, but it was something with Phoenix as an example, and it provoked an apparent desire to look at our philosophy statement, etc. He didn't know why that suddenly gained such importance, but trying to be a good trooper, he engaged in the discussion about it and went away with a homework assignment. We were to take the CLG Agreement, Article 15 - Historic Preservation Ordinance, the City of Phoenix historic preservation materials, the March 10, 2015 Sedona HPC Purpose, Goals and Responsibilities training materials, and he assembled the things that had been specified and gathered others to do his homework, because on March 9th, we didn't know much about what we were approaching, but we all agreed as reflected in the minutes that all of this had come to us suddenly. We certainly had not had time to read the background materials we received that day for the first time, but accepting staff's advice, we were to try to study the Phoenix example and develop the philosophy of historic preservation and take it from there with other particulars that he barely can remember.

Commissioner Schudson indicated he knew that if he didn't do his homework right away, he would probably forget about it, so he jumped on it, and we all agreed as reflected in the minutes that what clearly disabled us from doing anything meaningful on March 9th was that we didn't have anything in advance. We were seeing a substantial volume of material for the first time, and so discussion was not very helpful, and faulting no one for that, what we resolved to do at that point was to do our homework and circulate our drafts to each other -- not for the purpose of debate or discussion, but so that in the next meeting, we wouldn't walk in and receive them for the first time, but rather so that we could study them in advance. Consistent with what we had been instructed in our open meeting trainings, we reiterated that at that meeting, we don't disseminate them to each other, but we disseminate to Audree and Donna, so they in turn, consistent with our protocol and with open meetings, would disseminate them. The purpose was to do it as soon as possible, get it to each other so no one had to reinvent wheels and others could build on that and if they choose to do the homework, so be it.

The Commissioner stated that two days later on March 11th, he sent an email to he thinks to Audree, but it may have been to Donna or both, and it specified that he wanted both the email and the attachment he drafted to go to everyone, consistent with what they had decided. He assumed that within 24 to 48 hours later, he would receive it along with everybody else or that he wouldn't

because that would be redundant, since he sent it in, but he waited five days, and on March 16th, he wrote to Audree, "I thought I would have seen my March 11th email to you forwarded to our HPC Commissioners by now; any reason for the delays? Thanks." Then, he received a response on March 18th from Audree, "I appreciate your email and perspective; however, based on a discussion and guidance from City Attorney, Mike Goimmarac, I will disseminate your email and attachments as part of the staff packet and agenda several weeks in advance of the May 11th meeting." He then wrote 20 minutes later, "As long as my email and draft are disseminated 'several weeks in advance of the May 11th meeting', I see no problem, etc., etc." He had expressed elsewhere that he did see a problem, but he wasn't going to push it. He saw a problem of really violating the intent of what we had expressed at the March 9th meeting -- let's get this out there, so people can work with it, build on it and understand it and not be pushed up against the last minute, but he figured it doesn't have to be a federal case, let it go and move on.

The Commissioner then indicated that it didn't go to everyone several weeks in advance of the next meeting; it went to people on May 7th for a May 18th meeting, and he then checked with one or two members of the commission to confirm they had received it and they said they had not -- inadvertence, a slip in the email, he didn't know, so he didn't know if people had received it. He knew they hadn't received it right away as they should have, consistent with what they had agreed; he knew they hadn't received it several weeks in advance of the meeting, which he had been promised, and he wasn't sure they had received it 11 days in advance. In his estimation for a project like this, receiving it 58 days after we had our March 9th meeting with nothing any longer fresh in the minds of anyone and 11 days in advance of a meeting, leaving in doubt if they received it would have the chance to work from it. In any event, it was all inconsistent with what we all had agreed.

Commissioner Schudson stated that is what he knows, but what he doesn't know for sure is why. It is a concern, and he has inferred from comments at our meetings that what he wrote on March 11th might not have been something with which Audree agreed. The Commissioner then read what he wrote on March 11th as follows: "I have reviewed 1) the CLG Agreement, 2) Article 15 - Historic Preservation Ordinance, 3) City of Phoenix's Historic preservation materials, 4) the 03-10-15, City of Sedona HPC Purposes, Roles and Responsibilities training materials that I found in my file. I have drafted the attached philosophy of Historic Preservation, which I offer for our commission's consideration. Additionally, I offer these comments: A. While the study of these materials and the drafting of our philosophy may be a useful exercise; it also may be an unnecessary one. After all, our philosophy is embodied in the legal documents I have quoted. Even if we believe we can improve on them, we have no authority to do so. B. If however, we wish to adopt our own statement of philosophy, no harm done as long as we do not stray from our mandate, thus I've given it my best shot in the attached. C. Still, I've not done anything more than frame the legal standards, and standards with concise, hopefully, helpful words to try to capture the essence. D. In my view, the statement of philosophy should not strain the specifics of implementation; therefore, we should not repeat the Phoenix approach -- that is, we should not restate or summarize the historic rehabilitation guidelines, instead as I have done, we should merely refer to the governing standards. E. Note my many brackets in section 1501.B.4. As written in both editions I have obtained, this subsection is in part incomprehensible, a victim of sloppy drafting and/or poor proofreading and/or typographical errors. I've tried to make sense of it, thus, I've bracketed it toward what I deduce may be its intended meaning, but Audree and Donna if you can look at some other corrected edition, please advise. Bottom line, now having made this attempt, I believe I better understand our mission and our legal underpinnings. I do not, however, believe this endeavor merits much more time or attention. Our philosophy already is embodied by existing statutes and standards. We need to understand them of course, but we need not labor over them unless or until a resolution of a specific case requires statutory scrutiny. Please forward this email and the attached draft to the HPC Commissioners and Council liaison. Thank You."

The Commissioner then asked, so what is the rub here and stated that the rub in pure speculation and opinion, but based on what he thinks we experienced in our March 9th meeting, was that he came to the conclusion that yes -- useful exercise, good for self-education of each Commissioner,

good for us to periodically take a look and make sure we are focused on our goal and know what the mandate is, make sure we stay on track, but truly not the global goal that apparently was to consume the next year of our work. We all were taken aback a bit on March 9th by what Audree believed, and perhaps she was right and still is, but we were taken aback by this presentation of what was likely to consume the next year of our time, and he wasn't sure he disagreed though he was skeptical. That is part of why he wanted to take a quick look at it before everybody started spinning wheels in the wrong directions or unnecessary directions, and why he thought he was going to be able to contribute something concise that was respectful of the good input Audree was providing, but perhaps also benefited from what a citizen commission is supposed to benefit from -- the fresh perspective of volunteer citizens who try to inform themselves and bring a point of view that sometimes is that kind of breath of fresh air that mixes well with the closer, perhaps more bureaucratic or intense view that staff provides. He thought he had done that; he thought it was a constructive contribution. He would not have spent the six hours on it that he did, had he not thought so, and he wanted everybody to have that, so that each Commissioner would not have to feel guilty for two months about not doing something or feel like this was a thick swamp through which they had never waded before, because they are not well versed in statutory construction or whatever it might be. He thought it would be a constructive contribution that could advance the agenda, respond in a respectful way to Audree's desire, but perhaps take a fresh look that might caution us against immediate unnecessary work or a year of unnecessary work.

Commissioner Schudson stated that didn't happen, and the proof was in the pudding; come May 18th, we were pretty much back to where we had been on March 9th. People had either not received what he drafted or had not had time to read it or now 58 days later couldn't fathom what it was about. His aging memory is not the only one in this room and sometimes it is just hard to hold it from step to step. He was troubled by that; he was troubled by what he saw as a flawed process that had undermined our effectiveness and our opportunity, in fairness to Audree, to give her chosen agenda its due. He wanted to raise that and it's probably possible we had a meeting cancellation, but in any event, by the time it rolled back around, he could barely remember and today can barely remember without the help of highlighted emails what all of this was about. And, he would note parenthetically if we are at the point where those who were assigned this high priority homework can barely remember what this was all about, it at least begs the question of whether it did merit the attention that was suggested.

The Commissioner then indicated that he wanted to bring to the attention of the commission what he considered a flawed process, and a mistaken understanding by Audree of the proper role of a staff liaison to a citizen commission -- not because it is personal or because he is hostile, but because he truly values the enormous talents and energies that Audree brings us, and all of that can serve so well in coordination with the fresh perspectives of citizen commissioners. He, however, will be blunt; he agrees with what virtually every commissioner at this table today has told him. If they choose to confirm this fine; if they choose to deny it fine, but he wants to tell her in as constructive a way as possible, virtually every commissioner has said to him at one time or another that this commission suffers from staff's control freakishness like we've never encountered before, and in trying to raise that and seeing what happened at our last meeting, he doesn't have to make any claims, because everybody saw it again.

Commissioner Schudson stated that he attempted to get our Chair to put this on the agenda, and do you remember the 25 minutes of wheel spinning at our last session to try and figure out the intricacies of how we could put it on the agenda and who could put it on the agenda and what we titled it on the agenda, and bless his heart, his kindred spirit Commissioner Segner said this is . . ., come on this isn't a court of law. We need not be wordsmiths to accurately identify an agenda item and we certainly should not be in the position of having our desire for an agenda item trumped by our staff saying no, we are not going to discuss it or list it that way. It was insulting; it was demeaning and it was the kind of 25-minute foxtrot that sucks the energy and the initiative and the fresh thinking from creative, dedicated citizen commissioners.

The Commissioner then indicated that the frosting on this stale cake and perhaps what was most troubling to him was what related to the open meeting laws. He was told in the emails that what we had all anticipated on March 9th, the sharing of information, was inconsistent with open meetings -- it is not. It is not inconsistent with either the spirit or the law. Can we find words that might suggest otherwise, sure, but based on his professional experience and everyone's common sense, there is a fundamental principle of law and that is when there is any uncertainty or ambiguity in law, it is to be interpreted consistent with common sense. The Open Meeting Law was never intended to be applied in a way that preempts common sense and keeps people from communicating with each other, so he saw here a misrepresentation. He is not blaming Audree, because she said it was based on her consultation with a predecessor counsel, but this commission has had a very sour experience with legal advice received from predecessor counsel. Several of us were here a few years ago during the controversy about eliminating citizen commissions, and if he needed any further proof that this is nothing personal, Audree better than anyone else in this room would remember what happened at that meeting, because of his role at that meeting.

Commissioner Schudson stated that we were being told that like all other commissions we were about to be eliminated. Some here challenged that and he looked at a staff member, Kevin Snyder, and said that he hadn't studied the law on this, but certain citizen commissions are statutorily mandated, so before going farther, has this been carefully researched; are we among those that by statute could be eliminated, and he and the City Attorney promised that they had researched this to the depths and we could be eliminated, and as Audree will confirm, as soon as he heard that, he said to the other commissioners, "Let's stop the belly aching; it's not our call". We may disagree with it, but it is not our call. We are about to be eliminated, so given that we are about to be eliminated, our agenda today should be how to make a smooth transition and under the new configuration, how do we make a constructive contribution. We are citizen volunteers dedicated to this city and no one is trying to build a bridge to the next position, so if we are no longer commissioners so be it, but we can still offer our thoughts on how we contribute to historic preservation under the new configuration, and he turned the discussion, and that is where we went. After that meeting, Audree came to me and thanked him for bringing that perspective and constructive approach, so ironically, he is the, as he said once before, the idiot lawyer in the room who said to the City Attorney and Kevin to just tell us that you have researched this -- give us your word, and he accepted that. Only one problem, it was wrong and it was the legal factual premise on which we were eliminated, and he swallowed it. As a judge, he would have said to give him the citation and show him the legal authority, but no longer being a sitting judge, he said give me your assurance and we went on that basis, so that was the first time we had a misrepresentation of law and we acted based on that. The second time is here, and then the third; the final layer of frosting on the stale cake. When he raised this and attempted to put this on the agenda, Chair Unger advised him that Audree and/or City Attorney and/or he is not sure who, but one, two or three people had implored her to convey to him their desire to meet with him privately to discuss these staff issues, so that he would not raise them publicly.

Chair Unger stated that she doesn't know that it was so you would not raise them publicly; it was more in terms of so that they understood where you were coming from. Commissioner Schudson then stated that he would defer to the Chair, because he got it secondhand through her, so fair enough. In any event, his reaction was immediate, legally informed and instinctive -- absolutely not, that would be a violation of open meetings, and Chair Unger related that the concern was a staff issue, and as a staff issue, it should not be on the commission's meeting agenda. The Commissioner then said that he didn't know, not having studied the law, but his guess is there is a provision for that and that is where boards, commissions or governmental bodies can adjourn into executive session for confidential discussion of staff issues. In any event, he refused to meet, not because he is unfriendly though people at times tell him that he is, but because he wanted to ensure that he would not act inconsistently with open meetings, and that those asking to meet with him would not either, and with good reason. What could be a more appropriate agenda item for a commission as a whole that what one, hopefully, respected commissioner believes is a fatal flaw in process that is undermining compliance with open meetings, creation of our agenda, our Chair's authority to make the call on setting agendas, and that at least in his case is undermining, if not

destroying any further desire he has to serve on this commission for the simple reason that he doesn't want to waste his time. He is not here for the title; he is here because he loves history and Sedona, and he adores the people who serve on this commission and it has been a joy for five years, but it is no longer a joy. It is a pain in the butt, because he feels he is wasting time, and with all of the organizations out there he serves as a volunteer, squeezed for time, he would simply want to say thank you very much, best of luck, let him know if he can help in the future as a volunteer, but he is not going to spin his wheels anymore, if he is serving on a commission where he has little say in the agenda and where he has little energy remaining, because he believes we have been consumed more than assisted by staff, so that is where we are today, and he brings this to you in a genuine spirit of constructiveness with absolutely no desire to attack, accuse or embarrass anyone, with deep appreciation for Audree's enormous talents and unbelievable energy and unquestioned dedication, but he thinks we do have an honest misconception of respective roles, and if we can correct that, we can reach a modified relationship that is respectful and coordinated and again energized and that we can come to the end of what has been a couple of years of people complaining that we have staff control freakishness at the expense of open and creative communication.

Chair Unger stated that in a sense the real reason we were given the homework at the beginning of the year, and it may have been a bit vague and maybe it should have been clarified some, because we were basically looking at our ordinance, and the reality is that we have to address it and possibly reconstruct it. What Audree had hoped to do was get us to look at our philosophy, which was exactly what Commissioner Schudson did, and she commends him, because too infrequently do we actually look at those documents that dictate who we are, and too infrequently do we even think about them as being a basis for where we are going, which is something that was being stimulated by our thought that we had to look at our ordinance and possibly rewrite it -- something that we are taking on now in a very serious manner. Also, we have gone through a couple of years of discomfort, given the fact that we ended up being the only commission left standing, and certainly it was awkward. Audree did a very good job of having us have a retreat where we tried to address that. In a sense, the best possible place to have had this conversation would probably have been a retreat rather than a meeting, simply because we are trying to figure out a functional problem that Commissioner Schudson sees. In terms of who is responsible for the agenda or even for our work plan, the reality is that the City Council is the driving force for that. It does come to us through staff, and then it is up to the commission to determine that work plan. She feels that in the last couple of years, she has been a little bit negligent in not making that work plan terribly clear at the beginning of the year. We had a couple of years where we had a lot of things on our plate. We did a lot of hearings and by the time we came to January, there should have been a work plan put in front of us and that should have been determined by the commission, and then given to the City Council, so they could review it and make sure that we were on track for what the City Council has on their agenda for their yearly work plan. That is a process that she will take responsibility for not having done, and part of it was because of the confusion in the last couple of years and part of it was because of our agendas last year; however, that is no excuse for not having done that. If we had done that, the clarity of what we were trying to accomplish would have been there, and she is not one who understands what the open meeting laws are. She knows that we are not supposed to be discussing things amongst ourselves, and there are all of the different things we have to worry about like the spokes and the hub, where you have all of us actually making contact indirectly with one another that then we have made a decision prior to any decision that we are going to be making here on the floor. When talking about philosophy, it seems that it is an awkward scenario, because that seems like a simple thing, and she agrees that in almost all of the things that have established us, including the federal historic preservation, SHPO, and the city, it is pretty clear what our philosophy needs to be. Whether we should be considering rewriting it or not, she would doubt and she appreciates the fact that Commissioner Schudson felt maybe this was not something we should be wasting our time with, but we do have to know it and in a sense all of us do.

Chair Unger explained that the bigger picture here is that the ordinance needs to be redone, and Commissioner Schudson pointed out one part of the ordinance that he really couldn't understand, and Commissioner Jarmusch has pointed out that it needs a wordsmith to go over it. It does pretty

much what we want it to do, but we may have to make some alterations and additions, but that will be the subject of one meeting where we all have to make that decision and that will be a vote as to whether we need to make major changes or only make these very minor changes; however, some of those minor changes will make a big difference in the way the public views the commission, especially when we talk about some of the issues we have had in the last couple of years that have driven the commission into a difficult situation with some homeowners, in so far as they have not been able to come to the commission to get an answer about roofs that they need right now, so those are the things we are talking about. At times, it does feel that we are being driven by staff to get things done. She has to agree that it does feel that way at times, but part of that is because we haven't taken a close look at it and actually made that work plan that takes us through the year to ensure we are all on board and we have decided what that work plan is. That of course then has to go back to the city staff and back to the City Council to make sure we are on track for what the city wants, because no matter what we are, we are responsible to the City Council. She doesn't see us responsible to the city staff; she counts on the city staff to tell her what the City Council is thinking.

Commissioner Segner indicated that he has been through five liaisons from the city and some are extremely knowledgeable and some don't have a clue, because it is new to them. Audree has a strong background and has been here since day one, and Kathy was extremely knowledgeable. He has been here seven or eight years, and normally, they would ask what we want to see on the agenda, and we would talk at the meeting and have an agenda, but we always went in front of the City Council to say here is what we are going to work on next year, and then the Council would say we should be doing this too, and then we would say okay and add that to our agenda and move forward from that. He feels that is not happening; what happens is in the middle of a meeting something will pop up. What popped up was staff was looking for a way to handle emergencies and sometimes we are asked to make too quick of a decision. First is there a real problem; he doesn't know that there really is. At the last meeting, we talked about if someone had a problem they could go to staff and staff could make the decision to a point, and above that point, two people would become involved and it would be taken care of within 48 hours, and we talked in the last meeting that it wasn't in the notes, because it couldn't be deciphered from the conversation, but we all kind of remembered it. We had a three-hour discussion and all agreed that staff at the front counter shouldn't make these decisions and should ask for help, and it would all be taken care of and that was our understanding. Then, we came back a month later and that really wasn't the understanding, so he is not pointing fingers, it was probably just confusion, but if that had been on our agenda from the beginning of the year, when we left the City Council, that we were going to look at this, then we would have all had time to study it, and Commissioner Schudson has a point. If Commissioner Schudson said he found this at this hotel and Commissioner Jarmusch said she found this other city, etc., we should be able to send that to each other, so we could read the relevant data, and it just seems that it is hard to get stuff on the agenda, so we just have to kind of kiss and make up and get started again, and get back to where we are trying to get something accomplished.

Chair Unger indicated that one thing that sort of fell through on one issue where Commissioner Schudson and the commission decided that we would all vote on that issue, maybe on the agenda, we have to actually agendize that it has to be voted on at that time, and if it doesn't, we need to bring it to the next one.

Commissioner Schudson stated that it was voted on; there was a motion, a second, a discussion and by a three to two vote, so that one is done isn't it? Commissioner Segner explained that we don't quite understand the wording of it. Commissioner Schudson then added that we even wordsmithed it here; this is troubling to him. Commissioner Segner explained that when it came back, he asked . . . Robert Pickels advised the Chair not to go into . . ., and the Chair interrupted to agree that is a specific and she doesn't know that it can be discussed on this agenda. Commissioner Schudson asked who suggested that wasn't done; that was something that we accomplished. Commissioner Holmes noted that may have happened after Commissioner Schudson left last time.

The Chair expressed concern about going into actual specifics that we will have to vote on or have voted on. Commissioner Schudson then asked if there is anyone here who does not remember motion, second, discussion . . . The Chair again stated that we can't . . ., and actually it is in the minutes of the last meeting. Commissioner Jarmusch indicated that she objected to voting on something without the entire ordinance before us. The Chair noted that it is probably on the agenda in item 6.

Commissioner Segner stated it isn't discussion about that motion, it is just an idea of not communicating well, and that is part of today's discussion, and we need to not have that happen in the future. It seems that we don't understand how we can pass around information and work back and forth. Chair Unger indicated that she would turn that over to Audree and the City Attorney, because if we are trying to form an opinion that is one thing, but if we found information and need to view it before our next meeting, how is that possible?

Commissioner Schudson stated that he found the exact wording and it is important to understand the legal misconception. He then recounted sending his draft on March 11th to be disseminated and receiving a response on March 17th that the next meeting will be May 18th and "at that May 18th meeting, you can distribute", which would put them right back where they were two months earlier. Then, we have an email exchange and Audree tells him that we can do it several weeks in advance of that meeting, so let's be clear, if it would be a violation of the open meetings for him to have sent that to everyone right away, it also would have been a violation to distribute it several weeks in advance, like being a little bit pregnant. Chair Unger then restated her question to Audree and Robert Pickels.

Robert Pickels explained that they are talking about two different things, but he first wanted to make sure that everyone understands that the City Attorney has two very distinctively different roles here in relation to this commission. One is to provide day-to-day operational guidance and advice to city staff, which would be Audree, Warren and whoever else is involved in this. That guidance and advice is that leads to communications like Commissioner Schudson has described with the City Attorney suggesting to Audree that certain things are permissible or not. The second role and very distinctive role is to provide guidance and counsel to this body in this environment on the day of the meeting, so they are sometimes necessarily linked and sometimes very different, so he as the City Attorney has to different roles here. Sometimes they blend together and sometimes they are a little more separate. He is hearing talk about two different types of communication. You are talking about if you discover information from third-party sources that is important to be distributed to other members of the commission, there is nothing wrong with that information being distributed through a proper source. If that is sent to Audree, she can communicate that third-party information; it has nothing to do with independent thoughts of any of the individual commissioners. What is very different is when you are sharing your own individual thoughts; those cannot be communicated in advance of a meeting outside of this kind of meeting setting, whether they are sent from Audree or yourselves. There is no proper way to communicate those thoughts outside of an open meeting, and that is what the open meetings are for; it is a transparency issue. What you are thinking in relation to commission business has to be discussed in an open environment where people can come and listen and hear what you are thinking, and Commissioner Schudson commented earlier about it being flawed, and he doesn't know that he would call it flawed, but it is certainly difficult sometimes to get those communications in advance of a meeting to get business done in a more speedy fashion, and he agrees on that part.

Commissioner Schudson then asked how his memo and its attachment be disseminated several weeks in advance of a meeting, and Robert Pickels indicated if he is asking if that is the same violation, he thinks it is. If you ask him when that information can be disseminated, it can only be distributed at the meeting and discussed at that time. Commissioner Schudson then referenced the predecessor and Robert Pickels indicated that he doesn't know what his opinion was. Commissioner Schudson indicated that at least as decided on March 9th, we were contemplating a violation of open meetings if we were to circulate, and then when he was told at that meeting that you can distribute, that would have been correct but would have landed us back in the same

predicament, and several weeks in advance would again have been a violation. Donna Puckett noted that when meeting materials were shared ahead of the meeting, it coincided with when we put the materials and agendas on the website for the public to see, and that was one reason things weren't sent out far in advance, because it was timed to go when it went on the public website.

Audree Juhlin indicated that as the City Attorney said, we have two forms of communication we have to pay attention to. One is the third-party information, and that is what we were discussing in the March meeting; it was go and look at other communities and see how their historic preservation ordinance is drafted, look at their philosophies, because this work program item was a City Council directive, so we were fulfilling the City Council directive to evaluate our philosophy and ordinance and make recommendations to the City Council, whether there were few recommended changes or none; we were just tasked to look at it, so when we talked about researching other communities and giving that information to staff to distribute, that is what we were talking about. We will absolutely distribute your research, such as San Diego is doing this, Portland is doing that, Washington is doing this, and that is what we were going to distribute. As far as individual work program items, as Commissioner Schudson did, we would then compile all of that input into one document and include that in the meeting materials for the next meeting, and that is the email that she sent, because you are providing information other than other communities or third-party information, because you are providing opinions and direction through the email to the rest of the Commission, it was best to include all of that in one document according to the former attorney's advice, and that is what we did.

Commissioner Schudson then asked how that would not leave us exactly where we were two months earlier with receiving material on the day of the meeting. Robert Pickels explained that he can't reconcile that for the commission, because in his experience in dealing with these kinds of bodies, that is how the business gets presented. Commissioner Schudson stated that he can; he can reconcile that. It is the rule of common sense. The open meeting law was never intended by spirit or verbiage to prohibit the commission from having fundamental communication that enables us to do our homework and prepare for a meeting. It seems that the obvious solution is the gift of modern technology, and it is quite basic, if he takes the six hours to write this memo and provide this material and he wants the commissioners to have the benefit of that, he should send it to be posted on the website immediately -- problem solved.

The Chair stated that the former attorney stated that we could have everybody's and it would all be in one package and we could send it out, but she was hesitant to do that, because she thought she was breaking the open meeting laws, but if we did homework and send something in and it was posted to the public would that be any different if it all went on the City's website? Robert Pickels stated that his advice would be not to share that information in any way shape or form prior to the convening of this meeting.

Commissioner Schudson asked how we are to accomplish our work if we can't do that; it is like being caught in a telephone recording loop where you just keep coming back and we meet 60 days later, and again, we say that we haven't had a chance to look at it. Chair Unger explained that very infrequently are there going to be times where we have that kind of homework. For the most part, we have decisions made off of short documents or a hearing that is only about one thing; we rarely have anything where we are talking about this much work. Her suggestion would be that if we can't do what you are saying, maybe we need to take a day to look at it. We can't do it all in an hour or two in one meeting.

Commissioner Segner stated that what the commission does is kind of technical and there is a lot of institutional knowledge in this group, but some of it has to be looked up and researched. Audree popped up with it and said here it is, and he remembers let's all go home and do some research to find out the nuts and bolts of this, and his understanding was that we would just share it and read it, so we would be prepared for the next meeting, and he doesn't think that is unreasonable. Walking in unprepared on a new subject, we only know what we know and usually it is not enough to make a decision. The Chair noted that there is a difference and that is what the City Attorney is trying to

tell us, and the difference is when we research and bring things from different places, people can look at that. If we put out an opinion or write it in our words, then that turns it into our opinion rather than research, but she has a problem with that too, because she can go out there and find instances where everything is going to be what she wants it to be, and she can send that out and it is basically an opinion too in a sense. Robert Pickels clarified that he is not suggesting that you can communicate those yourselves, and the Chair agreed and explained that she can send it to Audree. If we brought in information from different places and sent it to Audree, and she distributed it before the meeting, nobody would know who that came from, so in a sense, it would be blind from that side. Does that make sense? Robert indicated yes and explained this is not a legal issue, it is more of an operational issue, so take it for whatever you want, but his experience with these kinds of boards is that the work is actually done in the open at these meetings and very often you don't have the benefit of having a lot of background information from each other until you sit down face to face. Reflecting on the suggestion about doing the homework and bringing your thoughts together was so you would have them organized and ready to discuss so you could have a thoughtful discussion in an open meeting setting, not so you could come to any conclusions or develop positions in advance of the meeting. Audree indicated that was exactly right.

Robert Pickels explained that sometimes it takes a lot longer to get things accomplished in that . . . Commissioner Schudson interjected that may be reasonable, but that it is exactly what we specifically said we would not do on March 9th, as the recording will confirm, when a question was raised, he found the page and line and it is reflected in Donna's good notes. We said let it be clear that this is a big task that we are taking on, so as to prevent ourselves from being in exactly the same position at our next meeting, let it be clear that we are to get these to Audree, so they are disseminated quickly, so people can build on this, so by the time we get back here we are prepared. Without that and with the suggestion that at the next meeting you can distribute, we are in that phone message loop again and again. Why is not a reasonable solution in 2015 doing our work, getting it to staff, so that simultaneous to its dissemination to the commissioners for their continuing work, it is on the website for all to enjoy?

Commissioner Segner stated that work and opinion to him are two different things. He can understand that we don't want to get together and conclude; that is what the law is about. We don't want to get together and make a decision, but what is wrong with saying here is what I've found and here are some flaws in the thought process, because the flaw in the thought process might be to bring up two or three flaws, so we can discuss them at the next meeting. Robert explained it is that thought process that the public has an entitlement to be a part of.

Chair Unger indicated that even if everybody sent their opinions and none of them had our names on it, that still would not work. Commissioner Segner indicated he is getting where Robert is coming from. Maybe there is a giant mass communication missed, so we are making bad decisions because we are coming in here at 4:00 p.m. and we want to leave at 5:45 p.m. and we don't have time to have the information ahead of time, and we are expected to come up with policy for the city in an hour and 40 minutes or less, because this is just one agenda item, and that is not going to work.

Commissioner Schudson stated that we have one wonderful example of this and the rather strange distinction that is being drawn. Going back to his March 11, 2015 cover memo and two-page draft. In item E., he wrote, "Note my brackets in Section 1501.B.4, as written in both editions he has obtained, the subsection is in part incomprehensible" and he goes on to explain why. According to what counsel has just advised, what he could have done was send Audree a copy of that statute, but without his commentary that is meaningless and worthless. For better or worse, he is an expert on statutory construction and we all are educated enough to read the English language, and if we just sent that statute, we would ask why somebody was sending this drivel, but with the commentary, they would say they understand the problem and could go on and take the next step. Under the fundamental legal premise of common sense, it would have been absurd to send everyone a copy of 1501.B.4. It made sense to offer commentary saying please note this is

grammatically, syntactically and logically worthless; thus, we don't know what it means; therefore, we are just shooting in the dark to try to figure out what the problems are.

Donna Puckett pointed out that regardless of the feelings about the Open Meeting Law as she recalls, Mike Goimarac shared in the last briefing that OMLET had added a guideline that you can't share an opinion or proposal, even when you don't expect a response, because that was conducting some of the Commission's business. Chair Unger and Robert Pickels explained OMLET is the Open Meeting Law Enforcement Team. Audree Juhlin added that as a staff liaison, it is her responsibility to ensure that the commission adheres to the open meeting laws, and she takes that seriously, so sometimes she meets with legal counsel to make sure that her direction is consistent with the open meeting laws, but that is her job and that is what she has been doing and will continue to do.

Chair Unger added that she knows that Audree also wants the commission to get their work done; she is not doing any of this to stop the commission from getting the work done. The reality is that given the fact that we have to be a commission in order to do what we are doing, we are subjected to the open meeting laws. If we. . . Commissioner Schudson interrupted to say excuse him; no problem with that. Operating under open meeting laws is correct, but watch what has happened in the last 90 seconds. We've had expressions from the City Attorney, a former appellate judge, and a staff member, and the staff member's opinion just trumped everything else. What he is about to say is, let him be clear, Audree has just eloquently sincerely expressed her devotion to open meetings and her obligation to make sure we comply, and earlier this afternoon, he pointed to several examples where he believes as a matter of law, Audree's and the predecessor counsel's interpretation have been wrong, and today, as Robert referred to this board, he submits that we have an honest disagreement on open meetings interpretation, but that his is consistent with common sense and the commission's ability to get things done. If the other point of view is the one that prevails, then we have the tail wagging the dog and we are then unable to carry out the fundamental communication we need. There is a quip and it is that the definition of a bureaucrat is someone who writes endless memoranda to other bureaucrats explaining why common sense cannot be followed.

Robert Pickels indicated that he and Commissioner Schudson do have a fundamental disagreement on that issue and that is fine, the Commissioner is entitled to that opinion, but this commission exists as an appointed body of the City Council of the City of Sedona, and he as the City Attorney is their attorney and he as the City Attorney is the only attorney that represents this body, and if you are wanting to ask for a legal opinion, you are free not to follow his opinions. He gives you advice, guidance and counsel as your one and only attorney; if you want to follow that advice and counsel that is up to you as a body. You are the ones that are going to run the risk if you don't do that, so all he can do is give you his best guidance, counsel and advice as your attorney, and it is up to you if you want to follow it or not. Commissioner Schudson stated that is very fair, because an attorney has to be concerned with risk management for his or her client. Our commission however has a very different charge. We know our missions and goals, and we do not necessarily have to defer to what at least one of us believes is not a correct interpretation of open meetings. Reasonable people may disagree, and we can respectfully disagree on an intricate interpretation, but we have to stay focused on our mission and say to staff, say to Council, thank you very much; we appreciate your input; it is our call.

Chair Unger stated that her concern with that is even though we are a body unto ourselves in a sense, we are still a body under the management of the City Council and her feeling is that if we are to make any decision like that, it would have to be with the concession of the City Council. She would say the City Council is not going to agree with your opinion, because we operate under them and if we do something that is inappropriate, then they are going to be blamed for it too, so she has to say that she would defer that if we are going to make this decision not to follow the counsel of the City Attorney, then it would be up to the City Council to say we could do without it. She doubts that they would go in that direction. Commissioner Schudson indicated that he is more optimistic about their common sense, but the Chair may be right.

Commissioner Segner indicated to try to get something out of this, we want to be a working group and we have work to get done. We all want to work together and apparently the laws have changed and become stricter that we didn't know about as far as some new rule. Commissioner Schudson stated he doesn't agree with that. Commissioner Segner then continued to say that the question is how we function in the future. The way we are functioning now will not work; we are going to have to put in twice as much time to have a discussion here, so when you say this is crap, we have to delve into it and spend the time and go line by line and do it. That is not the format we have now; we are going to have to come to the meeting blind with a little outline and have a long discussion and delve into it to get a good answer, and the 30 to 40 minutes we give to it now is not going to work. Robert Pickets stated that not as a legal issue, but an operational issue, but his suggestion is that is why you rely on staff to frame the issues for you and bring them to you for discussion. Commissioner Segner indicated that is fine, but staff may frame them this way and we may say we want to look at them that way, and that just takes time. It's not because staff is wrong, but the whole idea of having other people besides staff is to bring in other ideas and points of view, so when Audree says we can handle this at the front counter, he says great, but that person doesn't have expertise, so how does the person at the front counter get the expertise. Well, we would do this, this and this, and that is great, but it takes time and at that meeting, we were blind sighted and going down a road we weren't convinced that we were supposed to; it wasn't on our work agenda, it just came up.

Chair Unger explained that it was on the work agenda, but it was inappropriately put together and that she will take as much responsibility as anyone else. Commissioner Segner suggested having a half-day to come up with our work structure, how we are going to do it and proceed in the future. We might meet once a month for five hours if that is what it takes. This isn't working; we have to come up with something different.

Audree Juhlin indicated that as background to how the meeting with James Gardner happened. It was based on this item being on the commission's work program for about two years without any progress, so to help the commission move it forward, we had talked in the past about how to deal with emergency situations and repairs to make sure landmarks are maintained in an acceptable manner, etc., but we weren't seeing any movement. We had asked that you do some research and give your opinions, so when we had the intern, she took advantage of that opportunity to help jump start the commission and it was only meant for discussion. It was never meant for action to give the commission a place to jump off from with information about how other cities handle emergency situations and repairs, so that meeting was meant to be discussion for the commission and for staff to share staff's research, and then if we were steering you in a direction you didn't want to go, then we would take that feedback and adjust the ordinance accordingly and bring it back to the next meeting for consideration and perhaps at that point we might be ready for a motion, but we never intended to have a motion at that meeting.

Commissioner Schudson stated that he remembers it differently, and it was of the many things, it was a priority. How do we help people with landmarked properties efficiently get approval for emergency intervention; we had a thorough discussion and he was shocked at the time that we enacted this with a three to two vote, and had done so with what he thought was consistent with Audree's recommendation. There was some tweaking with a two-person approval rather than one that was very thoughtful, but he thought Audree must be delighted. We actually finally accomplished something and approved something that met the highest priority, so he is flabbergasted to hear that, and no one opposed doing that at the time.

Donna Puckett asked if we are still on agenda item #5, and Chair Unger indicated that if we are still on agenda item 5, we need to get off of that. It is sort of strange that we have gotten off on this whole vent. This is one thing that we are going to be doing in the next couple of years; this is not what we generally are going to be faced with. She doesn't see us in any of our hearings needing a five-hour hearing. We get it done in less than an hour. This was asked for by the City Council, and this is going to be a process where we are going to have to dedicate the time.

Commissioner Schudson indicated he wanted to repeat his earlier question, what could be inconsistent with the spirit and letter of the open meeting laws with putting on the public website items that we desire to have other commissioners consider. Chair Unger explained it is fine as long as it does not contain your comments and opinions. Robert Pickels stated that if there is no . . . Commissioner Schudson interrupted to say he is not trying to get off easy here -- including the kind of commentary on Section 15 so people understand. Come on, common sense, common sense; for him to send Commissioner Segner an excerpt from the statute without commentary . . .

Chair Unger noted that we had all heard that. She then called on Audree who stated that the Commissioner has a point about common sense, and what she is going to say may not be popular, but she wants to bring it up, because it would accomplish exactly what he is trying to do now. As you remember when the discussion about eliminating the commissions took place, it wasn't about eliminating the commissions. It was about providing an avenue from which the commissions could get things done. The frustration that is being shared right now was not uncommon amongst all commissions as to how they could get around the open meeting law to get work done. It was prohibiting them from doing what they wanted to do, so the CLG is an agreement that the City has. Commissioner Schudson asked what CLG was and Chair Unger stated Certified Local Government that we have with SHPO, and Audree noted that Commissioner Schudson had referenced it earlier. That CLG is not binding, we can stop that agreement. We have the ability to cancel that contract with the state for the CLG; we don't have to and we are not obligated statutorily . . . Chair Unger interjected that we could lose our landmarks and everything else; however, Audree Juhlin stated no, we don't lose our landmarks. The Chair then indicated it would be handed to P&Z, which they already told her they don't want. Audree Juhlin asked if she could finish what she was saying, and the Chair indicated yes. Audree Juhlin then indicated that if the commission wants to go down that route, we could stop the contract with the CLG, which is the document in place now for the commission, and recommend to the City Council that this commission be considered for disbanding and that working groups in the Citizen Engagement Program be created, which you could then participate in to get work done without the encumbrance of the open meeting laws.

Chair Unger noted that the staff would choose who gets on that, because that is how that works. Audree Juhlin stated that it is an option. We can continue to support the commission absolutely and she is not suggesting disbanding, but if you want . . . Chair Unger interjected that she was going to bring it up too; this is exactly why the rest of the commissions were disbanded.

Commissioner Schudson indicated that he has heard from several people speculation that you were a key figure in opposition to the continuation of citizen commissions, and that your determination . . . Chair Unger stated that is unfair to ask, totally unfair. Audree Juhlin noted that is not agendized, but she would be happy to talk with him if he wanted meet afterward. Commissioner Schudson stated no, and then asked if that is what is motivating the alternative she is presenting now and Audree stated no. Chair Unger also stated no, it is not. It is absolutely not; she can tell you that now, because if Audree hadn't brought it up, she was going to; that is a reality.

Robert Pickels again asked that the discussion be limited to the alternative aspect of it in reference to the open meeting law and communications. Commissioner Schudson commented that someone could be concerned that this was a backdoor entry to the elimination of this commission. Chair Unger stated no; it would not be and that was never on anybody's mind, but it is only a matter of Audree reflecting on something and not something that was intended to be brought up at this meeting. The Chair indicated that she knows we can't take a vote, because it isn't possible to vote here as to whether or not we want to follow what the City Attorney is saying or what Commissioner Schudson is saying in terms of open meeting laws. She doesn't see that as something she would even like to consider.

Robert Pickels stated that he hoped there was not a misconception as to what he was suggesting. He was not suggesting that you can disregard his and accept someone else's; he was simply suggesting that on an issue by issue basis, he gives you advice and it is your . . . The Chair then interrupted to say okay, because she can't see the commission doing that. Robert indicated that he

can't either, and he doesn't recommend you do that. Commissioner Schudson stated that he has a different role here; he is a commissioner advocating for this commission accomplishing its goals.

Commissioner Segner indicated that to look for a solution again, we all understand now that we can't basically communicate by sending anything around ahead of time. Okay, he got it; pretty simple, so that just means we are going to have to have a little more time on complicated issues to have more discussion. We can all do that; the other thing we need to do is several meetings ago when we had discussion about the vote, you said here are the notes from the last meeting and we were going to vote on them, and he said the notes were incorrect and he would like to change them, and he was told we couldn't change the notes. His question is if we ask for a vote and if they weren't correct and we ask to change them, what is the procedure. Chair Unger indicated that he is talking about the minutes, and Commissioner Segner indicated that the minutes weren't correct; there were some changes and when you read the minutes, you said that you couldn't understand who said this and it wasn't clear who said that, and he and Commissioner Schudson said this is how we understand it, so how do you correct it.

Donna Puckett indicated that she didn't recall a conversation with Commissioner Segner, she recalls one with Commissioner Segner about a recent meeting, but the process would be if you tell her there is a concern, she goes back to the audio recording and listen to it. If she made a mistake in what she heard, she changes it to match the audio. Commissioner Segner indicated that the comment was that it was inaudible and she couldn't hear what was said, but we remembered the conversation distinctly, and when it was in the record it was different, so he was trying to change the record to what we understood, but he doesn't want to go back and change that, but that is one of the things layered on top of this. It is just like one little bad situation laid upon another. In the future, and it is probably our fault because we speak on top of each other and we don't say our name, so he totally understands that, but it was a layer of lots of little things that brought this to a head, so let's all take a deep breath and if you want us to look back, we are going to have to spend some research here and talk here.

Donna Puckett added that the rest of the answer to Commissioner Segner's question is if you feel that after she has done that and can't say what you want it to say, then when you come to the next meeting and get to the item to approve the minutes, just as Charlie did in a recent meeting, then you can express your concern and what you believe was stated, etc., and if you are still in disagreement, you can vote not to approve the minutes. The minutes try to match the audio and she can't re-dub the audio to say what you wish it said, and when there are three or four of you talking at one time, the speaker is going to choose who it is going to pick up.

Commissioner Schudson stated that the curiosity is that we do get the minutes in advance and we are asked for any corrections, and on the one occasion when I attempted to offer that I was told that minutes can't be changed, and one of the things that he requested, which he elaborated on last time, he had made a facetious remark referring to "idiot lawyer" clearly indicating himself and yet when one read the minutes one might have inferred that he was referring to the City Attorney or someone and all he asked was an addition of [indicating himself]. Donna Puckett added, which he did not state. Commissioner Schudson agreed that he didn't say aloud "indicating himself", so that was the kind of addition he requested, and he disagreed with Donna on her position that an addition like that cannot be made. He served on countless bodies where bracketed clarifications were permitted, so fair warning, next time you get an email saying to let her know that there are corrections that is not exactly a genuine offer. Donna Puckett clarified it is an offer for corrections, but not changing what was stated on that audio, as we discussed for two and a half days in emails. Commissioner Jarmusch added that we are talking about tone now and not actual words, and tone is what we hear as human beings. Commissioner Schudson asked if we could all agree that he is the "idiot lawyer", and the Chair and one other participant responded no comment.

Chair Unger indicated that as Commissioner Segner stated, it would be nice to come to a conclusion on this and certainly Commissioner Schudson has a decision to make as to how he

feels about going forward. Commissioner Schudson stated that he could announce that now if she would like.

Commissioner Jarmusch stated that she is extremely discouraged about the state of the commission and the state of this discussion. There are principles that are being upheld as they should be, and there are also things that are so nonsensical that she is really discouraged and she is not sure that she can devote her energy to this body, and she really wants to help with the ordinance, so she is saying a lot there. Chair Unger asked if Commissioner Jarmusch sees any way to get around the open meeting law and take care of this. Commissioner Holmes stated that she doesn't think anybody wants to get around the open meeting law; we just want to function within it constructively. The Chair then asked how we get around the fact that you want to do something that is against the open meeting laws.

Commissioner Schudson stated that not everybody agrees that it is against open meetings. He has been operating with open meeting laws for about 30 years and operating within it includes common sense, so he doesn't accept the premise.

Commissioner Jarmusch indicated that her question is the charge she was given was to go over the ordinance, wordsmith it and make suggestions of additions and deletions that was then open for discussion with everybody, but her understanding was that she would turn over her draft to staff, and then staff would distribute it to the commission in advance of the meeting. Is that not going to happen? Audree Juhlin indicated that would happen as part of the packet as a draft for consideration. We are not having consideration outside of the meeting; here is a document that we will consider at the next meeting. Commissioner Jarmusch stated that sometimes we don't get the materials for the meeting until three to five days in advance. Audree Juhlin stated that we can ensure that you get it in plenty of time.

Commissioner Schudson stated no you can't. He can pull it up, "the day of the meeting", then you relented and said several weeks. Audree Juhlin indicated that the protocol is to follow what is generally held by the City Council, so their packet is out in advance of the meeting about one and a half weeks before the meeting and that is typically what we do. We try to go for two weeks in advance or one and a half weeks before the meeting, so we are similar to the same protocol used by the City Council.

Chair Unger asked, since Commissioner Jarmusch is the one that is going to be doing the manipulation of this, would that be thought of as her opinion, and Robert Pickels stated absolutely and his opinion is that material can be presented to the commission on the day that the commission will discuss this. Commissioner Schudson stated that in the last 60 seconds on the day, consistent with others, several weeks in advance. They don't know what they are doing. Chair Unger stated that is unfair; totally unfair. Commissioner Schudson indicated that they have not come to an agreement on how to apply this. In writing and now in person, we now have had in the last two minutes a commitment that will be on the day of the meeting, but not before; several weeks in advance, and the way others do it. They can't answer Commissioner Jarmusch's questions and he can -- follow common sense. He then asked if the Chair had some concluding remarks, before he says goodbye. Chair Unger commented that she thinks this is a farewell, and Commissioner Schudson stated probably.

The Chair indicated that it will probably be up to Audree to determine if those comments are sent out, and Audree Juhlin indicated that she will get with our new City Attorney, because his opinion might be different than our former attorney. In the past, we were allowed to do strikeout and highlight, etc. in the document that we are proposing to change, but it included commentary of why that discussion took place at the meeting. If that direction has changed, she will follow that direction. Chair Unger indicated that if it is reviewed by staff, would it not be up to staff to look at it and say. . .

Robert Pickels explained that the fly in the ointment is that you are having a commission member actually perform that function. Typically those are functions that would be performed by staff and the strikethroughs and suggestions, modifications, etc., would be brought by staff and discussed by the public body. If there are adjustments made, then staff takes them back and makes those adjustments and they are brought back again. The public body can comment again and. . . Commissioner Segner interrupted to say that in this case, this commission has more knowledge and that is why they are doing that.

Commissioner Segner then stated that before Commissioner Schudson leaves, he is very important to this staff and him, because he brings a sense of knowledge that none of us have, and you have unique writing skills, and he is patient and quiet and great for this staff. He doesn't want to see either one of the Commissioners leave; we are having a simple management-employee dispute that we probably can work through. Everything Commissioner Schudson has said is right on the button, but nothing is going to change. This is the new regime; this is the new law and the way it is. We can choose to follow it or choose to walk out. You are both too important to this to walk away, because if you walk away, we are not going to be able to fill your shoes, so he would like to see them take a deep breath and say we have to get together and come up with a new game plan and work together and get past this, because he doesn't want to lose either one of you.

Chair Unger asked if instead of this being something that Commissioner Jarmusch does on her own, would it be possible for her to send it to Audree to discuss and look at everything together and basically have it be projected by city staff. She thinks that Audree has already sent something that has commentary. Audree Juhlin indicated yes, it was through the changes that James Gardner, a staff member, had done and we included a Staff Report and a presentation to discuss that. The Chair noted Commissioner Jarmusch's background on the HP Commission for San Diego and she understands these things really well, so could they look at that together, and then bring it to the commission, since that would be working with city staff rather than being addressing this just as a member of the commission.

Robert Pickels indicated that is an interesting hair to split and he is not going to suggest that the information changes character because the Commissioner would be working with city staff, but if it comes to the commission as a staff recommendation, then that is appropriate and can be distributed as far in advance as you want. The Chair then indicated they can do it, because she doesn't see any reason why it couldn't be sent to Audree, and then Audree can send it to the commission if she reviews it.. Audree indicated no, that is not what he said, and Robert said now the hair has been split.

Audree Juhlin then explained that if she and Commissioner Jarmusch team up together to put together a draft document where the Commissioner is providing input to her as a staff liaison, she will then draft the proposed ordinance and send that forward as a staff recommendation, using her expertise. Robert added Audree would be using her expertise, but forming her own conclusions; there is a distinction between the two.

Commissioner Jarmusch expressed that she would prefer the way it was framed earlier as a dialogue between them as they proceed with the draft, but they are not listening right now. Chair Unger then restated that the Commissioner was saying that she would prefer that we do it . . ., this is such an unusual thing for us to do; how many times are we going to have to rewrite this, probably not in her life on this commission. It is going to be one big thing that we have to do. Donna Puckett then asked if Commissioner Jarmusch could restate for desire for Audree, and the Chair asked Commissioner Jarmusch to do so. Robert Pickels suggested opening agenda item 6, if we haven't already, so we can be talking about the same item, and the Chair indicated that we are now on agenda item number 6; however, Commissioner Schudson asked if the Chair wanted to make any closing remarks on number 5. Robert indicated that the two items could be open together, and the Chair then agreed to have them both open together.

5. **Discussion regarding communications between City staff and the Commission concerning open meeting laws (continued), and**
6. **Discussion/possible action regarding possible amendments to Article 15 (Historic Preservation Ordinance) of the Sedona Land Development Code**

Commissioner Schudson then again asked for the Chair's concluding remarks, and the Chair stated that the reality is that she doesn't see the commission having a lot of instances where the commission will be doing this. This is something that is critical to HPC, and as such, she would like him to remain on the commission. It is something that we will have to do within the boundaries of the open meeting laws, and her feeling is that we are going to have to have a session that is more like our retreats where we have a whole day to actually accomplish this. It can't be done in bites and small bits; it will have to be a longer situation where we can go over things. She can only see the commission being able to do that. . . , and she is not fond of reading everything online on her own. She much prefers it to be an open conversation, so at the end of the day, we have everybody entering into it and making contributions to the items together. It is lovely to have email, but it still is something where there is a distance between all of us and we aren't making a conclusion that all of us are involved in, and unfortunately, maybe even beyond the open meeting laws, when you are making an argument on something you see without the benefit of somebody else introducing an idea, it is not accomplishing as much as we could accomplish by all being together.

Commissioner Schudson stated that, having served on this commission for five years, he would like to offer his conclusion. He didn't expect to be doing this; he came thinking this was going to be an opportunity for a constructive thoughtful discussion, and he thought we would make progress and find a way that would nicely accommodate the competing concerns. Open meeting law stuff can be vexing, complicated, but it need not be the tail wagging the dog. Instead today, he has heard some things that in one sense are very helpful, they were clarifying and made it very easy for him to reach a conclusion. First, no hard feelings. Second, he and counsel enjoy this kind of stuff; it is their stock and trade. We can go and have a beer together now and one of the nicest things that experienced lawyers and judges get to say a lot and say genuinely is that reasonable people may disagree, and as long as people keep that in mind, they can battle like dogs in the court room or the commission room, and admire each other, respect each other, and go on and have a beer knowing that the next day, they might be on the same side, and there is nothing that has transpired today that leads him to think any less of anybody. Audree, not being in that horrible world of lawyers and judges, that might not be as easy for her to embrace, but he assures her of his affection, respect and admiration for her, and there is nothing in any of this that lead him to not welcome a call from her if she called him and asked for some help. He is guided by his love of this city; it is such a delight to live here and his mistake is over-volunteered, stretched too thin, but he also looks at some of the other areas where he is active. Some of the things of which he is most proud has come through this commission, like what we did in conjunction with the Centennial, where we let our imaginations run wild and contributed some things to the community and the state that no one else was contributing. One of the things he loved most was where we easily and quickly identified that he and Commissioner Segner needed to branch off of the commission, because they saw an efficient way to do something wonderful, and it took them a year and it is up there for everybody to enjoy, and every time you drive that hill you see people walking and reading those plaques. Sometimes it is outside, an impromptu, an initiative outside the organized way to get some things done. Two of the last three nights, he has been out in the middle of the night searching for lost people. Search and rescue is one of the most engaging things he has ever done in his life. It is bruising and exhausting, but it is fulfilling, and it takes a great deal of time, and he is thrilled to do it. He is insatiable in his desire to contribute to this community. We all think that we are stewards when we are given the chance to live here for a brief time, so his departure from the Historic Preservation Commission is not in anger; it is not in a huff. It is with some regret, but it is also a pragmatic call on where can he most effectively allocate his time to serve. This meeting has confirmed for him that we are facing a roadblock. If we can reach our goals, it would only be because we multiply the time we devote to this commission tenfold, a hundredfold. It can't be done that way. Commissioner Segner has referred to how many more hours we would need, etc., it can't be done and we delude ourselves into thinking that it can be done properly and thoroughly if we are

disabled from the kind of communication that makes that process flow effectively. There aren't hours in the day or maybe he is just being selfish; he doesn't have the hours in the day. He would rather allocate them more intelligently and effectively, so with that, he has offered some suggestions; maybe they will come into conversation. He is delighted that our wonderful Mayor is here; it has given her an opportunity to hear some things that might be systemic, and he just wants to assure you to the extent that you can trust his word on this, he has had years of experience dealing with open meeting laws.

Commissioner Schudson continued to say that his brother's new book just came out three weeks ago. It is titled, "*The Rise of the Right to Know*", Harvard University Press. He is at the Columbia School of Journalism and he is considered the nation's foremost authority on these kinds of issues, and he has now after 12 years of work published the definitive work on the rise of the right to know. He read the book, helping him understand where this whole subject fits in the historic context of the right to know -- a vital right that encompasses so many things, like environmental impact statements and truth in labeling in grocery stores and things like that. The right of the citizen to know, to be fully informed, so that you are protected against Volkswagen, graft and corruption, so he does not denigrate in the slightest the importance of the open meeting laws. It is vitally important and needs to operate with full force. It was never, however, intended to reduce the quality of communication that goes into the business of government, and it never had until this most recent incident. He spent a year on the Sustainability Commission, five on this commission, worked with Kathy Levin and others, and most notably advising this commission have been people with whom he politically is poles apart. He and Dan McIlroy could not have been farther apart politically and could not have come to have a warmer mutual admiration society. You want to see proof that a wild-eyed liberal and a rock hard conservative could break bread together and find common ground on issue after issue, just watch Dan McIlroy and him in a meeting. What a wonderful public servant he is and what a privilege it was to serve with him. He doesn't mean to diminish the roles of others, but that is noteworthy, because we probably had never voted for the same candidate. In any event, reasonable people may disagree, work together, build consensus and generally when they do the result is even better. That is not the situation we have here; historic preservation from this moment forward could probably run more efficiently and effectively if everybody resigned and it would be renamed Audree's Historic Preservation Commission. Chair Unger stated that is enough; however, Commissioner Schudson continued to say, and her point of views often would be right on the money and her decision-making probably in almost every instance would be sound, but let's not delude ourselves into thinking that in this application of open meetings, we can function. We can't, and he doesn't mean to be here to pretend or continue in that charade, so it has been an honor to serve for five years and he hopes his contributions have been helpful, and the offer is open, he will continue to assist the commission or historic preservation in any and every way he can, and he just won't be a member of the commission to carry that effort forward. His time will be better spent making contributions elsewhere, and that is not to suggest that others should follow suit, so do the best you can, accomplish what you can within the nonsensical confines of the incorrectly interrupted open meeting laws, and there will be many things that still can be accomplished, so he thanks you very much and please know how genuinely he says this, you have his affection and admiration and no hard feelings that he is feeling.

Chair Unger thanked Mr. Schudson for his service, and he left the meeting at approximately 4:59 p.m.

Commissioner Holmes noted that Commissioner Jarmusch got shuffled aside and she would like for Commissioner Jarmusch to finish her statement. The Chair asked Commissioner Jarmusch if she had any more comments in terms of working with Audree. Commissioner Jarmusch indicated that she wanted to be sure that she understood what they were going to do together. Her understanding is that she would hand in a draft to Audree, and it would be released by Audree in Audree's approved form, adding her wisdom and knowledge to what she presents, but earlier, there was a discussion about working together. Robert Pickels explained that it needs to be a collaboration and Audree will form her own conclusions, as a result of that collaboration. Chair Unger agreed that it would be more of a collaboration, not sort of an independent thing; it would be

the communication between the two of them. Audree Juhlin pointed out that the other option is that you put together what you feel is most appropriate for modification, and then bring that to the next meeting.

Commissioner Jarmusch then noted that the city employs consultants, such as the preservation consultant who did the survey, so could she be employed as a consultant, and if she were to propose that, would she need to resign from the commission first. Robert Pickels explained that there is no short answer to that; there are certain mechanics that are involved and you would certainly have to abstain from any actions related to the ordinance itself, but it is deeper than that, because that ordinance review is by this commission in the future. Chair Unger added that she thinks that would have to go to the City Council for a decision as to whether or not somebody would be paid to take that role, and Audree stated that for a contract it needs more consideration than just off the top of our heads. Commissioner Jarmusch then stated that she takes that off of the table. The Chair then indicated that Commissioner Jarmusch could talk to Audree or somebody in the city after the meeting.

Chair Unger then indicated that the commission needs to discuss how we are going to look at Article 15, and we will probably have to have a longer meeting. When we get to agenda item #9, we can discuss future meetings.

7. Discussion/possible action regarding a recognition program and/or event for landmarked structures

The Chair suggested letting this item slide to the next meeting; however, Donna Puckett pointed out that was Commissioner Segner's item. Commissioner Segner stated that it was just to comment that he and Allyson met and discussed that they would do a cocktail soiree at El Portal next year in the spring and invite the people with the homes to thank them for designating their homes and give them some recognition. He would pick up the tab probably and we would work together and just do it. If somebody is against it or has some ideas, there it is. A lot of these people had their homes written up five or six years ago and they have heard nothing from us, so he would like to bring them in and say thank you, and by the way, here are our new policies and procedures.

Commissioner Holmes added that they also talked about doing this the first week of November, but clearly, our ordinance is not going to be put together by then, so it would need to be in the spring, but it is a goodwill gesture. Audree Juhlin added that if you are setting the dates based on the ordinance, that process is extensive and long, so you are probably looking at six to nine months to get it from this commission to P&Z and the City Council. Commissioner Segner indicated it is just to say thank you so they aren't forgotten. Someone may have not heard from us for seven or eight years, and we should bring them in, plus we had discussed homes that are significant. There are some homes he would like to see us start talking about and identifying some of the unique buildings and great architects, etc., in Sedona, but he would like to see some get-together, and they will work on that.

Commissioner Jarmusch asked if they are considering May, because it is National Preservation Month, and Commissioner Segner stated that would be a great thing to shoot for, so maybe that is what we will do. Chair Unger agreed that would be really good and Commissioner Segner noted that they will send out invitations, invite the City Council, have a couple of speakers, and just have a nice evening.

8. Discussion regarding the demolition of 86 Saddlerock Circle, the Lowman House

Warren Campbell indicated that on September 17, 2015, he sent the commission an email to let you know that a demolition permit had been submitted and would soon be issued for 86 Saddlerock Circle. The email also identified some of the preceding topics that occurred before the issuance of that permit included the hiring of Nancy Burgess to perform a study of the specific property, which we were going to use in discussion with the owner of the property about preserving the property.

With that information in hand, the owner still wanted to proceed with the demolition, and with that knowledge, we encouraged them to look at opportunities to preserve materials and make them available to other properties or for use in a new development. He drove by the site today and some structures have already come down and more will be coming down in the days ahead.

Commissioner Segner stated that the builder before this one had entered into an agreement with the city to leave that property and build around it, so he just wanted to put that on the record. They recognized that it was a unique building, and they were going to incorporate it with their property. It should be said that this action ought to be taken to P&Z, in case they go to P&Z for any zoning changes. They could have worked better with us and could have been citizens that listened, so P&Z and the Council should know that, if they ask for exceptions to the zoning. He will make sure that is known. Chair Unger indicated that is legitimate and it is unfortunate that this was not landmarked. Warren and Audree really pressured them very hard to see if we couldn't save the buildings or at least save pieces of the buildings. Commissioner Segner indicated that builders come to the city all the time asking if the city will work with them, and the city does a pretty good job of trying to work with them, but it is a two-way street.

Commissioner Jarmusch asked if the structure is still standing and Warren responded that it was standing as of after lunch today. The Commissioner then proposed that the commission pass a resolution along the lines of what Commissioner Segner just said and that we are greatly dismayed that a developer would not listen to the community input, and we are losing an historic resource -- part of Sedona's legacy. Chair Unger noted that we could say that we are upset about it, but there is no . . . Robert Pickels pointed out that there is no action agendized; it is on the agenda for discussion only.

Commissioner Segner stated that it can be put on the agenda down-the-line if we need to write an appropriate letter to P&Z or the City Council. Commissioner Jarmusch expressed concern that it will be gone by then. Commissioner Segner indicated that it is going to be gone and Chair Unger agreed; she doubts that we have any further . . ., the city went to the extremes, actually getting Nancy Burgess to write-up a report and it is not like that effort wasn't made. The developer just decided not to look at it. It is unfortunate, but some of the things that came out in the report were that it was not exactly what we thought it was. It was not a Cook building and someone else constructed it; however, it still remained an historic piece of property, but we weren't able to landmark it, so we have very little recourse except to do what Audree and Warren did and ask them to really consider it. She doesn't know if the city feels that we should write an article to the paper or if there is something else we need to do or if that is even feasible, to say that we are sorry we lost this piece of property, in the context of asking people to look to landmarking their property, so these things don't happen.

Audree indicated that could be put on a future agenda for discussion and possible action, and Chair Unger indicated that it should be included; we are going to lose properties like this in the future too, but she would like to see us do that. Commissioner Holmes stated that it is very sad, and Biddles should have been landmarked.

9. Discussion regarding future meeting dates and future agenda items

Commissioner Segner stated that he would like to have one-half day on Article 15, get into it and get it done, so we can get back to regular business, because it is an exception. There was miscommunication all around, so let's get past it and move one, and we need to go back to the format where we went to the City Council and presented our work agenda, and they then said they also wanted us to do this and this, and we would say okay and go do it.

Audree Juhlin indicated that she could request a joint meeting with the City Council; we haven't had one in a number of years, and last year, as part of the commission's discussion, you presented a proposed work program and that was included in the budget, so items were budgeted based on that proposed work program, which was very small because of the Land Development Code, but we

would again submit the work program through the budget process, so we get the approvals and funding at the same time. Chair Unger indicated that we didn't meet with the City Council last year and it may be a good thing to have that again. Commissioner Holmes asked if that would be to work on Article 15, and Chair Unger indicated no. Commissioner Holmes then suggested getting Article 15 settled first and Commissioner Segner indicated agreement, saying let's get it done.

Chair Unger indicated that Commissioner Jarmusch would not be available on October 12th and that date is only two weeks away, so maybe we should look at a later date, which would give Commissioner Jarmusch and Audree more time to look at Article 15 too. Audree noted that the next regularly scheduled date would be November 9th and Commissioner Segner stated that he would not be available.

It was then determined that the next meeting would be held on Monday, October 26, 2015 from 1:00 p.m. to 5:00 p.m. Commissioner Segner suggested having the agenda item broken into steps to help the commission get through it. Commissioner Jarmusch asked to add Saddlerock Circle as a secondary item, because time is of the essence. Audree asked if the commission wanted that item specific to Saddlerock Circle or demolitions in general, and the Chair indicated demolitions in general may be a good thing, if we could come up with an idea of what we might want to put in the paper talking about that and that we lost that.

Commissioner Jarmusch indicated that she has a number of suggestions for future agenda items. Commissioner Segner then stated that on Saddlerock, somebody will come to a meeting with a probably fairly worked out letter. Donna Puckett asked if we have somebody named "Somebody". The Chair then indicated that she doesn't know that the commission can assign someone, and Commissioner Segner stated that it will just probably happen.

Audree Juhlin explained that the meeting on the Land Development Code will be for discussion/possible action, but it won't be for legal action, because we have to publicly post what is proposed, so there will have to be another formal meeting, and the Chair agreed it would be more like a discussion meeting and we will call it a work session.

Audree recapped for the Monday, October 26th Work Session from 1:00 p.m. to 5:00 p.m. there will be two agenda items; one regarding possible amendments to the Land Development Code and the other one to discuss demolition of historic buildings and perhaps including language that asks for a resolution or letter supporting the commission's position.

Commissioner Jarmusch requested that on all future agendas, unless it is an item like approving the minutes or discussion of future meeting dates, let it say, "Discussion/possible action" always, because we are losing a month now. Robert Pickels indicated that he recommends that on every agenda; there is no risk to have possible action on it. Commissioner Holmes added that if we can do some small things like that that improve our communication, maybe we can avoid fracas like this. Chair Unger stated that depending on how things go, we might be able to have the November meeting close to that meeting and pass everything; however, Audree explained that there is a required number of days that it has to be legally posted and put in the newspaper with public hearing notices, etc., but we can make it happen as soon as possible.

10. Adjournment

The Chair called for adjournment at 5:20 p.m., without objection.

I certify that the above is a true and correct summary of the special meeting of the Historic Preservation Commission held on September 28, 2015.

Donna A. S. Puckett, *Administrative Assistant*

Date