PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
AUGUST 28, 2019

COMMISSIONERS IN ATTENDANCE:

Chair John Phillips, John Kenworthy, Mark Sletten, Laura Suesser, Doug Thimm

EX OFFICIO: Planning Director, Bruce Erickson; Hannah Tyler, Planner; Caitlyn Barhorst, Planner; Alexandra Ananth, Planner; Rebecca Ward, Land Use Policy Analyst; Margaret Plane, Special Counsel; Mark Harrington, Legal Counsel

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ROLL CALL

Chair Phillips called the meeting to order at 5:35 p.m. and noted that all Commissioners were present except Commissioners Hall and Van Dine, who were excused.

ADOPTION OF MINUTES

August 14, 2019

Commissioner Kenworthy referred to page 5 of the Minutes under Communications and Disclosures, and changed she to correctly read **he** in the first sentence where he disclosed that he was the landlord to Deer Valley Seasonal Housing.

MOTION: Commissioner Thimm moved to APPROVE the Minutes of August 14, 2019 as amended. Commissioner Suesser seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS
There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Erickson reported that the Planning Commission was scheduled to meet on September 11th and September 25t. He anticipated both agendas to be fairly full.

CONTINUATIONS – (Public Hearing and Continue to date specified.)

V.A. 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue (Woodside Park Phase II Master Planned Development) Remand. On July 16, 2019, the Board of Adjustment reviewed an Appeal of the

May 22, 2019 Planning Commission approval of the Master Planned Development application and remanded the review of Setbacks for the Master Planned Development application to the Planning Commission pursuant to LMC 15-6-5(C). The Planning Commission will review the applicant's updated submittal for compliance with 15-6-5(C) Master Planned Development Requirements - Setbacks. (Application PL-18-03822)

Director Erickson stated that this item was the Woodside Park Phase II. The Staff was requesting a continuance to September 11, 2019 to allow additional time to work on some of the details for the setback remand from the Board of Adjustment.

Chair Phillips thought Woodside Park Phase I appeared to be complete and he assumed they would be doing the lottery very soon. Director Erickson replied that the lottery would not take place until they have the Certificates of Occupancy. A few minor items needed to be cleaned up before the COs could be issued. Chair Phillips asked if the Planning Commission do a walk-thru of the project before the units are occupied. He thought it would be a good opportunity for the Commissioners to see how the units turned out. Director Erickson replied that the Staff would make sure to schedule a walk-thru.

Chair Phillips opened the public hearing. There were no comments. Chair Phillips closed the public hearing.

MOTION: Commissioner Suesser moved to CONTINUE Woodside Park Phase II Master Planned Development to September 11, 2019. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

VIII.A. Annexation Policy Plan and Land Management Code Amendments – The Park City Planning Commission will hold a public meeting to consider amendments to the Annexation Policy Plan and the Annexation Expansion Area, a map that highlights properties the City may consider annexing in the future. The Annexation Policy Plan and Annexation Expansion Area are codified in the Land Management Code Title 15, Chapter 8. The proposed Annexation Expansion Area includes (1) the northeastern portion of the Round Valley area, (2) the southeast quadrant of the Quinn's Junction Intersection at Highway 40 and State Road 248 to the Summit County

<u>border to encompass City-owned Clark Ranch, the Richardson Flat development-restricted area, and private property, and (3) the City-owned Bonanza Flat open space along the City's southern boundary in unincorporated Wasatch County. Members of the public and affected entities are invited to attend, may examine the proposed plan, and provide input.</u> (Application GI-10-00416 and PL-19-04300)

Land Use Policy Analyst, Rebecca Ward reviewed the Annexation Policy Plan and Amendments to the Land Management Code, Title 15, Chapter. She reported that in April 2019 the City Council directed the Staff to work with the Planning Commission to modify the City's Annexation Policy Plan and Annexation Expansion area.

Planner Ward stated that the Policy Plan establishes the framework through which the City considers potential future annexations; and it establishes the criteria that the City would look to when denying or granting an annexation petition. The Annexation Expansion Area is the map that shows the lands the City may consider annexing in the future.

Planner Ward reported that in 1993 Park City adopted its first Annexation Policy Plan. In 2003 the City adopted and codified the Annexation Policy Plan in the LMC. She presented a slide showing the existing annexation expansion area identified in yellow. She stated that since 2014 the General Plan has considered modifying the Annexation Expansion Area so the City could consider protecting gateways to the City, to preserve open space, to continue the planning partnership that the City has with Summit County in the Quinn's Junction area, and to bring City-owned property into the City jurisdiction.

Planner Ward stated that since the first annexation expansion area was adopted in 2003, the City has acquired property in the Round Valley area. In 2008 a 363-acre parcel was acquired. In 2014 the City purchased the 344-acre parcel to the east of the boundary to Clark Ranch property. In 2016 the City voted in favor of a $25 million bond to purchase the 1350-acre Bonanza Flat open space property to the south of the City boundary in unincorporated Wasatch County. Planner Ward stated that although the City does not own the Richardson Flat property, there are 580-acres of development restricted property in the southeast quadrant of the Quinn's Junction Intersection at Highway 40 and SR248. Park City is the beneficiary of that development restriction.

Planner Ward remarked that in the context of some events in neighboring communities, Hideout adopted their annexation expansion on August 22, 2019. Park City had requested that Hideout remove Clark Ranch from their annexation expansion area, which they did. They also removed approximately 160 acres of Operable Unit 1 in the Richardson Flat tailings site. However, Park City is the beneficiary of approximately

420 acres of the development restricted property that was still included in the Plan. Planner Ward explained that when the Town Council adopted this plan they indicated that when the final expansion area is published it will show the boundary line and where they have gone into Summit County. She reviewed the map to show that it is near Park City property and Highway 40 can be seen along the west; as well as SR248. She indicated the Clark Ranch property and the Wasatch County boundary line, which is where the Hideout Annexation Expansion Area and the Park City Expansion Area may overlap.

Planner Ward stated that on July 2nd, the Military Installation Development Authority adopted their Project Area 3. It was the area shown in green at the base of their project area, which comes up to Park City's southern boundary.

Planner Ward reported that the City Council had asked the Staff to work with the Planning Commission to consider a modified annexation expansion area in order to provide consistent services and management to the City-owned properties, preserve open space, develop affordable housing, and to avoid overlaps with other annexation expansion areas. For the Round Valley area, she indicated the 363-acre City-owned parcel on the right shown in green. She noted that the proposed annexation expansion area also goes north to include approximately 75 acres of private property. A Mountain Regional Water Special Service District tank sits on a quarter acre in that area. In the Quinn's Junction area is the Clarks Ranch Property shown in green. The red color indicated 580-acres of development restricted Richardson Flat property. The yellow identified 575 acres of privately owned property.

Planner Ward reported that Park City has been collaborating with Summit County since 2002 to develop the Quinn's Junction Joint Planning Commissioner Principles up to the Summit County border. The City and County together have established principles of how this City area would be developed in the future. Planner Ward stated that within Bonanza Flat is the 1350 acres which will be under a conservation easement.

Planner Ward noted that prior to this meeting, Heinrich Deter, the Open Space and Trails Manager, received an email from the Girl Scouts of Utah Chief Executive Officer. The Girl Scouts have approximately 250 acres to the south of the Bonanza Flat City-owned property that is deed-restricted open space. They have requested that the Planning Commission consider potentially expanding the expansion area to include the Girl Scout property in the event they would want to petition the City for annexation in the future. Planner Ward stated that because Bonanza Flat is located in Wasatch County, if the City decides to petition to annex this property into the City boundary in the future, the City would have to work with Wasatch County and receive approval from the

Wasatch County Council. They would first need to pass a resolution to allow the City to take the next step and annex into the City boundary.

Chair Phillips indicated a square at the bottom left-hand corner of the map that was excluded and appeared to be landlocked. Director Erickson replied that it was a mine claim. He pointed to two smaller pieces that were privately owned. The City will have conversations with those landowners on bringing them into the boundary or leaving them out. Director Erickson explained that the boundary currently established was designed to only take in City-owned lands and not consider additional annexations. He indicated the Girl Scout land, and noted that if the private owners also wanted to come in before the City Council approves the Annexation Policy Plan, it would be considered.

Planner Ward summarized that the proposed annexation expansion area was shown in green, and included the three areas that were discussed. As part of the process, State law requires the City to send notice to affected entities. On August 12, 2019 the draft Policy Plan and proposed changes were mailed to affected entities, which included Summit and Wasatch Counties, the School Districts, Local District, Special Service Districts, and Municipalities within one-half mile, including Hideout. A public meeting must be held and the affected entities have an opportunity to provide their input on the proposed plan within 10 days from the public meeting, in this case through September 9th, and submit written input for the Planning Commission's consideration. A public hearing will also be scheduled with the Planning Commission. The Planning Commission will make modifications and forward a recommendation to the City Council for a final public hearing.

Commissioner Kenworthy asked if the 250 acres of Girl Scout property was in Wasatch County. Planner Ward answered yes. Commissioner Kenworthy understood that Wasatch County would need to give permission, in addition to the Girl Scout application. Director Erickson explained that if the Girl Scout property was in the Policy Plan and at some point they decided to annex, the City would need consent from Wasatch County before the annexation could occur.

Commissioner Thimm asked if the Planning Staff had a position on adding the Girl Scout land to the Policy. Director Erickson replied that at this point they were leaning toward the positive, but it still needed to be discussed. In terms of the management of Bonanza Flat, if the City chooses to annex Bonanza Flat and go through the process, the City Police would respond in that area. Director Erickson understood from the Police Chief that City response times are quicker than trying to get the Sheriff up there because the Sheriff comes from Heber. However, additional services would be complicated because there is a different water shed on that side of the hill. It is Provo River Water and Park City Water comes from Weber Basin Water. Director Erickson stated that if the Commissioners were interested, at another time on they could go through the Development Agreement and how it was resolved when Bonanza Flat was proposed for development.

Commissioner Thimm asked what action the Planning Commission was being asked to take this evening. Director Erickson replied that the Staff was asking for a public hearing to give the affected entities the opportunity to come before the Planning Commission for a public hearing before they forward a recommendation to the City Council. Director Erickson stated that the Staff would have a response on the Girl Scout land by September 11th, Planner Ward will update any new information, as well as providing information from the affected entities. Director Erickson noted that during the last couple of Annexation Hearings they heard comments from water companies, school districts, and the County Commissioners, and others. They have also tried to brief all the normal affected entities during their development review meetings.

Planner Ward noted that the Outreach to the affected entities were outlined in the Staff report.

Commissioner Suesser asked if the Staff had met with MIDA. Planner Ward replied that they had not met with anyone from MIDA. Commissioner Suesser asked if MIDA had made any comments or statements. Director Erickson answered no.

Chair Phillips opened the public hearing.

Mary Bransford Leader stated that she was one of the private landowners within this Annexation Policy Agreement. Her property abuts to Guardsman Road and she would have access from Guardsman. Currently, she accesses her property through the normal channels going into Bonanza Flat. Ms. Leader was unsure whether she was considered one of the affected entities as a private homeowner, but she had not received the notice on August 13th regarding the annexation. However, Heinrich Deter had called her sister to let her know about the Annexation Policy discussion.

Ms. Leader wanted to know how she would benefit as a private landowner if this Annexation Policy is approved.

Commissioner Suesser clarified that Ms. Leader's parcel would be included in the Annexation Expansion Area. Director Erickson replied that it would be included in the Expansion Area and it is identified as a private parcel.

Chair Phillips closed the public hearing.

Chair Phillips noted that the annexation boundary was expanded a few years ago. Director Erickson stated that in 2017 the City discussed expanding the expansion area from the annexation of the Clark Ranch and the Round Valley areas. Chair Phillips could not recall whether the boundary was actually expanded or just discussed. Director Erickson remarked that the conversation was about which land uses would happen; as well as a conversation about the General Plan regarding open space and housing. The boundary expansion was put on the back burner due to Treasure Hill. Chair Phillips clarified that the currently proposed boundary expansion included additional areas to what was proposed in 2017. Director Erickson answered yes.

Commissioner Suesser asked Planner Ward to put up the image of the proposed annexation expansion area.

Chair Phillips asked if the Bonanza Flats area was discussed in 2017. Director Erickson answered no. He noted that the Planning Staff and others in the Community Development Team thought it would make the discussion more complex because it was in Wasatch County. Chair Phillips recalled that the Planning Commission discussed the idea of Bonanza Flats but it was not presented by the Staff. Director Erickson remarked that the intention was to expedite getting Clark Ranch and Round Valley into the City boundaries without the complications of Bonanza Flat. However, adding Bonanza Flats in the Annexation Policy now was the right thing to do.

Chair Phillips asked the Staff to respond to the question Ms. Leader asked during the public hearing. He pointed out the other private properties and asked if those property owners were aware of this annexation expansion boundary.

Margaret Plane, Special Counsel, stated that Affected Entity is a defined term in the State Code and it does not include private property owners. She explained that currently they were only talking about an Annexation Policy Plan; not an actual annexation. The discussion is about a plan that allows consideration of an annexation in the future. Ms. Plane noted that the definition of an Affected Entity includes Counties, Local Districts, the School Districts, and Municipalities whose boundaries are within one-half mile of the area proposed in the plan. Ms. Plane stated that Park City did not attempt to notify the public property owners that may be included in the proposal because it is not required by Statute; and because of the confusion it might generate.

Chair Phillips asked if the private property owners would be notified if the City established this new boundary and a property was actually being considered for annexation. Planner Ward replied that under that scenario the private property owners would be notified.

Director Erickson explained that MIDA was not notified because it is not a defined affected entity. MIDA is a public entity controlled by a Board and by the State Legislature. City Attorney Harrington reported that MIDA came to the City Council retreat and gave a comprehensive update of their efforts. At that time, they were informed of what the City was doing with the Annexation Policy; even though it was not an official notice. Mr. Harrington stated that there was an open channel of communication between MIDA and the City.

Director Erickson referred to the question raised by Ms. Leader and suggested that she asked the same question asked at the City Council level. In terms of services, if Ms. Leader's property was to be annexed, the police protection would be extended. The City was still considering how fire protection would be extended. The City Council needed to provide guidance on other services.

Commissioner Suesser asked about water service. Director Erickson did not have an answer on water. City Attorney Harrington thought they were getting ahead of the actual question Ms. Leader had raised about a benefit to her. He explained that this action would allow a private property owner to submit their own petition for annexation or to be included in another annexation petition that meets State Code and the local ordinance standards to be considered for annexation in the future. If a property is not included in the boundary area, they cannot be considered on either their own petition or included in another petition for annexation. That was the sole purpose of this Annexation Policy. Mr. Harrington stated that decisions regarding services would be determined when an eventual annexation petition is considered and granted.

Commissioner Sletten stated that the first time he saw the Hideout expansion he did not understand the complexity of throwing out a net. Like Ms. Leader, he would be concerned if he was a private landowner and heard that his land was included in a potential annexation boundary without understanding the background. Commissioner Sletten asked if it was possible to include the individual private landowners in the noticing process. Mr. Harrington pointed out that courtesy efforts were extended to certain individuals, but he was unsure to what extent without looking talking to Mr. Deter.

Commissioner Kenworthy clarified that if this Annexation Policy is approved, Ms. Leader would have the option to petition for annexation if she wished. Mr. Harrington replied that she would have the ability to file her own petition provided it complies with the statutory requirements. He explained that being in the annexation boundary does not mean the property owner must be annexed. For example, Ms. Leader would remain in unincorporated Wasatch County until she is affirmatively annexed through a proper petition by someone else or herself. Commissioner Suesser asked if Ms.

Lbeader would have the ability to exclude her property from an annexation petition. Mr. Harrington stated that he could not answer that question without knowing the scope of the petition and the percentages of ownership. The rules are specified in the State Statute and would be analyzed at the time of the petition. Mr. Harrington stated that the City was willing to meet with any of the property owners if they have additional questions on what this action would mean for them.

Chair Phillips informed the public that they could contact the Planning Department or the Legal Department if they have additional questions. The public would also have another opportunity to make comment during the public hearing on September 11th.

Chair Phillips thought the proposed annexation boundary was logical. He commended the Staff on a great report and for providing the Commissioners with the necessary information to help them understand what was being proposed.

MOTION: Commissioner Kenworthy moved to set the public hearing for the Annexation Policy Plan and Land Management Code amendments for September 11, 2019 on the Annexation Policy. Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

VIII.B. Land Management Code (LMC) Amendments - Regarding Historic Preservation in 15-11 including amendments to the following sections: 15-11-2(C) Terms and Qualifications of Members; 15-11-8(A) Staff Assistance; and 15-11-12.5 Historic Preservation Board Review for Material Deconstruction. All references to Utah Heritage Foundation will be updated to reflect their new organizational name of Preservation Utah. The Historic Preservation Board Review process for Material Deconstruction will be updated as directed by City Council.
(Application PL-19-04232)

Planner Caitlyn Barhorst stated that these LMC amendments were in two parts and required two separate motions.

Planner Barhorst reported that following the August 21st HPB meeting, the Staff decided relook at Section 15-11-12.5, the Review for Material Deconstruction. It was Part 2 of the proposed amendments and the Staff requested that the Planning Commission Continue that portion to a date uncertain.

Planner Barhorst stated that Part 1 of the proposed amendment was to change Utah Heritage Foundation to Preservation Utah, which is the current name of the organization. The name change would occur in sections 15-11.2 and 15-11.8.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

MOTION: Commissioner Thimm moved to Forward a POSITIVE recommendation to the City Council concerning Land Management Amendments for Chapter 15-11-2(c) and 15-11-8(a). Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

MOTION: Commissioner Thimm moved to CONTINUE Land Management Code amendments for Chapter 15-11-12.5, Historic Preservation Board Review for Material Deconstruction, to a date uncertain. Commissioner Suesser seconded the motion.

VOTE: The motion passed unanimously.

VIII.C. Twisted Branch Road - Subdivision – East of Montage and Empire Lodge. The Applicants, REDUS Park City LLC and Park City Municipal Corporation, are proposing to create three lots of record for 1) an Existing City Water Tank; 2) a private on-mountain restaurant; and 3) and an existing City water pump station. The plat also creates six non-development parcels for Deer Valley to be used for access, utilities, ski runs, public trails and trailheads, bridges, snowmaking, etc., and open space. The property is subject to the Amended Flagstaff Development Agreement and Technical Reports. No changes to SR 224 are proposed.
(Application PL-17-03664)

Planner Hannah Tyler distributed copies of two emails with public comment that were received after the Staff report was prepared.

Planner Alexandra Ananth introduced Doug Ogilvy, who was representing REDUS this evening.

Planner Ananth reviewed the request for a subdivision plat approval of the Twisted Branch subdivision, which is a gated private road that would be owned by REDUS and creates three platted lots of record. Lot 1 is the City water tank and some additional land; Lot 2 is a proposed on-mountain private restaurant that was approved under Exception 2.6 of the Development Agreement; Lot 3 is a City-owned water pump station. The plat also creates six non-development open space parcels, records some easements, and maintains the status quo in terms of ownership, use and maintenance of both Twisted Branch Road and SR224. It neither allocates or assigns residential or new commercial development to any of these lots or parcels.

Planner Ananth reported that the proposed plat does not preclude Twisted Branch Road from becoming a public road in the future, subject to the necessary approvals and agreements. The Staff recommended a condition of approval and a plat note stating that fact.

Planner Ananth stated that the three main issues with Twisted Branch Road were 1) the Lot 2 grading and height of the future restaurant; 2) access to Twisted Branch Road; 3) historic preservation and open space.

Planner Ananth stated that the proposal for Lot 2 is a private on-mountain restaurant with no parking. It would be ski access only. The restaurant is allowed per the Development Agreement. A conditional use permit was previously approved in February 2008 for a similar private on-mountain restaurant. The applicant was granted an extension of the CUP; however, it was never acted upon and the CUP expired. Planner Ananth noted that the Lot 2 site is below the grade of the adjacent ski run. The applicant was proposing to fill the lot to match the adjacent ski run in order to accommodate the ski in/ski out access. The applicant was proposing to measure the height from the grade after the acceptance of fill. However, the height would still need to meet the LMC requirement, which is 28' from the future grade after fill. Planner Ananth stated that a CUP application would be required prior to issuance of any building permits for Lot 2.

Chair Phillips asked for an estimate of the amount of fill. Mr. Ogilvy replied that a grading permit was approved by Staff for 20' feet of fill under the restaurant pad, which would bring it up to a contour going from the top of Bandana, tying into natural grade on the west end of Lot 2. They were requesting that that be considered the natural grade and measure the 28' from that grade. Mr. Ogilvy believed that language was included indicating that it is the lower of 28' from assumed natural grade or finished grade.

Commissioner Suesser asked if it was a private restaurant. Planner Ananth answered yes.

Planner Ananth reported that Section 2.8.2 of the amended Agreement allowed for the construction of the private road in Flagstaff Mountain, and it allows for all season access throughout the year. The goals of the limited access road were to preserve the existing limited winter time public access to Park City from Wasatch County and continuing the seasonal closure of SR224. According to Exhibit 9 of the 14 exhibits, the road was to be built to serve development Pod D, which is the Red Cloud Subdivision. Planner Ananth noted that Twisted Branch Road dead-ends in the Red Cloud Subdivision at the top of Empire Pass. There are access controlled gates at both ends of the road.

Planner Ananth stated that to date, Park City Municipal Corporation has not received any indication that UDOT plans to abandon State Road 224 as a seasonal right-of-way; and not obligation is created to convert the private road to a public right-of-way. The proposed Twisted Branch Subdivision does not change the current use, access or ownership of either SR224 or Twisted Branch Road. The Staff recommended a condition of approval to that effect.

Commissioner Phillips asked if the condition of approval was already in the Staff report or whether it would be an additional condition. Planner Ananth replied that it was already included in the conditions of approval as Condition 11u.

Planner Ananth commented on preservation and open space. She stated that while there are no historic sites located on the subject property itself, over the courses of the past year the City has worked to complete a Memorandum of Agreement specifying that the Empire Pass Master Owners Association is the party responsible for compliance with Technical Report 5 regarding historic preservation; and Technical Report 6 regarding open space. The MOA specifies that the Empire Pass Master Owners Association would contribute $20,000 annually for the next ten years, with a ten-year extension for historic preservation activities. The MOA sets forth a plan to address maintenance needs of certain historic mining sites for achieving substantial compliance with the Technical Reports. The fee would be placed in the maintenance fund and distributed after a review by the Empire Pass Master Owners Association and the City. All expenditures need to be approved by the City. Planner Ananth stated that the execution of the MOA is a condition prior to the recording of the Twisted Branch Subdivision or other REDUS plats.

Planner Ananth noted that the City had also secured a commitment from the Empire Master Owners Association to the Park City Museum for reimbursement of costs associated with the stabilization of the Little Bell Mine Ore Bin. REDUS and Storied Development also agreed to make a one-time payment of $40,000 each to stabilize the roof structure of the Judge Mining and Smelting Company office. Technical Reports 5 and 6 would be updated to reflect the current ownership; and mine operations would be completed by the Empire Pass Master Owners Association and the City. Planner Ananth reported that the City was currently in discussions with Deer Valley regarding additional contributions to this fund.

Director Erickson explained that the Empire Pass Master Owners Association contracted with the City's consultant to complete a third party analysis of all the mine sites in order to determine completion. Once the City signs the agreement, there will be a six-month period to complete that review. The report will come back to the Planning Commission to update Technical Reports 5 and 6.

Commissioner Suesser asked if REDUS and Storied Development were part of the Master Owners Association. Director Erickson answered yes. Mr. Ogilvy stated that they were the joint master declarants for Empire Pass. He noted that the consultants were on-site the day before looking inside and outside of the Judge Mining and Smelting building. The consultants were all over Empire Pass reviewing the 21 sites.

Commissioner Sletten referred to the ten-year extension of funds and asked for the trigger. Director Erickson thought it would be determined by the analysis of what work needed to be done. If everything is done, then it would be on-going maintenance. Director Erickson clarified that the Planning Commission needs to define the term "done". He explained that Empire Pass would be managed the same way as the sites on Park City Mountain Resort. There is a list of seven priorities and the City goes through that list every year with the Resort to determine the priorities for spending money that year.

Commissioner Kenworthy asked if there is a deadline for the inspection report to be completed. Director Erickson replied that the inspection reports were due in approximately six weeks. The Agreement has six months to be reviewed by the Planning Commission. Chair Phillips noted that it would be into next Spring.

Planner Ananth stated that the Staff finds that the proposed Twisted Branch Subdivision Plat complies with the development regulations and density as identified in the Development Agreement and the LMC. The private road was constructed and gated per the Agreement, and the subdivision does not change how the road is accessed, maintained or used.

The Staff recommended that the Planning Commission conduct a public hearing, review the application and the draft findings of fact and conditions of approval, and forward a positive recommendation to the City Council.

Mr. Ogilvy noted that the applicant has been working on this application with the Staff for two years. The trigger is the need to create a buildable lot for the restaurant. He pointed out that the 2008 CUP was contingent on recordation of a plat for that lot, which is why the CUP expired. They originally came in with a plat that extended up to Red Cloud; however, that triggered significant discussions about private road versus public road. Mr. Ogilvy stated that the objective of this plat is create a buildable lot for the High Creek Restaurant. This plat does not change future discussions about the ownership of Twisted Branch Road; but at this time they are obligated under the Development Agreement to keep the road private.

Mr. Ogilvy reiterated that the historical consultant was doing all the field work for the historical review and report. He noted that the Master Declarants and the Master Association had negotiated the Memorandum of Agreement with the Staff. The MOA creates a significant funding source for addressing a limited number of structures at Empire Pass. Mr. Ogilvy stated that unlike Park City Mountain Resort, which has dozens of historic mining structures, within Empire Pass there is only the Daly Head Frame, the Judge Mining Building, the explosives bunker, the Little Bell Ore Bin, and water tanks on the City-owned parcel. It was not nearly the magnitude of the situation at PCMR. Mr. Ogilvy remarked that other mining buildings in Empire Canyon are not within the Development Agreement or on land owned or controlled by the Declarant.

Mr. Ogilvy clarified that the goal was to create a platted lot for the restaurant and to leave the other issues for discussion down the road. He emphasized that they were actively moving forward with the historic preservation.

City Attorney Harrington referred to the phrase “continue these discussions down the road”. He wanted it clear that it was what the applicant was asking as indicated on the final page of the Staff report. Mr. Harrington pointed out that the initial Staff report had an exact condition of approval regarding dedication for the right-of-way, not requiring dedication at a date certain or at this time, but preserving it moving forward. However, that was unacceptable to the applicant and they were still negotiating whether that could take a different form or timing. Mr. Harrington stated that at this point they have not been able to reach agreement on that matter. Those issues were germane to the concerns Mark Fischer had outlined in his email to the Staff. Mr. Harrington remarked that the applicant asserts that those issues were more appropriately directed before City Council in the context of amendments or clarifications to the Development Agreement; or interpretation of the Development Agreement. Those were reflected in the submittal directly responding directly to Mark Fischer. Mr. Harrington pointed out that the City does not agree with all of Mr. Ogilvy’s characterizations; nor do they agree with all of Mr. Fischer’s characterizations. For that reason, REDUS requested to address those issues before the City Council. Mr. Harrington stated that the Planning Commission had three options with regards to the road. They could agree that those matters are more appropriate before the City Council or determine that the matters are appropriate for the Planning Commission; they could direct the applicant to go before the City Council to resolve the issues, and then come back for a recommendation from the Planning Commission incorporating that resolution into the application; or they could request additional information and continue the matter.

City Attorney Harrington anticipated significant public comment on historic preservation and he preferred to address that issue after the public hearing.

Commissioner Suesser asked for further explanation on the road issue and the debate regarding the access, the realignment and use of SR224, and potentially dedicating the road to the public at some point. She did not believe the analysis in the Staff report was clear.

Planner Ananth explained that Twisted Branch Road was allowed under the Development Agreement. The Development Agreement is fairly clear that Twisted Branch is to be a private road but it does not preclude it from being a public road at some point in the future if UDOT decided to give up SR224. Planner Ananth clarified that the developer would like to keep it a private road for now with seasonal access. She noted that UDOT policy on SR224 is to allow seasonal access only. The applicant was not proposing any changes. City Attorney Harrington stated that under that interpretation the only way the road becomes public in the future is through condemnation by UDOT.

Commissioner Suesser understood it was a private road going dead-end into a private community. She wanted to know what right-of-way issue Mr. Harrington had mentioned. Mr. Harrington stated that the nuance of the language is slightly different in terms of what the Development Agreement did or did not contemplate. The applicant and the City have agreed to disagree on that issue. He believed the original intent was to facilitate an abandonment of the original alignment of SR224 in favor of Twisted Branch Road. However, that was contingent on a number of other things occurring mostly under the control of the State. Those things did not occur and it was beyond the City's control. Mr. Harrington stated that because they did not occur, the Development Agreement does address Twisted Branch as a private road with conditions. Now that they know this is the result going forward, the City was attempting to clarify to make sure there was no still no avenue for future misunderstandings moving forward. That is the discussion the applicant prefers to have with the City Council. Mr. Harrington thought it was anticipated that the road would be owned by a third party at this point, which was the genesis of further discussions. He noted that the applicant and the City were not able to reach agreement on those terms and the applicant has the right under State law to require their application to move forward.

Commissioner Sletten noted that Mark Fischer's August 20th email references various letters that he had provided to the Planning and Legal Departments. Director Erickson stated that all the letter received were on the record and most likely in the Minutes of previous meetings. He would need to review the Minutes of those meetings to find them. Planner Ananth noted that some of the significant letters were also attached to the Staff report. She believed Mr. Fischer was referring to Exhibit T, the Brighton Estates encroachment permit to allow a small portion of SR224 from the .9-mile marker to the Wasatch County Line.

Mr. Ogilvy stated that in his letters Mr. Fischer made comments that there were historical agreements between parties to do certain things. Mr. Ogilvy noted that they were only letters written by Mark Fischer and people in Brighton Estates. There are no two-way agreements. The letters are what Brighton Estates believed went on. The historical record is that the 1999 Flagstaff Development Agreement; and as amended in 2007, are very clear that Twisted Branch Road shall remain a private road. Within the Technical Reports, specific sections talk about how Twisted Branch Road would be maintained as private. Mr. Ogilvy stated that the 2007 amended Development Agreement is the most recent document related to Flagstaff is very clear that the road was supposed to be maintained as a private road. He emphasized that the plat as presented did not preclude the City Council, REDUS, and UDOT from having future discussions about the road. However, at this point the road must be kept private in order to be compliant with the Development Agreement. Mr. Ogilvy stated that dedicating a portion of the road to the Master Association and leaving the balance of the road under ownership of the Master Developer further complicates future discussions. He felt it was better to maintain the ownership of the road with REDUS.

Mr. Ogilvy explained that Exhibit T was an agreement whereby members of the Brighton Estates HOA is allowed to plow and use SR224 in the winter for an annual fee. Planner Ananth stated that Exhibit T was the only agreement she was able to find in her research. In her response to Mr. Fischer's initial letter, she made it very clear that she had not found any two-party agreements.

Director Erickson noted that page 182 of the Staff report contained the Minutes from the June 13, 2018 meeting where Mark Fischer made his presentation. His email reiterated some of the points he made during that meeting.

Commissioner Suesser asked the Staff to elaborate on the real tension about the road between Brighton Estates and Mark Fischer; as well as some of the negotiations between the City and the applicant. Planner Ananth thought the tension was due to Mark Fischer and the Brighton Estates believing they should have access through Twisted Branch Road gates to access the Brighton Estates property and Pine Canyon as it picks up in Wasatch County. Currently they have access under a tunnel near the bypass around SR224.

Mr. Ogilvy stated that per the 1999 Development Agreement and the language in the 2007 Amendment, SR224 was to be used for snowmobile access to Wasatch County in the winter months. It was a point of contention for Park City during the 1999 approvals because it would increase traffic through the Historic District and Marsac Avenue. Mr. Ogilvy remarked that a Condition of the original Development Agreement was that the road would remain private. From the perspective of REDUS, the previous successors spent millions of dollars spending the road network and the Master Owners Association spends approximately $2 million per year maintaining the road from the Bob Wheaton connection to the top of the mountain. Mr. Ogilvy stated that their neighbors in Wasatch County believe they should be granted the right to use a private road at no cost.

Commissioner Kenworthy noted that Mark Fischer stated in his letter that his attorney had spoken with the REDUS attorney, and that REDUS will go along with whatever direction is given by Park City Municipal Corp. He asked if Mr. Fischer was correct.

Wade Budge, legal counsel representing REDUS, stated that he had spoken with Mr. Fischer's attorney, Eric Lee, on a number of occasions. He told Mr. Lee that REDUS would not get ahead of the City and they would take into account what the City says on this item. However, currently the Development Agreement requires the road to remain private. Mr. Budge noted that a number of people already have access up this road; and Park City has negotiated and obtained access for certain purposes as part of the Bonanza Flat transaction. He emphasized that REDUS will not open up the road to a set of owners that the Development Agreement clearly states should not have that access. Mr. Budge stated that as they proceed with certain development applications, they have been reminded of the importance of not taking actions to facilitate wintertime access into Wasatch County.

Mr. Ogilvy stated that an example would be the Red Cloud plat. When originally platted, Twisted Branch Road terminated ten feet before the County line. At the request of Park City, United Park revised the plat for Red Cloud to terminate the road approximately 150 feet from the County line because the City was concerned that the 10-foot gap was too short.

Commissioner Sletten stated that if the Planning Commission were to approve this application, he wanted to know what plans have been made by REDUS and the Master Owners Association to begin discussions with the City Council with respect to the issues Mark Fischer raised in his letter. Mr. Budge replied that there was nothing specific at this time. They have done a number of transactions with the City and they always look for opportunities to work together, but at this point they have not identified a set of terms or parameters for discussion. Mr. Budge clarified that they were dealing with a plat that deals with a portion of this road. They were not trying to have the entire road included within the plat or address all the items. He explained that whatever decision is made on this request would not foreclose any future action.

Mr. Ogilvy stated that the most advanced dialogue with the City relates to the possibility of running bus service up Twisted Branch Road; but the City had not yet come back with a concrete request or proposal. Mr. Budge clarified that it would be an arrangement whereby snow access would be given into Bonanza Flat. It would not be vehicular access all the way into the County, but it would get people closer to the maintained cross-country and other trails.

Commissioner Suesser asked if the Planning Commission could be provided with a copy of the Development Agreement to help them understand the terms that were agreed to with respect to access over this road. Planner Ananth noted that the Development Agreement was linked to the Staff report as Exhibit C. The Commissioners should be able to click on the link in the Background Section of the Staff report to access the Development Agreement.

Commissioner Sletten noted that Section 2.8.2 did not say that the conversion to a public road needed to be done by UDOT. He understood from a previous comment that only UDOT could mandate the change. City Attorney Harrington replied that the City has no jurisdiction or control over SR224 because it is a State Road. Mr. Harrington emphasized that the City Council at the time and the original applicant negotiated in conjunction with the State and Wasatch County. There were a number of discussions with the owners and some objected and some agreed. The question of who is “they” is still undefined. The HOAs have their own issues in terms of organizations and who represents whom. They do not speak for one another. Mr. Harrington explained that the City’s resolution was to preserve existing historic legal access. The City’s position remains the same today, that the original agreement did nothing more than leave the control of SR224 in the hands of the State. By closing the road, the access rights were actually increased by a process that would have occurred whether the State or the City had taken control and acceptance of dedication of Twisted Branch Road. In either event, conditions were in place that preserved the status quo with some enhanced rights for snowmobile access. Mr. Harrington clarified that it was the intent at the time; however, those things did not occur and instead UDOT chose to expand snowmobile rights on existing SR224 by giving keys to gated access and working out encroachment permits. Mr. Harrington remarked that the historic access that was in place of the time of the original development agreement has also been changed; but that was not within the City's control. The City can control whether or not to approve this road consistent with the terms and restrictions that are already in place.

Commissioner Sletten thought the last sentence of 2.8.2 was ambiguous. It only says that the private road can be converted to a public road. It does not specify by UDOT or that SR224 would need to be abandoned. Mr. Harrington replied that it was the only eventuality that could exist at this point under State law.

Chair Phillips opened the public hearing.

Sandra Morrison, with the Park City Museum, assumed the Planning Commission had read the email she had sent on Monday. She intended to follow up on two main issues in her letter. The first was the Judge Mining and Smelting Building. She handed out copies of the building as it exists today.

Ms. Morrison stated that under the Flagstaff Development Agreement the developer is required to restore the Judge Mining Building. According to the agreement that was supposed to happen starting in 2001. That obligation is still in effect today; however, it was apparent from her handout that the building was not restored. Ms. Morrison stated that the promise to fully restore the judge building was fabulous. The building deserves the attention and their mining history is what makes Park City unique. The Judge building is a significant and beautiful historic building. It is an important part of Park City history and heritage and it is constantly explored by hikers, bikers, cross-country skiers and others. Ms. Morrison pointed out that the City was tragically losing this treasure to neglect. Currently the area is vandalized and blighted with garbage, graffiti, broken windows, and there is a rusty old trailer on site. Ms. Morrison suggested that the uses in the rusty trailer could be moved into the restored Judge building allowing the trailer to be removed. Ms. Morrison noted that the Judge building is directly next to the adjacent City Water Source, the Judge tunnel, and she suggested that the Water Department could use the restored building as an office building. Ms. Morrison believed there were a number of opportunities for the Judge building if it was restored. If the historic building is occupied by a tenant the site would be maintained and the graffiti and garbage would be eliminated. Ms. Morrison thought that should be the goal and how Park City would want to celebrate their mining history.

Ms. Morrison stated that instead of the revised obligation of putting a roof on the building as outlined in the MOA, the restoration of the Judge building should be a condition of approval on this application. It was agreed to in 2001 and the applicant should be obligated to restore it. Ms. Morrison wanted to know who made the decision that the residents of this town deserve less that what was agreed to in the Flagstaff Development Agreement. Ms. Morrison reported that a structural engineer estimated the restoration cost to be approximately $350,000. REDUS could seek to share this cost with the other Empire Pass developers if necessary, but the City should require this developer to do the work. They are planning to build a restaurant so they already have contractors and subcontractors who could work on the Judge building as well. Ms. Morrison thought it was important for the condition of approval to have a completion date. She suggested December 2020. Other option would be to withhold the occupancy permit for the restaurant until the restoration of the Judge building is completed. Ms. Morrison emphasized that this obligation was currently in effect in the Flagstaff Development Agreement and the applicant was looking to diminish their obligation.

Ms. Morrison stated that the second issue was the Memorandum of Agreement. She noted that Finding of Fact #43 states that the Memorandum of Understanding will achieve substantial compliance with historic preservation, preservation or maintenance requirements of Technical Reports #5 and #6 of the Flagstaff Development Agreement". Ms. Morrison thought that Technical Reports #5 and #6 were being replaced with the Memorandum of Agreement; not updated.

Ms. Morrison commented on the discussion about an updated preservation plan. She thought it was a good idea because 20 years of deferred maintenance is not what they are seeing today. Ms. Morrison stated that currently, the obligation under the Flagstaff Development Agreement is the obligation to maintain 21 sites as identified in Technical Report #6. Section 7 in the proposed MOA states, "The party shall execute an updated historic preservation plan identifying outstanding requirements on the sites". The sites were listed on Exhibit A of the MOA. Ms. Morrison pointed out that Exhibit A only had four sites listed, and only three sites were actually historic structures. She wanted to know why the City would allow an updated historic preservation plan that only address three historic sites when Technical Report #6 identified 21 sites.

Ms. Morrison stated that another problem with the update preservation plan and how it was addressed in the MOA was the lack of a description of what this plan would be and whether there would be a timeline requiring completion of these efforts. She noted that Vail spent a considerable funds creating a historic preservation plan for PCMR, and she thanked the Planning Commission for requiring Vail to do it. However, there were no timelines for completion and now they were three years into the five-year preservation plan for Park City Mountain Resort, and so far the Jupiter Ore Bin is the only structure that has been completed.

Ms. Morrison apologized for her frustration over this agreement. They have been discussing the MOA since January and nothing has actually changed. She noted that some provisions were supposed to occur this summer. Ms. Morrison stated that the time left to stabilize these last remaining mine structures was very limited. One of the historic buildings at PCMR had already collapsed and it was not on the list of priorities. Ms. Morrison urged the applicant and the City to get these sites done as quickly as possible. Ms. Morrison remarked that the unchanged MOA that was presented this evening was presented as the final version to be forwarded to the City Council. Therefore, none of the public input given over the last eight months has been included. She believed the MOA was a huge opportunity to stabilize many, if not all, of the last remaining mining structures; and she thought it was probably their last opportunity to get it done. Ms. Morrison encouraged everyone to make this opportunity a reality.

Ms. Morrison stated that the Flagstaff Development Agreement established a one-percent real estate fee so the Open Space Transit Management Fee. The fee was established to pay for maintenance of the historic mine sites. The MOA recognizes that fact and outlines using a portion of these funds for maintenance. Ms. Morrison pointed out that finding funds for these site has always been a hurdle. The Park City Museum, through the Friends of Ski Mountain Mining History, have achieved a few successes through a "bake sale" approach. However, that process is slow and the funds are very limited. In the last three years they completed three projects; the Ore Bin at Jupiter, the Little Bell Ore Bin, and the Counterweight Building. She noted that they were still waiting to be reimbursed for the Little Bell Ore Bin so those funds were not available to spend this summer.

Ms. Morrison noted that the MOA proposes both a limit on the funds to be spent and a ten-year time period. She stated that the Development Agreement required the Master Owners Association to maintain the historic mine sites in perpetuity with no limit on the amount of funds that could be spent on these outstanding cultural resources. Ms. Morrison remarked that the intent of the agreement and the express provisions were "to preserve the historic mine sites and buildings in perpetuity". She thought the 10-year time limit was a strange clause. People maintain their homes every year and no one expects that in ten years they will no longer need to perform any maintenance.

Ms. Morrison stated that according to Matt Diaz, the Assistant City Manager, the City had collected $9.3 million of the OSTM fees; and $6.8 million has been spent. That means $2.5 million remains to be spent. Ms. Morrison urged the Planning Commission to include in their recommendation to the City Council that a large portion of the remaining $2.5 million be spent immediately on maintaining and saving these last remaining historic mine structures. Ms. Morrison remarked that the only limiting factors on the maintenance work that should appear on this MOA is the Planning Staff time and resources to get these projects approved. She requested making that change to the MOA as well.

Ms. Morrison commented on Preservation Easements. She noted that the MOA makes no mention of dedicating preservation easements. The City needs those easements and the Flagstaff Annexation Agreement said that preservation easements would be given. She stated that earlier this year the Museum received an award for their maintenance efforts at the Alliance Mine and for removing the graffiti last summer. The graffiti was back, and in meetings with the Police Department they were told that the police could not monitor the site because it is not City-owned. Ms. Morrison stated that if the City held the preservation easements for the Alliance Mine, the police could monitor and protect the site. She suggested adding the preservation easements to the revised MOA and include a deadline for execution, such as December 31, 2019.

Ms. Morrison reiterated that Exhibit A in the MOA only identifies 3 sites instead of the 21 sites identified in the Development Agreement. She thought the most significant omission was the Daly West Headframe. There are numerous references in the Development Agreement specifically identifying the Daly West. She read from Section 2.9.3, "The headframe at the Daly West is historically significant". Ms. Morrison pointed out that 20 years ago everyone agreed to keep the Daly West Headframe. There were four headframes in Park City and today only three are standing. Ms. Morrison remarked that the cost to fix and re-stand the Daly West was around $250,000. She thought the Daly West definitely needed to be identified in the MOA and specified as a priority.

Ms. Morrison summarized her conclusion. The developer is required under the Flagstaff Development Agreement to restore the Judge Mining and Smelting Building in its entirety; and a specified date of completion should be met before this application is approved. Ms. Morrison remarked that the Memorandum of Understanding should revised to include all the points she made this evening, and include all the mine sites identified in Technical Reports #5 and #6. Ms. Morrison reiterated that there is money in the OSTM Fund and the Master Owners Association receives the other half of this fee. In the past 20 years, half of the $18 million that was collected went to the Master Owners Association. She pointed out that the OSTM Fund is collected in perpetuity and there is no ending date for the 1% real estate transfer fee. Therefore, the MOA should not limit the funding or the time period that the Master Owners Association is required to meet their obligation to maintain all the historic mine sites that were identified in Technical Reports #5 and #6 of the Flagstaff Development Agreement.

Ms. Morrison requested that the Planning Commission make the most of this opportunity and save the town's mining history now. Many people spent an incredible amount of time crafting the Flagstaff Development Agreement so all the historic mine sites would be stabilized, preserved and maintained not only for the current residents, but for their children and grandchildren. This is the opportunity to see that vision become reality. Ms. Morrison requested that the Planning Commission postpone approval of this subdivision plat until the Memorandum of Agreement can be thoroughly reviewed and improved. She urged them not to approve this first draft of the MOA by default this evening.

Commissioner Suesser noted that REDUS and Storied Development were each making a one-time payment of $40,000 to stabilize the roof of the Judge Mining Building. She asked Ms. Morrison if that was an adequate amount for the necessary work.

Ms. Morrison answered no. She stated that the current obligation under the Flagstaff Annexation Agreement, which is still in effect today, requires the applicant to restore the building to full restoration. Ms. Morrison pointed out that it was supposed to occur in 2001. For 18 years they have been living with blight and vandalism and it was only getting worse. She outlined a number of uses and opportunities for the Judge Mining and Smelter Building if it were restored. Ms. Morrison questioned whether the building could support a new roof after being abandoned and neglected for 18 years. She asked if anyone had looked into whether or not the building could possibly collapse under a new roof. She stated that for $350,000 the City could have a fabulous historic building that the residents and the tourists love. They need to take the necessary steps to celebrate their history because that is what makes Park City different.

Commissioner Suesser noted that Ms. Morrison indicated that Matt Diaz had referenced a certain amount of funds that were remaining. In looking at the Flagstaff agreement the developer's obligation, she assumed there was money to restore the Daly West headframe and other restoration projects. Ms. Morrison reiterated that the City has $2.5 million to spend. She was unsure how much the Master Owners Association had, but $9.3 million in OSTM funds has been collected over the last 20 years and the money keeps coming in. Every time real estate sells at Flagstaff the City gets 50% and the Master Owners Association gets 50%. As the price of real estate increases, the amount in the fund increases. Commissioner Suesser wanted to know why there was money available in the fund but none of it was being spent on the restoration projects. Ms. Morrison did not understand why the money was not being used.

Sally Elliott stated that she has been doing this for 33 years. She did not do much to get the Flagstaff Annexation Development Agreement approved, but she stood behind the people who worked very hard on it. They were a dedicated group and everyone believed that when they got the agreement that they would finally get some help with preservation and restoration of these structures. Ms. Elliott urged the Commissioners not to delete the intention of that Agreement by letting the MOA go through with only $40,000. She raises the money and $40,000 is a small amount in terms of the amount of work that needs to be done. They need a full commitment from the Planning Commission to preserve these structure because they are important.

Paige Anderson, with the Park City Museum, stated that based on the comments this evening, the Flagstaff Development Agreement has a lot of obligations in it, especially with respect to Preservation. Park City is well-known as a mining town and it is a vibrant part of their history. They should abrogate those rights. What she heard tonight from REDUS is that they have been working two years on this agreement. Ms. Anderson stated that the Flagstaff Development Agreement has been in place for much longer than two years, and the developer has not been working at all on the obligations under that Development Agreement for the preservation of the historic buildings. She remarked that it was more than just the three buildings referenced in the MOA. There are at least 21 sites and while there have been different owners and subdivisions over time, the obligations stand. If the Planning Commission approves the plat tonight they would be abrogating those rights and telling the community that historic preservation does not make a difference. Ms. Anderson stated that the kick-the-can approach that REDUS was requesting would not help preservation. She noted that Mr. Ogilvy and his attorney wanted to abide by the provisions about not allowing non-owners onto the road. Ms. Anderson thought they should also abide by the provisions in the rest of the Agreement that they have been aware of for the past 20+ years. She stated that if the Planning Commission approves this application, they would be giving up the rights of the public to preserve these structures. She requested that the Planning Commission address it right now and not kick the can down the road.

Sanford Melville, a full-time Park City resident, agreed with the previous speakers. He fully agreed with the comments in Sandra Morrison's letter. Mr. Sanford stated that in reading the Staff report, the Memorandum of Agreement, and the Technical Reports, he believed it came down to a contract issue. The developers of Empire Pass, under their agreement with Park City as detailed in the Flagstaff Annexation Development Agreement, have the right to develop millions of dollars of property in exchange for certain obligations; one of which was to comply with the historic preservation plan. Mr. Melville stated that those obligations have never been satisfied. The current applicant gets the rights from the Flagstaff Agreement, but they also get the obligations that go with it. It is simple contract law. Mr. Sanford remarked that the applicant is a sophisticated developer who employs highly-skilled attorneys, and they certainly should have been aware of the obligation for historic preservation. Mr. Sanford questioned why they were rewriting and substantially diluting the original historic preservation obligations detailed in the Flagstaff Agreement. He could see no public benefit for doing so. Mr. Sanford requested that the Planning Commission postpone approval of this current subdivision and plat amendment application until the Memorandum of Agreement could be fully reviewed and made consistent with the controlling Development Agreement.

Anne Bransford remarked that several in the room were here 30 years ago discussing the Flagstaff Annexation Agreement. She and her sisters were there 30 years ago because they were landowners in the Summit County area. Ms. Bransford stated that as someone who has served on the School Board for 4 years, she has great appreciation for the decisions at hand. She agreed with Mr. Sanford and requested that the Planning Commission postpone their decision this evening. She also asked the Commissioners to go down Twisted Branch Road because she was there on the seasonal Guardsman Pass Road several times in the last few weeks. Ms. Bransford stated that risk management always played into the decisions when they were talking about children and safety. It is a death tramp and an accident waiting to happen. When she reached the top of the old road, she was surprised to see what appeared to be construction of guard houses going off the intersection of Twisted Branch and Red Cloud Road. Ms. Bransford asked if the Planning Commission was aware of the plan for a private entrance at the top. If they are concerned about security, she did not understand why the existing gated Twisted Branch needed to remain open. There will be a gate at the bottom, a $17 million road, and then another gate. There are 30 lots and only one or two are primary residents. Ms. Bransford intended to start a petition for UDOT to abandon the existing road because it is not safe in the summer. If the City intends to annex Bonanza Flat, she was concerned how people could drive up there safely. Ms. Bransford urged the Planning Commission to address the Annexation Agreement as it pertains to that road and access to the top. It is not about Brighton Estates or others. It is about risk management and safety of the community. Ms. Bransford stated that if the Planning Commission does not address it and a serious accident occurs, it will be on them because they might have prevented it by making it a year-round road.

Hope Melville, a Park City resident, agreed with all the comments in terms of historic preservation and not downgrading the obligations of the agreement with the new MOA. Ms. Melville noted that the Judge Mining and Smelting building is a beautiful building and it is iconic. It is one of the few remaining mining sites and it can be restored easily and reused. She noted that the picture Ms. Morrison had provided showed that the building in the historic picture from the 1920s is the same building they see today. It is fun to see that building, except for the vandalism and the neglect. Ms. Melville pointed out that the building is adjacent to the Judge tunnel and the maintenance people store their equipment in the trailer on the site. If this building is restored, they could store their equipment in the building and the City could lease it from the owner. Ms. Melville emphasized that this is an important building and a small restoration project that could actually be done. It was one of the few examples left of Park City's historic heritage. She encouraged the Planning Commission to enforce the agreements already in place to get this building restored so it can be usable.

Sanford Bromley stated that he has been a Park City resident for two years. Mr. Bromley reminded the Planning Commission that they have taken action on a similar circumstance in the past. When Park City Mountain Resort wanted to add the Quick Silver gondola, the Planning Commission took a stand and basically said they could have the gondola if they supported the historic mining situation. Mr. Bromley thought that action was relevant to this request as well.

Chair Phillips closed the public hearing.

Mr. Ogilvy appreciated the passion from Sandra Morrison and the others who made comments. He also shares the enthusiasm for Park City's mining heritage. However, they were also trying to navigate within the obligations that are correctly assessed to the developer. Mr. Ogilvy noted that Ms. Morrison made reference that Exhibit 6 of the Technical report outlines 21 historic sites, and the MOA references a lesser number. He explained that of the 21 sites listed in Exhibit 6, four are on properties that are not signatory to the Flagstaff Development Agreement and there is no jurisdiction over those sites. The majority of the sites within the list of 21 are historic mine dumps and those are not historic structures. Mr. Ogilvy stated that in reading the recommendations in Exhibit 6, the obligations are reclamation, revegetation, and interpretative signage. He reported that much of the interpretative signage is in place. The Historical Society worked with United Park years ago in creating a number of stainless steel signs. Not all the signs are in place and the consultants will be reviewing the outstanding signage obligations.

Mr. Oglivy stated that one of the actual physical structures referenced in the list of 21 sites is the White Pine Mine, which is a collection of logs. The recommendation ten years ago was to leave it alone and only put in interpretative signage. There was no recommendation for reclamation or restoration of the logs remaining from a log structure. Mr. Ogilvy remarked that an explosives bunker on the neighboring property is not signatory to the development agreement. Mr. Ogilvy stated that the recommendation from Exhibit 6 was interpretative signage and that signage is in place. He noted that the explosive bunker needs a little more restoration, but it is not on land signatory to the development agreement. When the owner of that land comes before the Planning Commission, they will have an opportunity to discuss what appropriate historic preservation should be done on the explosives bunker.

Mr. Ogilvy referred to a provision in the Development Agreement stating that historic preservation does not apply to operational structures. At the time the Development Agreement was entered into, JSSD was operating the Daly headframe that was in place as a route for the miners to get in and out of the mine in an evacuation. Unfortunately, JSSD did not maintain the headframe and it collapsed. Mr. Ogilvy noted that JSSD acquired title to that property from United Park subject to the Development Agreement. The provisions of the Development Agreement state that the obligations run with the lands. Mr. Ogilvy clarified that the obligation to restore the headframe runs with the land back to JSSD and not to the Master Owners Association, because it was an operational structure at the time. Mr. Ogilvy agreed that from a community perspective, the Daly West headframe should be a high priority for historic preservation; but following the chain of contract, it is not an obligation of the Master Developer or the Master Owners Association. Mr. Ogilvy noted that some stabilization work was done on the Little Bell Ore Bin ten years ago, and the Historical Society did much more work last year. He stated that the Master Owners Association was ready and willing to reimburse the Historical Society for that work.

Mr. Ogilvy stated that the Judge Mining and Smelting Building is on land owned by the Park City Mines. He doubted whether anyone has been in the trailer in the last 15 years. If the Water Department was using it to store tools that was a separate issue. Mr. Ogilvy noted that he was inside the Judge Mining and Smelting Building yesterday with the consultants. It is an aged building and contrary to prior statements, work was done in 2005-2007 to stabilize the building. It was cleaned up at the time, all the windows were boarded up, and shoring was put in place in one section of the roof that was weakened. The section that had shoring withstood the record winters. The adjacent sections of roof that were not shored up did collapse. Mr. Ogilvy reported that in discussions with the City, the owner of the building has been very clear that even though the original report indicated restoration of the building with an anticipated use of being an HOA Office, the building is one mile from the nearest road that is plowed in the winter. The building was probably designed for a snow load of 50 pounds per square foot. To bring the building to the point where it could be occupied would require a complete reconstruction of the building. The concrete walls have shifted 12 inches from one side to the other. The building can be stabilized to keep it from further deterioration; but if they were to make the building habitable the only historic part left would be the façade. All other components of the building would be new.

Mr. Ogilvy reiterated that the consultants were hired to review what needed to be done in terms of historic preservation. They were also working with the Staff to create flexibility. Mr. Ogilvy stated that the proposed MOA creates a funding source of $60,000 immediately to the Historical Society as reimbursement; $80,000 immediately towards the Judge building; and $400,000 over the next 10 years. A mechanism is in place for the Master Owners Association to meet with the City Staff every year to review and set the highest priorities for spending money in that year.

Mr. Ogilvy was interested in moving forward to address the historic projects, but there were better uses of funds for historic preservation than trying to make a building habitable that is one mile from the nearest plowed road and one mile from the nearest fire hydrant. However, the owner of the building has represented that they were willing to do the necessary repairs to stabilize the building.

Mr. Ogilvy addressed the question regarding preservation easements. He emphasized that the Master Declarant does not own any land with historical structures; and therefore, they are not in a position to grant the easements. In addition, there are no historic structures on the Twisted Branch Road alignment. Mr. Ogilvy stated that a year ago the historic preservation issues was raised and they met with the City Staff and negotiated the Memorandum of Agreement. The applicant would like to execute the MOA and move forward so funds could be released. They were working with the consultant to review the 21 sites and the necessary work involved. However, he did not believe a single site on the list was on land owned by the Declarant or the Master Association. Mr. Ogilvy noted that the Master Owners Association has specified obligations for preservation of historical structures that are not ongoing operations. That precluded the headframe and land that was not subject to the Development Agreement. For that reason, the list in the MOA was shorter than the 21 sites outlined in the Development Agreement. Mr. Ogilvy explained that a mechanism within the agreement states that if the City Staff and the Master Association believe spending funds on something outside of the three identified structures is the highest best use of funds, and they would have the ability to release the funds for that use.

Chair Phillips stated that every time REDUS comes back the discussions are repetitive while they wait for the MOA. He noted that this keeps occurring because the same individuals make comments that steer the Planning Commission in this direction. Chair Phillips was unsure of the timeframe for completing the MOA and the Technical Reports, but he thought it was in everyone's best interest to do everything possible to reach the point of being able to review the MOA.

City Attorney Harrington remarked that Director Erickson could address the stabilization and the Staff interpretation of the Technical Report. Mr. Harrington would address the issues related to the contract and Development Agreement. He noted that the Development Agreement incorporates a subsequent approval from 1989 to 2007, as amended, for the actual contract that was referenced in the Development Agreement. He explained that there is an additional option of the Planning Commission accepting technical reports in the first phase of development in 2001. That document controls the historic preservation actions. Mr. Harrington stated that the document is very specific on some items, but not specific on other items. The Planning Commission has a history of prior approvals that made reference to those documents in all the phases that previously came the Planning Commission. Mr. Harrington remarked that when they analyze contract or enforcement rights, it is in the context of that history. It is why the City Staff felt comfortable recommending a path similar to the success with Park City Mountain Resort.

City Attorney Harrington clarified that there was not an unspent fund for historic preservation within the City. He noted that Section 3.2 of the original Development Agreement, as amended in 2007, references an Open Space and Transit Management Fund. The public creatively argues that because the word "preservation" is part of a sentence, that it included historic preservation. The Staff did not believe that was true. It is a qualifier to open space preservation and it has been interpreted that way since the beginning. Half of the funds have been spent for open space and the other half for transportation on the City's side. The City can only spend funds on assets that it owns. The City did not accept obligations in the Technical Reports that would authorize the City to fund expenditures in 2001. Mr. Harrington completely disagreed with the idea that there was a direct correlation between that Fund and the City's lack of expenditure. However, the public has the right to argue whether the Staff sufficiently and successfully implemented portions of the Technical Report. If they feel the Staff did not, they can ask the City Council to reconsider how to appropriate that fund either from the amended agreement or the Staff recommended compromise, which represents the agreement in the Staff report. These issues would be appropriate before the City Council. He explained that the issues would be kicked to the City Council; not kicked down the road, because the Development Agreement and expenditure modifications are the Council's jurisdiction.

City Attorney Harrington did not anticipate changing the Agreement, which the applicant negotiated in good faith as an alternative to enforcement against a different party. He gave the same explanation during the Storied Development subdivision, and he stands by that explanation. However, the public raised concerns about public policy considerations for further investment by the City, and as they perceive it, as a lack of attention to historic preservation. It is an appropriate City Council issue and he would be comfortable with that argument as long as it was constructed as a change. The decision would be up to the City Council. Mr. Harrington thought the fund balance was on the transit side. He believed the open space money had been spent for funding contracts with Summit Lands Conservancy, open space maintenance, weed abatements, and other things related to open space. Mr. Harrington emphasized that the City was not holding funds that could be used for historic preservation.

Mr. Harrington recalled that the prior Staff report contained the Staff analysis on some of the distinctions between open space, historic properties, non-open space historic properties, and properties within the Development Agreement and outside the Development Agreement. He recognized that it was confusing. If the Planning Commission wanted to have further public hearings and a work session they had the prerogative to do so. However, time was of the essence and they were anxious to take the Agreement to the City Council. The timeline has been affected by many things beyond both the applicant and the City's control. Everyone anticipated having the Agreement to the City Council earlier in order to spend the funds this summer. For that reason, the Staff recommendation was for the Planning Commission to forward the plat to the City Council this evening; notwithstanding the issues being raised by other parties.

Commissioner Suesser was unclear on whether or not the City thinks the developer is in compliance with the Flagstaff Development Agreement, and whether an approval is appropriate. She understood the recommendation was to approve this application; however, the City Attorney talked about a policy decision as the reason for kicking it to the City Council to make an allocation for historic preservation funds. Commissioner Suesser asked if the developer was in compliance with the Development Agreement.

City Attorney Harrington believed the proposed Findings recommend compliance. The Planning Staff made findings with each phase as it applied to the project before them. Mr. Harrington did not want to state on the record whether or not he thought the prior developer was in compliance with the first phase of development, because that may preclude additional efforts of other parties. He did agree with the statements that historic properties in question are not within the project boundary before them; nor owned or under the control of the applicant.

City Harrington explained that REDUS was not here in the pro-active developer posture. They were ahead of the City in enforcement and they were trying to foreclose and recover assets lost due to their own situation. Being successful in enforcement on a company already in a default ownership posture does not achieve anything quickly. For that reason, they were going with the process where owners can contact other owners for permission rather than the City getting involved on a 2001 Technical Report that has been referenced five or six times in prior approvals. They will change that approach if the City Council directs differently, but until then, based on the Staff's recommendation, they were working towards prioritization and stabilization and using additional resources in the short term first.

Commissioner Sletten asked if the Development Agreement and other exhibits survived the bankruptcy. He wanted to know if they were still enforceable and whether this developer was as responsible as the previous developer. Mr. Harrington believed they were responsible and that was written into a condition of approval.

Commissioner Suesser wanted to know when the Staff expected to complete the MOA. Mr. Harrington stated that this MOA was complete as submitted by the EPMOA. It is the submittal the applicant would like the City Council to evaluate and take action on. The City Council is the body that will consider the issues raised by the Historic Society in terms of additional funding. The applicant was asked to sign the document to show good faith. Any modifications would be directed by the City Council. Mr. Harrington clarified that this document came out of negotiations from the Storied plat process. Additional modifications had not been approved by the City Council.

City Attorney Harrington stated that the fund was precariously established and it was being modified. It was constructed in a way to get around City budgetary restrictions on assets. He noted that it was similar to what was offered to the open space group; which was not successful in getting Board approval. That factored into the degree of the portion that was being redirected for historic preservation. He thought it was important for the Commissioners to understand the full context.

Commissioner Kenworthy did not want to slow down private ownership from developing their property. However, he wanted to see the Development Agreement with regards to historic preservation move forward. There was an Agreement signed by the original partners and there was intention; however, over the past 20 years nothing has been done. Commissioner Kenworthy remarked that everyone understands that this differentiates Park City from other cities, and they all understand that historic preservation is a huge economic driver. They now have a situation where they are working together and he was pleased that the MOA was finally before them; but he thought it was premature. Director Erickson earlier stated that the inspection report would probably take six weeks to complete. Commissioner Kenworthy did not believe they should be addressing the matter this evening if the report on all the sites would be completed in six weeks. He preferred to wait to see the inspection report on all these properties and to have more time to understand what the applicant was actually responsible for in terms of historic preservation. He heard Mr. Ogilvy mention seven sites as the Master Owners Association. He listed the Judge building, Little Bell Ore Bin, the water tanks, and the explosive buildings, but he was now hearing those sites were not under their responsibility.

Mr. Ogilvy stated that he was wearing two hats this evening. In addition to representing REDUS, he was also the President of the Master Owners Association. Under the MOA that was negotiated with the City Staff, the Master Owners Association was committing funds for historical preservation of structures upon lands subject to the Development Agreement. They were responsible for very few sites because the majority of the 21 sites are mine dumps that have been reclaimed and revegetated. The other obligation was interpretive signage. Mr. Ogilvy remarked that the majority of interpretive signage was up but there were still a few sites without signage. Under the MOA, the Master Owners Association will complete the interpretive signage as required. He noted that a number of sites owned by third parties still require vegetation, but that is beyond their control. Mr. Ogilvy stated that Exhibit 5 to the Technical Reports assigns responsibility for open space differently than historical structures. He remarked that the Master Association is responsible for historical structures. Open space falls under Deer Valley's responsibility.

Mr. Ogilvy clarified that the Master Association commissioned the study to see where they were on the 21 sites. Four sites are not signatory to the development agreement. Of the remaining 17 sites, the obligation is either revegetation, stabilization, and signage.

Mr. Ogilvy referred to the comments that nothing has been done. He noted that United Parks spent millions of dollars doing reclamation. The entire Montage is built on the Daly West Mine Site and millions of dollars were spent to clean up the site and moving soils to Richardson Flat. He was not representing United Park City Mines, but as the former Declarant they did move forward in the earlier days. Mr. Ogilvy anticipated that the consultant's report will show that very few sites fall under the jurisdiction of the Master Association or the Master Developer. Under the terms of the Development Agreement, the headframe is not a Master Association responsibility because it was an ongoing operation, owned and operated by JSSD. He did not believe the Master Association should be responsible for doing what JSSD failed to do. Mr. Ogilvy pointed out under the MOA they have the opportunity to contribute funds towards the headframe, even though it is not their responsibility.

Commissioner Kenworthy understood that the Master Owners Association was agreeing to the Memorandum of Agreement, but they were not responsible for much of anything. Mr. Ogilvy stated that under the terms of the MOA, they are responsible for meeting with the City every year to decide how the money should be spent and address the highest priorities. He noted that REDUS and Storied Development were initially contributing $80,000 to start the process. Commissioner Kenworthy wanted to know which hat that was under. Mr. Ogilvy explained that under this MOA, the Master Association was accepting responsibility for maintaining structures on lands that are subject to the Development Agreement and are not operational structures. They were also willing to work with the City to allocate those funds as best as possible.

Mr. Budge clarified that REDUS was not responsible for anything because they do not own any land on which a historic structure is located. He stated that United Park is still around and they still own land under a number of these structures. United Park is also a party to the Development Agreement. If an outstanding obligation is not being fulfilled, United Park is still a responsible entity. Mr. Budge remarked that there are many outstanding obligations with respect to United Park, and there are a lot of problems. He believed there was a community benefit to start moving this in the right direction, which is why REDUS has offered to put in money to move the matter forward. Mr. Budge emphasized that they do not own the land underneath the Judge building; and other property owners own the land underneath the other sites that were mentioned.

Commissioner Suesser asked if one of the terms of the Development Agreement is that you need to own the land underneath in order to be responsible for the historic structure. She thought all the owners had a joint responsibility to restore the sites regardless of who owns the property.

Mr. Budge read from 8.1 of the Development Agreement, “All successors and interests shall succeed only to those benefits and burdens of this agreement which pertain to the portion of the project to which the successor holds title.” That is the agreement that governs. Mr. Budge stated that REDUS was not blind to the fact that they can help contribute, which is why they are willing to do so. However, it was unfair to hold up their application because other parties were not fulfilling their obligations. In addition, they would be punishing someone who has suffered economic harm as a result of other matters with those parties unrelated to this application. Mr. Budge stated that case law does not allow the Planning Commission to condition approval of a development application on third party consent or a third party performing some other action. When they present the subdivision plat, they are presenting an application that covers land that REDUS owns or that the City owns, which are the two parties who would be signing the plat before them this evening. Mr. Budge emphasized that REDUS has no outstanding obligations with respect to any portions of the land, particularly regarding the subdivision. He encouraged the Planning Commission to focus on that fact rather than trying to attach different obligations to this application. Mr. Budge noted that REDUS also recognized that they can play a role in supporting the Master Association to help fix this problem.

Commissioner Suesser noted that REDUS has taken some responsibility in their willingness to contribute $40,000 to stabilize the roof of the Judge building. She would like to see consensus between the applicant and the Historic Preservation Society on a reasonable restoration of that building. If the building cannot be used in the future, at least it will be restored to its historic significance and stabilized. Planner Suesser stated that some were talking about restoration and others were talking about stabilization. She would like consensus on what is reasonable. Commissioner Suesser also suggested a larger contribution from REDUS since they were taking some responsibility for that specific building. She thought they could possibly move the conversation forward if they had some consensus on the Judge building.

Mr. Budge apologized if he was not clear. He emphasized that REDUS has no responsibility at all to the Judge building. They have never owned it and it is not part of their collateral. He noted that the Master Association is willing to do some of the work, but if more is being required or considered, then the land owner needs to be part of this process as the responsible party. Mr. Budge reiterated that this application should not be held up for that reason.

Commissioner Suesser agreed with Chair Phillips that they continue to have the same conversations and nothing changes or gets done.

Commissioner Thimm stated that when they started the conversation the City Attorney said they had three choices. They could agree to kick the can down the road; they could say that the issues should be addressed by the Planning Commission before going to the City Council; or they could request additional information. Commissioner Thimm thought the issues should remain before the Planning Commission, and he also thought they needed additional information. In looking through his notes from previous meetings, they talked about the MOA at the first meeting. He could not find it in his notes, but he did not recall that the MOA would override Technical Reports #5 and #6. He thought the MOA would be supplemental and an update.

Director Erickson stated that Commission Thimm was correct. The MOA would not override Technical Reports 35 and #6. The MOA establishes a funding source for the City Council to consider. That was the purpose of having a third party consultant in the field making an independent determination on whether the sites were completed.

Commissioner Thimm stated that with regard to the inspection and the accompanying report, he noted that the Planning Commission previously asked for the status on each of the sites; what is needed, if anything, to continue the obligations of the original agreement; the cost to reach that point; a schedule to achieve the work; and who is responsible. Commissioner Thimm appreciated the passion for historic preservation and the passion expressed by Mr. Budge that REDUS is not responsible for anything. As part of this discussion, he would like to see something that shows who is responsible. Commissioner Thimm pointed out that based on the current schedule they should have the report in six weeks. He believed that would be the proper time for the Planning Commission to actually consider this application.

Chair Phillips suggested that the Planning Commission should have a work session on the restoration of these sites once they receive the report.

Commissioner Thimm noted that more than one entity has communicated to the Planning Commission the safety hazards related to the State road. He asked whether the City has any jurisdiction to address their concerns. City Attorney Mark Harrington stated that the City offered to accept jurisdiction of transfer subject to the existing historic access remaining. That condition is embedded in the current Development Agreement; and the City Council revisited that issue with Wasatch County. Mr. Harrington had no other direction beyond what exists in the Development Agreement.

Mr. Ogilvy understood the comments about waiting for the report; and he thought it was appropriate to have more information from the consultant before moving forward on historic preservation. When they were negotiating the MOA with the City Staff last winter there was ten feet of snow on the ground and the ability to assess the Judge building was limited. Mr. Ogilvy stated that both REDUS and the Master Association remain committed to moving forward on the historic preservation matter, and it should not hold up the approval of the plat application. He was willing to make it a condition that historic preservation must be executed to the satisfaction of the City Council before the plat can be recorded.

Commissioner Sletten remarked that it would move the responsibility from the Planning Commission to the City Council. He agreed with Commissioner Thimm that the Planning Commission should keep that jurisdiction for now. Planner Kenworthy concurred.

Director Erickson recalled that with the original Storied application with Talisker, the Historic Preservation Staff brought forward three or four technical documents that they had researched in addition to Technical Report #5 and the current historic preservation plan. That packet of documents was also delivered to the City Council. That information currently exists. Director Erickson clarified that the study being done now by the applicant was requested by the City so there would be an independent review. He was told that the study would take approximately six weeks. The timing and control of the study was on the applicant. At that point, the Staff could bring the study cold to the Planning Commission, or the Staff could take the time to vet the study and the conclusions before providing it to the Planning Commission.

Chair Phillips believed there were policy components that fall to the City Council and the Planning Commission needed to decide how to handle the matter.

Commissioner Sletten appreciated the urgency to move forward with winter getting close, but he thought the Commissioners would be doing a disservice to the community if they did not wait for the study. Commissioner Suesser agreed. She pointed out that timing was in the applicant's control and this item should be continued until the study is completed.

Commissioner Thimm noted that the report will take six weeks and then additional time is needed for the Staff to complete their review of the study. He thought it was important for the Staff to review the study before bringing it to the Planning Commission. It could go beyond six weeks to a date uncertain.

MOTION: Commissioner Thimm moved to CONTINUE the Twisted Branch Subdivision Plat to a date uncertain. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

The Planning Commission Meeting adjourned at 8:25 p.m.

Approved by Planning Commission: ______________________________________