



**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH,
July 17, 2014**

AMENDED

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, July 17, 2014.

3:00pm PUBLIC ART ADVISORY BOARD INTERVIEWS

Closed Session

4:30pm Property, Personnel and Litigation

Work Session

5:50pm Council Questions and Comments and Manager's Report

PG 3

Regular Meeting

6:00 pm

I. ROLL CALL

II. COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III. PUBLIC INPUT (*Any matter of City business not scheduled on the agenda*)

IV. CONSIDERATION OF MINUTES FROM JULY 10, 2014 CITY COUNCIL MEETING

PG 6

V. CONSENT AGENDA (*Items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon*)

1. Donation Application for placing benches along the nature trail, located on the McPolin Farm Open Space.

PG 16

VII. NEW BUSINESS

1. Consideration of an Economic Grant Award to Soul Sports in the amount of \$20,000.
 - (a) Public Hearing
 - (b) Action
2. Consideration of an Ordinance amending the Land Management Code: Appeals, Chapter 15-1-18; Completion guarantees, Chapter 15-7-2; Design guidelines regarding Exterior Materials, Chapter 15-5.5; Definitions, Chapter 15; GC and LI regarding Animal services chapter 2 & 15.

PG 30

PG 61

- (a) Public Hearing
- (b) Action

3. Consideration of a request for remand to the Planning Commission regarding an appeal of the Planning Commission denial of Steep Slope Conditional Use Permit located at 30 Sampson Avenue PG 109
 - (a) Public Hearing
 - (b) Motion to Continue to July 31, 2014
4. Consideration of a resolution for a Sales Tax bond refund PG 186
 - (a) Public Hearing
 - (b) Action

IX. ADJOURNMENT INTO THE PARK CITY HOUSING AUTHORITY

PARK CITY HOUSING AUTHORITY SUMMIT COUNTY, UTAH July 17, 2014

I. ROLL CALL

II. CONSIDERATION OF MINUTES FROM THE MARCH 20, 2014 MEETING

PG 211

III. NEW BUSINESS

1. Consideration of the adoption of the Park City Heights Affordable Housing Plan.

PG 212

IV. ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting. Wireless internet service is available in the Marsac Building on Wednesdays and Thursdays from 4 p.m. to 9 p.m. Posted: 07/14/2014 See: www.parkcity.org
Amended 07/16/2014

Manager's Report



To: Diane Foster, City Manager
Author: Thomas Eddington, Planning Director
Jonathan Weidenhamer, Economic Manager
Subject: State Historic Preservation Office (SHPO) letter
Regarding Carl Winters Building nomination to the National Register of
Historic Places (NRHP)
Date: July 17, 2014

PLANNING

On June 6, 2015 the City Council directed staff to proceed with the remodel and addition to the Carl Winters/ Park City Library Building. The scope of the project included the removal of the 1992 addition so that the new remodel and addition appeared as one cohesive building campaign.

The City Council, with an understanding that nomination for the National Register of Historic Places (NRHP) would not take place until completion of the new addition, asked staff to inquire if the State Historic Preservation Office (SHPO) would provide preliminary input on the proposed renovation to ensure the project wouldn't preclude future listing.

SHPO issued a letter with a preliminary opinion that staff received on July 7, 2014 (Exhibit A). While they believe the renovation plans, "present a fairly major alternation to the sides and rear of the building....that is more intrusive than the 1992 addition," they go on to say, "I think the building could still be eligible for nominating to the NRHP." Additionally, SHPO indicated that before their Review Board and the National Register Reviewers will review the nomination, "they will want the building in its completed project state".

The Planning Director, Thomas Eddington, and the Current Planning Manager, Kayla Sintz, feel strongly that the proposed project is consistent with the Department of the Interior Standards and believe it can still be nominated, and included, on the National Register.

Next steps, as identified in the letter, will be to complete the project and submit for nomination which will go through the Utah SHPO office and then to the National Register reviewers.

Exhibit A – SHPO Letter



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Julie Fisher
*Executive Director
Department of
Heritage & Arts*



Brad Westwood
Director

July 3, 2014

JONATHAN WEIDENHAMER
SUSTAINABILITY DEPARTMENT
PARK CITY MUNICIPAL CORPORATION
445 MARSAC
P.O. BOX 1480
PARK CITY, UT 84060

RE: Park City Library/Carl Winters School NRHP Eligibility

I was recently provided plans and documents for the planned renovation and addition to the Park City Library/Carl Winters School, and asked for comments regarding the possibility of it remaining eligible for nomination to the National Register of Historic Places (NRHP). The building is not currently listed on the Register; however, in a 1995 reconnaissance level survey it was evaluated as being an eligible/significant building with potential for being nominated to the NRHP.

The current renovation plans present a fairly major alteration to the sides and rear of the building where a large addition was constructed in 1992. After a discussion with other Utah State Historic Preservation Office (SHPO) staff regarding the planned renovation, we determined that the new addition would actually be more visually intrusive than the 1992 addition. However, even with the alterations, I think the building could still be eligible for nominating to the NRHP.

Eligibility would be based on its historical significance and function as a school and tie to broad patterns of Park City history rather than for its architecture, which has been compromised. If there is enough significance in that regard, it could probably be enough to mitigate for the adverse visual impact from the planned new addition.

Should the building be nominated, the State Historic Preservation Review Board and the National Register reviewers would be the final arbiters in the decision to list on the NRHP. Additionally, in order to have the most accurate information, they will want the building in its completed project state before they will review a nomination.

If you have any questions about this project or our preliminary review please let me know. You can reach me at coryjensen@utah.gov, or 801/245-7242.

Sincerely,

J. Cory Jensen
Architectural Historian/
National Register Coordinator
Office of Historic Preservation



Manager Report

To: Honorable Mayor/Member of City Council
Subject: Rejection of Bid for the Deer Valley Drive Phase 2 Project
Author: Matthew Cassel, P.E., City Engineer
Department: Engineering
Date: July 17, 2014
Type of Item: Informational

Bids for the Deer Valley Drive Phase 2 project were received on June 24, 2014. Only one bid was received and that was from COP Construction. COP's base bid was \$1,169,910, which was \$359,910 over our engineer's estimate of \$810,000 and over our project budget. After reviewing the bid, staff noticed numerous high unit prices that were out of line with industry standards. Staff surmises that only one bidder submitted due to being so late in the construction season. Contractors are usually looking to have their plate full of projects by the end of March. By bidding the project in late May, many contractors may not have been interested because they have enough work already for the summer.

After meeting and following our purchasing policy guidelines (specifically Part II – Contracting and Purchasing Policy, Paragraph F-5) staff has decided to reject COP Construction's bid. Over the next few months, Staff will review the current contract documents, make adjustments to the bid schedule, maybe look for more money for the project and re-bid the project this coming January 2015 during the height of the bidding season.



PARK CITY COUNCIL MEETING MINUTES- DRAFT
SUMMIT COUNTY, UTAH,
July 10, 2014

Work Session

Council Questions and Comments and Manager's Report

Council member Beerman attended a Mountain Accord management meeting as well as the Leadership BBQ. He gave a shout out to staff involved with the poison creek pathway remodel stating that it looked great and has seen a lot of use.

Council member Henney attended the Back Alley bash, then was coerced on the Treasure Mountain Inn roof with Mayor Thomas and Council member Beerman where they watched the Fourth of July Parade. Thanked Mayor Thomas for the letters he has been sending out regarding the PCMR/Vail litigation.

Council member Simpson said kudos to Phyllis for getting her Wildland firefighting card

Council member Matsumoto attended the library board meeting where they discussed signage to let people know where the library is currently housed. Attended the Museum board meeting where they announced they have purchased a lot in prospector to build a building to preserve artifacts also informed the public that there is a free museum day coming up in August.

Council member Peek left town to visit family for the holiday and had a great time.

Mayor Thomas recognized Tanner Putt for successfully defending is under-23 national title at the 2014 USA Cycling Amateur Road Nationals. Mayor Thomas stated he conducted his own City tour across Europe where he studied small towns. Attended a press conference to bring a Banksy into the corridor by the Egyptian Theater.

Shared Use Lane Markings

Heinrich Deters, Trails and Open Space, spoke to the pilot program that staff is recommending for the Sharrows or Shared Use Lane Markings. Sharrows are used to communicate to the vehicles on the road that there is an intention to share the lane with cyclists. Deters stated that the capital cost is around \$200 per sharrow and staff is looking at sidewinder and prospector roads to begin the pilot with a total of \$7600, the maintenance cost is the same as the initial cost as it is a stencil that needs to be reapplied each year. Kai Tohinaka spoke to the criteria that they looked at for choosing the roads for the pilot study. They are surveying the area and will look at the current use prior to the painting of the markings and then again following the sharrows to see if they will favorable throughout other areas identified by the firm.

Council member Beerman stated that he feels the pilot program is only on the streets where bikers already feel safe and feels that there are riskier roads to bring bike awareness to. Deters stated that he feels that there has been a lot of thought put in this and staff has looked at the commuter rider rather than the recreational rider. This is to help create a link to commercial areas. Deters feels that this gives bikers options and will come back with

more data. Council member Henney stated that he feels that this will help with motorist expectation and messaging that we are a bike community. He also asked for them to incorporate a more challenging stretch to bring back a better study.

Mayor Thomas opened the floor for public input.

Michael Watson stated that he was originally inspired by this program during the walkability/bikeability study. Stated that he knows about the safety concerns and would like to see sharrows along the stretch along 224 from Dan's to Jan's. He informed the Council that this area was already approved as a sharrow area by UDOT. He stated he agrees with Council members Beerman and Henney that a safe route will stay safe. He then proposed an alternative from Cole Sports to Heber Ave to help inform and educate visitors and residents that we are a "bike" town.

Lynn Ware Peek stated that she loves the sharrows and her only concern is that we also communicate to the cyclist community that this is not a free license to ride three abreast.

Council member Simpson agreed that more challenging routes would be great.

Council member Beerman thanked Watson for being so tenacious and agreed with Lynn that the bike community needs to be half of the solutions. Also feels that speed limits should be part of future discussions.

Website Design Discussion

Scott Robertson and Shannon Dale from the IT department spoke about the website redesign. Dale has worked with over 20 departments on what the needs and desires of the City. The top three were low cost, visually appealing and it easy implementation. Staff has determined that it would be best for the City to work with our current company to utilize extended features that they offer. This will offer better searching capabilities and more real estate on the home page.

Council member Beerman thanked staff for the great report. He then inquired about the design element. Robertson stated that it would be different than what we have now but will be equally appealing.

City Manager Foster thanked staff for getting such a great price and for keeping the website fresh and current.

Main Street Peak-Hour/Peak-Day Employee Parking Update

Kent Cashel, Transit director, Jon Weidenhamer, Economic Development Manager, and Allison Butz, HPCA addressed the concerns regarding Main Street parking and how they are joining efforts to combat the problem. Cashel spoke to the approach of the analysis stating that they have taken occupancy counts during multiple days and times and have collected a great amount of data. Stated that they identified the peak days and then surveyed the merchants who identified up to 1000 employees that would be parking in the area. The knowledge was also identified was that the employee commute was beginning in Park City and would have easy access to public transit. Cashel outlined the pilot program stating it would include expanding the transit hours, promoting van-car pool, an incentive program, marketing and awareness program and expanded enforcement hours. Butz spoke to the incentive program for the Main Street

District employees who ride the buses will be eligible each ride to be put in a drawing once per week for 4 weeks of \$500 cash.

Council member Matsumoto stated that she was shocked with the numbers and stated that it was a great report. She feels that it is an optimistic program.

Weidenhamer stated that this is starting point with the goal being 300 less cars on the road. He stated that they do not meet the goal then they will have to come back to Council with a more robust approach.

Council member Simpson stated that she hopes that with the enforcement hours changing parking enforcement will strengthen as well.

Council member Beerman thanked staff and HPCA for pulling this data together and feels that it identifies our weak link and feels that the cost is minimal compared to building more parking spaces.

Council member Henney encouraged staff and HPCA to keep being creative with the incentives. Butz stated that it will require cooperation from everyone and the HPCA wants to be part of the solution.

Ice Expansion Discussion

Jon Pistey and Amanda Noel discussed the ice expansion idea. Pistey stated that last October the Recreation department met with Council to discuss possibility of a second sheet of ice during that meeting it was a consensus that while to Council was supportive of the ice arena and the programs and very pleased with the department and efficiency it was not in the immediate future to build a second sheet. With the recent information from the Basin Rec and County regarding the bond that would offer 1.25 million dollars towards a second sheet of ice, the Recreation department felt it was appropriate to bring the item back to Council for discussion. Noel stated that they increased the number of hours and ?? tracked lost opportunities and found that they lost 417 hours of rentals which calculates to \$131,000 in lost revenue. Pistey spoke to the options for a second sheet of ice. Option 1 is a phased construction would be the fastest route with the lowest overhead costs, it would not meet all the needs and the RAB was not in favor. Option 2 is "rink in a box" and would provide a similar facility that we currently have. The drawback is that it would not meet the current green building standards and would not seat as many patrons as desired. Option 3 would be a duplicate with the current building with the office space being dedicated for alternate weight rooms; the disadvantage would be taking longer to build. Option 4 is an Event Center which would meet all the needs and would bring in revenue but would have high overhead costs. Option 5 is no expansion which would not meet the needs of our groups. Pistey spoke to the options for possible locations for a second sheet of ice around the current facility. Stated there is not currently an ideal location and all of the options would have to be looked at more closely before a decision was made.

Mayor Thomas stated that all the proposals would require an in depth discussion, but he was in favor of having that discussion.

Council member Henney stated that he is in favor of exploring the options and feels that it makes a lot of sense to meet the needs of the community.

Council member Simpson stated she agrees with Henney and looks forward to having a further discussion.

Council member Matsumoto thanked staff for the fabulous way they have managed the ice but she feels that the 1.25 million from the County is not a significant amount to rush into a partnership.

Council member Peek stated that he feels cost recovery is important and agrees with Matsumoto that the County should be putting in a more significant amount based on the 80% of outside users.

Council member Beerman stated that he feels that this needs to come back for a serious conversation and would like to look into solving the second ice sheet of ice and aquatic center needs in one.

Council member Simpson inquired about where the 1.25 million out of the 25 million dollar bond figure came from. Pistey stated that he had not had the time to sit down with the county to discuss the needs of the community and had spoken with Rena about an offhand figure for a bare bones structure. Rena, County, stated that the County has been working jointly with the City and was more than willing to put in more than half when Pistey quoted 2 million dollars. She also spoke to the needs of the county to include indoor turf and spoke to the balance between programs, parking and users.

Council member Matsumoto spoke to the land contribution and would like to explore all the options.

Council members Matsumoto and Simpson both felt that they are not in favor of an Events Center. Council member Henney stated that there could be good aspects in every option. Council member Simpson stated that she would like to look at this project holistically and see if the needs will be met throughout the County.

City Manager Foster inquired if the City Council spoke to the County Council about raising the bond amount. Rena spoke that it is a balancing act with the tax payers and the user groups.

Council member Beerman thanked the Basin for all the partnerships to date. Inquired if the County had to earmark the monies prior to the bond or if the City works quickly would the monies be available to move around. Rena stated that the bond filing is Aug 21st and it might be more feasible to look into savings opportunities over the next few years than moving bond funds around.

Foster stated that staff will work together to bring forth a few options to meet the needs of the communities.

Mayor Thomas thanked the public for attending the meeting to show support, and then offered to allow public comment during the regular meeting.

Regular Meeting

I. ROLL CALL-Mayor Jack Thomas called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, July 10, 2014. Members in attendance were Jack Thomas, Andy Beerman, Dick Peek, Liza Simpson, Tim Henney and Cindy Matsumoto. Staff member present were Diane Foster, City Manager; Mark Harrington, City Attorney; Matt Dias, Assistant City Manager; Jed Briggs, Budget Operations Manager; Nate Rockwood, Capital Budget, Debt and Grant Manager; Scott Robertson, IT Manager; Thomas Eddington, Planning Director; Anya Grahn, Planner; Marci Heil, City Recorder

II. COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Council member Peek stated that in regards to the 257 McHenry item he is currently working with an attorney in the Tesch Law Offices but it will not affect his decision.

III. PUBLIC INPUT (*Any matter of City business not scheduled on the agenda*)

Aaron Dufford, Hockey Director for Youth Program and High School hockey coach, stated that they are running about 160 kids and have had to turn kids away; they have lost revenue due to the lack of time on the ice. They have immediate need right now and would like to get a rink here as soon as possible and suggested that they look at opportunities to operate in a stage form.

Matt Pruca, President of the Youth Hockey program stated that they have 12 youth teams and stated that quarter of the practice time is spent in Salt Lake. Also spoke to the tournament opportunities that have been lost due to the size of the current rink.

Tiffany Mciveli, figure skating coach, spoke to the cost and time that her athletes have put in and is afraid that they will lose the competitive edge if they do not get the ice time they need. Stated they have to travel to Salt Lake twice a week to train.

Barbara Caine, Coalville resident, stated she is disabled and can no longer participate in many sports. Stated curling has saved her life but they are only allowed 1 hour a week due to lack of ice time.

Marian Wohlrab, US Speed Skating Events Coordinator, supports the second sheet of ice and stated that the legacy of speed skating is growing with every winter Olympics. Feels that this is a town of high class facilities and high class athletes.

IV. CONSIDERATION OF MINUTES FROM JUNE 26, 2014 CITY COUNCIL MEETING

Council member Simpson moved to approve the minutes from the June 26, 2014 meeting
Council member Matsumoto seconded
Approved unanimously

V. APPOINTMENTS AND RESIGNATIONS

1.Consideration of the appointment of Becca Gerber, Eric Hoffman and reappointment of Michael Barille to the Recreation Advisory Board with terms ending July 2017 And the appointment of Cynthia Sandoval to complete the term vacated by Spencer Lace ending in July 2016

Council member Peek moved to appoint Becca Gerber, Eric Hoffman and reappointment of Michael Barille to the Recreation Advisory Board with terms ending July 2017 and appoint Cynthia Sandoval to complete the term vacated by Spencer Lace ending in July 2016

**Council member Simpson seconded
Approved unanimously**

VI. CONSENT AGENDA (*Items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon*)

1. Consideration to authorize the City Manager to execute a Construction Agreement, in a form approved by the City Attorney, with Beck Construction and Excavation, Inc., for Top of Main PRV Replacement Project in an amount of \$297,953.00.
2. Consideration to authorize the City Manager to execute a Construction Agreement, in a form approved by the City Attorney, with SCI, Inc., for Estates Drive Water Line Replacement in an amount of \$444,444.00.
3. Consideration to authorize the City Manager to execute a Contract, in a form approved by the City Attorney, with Vision Internet for website redesign services in the amount of \$24,622.

**Council member Simpson moved to approve the consent agenda
Council member Beerman seconded
Approved unanimously**

VII. OLD BUSINESS

1. Consideration of an Ordinance approving Dority Springs Subdivision located at 1851 Little Kate Road, Park City, Utah pursuant to the findings of fact, conclusions of law and conditions of approval stated in an attached ordinance in a form approved by the City Attorney.

Mayor Thomas opened the public hearing, no comments were heard. Mayor Thomas closed the public hearing.

**Council member Matsumoto moved to Continue to July 31, 2014
Council member Simpson seconded
Approved unanimously**

VIII. NEW BUSINESS

1. Consideration of a resolution amending the Fiscal Year 2015 Budget

Jed Briggs, Budget Manager, stated that staff is recommending amending the fiscal year 2015 budget that was adopted on June 12, 2014. The recommendation is revolving around the reorganization of the transportation and public works departments. Briggs stated there are also some changes to the library staff and the economic development grant criteria.

Council member Simpson stated she is excited about re-organization and is looking forward to the growth of some of our top employees.

Council member Beerman stated he echoed Simpson's thoughts and asked Foster for an update as to what led this change.

Foster stated that with the growth and development in the community and the transportation planning goal of the Council it was only a matter of time before we went this direction.

Mayor Thomas and Council member Henney were also in favor.

Jonathan Weidenhamer, Economic Development Manager, spoke to the changes to the economic development grant criteria to tie the language to the Council goals.

Council member Beerman inquired if the grant applications need to meet all 6 criteria. Weidenhamer stated that yes, it is all of the six and with the new language it will broaden the criteria and should not be problematic to meet. Harrington clarified that the new language meets both legislation and economic development contracts language. Stated this was a good balance with the most flexibility while still meeting the state code requirements.

Mayor Thomas opened the public hearing, no comments were heard. Mayor Thomas closed the public hearing.

**Council member Simpson moved to approve a resolution
amending the Fiscal Year 2015 Budget
Council member Peek seconded
Approved unanimously**

2. Consideration of resolution to create a list of authorized purchasing pools as specified by the Contracting and Purchasing Policy which is approved annually in the Budget Document.

Scott Robertson, IT Manager, spoke to the creation of this purchasing list in order to make purchasing extremely efficient. Nate Rockwood, Capital Budget, Debt and Grants Manager, stated that the purchasing policy states that the City can purchase from a pool that has been approved by resolution which has not been done in the past.

Mayor Thomas opened the public hearing, no comments were heard. Mayor Thomas closed the public hearing.

**Council member Beerman moved to approve a resolution to create a list of authorized
purchasing pools as specified by the Contracting and Purchasing Policy which is
approved annually in the Budget Document.
Council member Matsumoto seconded
Approved unanimously**

4. Consideration of the 257 McHenry Avenue Plat Amendment pursuant to the findings of fact, conclusions of law and conditions of approval stated in an attached ordinance in a form approved by the City Attorney.

Planner Grahn stated that the resident at 300 McHenry has sent his attorney to ask for a continuation. Joe Tesch, attorney, stated that his client is concerned with the Planning Commission's recommendations and would like more time to get the two parties together to discuss the concerns. Planning Director Eddington stated that staff is not in favor of continuing the item.

Planner Grahn stated that the site is a significant site; the existing house had encroachment agreement on the lot lines and was deconstructed following a notice of order with a guarantee to reconstruct within two years. Staff outlined the many issues with this lot and the past plats. Staff has worked with the Title Company and Alliance Engineering to deal with all of the issues of the platted McHenry Ave and the built out McHenry Avenue. Discussions continued regarding the placement of the new structure and Grahn informed Council that the new structure would be placed in the current location and could not be relocated unless the City Engineer and Chief Building Official determine there is a unique condition to place the structure somewhere else on the lot.

Council member Simpson thanked staff for the complete staff report.

Council member Peek clarified that the staff report for 257 McHenry could stand on its own without the prior background information since the prior actions were completed in error. Grahn concurred.

Mayor Thomas opened the Public Hearing.

Joe Tesch passed out an exhibit related to the staff report. Stated that he feels that the staff report seems to have lost the feel of a historic structure. Feels that lot 16 should be cut out to disallow for a larger home to be built. Spoke to the request that the amendment not include the historic footprint which is now in an area deeded to the City. He spoke to the law regarding the right to property and the existing footprint prior to the deeded property. Also spoke to the encroachment agreement that staff is proposing for the access to be moved from the current McHenry Avenue to Platted/Built McHenry Avenue. He spoke to the fact that his client has a driveway melt system and the run off causes ice to collect at the bottom of the driveway and they are concerned with more traffic in the area not knowing how to navigate the conditions. Stated he feels that this application should be denied.

Mayor Thomas inquired where the driveway is heated. Tesch passed out another photo that showed the driveway was heated to platted McHenry Avenue.

Mayor Thomas closed the public hearing,

Director Eddington stated that the guidelines of the HDDR is to keep it in its current location. David White stated that the actual footprint of the historic home will be reconstructed exactly the way it was with a portion of the back crossing onto the City's property. Grahn stated that the owner could enter into an encroachment agreement with the City for the portion that would remain on the City's property. White stated that with the amount of property they are allowed 1858 square feet and are only using 1415 square feet. Council member Matsumoto inquired if there could be condition that they will not build larger than the proposed 1415 square feet. Grahn stated that it could be added in as a condition.

Council member Henney inquired if the ice build-up from the heated driveway causes an accident, who would be responsible. Harrington stated that it would be a building code issue with mitigation. White stated that as an architect he understood that it is against the code to drain water off of the driveway onto someone else's property or the City right-of-way.

Tesch reminded Council that it could take up to a year for the subdivision to be filed and is concerned with what the current plans are today not being what truly happens. Is also concerned that the Council cannot stipulate a smaller house if the zone allows a larger home.

Council member Matsumoto inquired about the comment that Tesch made regarding the right of property. Harrington stated that it could be true but the condition of approval would stand if the Council so set.

White spoke to the applicant's desire to move ahead and feels that everything is in order, reminding Council that there is still the HDDR process that the application must go through.

Planner Grahn read the two conditions added to the Ordinance into the record as #8-the applicant may not exceed 1420 square feet encroachment and #9- nothing in this amendment will prevent the City from entering into an encroachment agreement should the regulatory authority not find unique conditions to relocate the structure.

**Council member Simpson moved to approve the Ordinance for 257 McHenry Avenue
Plat Amendment pursuant to the findings of fact, conclusions of law and
conditions of approval stated in an attached ordinance in a form approved
by the City Attorney as amended
Council member Beerman seconded
Approved unanimously**

5. Consideration of an Ordinance Approving The 1604 & 1608 Deer Valley Drive Plat Amendment pursuant to the findings of fact, conclusions of law and conditions of approval stated in an attached ordinance in a form approved by the City Attorney.

Mayor Thomas opened the public hearing, no comments were heard. Mayor Thomas closed the public hearing.

**Council member Beerman moved to Continue to July 31, 2014
Council member Simpson seconded
Approved unanimously**

IX. ADJOURNMENT INTO REDEVELOPMENT AGENCY

**Council member Peek moved to adjourn into the Redevelopment Agency meeting
Council member Beerman seconded
Approved unanimously**

MEMORANDUM OF CLOSED SESSION

The City Council met in a closed session at approximately 2:00 p.m. Members in attendance were Mayor Jack Thomas, Andy Beerman, Liza Simpson, Dick Peek, Cindy Matsumoto and Tim Henney. Staff members present were Diane Foster, City Manager; Matt Dias, Assistant City Manager; Mark Harrington, City Attorney; Tom Daley, Deputy City Attorney; Heinrich Deters, Trails and Open Space; Ann Ober, Community Relations; Nate Rockwood, Capital Budget, Debt and Grants Manager. **Council member Beerman moved to close the meeting to discuss Property, Litigation, and Personnel. Council member Henney seconded. Motion carried.**

Council member Peek moved to open the closed session. Council member Beerman seconded. Motion carried.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Marci S. Heil, City Recorder.



Marci S. Heil, City Recorder



City Council Staff Report



Author: Heinrich Deters, Trails and Open Space Project Manager
Subject: Administrative Policy: Community Project Donations
Date: July 17, 2014
Type of Item: Administrative

Recommendation: City Council should review and approve the attached Donation Application for placing benches along the nature trail, located on the McPolin Farm Open Space.

Topic: City Council review and approval per the City's adopted donation policy.

Background

In June 2011, Council adopted a City donation policy for community service and private donations on City property.

In June 2014, Sam Sumsion contacted the City and Summit Land Conservancy, who hold the conservation easement on the McPolin Farm Lands, inquiring about an Eagle Scout Project. The project detailed the placement of two benches along the nature trail, located on City Open Space.

Analysis

The City's donation policy requires City Council notification and approval for projects located on certain city properties. In this case, the McPolin Farm Lands are noted as a 'Tier III' location and must be approved in a regular session meeting.

Sam has provided details associated with the project, including letter of intent, size, scope (location), in addition to, having the use approved by Summit Land Conservancy (SLC). A plaque for future fundraising efforts for SLC has been requested for reservation on the two benches, consistent with the policy. Staff finds that the benches are consistent with the policy and provide a benefit to the public utilizing the open space and trail. Staff does not see any negative aspects to the project. The value of the donation is under \$5,000 and consistent with the notification of an asset to the Finance Department.

Alternatives:

- A. Approve: Council may approve the attached donation application for benches along the nature trail, located on the McPolin Farm Open Space.**
- B. Modify the request: Council could choose to modify the donations request as provided. as presented in the Resolution.
- C. Deny the request: Council could not approve the request at this time.
- D. Continue the Item: Council may feel there is not enough information to make a decision, and have staff return with more information.
- E. Do Nothing: Same effect as continuance.

Significant Impacts

Staff does not find any significant impacts associated with this request.

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Accessible and world-class recreational facilities, parks and programs + Safe community that is walkable and bike-able			+ Well-maintained assets and infrastructure
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Very Positive 	(Select from List)	(Select from List)	Positive 
Comments:				

Departmental Review

This report has been reviewed by the Legal Department and City Manager.

Staff Recommendations:

City Council should review and approve the attached Donation Application for placing benches along the nature trail, located on the McPolin Farm Open Space.

Attachments

- Exhibit A Park City Municipal Donation Policy
- Exhibit B Written Proposal from Sam Sumsion, Eagle Scout candidate

Simsen
7/14

Exhibit A **PARK CITY DONATION POLICY**

I. Purpose

To establish a policy for non-artistic donations proposed in public parks, facilities, open space and trails on City property or on public easements.

II. Authorization

The City Council shall retain final authority for accepting donations and/or authorizing any use of City owned property.

III. Objectives

- Ensure uniformity and a timeline for requests
- Facilitate and encourage contributions to the City
- Protect the integrity of City property
- Provide opportunities for residents to augment the provision of City services and create a vested connection to place and community
- Provide customer service consistent with open and responsive government

IV. Qualifying Donations

- Community project enhancements and/or services, such as eagle scout and youth program projects
- Memorial items, such as benches or trees
- Artistic donations **will not be considered**. PCMC has a specific donation policy for art, which is reviewed by the Art Board.
- Third party consideration prohibited. Unless specifically approved by the City Council, third parties, including non-profit organizations, may not market or include donations to the City as part of a donation or additional consideration to that party or organization. The City Council may only approve such arrangements where the consideration is used to offset costs or enhance existing services or donations directly provided by that organization to the City (such as Adopt a Trail programs).

V. PCMC 'Donation List'

PCMC has created a list of items that may represent a benefit to the community but are not currently funded within the budget. It is recommended that all proposals review this list of approved items. Donations identified on this list have a very high probability of being approved.

VI. Process

The purpose of this policy is to establish a uniform process for donations in public parks, facilities, open space and trails on City property or public easements.

The following guidelines will be used when donating items:

A. Written Proposal and Letter of Intent

A written proposal (Exhibit B) must be submitted to the Executive Office at Park City Municipal Corporation for review. The proposal submitted should include: an explanation or scope of the proposed donation; specifications, including type, dimensions, material and proposed location; estimated value of the donation; and any other pertinent information. Additionally, a draft Letter of Intent (Exhibit C), detailing the general criteria and obligations for a donation needs to accompany the proposal.

B. General Criteria

In general, the following criteria will be considered: Any existing agreements, regulations or deeds, proposal, scope, easements, utilities, existing structures, quality and/or quantity of an object(s), size, future or ongoing maintenance, public safety, estimated value, relationship to the natural environment, users of the proposed site, future development plans, landscape design, existing infrastructure, environmental concerns, visibility and accessibility and if the item is identified on the PCMC "donations list."

All applications may be reviewed by such city agencies as Engineering, Finance, Parks, Public Works, Sustainability, Water, Recreation or Planning before making a recommendation. Should the donation be proposed for a historic building, site or district, PCMC will consult with the Planning staff and the appropriate Historic Commission. Finally, donations made on property with a conservation easement or deed restriction shall require approval from the easement holder if required per the applicable easement or deed.

The City Council shall retain final authority for all use of City owned property.

C. Timeline and Review Process

Once an application is considered complete, (verified in writing) staff will process and respond to each application within 60 days of submittal. One of the following responses will be provided:

1. Application acceptance and prepare for Council approval.
2. Application denial due to the applicant not meeting the terms of agreement of general criteria.
3. Application modification request which may include a general modification to the scope of the project

4. No timeframe shall be set for Council approval.

Location and Process

Donations will be processed appropriately within a tier system dependent on the proposals location.

Tier 1: Donations which are included in the PCMC Donations List (Exhibit G) and proposed location is within City Parks, Urban green spaces and along trail corridors (Exhibit F), may be approved administratively by a review committee consisting of Parks, Public Works, Executive and Sustainability Department staffers. The City Manager will notify City Council of any such approval, by means of a Manager's Report.

Tier 2: Donations which are NOT included in the PCMC Donations List and proposed location is within City Parks, Urban green spaces and along trail corridors shall be reviewed by City Council in a regularly scheduled work session meeting.

Tier 3: Donations proposed on City Owned Open Space, identified in (Exhibit E), must be compliant with the locations management plan, conservation easements, if any, and shall require City Council approval in a regularly scheduled meeting.

D. Implementation

The following guidelines are provided for the installation, construction or placement of any donation:

- 1. Project and Process**

This donation agreement shall be appurtenant to the following location and project: _____

- 2. Funding**

All costs including initial installation, labor and materials are the responsibility of the donor. All donations with an estimated value over \$5000 need to be reported to the Finance Department.

- 3. Installation**

Park City Parks Department will oversee and provide for the installation of all donations. Donations requiring installation services outside of the Parks Department's regular duties may require an outside contractor at the applicant's expense. Furthermore, the Parks Department shall approve final locations and the installation timeline for all donations.

- 4. Location**

PCMC reserves the right to amend and/or reject any location provided by the applicant, based on any existing agreements, regulations or deeds, scope, proposal, easements, utilities, existing structures, quality and/or quantity of an object(s), size, maintenance, public safety, relationship to the natural

environment, users of the proposed site, future development plans, landscape design, existing infrastructure, proximity to other donations, environmental concerns, visibility and accessibility and if the item is identified on the PCMC "Donations List." Unless specifically agreed to in writing, the City may, at any future date, elect in its sole discretion to remove or relocate the donation. No permanent right, title, or interest of any kind shall vest in the Donor's behalf by virtue of this agreement.

5. Vandalism & Maintenance

All normal maintenance costs are at the City's expense, however, no special maintenance and/or replacement will be undertaken. Special maintenance shall be defined as exceeding normal maintenance as determined and provided by the Parks Department. Payment will be made by check payable to Park City Municipal Parks Department. The Parks Department will replace a tree within one year of the planting of the tree but will not be responsible after two years. The City reserves the right to relocate any donation.

6. Plaques

No upright, free standing signs or plaque donations are allowed without City Council approval. The City will allow at specified sites an engraved (12"x 8") 96 square inch or smaller engraved flat stone that can be placed at the foot of a donation. Other items may have a plaque placed or engraved. These Plaques/engravings will be (4"x 4") sixteen square inches in size. Other details such as materials and wording must be approved by the City as part of the written proposal.

7. Materials

All donated benches and species of trees must be approved by the Parks Department. Materials or items not specified within this document will be reviewed and approved by the City Engineer. Trees may only be planted between May 15th to October 1st; weather permitting approved and coordinated with the Parks Department.

8. Liability

In no event shall the City be liable for value or tax assertions/claims by the Donor. The Donor(s) agree(s) to hold the City harmless and indemnify the City for any and all claims which might arise from any person, entity or corporation, resulting from the Donor's use of the City property or right-of-way for installation purposes, or arising from the Donor's performance or improvement/item donated pursuant to this policy.

9. Other

This agreement shall be in effect for the life of the donated item in accordance with generally applicable standards administered by the Finance Department.

(Exhibit B)

Written Proposal

Date: 7/1/14

Applicant: Sam Sumsion / Boy Scouts of America

Address: 4135 Two creeks lane

Phone: 435-659-0704

Email: triples222@gmail.com

Scope of donation(s) (Why and what are you submitting for this request?)

To gain approval to build 2 benches for my eagle
Scout Project.

Location (Where are you proposing to donate the item(s)? maps, photos are encouraged. Please be specific)

On the nature trail behind the McPolin Barn. The
trail that goes through the trees

Type of Donation (Please provide size, shape, materials, quantity of donation.)

4 foot long benches with no back, made out of
trex or Synthetic material and Pressure treated wood. There
will be two benches

Approximate Cost of Donation

\$300

Sam Sumsion
Donation Letter of Intent

I am planning to build two (2) benches made of synthetic material on the nature trail through the trees behind the McPolin barn. I am doing this for my Eagle Scout Project. Estimated costs for this project will be around \$300. Myself along with some friends and family will be installing the benches ourselves. We will be installing the benches on the nature trail behind the McPolin barn. The is not the large gravel walking trail but the small dirt trail behind it that goes through the trees. I am planning to put one bench near the beginning of the trail and one near the end.

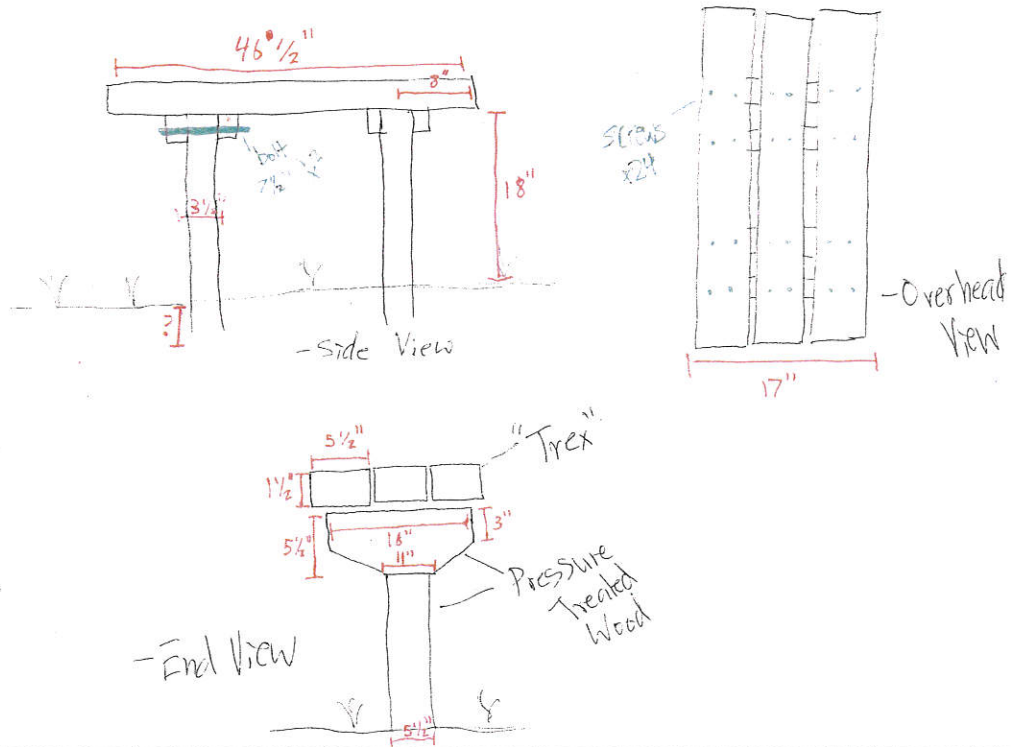


The red circles are the beginning and the end of the trail.

With the use of Trex or synthetic material, maintenance will be little, if it all. Kate Sattlemeier from Summit Land conservancy is helping me with my project and she requested to have a plaque on the benches for the Summit Land Conservancy. The top of the bench will be made with trex or synthetic material and the bottom will be made with pressure treated wood. I hope that these benches can be helpful to all those who walk along that trail. Attached are some photos of similar benches



Standard "Trex" Design



THIS AGREEMENT is made by and between PARK CITY MUNICIPAL CORPORATION (City) and Sam Sumsion (Donor(s)) to set forth the terms and conditions under which the City will permit the applicant to donate certain improvements on City property at _____

_____, (location), Park City, Utah.
Subject to the following terms and conditions of this agreement.

DATED this _____ day of _____, 20____

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

Attest:

[Signature]
Owner's Signature

4135 two creeks Lane
Mailing Address

Sam Sumsion
Owner's Name (Printed)

triples22@gmail.com
email address or phone number

STATE OF UTAH)
 ss
COUNTY OF SUMMIT)

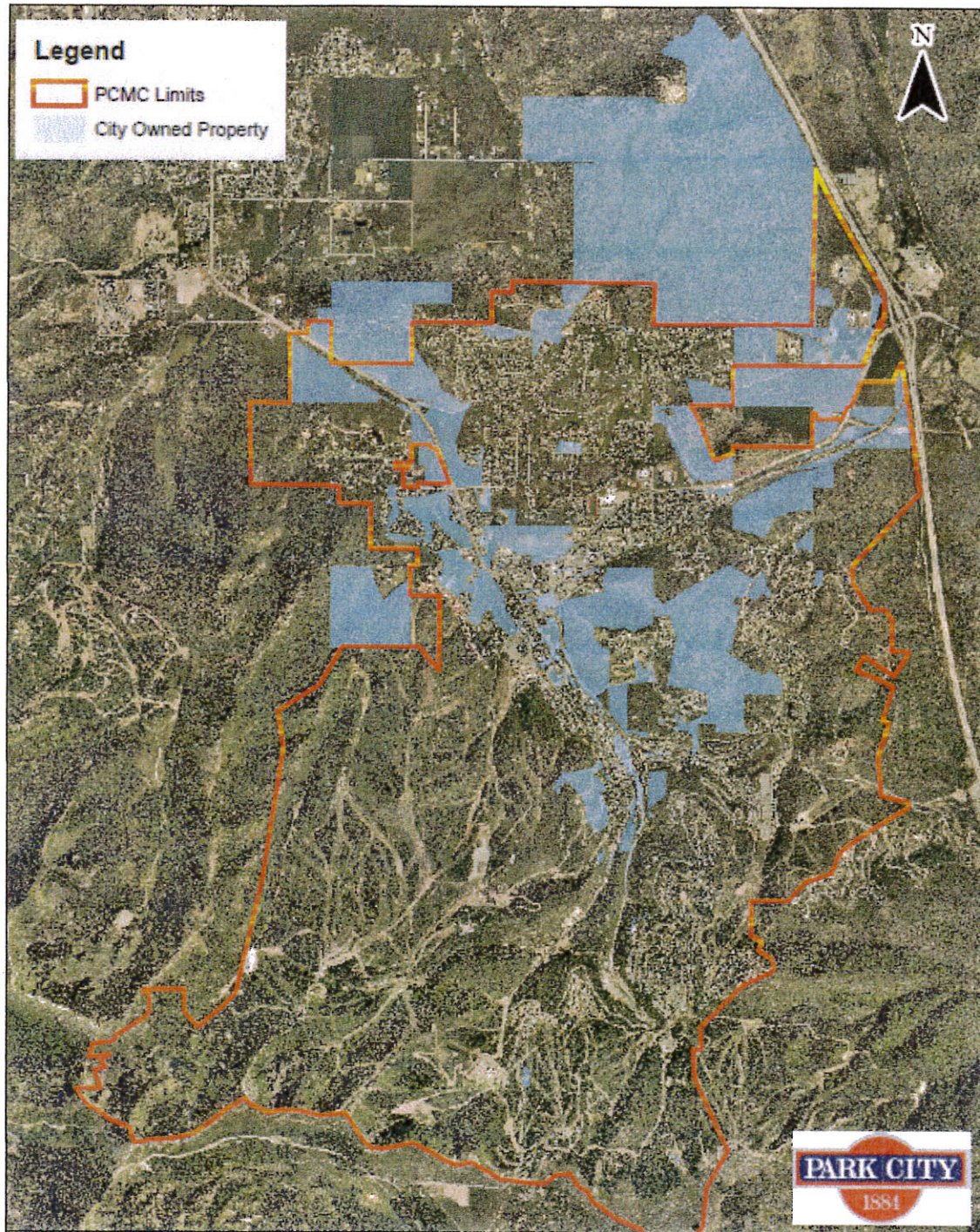
On the 11 day of July, 2014, _____ personally appeared before me Sam Sumsion who, being first duly sworn and upon oath, and in full recognition of the penalty for perjury in the State of Utah, did acknowledged to me that she/he is the Owner(s) of the property or, if the Owner(s) is a Corporation, that she/he is an authorized representative of the Corporation, and that she/he signed the foregoing instrument on their behalf.

Sharon C Bauman
Notary Public



EXHIBIT E

PCMC Owned Property



Park City Open Space (Exhibit E description continued)

1. Round Valley Open Space
2. Osguthorpe Conservation Easement
3. Armstrong Open Space
4. April Mountain/Masonic Hill Open Space
5. McPolin Farm Open Space (does not include barn structures and patio area)
6. Willow Ranch/Aspen Springs Open Space
7. Coalition Park Open Space
8. Rail Trail
9. Virginia Mining Claims/Rossi Hill Open Space
10. Iron Mountain/Colony Open Space
11. Town Lift
12. Quinn's Complex Open Space
13. PRI parcel
14. Quarry Mountain Open Space
15. Park City Heights Open Space
16. McLeod Creek Open Space (not including trail corridor)
17. Pace Open Space
18. North 40 Open Space
19. Triangle Parcel
20. Eagle Mountain Open Space
21. Huntsman Parcel adjacent to Hwy 224

Park City Urban Spaces and Parks (Exhibit F)

PARK CITY CEMETERY

CARL WINTERS

CITY PARK

MARSAC (No trees)

RACQUET CLUB

THAYNES CREEK RANCH

TRANSIT CENTER (No trees)

UPPER CHINA BRIDGE (No trees)

LOWER CHINA BRIDGE (No trees)

T.M.I. PARKING (No trees)

OLYMPIC WELCOME PARK

6TH STREET (No trees)

CREEKSIDE PARK

COALITION PARK

MAIN STREET WALK (No trees)

CITY PARK REC. BUILDING

SOUTH END OF CITY PARK

PROSPECTOR PARK

PROSPECTOR BUFFER STRIP

MAKING TRACKS

HUNTSMAN PARK

TROLLEY TURN AROUND

224 MEDIAN (No trees)
SANDRIDGE PARKING
SKATE PARK
248 MEDIAN (No trees)
ROTARY PARK (No trees)
HILLSIDE PARK
SENIOR CITIZENS CENTER
SIDEWINDER PARK
PUBLIC WORKS
MAWHINNIE PARK
HACKNEY COURT
SUNSET COURT
RIVER BURCH COURT
WHITE PINE
RED MAPLE
QUAKING ASPEN
MOUNTAIN OAK
RED PINE
QUINN'S – PARK CITY SPORTS COMPLEX
HOLIDAY RANCH PARK STRIP
COMSTOCK PARK STRIP
HILLSIDE PARKING LOT
ROUNDAABOUT
BONANZA MEDIAN/PARK STRIP
Poison Creek Pathway
McLeod Creek Pathway
Crescent Tram area
Round Valley Way Trailhead
Cove Trailhead
Quinn's Trailhead
Lost Prospector Trailhead
Guardsman Pass Trailhead
Park City Recreation Center Park/Outdoor areas
Solamere Trailhead
Mid Mountain Trailheads
Lost Prospector Trailhead

DONATIONS LIST (Exhibit G)

All proposed donations must meet City specifications and be approved by the Parks Department.

- Interior Plants
- Trees
- Shrubs
- Flowers

- Picnic tables
- Benches
- Playground equipment
- Drinking fountains (existing water service must be considered)
- Doggy waste dispensers or bags
- Ball Field Conditioner
- Ball Field Bleachers
- Recreational Equipment – (ball sports, swimming, exercise, etc.)
- Soccer or Lacrosse goals or nets
- Garbage cans
- Shade Structures
- Memorial Markers
- Flags (national or municipal)
- Trailhead (tools) kiosk/informational items
- Signage (informational and without sponsorship)
- Trailhead Kiosk
- Bicycle Racks



City Council Staff Report

Subject: Economic Development Grant Application - Soul Sports
Author: Jonathan Weidenhamer, Economic Development Manager
Kory Kersavage, Budget Analyst
Department: Sustainability & Budget
Date: July 17, 2014
Type of Item: Administrative - Award of Economic Development Grant

Summary Recommendations:

The City Council should approve an Economic Development Grant Contract in the amount of \$20,000 for Soul Sports for relocation and startup costs in a form approved by the City Attorney.

Topic/Description:

Economic Development Grant application.

Background:

The City Council agreed to update the criteria to consider award of Economic Development Grants as part of an update to the Budget Policy on July 10, 2014 (Exhibit A).

On June 2, 2014 staff received a grant application from Bryon Friedman, Founder and CEO of Soul Sports for business expansion and relocation to Park City. A panel of staff and Economic Development Council Liaisons Henney and Beerman reviewed the application on July 8, 2014.

Soul Sports Grant Application

This application was reviewed by the Economic Development Program Committee, which consists of representatives of the Economic Development and Budget, Departments, as well as Council Liaisons Beerman and Henney. Although the application was submitted under the old criteria the applicant consents to being reviewed under the new criteria.

In general the proposal is to relocate a sustainably based light-manufacturing, workshop, retail shop and office space to the Park City limits (Exhibit D). The owner and CEO, Bryon Friedman is from Park City and went to high school here. After 10 years on the World Cup ski circuit he co-founded, along with Erik Schlopy, Soul Sports as a "means to promote sustainability and social responsibility in the ski industry." Their manufacturing philosophy is to, "Build to the highest performance standards while creating no unnecessary harm", Soul Poles uses direct trade bamboo, recycled plastic grips, and post-consumer aluminum tips to build socially responsible and environmentally conscious ski and trekking poles.

Based on promising growth during the 2013-14 winter season the vision of Soul Sports is to develop a multi-season outdoor lifestyle brand that includes:

- A winter product line including outdoor apparel and accessories;
- Significant increase in local sales;
- Expansion of mobile workshop, build your own poles experience;
- Expansion of current workshop attraction of building your own ski pole on site; and
- Creation of a Maker's Space (think R&D incubator and conference space with state of the art manufacturing tools).

The grant request is specifically being requested for (this is an excerpt from the application):

1) Relocation and Expansion:

We believe business relocation and expansion go hand in hand. By relocation In order to absorb the moving and increased rent costs of an in-town location, Soul Sports will appropriate \$13,000 towards offsetting the higher costs of doing business from the Bonanza Park location. With increased foot traffic expected beyond current location, accessibility, and workshop services we expect to see an incremental revenue increase sufficient to offset the higher cost of rent in town after the first year that would prevent us from needing rent subsidy beyond year one.

Timeline	Type	Inputs	Throughputs	Outputs
1 Year	Personnel	\$1000	Moving Costs	Affordable relocation in Bonanza Park
	Non-Personnel	\$12000	Rent Subsidy	

2) Building Retrofit:

The development of an environmentally conscious business requires attention to detail, willingness to entertain creative solutions, and the embedment of environmental awareness in corporate culture. Soul Sports will allocate \$2,500 of the approved grant to the professional's fees and materials for retrofitting the determined space with reclaimed wood paneling, renewable bamboo surfaces, and up-cycled and repurposed materials to build and adorn the space while actualizing low-tech sustainability modifications like rain barrels for watering plans, passive solar, bike racks, and insulation improvements where possible. Built with utmost consideration for the triple-bottom line: sustainability, community, and bottom-line profit in mind, Soul Sports will divert these resources to create a space attractive for families, visitors, and customers.

Timeline	Type	Inputs	Throughputs	Outputs
Year 1	Personnel – 1099 labor	\$3000	Time dedicated to constructing showroom, workshop, and low-tech sustainability modifications.	Showroom, Office, workshop

3) Makers Space:

For a one-time seasonal fee or pay-as-you-go pricing, Soul Sports will make effective use of the Soul Poles manufacturing space for summer workshop events, classes, and makers membership use. With community events and a more centralized location, Soul Sports will act as a hub for sustainability, recreation, art, music and civic engagement in Park City. \$3,000 will be dedicated to purchasing tools, and materials for an additional build out of the art and community spaces. The programs shall remain sustainable with minimal inputs after all tools and surfaces are in place.

Timeline	Type	Inputs	Throughputs	Outputs
Year 1	Personnel	\$1500	Construct working surfaces, art lockers, and functional space	Art space
	Non-Personnel	\$2500	Art Materials/Tools	

Analysis

On July 10, 2014 the City Council adopted updated Grant Criteria (Exhibit B). The former criteria did not provide the flexibility that previous City Councils were looking for when considering grant applications. Staff believes the proposed changes will allow Council to balance their economic development priorities within other stated community goals.

Soul Sports Grant Application - The review according to criteria is included in *italics*.

1. **Criteria #1** – The organization must demonstrate a sound business plan that strongly supports prioritized Goals of the current City Economic Development Plan. *Soul Sports exhibits a sound business plan in line with Council goals. Examples of the ways in which the business plan meet council goals include: 1) An effort to use recycled materials for construction which meets the Council goal of preserving the natural environment; 2) the use of Soul Poles manufacturing space for workshop events, classes and maker crafting, which will bring in additional sales tax revenue in addition to supporting the Inclusive Community council goal by creating a gathering space for the community 3) Supporting continued success of the multi-seasonal tourism economy by providing activities available during the summer as well as winter seasons and 4) Helping Park City continue to grow as an arts and culture hub by encouraging the use of its facilities for the creation of art as well as providing classes and instruction to help aspiring artists.*
2. **Criteria #2** – Organizations must commit to and demonstrate the ability to do business in the City limits no less than three years. Funding cannot be used for one-time events. *The business plan demonstrates a plan to provide rent for the next year. Rent in future years will be afforded based on incremental revenues stemming in growth of the company after the first year. The plan for an installation of fixtures in the new rental space indicates an intention of long term*

residency. Per Criteria 5, they have committed to providing a balance sheet to show they can afford rent in future years.

3. **Criteria #3** — The organization must produce items or provide services that are consistent with the Economic Development Work Plan and be consistent with the City's General Plan and enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City. The organization must demonstrate there is more identifiable benefits than detriment when weighed against the balanced goals of the General Plan through the attached score sheet as well as identify areas where the proposal is consistent or inconsistent with the City's biennial strategic plans. the proposal is consistent with the World Class, Multi-Seasonal Resort Destination Biennial Strategic Plan Key Strategy of Pursuing Development and Redevelopment Consistent with the General Plan and specific Area Plans as well as the Desired Outcome of providing unique and diverse businesses. *Indirect Benefits - The business plan provided by Soul Poles indicates that an ED grant would help fund the creation of a space which will be used as a community unifying space. This space will promote art within the community and provide an opportunity for those with diverse backgrounds to come together in a common pursuit, by creating a culture of environmental consciousness and social entrepreneurship. The business plan also promotes an emphasis upon sustainability, which is a pursuit of the City Council. The following was submitted by Soul Sports in response to this criteria:*

In town, Soul Sports will be known for not only being the voice of sustainability and social responsibility in the outdoor industry, but also the product of a model, environmentally-conscious community. If awarded the relocation and assistance grant, Soul Sports will commit to converting the determined space into a symbol of pride for a sustainable Park City.

By nurturing an inclusive community of diverse businesses, Park City can stray away from the label of being a "resort town." Yes, there are resorts here, but by bringing in business like Soul Sports, PCMC will be providing a community, art, and lifestyle gathering space where people can come to learn, have fun, and be inspired. In order to cultivate the growth of vibrant art and cultural offerings here in Park City, for a one-time seasonal fee or pay-as-you-go pricing, Soul Sports will make effective use of the Soul Poles manufacturing space for workshop events, classes, and maker crafting.

List of indirect benefits:

SP Media Placement - national, regional, and local media outlets (magazines, blogs, films such as Freeskier Magazine, Powder Magazine, Warren Miller, Level One etc.)

SP Mobile Workshop Tour - western united states/canada marketing and branding coverage complete with hands-on workshop experiences (Utah, Colorado, California, Idaho, Washington, Oregon, and British Columbia).

Direct Benefits – See Criteria #5.

4. **Criteria #4 – Fiscal Stability and Other Financial Support:** The organization must have the following: (1) A clear description of how public funds will be used and accounted for; (2) Other funding sources that can be used to leverage resources; (3) A sound financial plan that demonstrates managerial and fiscal competence. *The use of the ED grant funds has been well outlined in detail in the application. They will be used to retrofit the building that will be rented, and to create a “maker’s space”. The additional funds will be obtained by charging for the use of the maker’s space. A financial plan has also been presented which demonstrates managerial and fiscal competence, with the exception of a plan to cover rent beyond the first year of relocation to Park City.*
5. **Criteria #5 – Can forecast at the time of application an ability to achieve direct or indirect economic/tax benefits equal to or greater than the City’s contribution.** *The City collects approximately 2.65% in sales tax, which would require approximately \$750,000 in sales. The applicant forecasts the ability to achieve a combination of direct and indirect benefits equal to the City’s contribution through the following Evaluation (from their application):*

Project Evaluation

If awarded the grant, the success of Soul Sports relocation and assistance will be measured based on the project and submitted to PCMC within one year of the grant’s exhaustion.

Relocation: Soul Sports shall submit a balance sheet within one year of the grant’s exhaustion showcasing the company’s ability to afford the acquired space.

Building Retrofit: 500 questionnaires and a summary sheet will be submitted to PCMC within one year of the grant’s exhaustion. The questionnaire will be distributed during maker’s workshops and community events. The specific questions pertaining to the building retrofit will ask whether Soul Sports effectively utilized public funds to construct a functional and presentable business, community, and art space.

Makers Space: 500 questionnaires and a summary sheet will be submitted to PCMC within one year of the grant’s exhaustion. The questionnaire will be distributed during maker’s workshops and community events. The specific questions pertaining to the Makers Space will ask whether Soul Sports utilized public funds to create a business hub for sustainability, recreation, art, music and civic engagement in Park City.

The Budget Department talked with Soul Sports and reviewed the sales and growth patterns over the last 2 year. They also reviewed the 5-year business plan. Soul Sports have seen a 75% growth over the last year. Product awards in numerous national ski and outdoor magazines have aided this growth significantly. The company projects an annual growth rate of 30% over the next

several years on their current equipment line. They also have plans to expand their retail line to include year round products. The primary business of Soul Sports is focused on the experience that is created in helping the customers create their own poles in the workshop. The majority of sales come for these workshop events. The Budget Department has determined that over the 3-year contract period, through a combination of direct sales and indirect economic benefits, Soul Sports will provide benefits equal to or greater than the \$20,000 contribution.

In addition to direct sales tax there are a series of indirect economic benefits associated with the business relocation:

- Marketing & national media exposure. The appendix included in the application includes a series of articles in national publications exposing the business. This marketing ultimately highlights Park City's commitment to sustainable, local business, rooted in outdoor products;
- Soul Sports relocation into the Iron Horse District has synergies with existing, locally owned outdoor businesses including Podium Skis and Skis on the Run and Switchback Sports. Staff believes creating a critical mass of this type of business will create a niche, and help brand the District, consistent with General Plan goals which should build on itself;
- Creating year round jobs;
- Consistency with Economic Development Targeted Industries supported by Council at their December 5, 2013 Study session. The entire list (exhibit C) included the following areas which this application is consistent with:

Tourism & Recreation

Outdoor recreation & sports

Training facilities

Guided tours

Destination resorts and ancillary services

Agra tourism & Boutique Industry (craft brewing/distilling, candy, skis, etc.)

Consumer Products

Sports & Outdoor Products

General merchandise

Professional Services

Financial activities

Corporate Headquarters

Incubation and/or innovation center.

6. **Criteria #6** – The organization should show a positive contribution to diversifying the local economy by increasing year-round business opportunities, creating new jobs, and increasing the local tax base. The year-round economy will be bolstered by Soul Poles as it will sell equipment in the winter time, while providing a work space and activities during the summer time. This will be a year-

round revenue generator. This will create an increase in local sales tax as well as a spark for locals looking to pursue artistic vocations.

Issues for Discussion

1. Does Council agree with the staff and Council Liaisons' recommendation on an award and a specific amount of \$20,000?
2. Is Council comfortable considering merits of additional Economic Development grants during FY 2015 on a case by case basis?

Significant Impacts

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Multi-seasonal destination for recreational opportunities + Accessible and world-class recreational facilities, parks and programs + Balance between tourism and local quality of life + Unique and diverse businesses + Multi-seasonal destination for recreational opportunities	+ Reduced municipal, business and community carbon footprints + Managed natural resources balancing ecosystem needs	+ Residents live and work locally + Physically and socially connected neighborhoods + Skilled, educated workforce + Jobs paying a living wage	+ Engaged, capable workforce
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Positive 	Positive 	Very Positive 	Positive 
Comments:				

Funding

Staff received this application on June, 2 2014 before the end of the 2014 Fiscal year. We were unable to present it to City Council before the end of the 2014 FY. Therefore any award will come out of the 2015 FY. Budget and Economic Development Staff recommend that Council consider adding an additional \$20,000 to the Grant program if/when we receive another application based on not spending FY 2014 money. This could be done at their discretion at the time of any new application. Without the specific details and location of any second application, it is difficult to anticipate the appropriate funding source.

Department Review:

This report has been reviewed by Legal, Budget and the City Manager.

Recommendation:

The City Council should approve an Economic Development Grant Contract in the amount of \$20,000 for Soul Sports for relocation and startup costs in a form approved by the City Attorney.

Exhibits

Exhibit A	Draft Grant Contract
Exhibit B	Economic Development Grant Criteria General Plan Goals Biennial Strategic Plan Goals - http://www.parkcity.org/Biennial Plan 15/16
Exhibit C	Targeted Industries – Identified during Council 12.5.13 Study Session
Exhibit D	Soul Sports Grant Application and Proposed Use of Funds

Exhibit A – Draft Grant Contract

Economic Development Grant Contract

ECONOMIC DEVELOPMENT GRANT CONTRACT BETWEEN SOUL SPORTS AND PARK CITY MUNICIPAL CORPORATION

THIS AGREEMENT is made and entered into this 26th day of June, 2014, by and between **Soul Sports** and **PARK CITY MUNICIPAL CORPORATION** (hereinafter “City”).

WITNESSETH:

WHEREAS, as part of the budget process, the City Council appropriates Economic Development funds to contract with organizations who meet the economic development grant program requirements outlined by the City’s Budget Policy; and

WHEREAS, organizations must meet certain criteria in order to be eligible for an Economic Development Grant Contract; and

WHEREAS, applicants are eligible to apply for an Economic Development Grant Contract year round, the City will award Contracts through an application process administered by the Economic Development Grant Program Committee; and

WHEREAS, pursuant to Sections 10-8-2 and 10-2-84 of the Utah Code Annotated, the City Council hereby finds that the provision of City funds herein is consistent with the Park City General Plan, and provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City; and

WHEREAS, notwithstanding the recitals above, the City desires to provide grant funds in exchange for positive economic impact benefit at least equal to the current fair market value to the City’s contribution; and

WHEREAS, the Economic Development Grant program committee evaluated and approved the Economic Development grant request by Soul Sports for assistance towards rent subsidy and relocation costs.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the sufficiency of which is hereby acknowledged, that parties agree as follows:

ARTICLE I

TERM AND ALLOCATION

Soul Sports shall have an Economic Development Grant contract with a term of three years. The City will allocate the full grant amount upon execution by both parties.

TOTAL amount available for allocation: \$20,000

ARTICLE II

SERVICES TO THE COMMUNITY

In exchange for the City's contribution, Soul Sports agrees to:

- Operate the Business in Park City for a minimum of three years.

Both parties agree that the above service provided to the community represents a good faith exchange of current fair market value for the City's contribution.

ARTICLE III **HOLD HARMLESS/NO AGENCY**

Soul Sports agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from and against all losses and expenses, including costs and attorney's fees, resulting from any injury, including death, to any person or damages to property of others arising out of the acts or omissions of Soul Sports in the performance of work under this agreement. Soul Sports is an independent entity and nothing herein shall be construed to create any agency, nor employee relationship with the City.

ARTICLE IV **DISSOLUTION**

On dissolution of the organization or project prior to three years any remaining funds attributable to the City shall revert to the City in a prorated amount.

ARTICLE V **RECORD KEEPING/AUDIT**

Soul Sports agrees to keep accurate books and records of expenditures related to its operation. The City or its independent auditor reserves the right to conduct its own audit of books and records at reasonable times and places during ordinary business hours. If the grant money has not been used as agreed herein, the City shall be entitled to a full or partial refund of the grant.

ARTICLE VI **AMENDMENT**

This Agreement may be amended with the approval of the City Council and Soul Sports. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

ARTICLE VII **EFFECTIVE DATE**

The effective date of this Agreement is the date first written above.

PARK CITY MUNICIPAL CORPORATION

Diane Foster, City Manager

Attest:

Marci Heil, City Recorder

Approved as to form:

Mark Harrington, City Attorney

Soul Sports

Bryon Friedman, CEO

STATE OF UTAH)

) ss.

COUNTY OF SUMMIT)

On this ____th day of June, 2014 before me, the undersigned notary, personally appeared Bryon Friedman, personally known to me/proved to me through identification documents allowed by law, to be the person whose name is signed on the preceding or attached document, and acknowledged that he signed it voluntarily for its stated purpose as Manager of Local Tourist.

Notary Public



Exhibit B –Grant Criteria

ECONOMIC DEVELOPMENT GRANT POLICY (adopted 7.10.14)

Annually, the City will allocate \$20,000 to be used towards retaining and growing existing businesses and attracting and promoting new organizations that will fulfill key priority goals of the City's Biennial Strategic Plans and General Plan. Funding will be available for relocation and/or expansion of current businesses, and new business start-up costs only.

ED Grant Distribution Criteria: Applications will be evaluated on the following criteria in order to be eligible for an ED Grant:

Criteria #1 – The organization must demonstrate a sound business plan that strongly supports prioritized Goals of the current City Economic Development Plan.

Criteria #2 –Organizations must commit to and demonstrate the ability to do business in the City limits no less than three years. Funding cannot be used for 1-time events.

Criteria #3 – The organization must produce items or provide services that are consistent with the Economic Development Work Plan and be consistent with the City's General Plan and enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City. The organization must demonstrate the proposal is consistent with the World Class, Multi-Seasonal Resort Destination Biennial Strategic Plan Key Strategy of Pursuing Development and Redevelopment Consistent with the General Plan and specific Area Plans as well as the Desired Outcome of providing unique and diverse businesses.

Criteria #4 – Fiscal Stability and Other Financial Support: The organization must have the following: (1) A clear description of how public funds will be used and accounted for; (2) Other funding sources that can be used to leverage resources; (3) A sound financial plan that demonstrates managerial and fiscal competence.

Criteria #5 – Can forecast at the time of application an ability to achieve direct or indirect economic/tax benefits equal to or greater than the City's contribution.

Criteria #6 – The organization should show a positive contribution to diversifying the local economy by increasing year-round business opportunities, creating new jobs, and increasing the local tax base.

The City's Economic Development Program Committee will review all applications and submit a recommendation to City Council, who will have final authority in judging whether an applicant meets these criteria.

Economic Development Grant Fund Appropriations: The City currently allocates economic development funds through the operating budget of the Non-Departmental section of the budget. Of these funds, no more than \$20,000 per annum will be available for ED Grants.

Unspent fund balances at the end of a year will not be carried forward to future years.

ED Grant Categories: ED Grants will be placed in three potential categories:

(1) Business Relocation Assistance – This category of grants will be available for assisting an organization with relocation and new office set-up costs. Expenses that could be covered through an ED Grant include but are not limited to moving costs, leased space costs, and fixtures/furnishings/ and equipment related to setting up office space within the City limits.

(2) New Business Start-up Assistance - This category of grants will be available for assisting a new organization or business with new office set-up costs. Expenses that could be covered through an ED Grant include but are not limited to leased office space costs and fixtures/furnishings/ and equipment related to setting up office space within the City limits.

(3) Business Expansion Assistance - This category of grants will be available for assisting an organization or business with expansion costs. These expansions should increase square footage, increase year-round jobs in city limits and/or increase tax revenue; or demonstrate a venture into an area considered a diversification of our economic base

Application Process: Application forms may be downloaded from the City’s www.parkcity.org website or available for pick-up within the Economic Development Office of City Hall. Funds are available throughout the City’s fiscal year on a budget available basis.

Award Process: The disbursement of the ED Grants shall be administered pursuant to applications and criteria established by the Economic Development Department, and awarded by the City Council consistent with this policy and upon the determination that the appropriation is necessary and appropriate to accomplish the economic goals of the City.

ED Grants funds will be appropriated through processes separate from the biennial Special Service Contract and ongoing Rent Contribution and Historic Preservation process.

The Economic Development Program Committee will review all applications and forward a recommendation to City Council for authorization. All potential awards of grants will be publicly noticed 14 days ahead of a City Council action.

Nothing in this policy shall create a binding contract or obligation of the City. Individual ED Grant Contracts may vary from contract to contract at the discretion of the City Council. Any award of a contract is valid only for the term specified therein and shall not constitute a promise of future award. The City reserves the right to reject any and all proposals, and to waive any technical deficiency at its sole discretion. Members of the City Council, the Economic Development Program Committee, and any advisory board, Task Force or special committee with the power to make recommendations regarding ED Contracts are ineligible to apply for such Contracts. City Departments are also ineligible to apply for ED Contracts. All submittals shall be public records in accordance with government records regulations (“GRAMA”) unless otherwise designated by the applicant pursuant to UCA Section 63-2-308, as amended.

General Plan Goals Score sheet

Small Town

Goal 1: Park City will protect undeveloped lands, discourage sprawl, and direct growth inward to strengthen existing neighborhoods

Objectives:

1A: Direct complimentary land use and development into existing neighborhoods that have available infrastructure and resource capacity.

1B: Each neighborhood should have a well-defined edge, such as open space or a naturally landscaped buffer zone, permanently protected from development, with the exception of the transition areas where two adjacent neighborhoods merge along an established transportation path.

1C: Primary residential neighborhoods should encourage opportunities to enhance livability with access to daily needs, including: a mini market, a neighborhood park, trails, community gardens, walkability, bus access, home business, minor office space, and other uses that are programmed to meet the needs of residents within the neighborhood and complement the existing context of the built environment.

1D: Increase neighborhood opportunities for local food production within and around City limits. Sustainable agriculture practices should be considered within appropriate areas.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 2: Park City will emphasize and preserve our sense of place while collaborating with the Wasatch Back and Salt Lake County regions through regional land use and transportation planning.

Objectives:

2A: A regional land-use planning structure should be integrated within a larger transportation network built around transit.

2B: Regions should be bounded by and provide a continuous system of greenbelt/wildlife corridors to be determined by natural conditions.

2C: Regional institutions and services (e.g. government, stadiums, museums, etc.) should be located within existing development nodes.

2D: Materials and methods of construction should be specific to the region, exhibiting a continuity of history and culture and compatibility with the local character and community identity.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 3: Park City will encourage alternative modes of transportation on a regional and local scale to maintain our small town character.

Objectives:

3A: Streets, pedestrian paths and bike paths should contribute to a system of fully connected and interesting routes to all destinations. Their design should encourage pedestrian and bicycle use by being small and spatially defined by buildings, trees, signs, and lighting; and by discouraging high-speed traffic.

3B: Prioritize efficient public transportation over widening of roads to maintain the *Small Town* experience of narrow roads, modest traffic, and Complete Streets.

3C: Public transportation routes should be designed to increase efficiency of passenger trips and capture increased ridership of visitors and locals.

Impacts Goal:		
Positively	Negatively	neutral/unsure

NATURAL SETTING

Goal 4: Open Space: Conserve a connected, healthy network of open space for continued access to and respect for the *Natural Setting*.

Objectives:

4A: Protect natural areas critical to biodiversity and healthy ecological function.

4B: Buffer entry corridors from development and protect mountain vistas to enhance the natural setting, quality of life, and visitor experience.

4C: Prevent fragmentation of open space to support ecosystem health, wildlife corridors, and recreation opportunities.

4D: Minimize further land disturbance and conversion of remaining undisturbed land areas to development to minimize the effects on neighborhoods.

4E: Collaborate with neighborhoods to create small parks or passive open space areas.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 5: Environmental Mitigation: Park City will be a leader in energy efficiency and conservation of natural resources reducing greenhouse gas emissions by at least fifteen percent (15%) below 2005 levels in 2020.

Objectives:

5A: Encourage development practices that decrease per capita carbon output, decrease vehicle miles traveled, increase carbon sequestration, protect significant existing vegetation and contribute to the community emission reduction goal.

5B: Encourage efficient infrastructure to include water conservation, energy conservation, renewable resource technology, decreased waste production, green public transit, and increased road and pathway connectivity.

5C: Park City Municipal Corporation will be a strong partner in efforts to reduce community GHG emissions, leading by example and providing policy guidance while promoting personal accountability and community responsibility.

5D: Align transportation goals with sustainable goals that reflect all four Core Values of the City.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 6: Climate Adaptation: Park City will implement climate adaptation strategies to enhance the City's resilience to the future impacts of climate change.

Objectives:

6A: Prepare for probable scenarios that could threaten health, welfare, and safety of residents. Implementation of climate adaptation strategies is necessary to become more resilient to wildfire, flood, and drought.

6B: Encourage opportunities for local food production and sales of food produced regionally.

6C: Support ecosystem health, biodiversity, and natural buffers between development and sensitive lands.

6D: Encourage regional planning efforts as a mechanism to mitigate population growth.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Sense of Community

Goal 7: Life-cycle Housing: Create a diversity of primary housing opportunities to address the changing needs of residents.

Objectives:

7A: Increase diversity of housing stock to fill voids within housing inventory (including price, type, and size) to create a variety of context sensitive housing opportunities.

7B: Focus efforts for diversity of primary housing stock within primary residential neighborhoods to maintain majority occupancy by full time residents within these neighborhoods.

7C: Focus future nightly rental units to resort neighborhoods - near Park City Mountain Resort and Deer Valley.

7D: Facilitate the implementation of a housing plan that promotes economic diversity.

7E: Create housing opportunities for the City's aging population (e.g. step-down housing, community housing, cottage style units).

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 8: Workforce Housing: Increase affordable housing opportunities and associated services for the work force of Park City.

Objectives:

8A: Provide increased housing opportunities that are affordable to a wide range of income levels within all Park City neighborhoods.

8B: Increase rental housing opportunities for seasonal workers in close proximity to resorts and mixed use centers.

8C: Increase housing ownership opportunities for work force within primary residential neighborhoods.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 9: Parks & Recreation: Park City will continue to provide unparalleled parks and recreation opportunities for residents and visitors.

Objectives:

9A: Maintain local recreation opportunities with high quality of service, exceptional facilities, and variety of options.

9B: Locate recreation options within close vicinity to existing neighborhoods and transit for accessibility and to decrease vehicle miles traveled. Grouping facilities within recreational campuses is desired to decrease trips.

9C: Optimize interconnectivity by utilizing bus/transportation services to recreation facilities.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 10: Park City will provide world-class recreation and public infrastructure to host local, regional, national, and international events that further Park City's role as a world-class, multi-seasonal destination resort while maintaining a balance with our sense of community.

Objectives:

10A: Remain competitive as a world-class, multi-season, destination resort community by increasing year-round recreation events and demand for resort support services, such as hotels and restaurants.

10B: Balance tourism events with preservation of small town character and quality of life. Locate larger tourist activities close to resorts and/or existing facilities. Locate community facilities close to primary residential areas.

10C: Public infrastructure improvements and programming should consider the visitor experience to Park City during large events and master festivals.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 11: Support the continued success of the multi-seasonal tourism economy while preserving the community character that adds to the visitor experience.

Objectives:

11A: The vibrancy of Park City's resorts is essential to the success of resort support businesses. The City must provide flexibility to allow the primary resorts to evolve with the tourism industry, increase occupancy rates year round, and create more demand for the resort support industries throughout the City.

11B: Preservation of our community core values of Small Town, Natural Setting, Sense of Community, and Historic Character is essential to maintaining the unique Park City Experience for visitors and residents. Regulate design of new development to compliment the community's core values and protect the Park City Experience.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 12: Foster diversity of jobs to provide greater economic stability and new opportunities for employment in Park City.

Objectives:

12A: Retain and expand existing Park City businesses.

12B: Improve the balance of jobs-to-housing ratio in Park City through efforts to attract higher paying jobs and workforce housing strategies.

12C: Support local owned, independent businesses that reflect the core values of Park City and add to the Park City experience.

12D: Minimize commercial retail chains on Main Street and the impacts of big box and national chains on the unique Park City experience.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 13: Arts & Culture: Park City will continue to grow as an arts and culture hub encouraging creative expression.

Objectives:

13A: Increase cultural, arts, and entertainment-related events that diversify and support our tourism-based economy.

13B: Foster and enhance the vitality of Park City's local arts and cultural sectors.

13C: Encourage the installation of public art on private property, public space, parks, trails, and streets that represent Park City's core values.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 14: Living within Limits: The future of the City includes limits (ecological, qualitative, and economic) to foster innovative sustainable development, protect the community vision, and prevent negative impacts to the region.

Objectives:

14A: Provide reliable public resources to ensure the health, welfare, and safety of residents and visitors.

14B: Manage growth to protect the quality of life and preserve the unique *Park City Experience* by recognizing limits to growth and adopting responsible policies that are consistent with those limits. Look at policies to offset this growth through efficiencies and renewables.

14C: Provide safe drinking water to residents and visitors. Set limits to future demand based on available sources and expense of available sources.

14D: Prevent degradation of air quality through the implementation of best practices for land use, clean energy, regional transportation, and growth management.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Historic Character

Goal 15: Preserve the integrity, mass, scale, compatibility and historic fabric of the nationally and locally designated historic resources and districts for future generations.

Objectives:

15A: Maintain the integrity of historic resources within Park City as a community asset for future generations, including historic resources locally designated on the Park City Historic Sites Inventory and its two National Register Historic Districts – the Main Street Historic District and the Mining Boom Era Residences Thematic District.

15B: Maintain character, context and scale of local historic districts with compatible infill development and additions.

15C: Increase local knowledge of historic preservation principles and accepted standards through increased public education and programming.

15D: Provide additional public education/programming to connect property owners and financial incentives in an effort to offset the high cost of restoration.

15E: Encourage adaptive reuse of historic resources.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Goal 16: Maintain the Historic Main Street District as the heart of the City for residents and encourage tourism in the district for visitors.

Objectives:

16A: Support “adaptive re-use” of buildings along Main Street through incentives to property owners and businesses.

16B: Limit uses within the first story of buildings along Main Street to retail and restaurant establishments that are inviting to the passing pedestrian. Uses that should be discouraged include office space, real estate show rooms, parking, etc.

16C: Utilize Main Street as a backdrop/setting for cultural events, festivals, and celebrations.

Impacts Goal:		
Positively	Negatively	neutral/unsure

Total Score/15		
Positively	Negatively	neutral/unsure

Biennial Plan

The Biennial Strategic Plan draws on Park City 2030, the Business Plans, and the Budget Document to give a summary of the City's approach over the next two years to pursue Council Priorities and the Community Vision. This document is used to report highlights of the Strategic Planning Process to Council during their annual Visioning Session, and it is updated every two years.

The current Biennial Plan to be provided by the Economic Development Department along with application forms at the request of the applicant. The 2015 – 2016 Plan can be found at:

<http://www.parkcity.org/Modules/ShowDocument.aspx?documentid=10646>

Exhibit C – Targeted Industries Excerpt

Targeted Industries

Since 2003 the City Council has updated an economic development strategic plan annually during the visioning session. Recently that morphed into a biennial strategic plan and business plan. Economic Development Excerpts of the FY 13-14 Sustainability Business Plan are found as Exhibit F. The four strategies stated are:

1. Support & Manage World Class Events;
2. Provide Amenities, Facilities, Trails & Infrastructure;
3. Pursue Development and Redevelopment Consistent with General & Area Plans; and
4. Retain & Attract Diversified Business Types.

City Council held a study session on business recruitment and retention on December 13, 2012: <http://www.parkcity.org/Modules/ShowDocument.aspx?documentid=10389>. Staff was in progress on a follow up Retention and Attraction Plan when the Joint Task Force was created (Overview, Exhibit G). Concurrently included in the effort was creation of a potential “tool box”, which Economic Development staff produced to help inform the draft general plan (Exhibit H). We chose to put the draft plan and follow up discussion on the back burner so it could be better informed by the outcomes of the task force work and subsequent policy direction from the entire City Council.

Through six months of research, data collection, interviews, consultant meetings and Task Force discussions, the EDTF has made *preliminary suggestions* for Council consideration. The red highlighted programs are recommended as “highest priority”; the yellow ones as “important”, but falling just short of the top priorities:

Tourism & Recreation

Outdoor recreation & sports

Training facilities

Guided tours

Destination resorts and ancillary services

Agra tourism & Boutique Industry (craft brewing/distilling, candy, skis, etc.)

Performing Arts, Film

Music

Theater

Film/Video/digital media

Consumer Products

Sports & Outdoor Products

General merchandise

Life Sciences

- Healthcare services

- High Altitude Training & Sports Medicine

- Boutique healthcare services (cosmetic, weight loss, etc.)

Professional Services

- Financial activities

- Corporate Headquarters

- Incubation and/or innovation center

Software & IT

- Software & Web Apps

- Broadband (fiber)

Exhibit D – Soul Sports Application

Soul Sports
6440 Business Park Loop Rd.
Suite N.
Park City, UT 84098

June 23, 2014
Jonathan Weidenhamer
Economic Development Manager
Park City Municipal Corporation
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060

Dear Mr. Weidenhamer,

I am pleased to submit the enclosed proposal to the Park City Municipal Corporation (PCMC). We are requesting \$20,000 in Business Relocation and Expansion Assistance to cover the cost of moving and rebuilding Soul Sports manufacturing, workshop, retail, and office space within Park City's city limits. As you may or may not be aware, Soul Sports current location in the Silver Summit Business Park has acted as a buffer between our local customer base, employee housing, and Park City tourist visitors and the Soul Sports (Soul Poles) brand.

We understand that PCMC intends to allocate \$20,000 towards the relocation and expansion of locally-owned businesses producing items or providing services consistent with the Park City Economic Development Work Plan, Biennial Plan, and General Plan. We hope you will assist us this year in growing our business in a new space where we can most effectively interact with our customers, promote the Park City brand, and diversify Park City's year-round employment opportunities.

Please visit our website at www.soulpoles.com or call me at (435) 901-8754 if you have any questions. If you'd like to visit our current location, I'd be happy to show you around the Soul Poles workshop here in Silver Summit.

Sincerely,

Bryon Friedman
Founder, CEO

Proposal Summary

Soul Sports was born from the perceived need to raise awareness for the environmental and social challenge posed by Climate Change. Using inspiring imagery, words, and ethos, Soul Sports is committed to building quality products that inspire momentous living and the protection of the playgrounds we love. In its fourth year of existence, Soul Sports sits on the cusp of a breakthrough in the ski industry with its Soul Poles brand and is highly motivated to pursue a four-season brand driven by the company's core values: transparency, social and environmental responsibility, good vibes, quality, simplicity, and community.

Soul Sports is currently located in Silver Summit and sees highway 40 and Round Valley as a significant barrier preventing the company from gaining the local traction it needs to launch its four-season brand, "Soul Play." With access to funding for relocation and expansion Soul Sports believes it can build a brand and space to attract Park City visitors, residents, and businesses within Park City. Through relocation to Park City's core, a sustainable building retrofit, and maker's space Soul Sports hopes to demonstrate how it can positively contribute to the diversification of the local economy, create a community meeting space, engage citizens in a civic dialogue, and promote the Park City brand as an artsy, environmentally conscious city with incredible year-round recreation opportunities.

The following proposal requests funding to the tune of \$20,000 for the relocation and expansion of Soul Sports, and offers a composite evaluation design including submitted balance sheets showcasing the investments in relocation and retrofitting as well as a public questionnaire and summary sheet describing the ease-of-use of Soul Sports' makers space. All programs and project undertakings enclosed in the attached proposal are designed to continue into perpetuity without additional cash infusions. Soul Sports thanks you for your time and consideration of this proposal to relocate and expand Soul Sports into the geographic and cultural core of Park City.

Soul Sports Introduction

Raised by the Wasatch, Soul Sports co-founder and CEO, Bryon Friedman spent the majority of his youth honing his skills as a ski racer and musician. After graduating from the Winter Sports School (where he now serves on the Board of Trustees), Bryon was offered a position on the U.S. Ski Team, where he flourished for ten years on the World Cup before losing control at 65 miles per hour during a training run in Chamonix. This hiccup in his ski career would bring Bryon back home in 2005 to co-found the World Cup Dreams Foundation dedicated to helping National Alpine Ski Team members gain the financial resources needed to recover from season ending injuries and achieve their ski racing goals to compete at their highest level. Following the founding of World Cup Dreams, Bryon was voted 2009's #1 emerging singer-songwriter on Sirius/XM's "Coffeehouse" radio. Pushing forward to 2010, Bryon and fellow U.S. Ski Team member, Erik Schlopy, founded Soul Sports as a means to promote sustainability and social responsibility in the ski industry.

Since inception, Soul Sports has directed nearly all of its energy to the development of the Soul Poles brand. Built to the highest performance standards, while creating no unnecessary harm, Soul Poles use direct trade bamboo, recycled plastic grips, and post-consumer aluminum tips to build socially responsible and environmentally conscious ski and trekking poles. Soul Poles endorsing athletes include freestyle skiers Alex Schlopy (11th AFP ski slopestyle)ⁱ, Aaron Blunck (2nd AFP ski halfpipe)ⁱⁱ, Conor Pelton (16th FWT big mountain)ⁱⁱⁱ, Kaylin Richardson^{iv}, Tatum Monod^v, and Lucy Sackbauer (1st big mountain telemark)^{vi}. Soul Poles has also received the honor of Powder Magazine's 2012 Gear of the Year Award as well as Ski Magazine's 2011-12 "Stuff we Like."^{vii}^{viii}

Going into the '13-14 season, Soul Poles hired on former Little Cottonwood Canyon brand ambassador, Matt Hundhammer, to plan a winter of build-your-own bamboo ski poles workshops throughout North America west.^{ix} The goal of this outreach was to give people a chance to physically interact with and build their very own pair of custom bamboo ski poles. The tour's success coupled with two previous years of brand equity growth echoed throughout the company's e-commerce and retail sales, boosting overall revenue by 75% and online revenue by 100% from the 2012-13 season.

Promising growth during the 2013-14 season and the pending sustainability of Soul Sports' subsidiary, Soul Poles, led Bryon and Matt back to the drawing table this spring to develop a plan for Soul Sports' multi-season outdoor lifestyle brand, "Soul Play." **Soul Play's mission is to build quality products that inspire momentous living and the protection of the playgrounds we love.** In addition to creatively integrating Soul Poles into Soul Play's winter product line, Soul Play also plans to release sustainable outdoor apparel and accessory lines including wool sweaters and hats, bamboo sunglasses, and the world's first petroleum-free bamboo koozie.^x Soul Play's vision is to grow the movement of conscientious individuals by creating iconic products based on the pillars of transparency, sustainability, and social responsibility. Driven to carve out a year-round position in the outdoor industry, Soul Sport's magnetism, creativity, and energy would substantially increase the vibrancy and environmental awareness of downtown while still keeping Park City, "Park City."

Need for Business Relocation and Expansion Assistance

Park City is a unique community of year-round and part-time residents coupled with a stream of summer and winter visitors. The challenges posed to Park City to accommodate the needs of resorts and residents, balance development and conservation, cultivate an engaged citizenry, and support the growth of diverse cultural and economic opportunities are incredibly inspiring tasks. The encompassing goals of the current City Economic Development Plan work to identify key ways in which individuals, businesses, and municipal entities can engage in the resolution of these challenges. As a locally owned and operated business focused on growing into a multi-season, environmentally conscious, passion-driven brand, Soul Sports believes it has the type of company culture, ethos, network, and voice to increase Park City's economic diversity, support art and community events, and engage residents in civic dialogue about local and state environmental concerns. In essence, we are the fabric of Park City.

The opportunity to move Soul Sports current location from the Silver Summit Business Park across highway 40 and into the core of Park City's recreational, commercial, and residential community will be a boon to the company's hotel concierge, resort group sales, retail, and walk-in revenue streams. Based on incremental revenues associated with the **relocation**, it is estimated that after the year's city subsidies eclipse, Soul Sports' increased foot traffic, accessibility, and workshop services **will offset higher rent rates into perpetuity**. This prudent and timely investment shall ensure an increase in the business's contribution to local tax collections, the brand's recognition, and the company's ability to create effective community interactions.

Building a brand in the outdoor industry requires early adopting product evangelists, media connections, a consistent voice, and a defined niche. Soul Sports' has formed these relationships and brand equity over the past three years. It has a loyal customer base and marketing team dedicated to promoting a company based in Park City and living the Park City lifestyle. In town, Soul Sports will be known for not only being the **voice of sustainability and social responsibility in the outdoor industry**, but also the product of a model, environmentally-conscious community. If awarded the relocation and assistance grant, Soul Sports will commit to converting the determined space into a symbol of pride for a sustainable Park City.

Highlighting Bryon Friedman's 2012 Recycler of the Year award and Soul Sports ongoing relationship with Recycle Utah, Soul Sports would commit to using reclaimed wood paneling, renewable bamboo surfaces, and up-cycled and repurposed materials to build and adorn the space. Utilizing the funds provided, Soul Sports' headquarters will be built with utmost consideration for the triple-bottom line: sustainability, community, and bottom-line profit, and be seen as a model for pragmatic, sustainable retrofit solutions.

By nurturing an inclusive community of diverse businesses like Soul Sports, Park City can stray away from the label of being a "resort town." Yes, there are resorts here, but by bringing in business like Soul Sports, PCMC will be providing a **community, art, and lifestyle gathering space** where people can come to learn, have fun, and be inspired. In order to nurture the growth of the vibrant art and cultural offerings here in Park City, for a one-time seasonal fee or pay-as-you-go pricing, Soul Sports will make effective use of the Soul Poles manufacturing space for **workshop events, classes, and maker crafting**.

Quantitative Project Objectives

1) Relocation and Expansion:

We believe business relocation and expansion go hand in hand. In order to absorb the moving and increased rent costs of an in-town location, Soul Sports will appropriate \$13,000 towards offsetting the higher costs of doing business from the Bonanza Park location. Based on incremental revenues associated with the relocation, it is estimated that **after the year's city subsidies eclipse, Soul Sports' increased foot traffic, accessibility, and workshop services will offset higher rent rates into perpetuity.**

Timeline	Type	Inputs	Throughputs	Outputs
1 Year	Personnel	\$1000	Moving Costs	Affordable relocation in Bonanza Park
	Non-Personnel	\$12000	Rent Subsidy	

2) Building Retrofit:

The development of an environmentally conscious business requires attention to detail, willingness to entertain creative solutions, and the embedment of environmental awareness in corporate culture. Soul Sports will allocate \$2,500 of the approved grant to the professionals fees and materials for retrofitting the determined space with reclaimed wood paneling, renewable bamboo surfaces, bike racks, and up-cycled and repurposed materials to build and adorn the space. **Built with utmost consideration for the triple-bottom line: sustainability, community, and bottom-line profit** in mind, Soul Sports will divert these resources to create a space attractive for families, visitors, and customers.

Timeline	Type	Inputs	Throughputs	Outputs
Year 1	Personnel – 1099 labor	\$3000	Time dedicated to constructing showroom, workshop, and low-tech sustainability modifications.	Showroom, Office, workshop

3) Makers Space:

For a one-time seasonal fee or pay-as-you-go pricing, Soul Sports will make effective use of the Soul Poles manufacturing space for summer workshop events, classes, and makers membership use. With community events and a more centralized location, Soul Sports will act as a hub for sustainability, recreation, art, music and civic engagement in Park City. \$3,000 will be dedicated to purchasing tools, and materials for an additional build out of the art and community spaces.

In order to ensure effective use of the space and tools, members must sign up ahead of time to schedule shop time and reserve certain limited quantity tools for their time-slots. The use of a public calendar hosted on our website will make it transparent as to what is available and when. Non-member will have access to the shop's tools during public workshops. The programs shall remain sustainable with minimal inputs after all tools and surfaces are in place.

Timeline	Type	Inputs	Throughputs	Outputs
Year 1	Personnel	\$1500	Construct working surfaces, art lockers, and functional space	Art space
	Non-Personnel	\$2500	Art Materials/Tools	

Project Evaluation

If awarded the grant, the success of Soul Sports relocation and assistance will be measured based on the project and submitted to PCMC within one year of the grant's exhaustion.

Relocation: Soul Sports shall submit a balance sheet within one year of the grant's exhaustion showcasing the company's ability to afford the acquired space.

Building Retrofit: 500 questionnaires and a summary sheet will be submitted to PCMC within one year of the grant's exhaustion. The questionnaire will be distributed during maker's workshops and community events. The specific questions pertaining to the building retrofit will ask whether Soul Sports effectively utilized public funds to construct a functional and presentable business, community, and art space.

Makers Space: 500 questionnaires and a summary sheet will be submitted to PCMC within one year of the grant's exhaustion. The questionnaire will be distributed during maker's workshops and community events. The specific questions pertaining to the Makers Space will ask whether Soul Sports utilized public funds to create a business hub for sustainability, recreation, art, music and civic engagement in Park City.

Appendix

Proposed Use of City Funds

Project	Items	Notes	Cost	% of Annual Budget	Total
Relocation/Expansion				\$ 20,000.00	
Rent	Rent Subsidy	Non-Personnel	\$ 12,000.00	60%	
Moving Cost	Labor	Personnel	\$ 1,000.00	5%	
Building Retrofit					
Design	Labor	In-house design	\$ -		
Construction	Labor	Personnel	\$ 2,000.00	10%	
Cost of Goods	Materials	Recycled/Reclaimed	\$ 1,000.00	5%	
Makers Space					
Design	Labor	In-house design	\$ -		
Construction	Labor	Personnel	\$ 1,000.00	5%	
Equipment	Machinery	Second hand	\$ 3,000.00	15%	
Total				100 %	\$ 20,000.00

- ⁱ Association of Freeskiing Professionals, “Alex Schlopy,” 6/1/14: <http://www.afpworldtour.com/rankings/>
- ⁱⁱ Association of Freeskiing Professionals, “Aaron Blunck,” 6/1/14: <http://www.afpworldtour.com/rankings/>
- ⁱⁱⁱ Freeride World Tour, “Conor Pelton,” 6/1/14: <http://www.freerideworldtour.com/778.html>
- ^{iv} Kaylin Richardson, <https://www.soulpoles.com/kaylin-richardson>
- ^v Tatum Monod, <https://www.soulpoles.com/tatum-monod>
- ^{vi} Lucy Sackbauer, <http://www.grandtarghee.com/the-resort/news-events/1822/4thAnnualBigMountainTelemarkComp.php>
- ^{vii} Powder Magazine’s 2012 Gear of the Year, <http://www.powdermag.com/stories/gear-of-the-year/>
- ^{viii} Ski Magazine’s 2011-12 “Stuff we Like.” <http://www.skinet.com/ski/article/stuff-we-soul-poles>
- ^{ix} Soul Poles Workshop Tour, <https://www.soulpoles.com/soul-mobile-tour>
- ^x Bamboozie, <https://www.soulpoles.com/bamboo-koozies>

City Council Staff Report



PLANNING DEPARTMENT

Application No: PI-14-02348
Subject: LMC Amendments
Author: Kirsten Whetstone, MS, AICP
Date: July 17, 2014
Type of Item: Legislative – Land Management Code (LMC) Amendments

Summary Recommendations

Staff recommends that the City Council review the proposed amendments to the Land Management Code (LMC) regarding 1) appeals (Chapter 1), 2) exterior siding materials (Chapter 5), and 3) warranty guarantees (Chapter Seven), as described in this report and as presented in Exhibit A. Staff recommends the Council conduct a public hearing, consider public input, and consider adopting the Ordinance as presented in Exhibit A.

Staff recommends the City Council continue the public hearing on the LMC Amendments for Chapter 2.18 (GC zone), 2.19 (LI zone) regarding Animal Services, Chapter 15 (Definitions), to a date uncertain.

Description

Project Name:	LMC Amendments
Applicant:	Planning Department
Approximate Location:	City-wide and General Commercial/Limited Industrial zones
Proposal	Amendments to the Land Management Code require Planning Commission review and recommendation and final action by the City Council.

Background

Chapter 1 Amendments: Further clarification of the City's appeal process involving Historic Preservation Board review of City Developments is needed in the Code. Language was added in 2010 to clarify that Final Action by the Planning Commission, on Conditional Use Permits and Master Planned Developments involving City Developments, may be appealed to the Board of Adjustment at the City Council's request, as opposed to the City Council. Similar language is proposed for appeals of Historic District Design Review decisions on City Developments, in the Appeals section (Chapter 1) when the Historic Preservation Board participates in the review of the Historic District Design Review for City-Owned projects (as part of their duties at the direction of the City Council pursuant to LMC 15-11-6(A)) any appeal of the final decision should be heard by the Board of Adjustment.

Chapter 5 Amendment: On June 11, 2014, the Planning Commission discussed at work session amendments to the Architectural Design Guidelines related to vinyl siding. The Commission provided direction for staff to return with additional analysis and recommended that vinyl and other siding materials be included in the materials exception section for case by case review by the Planning Director, similar to the way aluminum siding is reviewed. Planning staff conducted additional research and on June 25, 2014, presented LMC amendments to the Commission to consider adding vinyl siding, and other similar siding products, to be reviewed on a case by case basis by the Planning Director, in areas where there are already houses with similar siding materials (Chapter 5). These areas are primarily in the Prospector neighborhood.

Chapter 7 Amendments: The Utah State Legislature amended the State Code limiting warranty guarantees to 10% of the cost of completion and municipalities should align their development codes to be consistent with the State law where required. On May 28, 2014, the Planning Commission discussed amendments to Chapter One regarding such warranty guarantees which was adopted by City Council on June 26, 2014. Staff discovered another section of the LMC in the Subdivision Ordinance (Chapter 7.2-1) that is in need of a similar update regarding guarantees. This section refers to a maintenance guarantee, which the City Engineer does not collect, and if collected may run afoul of the 10% warranty guarantee which is required.

On June 25, 2014, the Planning Commission conducted a public hearing and forwarded to City Council a unanimous positive recommendation on these proposed LMC amendments (see Exhibits B and C for minutes).

General Plan

The proposed LMC amendments have been reviewed for consistency with the newly adopted Park City General Plan. The General Plan does not specifically address each of these issues; however the Land Management Code implements the goals, objectives and policies of the Park City General Plan to maintain the quality of life and experiences for its residents and visitors and to preserve the community's unique character and values.

Analysis

Planning Staff recommends the following LMC amendments to address issues that have come up regarding 1) appeals of Historic District Design Review on City-owned projects (known in the LMC as City Development), 2) consideration of vinyl and other alternative siding materials on a case by case basis, and 3) alignment of the LMC with amendments to the State Code regarding warranty guarantees in the subdivision ordinance.

- 1) Appeals process for City Development in which the Historic Preservation Board (HPB) participated in the design review (Chapter 15-1-18 (B))

Staff recommends the process for appeals of final action on City Development projects where the Historic Preservation Board participated in the Historic District Design Review (HDDR) be revised to be heard by the Board of Adjustment,

rather than the Historic Preservation Board. Currently, final action on Historic District Design Review applications is made by the Planning Director (or designee) with appeal to the Historic Preservation Board. On City Development projects, the City Council can direct the HPB to participate in the HDDR application review, therefore the appropriate appeal would be to the Board of Adjustment, not the HPB. Related to these amendments is clarification of the Burden of Proof and Standard of Review of the Board of Adjustment when the Board is reviewing an appeal on City Development projects where the Historic Preservation Board participated in the HDDR. Staff has slightly modified the language for clarity sake.

Amendments to change the language regarding stays of approval pending outcome of appeals were also recommended by the Commission. Currently the Code indicates a stay of approval only from the Planning Commission to the City Council. If someone appeals a Planning Commission approved CUP, that approval is stayed until the City Council makes its decision. The issue was raised recently that it should be applicable across the board for all appeals. City Attorney Ms. McLean could not understand why it would only apply to appeals of Planning Commission decisions to City Council and she thought the rule should apply to all Boards. However, once the appeal goes to District Court, explicit language in the LMC says that the approval is not stayed. The appellant would then have to request a stay from the District Court.

Although Staff did not bring to the Planning Commission changes regarding consolidation of timing and notice requirements for all appeals under the specific sub-sections, in order to be consistent with the Notice Matrix in 15-1-2, Staff is recommending moving the location of these requirements. No changes to specific notice or timing requirements are proposed.

Recommended redlines:

15-1 -18. APPEALS AND RECONSIDERATION PROCESS.

(A) STAFF. Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Historic Preservation Board as described in 15-11-12(E), unless the Historic Preservation Board participated in the Design Review of a City Development project pursuant to 15-11-6, in which case any appeal of the decision shall be reviewed by the Board of Adjustment. The Board of Adjustment in such an appeal will have the same scope of authority and standard of review as the Historic Preservation Board would have in such an appeal.

~~All appeals must be filed with the Planning Department within ten (10) days of Final Action.~~

~~There shall be no additional notice for appeal of the staff determination other than listing the matter on the agenda, unless notice of the staff review was provided in which case the same notice must be given for the appeal.~~

(B) **HISTORIC PRESERVATION BOARD (HPB)**. The City or any Person with standing adversely affected by any decision of the Historic Preservation Board regarding the Design Guidelines for Historic Districts and Historic Sites may petition the District Court in Summit County for a review of the decision. Appeal of all other Final Action by the Historic Preservation Board may be appealed to the Board of Adjustment.

(C) **PLANNING COMMISSION**. The City or any Person with standing adversely affected by a Final Action by the Planning Commission on appeals of Staff action may petition the District Court in Summit County for a review of the decision. Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. All other Final Action by the Planning Commission concerning Conditional Use permits (excluding those Conditional Use permits decided by Staff and appealed to the Planning Commission; final action on such an appeal shall be appealed to the District Court) and MPDs may be appealed to the City Council.

When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.

....

(G) **BURDEN OF PROOF AND STANDARD OF REVIEW**. The appeal authority shall act in a quasi-judicial manner. The appellant has the burden of proving that the land Use authority erred. ~~Except for appeals to the Board of Adjustment, the~~ appeal authority shall review factual matters de novo and it shall determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance.

Exception. ~~For a~~ Appeals to the Board of Adjustment, ~~the Board shall~~ review factual matters for correctness and determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance. The scope of review of the Board of Adjustment is limited to issues brought to the land Use authority ~~below.~~

Exception. For appeals to the Board of Adjustment regarding Design Guidelines for Historic Districts and Historic Sites, involving City Development projects, the Board shall review factual matters de novo and it shall determine the correctness of the Planning Director or Planning Staff decision in the interpretation and application of the Historic District Design Guidelines for Historic Districts and Historic Sites.

...

(K) **NOTICE.**

There shall be no additional notice for appeals of staff determination other than listing the matter on the agenda, unless notice of the staff review was provided in which case the same notice must be given for the appeal.

Notice of appeals of final action by the Planning Commission and Historic Preservation Board, and notice~~Notice~~ of all appeals to City Council or call-ups shall be given by:

(1) Publishing the matter once at least seven (7) days prior to the hearing in a newspaper having general circulation in Park City; ~~and~~

(2) By mailing courtesy notice at least seven (7) days prior to the hearing to all parties who received mailed courtesy notice for the original action. The City Recorder shall provide noticing for Council call-ups; ~~and~~

(3) By posting the property at least seven (7) days prior to the hearing.

Notice of appeals to Board of Adjustment, except for appeals of staff determination regarding Historic District Design Guidelines for City Development projects where the Historic Preservation Board participated in the design review Development, shall be given by:

(1) Publishing the matter once at least fourteen (14) days prior to the hearing in a newspaper having general circulation in Park City;

(2) By mailing courtesy notice at least fourteen (14) days prior to the hearing to all parties who received mailed courtesy notice for the original action; and

(3) By posting the property at least fourteen (14) days prior to the hearing.

(L) **STAY OF APPROVAL PENDING REVIEW OF APPEAL.** Upon the filing of an appeal, any approval granted under this Chapter by the Planning Commission will be suspended until the City Council appeal body, pursuant to this Section 15-1-18, has acted on the appeal.

(M) **APPEAL FROM THE CITY COUNCIL.** The Applicant or any Person aggrieved by City action on the project may appeal the Final Action by the City Council to a court of competent jurisdiction. The decision of the Council stands, and those affected by the decision may act in reliance on it unless and until the court enters an interlocutory or final order modifying the decision.

2) **Exterior Siding Materials (Chapter 15-5-5 (B))**

During the June 11th, 2014 meeting, the Planning Commission held a work session discussion regarding the inclusion of vinyl siding in the list of siding materials exempt from LMC chapter 15-5-5(B), **Prohibited Siding Materials**. Planning Commission requested staff return with draft language addressing inclusion of vinyl in LMC chapter 15-5-5(B) (11), **Exemption**. On June 25, 2014, the Planning Commission discussed this issue and forwarded a positive recommendation on the following amendments to address this request:

Recommended redlines:

(B) **PROHIBITED SIDING MATERIALS.** The following siding, fascia, and soffit materials are prohibited because they have proved to be unsuitable for Use in Park City due to the extreme climate, or because their appearance is such that the values of adjoining or abutting Properties are adversely affected:

- (1) Thick shake shingles;
- (2) Ceramic tiles;
- (3) Slump bloc, weeping mortar;
- (4) Plastic or vinyl siding;
- (5) Used brick;
- (6) Synthetic stone products such as simulated stone or brick, cultured stone or brick, pre-cast stone or concrete imbedded with stone fragments;
- (7) Lava rock, clinkers;
- (8) Asphalt siding;
- (9) Plywood siding, except that plywood may be approved by the Planning Director if utilized as a base for board and batten siding;

(10) Aluminum siding is generally not considered an appropriate material. The Planning Director may, however, consider requests for the Use of aluminum siding. The design of the Structure shall be consistent with the Park City Design Guidelines. The Applicant will be required to bring a sample of the type and color of siding to be approved by the Planning Director. When aluminum siding is approved by the Planning Director, it shall have a minimum thickness of .019 inches and shall be backed or insulated with a minimum of 3/8 inch fiberboard of polystyrene foam;

(11) **Exemption.** Aluminum, vinyl, or other siding materials, including soffits and fascia, and synthetic stone products may be permitted upon approval by the Planning Director, on Structures when such Structures are located in Areas predominately developed with Structures utilizing the same type of materials, such as in Prospector Village, Park Meadows and Prospector Park Subdivisions.

Existing Buildings with synthetic stone products and aluminum or vinyl siding may be re-sided or repaired using synthetic stone products and aluminum or vinyl siding with specific approval by the Planning Director.

The Applicant is required to bring a sample of the material and description of the application method of the requested siding and/or synthetic stone to be approved by the Planning Director and an exhibit documenting siding materials found in the surrounding neighborhood.

Vinyl products shall have a minimum thickness of .042 inches for siding and .05 inches for soffits and fascia. Trim with a wider reveal shall be incorporated. Vinyl products shall also be subject to aesthetic analysis to ensure compatibility with existing Structures in the surrounding neighborhood and to ensure use of a higher quality material.

3) Warranty Guarantees (Chapter 15-7-2)

Staff recommends the following LMC amendment language to Chapter 15-7-2 to be consistent with Chapter 15-1-13 amended at the May 28, 2014 meeting. According to the City Engineer, the guarantee that is collected for assurance for completion and maintenance of improvements is the guarantee referred to in LMC Chapter 15-1-13 and the language referring to a separate maintenance guarantee is duplicative.

Recommended redlines:

CHAPTER 7.2 - ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS.

15-7.2-1. IMPROVEMENTS.

(F) MAINTENANCE OF IMPROVEMENTS.

(1) The Applicant shall be required to maintain all improvements on the individual subdivided Lots and provide for snow removal on Streets and sidewalks until acceptance of said improvements by the City Council. If there are any certificates of occupancy on a Street not dedicated to the City, the City may on twelve (12) hours notice plow the Street or effect emergency repairs and charge same to Applicant. The City will not normally accept water improvements or Street improvements or assume responsibility for either general maintenance or snow removal until over fifty percent (50%) of the Lots within the Subdivision are built upon.

~~(2) The Applicant shall be required to file a maintenance Guarantee with the City, prior to acceptance, in an amount considered adequate by the City Engineer and in a form satisfactory to the City Attorney, in order to assure the satisfactory condition of the required improvements, including all Lot improvements on the individual subdivided Lots for a period of one (1) year after the date of their acceptance by the City and dedication of same to the local municipality.~~

Process

Amendments to the Land Management Code require Planning Commission recommendation and City Council adoption. City Council action may be appealed to a court of competent jurisdiction per LMC § 15-1-18.

Notice

Legal notice of a public hearing was posted in the required public spaces on June 10, 2014 and published in the Park Record on June 11, 2014 as required by the Land Management Code.

Public Input

Public hearings are required to be conducted by the Planning Commission and City Council prior to adoption of Land Management Code amendments. Public input was presented to the Planning Commission on June 11 and June 25 supporting the proposed amendments to allow vinyl siding to be considered on a case by case basis.

Alternatives

- The City Council may approve the LMC amendments as drafted, or amended at the meeting; or

- The City Council may deny the LMC amendments; or
- The City Council may continue the discussion to a date certain and provide direction to Staff regarding additional information or analysis needed in order to make a final decision.

Significant Impacts

The proposed LMC amendments regarding warranty guarantees are required to align the Park City Land Management Code with the State Code. The proposed LMC amendments for appeals provides clarification of the appeal process for City Development projects, and the amendments regarding siding materials and animal/pet services update the LMC for current uses, materials, and regulations in response to requests by members of the community.

Summary Recommendation

Staff recommends that the City Council review the proposed amendments to the Land Management Code (LMC) regarding: 1) appeals (Chapter 1-18), 2) exterior siding materials (Chapter 5-5), and 3) warranty guarantees (Chapter 7.2-1), as described in this report. Staff recommends the Council conduct a public hearing, consider public input, and consider approving the LMC Amendments as described in this report and in the attached ordinance.

Staff recommends the City Council continue the public hearing on the LMC Amendments for Chapter 2.18 (GC zone), 2.19 (LI zone) regarding Animal Services, Chapter 15 (Definitions), to a date uncertain.

Exhibits

Exhibit A- Proposed Ordinance with attachments

Exhibit B- Minutes of the June 11th PC work session

Exhibit C- Minutes of the June 25th PC meeting

Ordinance 14-

AN ORDINANCE AMENDING THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, REVISING CHAPTER 1- GENERAL PROVISIONS AND PROCEDURES; CHAPTER 5.5 DESIGN GUIDELINES, AND CHAPTER 7-2 SUBDIVISIONS.

WHEREAS, the Land Management Code was adopted by the City Council of Park City, Utah to promote the health, safety and welfare of the residents, visitors, and property owners of Park City; and

WHEREAS, the Land Management Code implements the goals, objectives and policies of the Park City General Plan to maintain the quality of life and experiences for its residents and visitors; and to preserve the community's unique character and values; and

WHEREAS, the City reviews the Land Management Code on a regular basis and identifies necessary amendments to address planning and zoning issues that have come up, and to address specific LMC issues raised by Staff, Planning Commission, and City Council, to address applicable changes to the State Code, and to align the Code with the Council's goals; and

WHEREAS, the Planning Commission duly noticed and conducted a public hearing at the regularly scheduled meeting on June 25, 2014, and forwarded a positive recommendation to City Council; and

WHEREAS, the City Council duly noticed and conducted a public hearing at its regularly scheduled meeting on July 17, 2014; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the State of Utah Code, the Park City General Plan and to be consistent with the values and goals of the Park City community and City Council to protect health and safety, maintain the quality of life for its residents, preserve and protect the residential neighborhoods, promote economic development, and preserve the community's unique character.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. AMENDMENTS TO TITLE 15 - Land Management Code Chapter One (Section 15-1-18). The recitals above are incorporated herein as findings of fact. Section 15-1-18 (B) of the Land Management Code of Park City is hereby amended as redlined (see Attachment 1).

SECTION 2. AMENDMENTS TO TITLE 15 - Land Management Code Chapter Five (Section 15-5-5). The recitals above are incorporated herein as findings of fact.

Section 15-5-5 of the Land Management Code of Park City is hereby amended as redlined (see Attachment 2).

SECTION 3. AMENDMENTS TO TITLE 15 - Land Management Code Chapter Seven (Section 15-7-2). The recitals above are incorporated herein as findings of fact. Section 15-7-2 of the Land Management Code of Park City is hereby amended as redlined (see Attachment 3).

SECTION 4. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this ____ day of _____, 2014

PARK CITY MUNICIPAL CORPORATION

Jack Thomas, Mayor

Attest:

Marci Heil, City Recorder

Approved as to form:

Mark Harrington, City Attorney

TITLE 15 - LAND MANAGEMENT CODE**CHAPTER 1 - GENERAL PROVISIONS AND PROCEDURES**

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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 1 - GENERAL PROVISIONS AND PROCEDURES

Chapter adopted by Ordinance No. 00-25
....

**15-1 -18. APPEALS AND
RECONSIDERATION PROCESS.**

(A) **STAFF**. Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Historic Preservation Board as described in 15-11-12(E), unless the Historic Preservation Board participated in the Design Review of a City Development project, pursuant to 15-11-6, in which case any appeal of the decision shall be reviewed by the Board of Adjustment. The Board of Adjustment in such an appeal will have the same scope of authority and standard of review as the Historic Preservation Board would have in such an appeal. All appeals must be filed with the Planning Department within ten (10) days of Final Action.

There shall be no additional notice for appeal of the staff determination other than listing the matter on the agenda, unless notice of the staff review was provided in

which case the same notice must be given for the appeal.

(B) **HISTORIC PRESERVATION BOARD (HPB)**. The City or any Person with standing adversely affected by any decision of the Historic Preservation Board regarding the Design Guidelines for Historic Districts and Historic Sites may petition the District Court in Summit County for a review of the decision. Appeal of all other Final Action by the Historic Preservation Board may be appealed to the Board of Adjustment.

(C) **PLANNING COMMISSION**. The City or any Person with standing adversely affected by a Final Action by the Planning Commission on appeals of Staff action may petition the District Court in Summit County for a review of the decision. Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. All other Final Action by the Planning Commission concerning Conditional Use permits (excluding those Conditional Use permits decided by Staff and appealed to the Planning Commission; final action on such

an appeal shall be appealed to the District Court) and MPDs may be appealed to the City Council. When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.

(1) **APPEAL PANEL MEMBERSHIP AND QUALIFICATIONS.**

The appeal panel shall have three (3) members. The decision to appoint and the appointment of an appeal panel shall be made by the City Council at a duly noticed public meeting after publicly noticed request for qualifications. Qualifications shall include a weighted priority for the following: Park City or Area residency, five years or more of prior experience in an adjudicative position, and/or a legal or planning degree. Each member of the appeal panel shall have the ability to:

- (a) Conduct quasi-judicial administrative hearings in an orderly, impartial and highly professional manner.

- (b) Follow complex oral and written arguments and identify key issues of local concern.

- (c) Master non-legal concepts required to analyze specific situations, render findings and determinations.

- (d) Absent any conflict of interest, render findings and determinations on cases heard, based on neutral consideration of the issues, sound legal reasoning, and good judgment.

(2) **PROCESS.** Any hearing before an appeal panel shall be publicly noticed, include a public hearing, and meet all requirements of the Utah Open and Public Meetings Act. The appeal panel shall have the same authority and follow the same procedures as designated for the "City Council" in this section 15-1-18 (G-I). The City Council may decide to appoint an appeal panel for a particular matter at any time an application is pending but the appointment of the individual members of the panel shall not occur until an actual appeal or call up is pending.

(Amended by Ord. No. 10-15;12-37)

(D) **STANDING TO APPEAL.** The following has standing to appeal a Final Action:

(1) Any Person who submitted written comment or testified on a proposal before the Planning Department, Historic Preservation Board or Planning Commission;

(2) The Owner of any Property within three hundred feet (300') of the boundary of the subject site;

(3) Any City official, Board or Commission having jurisdiction over the matter; and

(4) The Owner of the subject Property.

(E) **TIMING.** All appeals must be made within ten (10) calendar days of the Final Action. The reviewing body, with the consultation of the appellant, shall set a date for the appeal. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

(F) **FORM OF APPEALS.** Appeals to the Planning Commission, Board of Adjustment, or Historic Preservation Board must be filed with the Planning Department. Appeals to the City Council must be filed with the City Recorder. Appeals must be by letter or petition, and must contain the name, address, and telephone number of the petitioner; his or her relationship to the project or subject Property; and must have a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken. The Appellant shall pay the applicable fee established by

resolution when filing the appeal. The Appellant shall present to the appeal authority every theory of relief that it can raise in district court. The Appellant shall provide required envelopes within fourteen (14) days of filing the appeal.

(G) **BURDEN OF PROOF AND STANDARD OF REVIEW.** The appeal authority shall act in a quasi-judicial manner. The appellant has the burden of proving that the land Use authority erred. ~~Except for appeals to the Board of Adjustment, I-~~the appeal authority shall review factual matters de novo and it shall determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance.

Exception. For aAppeals to the Board of Adjustment, ~~the Board shall will~~ review factual matters for correctness and determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance. The scope of review of the Board of Adjustment is limited to issues brought to the land Use authority. ~~below.~~

Exception. For appeals to the Board of Adjustment regarding Design Guidelines for Historic Districts and Historic Sites, involving City Development projects, the Board shall review factual matters de novo and it shall determine the correctness of the Planning Director or Planning Staff decision in the interpretation and application of the Historic District Design Guidelines for Historic Districts and Historic Sites.

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(H) **WRITTEN FINDINGS**

REQUIRED. The appeal authority shall direct staff to prepare detailed written Findings of Fact, Conclusions of Law and the Order.

(I) **CITY COUNCIL ACTION ON APPEALS.**

- (1) The City Council, with the consultation of the appellant, shall set a date for the appeal.
- (2) The City Recorder shall notify the Owner of the appeal date. The City Recorder shall obtain the findings, conclusions and all other pertinent information from the Planning Department and shall transmit them to the Council.
- (3) The City Council may affirm, reverse, or affirm in part and reverse in part any properly appealed decision of the Planning Commission. The City Council may remand the matter to the appropriate body with directions for specific Areas of review or clarification. City Council review of petitions of appeal shall include a public hearing and be limited to consideration of only those matters raised by the petition(s), unless the Council by motion, enlarges the scope of the appeal to accept information on other matters.
- (4) Staff must prepare written findings within fifteen (15) working days of the City Council vote on the matter.

(J) **CITY COUNCIL CALL-UP.**

Within fifteen (15) calendar days of Final Action on any project, the City Council, on its own motion, may call up any Final Action taken by the Planning Commission or Planning Director for review by the Council. Call-ups involving City Development may be heard by the Board of Adjustment at the City Council's request. The call-up shall require the majority vote of the Council. Notice of the call-up shall be given to the Chairman of the Commission and/or Planning Director by the Recorder, together with the date set by the Council for consideration of the merits of the matter. The Recorder shall also provide notice as required by Section 15-1 -12 herein. In calling a matter up, the Council may limit the scope of the call-up hearing to certain issues. The City Council, with the consultation of the Applicant, shall set a date for the call-up. The City Recorder shall notify the Applicant of the call-up date. The City Recorder shall obtain the findings, and all other pertinent information and transmit them to the Council.

(K) **NOTICE.**

There shall be no additional notice for appeals of Staff determination other than listing the matter on the agenda, unless notice of the Staff review was provided, in which case the same notice must be given for the appeal.

Notice of appeals of Final Action by the Planning Commission and Historic Preservation Board, and notice ~~Notice~~ of all appeals to City Council or call-ups shall be given by:

(1) Publishing the matter once at least seven (7) days prior to the hearing in a newspaper having general circulation in Park City; ~~and~~

(2) By mailing courtesy notice at least seven (7) days prior to the hearing to all parties who received mailed courtesy notice for the original action. The City Recorder shall provide noticing for Council call-ups; and-

(3) By posting the property at least seven (7) days prior to the hearing.

Notice of appeals to the Board of Adjustment, except for appeals of staff determination regarding Historic District Design Guidelines for City Development projects where the Historic Preservation Board participated in the design review, shall be given by:

(1) Publishing the matter once at least fourteen (14) days prior to the hearing in a newspaper having a general circulation in Park City;

(2) By mailing courtesy notice at least fourteen (14) days prior to the hearing to all parties who received mailed courtesy notice for the original action; and

(3) By posting the property at least fourteen (14) days prior to the hearing.

(L) **STAY OF APPROVAL PENDING REVIEW OF APPEAL.** Upon the filing of an appeal, any approval granted under this Chapter by the Planning Commission will be suspended until the City Council appeal body, pursuant to this Section 15-1-18, has acted on the appeal.

(M) **APPEAL FROM THE CITY COUNCIL.** The Applicant or any Person aggrieved by City action on the project may appeal the Final Action by the City Council to a court of competent jurisdiction. The decision of the Council stands, and those affected by the decision may act in reliance on it unless and until the court enters an interlocutory or final order modifying the decision.

(N) **RECONSIDERATION.** The City Council, and any Board or Commission, may reconsider at any time any legislative decision upon an affirmative vote of a majority of that body. The City Council, and any Board or Commission, may reconsider any quasi-judicial decision upon an affirmative vote of a majority of that body at any time prior to Final Action. Any action taken by the deciding body shall not be reconsidered or rescinded at a special meeting unless the number of members of the deciding body present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.

(O) No participating member of the appeal panel may entertain an appeal in which he or she acted as the land Use authority.

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(Amended by Ord. Nos. 06-22; 09-10; 09-23; 10-15)

15-1 -21. NOTICE MATRIX.

(See following pages)

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Zoning and Rezoning	14 days prior to each hearing before the Planning Commission and City Council	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
LMC Amendments	14 days prior to each hearing before the Planning Commission and City Council.	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
General Plan Amendments	14 days prior to each hearing before the Planning Commission and City Council.	14 days to each affected entity.	Once 14 days prior to each hearing before the Planning Commission and City Council.
Master Planned Developments (MPD)	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Appeals of Planning Director, Historic Preservation Board, or Planning Commission decisions or City Council Call-Up	7 days prior to the date set for the appeal or call-up hearing.	To all parties who received mailed notice for the original Administrative or Planning Commission hearing 7 days prior to the hearing.	Once 7 days before the date set for the appeal or call-up hearing.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Conditional Use Permit	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Administrative Conditional Use Permit	10 days prior to Final Action.	10 days prior to Final Action, to adjacent Property Owners.	No published notice required.
Administrative Permit	10 days prior to Final Action.	10 days prior to Final Action, to adjacent affected Property Owners.	No published notice required.
Variance Requests, Non-conforming Use Modifications and Appeals to Board of Adjustment	14 days prior to the hearing before the Board of Adjustment.	14 days prior to the hearing before the Board of Adjustment, to owners within 300 ft.	Once 14 days prior to hearing before the Board of Adjustment.
Certificate of Appropriateness for Demolition (CAD)	45 days on the Property upon refusal of the City to issue a CAD; 14 days prior to the hearing before the Historic Preservation Board.	14 days prior to the hearing before the Historic Preservation Board, to Owners within 300 ft.	Once 14 days prior to the hearing before the Historic Preservation Board.
Designation of Sites to the Historic Sites Inventory	7 days prior to hearing before the Historic Preservation Board.	-----	Once 7 days prior to hearing before the Historic Preservation Board.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Historic District or Historic Site Design Review	First Posting: The Property shall be posted for a 14 day period once a Complete Application has been received. The date of the public hearing shall be indicated in the first posting. Other posted legal notice not required. Second Posting: For a 10 day period once the Planning Department has determined the proposed plans comply or does not comply with the Design Guidelines for Historic Districts and Historic Sites. Other posted legal notice not required.	First Mailing: To Owners within 100 feet once a Complete Application has been received, establishing a 14 day period in which written public comment on the Application may be taken. The date of the public hearing shall be indicated. Second Mailing: To Owners within 100 feet and individuals who provided written comment on the Application during the 14 day initial public comment period. The second mailing occurs once the Planning Department determines whether the proposed plans comply or do not comply with the Design Guidelines for Historic Districts and Historic Sites and no later than 45 days after the end of the initial public comment period. This establishes a 10 day period after which the Planning Department's decision may be appealed.	If appealed, then once 7 days before the date set for the appeal
Annexations	Varies, depending on number of Owners and current State law. Consult with the Legal Department.		
Termination of Project	-----	Mailed Notice: To Owner/Applicant and	-----

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Applications		certified Agent by certified mail 14 days prior to the Planning Director's termination and closure of files.	
Lot Line Adjustments: Between 2 Lots without a plat amendment.	10 days prior to Final Action on the Property. Other posted legal notice not required.	To Owners within 300 ft. at time of initial Application for Lot line adjustment. Need consent letters, as described on the Planning Department Application form, from adjacent Owners.	-----
Preliminary and Final Subdivision Plat Applications	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Condominium Applications; Record of Survey Plats	14 days prior to the hearing before the Planning Commission.	14 days prior to the hearing before the Planning Commission, to Owners within 300 ft.	Once 14 days prior to the hearing before the Planning Commission.
Record of Survey Amendments	14 days prior to the hearing.	14 days prior to the hearing, to Owners within 300 ft.	Once 14 days prior to the hearing.
Subdivision Plat Amendments	14 days prior to the hearing.	14 days prior to the hearing, to Owners within 300 ft.	Once 14 days prior to the hearing.

NOTICE MATRIX			
ACTION:	POSTED:	COURTESY MAILING:	PUBLISHED:
Vacating or Changing a Street	-----	14 days prior to the hearing before the City Council, to Owners within 300 ft. and to affected entities.	Once a week for 4 consecutive weeks prior to the hearing before the City Council.
Note: For all Applications, notice will be given to the Applicant of date, time, and place of the public hearing and public meeting to consider the Application and of any Final Action on a pending Application. Appendix A – Official Zoning Map (Refer to the Planning Department)			

(Amended by Ord. Nos. 06-22; 09-10; 09-23; 11-05; 12-37)

TITLE 15 - LAND MANAGEMENT CODE**CHAPTER 5 - ARCHITECTURAL REVIEW**

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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 5 - ARCHITECTURAL REVIEW

Chapter adopted by Ordinance No. 02-07

**CHAPTER 5 - ARCHITECTURAL
REVIEW**

15-5 -1. POLICY AND PURPOSE.

As a community dependent upon the tourism industry, the atmosphere and aesthetic features of the community take on an economic value for the residents and Property Owners of Park City.

It is in the best interests of the general welfare of the community to protect the aesthetic values of the community through the elimination of those architectural styles, and those Building and Landscape materials, which, by their nature, are foreign to this Area, and this climate, and therefore tend to detract from the appearance of the community.

Most of Park City's Main Street and many homes in Park City's older neighborhoods are listed on the National Register of Historic Places as well as being locally designated as Historic Sites, which is a point of considerable importance to the tourism industry. New Development, while distinct from surrounding Historic Sites, should not

detract from them. Park City is densely developed due to the shortage of level, buildable land.

The effect of one Development is felt on the community as a whole. It is the policy of the City to foster good design within the constraints imposed by climate, land ownership patterns, and a Compatible architectural theme.

It is also the intent of this section to encourage lighting practices and systems which will minimize light pollution, glare, and light trespass; conserve energy and resources while maintaining night time safety, utility, and security; and curtail the degradation of the night time visual environment.

It is recognized that the topography, atmospheric conditions and resort nature of Park City are unique and valuable to the community. The enjoyment of a starry night is an experience the community desires to preserve. The City of Park City, through the provisions herein contained, promotes the reduction of light pollution that interferes with enjoyment of the night sky.

It is also the intent of this section to encourage and implement water conservation practices for landscaping. Park City is in a mountainous, semi-desert environment where much of the precipitation occurs as snow during the winter months and the highest demand for water occurs during the summer months. The largest single water demand is for irrigation of landscaping. The use of water wise Xeriscaping will protect the health, safety, and welfare of the community from impacts of water shortages likely to occur during cycles of drought. Xeriscaping is a concept of landscaping with plants that use little or no supplemental irrigation and are typically native to the region. The concept also requires water conserving irrigation practices, such as drip irrigation and effective mulching with plant based mulches.

(Amended by Ord. Nos. 06-56; 09-23; 12-37)

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15-5 -5. ARCHITECTURAL DESIGN GUIDELINES.

(A) **PROHIBITED ARCHITECTURAL STYLES AND MOTIFS.** The following architectural styles and motifs are prohibited in Park City because these styles and motifs have a strong connection or association with other regions:

- (1) A-frame Structures;
- (2) Geodesic dome Structures;

- (3) Mediterranean motifs;
- (4) Tudor or mock Tudor, half timbering;
- (5) Swiss chalets;
- (6) Highly ornate Victorian;
- (7) Rustic frontier;
- (8) Colonial;
- (9) Nouveau-Chateau, French Provincial, Fairy Tale or Castle. Tower features and turrets may be allowed if roofs are not conical and if the roof line is integrated into the main Structure. Round exterior walls are permitted but not as semi-detached round rooms, i.e., a round room may not exceed 270 degrees;
- (10) New Structures designed to imitate Historic Structures built in Park City or elsewhere, unless the project complies with the Historic District Architectural Guidelines.
- (11) **Exemption.** The above provisions addressing Tudor, Victorian, and colonial styles and tower elements shall not apply in the Prospector Park Subdivision.

(B) **PROHIBITED SIDING MATERIALS.** The following siding, fascia, and soffit materials are prohibited because they have proved to be unsuitable for Use in Park City due to the extreme

climate, or because their appearance is such that the values of adjoining or abutting Properties are adversely affected:

- (1) Thick shake shingles;
- (2) Ceramic tiles;
- (3) Slump bloc, weeping mortar;
- (4) Plastic or vinyl siding;
- (5) Used brick;
- (6) Synthetic stone products such as simulated stone or brick, cultured stone or brick, pre-cast stone or concrete imbedded with stone fragments;
- (7) Lava rock, clinkers;
- (8) Asphalt siding;
- (9) Plywood siding, except that plywood may be approved by the Planning Director if utilized as a base for board and batten siding;
- (10) Aluminum siding is generally not considered an appropriate material. The Planning Director may, however, consider requests for the Use of aluminum siding. The design of the Structure shall be consistent with the Park City Design Guidelines. The Applicant will be required to bring a sample of the type and color of siding to be approved by the Planning Director. When aluminum siding is approved by the

Planning Director, it shall have a minimum thickness of .019 inches and shall be backed or insulated with a minimum of 3/8 inch fiberboard of polystyrene foam;

(11) **Exemption.** Aluminum, vinyl, or other siding materials, including soffits and fascia, and synthetic stone products may be permitted upon approval by the Planning Director, on Structures when such Structures are located in Areas predominately developed with Structures utilizing the same type of materials, such as in Prospector Village, Park Meadows and Prospector Park Subdivisions.

Existing Buildings with synthetic stone products and aluminum or vinyl siding may be re-sided or repaired using synthetic stone products and aluminum or vinyl siding with specific approval by the Planning Director.

The Applicant is required to bring a sample of the material and description of the application method of the requested siding and/or synthetic stone to be approved by the Planning Director and an exhibit documenting siding materials found in the surrounding neighborhood.

Vinyl products shall have a minimum thickness of .042 inches for siding and .05 inches for soffits and fascia. Trim with a wider reveal shall be incorporated. Vinyl products

shall also be subject to aesthetic analysis to ensure compatibility with existing Structures in the surrounding neighborhood and to ensure use of a higher quality material.

(C) **DESIGN ORNAMENTATION.**

Architectural design in Park City has historically been simple. Highly ornate Buildings are inconsistent with the architectural patterns of the community, and due to the close proximity of one Development to another, inconsistent ornamentation may become unsightly and detract from Property values.

To add architectural interest to Buildings, special ornamental siding materials may be used, provided that no more than twenty five percent (25%) of any facade of the Building is covered with ornamental siding. Examples of ornamental siding provided for information purposes only and not as a limitation, are as follows:

- (1) Fish scale cut shingles;
- (2) Half-timbered stucco;
- (3) Match-sticked wood or other inlays.

(D) **NUMBER OF EXTERIOR WALL MATERIALS.**

Different exterior siding materials add interest to a Building, and to the community as a whole, however, the Use of too many exterior materials, like excessive ornamentation, detracts from the values of adjoining Properties. Exterior

walls of any Building may be sided with up to three (3) different materials per Building, but no more than three (3) materials may appear on any one (1) wall, including ornamental siding. Trim shall not be counted as a siding material, but ornamentation is counted as a siding material. If trim covers more than ten percent (10%) of a side of the Building, it shall be counted as a siding material on that side.

(E) **ROOFING MATERIALS.**

Because of the steep Grade changes within Park City, and the fact that residents and visitors are frequently in a position to look down on the City from the adjoining mountains, the appearance of roofs in Park City is of more significance than in other communities. Some roof types do not perform well in Park City's harsh climate. In addition, the Area's dry climate creates a high potential for wild land fires which makes the Use of wood roofs unsafe in some Areas. For these reasons, the following roof types are prohibited in Park City:

- (1) Untreated aluminum or metal, except that copper may be used;
- (2) Reflective materials;
- (3) Brightly colored roofing such as bright red, blue, yellow, green or similar colors are highly visible. Exception: Green is allowed if it is determined that its hue, color, chroma and other attributes of color are similar to other earth tone colors currently approved in Park City. In

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no case shall the color be determined
to be bright or highly reflective or

TITLE 15 - LAND MANAGEMENT CODE

CHAPTER 7.2 - ASSURANCE FOR COMPLETION AND MAINTENANCE

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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 7.2 - ASSURANCE FOR COMPLETION AND
MAINTENANCE OF IMPROVEMENTS

Chapter adopted by Ordinance No. 01-17

**CHAPTER 7.2 - ASSURANCE FOR
COMPLETION AND MAINTENANCE
OF IMPROVEMENTS.**

15-7.2-1. IMPROVEMENTS.

(A) COSTS OF IMPROVEMENTS.

All required Site or Public Improvements shall be made by the Applicant, at his expense, without reimbursement by the City or any improvement district therein, and in accordance with related codes, fee schedules, and ordinances.

**(B) ESCROW DEPOSITS, CASH
DEPOSITS, OR LETTERS OF CREDIT
FOR LOT IMPROVEMENTS.**

**(1) ACCEPTANCE OF
ESCROW FUNDS.** Whenever, by reason of the season of the year any improvements required by the Subdivision regulations cannot be performed, the Building Official may, nevertheless, issue a temporary Certificate of Occupancy, provided there is no danger to health, safety, or general welfare, upon accepting as

a Guarantee an Escrow deposit, a cash deposit, or a letter of credit in an amount to be determined by the Chief Building Official, or his designee, for the cost of said improvements. The Guarantee covering such Lot improvements shall remain in full force and effect.

**(2) PROCEDURES ON
ESCROW FUND.** All required improvements for which a Guarantee has been accepted by the Chief Building Official, or his designee, at the time of issuance of a Certificate of Occupancy shall be installed by the Developer within a period of nine (9) months from the date of deposit and issuance of the temporary Certificate of Occupancy. In the event that the improvements have not been properly installed, at the end of the time period the Chief Building Official, or his designee, shall give two (2) weeks written notice to the Developer requiring him to install the same, and in the event that the same are not installed to the City's satisfaction, the Chief Building Official, or his designee,

may request the City Council to authorize the City to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the Guarantee. At the time of the issuance of the Certificate of Occupancy for which a Guarantee is deposited with the Chief Building Official, or his designee, the Applicant shall obtain and file with the Building Official prior to obtaining the Certificate of Occupancy a notarized statement from the purchaser or purchasers of the premises authorizing the Building Official to install the improvements at the end of the nine (9) month period in the event that the same have not been duly installed by the Developer.

(C) **TEMPORARY**

IMPROVEMENTS. The Applicant shall build and pay for all costs of Temporary Improvements required by the Planning Commission or City Engineer and shall maintain same for the period specified. Prior to construction of any temporary facility or improvement, the Developer shall file with the City a separate suitable Guarantee, in accordance with the Land Management Code, for temporary facilities, which Guarantee shall insure that the temporary facilities will be properly constructed, maintained, and removed.

(D) **DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS.**

(1) The Planning Commission may recommend that the City Council defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.

(2) Whenever it is deemed necessary by the Planning Commission to defer the construction of any improvement required herein because of incompatible Grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the Applicant shall pay his share of the costs of the future improvements to the City government prior to the signing of the final Subdivision Plat, or the Applicant may post a Guarantee insuring completion of said improvements upon demand of the municipality.

(E) **INSPECTION OF IMPROVEMENTS.**

(1) **GENERAL PROCEDURE AND FEES.** The Planning Commission in consultation with or upon the advice of the City Engineer or Planning Director, shall provide for inspection of required improvements during construction and insure their satisfactory

completion. The Applicant shall, in accordance with the City's fee resolution, pay to the City an inspection fee and the Subdivision Plat shall not be signed by the Chairman of the Planning Commission or Mayor unless such fee has been paid. These fees shall be due and payable upon demand of the City and no Building Permits or certificates of occupancy shall be issued until all fees are paid. If the City Engineer finds upon inspection that any of the required improvements have not been constructed in accordance with the City's construction standards and specifications, the Applicant shall be responsible for completing the improvements. Wherever the cost of improvements is covered by a performance Guarantee, the Applicant and the issuing company shall be severally and jointly liable for completing the improvements according to specifications. Prior to commencement of construction on any public improvement or private improvement required to be built to public standards, the Developer shall first obtain a Notice to Proceed from the Planning Director or his designee.

(F) **MAINTENANCE OF IMPROVEMENTS.**

(1) The Applicant shall be required to maintain all improvements on the individual subdivided Lots and provide for

snow removal on Streets and sidewalks until acceptance of said improvements by the City Council. If there are any certificates of occupancy on a Street not dedicated to the City, the City may on twelve (12) hours notice plow the Street or effect emergency repairs and charge same to Applicant. The City will not normally accept water improvements or Street improvements or assume responsibility for either general maintenance or snow removal until over fifty percent (50%) of the Lots within the Subdivision are built upon.

~~(2) —The Applicant shall be required to file a maintenance Guarantee with the City, prior to acceptance, in an amount considered adequate by the City Engineer and in a form satisfactory to the City Attorney, in order to assure the satisfactory condition of the required improvements, including all Lot improvements on the individual subdivided Lots for a period of one (1) year after the date of their acceptance by the City and dedication of same to the local municipality.~~

(G) **COMPLETION OF IMPROVEMENTS.** Before the plat is signed by the Chairman of the Planning Commission and the Mayor, all Applicants shall be required to complete, in accordance with the Planning Commission's decision and to the satisfaction of the City Engineer, all the Street, sanitary sewer, and other

improvements, i.e: storm drainage, trails, sidewalk, curb, gutter, Street signs, water lines, etc., including Lot improvements on the individual Lots of the Subdivision as required, and as approved by the Planning Commission and the City Council, and to dedicate same to the local government, free and clear of all liens and encumbrances on the Property and public improvements thus dedicated.

(H) **CERTIFICATE OF SATISFACTORY COMPLETION.**

Subject to maintenance provisions contained in Section 15-7.2-1(F), the City will not accept dedication of required improvements, or release or reduce a performance Guarantee, until the City Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until the Applicant's engineer or surveyor has certified to the City Engineer, through submission of detailed "as-built" survey plats of the Subdivision, indicating location, dimensions, materials, and other information required by the Planning Commission and City Engineer, that the layout of the line and Grade of all public improvements is in accordance with the City approved construction plans for the Subdivision and that a commitment for a title policy or other acceptable evidence has been furnished to the City Attorney and City Engineer indicating that the improvements have been completed, are ready for dedication to the local government and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation, the City Council shall thereafter accept the

improvements for dedication in accordance with the established policy and procedure.

(I) **FAILURE TO COMPLETE IMPROVEMENT.** For Subdivisions for which no performance Guarantee has been posted, if the improvements are not completed within the period specified by the Planning Commission and City Council in the Ordinance approving the plat, the approval shall be deemed to have expired. In those cases where a performance Guarantee has been posted and required improvements have not been installed within the terms of such performance Guarantee, the Planning Department may thereupon declare the Guarantee to be in default and require that all the improvements be installed.

(Amended by Ord. Nos. 06-22; 09-09)

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**PARK CITY PLANNING COMMISSION
WORK SESSION MINUTES
JUNE 11, 2014**

PRESENT: Preston Campbell, Stewart Gross, Steve Joyce, John Phillips, Clay Stuard, Thomas Eddington, Kayla Sintz, John Boehm, Polly Samuels McLean.

Commissioners Strachan and Worel were excused.

WORK SESSION ITEMS

Land Management Code Chapter 15-5.5 – Architectural Review

Planner John Boehm noted that on May 14th the Planning Commission requested that the Staff conduct a reconnaissance level analysis regarding the applicability of vinyl siding in the Prospector Park neighborhood. The purpose of this work session was to discuss the Staff's assessment and analysis.

Planner Boehm reported that currently LMC Section 15-5.5, under the Architectural Design Guidelines, lists vinyl as a prohibited siding material. Subsection 11 has an exemption for aluminum siding, as well as synthetic stone. At the May 14th meeting, Ben and Melanie Martin, homeowners in Prospector, requested that vinyl also be included as an exemption.

Planner Boehm stated that the Staff visited the Prospector Park neighborhood and performed a visual analysis of the existing conditions. They found that Mr. and Mrs. Martin were fairly accurate in terms of the number of homes that currently have vinyl siding. Approximately 44 of 160 homes have vinyl siding from a street level analysis. On a few of the homes it was more difficult to discern whether the siding was aluminum or vinyl. With approximately 44 homes being vinyl, the rest were either aluminum or a masonite-like composite. Planner Boehm pointed out that the predominant siding material was aluminum.

Planner Boehm remarked that the Staff did a high-level investigation of the pros and cons of vinyl and discovered that there was significant information both for and against, and the answers regarding vinyl were varied. The Staff determined that in order to be fair and equitable, in addition to a thorough investigation of vinyl, they should also do a thorough investigation of all siding materials.

Planner Boehm noted that the Planning Department has supported the prohibition of vinyl based on aesthetic character and its susceptibility to break down in high altitude climates. The Staff found that there have been improvements to the aesthetics of vinyl, but they found no hard evidence on whether or not the new vinyls would withstand the high altitude environment. At this point, the Staff felt that vinyl should remain on the list of prohibited siding materials.

Commissioner Joyce questioned why 44 homes in Prospector have vinyl siding if it was prohibited. Director Eddington stated that the ordinance prohibiting siding went into effect in 2006. Prior to the ordinance, vinyl siding was not prohibited. After 2006, vinyl siding was only allowed if it was to replace existing vinyl siding. Commissioner Stuard clarified that the vinyl siding on those 44 homes was eight years old or older. Planner Boehm noted that some of the homes may have violated the ordinance and used vinyl siding after the ordinance was in place or other may have replaced existing siding.

Commissioner Campbell wanted to know how much of a burden is put on the Staff when someone requests an exception, and how often that occurs. Director Eddington stated that the primary Exception requests are for aluminum because that is a permissible siding. It takes several days for the Staff to look at the materials, visit the neighbor and take photographs to make sure what was being proposed is compatible.

Commissioner Campbell stated that building materials change faster than the LMC gets updated and he preferred to give the Staff the flexibility to make those decisions. He believed the vinyl product that Mr. and Mrs. Martin presented at the last meeting looked better than three-fourths of the siding materials already in Prospector. As a builder, he thought it had good energy-efficiency, good thermal property and good moisture. In his opinion, twenty years from now it would look better compared to its neighbors. Commissioner Campbell proposed saying, "aluminum, vinyl, or other siding materials", and leave the discretion to the Staff. His only concern was overwhelming the Planning Department with additional work.

Commissioner Gross clarified that Commission Campbell was proposing to change the LMC to give the Planning Director the purview to make a decision on siding materials. Commissioner Campbell pointed out that the Planning Director already has that purview, but only for aluminum siding. He was proposing to change the language to read, "aluminum, vinyl and other siding materials" to the list of Exceptions, to be determined by the Planning Director on a case by case basis. Commissioner Campbell thought the Staff was capable of determining the difference between quality siding and inferior siding.

Commissioner Stuard was not uncomfortable making the change that Commission Campbell was proposing, but he felt that additional research need to be done regarding the use of vinyl. Commissioner Campbell thought the Staff could do the research without it coming back to the Planning Commission. Commissioner Stuard clarified that he was in favor of making the change now, but he wanted the Staff to continue to do the research. After vinyl siding is approved for two or three homes, physical evidence in the field may show whether or not vinyl siding should continue to be an excepted material. Commissioner Stuard emphasized the importance of further research before too many requests are approved for vinyl siding.

Commissioner Joyce stated that vinyl siding has progressed and it can be done in all shapes and textures. He thought that Planner Boehm's comment about not being able to tell what the siding was on some of the homes was proof that vinyl is not obvious from a distance. Commissioner Joyce believed that the negative feeling towards vinyl comes from the cruddy vinyl that was on the market 25 years ago. It was a terrible product and one hail storm could shred a house or sunlight would cause it to flake. However, the product has been improved and elements have been added to keep it from fading and breaking down. In most cases, vinyl siding holds up better than wood in many environments. Commissioner Joyce suggested that the Staff set a minimum standard for vinyl so they would not be wasting their time looking at inferior vinyl.

Director Eddington stated that if the Planning Commission decided to allow vinyl siding as an exception, he would recommend a thickness minimum and other minor standards, similar to the standards in place for aluminum siding. Director Eddington noted that this was a work session and he understood that the Planning Commission was directing the Staff to come back with an amendment to the LMC that incorporates the language proposed by Commissioner Campbell. It would be publicly noticed for the June 25th meeting and the Planning Commission would forward a recommendation to the City Council for final approval.

Commissioner Phillips agreed with the idea of looking at all siding materials. He commented on the number of masonite-type products, and stated that in his experience it is the least stable product. The masonite does not hold up to standing water and it can disintegrate after a wet winter. Commissioner Phillips suggested that the Staff look closely at masonite in their studies, because it might be better to add vinyl to the list of exceptions and move masonite products from an approved material to an exception as well.

Planner Boehm stated that all siding materials have a range. Commissioner Phillips agreed, which is why the Staff would have the ability to research the particular siding the applicant proposes and make the determination based on that research.

Commissioner Joyce stated that as he drove around Prospector, affordable housing came to mind. The City is pushing for affordable housing and vinyl is one way to keep the cost down. Also, as he drove around, some of the houses that looked the worst were those with wood siding that had been stained or painted and it was peeling off. Commissioner Joyce recalled that when Mr. and Mrs. Martin spoke at the last meeting, the issue they had with their current wood siding was water damage caused by the masonite product.

Director Eddington pointed out that in addition to quality, vinyl was prohibited primarily because of the character issue and the desire to keep Park City Park City. Commissioner Campbell thought it was difficult to identify vinyl from the street and he thought homeowners should have the ability to choose the siding they want.

Commissioner Philips stated that the most important part of vinyl is how it looks. The type of vinyl used in the tract homes in Sandy would not fit in. However, the sample Mr. and Mrs. Martin brought in looked nice and it would fit in. He assumed the Planning Department considers that when looking at the exceptions.

Commissioner Gross summarized that the proposal by Commissioner Campbell was to revise the LMC to say, "aluminum, vinyl and other siding materials" as Exceptions. Planner Boehm stated that the Staff would also add language regarding thickness and other standards to ensure a higher quality material.

Commissioner Campbell disagreed with specifying thickness, etc., because materials continually change and that would eliminate the flexibility to consider new materials. Director Eddington stated that the types of vinyl are extensive and the Staff would do the necessary research to ensure the right product for Park City's climate. However, he felt that minimal parameters would be beneficial to the Staff and the applicants.

Planning Manager Sintz agreed with Commissioner Campbell in terms of changing technology. She suggested that there would be more flexibility if they leave out a numeric value and state that the thickness of material would be a review criteria. Director Eddington clarified that he was not saying that it needed a specific numeric value, but they have to talk about some type of standard. Commissioner Stuard suggested a quantitative standard that addresses durability in light of UV, standing water, etc. Planner Boehm thought the applicant should be given some idea of what the Staff would be reviewing and the expectation.

Planner Boehm stated that the Staff would come back with the language proposed, as well as flexible language for the Planning Commission to review. Commissioner Stuard reiterated Commissioner Phillips comments regarding Masonite products and moving it from the list of approved materials to the list of exceptions. Commissioner Phillips questioned whether that could be done without further research of masonite-type materials.

Commissioner Campbell suggested that they make the change for vinyl at this point and allow the Staff to research other materials. Commissioner Stuard was comfortable with that suggestion as long as masonite materials would be addressed in the future. Director Eddington stated that over time the Planning Commission would be looking at a number of issues related to materials because the technology has changed.

Commissioner Joyce echoed Commissioner Campbell's concern regarding increased workload for the Staff. He encouraged the Staff to let them know whenever they have an idea that may overburden the Planning Department. He hoped the decisions they made this evening would be a reasonable reflection of changes in the market, without greatly impacting the Staff.

Chair Pro-Tem Gross called for public input.

Ben Martin stated that he and his wife were the homeowners who requested the discussion regarding vinyl, and he appreciated the direction that was taken this evening. Mr. Martin thought a case by case basis was a good approach. He presented photos of the masonite siding on his home to show that it had exceeded its life span. Mr. Martin again presented the vinyl siding material that he proposed to use to replace the wood siding. They had chosen the best grade category in terms of thickness, moisture barrier, etc. He noted that they have the approval from the neighbors directly surrounding them, as well as neighbors around the area who support what they were doing to improve their home. He believed that in addition to improving their home, it would also improve the value of the surrounding homes in the neighborhood.

The Work Session was adjourned.

7. Prior to building permit issuance the Building Height will be verified for compliance with the GC zone height of 35'.

5. Land Management Code Amendments related to:

1. Appeals (LMC Chapter 15-1-18)
2. Completion Guarantees (LMC Chapter 15-7.2)
3. Design Guidelines regarding Exterior Materials (LMC Chapter 15-5.5)
4. Definitions (LMC Chapter 15)
5. GC and LI regarding animal services (Continued to July 9th).

Appeals (LMC Chapter 15-1-18)

Planner Whetstone reported that redlines were in the Staff report and the Ordinance was a draft. The redlined pages from the LMC would be attached to the final Ordinance when it goes to the City Council.

Planner Whetstone noted that the proposed amendment addressed an appeal process for City development that is reviewed by the Historic Preservation Board regarding design guidelines. The amendment adds the ability for the City Council to recommend that final action by the HPB can be appealed to the Board of Adjustment. Projects other than City development would go to the Courts. Planner Whetstone noted that there was similar language for Planning Commission items on City projects or City interest in a project. An appeal of that decision would go to a special review Board as opposed to going to the City Council. The LMC was amended a few years ago to include that appeal process.

Planner Whetstone explained that per this amendment, final action on Historic District Design Reviews is taken by the Planning Director. If the applicant or somebody in good standing chose to appeal a design review, it would go to the Historic Preservation Board. If the applicant or somebody in good standing does not agree with the HPB decision, it would then go to the Courts. Planner Whetstone noted that the appeal process previously sent an appeal of the HPB decision to the Board of Adjustment, but that allowed two appeals within the City. They were legally informed that a second appeal is required to go through the District Court to avoid the process of double administrative appeal. The Code was adjusted to reflect that requirement.

Planner Whetstone stated that in cases of City development, the proposed language would state that the Council, as the applicant, could choose to go to the Board of Adjustment. Planner Whetstone read the proposed language, "Final action by the Historic Preservation Board regarding design guidelines for historic district sites involving City development may

be appealed to the Board of Adjustment at the City Council's request. The Board of adjustment would have the same scope of review as the HPB."

Assistant City Attorney McLean suggested that the language should be clarified to reflect that an appeal would only go to the Board of Adjustment if the Historic Preservation Board had participated in the design review of the project. She used the current Library project as an example. At the request of the City Council, the HPB reviewed the Library project and provided input and comments to the Council.

Chair Worel did not think the proposed language was consistent with previous changes. Planner Whetstone stated that the language was not drafted by the Staff. She had received the language in an email from the Legal Department and she was willing to make changes.

Commissioner Strachan could not understand the process as written. Director Eddington agreed that the language needed to be revised. He suggested the possibility of a continuance to allow the Staff time to rewrite the language. He believed the language was confusing and it should be clarified. As written it sounded like a double appeal. Commissioner Strachan highly recommended a continuance.

Assistant City Attorney McLean stated that the Historic Preservation Board, at the direction of the City Council, may participate in the design review of any City-owned projects located within the designated Historic District. If the HPB participates in the design review of a City-owned project, they would not be able to sit as the Appellate Board on that project. Director Eddington thought the language was written with that intent, but it was not clear. In those cases the automatic appeal body would be the Board of Adjustment. If the BOA decision is disputed, it would be appealed to the District Court.

Director Eddington reiterated his suggestion for a continuance. Planner Whetstone noted that the item was scheduled for action this evening and noticed for the July 10th City Council meeting. She preferred to take the time to draft the language this evening and move forward.

Commissioner Strachan recommended that the Planning Commission move to the other proposed amendments on the agenda; and if time permits, Planner Whetstone and Ms. McLean could draft revised language for the Planning Commission to review and consider whether or not to take action this evening. The Commissioners concurred.

Completion Guarantees (LMC Chapter 15-7.2)

Planner Whetstone noted that per a change in the State law, Chapter 1 was recently amended regarding how much of the maintenance guarantee the City could retain for the warranty period. She stated that the language in Chapter 7 under the Subdivision Ordinance conflicts with the language that was recently amended. The City Engineer recommended removing the redlined language shown on page 124 of the Staff report and replacing it with the language on page 123 of the Staff report. The new language on page 123 under Maintenance of Improvements, was taken directly from the State Code.

Commissioner Strachan pointed out that if the language came directly from the State Code the Planning Commission did not have the ability to change it.

MOTION: Commissioner Strachan moved to APPROVE the amendments to Title 15, Chapter 7, Section 15-7-2 regarding Warranty Guarantees as drafted in the Staff report on pages 123 and 124. Commissioner Gross seconded the motion.

VOTE: The motion passed unanimously.

Design Guidelines regarding Exterior Materials (LMC Chapter 16-5.5)

Planner Whetstone reported that on June 11th, the Planning Commission held a work session discussion regarding the inclusion of vinyl siding material in the list of siding materials that are exempt from the LMC. A specific exemption would allow the Planning Director to look at vinyl siding on a case by case basis and determine whether to allow these products based on certain parameters and surrounding structures. Planner Whetstone noted that currently the Exemption says, "aluminum siding, including soffits and fascia, and synthetic stone products may be permitted upon approval by the Planning Director on structures when such structures are located in an area predominantly developed with that." Planner Whetstone remarked that it ends up pertaining primarily to Prospector Village, Park Meadows and Prospector Park.

Planner Whetstone stated that there was a request for vinyl siding and she understood from Planner Boehm that during the work session the Planning Commission wanted to bring it back for a public hearing and to propose the LMC amendment to allow vinyl siding on a case by case basis. If the Planning Commission chooses to add specific language, the Staff recommended including more qualitative information, as reflected in the second part of the redline on page 123 of the Staff report, which states, "Vinyl products shall have a minimum thickness of .042 inches for siding and .05 inches for soffits and fascia. A moisture barrier and insulation shall be included with any vinyl application. Custom trim with a wider reveal shall be incorporated. Vinyl products shall also be subject to aesthetic analysis to ensure compatibility with existing structures in the surrounding neighborhood."

The proposed language would give the Staff a standard of review to make sure it is the better product. Planner Whetstone noted that the same standards apply to aluminum.

Commissioner Joyce recalled that the Planning Commission had talked about eliminating the need for an LMC amendment every time a product is improved. He asked if this could be addressed somewhere other than in the LMC to give the Staff latitude to consider new and improved products as they evolve. Director Eddington stated that the LMC was the correct place because there are no design guidelines for Prospector and similar areas. However, he noted that the discussion at the last meeting was to also look at a holistic opportunity for design guidelines for the City in the future that are more applicable to individual neighborhoods. He agreed that the LMC was not the most effective way to do design review for the neighborhoods, but currently it is the only resource where the public can obtain the information to know what is or is not permitted.

Commissioner Campbell stated that in addition to including the word “vinyl” to the language, he would also recommend adding “or other siding...” to give the Staff more latitude in the future without coming back to the Planning Commission. Commissioner Stuard thought that was the direction at the last meeting. The Commissioners concurred.

Director Eddington stated that the Staff had erred more on the side of caution, but they could add “or other siding” if the Planning Commission wanted to include it. Commissioner Campbell preferred to say, “Aluminum, vinyl or other siding materials”.

Commissioner Campbell thought the Staff recommended language on page 123 of the Staff report was too specific. He thought the standards regarding thickness, moisture barrier and insulation should be left up to the building department and not specified in the LMC. Director Eddington replied that it comes down to plan check. The building permit application is reviewed by the Planning Department. He believed the standards as written was an effort to specify qualitative measures with regard to how they can promote the length and durability of vinyl siding. The Staff had researched Best Practices and this was recommended as a minimum standard for good vinyl siding applications.

Commissioner Campbell was comfortable saying that the Building Code as adopted by the State requires a moisture barrier and insulation, whether it's part of the siding or inside of the wall. The wall system would need to have both of those on new construction. Commissioner Campbell believed that putting too much specificity in the LMC was heading in the wrong direction. He questioned the reason for adding, “custom trim with a wider reveal.” Director Eddington stated that the applicants have recommended that, as well as some of the Commissioners. The research noted that it tends to look less stock supply. Director Eddington believed the Staff could still require the moisture barrier if that was

removed from the language and he thought it was addressed in the International Building Code. However, he would like to at least provide minimum standards without being overly arbitrary. Commissioner Campbell felt that the words “custom trim” implied that someone would have to trim made specifically for their house completely different than any other. He thought “custom” was a dangerous word. Commissioner Stuard agreed. Director Eddington recommended removing the word “custom” and just say, “Trim with a wider reveal.”

Commissioner Stuard liked the fact that the standards would ensure the use of higher quality material. He asked how they could generally include that in the language without being too specific.

Commissioner Joyce stated that he drove around the neighborhoods before the last meeting to see how the siding materials have changed. He thought being too general leads to the debate of what is good enough. He commented on different standards that are recommended as the minimum in various places by various people. Everyone has a different opinion on what constitutes the “good siding”.

Commissioner Campbell asked Ben Martin to provide his thoughts since he had researched vinyl siding in depth for his home before requesting that the LMC be revised to consider vinyl as an acceptable material.

Ben Martin stated that the vinyl he was proposing was .042” in thickness. He noted that they were planning to put up 3-1/2” vinyl trim that was not stock. He would not consider it custom, but it is not stocked in building supply stores. Commissioner Campbell pointed out that the trim may be stocked in the stores next year, which is why he preferred to leave it out completely. Mr. Martin agreed that less specific language would be best.

Director Eddington was comfortable removing the word “custom” and taking out the reference to “moisture barrier”. However, he requested that they leave the rest of the language. He noted that good, better, best was an interesting concept, depending on where you stand. Commissioner Campbell questioned the reason for “wider reveal” because modern homes in Park City are being built without any trim. Director Eddington noted that some trim is required with vinyl siding to cap it at the end. Typically a wider reveal is considered a better look. He clarified that trim with a wider reveal is not required for the other siding products.

Chair Worel clarified that the language would read, “Trim with a wider reveal would be incorporated.” Director Eddington was comfortable with that language. Director Eddington stated that if these were guidelines they could be more qualitative. However, given that it was part of the LMC, he believed that some explicit information was necessary. He also

thought it was better for the applicant to know what to expect. Commissioner Campbell understood the situation, and he only requested that they leave it as general as possible.

Mr. Martin recalled that Commissioner Joyce had made a comment at the last meeting about the additives in vinyl siding for UV protection, etc. He thought that would be a valuable requirement for the Staff to consider when making a decision on vinyl siding.

Planner Whetstone read the revised language per the discussion”

“Vinyl products shall have a minimum thickness of .042 inches for siding and .05 inches for soffits and fascia. Trim with a wider reveal shall be incorporated. Vinyl products shall also be subject to aesthetic analysis to ensure compatibility with existing structures in the surrounding neighborhood and to ensure use of a higher quality material.”

She also revised the existing LMC language to say, Aluminum, vinyl and other siding materials, including soffits and fascia, and synthetic stone products may be permitted upon approval by the Planning Director....”

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation for the Amendments to the Land Management Code to Title 15, Chapter 5, Section 15-5-5 regarding vinyl siding subject to the amendments to the amendments, which have been inserted in the revised language on pages 122 and 123 of the Staff report. Commissioner Stuard seconded the motion.

VOTE: The motion passed unanimously.

Definitions (LMC Chapter 15) GC and LI regarding animal services

Planner Whetstone noted that the Staff recommended that the Definitions and the GC and LI zones regarding animal services be continued to July 9th. They had been removed from the ordinance that was before the Planning Commission this evening. Planner Whetstone explained that both items address animal services and the Staff was still working on the definitions, as well as the allowed versus conditional use language that was previously discussed.

MOTION: Commissioner Strachan moved to CONTINUE the public hearing on the LMC Amendments to Chapter 2.18, 2.19 and Chapter 15, Definitions, to July 9, 2014. Commissioner Phillips seconded the motion.

VOTE: The motion passed unanimously.

Commissioner Campbell clarified for the public that the Planning Commission had only forwarded a positive recommendation to the City Council regarding the use of vinyl. The LMC would not actually be changed until the City Council votes on their recommendation. The amendment needed to be approved before anyone could pull a building permit to use vinyl. Planner Whetstone noted that it was scheduled before the City Council on June 17th.

Appeals (LMC Chapter 15-1-18) – Continued Discussion

The Planning Commission took a short break to allow Planner Whetstone and Assistant City Attorney McLean the opportunity to draft appropriate language to reflect the correct appeal process.

The meeting was resumed.

Assistant City Attorney McLean remarked that it was a difficult situation because of the apparent conflict of interest if the HPB reviews a City project. Therefore, she put it under Staff because it is an appeal of the Staff decision. She explained that if it is a City-owned project which the HPB participated in the design review, then such appeal shall go to the Board of Adjustment and it would have the same scope of review as the HPB. In that case the BOA would be substituting for the HPB in the appeal process.

Planner Whetstone noted that the language was previously placed under the Historic Preservation Board Section of 15-1-18, and it was moved to (A) Appeals of Staff under 15-1-18. The revised language read:

STAFF. Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Historic Preservation Board as described in 15-11-12(E) unless the Historic Preservation Board participated in the Design Review of a City-owned project pursuant to 15-11-6, in which case any appeal of the decision shall be reviewed by the Board of Adjustment . The Board of Adjustment in such an appeal will have the same scope of authority and standard of review as the Historic Preservation Board would have in such an appeal. All appeals must be filed with the Planning Department within ten (10) days of Final Action.

Assistant City Attorney noted that language was also changed under Burden of Proof. The revised language read:

The appeal authority shall act in a quasi-judicial manner. The appellant has the burden of proving that the land Use authority erred. Except for appeals to the Board of Adjustment, the appeal authority shall review factual matters de novo and it shall determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance. Except in the case of appeals to the Board of Adjustment regarding Design Guidelines for the Historic Districts and Historic Sites, involving City owned projects, appeals to the Board of Adjustment will review factual matters for correctness and determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance. The scope of review of the Board of Adjustment is limited to issues brought to the land Use authority below.

Ms. McLean explained that typically when the Board of Adjustment hears appeals, they are the only body that reviews an appeal for correctness. However, in the case indicated in the revised language, the BOA would review the appeal de novo.

Assistant City Attorney stated that the next revision was under Stay of Approval Pending Review of Appeal. She noted that currently the Code stays an approval only from the Planning Commission to the City Council. If someone appeals a Planning Commission approved CUP, that approval is stayed until the City Council makes its decision. The issue was raised recently that it should be applicable across the board for all appeals. Ms. McLean could not understand why it would only apply to appeals of Planning Commission decisions to City Council and she thought the rule should apply to all Boards. However, once the appeal goes to District Court, explicit language in the LMC says that the approval is not stayed. The appellant would then have to request a stay from the District Court.

The language was revised as follows:

Upon the filing of an appeal, any approval granted under this Chapter will be suspended until the appeal body pursuant to this Section 15-1-18 has acted on the appeal.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council for the Amendments to Title 15, LMC Section 15-1-18 regarding appeals, as amended in the revised language in Section 15-1-18. Commissioner Phillips seconded the motion.

Commissioner Stuard asked to abstain from the vote. Assistant City Attorney McLean informed him that as a Commissioner he had an obligation to vote and he could not abstain.

Commissioner Stuard stated for the record that he was uncomfortable with the idea of making small word changes moments before voting. He believed these were primarily

legal procedures that have little to do with the role of the Planning Commission. Commissioner Stuard would have preferred a continuance to give the Staff and the Planning Commission time to make sure it was absolutely correct. He thought it would have been better to send the City Council a positive recommendation when the Staff was 100% sure it was correct. Chair Worel concurred.

VOTE: The motion passed unanimously.

The Planning Commission was informed that PCMR, the applicant for 1310 Lowell Avenue, was requesting a continuance date of July 23rd rather than July 9th. The amended motions to reflect that request are found under the CONTINUATIONS Section of the minutes.

Park City Planning Commission meeting adjourned at 7:25 p.m.

Approved by Planning Commission: _____

City Council Supplemental Staff Report



Subject: 30 Sampson Avenue
Project #: PL-13- 01988 and PL-12-01487
Author: Kirsten Whetstone, Senior Planner
Date: July 17, 2014
Type of Item: Appeal of Planning Commission denial of a Steep Slope
Conditional Use Permit

PLANNING DEPARTMENT

Staff and the applicant are jointly requesting that this item be continued to the July 31, 2014 City Council meeting in order to clarify some of the terms and conditions of the proposed remand.

City Council Staff Report



Subject: 30 Sampson Avenue
Project #: PL-13- 01988 and PL-12-01487
Author: Kirsten Whetstone, Senior Planner
Date: July 17, 2014
Type of Item: Appeal of Planning Commission denial of a Steep Slope Conditional Use Permit

PLANNING DEPARTMENT

Summary Recommendations

Staff recommends that the City Council remand the Steep Slope Conditional Use permit application back to the Planning Commission to allow the Commission to review a revised site plan and consider information provided in an Advisory Opinion of the State Office of Property Rights Ombudsman.

Description

Applicant/Owner: Michael Jorgensen
Architect: Jonathan DeGray
Location: 30 Sampson Avenue
Zoning: Historic Residential - Low (HRL)
Adjacent Land Uses: Residential, Vacant
Reason for Review: Appeals of Planning Commission action on Steep Slope Conditional Use Permits are considered by the City Council.

Proposal

This is a request by the applicant and Planning Staff to remand to the Planning Commission of a Steep Slope Conditional Use Permit (CUP) application. Subject of the appeal is a denial by the Planning Commission of a Steep Slope (CUP) application for a new single-family house to be located on a vacant platted lot at 30 Sampson Avenue. The property is located within the Historic Residential Low (HRL) zoning district. In the HRL zone construction of greater than 1,000 square feet, on slopes exceeding thirty percent (30%), requires a Steep Slope CUP prior to the issuance of a building permit. The purpose of the Steep Slope CUP is to ensure that potential impacts of construction on a steep slope are mitigated, either by plan and design modifications or by conditions of approval related to construction.

Background

On April 10, 2013, the Planning Commission denied a Conditional Use Permit application for 30 Sampson. There were several meetings prior to this date, including a public hearing on August 22, 2012 and a work session on December 12, 2012. Details of the application and meetings are found in the April 10, 2013 Staff Report (Exhibit A). At the April 10th meeting the Commission requested Planning Staff prepare Findings of Fact and Conclusion of Law consistent with the April 10th discussion and unanimous vote to deny (Exhibit B-minutes). These Findings and Conclusions were ratified by the Planning Commission on June 26, 2013 (Exhibit C).

On July 12, 2013, the applicant submitted, within the required ten (10) days, an appeal of the Planning Commission decision (Exhibit D) to the City Recorder. On August 5, 2013, the applicant requested a stay of the appeal in order to submit a request for an advisory review of the Planning Commission decision by the State Ombudsman. Staff agreed to continue the appeal to a date uncertain and the applicant submitted a request for Advisory Opinion from the State of Utah Office of Property Rights Ombudsman (Advisory Opinion).

On March 28, 2014, Planning Staff received a copy of the Advisory Opinion (Exhibit E) and after reviewing the document scheduled a meeting with the applicant to discuss the CUP application and appeal. At the meeting, the Applicant indicated he was willing to make some changes to the application. Staff recommends and Applicant requests that the appeal be remanded back to the Planning Commission for re-consideration of the application based on information presented by the Ombudsman, as well as a redesign and amendments to the application. As part of the amendments to the design in the application, the applicant has submitted a request for a variance from the LMC requirements regarding "number of stories" to the Board of Adjustment.

On July 3, 2014 the applicant submitted a Variance application requesting relief from the LMC requirement that "a structure may have a maximum of three (3) stories" based on a hardship created by the configuration of the platted lot, created by a subdivision approved in 1995. Staff is reviewing the variance application and has not yet scheduled a date for the Board of Adjustment hearing. The Variance is required for the redesigned plans due to an underground connection between the garage at the front of the lot and the main house at the rear of the lot, as further described below. The variance request would first go to the Board of Adjustment before the Planning Commission would hear the remand and review the amended application.

Analysis

By remanding the appeal back to the Planning Commission, the Planning Commission would have the opportunity to review the Advisory Opinion and the amended plans. The remand would also enable the applicant to request a variance from the Board of Adjustment for the amended design.

If Council decides not to remand the appeal, Staff recommends setting the appeal for a date certain for a more thorough analysis of the appeal points.

Process

If the Council remands the CUP application back to the Planning Commission, the BOA will review applicant's request for a variance for an amended design which includes an interior connection plan and then Planning Commission will hold a hearing on the revised CUP application and have the opportunity to review the Advisory Opinion. Final action by the Planning Commission on the remanded CUP may be appealed to the City Council following the procedures found in LMC § 15-1-18. Approval of the Historic District Design Guideline compliance is noticed separately and is a condition of building permit issuance.

Department Review

The request for a remand to the Planning Commission has been reviewed by the Planning, Building, and Legal Departments.

Public Input

Several public hearings were conducted by the Planning Commission (See minutes). Staff has not received input on this application for an appeal, which was publicly noticed.

Notice

On July 9, 2014 the property was posted and notice was mailed to property owners within 300 feet. Legal notice was published in the Park Record on June 25, 2014.

Alternatives

- The City Council may remand the Steep Slope Conditional Use Permit application, for 30 Sampson Avenue, back to the Planning Commission, or
- The City Council may request to hear the appeal, in which case the item should be continued to a date certain to allow staff to prepare a staff report in response to the appeal points, or
- The City Council may request additional information and may continue discussion on this request for a stay and remand to a date certain.
- There is not a “no action” alternative for this matter.

Significant Impacts

There are no significant fiscal or environmental impacts from this request, other than providing the Planning Commission an option to relook at the CUP application in light of the Advisory Opinion and to review the amended application.

Consequences of not taking the Suggested Recommendation

If the appeal is not remanded, Council must hear the appeal at an upcoming meeting.

Recommendation

Staff recommends that the City Council remand the Steep Slope Conditional Use permit application back to the Planning Commission to allow the Commission to review a revised application, give the applicant the ability to request a variance from the Board of Adjustment and consider information provided in an Advisory Opinion of the State Office of Property Rights Ombudsman.

Exhibits

Exhibit A- April 10, 2013, Staff Report

Exhibit B- April 10, 2013, Planning Commission meeting minutes

Exhibit C- June 26, 2013, Findings and Conclusions as ratified by the Commission

Exhibit D- July 12, 2013, Appeal of Planning Commission decision

Exhibit E- March 28, 2014, Advisory Opinion

Planning Commission Staff Report



Subject: 30 Sampson Avenue
Project #: PL-12-01487
Author: Mathew Evans, Senior Planner
Date: April 10, 2013
Type of Item: Administrative – Steep Slope Conditional Use Permit

Summary Recommendations

Staff recommends the Planning Commission review a request for a Steep Slope Conditional Use Permit at 30 Sampson Avenue. Staff has prepared findings of fact, conclusions of law, and conditions of approval for the Commission's consideration.

Description

Applicant/Owner: Michael Jorgensen
Architect: Jonathan DeGray
Location: 30 Sampson Avenue
Zoning: Historic Residential - Low (HRL)
Adjacent Land Uses: Residential, Vacant
Reason for Review: Construction of structures greater than 1,000 square feet on a steep slope requires a Conditional Use Permit

Proposal

This application is a request for a Steep Slope Conditional Use Permit for a new residence (home) to be located at 30 Sampson Avenue. The vacant lot is located within the Historic Residential Low (HRL) Zone designation. The HRL Zone requires that any new construction 1,000 square feet or greater, on slopes exceeding thirty percent (30%), first obtain a Conditional Use Permit for steep slope construction prior to the issuance of a building permit.



Background

On January 5, 1995, the City Council approved the “30, 40, and 50 Sampson Avenue Amended Plat,” also known as the Millsite Supplemental Plat Amended Subdivision, which was a combination of thirteen (13) whole and partial lots as well as a portion of “Utah Avenue” within the original Millsite addition to Park City Subdivision Plat. The Plat was recorded with a note that limited the “maximum size for residential structures” to 3,000 square feet for Lots One (1) and Three (3), and 3,500 square feet for Lot Two (2). The conditions of approval reflect that there would be a 400 square foot “credit” for garages (see Exhibit “C”). This application is for Lot Three (3) of the Millsite Supplemental Plat Subdivision totaling 7,089 square feet.

On March 30, 1998, Community Development Director Richard E. Lewis wrote a letter to the owners of Lots 1, 2, and 3, clarifying that the maximum size for residential structures noted on the plat excluded basements as defined by the LMC, so long as no portion of the basement was above ground. The letter also clarified the additional 400 square feet of floor area garage allowance to the total square feet allowed. This letter is attached hereto as Exhibit “D”.

On February 14, 2012, the City received a completed application for a Conditional Use Permit (CUP) for “Construction on a Steep Slope” at 30 Sampson Avenue. The property is located in the Historic Residential Low (HRL) District. On April 9, 2012, the application was deemed “complete” and scheduled as a public hearing before the Planning Commission.

This application is a request for a Conditional Use Permit (CUP) for construction of a new single family dwelling including a detached garage. Because the total proposed structure square footage is greater than 1,000 square feet and would be constructed on a slope greater than thirty percent (30%), the applicant is required to file a CUP application for review by the Planning Commission, pursuant to LMC § 15-2.1-6. A Historic District Design Review (HDDR) application is being reviewed concurrently by staff for compliance with the Design Guidelines for Historic Districts and Historic Sites adopted in 2009. No action has been taken on the HDDR as the Steep Slope CUP process is required prior to the processing of the HDDR.

On August 22, 2012, this application came before the Planning Commission and Public Comment was taken at the same meeting (see meeting minutes attached as Exhibit “E”). The Planning Commission closed the Public Hearing and voted unanimously to continue the item to a date uncertain for the purpose of reviewing the existing definition of “stories”. The applicant has since requested to have the application put back before the Planning Commission for consideration of the Steep Slope CUP. In an effort to reduce the mass and scale of the garage, the applicant has re-designed the garage from a side-by-side two door configuration, to a one door tandem garage.

Also, based upon the Planning Commission’s subsequent discussions regarding the definition of stories, this application for a home with a detached garage appears to meet the three story requirement under the current definition in the code. The plans show a detached garage that includes an elevator, which connects to a patio area in front of the

house. Since the garage is detached, it does not violate the 3 story height restriction in the code.

The current LMC defines of a “story” as follows:

15-15-1.249 STORY. The vertical measurement between floors taken from finish floor to finish floor. For the top most Story, the vertical measurement is taken from the top finish floor to the top of the wall plate for the roof Structure.

On December 12, 2012, the applicant came back before the Planning Commission on as a work session item, the minutes of which are attached hereto as Exhibit “F”. During the meeting, the Planning Commission brought up the following summary of potential issues related to the proposed Conditional Use Permit in no particular order. Staff notes are in *italics*:

- The comparison of existing houses on page 61 of the Staff report and suggested that the Staff also include the proposed project to the table to make it easier to compare. *Staff notes: This has been addressed.*
- Compatibility of the proposed home with existing historic structures is an issue based on the purpose statement of the HRL District, although it was acknowledged that larger structures had been constructed on Sampson Avenue in the past.
- 201 and 205 Norfolk Avenue properties should be discarded from the Existing Home Size Analysis due to the fact that they are not Sampson Avenue properties or located within the HRL District. *Staff notes: Staff included these properties for two reasons; both lots have driveway access to Sampson Avenue, and; 205 Norfolk Avenue is an adjacent property. Also noted by Staff is that the HR-1 District is actually less restrictive than the HRL in terms of minimum lot size, and allowed uses. Furthermore, Staff should point out that the adjacent Lot 1 of the Treasure Hill Subdivision, which is directly adjacent to the subject property, has an allowable footprint of 3,500 square feet per the Treasure Hill MPD. The proposed home at 30 Sampson is closer to the potential building sites of the Norfolk and King Road homes than it is to that of homes located on Sampson Avenue.*
- The proposed deck that connects the elevator to the main level of the home is a possible LMC violation because the deck attaches both buildings. The Planning Commission is concerned that this area could eventually be “filled in” to become one structure. *Staff note – The deck, so long as it is within the setback, can extend from one structure to another without violating the LMC. The deck is not counted towards the footprint of the home, and the deck is treated much the same way a patio would be, extending from one structure to another, again, so long as they are on the same property and so long as they are within the required setback area. There is no foundation for the deck, thus it is not technically adjoining the buildings together as one structure. Building Code does not regulate this issue because a deck is not a structure in the same way a building encloses and/or attaches living space. Staff cannot speak to the scenario of the area becoming a structure in the future because there is no way to anticipate what future LMC codes will allow the applicant to do with this area. If the codes*

were relaxed to allow greater footprint, etc., it is conceivable that more home additions would be proposed for any number of properties in old town.

- The story height of the proposed structures is compromised by the deck extension from the elevator to the top floor of the proposed home because connecting the two buildings would cause it to exceed three stories. *Staff notes: See previous Staff notes above. The deck extension from one building to another does not connect the two structures any more than a patio would or cement walkway would connect the two. The deck is not footprint and does not have a foundation.*
- The proposed facade of the home should be made to look and feel more historic in term of presentation. *Staff note – The Design Guidelines for Historic Districts and Historic Sites discourages the mimicking of historic design, but rather suggests that new homes and structures “compliment” existing historic structures nearby, in terms of like materials and form. The design of the proposed home has not been approved, and requires a Staff level review, as well as a Design Review Team review of the proposed elevations. The Planning Commission is not approving the design of the home, only the location, form, mass, scale, and other considerations as described in LMC § 15-2.1-6.*
- The proposed basement does not meet the requirement as stipulated in the letter from former Community Development Director Richard E. Lewis that clarified that the maximum size for residential structures noted on the plat excluded basements as defined by the LMC, so long as no portion of the basement was above ground. *Staff notes: The proposed basement is entirely underground with the only exposure coming from the building code-required window wells for emergency egress. The plans do not indicate that any portion of the proposed basement is above ground. Basements, as explicitly noted in CDD Lewis’ letter, are not counted into floor area calculations for residential properties.*
- Snow shedding onto adjacent property is a concern. *Staff note: This item has been addressed in the Conditions of Approval. The Building Official will have to review the proposed plans for snow shedding, which the applicant will have to prove mitigation for prior to the issuance of a building permit.*
- The LMC encourages homes on steep slopes be stepped with the grade and broken into a series of individual smaller components, as well as encourages detached garages, and that the applicant has done both, but the proposed structure is still incompatible with the volume and mass of surrounding homes. The design appears to comply with these requirements.
- The proposed home is across the street from 41 Sampson Avenue, and the proposal it is not compatible with respect to mass, scale, size, etc. *Staff note: The owner of 41 Sampson Avenue has plans to lift the home and place a basement foundation underneath, and also anticipates a historically compatible addition to the home. Staff has not seen the proposal and cannot speak to the actual size of the contemplated additions to the square feet; however the conceivable footprint based on lot size alone, is 1,830 square feet.*

Purposes of the HRL District

The purpose of the Historic Residential Low-Density (HRL) District is to:

- (A) Reduce density that is accessible only by substandard Streets so these Streets are not impacted beyond their reasonable carrying capacity,
- (B) Provide an Area of lower density Residential Use within the old portion of Park City,
- (C) Preserve the character of Historic residential Development in Park City,
- (D) Encourage the preservation of Historic Structures,
- (E) Encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District, and maintain existing residential neighborhoods,
- (F) Establish Development review criteria for new Development on Steep Slopes which mitigate impacts to mass and scale and the environment, and
- (G) Define Development parameters that are consistent with the General Plan policies for the Historic core.

Analysis

The proposed home is three (3) stories, including a basement level, a main level, and a top level. There is also a detached garage that includes an ADA accessible elevator building. The garage is not directly connected or attached to the home and is thus considered a detached accessory structure which is proposed to be built within the required setbacks for the main structure. The garage is setback from the elevator building by ten feet (10') and is setback thirty-two feet (32') from the main building. The highest point of the building is twenty-seven feet (27'), but at no point does the building exceed this height.

The total maximum allowed footprint per the LMC is 2,355.5 square feet. There is a plat note on the Millsite Reservation Supplemental Plat that restricts the maximum size of the structure to 3,000 square feet. A 1998 letter from former Community Development Director Richard E. Lewis, written to the owners of the Millsite Reservation Supplemental, plat clarified that the City Council granted an additional 400 square feet for a garage. In addition, Mr. Lewis determined that basements were permitted in addition to the maximum house size provided that the basement meets the definition in the Land Management Code. At the time a "Basement" was defined as having all four walls at least eighty percent (80%) underground and may not have an outside door visible from the public right of way. Our current Code defines Basement as "Any floor level below the First Story in a Building." The proposed basement level meets our new definition as found within LMC Section 15-15-1.

The applicant is proposing required two off-street parking spaces. There are two off-street spaces provided, one within the garage and one provided on an un-covered parking pad. In addition to the parking pad spot, the one-car garage is about two feet short of meeting the requirement for two tandem spaces so there would be parking for 3 vehicles albeit one would have to be small. A variation to the parking dimensions could be allowed by the City Engineer, but only two spaces are required, thus the applicant meets the minimum requirements for the two spaces.

The main home has a footprint of 1,189 square feet with a total of 3,601 square feet, and the total size of all the structures (excluding basement and 400 square feet for garage is 2,996 square feet. The total space including the detached garage is 4,132

square feet. Below is an analysis of each floor and accounts for the total square footage of the entire project:

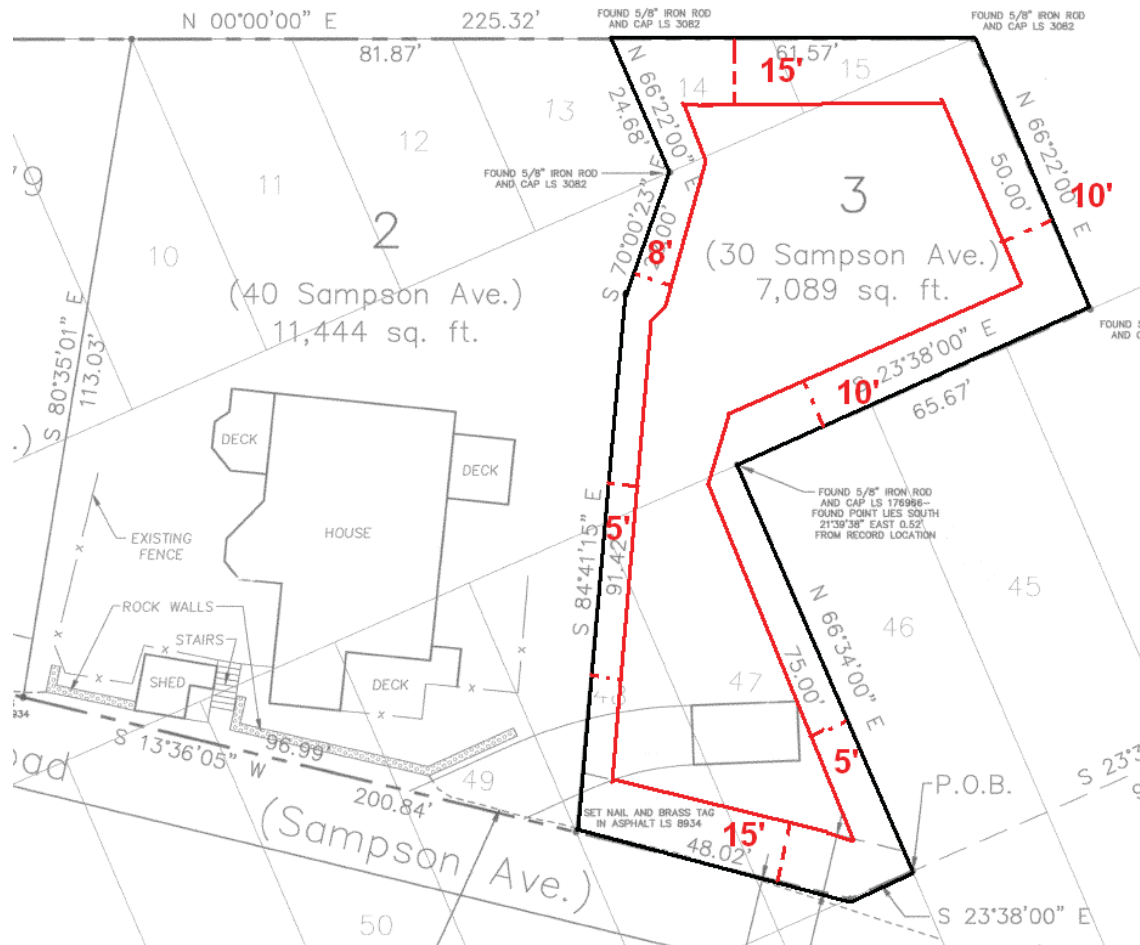
Floor	Proposed floor area
3 rd Story	1,209 square feet – Main (top) Level
2 nd Story	1,203 square feet – Lower Level
1 st Story	1,189 square feet – Basement
Garage/Accessory Building Area	453 square feet garage (400 sq ft allowance) 350 square feet – Garage Entry Area 180 square feet – Mud Room
Overall area	4,585 grand total square feet + garage
Overall size (excluding basement and 400sf for the garage)	2,996 square feet (above grade living space)
Total size above grade (including garage)	3,396 square feet total above grade including 400 sq ft garage allowance)

The LMC determines the proposed maximum building footprint size is determined by the LMC. The area of the lot is 7,089 square feet and under the LMC an overall building footprint of 2,380 square feet is allowed. A building footprint of 2,272 square feet is proposed, which includes the Garage entry Area.

Per Section 15-4-17 (Supplemental Regulations – Setback Requirements for Unusual Lot Configurations), all lots with more than four sides require a “Setback Determination” by the Planning Director. On October 11, 2011, Planning Director, Thomas Eddington determined that the lot has eight sides, and made the following setback determination for the subject property:

Setback Determination	
Required Setbacks	Proposed Setbacks
1. Front Yard – 15 feet (10 feet per LMC)	(East) Front – 15 feet (complies)
2. Side Yard south property line to “tapper” area (see diagram below) – 5 Feet (3 to 5 feet per LMC)	South Side-yard – 5 feet (complies)
3. Side Yard north property line to the southwest corner of Lot 46, Block 78 of the Subdivision #1 of the Millsite Reservation – 5 feet (5 feet per LMC)	North Side-yard – 5 feet (complies)
4. Combined Side Yards (north and south) of main portion of lot – 18 feet total, south-side shall be 8 feet; north-side shall be 10 feet (6 to 10 feet per	Combined north/south side-yard for main body of lot – 18 feet total (complies)

LMC)	
5. Rear Yard – 15 feet (10 feet per LMC)	Rear yard – 15 feet (complies)
6. North Side Yard property line – 10 feet (5 feet per LMC)	Side-yard north for main portion - 10 feet (complies)
7. West Side Yard property line – 10 feet (10 feet per LMC)	Side-yard west property line – 10 feet (complies)



The above ground square footage equates to sixty-nine percent (69%) of the total building size with the remaining 1,189 square feet of building space located underground. The total square footage (including the garage) above ground is 3,396 square feet which is compliant with the 1998 clarification letter written by Community Development Director Lewis.

Staff made the following LMC related findings:

Requirement	LMC Requirement	Proposed
Building Footprint	2,355.5 square feet (based on lot area) <u>maximum</u>	2,272 square feet, <u>complies.</u>
Building Square Foot Maximum	No LMC Requirement – 3,000 square feet per plat note	4,587 square feet, complies per allowed exceptions (minus 1,189 sq. ft. basement and 400 sq ft garage = 2,998).
*Front and Rear Yard	10 feet minimum (20 feet total) 15 feet per Planning Director	15 feet (front), <u>complies.</u> 15 feet (rear), <u>complies.</u>
*Side Yard	5 feet minimum, (10 feet total)	*Various – see notes
Height	27 feet above existing grade, <u>maximum.</u>	Various heights all less than 27 feet, <u>complies.</u>
Number of stories	A structure may have a maximum of three (3) stories.	3 stories, <u>complies.</u>
Final grade	Final grade must be within four (4) vertical feet of existing grade around the periphery of the structure.	4 feet or less, <u>complies.</u>
Vertical articulation	A ten foot (10') minimum horizontal step in the downhill façade is required for the third story unless the 1 st story is completely below finished grade.	First (1 st) story completely under finished grade, garage is detached, <u>complies.</u>
Roof Pitch	Roof pitch must be between 7:12 and 12:12 for primary roofs. Non-primary roofs may be less than 7:12.	7:12 for all primary roofs <u>complies.</u>
Parking	Two (2) off-street parking spaces required	1 covered + 1 additional uncovered space, <u>complies.</u>

* Planning Director Determination of setbacks based on the fact that the lot has more than four sides. Planning Director can require greater setbacks in this instance.

Existing Home Size Analysis – Neighboring Properties
(based on Summit County Records available to Staff as of 12-7-12)

Address	House Size + garage (sq. ft.)	Footprint (total sq. ft. estimate)	Total Size (sq. ft.)	Lot Size (total ac/sq. ft.)
205 Norfolk	7,711 + 612	3,200	8,323	.38 or 16,553
201 Norfolk	4,286 + 546	2,165	4,832	.14 or 6,115
16 Sampson*	3,684 + 457	2,160	4,141	.14 or 6,100
40 Sampson	(Unknown) + 0	1,746	0**	.26 or 11,444
41 Sampson	908 + 0	908 (1,830 possible)	908	.11 or 4,792
50 Sampson	3,674 + 500	1,830	4,174	.16 or 6,970
60 Sampson	3,800 + 446	1,900	4,246	.15 or 6,534
99 Sampson	2,990 + 500	1,500	3,490	.10 or 4,560
121 Sampson	1,854 + 0	680	1,854	.15 or 6,534
131 Sampson	2,085 + 240	750	2,325	.14 or 6,098
133 Sampson	2,593 + 626	1,200	3,219	.09 or 3,920
135 Sampson	3,014 + 484	560	3,498	.13 or 5,600
30 Sampson	3,471 + 1114	2,272	4,585	.16 or 7,089

*HDDR and SS-CUP previously approved, but the home is not yet built.

**Not used to calculate average home size below, however lot size and footprint were used.

Based on the analysis above with the numbers available to Staff through City and County records available on this date, the average total home size for the adjoining properties and the Sampson Avenue properties is 3,728 square feet, the average lot size is .16 acres, and the average footprint is approximately 1,550 square feet.

It is important to note that the subject property is 7,089 square feet, which would be the second largest lot on Sampson Avenue. Only 40 Sampson Avenue has a bigger lot (11,444 square feet), and the next closest in size is 50 Sampson Avenue with a 6,970 square foot lot. The home size of 40 Sampson Avenue is unknown, but county records show a footprint of 1,746 square feet (a portion of the house is two stories), and 50 Sampson Avenue is 4,074 with a footprint of 1,830 square feet.

Considering the proposed location of the proposed home on Sampson Avenue, all adjacent properties should be considered in the analysis, not just the Sampson Avenue properties. The proposed home will actually be situated closer to 205 Norfolk and the any future home built on Lot 1 of the Treasure Hill Subdivision, which sits directly to the west of (above) 30 Sampson Avenue. Thus the existing footprint and home size of 201

and 205 Norfolk are included. It is also important to consider the potential of Lot 1 of the Treasure Hill Subdivision has an allowed footprint of 3,500 square feet (per the Treasure Hill MPD). As previously noted, 201 and 205 Norfolk Avenue (as well as Lot 1 Treasure Hill) are in the HR-1 District, which is less restrictive than the HRL District with respect to lot size and allowed uses (see illustration below).



The subject lot was created by the Millsite Supplemental Plat Amended Subdivision, which was a combination of 13 whole and partial lots, and a portion of “Utah Avenue” within the original Millsite addition to Park City Subdivision Plat. The plat amendment reduced the overall density in terms of dwelling units on the substandard streets consistent with the purpose statements for the HRL zone.

LMC § 15-2.1-6 provides for development on steep sloping lots in excess of one thousand square feet (1,000 sq. ft.) within the HRL District, subject to the following criteria:

Criteria 1: Location of Development.

Development is located and designed to reduce visual and environmental impacts of the Structure. **No unmitigated impacts.**

The proposal is for a new single family dwelling with a proposed footprint of 2,272 square feet. The proposal includes a two car garage at the bottom of the slope along the frontage of the lot. The home will be built uphill from the street. The lot is wide at the street level but narrows before opening up to the most substantial portion of the lot. The lot was approved in 1995. The City was aware of the odd-shape of the lot at that time. The vast majority of buildable area is on the upper portion of the lot. There is no conceivable way to build a driveway that would meet the LMC requirements that limits the maximum slope to fourteen percent (14%) as measured from Sampson Avenue to

the upper portion of the lot. The prohibiting factors are the shape and slope of the lot, as it exceeds thirty percent (30%) at its most narrow portion.

The proposed coverage of the building is thirty-one percent (31%) of the overall lot. The applicant is proposing to plant forty (40) new trees on the property, and there is some existing native vegetation located on the lot, some of which will be disturbed; however, there are no large native trees or evergreens identified on the property, and the level of disturbance of existing vegetation will be mitigated by the planting of new vegetation as shown on the attached plans (sheet A02 of Exhibit A).

Criteria 2: Visual Analysis.

The Applicant must provide the Planning Department with a visual analysis of the project from key Vantage Points to determine potential impacts of the project and identify potential for screening, slope stabilization, erosion mitigation, vegetation protection, and other items. **No unmitigated impacts.**

The applicant submitted a visual analysis, including renderings, showing a contextual analysis of visual impacts (see exhibit "B"). The proposed structure cannot be seen from the key vantage points as indicated in the LMC Section 15-15-1.283, with the exception of a cross canyon view. The cross canyon view contains a back drop of two (2) story building with a garage building below. Visual impacts from this vantage point are mitigated by the amount of vegetation surrounding this area and on the subject property, as well as the breaking up of the massing of the house into upper and lower sections.

For the purpose of visual analysis it's also important to keep in mind that there are two more homes to be built in the area that are directly adjacent to the subject property, 16 Sampson Avenue, which is roughly the same size as 30 Sampson Avenue, and Lot 1 of the Treasure Hill Subdivision, which is approved for a 3,500 square foot footprint. Lot 1 of Treasure will be built at a higher elevation, and roughly adjacent to the location of the 30 Sampson Home. When built, the Lot 1 Treasure Hill home could potentially tower over 30 Sampson considering it is higher up the hillside, and has a much larger allowable footprint.

Criteria 3: Access.

Access points and driveways must be designed to minimize Grading of the natural topography and to reduce overall Building scale. Common driveways and Parking Areas, and side Access to garages are strongly encouraged, where feasible. **No unmitigated impacts.**

The proposed design incorporates a driveway from Sampson Avenue. The applicant is proposing retention on both sides of the driveway. The driveway access will be located on the south side of the lot where the finished grade of the street and the natural grade of the lot are closest in elevation. Again, as proposed, there will be minor retention of the driveway on both sides, although the access points and driveways are designed to minimize Grading of the natural topography and reduce the overall Building scale.

The driveway has a maximum slope of nine percent (9%). The applicant is proposing a one-car garage (not quite legal for two spaces within the garage) and one additional uncovered parking space provided on a pad adjacent to the garage, which will provide a total of two legally recognized parking spaces. The LMC requires two (2) off-street parking spaces. Because Sampson Avenue is an extremely narrow street, there is no available on-street parking. This means that the owners and guests will need to park on-site and parking is provided on site for this.

Criteria 4: Terracing.

The project may include terraced retaining Structures if necessary to regain Natural Grade. **No unmitigated impacts.**

No terracing is proposed. The applicants are proposing to build on the two flat areas of the lot, which will require some initial grading and site stabilization (not terracing). The end result will be that the grading between the garage and the house will be put back to its natural state. Grading around the home will be utilized to stabilize the ground around the foundation and to help separate the backyard area from the front yard area.

Criteria 5: Building Location.

Buildings, access, and infrastructure must be located to minimize cut and fill that would alter the perceived natural topography of the Site. The Site design and Building Footprint must coordinate with adjacent properties to maximize opportunities for open Areas and preservation of natural vegetation, to minimize driveway and Parking Areas, and provide variation of the Front Yard. **No unmitigated impacts.**

The building pad location, access, and infrastructure are located in such a manner as to minimize cut and fill that would alter the perceived natural topography. The proposed house sits on the uphill side of the lot where there is area with less than thirty percent (30%) slope on which to build. The existing eight-sided lot was approved in 1995 as a recorded subdivision lot. The lot is somewhat hourglass-shaped with a vast majority of the buildable area located in the rear of the lot. The street side of the lot has limited building area available which has dictated the location of the proposed home. The site design, reduced building footprint (smaller than what is allowed per code), and increased setbacks (to the code minimums established in the HRL District) maximize the opportunity for open area and natural vegetation to remain. Although the proposed home will be located on Sampson Avenue, it will appear as though it's grouped together with the larger homes on King Road within the Treasure Hill subdivision. As previously noted, the home will be closer to Lot 1 of Treasure Hill, which has an allowable footprint of 3,500 square feet, than it will be to the smaller, historic homes on Sampson Avenue. Only the garage will have a "presence" on Sampson Avenue.

Criteria 6: Building Form and Scale.

Where Building masses orient against the Lot's existing contours, the Structures must be stepped with the Grade and broken into a series of individual smaller components that are Compatible with the District. Low profile Buildings that orient with existing contours are strongly encouraged. The garage must be subordinate in design to the main Building. In order to decrease the perceived bulk of the Main Building, the

Planning Commission may require a garage separate from the main Structure or no garage. **No unmitigated impacts.**

The top floor of the home walks out to the existing grade of the top of the lot, and the main floor walks out to the existing downhill side of the lot. There is a minimal retaining wall on each side of the home to differentiate the rear and front yard. The Structures step with the Grade and are broken in to a series of individual smaller components Compatible with the District.

The garage is detached and completely subordinate to the main home and the design of the main building. The home and garage/elevator building are separated by a ten foot (10') setback. Only the elevator building connects directly to the garage and is only accessible to the home by a patio and deck area, which is considered flatwork and is not connected by foundation. The connection between the garage the elevator is completely underground and not visible. Only two (2) stories of the proposed home are exposed, with the basement completely underground with no portion thereof expose.

The top level (3rd story) consists of approximately 1,209 square feet, approximately one-half (½) of the total allowed above-ground square feet, and the exposed massing significantly steps with the hillside. The lower level contains 1,203 square feet which is above ground, the remaining 1,189 square feet of building space is under ground. The garage is 546 square feet (total w/mudroom and entry way) which is above ground and steps between 17to 24 feet in height.

Criteria 7: Setbacks.

The Planning Commission may require an increase in one or more Setbacks to minimize the creation of a “wall effect” along the Street front and/or the Rear Lot Line. The Setback variation will be a function of the Site constraints, proposed Building scale, and Setbacks on adjacent Structures. **No unmitigated impacts.**

The proposed location of the home on the property, including the placement of the garage angled to parallel the lot line, avoids the “wall effect” along the street. The actual dwelling is approximately seventy-seven feet (77') from the front property line, although the garage is fifteen feet (15') and the elevator building is approximately fifty-three feet (53') from the front setback. By breaking up the massing into smaller components the “wall effect” is avoided.

Criteria 8: Dwelling Volume.

The maximum volume of any Structure is a function of the Lot size, Building Height, Setbacks, and provisions set forth in this Chapter. The Planning Commission may further limit the volume of a proposed Structure to minimize its visual mass and/or to mitigate differences in scale between a proposed Structure and existing Structures.

Discussion Requested.

The proposed house is both horizontally and vertically articulated and broken into compatible massing components. The design includes two detached buildings; the increased setbacks (per the Planning Director's Setback Determination per LMC Section 15-4-17) offer variation and the proposed lower building height for portions of

the structure reduces visual mass. Since the submittal of the initial design, the applicant has redesigned the garage to a one-door bay with a tandem garage, rather than two separate side-by-side garage doors. Does the Planning Commission believe a reduction in mass is necessary? A change, or increase in building articulation that would still be compliant with setbacks, or does the unique shape of the lot compensate for this?

Criteria 9: Building Height (Steep Slope).

The maximum Building Height in the HR-1 District is twenty-seven feet (27'). The Planning Commission may require a reduction in Building Height for all, or portions, of a proposed Structure to minimize its visual mass and/or to mitigate differences in scale between a proposed Structure and existing residential Structures. **Discussion Requested.**

The proposed home does meet the twenty-seven feet (27') maximum building height requirement measured from existing grade. The unique shape of the lot has dictated the design of the home, with the garage portion close to the street, and the main structure (home) to be situated further up the hill where the vast majority of the buildable area exists. The garage and the house as they appear on the color rendering appear to create a significant mass – does the Planning Commission believe this is compatible with the neighborhood, considering two adjacent homes (one within the same zone district) are larger? The applicant has noted that the home will likely not be visible from the Street to those passing by due to the location of the home further up the hill. It is also conceivable that a home could be built above 30 Sampson, as Lot 1 of the Treasure Hill Subdivision is a buildable, vacant lot with a conceivably much larger footprint than that of 30 Sampson's footprint.

Portions of the house are less than 27' in height. The tallest portion of the house is on the front (uphill) side of the lot facing the street view. The garage building has a maximum height of twenty four feet (24') accommodate access to an ADA compliant elevator.

Process

Approval of this application constitutes Final Action that may be appealed to the City Council following the procedures found in LMC § 15-1-18. Approval of the Historic District Design Guideline compliance is noticed separately and is a condition of building permit issuance.

Department Review

This project has gone through an interdepartmental review. The Building Department determined that due to the narrow lot configuration between the front and rear, a construction mitigation plan will be required prior to construction that details how the applicant will protect and stabilize all adjacent property lines so that disturbance of other properties will not occur. This shall be a condition of approval.

Public Input

Staff had received various inquiries and comments regarding the proposed Conditional Use Permit. Neighboring property owner, Debbie Schneckloth, has met with Staff on three occasions to raise various concerns, including:

- The need for retaining walls between her property and the subject property – Ms. Schneckloth is concerned the proposal inadequately addresses on-site retention, which will be required to the satisfaction of the Building Department prior to the issuance of a building permit.
- Incorrect driveway grades – Ms. Schneckloth is concerned that the plans do not accurately reflect existing grades and is incredulous that a driveway that starts at Sampson Avenue with a rise of 10% can be achieved. She is worried that the architect's drawings are inaccurate, and the grade at Sampson is greater than shown on the plans.
- Future subdivision plans – Ms. Schneckloth is concerned that the applicant may try and acquire more property to the west and attempt to subdivide the lot at some point in the future creating a frontage on King Road (there is none at this point), and that the plans are designed in such a manner that will accommodate future subdivision plans.

Since the last meeting, the applicant has revised the site plan and landscape plan to address many of the concerns raised by Ms. Schneckloth (see Exhibit "A" pages 1 and 2). An e-mail from Ms. Schneckloth was forwarded to the Planning Commission on March 11, 2013.

Alternatives

- The Planning Commission may approve the Steep Slope Conditional Use Permit for 30 Sampson Avenue as conditioned or amended, or
- The Planning Commission may deny the Steep Slope Conditional Use Permit and direct staff to make Findings for this decision, or
- The Planning Commission may request specific additional information and may continue the discussion to a date uncertain.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

A Conditional Use is an approved use with specific conditions to mitigate potential impacts of the proposed development. If denied, the applicant would not be able to move forward with the Historic District Design Review. The Planning Commission should consider approving the Steep Slope CUP with specific conditions of approval to mitigate any of the impacts as outlined in LMC § 15-2.1-6.

Recommendation

Staff recommends the Planning Commission review a request for a Steep Slope Conditional Use Permit at 30 Sampson Avenue. Staff has prepared findings of fact, conclusions of law, and conditions of approval for the Commission's consideration.

Findings of Fact:

1. The property is located at 30 Sampson Avenue.
2. The property is within the Historic Residential (HRL) District and meets the purposes of the zone.
3. The property is Lot 3 of the Millsite Reservation Supplemental Plat, which was recorded in 1995.
4. The Lot area is 7,088 square feet.
5. A Historic District Design Review (HDDR) application is currently being reviewed by staff for compliance with the Design Guidelines for Historic Districts and Historic Sites adopted in 2009.
6. The proposal consists of single family dwelling of 4,585 square feet which includes a 453 square foot detached garage, a 350 square foot garage entry and a 106 square foot access tunnel which is located below ground.
7. Plat notes indicate the maximum square footage allowed for this lot is 3,000 square feet with an additional allowance of 400 square foot for a garage.
8. A subsequent 1998 letter from the (then) Community Development Director determined that the 3,000 square foot maximum only applied to the above ground portion of the future dwelling, and that basement areas would not count against the 3,000 square foot maximum. This letter was recorded on the title of the property.
9. The applicant meets the 3,000 square foot house size maximum as recorded on the plat notes of the Millsite Reservation Amended Plat with the further clarification of the 400 square foot allowance for a garage and non-calculated basement area as long as the basement is located below the final grade.
10. An overall building footprint of 2,272 square feet is proposed. Under the current LMC, the maximum allowed footprint is 2,355.5 square feet, based on the total lot area.
11. The proposed home includes three (3) stories including a completely below grade basement level.
12. The proposed home and detached garage, are not considered a single structure and the proposed configuration is consistent with requirements of the LMC regarding the number of allowed stories within a structure.
13. The applicant submitted a visual analysis, including a model, and renderings showing a contextual analysis of visual impacts.
14. The proposed structure will not be seen from the key vantage points as indicated in the LMC Section 15-15-1.283, with the exception of a cross canyon view from the corner of the Main Street Trolley turn-around (Hillside Ave/Main Street/Daly Ave intersection), which is largely mitigated by the presents of dense vegetation and trees.
15. The cross canyon view contains a back drop of a two (2) story building and a 2 story garage below the home.
16. The proposed design incorporates a driveway from Sampson Avenue on the top slope of the street to avoid excessive cuts and grading for the proposed driveway.
17. Retaining is necessary around the home on the upper-side of the lot. The plans as shown indicate that there will be retaining walls around much of the site, but there will be no free-standing retaining walls that exceed six feet in height.

18. The building pad location, access, and infrastructure are located in such a manner as to minimize cut and fill that would alter the perceived natural topography and will leave more than half of the lot undeveloped.
19. The site design, stepping of the building mass, reduced building footprint, and increased setbacks maximize the opportunity for open area and natural vegetation to remain.
20. As required by the LMC, the applicant is providing two legal off street parking spaces, including one legal covered space, and one legal pad-site space. There is no on-street parking available on Sampson Avenue due to its narrow width, although it is conceivable that one or two more cars could be parked on site depending upon size.
21. The detached garage/elevator building is set back fifteen feet (15') from the front property line, and the main portion of the building (the habitable portion of the overall dwelling) is located approximately 77 feet from the street.
22. 2,996 square feet of the total 4,041 square feet of building space is above ground.
23. 1,594 square feet of building space is under ground, which equates to thirty-six percent (36%) of the overall square footage.
24. The lot has been deemed to have eight (8) different sides, and thus a Planning Director determination for setbacks has previously been determined and calculated as outlined within the analysis section of the report.
25. The design includes setback variations (greater than those required within the HRL District) and lower building heights (than is allowed by code) for portions of the structure.
26. The proposed massing and architectural design components are compatible with both the volume and massing of other single family dwellings in the area.
27. The proposed structure meets the twenty-seven feet (27') maximum building height requirement measured from existing grade. Portions of the house are less than 27' in height.
28. Lot 1 of the Treasure Hill Subdivision, which is directly adjacent to the Subject property, has an allowed footprint of 3,500 square feet, and when built and if built to the maximum height and footprint, any future home on that property will appear visually much larger than the proposed home on 30 Sampson Avenue.
29. The findings in the Analysis section of this report are incorporated herein.
30. The applicant stipulates to the conditions of approval.
31. The necessary removal of vegetation from the site to accommodate the building will be mitigated by the installation of approximately forty (40) trees, seventy (70) shrubs and other plantings mixed with ground cover. A final landscape plan addressing the removal of existing vegetation and a replacement plan is required prior to the granting of a building permit. No significant trees (large evergreens or otherwise) are proposed to be removed.

Conclusions of Law:

1. The CUP, as conditioned, is consistent with the Park City Land Management Code, specifically section 15-2.1-6(B).
2. The CUP, as conditioned, is consistent with the Park City General Plan.
3. The proposed use will be compatible with the surrounding structures in use, scale, mass and circulation.

4. The effects of any differences in use or scale have been mitigated through careful planning.

Conditions of Approval:

1. All Standard Project Conditions shall apply.
2. City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits.
3. A final utility plan, including a drainage plan for utility installation, public improvements, and drainage, shall be submitted with the building permit submittal and shall be reviewed and approved by the City Engineer and utility providers prior to issuance of a building permit.
4. City Engineer review and approval of all lot grading, utility installations, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.
5. A final landscape and vegetation replacement plan shall be submitted for review and approved by the City Planning Department, prior to building permit issuance.
6. No building permits shall be issued for this project unless and until the design is reviewed and approved by the Planning Department staff for compliance with this Conditional Use Permit and the 2009 Design Guidelines for Historic Districts and Historic Sites.
7. If required by the Chief Building official based on a review of the soils and geotechnical report submitted with the building permit, the applicant shall submit a detailed shoring plan prior to the issue of a building permit. If required by the Chief Building official, the shoring plan shall include calculations that have been prepared, stamped, and signed by a licensed structural engineer.
8. This approval will expire on April 10, 2014, if a building permit has not been issued by the building department before the expiration date, unless an extension of this approval is applied for before the expiration and is granted by the Planning Director.
9. Plans submitted for a Building Permit must substantially comply with the plans reviewed and approved by the Planning Commission on March 4, 2013.
10. All retaining walls within any of the setback areas shall not exceed more than six feet in height measured from final grade. Front setback retaining walls are limited to four feet, unless reviewed by the City Engineer for walls up to six feet. Walls over 6 feet require an administrative CUP, though none are anticipated.
11. A snow shed agreement and/or snow shed mitigation shall be required, and is required to meet the satisfaction of the Chief Building Official prior to the issuance of the building permit for the home.

Exhibits

Exhibit A – Stamped Survey and Plans (site plan, elevations, floor plans, landscape plan) and Aerial Map

Exhibit B – Visual Analysis

Exhibit C – City Council Meeting Minutes for the Millsite Reservation Supplemental Plat.

Exhibit D – Richard E. Lewis letter to property owner(s) of the Millsite Reservation Supplemental Plat.

Exhibit E – August 22, 2012 Planning Commission meeting Minutes.

Exhibit F – December 12, 2012 Planning Commission Work Session Minutes.

EXHIBIT B

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Commissioner Hontz noted that the written Condition #4 would become Condition #5. She revised that language to read, "Modified 13-D sprinklers may be required by the Building Official for any construction." She commented on the important of making sure the Findings and Conditions are concise and legally defensible.

Regarding the language the new Condition #5, Director Eddington preferred to expand the modified condition to match the language in the condition of approval for 343 Park Avenue. "Modified 13-D sprinklers shall be required for new construction by the Chief Building Official at the time of review of the building permit submittal and shall be noted on the final mylar prior to recordation." Commissioner Hontz concurred.

Commissioner Savage stated that he was not as detail-oriented as some of the other Commissioners, but he was curious about language in Finding of Fact #12 that talks about the maximum allowed footprint of 994 square feet, but then says the footprint will not exceed 600 feet. He understood the intent but it was confusing. Commissioner Hontz clarified that it was her reason for suggesting that the first sentence be deleted and that the Finding begins with "Potential development on the property is limited to...."

Commissioner Strachan pointed out that Finding of Fact #14 was actually a Conclusion of Law. He recommended that it be deleted from the Findings and insert the language as Conclusion of Law #1.

MOTION: Commissioner Savage moved to CONTINUE the discussion of the 206 Grant Avenue plat amendment to April 24, 2013 Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

3. 30 Sampson Avenue – Steep Slope Conditional Use Permit. **(Application PL-12-01487)**

Commissioner Wintzer disclosed that he has a business association with Wade Budge, the attorney for the applicant. Commissioner Thomas disclosed that he also knew Wade Budge.

Planner Evans noted that the Planning Commission reviewed this item in December as a work session. The Work Session minutes were attached as Exhibit F. The minutes from the August 2012 meeting session was identified as Exhibit E in the Staff report; however, that Exhibit was inadvertently left out of the Staff report.

Planner Evans had emailed a corrected analysis to the Commissioners showing the correct numbers for the home at 30 Sampson Avenue. He noted that a lot of numbers were involved in the Staff report and any questions regarding the numbers would be referred to the applicant's representatives.

Commissioner Savage assumed that Planner Evans had reviewed and corroborated all the numbers, and any comments or explanations by the applicant or his representatives would also be on behalf of Planner Evans. Planner Evans replied that the Staff and the applicant had reviewed the

numbers and agreed upon them. Mr. DeGray concurred that the only discrepancy were the numbers on the matrix for 30 Sampson and that had been corrected.

Planner Evans remarked that there are nine criteria to be considered when reviewing the Steep Slope CUP. He noted that the project would go through a formal HDDR process, but that had not yet occurred. Therefore, any design features have not been approved and were still subject to HDDR review. He recommended that the Planning Commission look at the house and associated structures from the standpoint of form rather than the actual details with respect to materials and design.

Commissioner Thomas pointed out that mass, form and scale were also design elements, and as an architect, they are critical design elements. Planner Evans agreed. He was only pointing out that the Staff and the Design Review Team would be looking at those issues independent of the steep slope conditional use permit.

Planner Evans reviewed the nine criteria for review and how it was specifically applied to 30 Sampson Avenue. The Staff no unmitigated impacts on Criteria 1-7, and requested discussion on Criteria 8 and 9.

Criteria 1 – Location of Development. Planner Evans indicated an existing platted subdivision lot that was created in 1995 and specific conditions and criteria was recorded on the property, as documented in the Staff report. The structure was limited to 3,000 square feet. Discussions during the 1995 approval allowed a 400 square feet addition for a garage, for a total maximum of 3400 square feet. Planner Evans remarked that the Staff report also notes that in 1998 a decision was made by the Community Development Director that the 3400 square feet did not apply to a basement that is completely subterranean underground that meets that criteria. For that reason, Planning Commission was looking at a building that appeared to be much larger than what is recorded on the plat. The letter from the former Community Development Director was attached to the Staff report as Exhibit D.

Commissioner Thomas asked if the previous decisions over-rides the 2009 Code that has different stipulations for those areas. Planner Evans stated that the applicant is vested for 3,000 square feet plus 400 square feet for the garage, not counting the basement. Commissioner Thomas thought the applicant was also held accountable to the interpretation of the 2009 revised Steep Slope CUP process. Planner Evans answered yes. Commissioner Thomas questioned the process if the current Code differs from the letter issued from the Community Development Director in 1998. Planner Evans replied that how it differs would depend on the Planning Commission's interpretation.

Commissioner Savage asked if the letter was considered to be a modification or an interpretation. Planner Evans replied that it was an interpretation. Commissioner Strachan understood that it was an interpretation of the plat amendment, not the Code. Planner Evans agreed that it was not a Code interpretation.

Criteria 2 – Visual Analysis. Planner Evans pointed out that the visual analysis had two missing components. One was 16 Sampson, which is an approved HDDR and Steep Slope CUP, and has a

similar sized home being built. The second was the potential development above this lot on Lot 1 of Treasure Hill, which also would add to the visual analysis but is currently an unknown.

Commissioner Wintzer clarified that the Treasure Hill property was not in this zone. Planner Evans replied that this was correct. It was directly above 30 Sampson in the HR-1 zone.

Criteria 3 – Access. Planner Evans noted that this property only has access on Sampson Avenue. No other access is contemplated.

Criteria 4 - There is no terracing; however, there is initial grading and stabilization. Some retention will be required.

Criteria 5 – Building location. Planner Evans reiterated that they were dealing with a previously approved building lot, Lot 3 of the Millsite Subdivision amended plat.

Criteria 6 – Building form and scale. The Planning Commission would be looking at the form, mass and scale of the home.

Criteria 7 – Setbacks. As indicated in the Staff report, because of the shape of the lot, the Code requires that the Planning Director do a setback analysis, which was previously done and included in the Staff report. Planner Evans stated that a lot with this configuration might have a 10' front yard and 10' rear yard and 5' side yard setbacks based on the lot width. This is an odd shaped lot with many different sides. Therefore, the Planning Director made a determination as to setbacks; 15' front, 15' rear and setbacks that vary on the side from 5' to 8' feet and 10' in some spots.

Criteria 8 – Dwelling volume. The Staff requested discussion from the Planning Commission on the building volume. The applicant had redesigned the home from its original design, which contemplated a two car garage, to a one-car garage in an effort to reduce the appearance of the building volume looking at it from Sampson Avenue.

The Staff had proposed questions for discussion.

Criteria 9 – Building Height. Planner Evans remarked that the maximum building height was 27'. The proposed dwelling does not exceed 27'; however, because of the steep slope situation, the Staff requested discussion by the Planning Commission.

The Staff had drafted findings of fact, conclusions of law and conditions of approval.

Wade Budge, counsel representing the applicant, introduced the property owners, Michael and Lori Jorgensen. Mr. Budge provided a brief background of the history of the property. He felt it was important to keep in mind that this property was platted from approximately 13 lots, allowing the potential to have more density in this area. However, in 1995 the property was part of a plat amendment to have three lots placed in this area and the plat was recorded. Mr. Budge stated that 30 Sampson was the last of the three lots to be developed.

Mr. Budge pointed out that the minutes from the 1994 Planning Commission meeting was attached to the Staff report. At that time it was determined that a home was appropriate for this site and plat notes were placed on the plat reflecting that. Mr. Budge felt it was important to note that the garage issues were discussed; as well as the idea of having a home on the property. He remarked that the slope was also discussed at that time. Those issues have already been considered, and he was pleased that they would be considered again because they were interested in hearing input from the Planning Commission before proceeding.

Mr. Budge thought the Staff report was very thorough and well-done, the applicants agreed with the analysis. He wanted to touch on a few points and asked Jonathan DeGray, the project architect, to talk about massing and some of the design changes. He believed the changes were important as the Planning Commission considers potential impacts.

Mr. DeGray reviewed changes to the garage based on the discussion with the Planning Commission during the site visit. Based on their concerns, the driveway was dropped approximately 1 foot and the slope was reduced. Mr. DeGray reviewed the site plan and noted that it was virtually flat on the south side of the driveway going to about a 10% grade on the right-hand side of the driveway facing it from the street. Mr. DeGray stated that since the initial application, the garage was changed from a two-car to a single-car garage. By doing so reduced the width of the frontage.

Commissioner Savage asked if it was a single car garage or a tandem two-car garage.

Mr. DeGray replied that it was a long single-car garage. It does not meet the requirements of tandem. However, two small cars could fit in it. Mr. DeGray stated that the second off-street parking space would be maintained on grade with the spur that goes off to the north.

Mr. DeGray stated that the width of the building was reduced to soften the appearance on the street.

In terms of relationships to other buildings on the street it is probably one the smallest structures on Sampson. The shape of the lot dictates that the bulk of the building be set back. As noted in the Staff report, the distance of the property line to the front of the building of the residence is 77 feet, which is considerably further back on the lot.

Mr. DeGray referred to Criteria 8 and 9 in the Steep Slope CUP. Regarding Criteria 8, Mr. DeGray stated that building volume is a product of the lot shape. The Planning Commission has already discussed the unusual hourglass shape and topography of the lot. It is dictated that the house be broken into two pods; the driveway/garage portion closest to the street, and then 70+ feet back up the hill is the residence. The residence above grade is a two-story structure on the front and single story at the rear. Above grade the two stories equal 2400 square feet of building area. Mr. DeGray believed the home was modest home in terms of building size visible from the street. He noted that 77 feet back would allow for significant vegetation between the garage and the main house. Surrounding the main house is predominantly a scub oak forest. Mr. DeGray stated breaking it into two pods reduced the dwelling volume considerably, compared to other structures on the street. He used 40, 60 and 99 Sampson as examples of larger structures along the road.

Mr. DeGray stated that the proposed garage is a 900 square foot structure. He noted that 50% of the garage structure is buried into the hillside; however, the entire square footage of the garage is counted in the maximum square footage. Mr. DeGray pointed out that the height of the structure is limited to 25 feet. One area of the home is 27 feet.

Mr. DeGray referred to the visual analysis drawings and noted that the house was only found to be visible from the trolley turnaround or from the top of Hillside at the intersection of Marsac. Mr. DeGray stated that another consideration was how the structure fits into the hillside and how it looks with the other residences. He would argue that it fits within the context of the entire hillside.

Mr. Budge thought the minutes from the 1995 process were informative. A lot of analysis was done by the Planning Commission at that time, and while it should not substitute for the judgment of the current Planning Commission, it was helpful and should contribute to their analysis. Mr. Budge believed the 1995 analysis shows that there was a lot of discussion about the kind of square footage that would be appropriate for this particular terrain. In the case of the adjacent lot at 40 Sampson, the determination was made that a larger structure would be appropriate. At some point in time it was possible that up to 3500 square feet above ground could be located next door and due south of this structure. Mr. Budge felt that was important to keep in mind as they analyzed the issues.

Mr. Budge remarked that a Code exception resulted from the 1995 process and is found in the Park City Code. He noted that it has been referred to as the Schneckloth exception. The exception allows someone in this particular subdivision to avoid this CUP process. Mr. Budge stated that the applicants were here this evening because they submitted an application, but he felt it was important to read what the City Council determined and said about this particular subdivision relative to that process. Mr. Budge read, "In conjunction with the subdivision or plat amendment, several property owners have undergone a review process comparable to that listed in the conditional use section B above." That section is the steep slope process they were talking about today. Mr. Budge stated that the City did not seek to subject those owners to additional Planning Commission review. He noted that further language allows the applicant to bypass the process and go directly to the Planning Director.

Mr. Budge emphasized that this property has already gone through great review. As an applicant, they have been very careful to make sure their proposal is in strict conformity with what was approved. Mr. Budge summarized that a plat was approved and recorded in 1995 and a statement was made that the maximum size of 3,000 square feet was appropriate for the site. In those same discussions a clarification was made relative to a 400 square foot garage not being included in the 3,000 maximum. In addition, as reflected in Exhibit D in the Staff report, in 1998 a determination was made regarding the basement issue. Mr. Budge reported that Mr. Jorgensen wanted the issue clarified before purchasing the property. Therefore, the seller, Ms. Schneckloth, sought that determination from the Community Development Director and the determination was recorded against this property. On that understanding, Mr. Jorgensen purchased the property that same year.

Mr. Budge stated in talking about detrimental impacts, they need to balance the interests and the expectations of the property owner with the impacts that would be created by his proposed structure.

Mr. DeGray commented on Criteria 9 – Building height. He reiterated that 25' was the general height of the main home. One portion was 27'. The structure is two stories in the front and one story in the back sitting parallel to the contours. He indicated a vertical change in the building site of 30 feet between the front garage pad and the home. Combined with the 70 feet of horizontal

change there is a great deal of variation in terms of building volume and the perceived building height as the building is viewed from the street and from a distance.

Mr. DeGray did not believe the renderings clearly showed the actual separation between the buildings. He reviewed the south elevation to show the distance between the garage and the main building. He noted that the portion in between the garage and the elevator is also a planting area. The garage would be a lower structure just over 20 feet at the ridge. He pointed out the 27' height line directly above the main house. It would be a modest structure of 2400 square feet sitting on top of the hill.

Mr. DeGray commented on the purpose statements in the HRL zone. He read from Item A, "Reduce the density that is accessible only by substandard streets so that these streets are not impacted beyond a reasonable capacity." Mr. DeGray reiterated that the plat reduced the subdivision from 13 platted lots to three platted lots. The property is in the HR-L zone. Historically HR-L zoning is larger lots at a two lot minimum of 3750 square feet and larger homes. The HR-L densities are different from the densities in the HR-1 zone.

Mr. DeGray read from purpose statement B, "Provide an area of lower density residential use within the old portion of Park City. He again noted that the plat reduced the density and therefore meets the purpose. Item C, "Preserve the character of historic residential development in Park City". Mr. DeGray stated that the proposed home would meet the design guidelines, it meets the steep slope criteria, and it is sensitive to the character of historic residences in the area. Item D, "Encourage preservation of Historic Structures." Mr. DeGray pointed out that there are no historic structures on the site. The closest historic structure is the adjacent property which is also within the same subdivision. As previously stated, that lot has an above grade building size of 3500 square feet plus basement plus a 400 square foot garage. It is the largest lot on Sampson Avenue at 11,000 square feet. Item E, "Encourage construction with historically compatible structures that contribute to the character and scale of the historic district and maintain existing residential neighborhoods. Mr. DeGray stated that compatibility within the HRL Zone is only defined in the LMC as height, footprint, setbacks, and meets the criteria of the steep slope CUP. Mr. DeGray believed the design as proposed met all the requirements.

Mr. DeGray noted that the Staff had provided additional comparisons of building size in the Matrix contained in the Staff report. If one of the criteria for compatibility is viewed as building size, as proposed by Staff, he thought it was fair to review compatibility with historic structures by reviewing what the historic structures in the area actually are, as well as how they have been renovated and could potentially be renovated. Mr. DeGray stated that 16 Sampson Avenue, which recently received an approval, is a historic structure. The project is a reconstruction resulting in 4,141 square feet gross. The lot size is equivalent to 3.2 lots. Mr. DeGray remarked that 40 Sampson Avenue is the Schneckloth property. The lot is the equivalent of six old town lots and the structure could be as large as 3500 square feet. Mr. DeGray noted that 41 Sampson across the street is currently a condemned structure due to the wall that supports Sampson Avenue. However, that property has an approval for a new structure at 4,154 square feet gross. He noted that 60 Sampson Avenue, which is a historic renovation, is 4,246 square feet on the equivalent of 3.5 lots. In comparison, Mr. DeGray pointed out that 30 Sampson Avenue is the equivalent of 3.7 lots at 7,000 square feet. It is the second largest lot on the street. The applicant was proposing a gross

square footage of 4,585 square feet. Mr. DeGray remarked that this proposal was very compatible based on the historic homes in the area and how they have been renovated. The same could be said for compatibility with new construction at 50 Sampson, as well as the homes at 201 Norfolk, 99 Sampson, and other properties in the neighborhood.

Mr. DeGray pointed out a smaller structure at 121 Sampson at 854 square feet. It is not a historic structure and could be torn down. The structure sits on 3.5 lots.

Mr. DeGray stated that building size is one level of comparison for determining compatibility, and he believed another level needs to be mass and scale. They have talked about the visual analysis and how the mass and scale of the building fits within the context of the hillside of the Sampson Avenue/Norfolk/King Road/Woodside area. He would argue that the building fits within that character.

Mr. DeGray remarked that a third level to judge compatibility would be the fact that the home needs to work within the Historic District Design guidelines. He emphasized that the home would meet those guidelines, and therefore would be compatible in its design and appearance. Mr. DeGray stated that the last item for judging compatibility was the 1995 plat, which stipulates compatibility based on building size. They also meet that criteria.

Mr. Budge understood that the elevator was discussed in prior meetings. He clarified that the purpose of the elevator was more than just convenience. Michael Jorgensen is a doctor. He does not see patients at home, but some of his friends, particularly one in a wheelchair, need accessibility. The elevator allows the owners to make use of their property and make sure that all of their guests could access their home. Mr. Budge believed the proposed design accomplishes that, and is done in a way that is consistent with the Code.

Mr. Budge stated that they have tried to anticipate all detrimental impacts and mitigate them as best as possible. They believed all the impacts had been mitigated by the design, but they were interested in hearing from the Planning Commission.

Chair Worel opened the public hearing.

John Vrabel stated that he lives across from 30 Sampson Avenue. Mr. Vrabel commented on structures in the area that were smaller homes, including 41 Sampson at 1100 square feet. His house at 33 Upper Norfolk is only 800 square feet. Mr. Vrabel noted that the proposal for 30 Sampson was not totally compatible with all the surrounding structures. In his opinion, two parking spaces was not sufficient for the size of the home proposed.

Susan Fredston-Herman stated that she was an adjacent property owner and was concerned with the status of Sampson Avenue. A building permit has been issued on her property and they are required to begin construction on May 15th. They have been told that the road cannot handle construction traffic, which puts them in a very difficult situation. They have a contractor waiting to start, but no one know if they can move forward. Ms. Fredston-Herman remarked that the integrity of the road is an issue. The road is clearly failing, which is why 41 Sampson has been condemned. She was concerned about the construction schedule of her project and additional projects. With no

disrespect to the Jorgensen project or anything else, Ms. Fredston-Herman requested that this item be continued until the City makes a determination on when the road would be repaired, how it would be repaired and how it affects the property owners on Sampson Avenue and adjacent properties. Ms. Fredston-Herman believed the issue of road safety was important and her concern was the sequence of events on Sampson. Until there is clarity on that situation and whether the road can handle construction equipment this item should be continued.

Chair Worel closed the public hearing.

Commissioner Savage asked if he was correct in assuming that the Planning Commission was looking at a recommendation on a conditional use permit related to a steep slope, and that the issuance of a building permit associated with construction of that project would be subject to separate reviews as mentioned by Ms. Fredston-Herman.

Director Eddington stated that if construction could not be started within a certain period following the CUP approval, the owner loses the CUP. He understood that this was a real concern with regard to Sampson Avenue. Director Eddington noted that the City Engineer was currently working with the Chief Building Official to determine what needs to be done on Sampson Avenue, and there are concerns with some of the safety features of the road on the downhill side regarding a retaining wall that is adjacent to 41 Sampson Avenue. Until that issue is addressed, Director Eddington assumed there were concerns about taking up heavy equipment and it was a valid concern.

Responding to Commissioner Savage's question, Assistant City Attorney McLean stated that the timing for this project to move forward would not be right away because they still needed to go through the HDDR process and do other things before pulling a building permit. Ms. McLean did not recommend delaying a decision on this application based on resolution of the road issue.

Commissioner Savage stated that having reviewed this proposal a few times and visiting the site, he understood some of the challenges related to this particular lot, as well as the challenges of the neighborhood and compatibility. He believed the applicant had done a good job making some of the recommended changes. He thought the change to the garage was positive and he was comfortable with the height. Commissioner Savage believed that certain things were aesthetically possible and would enhance the compatibility and nature of the structure as it relates to cross valley views and other neighborhood compatibility questions, without being detrimental to their own objectives. Commissioner Savage stated that unless he hears something in the discussion this evening that would sway his opinion, he would support the project.

Commissioner Gross concurred with Commission Savage.

Commissioner Hontz referred to the continual mention about potential future development that has not yet been applied for or approved. However, in the same Staff report, the Staff could not speak to the scenario of future development because there is no way to anticipate what future LMC Codes would allow an applicant to do with an application. She pointed out that it could not be both ways and everyone understands that there is no way to anticipate what might occur on those properties. Commissioner Hontz took issue with the reference in terms of it possibly being part of the visual

scenario and part of massing of a certain size. She emphasized that it should not be a factor in their decision-making.

Commissioner Hontz referred to page 84 of the Staff report and the purposes of the HRL District. She believed all of her comments would build up to support why this application did not meet the purposes of the HRL District. Specifically, Letter C – Preserve the character of the historic residential character of the historical residential development in Park City; Letter E – Encourage construction of historically compatible structures that contribute to the character and scale of the Historic District and maintain existing residential neighborhoods; Letter F – Establish development and review criteria for new development for new development on steep slopes which mitigate impacts to mass and scale and the environment. Commissioner Hontz believed the application in its current format did not meet statements C, E and F. She was prepared to provide examples to support her opinion.

Commissioner Hontz did not believe that any of the properties in the Matrix on page 89 of the Staff report were reviewed under the current LMC. Therefore, it was an inaccurate analysis. Commissioner Hontz was unsure why time was spent doing an analysis on homes that may or may not be built today because of Code changes. She also noted that the Matrix only included historic homes that had major renovations. There are numerous homes in close proximity on Upper Norfolk that are much smaller in size and footprint.

Commissioner Hontz read the Land Management Code language for the HRL District on page 90 of the Staff report. Section 15-2.1-6 – Development on Steep Slopes are regulated. “Development on Steep Slopes must be environmentally sensitive to hillside areas carefully planned to mitigate adverse effects on neighboring land and improvements and consistent with the Historic District Guidelines. Development, subsection (1), “Location of development needs to be designed to reduce visual and environmental impacts of its structure.” Commissioner Hontz stated that due to the shape of the lot, addressed in Criteria 1, it would be challenging to limit the visual impacts of the lot unless they only developed on one portion of it. However, moving up the hill and building from Sampson Avenue all the up to the top rear line does not reduce the visual impact. It also does not reduce or mitigate environmental impacts because they would be impacting the entire lot. For those reasons, Commissioner Hontz did not think it was a reduction to visual or environmental impacts.

Commissioner Savage asked Commissioner Hontz to clarify her statement regarding density reduction. Commissioner Hontz noted that Criteria 1 states that development is located and designed to reduce the visual and environmental impacts of the structure. They have to look at the lot to see if it is a reduction over what it could be. Commissioner Savage clarified that the reduction was over what it could be, not over what it is. He was trying to understand Commissioner Hontz’s perspective for her argument as to why it was not a reduction and from what. Commissioner Hontz replied that she would argue that it could be a more appropriate design.

Commissioner Hontz referred to Criteria 2 – Visual analysis from the across canyon view. She believed this was a great demonstration of how it is not screened and that the vegetation is not protected. It also shows how the structures take up the entire lot. The development grows as it continues up the hill.

Commissioner Hontz referred to Criteria 4 – Terracing. She noted that the Staff reports states that the project may include terraced retaining structures if necessary to regain natural grade. It further states that no terracing is proposed. Commissioner Hontz found that to be confusing because she has seen multiple places where retaining is defined as terracing because multiple levels of retaining occur on the site. She stated that at a minimum they have to acknowledge that terracing occurs on the site. She was not arguing that it should not happen and believed it needed to be done; however, it was an inaccurate statement to support something that was untrue because terracing will occur.

Commissioner Hontz referred to Criteria 5 – Building location. She read, “The site design and building footprint must coordinate with adjacent properties to maximize opportunities for open areas and preservation of natural vegetation to minimize driveway and parking access and provide variation of the front yard.” Commissioner Hontz remarked that the first part of that statement, “maximize opportunities for open areas and preservation of natural vegetation” are not supported by this current version of the application. She agreed that from the previous version, the driveway and parking area was minimized. However, based on comments during the public hearing, with a house of this size and a road you cannot park on, perhaps the parking area should not be minimized. Commissioner Hontz pointed out that this was a situation that may need three parking spaces but there was no room for it. The question was whether they wanted a less desirable design with a larger garage facing the street or impacting the neighborhood by parking on the street. She was unsure which would be worse.

Criteria 6 – Building form and Scale. “Low profile buildings that orient to the existing contours are strongly encouraged.” Commissioner Hontz was unable to say that they were looking at that in this design. In her opinion they are not low profile buildings and that they move up with the contours.

Criteria 7 – Setbacks. Commissioner Hontz recognized that this was a very challenging site based on the unusual configuration. However, challenging is not an excuse for a bigger house size that does not meet compatibility with surrounding historic structures. She thought they needed to look closer to make sure the setbacks are big enough.

Criteria 8 – Building Volume. “The Planning Director and/or Planning Commission may further limit the volume of a proposed structure to minimize its visual mass and/or to mitigate difference in the scale between and proposed structure and existing structures. Commissioner Hontz noted that the basement was adding to the volume. She thought the previous Planning Commission was very concerned about how this would look and feel on the site. She believed they would be distressed to see this application move forward in its current format and given a steep slope approval because the volume is very large above ground.

Criteria 9 – Building Height (Steep Slope). Commissioner Hontz stated that the Planning Commission could require a reduction in building height for all portions of the structure if they felt it would help mitigate some of the concerns related to size and scale. Even though the proposed height meets the zone height, it pushes the structure to look larger as it goes up the hill.

Commissioner Hontz noted that Finding of Fact #17 on page 96 supports that there is obviously terracing and retaining around the entire structure. She remarked that Finding of Fact #28 on page 97 needed to be removed because it was not pertinent to this application. Commissioner Hontz referred to Conclusion of Law #4 on page 98, which talks about the effects of any differences in use

or scale. She noted that there could not be a difference in use outside of the allowed use of this zone. If this project moves forward, Conclusion of Law #4 should be revised to say, "The affects of any difference in scale have been mitigated." Commissioner Hontz clarified that even as revised, she did not agree with the Conclusion of Law.

Commissioner Wintzer concurred with Commissioner Hontz's assessment. He noted that the Planning Commission has the right to reduce height and increase setbacks, and the reason is to better address mass and scale. Commissioner Wintzer referred to the Matrix on page 89 of the Staff report and disagreed that it represented historic structures. Commissioner Wintzer stated that 15 years ago his neighborhood wrote the HRL zone and the purpose was to create a neighborhood that people want to live in.

Commissioner Wintzer disagreed with Mr. DeGray that this project meets the General Plan. He found five areas in the General Plan that talks about reducing the mass and scale of Old Town and that new development should be a modest scale compatible with historic structures. In a survey taken, people said that new construction is threatening the mass and scale of the historic structures. Commissioner Wintzer stated that discussions about mass and scale should be about what they are trying to preserve, which is the mass and scale of the community. They are not trying to preserve mega-homes. In looking at page 141 of the Staff report, Commissioner Wintzer counted four floors in the first structure, which is not permitted by Code. He believed the first structure was connected to the second structure.

Commissioner Thomas agreed this was a difficult site with a lot of design challenges. However, he had to agree with comments made by Commissioners Hontz and Wintzer. Commissioner Thomas challenged the City's interpretation that this was not one structure because it is one single family residence. Commissioner Thomas believed the intent of the 2009 was to limit a structure to three stories. He counted five stories. He read from LMC Section 15-2.2-5, "No structure shall be erected to a height greater than 27 feet from existing grade." He reiterated previous comments that the Planning Commission has the purview to reduce the height. Commissioner Thomas further read, "Final grade must be within 4 feet of the existing grade around the periphery of the structure." With regards to the main house, Commissioner Thomas commented on the long linear window that was created to achieve two legal bedrooms that would otherwise not be legal. He would challenge the logic of putting bedrooms below grade where some had to climb up to safety and it caused him great concern.

Per the LMC, "The structure may have a maximum of three stories." Commissioner Thomas stated that in 2009 the Code was modified to count a basement as a story in the zone. Commissioner Thomas reviewed an elevation that showed a four story elevator; two stories above and two stories below grade, with beams and a walkway that physically connects one side to the other. Commissioner Thomas could not understand how the Staff could ever determine that this was not a connected continuous structure. He disagreed with the Staff interpretation and he also believed it would be questioned by the Building Department. Planner Evans clarified that the Building Department had already looked at the plans.

Commissioner Thomas was unsure how they could get over the hurdle that this was not a five story building. It is a burdensome lot but the proposed design solution was wrong in terms of number of

stories and the visual impacts on the community. Commissioner Thomas noted that he had previously requested a cross section through the garage and the elevator, and he was still waiting for it. In his opinion, this was an incomplete application. The streetscape is grossly inadequate and it was not what the Planning Commission had asked for. They wanted to see a streetscape showing the buildings and the context of the buildings next door. Commissioner Thomas believed the applicant had design hurdles to overcome, but as proposed he could not support it.

Commissioner Strachan asked if the applicant had applied for the Schneckloth exception under the conditional use. Mr. Wade replied that it was applied for and it was denied. Director Eddington noted that the applicant had been before the Planning Commissioner prior to asking for the exception. Commissioner Strachan understood that the applicant came to the Planning Commission, then applied for the exception, the exception was denied and it was again before the Planning Commission. Director Eddington explained that the exception was denied on the basis of a pending application and the need for review by the Planning Commission.

Commissioner Strachan asked if the applicant believed he needed the exception. Mr. Wade stated that it was needed in the sense that it reflects the fact that a project had already been reviewed. If they had not submitted an application for review by the Planning Commission, they could have gone to the Planning Director and requested a determination. However, because it a pending application before the Planning Commission, the Planning Director declined to strip away that review and would not grant the exception. If the Planning Commission does not approve the application, they would appeal directly to the City Council. Commissioner Strachan clarified that the exception was no longer an option for the applicant. They would either take an approval by the Planning Commission or appeal it to the City Council.

Commissioner Strachan stated that he still could not find that the dwelling volume was compatible with the surrounding structures. He thought the analysis on page 89 comparing it to existing structures was all they needed to make a finding that the dwelling volume is incompatible. Only two other structures would be larger in terms of total square footage. Commissioner Strachan agreed with Commissioner Wintzer that most of the structures on the list were non-historic structures. The compatibility analysis turns on a comparison to historic structures and not new development.

Commissioner Strachan thought the visual mass impact had not been mitigated. The difference in scale between the proposed structure and the existing structures in the surrounding area had not been mitigated as well. Commissioner Strachan did not believe the proposal could be compared to what might be built on different lots. The Code is clear that the comparison should be to existing structures. In comparing this proposal to existing structures the difference in scale was incompatible. He could not make a positive finding on that criteria in the Code.

Commissioner Hontz stated that she had read the historic minutes from December 14, 1994 on page 120 of the Staff report, to make sure she understood how they reached this point in terms of the lot, size and the thoughts of the previous Planning Commission. Commissioner Hontz thought the previous Commissioners had done a good job communicating their concern for setting a precedent for incremental buildup in the area. That was where they talked about reducing homes sizes and specifying it as a plat note. Commissioner Hontz stated that the convincing language from the minutes were key, "Commissioner Jones concurred with Commissioner Klingenstein and

remarked that the real issue is compatibility. The floor area ratios are maximum limits and often applicants believe they are allowed to build homes to the maximum size without regard to the neighborhood. He requested that the conditions of approval reiterate that the overriding criteria for house size is neighborhood compatibility in both design issues and how the home fits on the lot relative to the neighborhood.” Commissioner Hontz noted that the discussion continues as the former Commissioners tried to craft conditions of approval to support their concerns related to size, height, massing, and neighborhood compatibility. She believed this Planning Commission was continuing that discussion.

Commissioner Wintzer noted that the existing approvals were done in 1994 and did not believe any of the houses being compared were built in 1994. He believed what the City Council and the Planning Commission envisioned in 1994 was half the size of what they see today. The issue is that the community has allowed this creep and size to continue and they now realize it is not what they want.

Commissioner Savage asked if compatibility relates to back to the older period of time or to the current period. Commissioner Wintzer replied that the Code talks about compatibility with historic structures. At some point compatibility was being compared to newer structures and that was where they got off track. Somehow they needed to go back to what is directed in the Code.

Assistant City Attorney McLean read the definition of compatibility, from the definition section of the LMC, “Characteristics of different uses or designs that integrate with and relate to one another to maintain and/or enhance the context of a surrounding area or neighborhood. Elements affecting compatibility include, but are not limited to, height, scale mass and bulk of building, pedestrian and vehicular circulation, parking, landscaping and architecture, topography and environmentally sensitive areas.”

MOTION: Commissioner Wintzer made a motion to CONTINUE 30 Sampson Avenue and direct the Staff and the applicant to come back with findings that the building is not a three-story and to address the incompatible mass, scale and size. They also need to provide a streetscape that would allow the Planning Commission to look at compatibility and compare it with the adjacent buildings rather than a picture take from across the canyon.

Commissioner Strachan thought the Planning Commission need to decide if they wanted to continue this item with direction to Staff to remedy the stated issues, or if they wanted to deny it.

Assistant City Attorney McLean explained that typically when the Planning Commission does not adopt the Findings suggested by Staff, they could vote to deny based on their discussion and the Staff would draft findings for denial for ratification to make sure they would reflect all the pertinent comments given this evening. Commissioner Savage understood that Ms. McLean was suggesting that the Planning Commission either approve or deny this evening. Ms. McLean answered yes. Commissioner Gross clarified that if the Planning Commission votes to deny, the applicant to appeal their decision to the City Council. Ms. McLean replied that this was correct; however, the City Council would not hear the appeal until the Findings were ratified with the reasons for denial.

Commissioner Wintzer withdrew his motion.

Commissioner Strachan felt that even if they continued to another meeting, the Commissioner would still have the same concerns and issues. Commissioner Gross agreed. Commissioner Hontz noted that some information has been requested that could either further illustrate how this did not meet Code, or demonstrate changes that might move the project closer to Code.

Mr. Budge stated that the applicant would like a decision this evening.

Commissioner Strachan pointed out that if the Planning Commission denies the application and it is appealed to the City Council, the City Council could overturn the Planning Commission decision. If they continue it with direction to the applicant to decrease the building volume and make a three-story structure, and other issues; the applicant could reject the continuation and request a denial.

Ms. McLean pointed out that the applicant had just requested a decision. She explained why the timing would be the same with either a continuation or a denial.

Commissioner Strachan asked if the plans presented this evening was the design the applicant wanted to take to the City Council. Mr. Jorgensen stated that if the Planning Commission wanted to put remove the detached portion that they were calling two stories, it would require long terracing and other things that he was unsure were even possible at that grade.

Mr. DeGray stated that based on the issues raised by the Planning Commission, they had been through an inter-department Staff review, including the Legal and Building Departments, and they had received no feedback saying that they were not in compliance with the number of building levels represented in the plan. He understood that the Planning Commission had a different interpretation.

Mr. Wade wanted to satisfy the concerns expressed by the Planning Commission, but given the topography of the lot and the fact that this was an approved use, he did not believe they could make additional changes to satisfy the Planning Commission.

MOTION: Commissioner Savage moved to APPROVE the Steep Slope Conditional Use Permit at 30 Sampson Avenue based on the Findings of Fact, Conclusions of Law and Conditions of Approval found in the Staff report.

The motion died for lack of a second.

MOTION: Commissioner Savage motion to DENY the request for a Steep Slope CUP at 30 Sampson Avenue. Commissioner Strachan seconded the motion with the direction to Staff to prepare proposed Findings of Fact and Conclusions of Law for Denial based on the discussion this evening.

VOTE: The motion passed unanimously.

Planning Commission Meeting
April 10, 2013
Page 24

The Park City Planning Commission meeting adjourned at 7:50 p.m.

Approved by Planning Commission: _____



July 3, 2013
Michael and Laurie Jorgensen
3648 Wrangler Way
Park City, Utah 84098

NOTICE OF CITY COUNCIL ACTION

Project Description: Steep Slope Conditional Use Permit
Project Numbers: PL-12-01487
Project Address: 30 Sampson Avenue
Date of Final Action: June 26, 2013

Action Taken

On April 10, 2013, the Planning Commission held a regularly scheduled Public Hearing to consider the approval of a Steep Slope Conditional Use Permit (SS-CUP) application for 30 Sampson Avenue. During that same meeting, the Planning Commission voted to deny the requested SS-CUP and directed Staff to draft findings of fact in support of the decision to deny the request based on the evidence and reasoning put forth by the Planning Commission during the same meeting. The Planning Commission met on the June 26 2013, and voted unanimously to ratify the following Findings of Facts and Conclusions of Law:

Findings of Fact:

1. The property is located at 30 Sampson Avenue.
2. The property is within the Historic Residential (HRL) District.
3. The property is Lot 3 of the Millsite Reservation Supplemental Plat, which was recorded in 1995.
4. The Lot area is 7,088 square feet, the minimum lot size in the HRL district is 3,570 square feet.
5. The subject property is very steep ranging from flat areas near Sampson Avenue and climbing uphill with slopes reaching between 30-40% before reaching the main body of the lot.
6. The proposal consisted of a single family dwelling of 4,585 square feet which includes a 453 square foot detached garage, a 350 square foot garage entry and a 106 square foot access tunnel which is located below ground.
7. Plat notes indicate the maximum square footage allowed for this lot is 3,000 square feet with an additional allowance of 400 square foot for a garage.

8. A 1998 letter from the (then) Community Development Director Richard Lewis, determined that the 3,000 square foot maximum only applied to the above ground portion of the future dwelling, and that basement areas would not count against the 3,000 square foot maximum so long as they were constructed fully below the finished grade. This letter was recorded on the title of the property.
9. The Land Management Code has been amended numerous times since 1998.
10. An overall building footprint of 2,272 square feet was proposed. Under the current LMC, the maximum allowed footprint is 2,355.5 square feet, based on the total lot area.
11. The applicant submitted a visual analysis, and renderings showing a contextual analysis of visual impacts.
12. No streetscape analysis was presented to the Planning Commission as requested by the Planning Commission.
13. The cross canyon view contains a back drop of both structures, a two (2) story home up the hill with a two (2) story garage building in front.
14. The proposed design incorporates a driveway from Sampson Avenue on the top slope of the street and provides two (2) legal off-street parking spaces, which meets the minimum parking requirement.
15. The detached garage/elevator building is set back fifteen feet (15') from the front property line, and the main portion of the building (the habitable portion of the overall dwelling) is located approximately 77 feet from the street.
16. At their closest points, the two buildings are approximately nine (9) feet apart from each other and are attached by a deck with footings, which attaches the elevator building to the upper (second) floor of the main house.
17. The proposed height of the main building (home) and the elevator building is twenty seven feet (27').
18. 2,996 square feet of the total 4,041 square feet of building space is above ground.
19. The building locations and the proposed building designs both climb up the hill from Sampson Avenue. The proposal utilizes virtually the entire lot rather than concentrating the structure on one portion of the lot. The structures by their placement, massing and height are not located on the lot in a manner that reduces the visual impact.
20. The lot has been deemed to have eight (8) different sides, and thus a Planning Director determination for setbacks has previously been determined and calculated as outlined within the analysis section of the report.
21. The proposed home attempts to maximize the minimum setbacks on each of the property lines. The proposed garage building maximizes the setbacks on the front and on the south property line.
22. There is no proposed screening of the home from Sampson Avenue due to the fact that the home climbs up the hill from the right-of-way, and that there is proposed parking and driveway area in front of the garage. There is no proposed screening of the home between the elevator building and the home due to the fact that the applicant has proposed an attached deck and patio connecting the two structures, thus minimizing any screening opportunities with exception of adjacent properties that are already screened by existing "Gamble Oaks" and other existing vegetation.

23. The scope of the project requires extensive retention of the hillside, and no substantial mitigation has been proposed to reduce the detrimental impacts to the hillside and the design is not appropriate to the topography of the site. The revised design provided by the applicant since the original inception shows substantial retention and retaining walls around the south property line and substantial retention and retaining walls around the garage building on the north property line.
24. The visual analysis cannot include what could potentially be built around the proposed home as doing so would be purely hypothetical.
25. The lot analysis presented by staff for Sampson Avenue and adjacent properties to the subject property are irrelevant for comparison because the study only takes into consideration lot size and home size, and does not take into consideration the height, setbacks, mass and scale of existing historic homes located on adjacent property, or nearby properties, including those located within the same District on King Road, thus making the analysis dissimilar for compliance with the LMC and General Plan.
26. The Existing Home Size Analysis for neighboring properties in the Staff Report does not reflect current LMC requirements, and most of the homes in the area were built prior to the current code requirements and considerations, and thus should not be used when looking at comparable home sizes consider that some of the homes in the analysis could not be built under the current LMC requirements.
27. There are existing historic homes as listed in the Historic Sites Inventory near the proposed site on Sampson Avenue, including the adjacent 40 Sampson Avenue, (approximately 1,700 square feet), 41 Sampson which is across the street from the subject property (approximately 900 square feet) as well as nearby 60 Sampson Avenue and 115 Sampson Avenue.
28. The proposal does not meet the purpose statement of the Historic Residential-Low (HRL) district, specifically §15-2.1-1(C) *preserve the character of Historic residential Development in Park City.*
29. The proposal does not meet purpose statement (LMC §15-2.1-1)(E) *encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District, and maintain existing residential neighborhoods.*
30. The proposal does not meet purpose statement (LMC §15-2.1-1)(F) *establish Development review criteria for new Development on Steep Slopes which mitigate impacts to mass and scale and the environment.*
31. The proposed development has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(1) “Location of Development” due to the fact that the building locations and the proposed building designs do not reduce visual and environmental impacts because both climb up the hill from Sampson Avenue, and because the proposal utilizes virtually the entire lot rather than concentrating the structure on one portion of the lot. The structures are not located on the lot in a manner that reduces the visual impact.
32. The proposed development has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(2) “Visual Analysis” because the proposal does not provide screening, vegetation protection, or other design opportunities that could have been incorporated into the design to help mitigate these issues.

33. The proposed development has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(5) "Building Location" due to the fact that the proposal does not coordinate with adjacent properties to maximize opportunities for open areas and preservation of natural vegetation to minimize parking areas.
34. The proposal has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(6) "Building Form and Scale" because the applicant is not proposing "smaller components" nor are they proposing low-profile buildings that orient with the existing contours. Both buildings are large and are not broken into the smaller components as encouraged by this sub-section of the LMC.
35. The proposed has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(7) "Setbacks" due to the fact that the proposed setbacks only help to maximize the building site and are not compatible with other historic structures in the neighborhood.
36. LMC §15-2.1-6(B)(7) requires that the variation in setbacks will be a function of the site constraints, proposed building scales and setbacks from adjacent structures, and the proposed buildings do not consider the site constraints and thus cannot be substantially mitigated.
37. The proposed home has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(8) "Dwelling Volume" due to the fact that the proposed basement adds significant volume to the building, which was an issues that was raised by the City Council in the minutes of the 1994 City Council meeting to approve the Subdivision that created the subject lot.
38. The proposed home is not compatible with existing historic homes in the neighborhood with respect to height, setbacks, mass or scale, and the proposed home and garage buildings offer no substantial mitigation measures necessary to show compatibility with the nearby existing structures.
39. Height within the HRL District is limited to three (3) stories, and the proposal is for two buildings a main structure (home) and a garage with an elevator building that connects to the home by a patio and a deck. The two buildings appear by their placement to be a five (5) story building. Connecting the buildings in this manner does not meet the intent of the LMC §15-2.1-5(B).
40. The basement proposed does not meet the criteria for not having it count against the overall building size maximum of 3,000 square feet as noted on the 1995 Millsite Supplemental Plat, because there are windows and a window well in the basement, making the basement not fully below grade, which was the criteria as described in the Plat note for the property, as stated in Finding of Fact #8.
41. The visual mass of the proposed dwellings have not been mitigated by this home design.
42. Additional parking beyond the minimum two (2) required spaces might be necessary due to the location of the home on a sub-standard street that offers no off-site parking.
43. This Ratification was continued from the April 24, 2013 Planning Commission meeting.

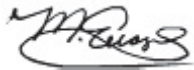
Conclusions of Law:

1. The proposed development does not meet the "Purpose" of the HRL District, specifically with respect to LMC §15-2.1-1(C)(E) and (F).
2. The proposed does not meet the criteria for development on steep slopes, specifically Land Management Code §15-2.1-6(B)(1-2), and (6-9).
3. The proposal is not historically compatible with other buildings within the HRL District, or areas nearby with respect to setbacks, height, mass or scale.
4. The proposed development does not meet the intent of the maximum height requirement restriction of no more than three (3) stories as required in LMC §15-2.1-5(B).
5. The reasonably anticipated detrimental effects of the proposed home and garage buildings on a steep slope cannot be substantially mitigated by the proposal or imposition of reasonable conditions to achieve compliance with the applicable standards specifically LMC §15-2.1-6(B)(1-2) and (6-9).

Order: The Steep Slope Conditional Use Permit for the proposed new single-family dwelling 30 Sampson Avenue is hereby denied for the reason specified within the Findings of Fact and Conclusions of Law listed herein.

The action taken by the Planning Commission can be appealed to the City Council if said appeal is filed within ten (10) days of this final action letter. If you have any questions or concerns regarding this letter, please do not hesitate to call me at 435-615-5063.

Sincerely,



Mathew Evans
Senior Planner

Park City Planning Department
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EXHIBIT D

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

PL-13-01988

July 12, 2013

VIA HAND DELIVERY

Park City City Council
445 Marsac Avenue
Park City, UT 84060

Re: Appeal of Planning Commission's Denial of Steep Slope Conditional Use Permit
Application for 30 Sampson Avenue

Dear Council Members:

This firm represents Michael and Laurie Jorgensen (the "Jorgensens") and this letter is their appeal of the Planning Commission's denial of their application to construct a new home at 30 Sampson Avenue ("30 Sampson") pursuant to a steep slope conditional use permit ("Steep Slope CUP").

Background

The City Council created the very steep lot known as 30 Sampson in 1995 when it approved Craig Schneckloth plat entitled "30, 40, and 50 Sampson Avenue Amended Plat," which was also referred to as the Millsite Supplemental Plat Amended Subdivision ("Amended Plat"). A copy of the Amended Plat is attached as Exhibit A. The 30 Sampson property is labeled as Lot 3 on the Amended Plat and is located in the Historic Residential ("HRL") zoning district. As the Amended Plat shows, Lot 3 totals approximately 7,089 square feet and is of a highly irregular shape. It climbs the mountain towards the west of Sampson Avenue and has slopes in excess of 30%.

When the City Council approved the Amended Plat there was a great deal of analysis and discussion about the suitability of Lot 1 and Lot 3 for a home (Lot 2 already had the Schneckloth's home located on it). As a result of this analysis, the City Council determined the maximum appropriate size for each of the lots on the Amended Plat. In the case of Lot 3 (30 Sampson), the City Council placed a notation that the "maximum size for residential structures" on the lot is 3,000 square feet. This "maximum size" does not include a garage so long as the garage is no larger than 400 feet and does not include area located within a basement.

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Section 15-2.1-6(C) of the LMC, enacted by the City Council, exempts Lot 3 (30 Sampson) from Planning Commission steep slope review because of prior approval of the Amended Plat and related plat notes and conditions of approval. On February 14, 2012, the Jorgensen's filed a completed Steep Slope CUP Application ("Application"). The Application sought approval for construction of a new single family dwelling, including a detached garage ("Project"). When they filed their Application, they did not invoke the Steep Slope CUP exception because they were not aware of it. Instead, they decided to proceed with their Steep Slope CUP.

From the outset, the Jorgensens have worked closely with staff on their application. They solicited and obtained input on the appropriate setbacks for this location and carefully considered the dimensional restrictions that apply to this lot. They also analyzed the relative sizes of the structures surrounding the lot and the development potential of those other lots. After considerable work and careful evaluating of all available feedback, the Jorgensens readied themselves for their first of several Planning Commission meetings.

The first Planning Commission hearing was held August 22, 2012. At the hearing, the staff presented a Staff Report that found that the Project complied with the LMC's requirements for building footprint size; building square foot maximum; setbacks; height; number of stories; final grade; vertical articulation; roof pitch; and parking. *Id.* at 205—206. The Staff Report carefully evaluated each of the 9 criteria required for a Steep Slope CUP.¹ Importantly, the August 22nd Staff Report found that in analyzing each of the 9 criteria that there were "no unmitigated impacts." A copy of the August 22nd report is attached as Exhibit B.

Notwithstanding the careful analysis and determination by the staff that the Application complied with the 9 criteria that the City Council had set for evaluating a Steep Slope CUP, the Planning Commission refused to approve the Application. Instead, they voted to continue the Application for the purpose of reviewing the definition of "stories."

More than 3 months later, on December 12, 2012, the Planning Commission conducted its next meeting on the Application at a work session. The Work Session Report addressed the definition of "stories." The report observed that the proposed home has three stories, including a basement level, a main level, and a top level. The Project also includes a detached garage and an ADA accessible elevator². The Work Session Report concluded that, because the garage is detached, the proposed home does not violate the three-story height restriction. WORK

¹ Section 15-2.1-6 of the LMC provides that the Application "shall be subject to the following criteria": (1) Location of Development; (2) Visual Analysis; (3) Access; (4) Terracing; (5) Building Location; (6) Building Form and Scale; (7) Setbacks; (8) Dwelling Volume; and (9) Building Height.

² An ADA accessible elevator is critical to the Jorgensens given a relationship they have with an individual in a wheelchair.

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SESSION REPORT, 30 SAMPSON AVENUE 56—57 (December 12, 2012), a copy is attached as Exhibit C.

Notwithstanding the staff's prior careful work, and its determination that the Project met all story requirements for the HRL zone, the Planning Commission again delayed any action and did not schedule a time to approve the Application. Rather, it identified new issues, including a complaints that the home's façade is not adequately historic, the basement has safety egress features that make it not a basement and the potential issue of snow shedding.

After four more months, and a request from the Jorgensens for a decision, the Planning Commission placed a revised Application on its April 10th, 2013 agenda. The Application had changed from the one first submitted by the Jorgensens. Notably, the Jorgensens redesigned the garage from a side-by-side two door configuration to a one door, tandem configuration. This reduced the mass and scale of the garage as observed by passersby on Sampson Avenue. The redesign complemented existing design features. Specifically, the garage is detached and completely subordinate to the main home. Because the garage is detached and the main home is located on the upper portion of the lot, passersby on Sampson Avenue will not likely be able to see the proposed home. A copy of the drawing showing the revised Application's elevations is attached as Exhibit D.

Even though the Jorgensens had revised their plans in a way that reduced the visual impacts to those on Sampson, some on the Planning Commission continued to express concerns with the Application. All of the concerns, however, were essentially visual in that some on the Planning Commission expressed distaste for the mass, scale and the impacts created by having a home on a residential lot in a neighborhood. Importantly, of the 2 who spoke at the hearing, their concern focused on the Sampson Avenue road, not with having a home at 30 Sampson. Nevertheless, the Planning Commission voted to deny the Application for 30 Sampson.

The Planning Commission requested that Planning Staff prepare Findings of Fact and Conclusions of Law consistent with its April 10th discussion and vote. The Planning Commission ratified the Findings of Fact and Conclusions of Law denying the Application at a June 28, 2013 meeting. Generally, the Planning Commission found that the Application doesn't meet the purposes of the HRL Zone; the Project is not compatible with existing historic homes with respect to height, setbacks, mass, or scale; the design doesn't reduce visual impacts; and placement of the Project doesn't maximize open space.

Analysis

The Planning Commission improperly denied the Application. First, it violated the Land Use, Development, and Management Act ("LUDMA") by failing to identify conditions to

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mitigate anticipated impacts from the Project. Second, the Planning Commission lacked substantial evidence to support denial of the Application. Third, it relied on unconstitutionally vague standards when it denied the Application. Finally, the Planning Commission improperly relied on criteria outside the LMC to deny the Application.

First, the Planning Commission violated LUDMA because it did not attempt to impose conditions that would mitigate the anticipated impacts of the Project. Section 10-9a-507(2)(a) of the Utah Code requires that “[a] conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.” (Emphasis added).

The 1995 Amended Plat approved a single-family residence at 30 Sampson. Based on approval of the Amended Plat, the Jorgensens submitted the Application. In the August 22nd Staff Report, Planning Staff determined that the Project complied with all applicable numeric criteria, including requirements for building footprint size; building square foot maximum; setbacks; height; number of stories; final grade; vertical articulation; roof pitch; and parking. PLANNING COMMISSION STAFF REPORT, 30 SAMPSON AVENUE 205—206 (Aug. 22, 2012). Moreover, the Staff Report concluded that there were no unmitigated impacts associated with the nine criteria used to evaluate the Steep Slope CUP. The Planning Commission expressed progressively more concern about the Project over the course of hearings and work sessions held in August 2012, December 2012, and April 2012. In June 2013, more than one year after submission of the Application, the Planning Commission denied the Application.

The Planning Commission made no attempt to impose conditions on the Project. In doing so, the Planning Commission functionally determined that no single family home may be constructed at 30 Sampson. This conflicts with the 1995 Amended Plat in which the City Council approved 30 Sampson as a lot appropriate for a single-family home. Moreover, it ignores the Jorgensens’ efforts to modify the Application to meet expressed concerns. For instance, in an effort to reduce the mass and scale of the garage, the Jorgensens’ redesigned their garage from a side-by-side two-door configuration to a one-door tandem garage. PLANNING COMMISSION STAFF REPORT, 30 SAMPSON AVENUE 82 (Apr. 10, 2013). Most importantly, however, the decision violated LUDMA’s mandate that conditions be proposed or imposed that would mitigate the anticipated detrimental impacts of the Project. UTAH CODE ANN. § 10-9a-507(2)(a); ADVISORY OPINION NO. 117, OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN *7 (October 15, 2012); *Trisko v. City of Waite Park*, 566 N.W.2d 349, 357 (Minn. Ct. App. 1997) (“Evidence that a municipality denied a conditional use permit without suggesting or imposing conditions that would bring the proposed use into compliance may support a conclusion that the denial was arbitrary.”).

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Second, the Planning Commission lacked substantial evidence to support denial of the Application. A land use authority's decision must be supported by substantial evidence. The Planning Commission must have substantial evidence to support its decision. UTAH CODE ANN. § 10-9a-801(3)(c). Substantial evidence exists when "a reasonable mind might accept as adequate the evidence supporting the decision." *Long v. Ethics and Discipline Comm. of the Utah Supreme Ct.*, 2011 UT 32, ¶ 50, 256 P.3d 206.

The Planning Commission found that the height, setbacks, volume, mass, and scale of the Project caused impacts that could not be substantially mitigated. But the Planning Commission lacked substantial evidence to support this determination. To the contrary, Planning Staff determined that the Project complied with the numeric criteria for floor area, building footprint, setbacks, and height. PLANNING COMMISSION STAFF REPORT, 30 SAMPSON AVENUE 86—88 (Apr. 10, 2013). Planning Director Thomas Eddington assigned the minimum setbacks. *Id.* at 86. Chief Building Official Chad Root determined that the proposed basement met the International Building Code's definition of basement. PLANNING COMMISSION STAFF REPORT, 30 SAMPSON AVENUE 157 (June 28, 2013). Because it qualified as a basement, the basement was permitted in addition to the maximum residence size, as explained in Director Lewis's 1998 letter. Finally, Mr. Root determined that the proposed home and garage were not connected and, as a result, did not exceed the maximum three story height. *Id.*

The Planning Commission also lacked substantial evidence for its finding that the Project is not compatible with existing historic homes. The Planning Commission discounted an existing home size analysis prepared by Planning Staff because the analysis did not consider height, setbacks, mass, scale, or existing LMC requirements. But the analysis provides a useful basis for comparing the Project to existing homes. The proposed floor area for the Project is 4,585 square feet. 60 Sampson, an existing historic home has a total size of approximately 4,246 square feet on a lot smaller than 30 Sampson's lot. 16 Sampson was recently approved for construction of a home of approximately 4,141 square feet. Moreover, two homes located on Norfolk in the HR-1 District sit adjacent to 30 Sampson. Both of these homes are larger than the Project. These data show that 30 Sampson is comparable to several neighboring properties, including adjoining properties. The Planning Commission did not offer quantitative height, setback, mass, and scale data that show the Project is not compatible with existing homes.

In addition to its other findings, the Planning Commission found that the Project failed to maximize open space, would cause visual impacts, and did not provide screening. When it approved the Amended Plat, the Planning Commission understood that 30 Sampson was an irregular lot. The majority of buildable area is located on the rear of the lot, where the proposed home is located. PLANNING COMMISSION STAFF REPORT, 30 SAMPSON AVENUE 92 (Apr. 10, 2013). The Project covers only 31% of the overall lot. *Id.* at 91. Thus, the Project preserves open space to the extent possible on this irregular and very steep lot. The Project

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minimizes visual impacts because it is broken into smaller pieces that step with the grade. *Id.* at 93. Notably, the proposed garage is detached and completely subordinate to the proposed home. *Id.* Lastly, the Jorgensens' plan to screen the Project by planting 40 new trees on the lot. *Id.* at 91. In summary, the Planning Commission lacked substantial evidence to support its findings that the Project is not compatible with existing homes and that it will have detrimental visual impacts.

Third, the provisions the Planning Commission relies upon to analyze compatibility with existing historic homes are unconstitutionally vague because they provide no guidance for the Jorgensens to prepare designs and an application. An ordinance is unconstitutionally vague when it either "(1) fail[s] to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly, or (2) [is] written in a way that encourages arbitrary and discriminatory enforcement." *Bushco v. Utah State Tax Comm'n*, 2009 UT 73, ¶ 55, 225 P.3d 153 (internal quotation marks omitted).

The Planning Commission found that the Project does not contribute to the character and scale of the HRL District. In particular, it found that the Project is not compatible with the height, setbacks, mass, or scale of existing historic homes. The Planning Commission appears to have based its decision, in part, on the purpose statements for the HRL District. LMC § 15-2.1-1(C), (E)-(F). The Planning Commission also appears to have relied on language permitting it to minimize the visual mass or mitigate differences in scale between existing and proposed structures. LMC § 15-2.1-6(B)(8)-(9).

The Project complies with the quantitative criteria in the LMC for floor area, building footprint, setbacks, and height. PLANNING COMMISSION STAFF REPORT, 30 SAMPSON AVENUE 86—88 (Apr. 10, 2013). The provisions relied on by the Planning Commission fail to provide guidance to applicants and design professionals as to when compliance with quantitative criteria will not be adequate to satisfy Steep Slope CUP requirements. Moreover, there is no guidance as to what additional criteria may exist and how they will be applied. Indeed, in this case, the Planning Commission's decision making appears to be driven by subjective standards developed on an ad hoc basis. Because they provide no meaningful guidance to the Jorgensens, the provisions relied upon by the Planning Commission are unconstitutionally vague.

Finally, the Planning Commission impermissibly relied on grounds outside the LMC to deny the Application. UTAH CODE ANN. § 10-9a-801(3)(d); *Mann Media, Inc. v. Randolph Cnty. Planning Bd.*, 565 S.E.2d 9, 17 (N.C. 2002) ("The [Planning Commission] . . . is without power to deny a permit on grounds not expressly stated in the ordinance and it must employ specific statutory criteria which are relevant." (internal quotation marks omitted)).

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The Planning Commission found that the Project maximizes the minimum setbacks; violates the intent of the three-story requirement, and may require more than two parking spaces. There is no dispute that 30 Sampson falls within the minimum setbacks established for the lot. The LMC defines a setback as "[t]he required minimum distance between a Building Pad and the closest of the following: (A) Property Line; (B) platted Street; or (C) existing curb or edge of a Street." LMC § 15-15-1.234. Based on this definition, the building pad for the Project may permissibly extend to the minimum setback line. Pursuant to section 15-2.1-5(A) of the LMC, "[a] Structure may have a maximum of three (3) stories." According to Mr. Root, the proposed home and garage are separate structures. Both are less than three stories. Thus, the proposed home and garage satisfy the story requirement. The LMC provides no additional criteria regarding the intent of the story requirement. The LMC requires two parking spaces per Single Family Dwelling unit; it provides no basis for requiring additional parking spaces. LMC § 15-3-6(A). The Project has the required two parking spaces. The Planning Commission may not use bases outside the LMC to impose conditions on 30 Sampson or to deny the Application.

The Jorgensens filed the Application in February 2012. The Planning Commission denied the Application without proposing any conditions to mitigate anticipated detrimental impacts of the Project. In doing so, the Planning Commission violated LUDMA, acted without substantial evidence, applied unconstitutionally vague provisions of the LMC, and relied on impermissible, uncodified grounds for its decision. Further, in the absence of conditions, the Jorgensens may not build a home at 30 Sampson. This outcome contradicts the Amended Plat, which expressly permitted a single-family residence at 30 Sampson.

Should you have any questions, please feel free to contact me.

Very truly yours,

Snell & Wilmer



Wade R. Budge

WRB



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

FRANCINE A. GIANI
Executive Director

BRENT N. BATEMAN
Lead Attorney, Office of the Property Rights Ombudsman

ADVISORY OPINION

Advisory Opinion Requested by:	Michael and Laurie Jorgensen By Wade Budge, Attorney for the Jorgensens
Local Government Entity:	Park City
Applicant for the Land Use Approval:	Michael and Laurie Jorgensen
Type of Property:	Residential
Date of this Advisory Opinion:	March 28, 2014
Opinion Authored By:	Elliot R. Lawrence Office of the Property Rights Ombudsman

Issues

What is the extent and obligation of a land use authority's evaluation of conditional use permit applications?

Summary of Advisory Opinion

Conditional uses are valuable aspects of a local zoning ordinance, and must be administered as part of the overall zoning scheme, respecting the ordinance's design standards and approvals previously granted by the local government. Conditional uses involve four steps: Designating the use as conditional; adopting standards to guide decision makers; identifying detrimental impacts associated with a particular use; and evaluation of conditions to mitigate the use's impacts. Before a conditional use permit may be denied, specific detrimental impacts must be identified, and conditions considered. The denial is justified only if the impacts cannot be substantially mitigated by reasonable conditions. Any decision made by a land use authority as part of the conditional use evaluation process must be supported by substantial evidence.

Review

A Request for an Advisory Opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE § 13-43-205.

An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A Request for an Advisory Opinion was received from Wade R. Budge, Attorney for Michael and Laurie Jorgensen, on August 9, 2013. A copy of that request was sent via certified mail to Janet M. Scott, City Recorder for Park City, at 445 Marsac Ave., Park City, Utah. According to the return receipt, the City received the Request on August 19, 2013.

Evidence

The following documents and information with relevance to the issue involved in this Advisory Opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, with attachments, submitted by Wade R. Budge, attorney for Michael and Laurie Jorgensen, received by the Office of the Property Rights Ombudsman on August 9, 2013.
2. Response submitted on behalf of Park City, by Polly Samuels-McLean, Assistant City Attorney for Park City, received on December 2, 2014.
3. Reply submitted by Mr. Budge, received on January 17, 2014.
4. Reply submitted by Ms. McLean, dated March 5, 2014.
5. Reply submitted by Mr. Budge, dated March 18, 2014.
6. Section 15-2.1-6 of the Park City Municipal Code.

Background

Michael and Laurie Jorgensen own a lot in Park City, located at 30 Sampson Avenue ("30 Sampson"). The lot was created by a subdivision plat approved in 1995, along with two other lots along the same road. The lot has an "irregular hour-glass" shape: The south boundary, adjoining another lot, is essentially straight, but the north boundary "zig-zags" at sharp angles, creating a wedge-shaped section on the east (adjoining Sampson Avenue) and a "suarish" area on the west, with a narrow area in the middle of the lot.¹ The total area of the lot is 7,089 square feet, but the narrowing in the middle limits the area available for a larger building such as a home. The upper, or western portion, is larger than the lower, or eastern portion.² The slopes on the lower portion leading the to the middle appear to be in excess of 30%, but area immediately

¹ The property boundary with the parcel to the north forms a right angle jutting into the middle of 30 Sampson. The western portion is slightly larger than the eastern. The City's staff noted that due to the sharp angles, the lot actually has eight sides.

² The western portion could also be deemed the "northwest" portion, as that part of the lot veers to the northwest. The lower portion is basically oriented on an east-west axis.

adjacent to the street is fairly level. The upper portion levels off somewhat, with the slope appearing to be between 20-30%. The lot has about 48 feet of frontage on Sampson Avenue.

Despite the slope and unusual configuration of 30 Sampson, the owners are confident that a home may be constructed. The lot is located within an "HRL" (Historic Residential-Low Density) zone district. The City Code requires that buildings larger than 1,000 square feet which are located on steep slopes obtain a conditional use permit (a "Steep Slope CUP").³ The Steep Slope CUP process addresses several criteria associated with the development, including size and mass of the building, height, location on the lot, and access.

In the HRL zone, the allowable building footprint size is a function of the lot size. Larger lots allow larger building footprints.⁴ According to the City, the maximum building footprint allowed on 30 Sampson is 2,355.5 square feet.⁵ Because of the unusual configuration, the City Planner determined the setbacks, as provided in § 15-4-17 of the City Code. Each of the lot's eight sides was assigned a setback.

The subdivision plat that created 30 Sampson in 1995 includes a note stating that 3,000 square feet is the "maximum size[] for residential structures" on the lot.⁶ The City determined that it would honor the maximum size approved by that plat. In March of 1998, the City issued a letter, stating that a basement could be included with a home on the lot, provided it met the requirements of the City Code ("March 1998 Letter").⁷ Importantly, the area of a basement would not count towards the 3,000 square foot maximum for the home.⁸ The March 1998 Letter was recorded with the Summit County Recorder's Office. The City acknowledges this Letter, and the development rights that it grants.

In February of 2012, the Jorgensens designed a home for 30 Sampson, and applied for a Steep Slope CUP, because a portion of their development is located on the steep portion constituting the middle of their lot.⁹ The proposed home is located on the western (or upper) portion of the lot (approximately 77 feet from Sampson Avenue), with a garage building located at street level. The garage building extends into the slope face, and includes a below-ground entry room and an elevator leading to the home on the upper portion. The elevator was connected to a deck or bridge leading to the main entrance of the home.¹⁰ A parking area and stairway next to the garage were also shown in the home's drawings. The final design considered by the City was about

³ PARK CITY MUNICIPAL CODE, § 15-2.1-6.

⁴ PARK CITY MUNICIPAL CODE, § 15-2.1-3. A building's "footprint" is the area it occupies, regardless of height. It is not the total floor area of a building.

⁵ "Findings of Fact and Conclusions of Law, June 26, 2013," Park City Planning Commission (Attached as Exhibit A), Finding No. 10.

⁶ The subdivision created three lots, including 30 Sampson. One of the lots is 6,956 s.f., and the other is 11,444 s.f. The smaller lot also has a 3,000 s.f. limit for structures, while the larger may build up to 3,500 s.f.

⁷ At the time of the March 1998 Letter, a basement was required to have four walls at least 80% underground. An outside entrance from the basement was not to be visible from a public street.

⁸ In other words, only the "above ground" portion of the home would be counted against the maximum area.

⁹ It appears that the City's planning staff determined that a Steep Slope CUP was necessary. *But see* Analysis Section II, *infra*.

¹⁰ Other than an outside stairway, the elevator would be the only access from the garage to the home. The Jorgensens included the elevator to make the home fully accessible.

4,041 total square feet, with 2,996 square feet above ground.¹¹ The overall footprint for the project was 2,272 square feet.¹²

After working with the City's staff for nearly six months, the matter was brought to the Park City Planning Commission on August 22, 2012. At that meeting, the staff recommended approval of the Steep Slope CUP, stating that there were no unmitigated impacts associated with the proposed home. The staff report concluded that all of the criteria required by the City's Code supported the permit.¹³ Despite the staff's recommendation, the Planning Commission continued the application, requesting clarification on the definition of "story" in the City Code.¹⁴

In December of 2012, the Planning Commission reviewed the application at a work meeting. At that meeting, the staff reported that the Jorgensen's home met the City's height and story restrictions. The Planning Commission again delayed a decision on the application, citing new issues about the proposed home. Specifically, the commission identified complaints that the home did not suit the historic nature of the area, issues about whether the basement area should be included in the total, and concerns about snow shedding.

In April of 2013, after a request from the Jorgensens, the Commission again considered the application. The Jorgensens had made changes to their home's design, in order to address the concerns raised at the December commission meeting. In particular, the garage was changed to lessen its apparent size and visual impact from Sampson Avenue.¹⁵

At the April meeting, it appears that members of the public expressed concerns about parking on Sampson Avenue, but said nothing about the home itself. During discussion, members of the Planning Commission expressed dislike for the size and visual impacts of the home. The Commission denied the Steep Slope CUP application, concluding that the home was too large for the neighborhood, did not satisfy the "intent" of the HRL zone, was not compatible with the historic development of the area, and that the reasonably anticipated detrimental impacts of the home could not be mitigated through reasonable conditions. On June 26, 2013, the Commission approved its Findings of Fact and Conclusions of Law, formally denying the Jorgensen's application.

¹¹ Findings of Fact and Conclusions of Law, Finding No. 18. It appears from the design information as well as the City's conclusions that the garage and elevator constituted one building, and the home was a separate building. The City code exempts a garage area up to 400 s.f. from the calculation of total area.

¹² Findings of Fact and Conclusions of Law, Finding No. 10.

¹³ Section 15-2.1-6(B) requires evaluation of nine criteria: (1) Location of Development; (2) Visual Analysis; (3) Access; (4) Terracing; (5) Building Location; (6) Building Form and Scale; (7) Setbacks; (8) Dwelling Volume; and (9) Building Height. The staff report also concluded that the proposed home also met the City's requirements, such as height, setback, etc.

¹⁴ Section 15-2.1-5 limits structures to three stories, with a maximum height of 27 feet (above grade). The City staff concluded Jorgensen's home has three stories: a basement, a main floor, and an upper level. The maximum height is below 27 feet.

¹⁵ As stated above, the final design had a building footprint of 2,272 s.f. Based on the analysis by the City's staff, the proposal has a total above-ground floor area of 2,996 s.f. The basement floor area was 1,189 s.f. The total area included 509 square feet of the garage/elevator building, because the first 400 s.f. of the garage was excluded from the total floor area.

In its final order, the Commission made 43 Findings of Fact, including finding that the proposed home did not meet the criteria for a Steep Slope CUP. Specifically, the Commission found that the home was not compatible with existing historic homes in the neighborhood “with respect to height, setbacks, mass or scale . . .”¹⁶ It also found that the home did not meet the purpose of the HRL zone, specifically paragraphs (C), (E), and (F) of § 15-2.1-1.¹⁷ A copy of the Findings of Fact is attached as Exhibit A.¹⁸

Analysis

I. The Planning Commission Does Not Have Discretion to Ignore Approvals Previously Granted by the City or to Reinterpret City Ordinances.

The Planning Commission abused its discretion when it concluded that the Jorgensen’s home did not meet the “purposes” of the HRL zone, and by ignoring terms in the City Code. It is true that interpretation of ordinances by a local planning board enjoys “some level of non-binding deference” *Fox v. Park City*, 2008 UT 85 ¶ 11, 200 P.3d 182, 185. However, the Planning Commission’s deference is limited, and its authority must operate within the terms of the City Code. The Commission does not have discretion to ignore an ordinance or approvals already made regarding the Jorgensen’s property.

A. A 3,000 Square Foot Home May Potentially Be Built on the Lot.

Because the maximum size for a home on 30 Sampson has already been approved by the City, the Steep Slope CUP could not be denied based on an opinion that the home does not meet the purposes of the HRL zone. In its Findings of Fact, the Planning Commission determined that the Jorgensen’s home did not “meet the purpose” of the HRL zone in part because the home did not “preserve the character of Historic residential development in Park City” (Finding No. 28) and because it did not “encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District . . .” (Finding No. 29).¹⁹ The basis for these findings is evidently because the Planning Commission felt that the proposed home is too large for the City’s Historic District.

The Planning Commission does not have discretion to decide that the home is too large for the HRL zone, because the maximum size has already been approved by the City. When the 30 Sampson lot was created in 1995, the City determined that a 3,000 square foot home could be built.²⁰ A few years later, the City agreed that the area of a basement level would not be counted

¹⁶ Findings of Fact and Conclusions of Law, June 26, 2013, Finding No. 38.

¹⁷ That sections lists the purpose of the HRL zone, which includes “preserving historic character” (paragraph (C)); “encourage historically compatible structures” (paragraph (E)); and “review criteria for development on steep slopes” (paragraph (F)).

¹⁸ The document is entitled “Notice of City Council Action” although it is the Findings of Fact and Conclusions of Law for the Planning Commission.

¹⁹ The Findings quote paragraphs (E) and (F) of § 15-2.1-1 of the Park City Code, which lists the purposes of the HRL zone.

²⁰ Along the same lines, the City also has approved the size of a building’s “footprint,” which is a function of the lot area. The size of a building’s footprint acceptable on 30 Sampson has already been approved by the City, and so the

against the total area of a home on that lot. Since the building size has already been approved, the Planning Commission cannot dictate the allowable size of a building simply because it feels that the “purpose” of the HRL zone is better served with smaller homes. In essence, Park City has already determined that on 30 Sampson, a home of 3,000 square feet suitably preserves the character of historic residential development and contributes to the character and scale of the historic district.²¹ The Planning Commission does not have discretion to change what the City Council has already approved.

Furthermore, the Jorgensens have a vested right for a home up to 3,000 square feet in floor area. The 1995 subdivision plat includes the specific approval for a home of that size on 30 Sampson. An approved subdivision plat grants vested rights to the owner. “Some courts have recognized that the filing of a subdivision plat gives a vested right to individual lot owners as to the lots’ size . . .” *Stucker v. Summit County*, 870 P.2d 283, 288 (Utah Ct. App. 1994).²² If an owner is entitled to a vested right in the size and configuration of a lot created by a subdivision, then an owner may claim vested rights in other development or design criteria approved on a subdivision plat. This would include specific building pads or setbacks, and building sizes. Since the City approved a 3,000 square foot home on 30 Sampson as part of the 1995 subdivision plat, the Jorgensens may claim the vested right to build a home up to that size.²³

B. The Jorgensens May Build Within the Approved Setbacks

In a similar vein, the Planning Commission abused its discretion by denying the CUP based on its position that the home “attempts to maximize the minimum setbacks.” (See Findings of Fact, Finding No. 21).²⁴ Because of the unusual configuration of the lot, the minimum setbacks for 30 Sampson have been determined by the Park City Planning Director, as provided in the City Code.²⁵ The buildings (the garage and home) are placed within the required setbacks, and there is no issue that the setbacks need to be adjusted.

Because the proposed home conforms to the established setbacks, the Planning Commission does not have discretion to deny approval simply because the home’s plan “maximizes” those setbacks. The Jorgensens have the right to build within the approved building pad. The buildable area of the lot, as defined by the required setbacks, has been decided by the City. As long as the building complies with the setbacks, the Planning Commission does not have discretion to deny the Steep Slope CUP because of an opinion that the proposed building is “too close” to what has

Planning Commission cannot presume the authority to determine what size building best suits the “purpose” of the HRL zone.

²¹ This is further reinforced by the fact that the proposed home and garage would be a permitted use if the lot had a slope less than 30%, and no Steep Slope CUP were required.

²² See also *Wood v. North Salt Lake*, 15 Utah 2d 245, 390 P.2d 858 (1964) (Property owners had vested right in lot sizes created by subdivision plat, even though a subsequent zoning ordinance required larger lots)

²³ Even if development criteria on a subdivision plat granted a vested right, development would still need to comply with other zoning requirements, including the Steep Slope CUP, if required by the City Code.

²⁴ The Planning Commission’s application of §15-2.1.6(B)(7) of the City Code (Setbacks as part of the CUP analysis) is discussed below.

²⁵ See PARK CITY MUNICIPAL CODE, §15-4-17 (Setback Requirements for Unusual Lot Configurations). The buildable area, or “building pad” is “the Lot Area minus required Front, Rear and Side Yard Areas.” *Id.*, § 15-2.1-3(C).

already been approved.²⁶ Otherwise, the Planning Commission would be overruling the City's determination by effectively increasing the setbacks, which would be an abuse of its discretion.

C. The Planning Commission Does Not Have Discretion to Ignore the Established Meanings of Terms Used in the City Code.

The Planning Commission must follow the terms and definitions adopted by the City, and does not have discretion to adopt its own definitions. "A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances." UTAH CODE ANN. § 10-9a-509(2). If a term is defined in either the City's ordinances or the State Code, the Planning Commission is bound to follow that definition, and does not have discretion to change the established meaning of the term.

The terms of the City's ordinances are interpreted according to the plain language used.

When interpreting statutes, [the] primary objective is to give effect to the [legislative] intent. To discern . . . intent, . . . look first to the statute's plain language. . . . [P]resume that the [legislative body] used each word advisedly and read each term according to its ordinary and accepted meaning. Additionally, . . . read the plain language of the statute as a whole and interpret its provisions in harmony with other statutes in the same chapter. When the plain meaning of the statute can be discerned from its language, no other interpretive tools are needed.

Selman v. Box Elder County, 2011 UT 18, ¶ 18, 251 P.3d 804, 807 (citations and alterations from original omitted). In addition, "since zoning ordinances are in derogation of a property owner's use of land . . . any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use." *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208, 1216. If a term is not defined by ordinance or statute, the ordinary meaning and usage of the word is used.

1. The Jorgensen Home Includes a Basement.

The City's planning staff concluded that the basement proposed for the Jorgensen home satisfied the definition stated in the March 1998 Letter, and so the basement area was not included when calculating the total floor area allowed.²⁷ Defying this analysis, along with the provisions of the City Code and the actions of the City Council, the Planning Commission decided that the

²⁶ The Planning Commission apparently objects to having the building located within the area the City has approved for building (*i.e.*, the building pad, or the area within the established setbacks). Admittedly, the home building occupies nearly all of the buildable area on the upper portion of the lot. Although the Planning Commission may prefer greater setbacks, it does not have discretion to deny the Steep Slope CUP based on the amount of buildable area being used. As discussed below, the Steep Slope CUP ordinance grants the Planning Commission a limited amount of discretion over setbacks as part of the conditional use analysis. That discretion, however, only involves setback adjustments in limited circumstances, and is not authority to question how a property owner uses the area approved for building.

²⁷ Excluding the basement floor area meant that the "above ground" portion of the home had 2,996 s.f., just under the 3,000 s.f. limit.

basement level of the Jorgensen home did not meet its conception of a basement, and so it concluded that the area of that level was to be included in the total area of the home.²⁸

The March 1998 Letter stated that the area of a basement level would not be included in the total area allowed on the lot, if all four walls of the basement were at least 80% underground.²⁹ The Planning Commission misquoted that definition, stating that a basement must be “constructed *fully* below the finished grade.” Findings of Fact, Finding No. 8 (emphasis added).³⁰ Moreover, the City Code currently defines “basement” as “[a]ny floor level below the First Story in a Building.” PARK CITY MUNICIPAL CODE, § 15-15-4(1.25) (Definition of “basement”).³¹ The Planning Commission decided that the basement was not “fully below the finished grade” because it had windows and a light well (or window well).³² Therefore, according to the Planning Commission, it was not eligible for floor area exemption provided by both the March 1998 Letter and the City Code.³³

Using the City Code’s definition, the Jorgensen home has a basement. It is a level below the first story. The City Code does not mention windows—as long as the level is below the first story, it could presumably have as many windows as the homeowner wants. In addition, windows are required by the building code. The March 1998 Letter requires that all four walls of a basement be at least 80% underground. It also does not mention windows, but it is reasonable that the requirement could be fulfilled if the walls of window wells were considered as part of the basement walls.³⁴ The March 1998 Letter allows an exterior door leading to a basement (including a garage door), so it would seem that windows are also a possibility.³⁵

²⁸ See Findings of Fact and Conclusions of Law, Finding No. 40.

²⁹ According to the March 1998 Letter, this was the definition of basement from the City Code. That letter provided that the area of a basement would not be included in the total floor area for a home. See Findings of Fact and Conclusions of Law, Finding No. 8. The design drawings submitted for this Opinion show that the basement walls are completely below ground, including the wall for the “light well.”

³⁰ See also Findings of Fact, Finding No. 40.

³¹ “First Story” means “[t]he lowest Story in a Building provided the floor level is not more than four feet (4’) below Final Grade for more than fifty percent (50%) of the perimeter. PARK CITY MUNICIPAL CODE, § 15-15-4(1.103). The Jorgensen’s plans show that only the basement of their home is below grade, and the so the first level would qualify as a “First Story.”

³² The windows are required by the building code, and provide light and emergency access. A portion of one basement wall includes three windows with a “light well,” which is basically a sunken window well extending across all three windows (about 20 feet total) allowing light and access. The outside wall for the light well is connected to the basement wall and extends a few feet from the main structure. There was evidently no analysis or measurement showing that the basement was less than 80% below ground, or that the basement was not below the First Story of a building.

³³ See *id.*, § 15-15-4(1.105) “Basement and Crawl Space Areas below Final Grade are not considered Floor Area.”

³⁴ It is also worth noting that most people would agree that a basement includes windows and even exterior doors.

³⁵ The March 1998 Letter states that an exterior door, including a garage door, may not be visible from a public street. Thus, it was at least considered possible that a basement with a garage door could still have 80% of its walls underground. Since windows are smaller than garage doors, a basement could also feasibly include windows. The HRL zone anticipates window wells and light wells, allowing them to extend into side and rear yard setbacks, and excluding the depth of window wells from defining existing grade. See *id.*, §§ 15-2.1-3(G)(3) and (I)(3), and 15-2.1-5.

The Planning Commission abused its discretion by not allowing the basement area to be exempted from the total floor area allowed for the Jorgensen home. Their conclusions are not supported by any reasonable interpretation of the City Code or the March 1998 Letter, particularly given the building code's requirement that windows be included. The conclusions reached by the Planning Commission place homeowners in a "catch-22" situation: A basement must have windows; but if it has windows, the Planning Commission would no longer consider it a basement.³⁶ This approach also nullifies the exemption granted by the City, depriving the Jorgensens of a valuable property right.³⁷ Finally, since the terms of the area exemption must be construed in favor of the property owner, there is no reasonable basis to conclude that the basement in the Jorgensen home does not meet the definitions of both the City Code and the March 1998 Letter.

2. The Home Meets the Height Requirements of the HRL Zone.

The proposed home satisfies the height requirements of the HRL zone. "No structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade." PARK CITY MUNICIPAL CODE, § 15-2.1-5. According to the materials submitted for this Opinion, the Jorgensen home, as well as the garage and elevator building, are both at or below 27 feet in height, measured from the existing grade. In addition, a structure may not have more than three stories within the 27-foot maximum.³⁸ For the purpose of defining maximum height, a basement level is considered a story, according to the City Code. *Id.*, § 15-2.1-5(A).³⁹

The Planning Commission focused on the height and the number of stories in the two structures proposed for 30 Sampson, eventually concluding that "[t]he two buildings appear by their placement to be a five (5) story building." Findings of Fact, Finding No. 39. However, both the home and the garage/elevator buildings satisfy the City's height requirement. The maximum height is 27 feet above the existing grade, regardless of how tall the building "appears" to be, or its location on a hillside. The Planning Commission does not have discretion to alter the definition found in the City Code.

The City Code does not define "story," but it does define how to measure a story.⁴⁰ The ordinary understanding of the term "story" is "each of the stage or portions one above another of which a building consists; a room or set of rooms on one floor or level." OXFORD ENGLISH DICTIONARY, Vol. XVI (2nd ed. 1989) p. 789.⁴¹ Using this as the plain language meaning of the term, the two

³⁶ "Catch-22" refers to a circumstance or situation that presents a dilemma because of mutually conflicting or dependent conditions. See THE OXFORD DICTIONARY AND THESAURUS, AMERICAN EDITION (1996), p. 219.

³⁷ The Planning Commission's conclusion also does not solve their concerns over the size of the structure. If the basement were eliminated, the structure would still have the same dimensions above ground—eliminating the basement would only reduce the total floor area, not the overall size and mass of the structure.

³⁸ The City Code allows additional height for an elevator building. See *id.*, § 15-2.1-5(3). It appears, however, that no extra height was requested for the Jorgensen's elevator.

³⁹ A basement would count as a "story," but only the portion of a structure above ground would be measured for the maximum height.

⁴⁰ *Id.*, § 15-15-32(1.251) "STORY. The vertical measurement between floors taken from finish floor to finish floor."

⁴¹ "Story" usually refers to the horizontal divisions of a building. A building's stories usually include space between floors to house electrical wiring, plumbing, etc.

structures comply with § 15-2.1-5. The home has three levels, including a basement. The garage/elevator building has only one story.⁴² The Planning Commission must abide by the plain language of the City ordinance, and does not have discretion to adopt a new interpretation not supported by the City Code. Since both buildings are less than 27 feet high and have no more than three stories, they both satisfy the required height limitation.

II. The City's Steep Slope CUP Ordinance Only Applies to Substantial Structures Actually Located on Steep Slopes.

The Steep Slope CUP ordinance only applies to substantial structures actually located on a steep slope, and may not be extended to regulate structures which are not placed on a slope. "A Conditional Use permit is required for any Structure in excess of one thousand square feet (1000 sq. ft.) if said Structure and/or Access is *located* upon any existing Slope of thirty percent (30%) or greater." PARK CITY MUNICIPAL CODE, § 15-2.1-6(B) (emphasis added).⁴³ In other words, the Planning Commission only has authority to add additional conditions on a structure which is actually placed on an area with a slope greater than 30%, if the structure exceeds 1,000 square feet. It does not apply to structures placed on more level areas of a lot, even if other portions of the lot have a steep slope, or to buildings which are smaller than 1,000 square feet.⁴⁴

It appears, based on the materials submitted for this Opinion, that only the lower portion of 30 Sampson has an area where the slope exceeds 30%.⁴⁵ The upper portion is more level.⁴⁶ If this is so, then the only portion of the lot subject to the Steep Slope CUP is whatever portion has a slope greater than 30%, and which has a substantial structure placed upon it. Structures on more level areas do not require conditional use approval.

The Jorgensen's proposal consists of two buildings: The home on the upper portion, and the garage/elevator structure on the lower portion. The City's review treated the two buildings as separate. The Planning Commission agreed that the home is a separate structure from the garage.

⁴² There was no indication that the elevator shaft would comprise two stories. At any rate, since the garage is a separate structure, it may have as many as three stories, so long as the height does not exceed 27 feet.

⁴³ Note that the ordinance language only applies to a structure located on an existing slope greater than 30%, in contrast, the ordinance would not apply simply when a structure is built on a level portion of a lot that also includes a steep slope.

⁴⁴ This interpretation is based on the plain language of § 15-2.1-6(B). In addition, the provision that a zoning ordinance must be narrowly construed in favor of the property owner demands this conclusion.

⁴⁵ See Findings of Fact, Finding No. 5: "The subject property is very steep ranging from flat areas near Sampson Avenue and climbing uphill with slopes reaching between 30-40% before reaching the main body of the lot." This is, of course, not a final conclusion that the slope on the upper portion is less than 30%, but is consistent with the information submitted for this Opinion. The City maintains that its staff concluded that a Steep Slope CUP is required, and that the Jorgensens failed to appeal that determination.

⁴⁶ This observation is based upon topographic data listed on the plans submitted for this Opinion. The lower portion of 30 Sampson has a small level area along the street, and the elevation rises sharply in the middle, where the lot narrows. The garage and elevator structure requires excavation into this slope face. The upper portion appears to be more level (the data on the plans suggests that the slope is less than 30%). According to the plans, the home structure will be entirely above ground (except for the basement), without extensive excavation into a slope face. A more thorough analysis is needed to accurately ascertain the slope of the upper portion.

See Findings of Fact, Finding Nos. 6, 13, 15, 16, 17, 22, 34 and 39. In addition, the conclusion that the buildings are separate is supported by the facts. Both the home and the garage have separate foundations, and are not connected, except by a walkway. The garage and elevator could be removed without changing the home, and the home could be altered without any changes to the garage. Simply providing access via a deck or bridge does not unite the two separate buildings.

If the slope on the upper portion of the lot is less than 30%, then the Planning Commission does not have authority to impose any additional conditions on a structure placed on that portion. If the home is located on an area with a steeper slope, then the Steep Slope CUP ordinance would apply. The garage/elevator building is located on a steep slope, and requires excavation into the slope face. However, the garage and elevator are less than 1,000 square feet, so a Steep Slope CUP should not be required.⁴⁷

In short, § 15-2.1-6 of the City Code requires a Steep Slope CUP not merely because a lot has a slope greater than 30%, but because a substantial structure is proposed to be built on that slope. That section must be construed narrowly, in favor of allowing the use and enjoyment of property. The City may not require a conditional use permit except where one is mandated by the City Code. Despite a desire to improve the City, the Planning Commission does not have discretion to exceed the authority granted to it.

According to the materials submitted for this Opinion, the Jorgensens object to being subject to the Steep Slope CUP for the same reasons. The City maintains that its planning staff decided that the CUP was necessary, and that the Jorgensens cannot object at this point. It is not clear if the Jorgensens raised their objections before the Planning Commission, however. If it is determined that the Steep Slope CUP ordinance does not apply to the Jorgensen's proposal, the Planning Commission's decision would possibly be void as an unauthorized act, even if its actions were supported by substantial evidence.⁴⁸

III. Before it May Deny a Conditional Use, the City Must Show the Detrimental Impacts of the Use, and the Conditions Which Were Considered to Mitigate Those Impacts.

In order to justify denying an application for a conditional use permit, the City must establish the detrimental impacts of the development, and show by substantial evidence that reasonable conditions would not mitigate those impacts. Conditional uses are governed by the Land Use,

⁴⁷ See Findings of Fact, Finding 6. "The proposal . . . includes a 453 square foot detached garage, a 350 square foot garage entry and a 106 square foot access tunnel which is located below ground" The areas listed total 909 square feet, but 400 s.f. is excluded from the total floor area.

⁴⁸ A zoning decision may be overturned if it is arbitrary, capricious, or illegal. UTAH CODE ANN. § 10-9a-801(3). A decision is arbitrary and capricious if it is not supported by substantial evidence. *Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 10, 70 P.3d 47, 51. It is illegal if the action taken was not authorized, or if it violated a statute or ordinance. UTAH CODE ANN. § 10-9a-801(3)(d).

Development, and Management Act (or “LUDMA”), found in Title 10, chapter 9a of the Utah Code.⁴⁹ A “Conditional use” means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.” UTAH CODE ANN. § 10-9a-103(5). Section 10-9a-507 provides the framework for consideration of conditional use permits:

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

Id., § 10-9a-507. The Utah Code thus anticipates four specific steps: First, a use must be designated as “conditional” in a land use ordinance; Second, standards must be adopted to guide evaluation of a conditional use; Third, reasonably anticipated detrimental impacts associated with the particular circumstances being evaluated must be identified by a land use authority; and Fourth, conditions must be proposed to mitigate those detrimental impacts. The use may be denied only if the proposed conditions cannot substantially mitigate the detrimental impacts.⁵⁰

A. Standards for Conditional Use Evaluation

In § 15-2.1-6, the City adopted some standards to govern evaluation of a Steep Slope CUP. “Development on Steep Slopes must be environmentally sensitive to hillside Areas, carefully planned to mitigate adverse effects on neighboring land and Improvements, and consistent with the Historic District Design Guidelines.” PARK CITY MUNICIPAL CODE, § 15-2.1-6. The section covers nine specific criteria: Location of Development, Visual Analysis, Access, Terracing, Building Location, Building Form and Scale, Setbacks, Dwelling Volume, and Building Height. *See id.*, § 15-2.1-6(B).

The Utah Code does not define “applicable standards,” nor does it explain the nature or extent expected for such standards that would be acceptable for conditional use analysis. Several years

⁴⁹ UTAH CODE ANN. §§ 10-9a-101 to -803 (applicable to municipalities); *see also id.*, §§ 17-27a-101 to -803 (applicable to counties). This Opinion will cite to the provisions in Title 10, because they apply to Park City.

⁵⁰ As has already been discussed, Park City has designated that a substantial structure located on a steep slope is a conditional use, thus fulfilling the first step.

ago, however, the Utah Supreme Court deferred decisions on standards to a local jurisdiction's judgment:

While it is true that a zoning ordinance must set some ascertainable boundaries on the exercise of discretion by a zoning authority, such boundaries are not required to be unduly rigid or detailed. A generalized exposition of overall standards or policy goals suffices to direct the inquiry and deliberation of the zoning authority, and to permit appellate review of its decision.

Thurston v. Cache County, 626 P.2d 440, 443-44 (Utah 1981). Thus, even though the standards listed in § 15-2.1-6 basically consist of fairly broad policy statements, they are nevertheless sufficient for conditional use analysis. The Planning Commission's discretion, however, is limited to these standards.

For example, § 15-2.1-6(B)(7) establishes standards to evaluate the setbacks of a structure subject to a Steep Slope CUP. The Planning Commission may vary setbacks only to "minimize the creation of a 'wall effect' along the Street front and/or the Rear Lot Line." PARK CITY MUNICIPAL CODE, § 15-2.1-6(B)(7). Unless it is shown by substantial evidence that there is "wall effect" on the front or rear of the lot, the Planning Commission may not consider a variation in setbacks, and it may not deny the Steep Slope CUP on the basis that there is some other "detrimental impact" associated with setbacks.

Moreover, the Steep Slope CUP, like any conditional use, is not to be evaluated in a vacuum, but as part of an overall zoning scheme. The Steep Slope CUP ordinance not only requires evaluation according to the standards listed, but also requires consideration "consistent with the Historic District Design Guidelines." Therefore, the CUP must also take into consideration the requirements and guidelines of the Historic District Zone. The design guidelines, allowed uses, and vested rights established as part of a zoning ordinance must factor into a conditional use evaluation.⁵¹ Otherwise, a conditional use regulation becomes "spot zoning" on individual parcels, rather than an aspect of a community's comprehensive zoning regulation.⁵²

⁵¹ This approach to conditional uses helps resolve the dichotomy between individual property rights and a community's legitimate interest in promoting the public welfare. Uses are designated as conditional because of unique aspects (including location) that warrant a more careful evaluation than that provided by generally applicable zoning regulations. If a locality makes a use conditional, the property owner has the right to carry out that use, by complying with the reasonable conditions meant to mitigate detrimental impacts. The owner may also rely on the design and use standards adopted in a zoning ordinance, and also on approvals previously granted. Conditional use evaluation does not negate other aspects of a zoning ordinance, but is an individualized consideration of an allowed use, consistent with the terms of a community's overall zoning scheme.

⁵² "[S]pot zoning occurs when a municipality either grants a special privilege or imposes a restriction on a particular small property that is not otherwise granted or imposed on surrounding properties in the larger area. *Tolman v. Logan City*, 2007 UT App 260, ¶ 15, 167 P.3d 489, 495. This does not mean that a local government may never identify a use as conditional, only that the conditional use permit must recognize the overall zoning regulation for the area. Conditional use evaluation is not an excuse to fashion a completely new zoning scheme applicable to a single property.

Thus, although the City Code requires conditional use evaluation for a structure located on a steep slope, that evaluation does not stand alone, and is not an excuse to ignore other zoning provisions. Instead, the Steep Slope CUP constitutes an individualized evaluation of the impacts made by a structure on a steep slope. That evaluation must consider the overall zoning scheme for the area, and must recognize the zoning and design standards as well as approvals previously granted by the City.

Finally, conditional use analysis must include consideration of the specific setting and circumstances of the proposed use. The possible impacts and potential conditions are inextricably tied to the location of the proposed use, and a determination of impacts and conditions must be specific to the unique aspects of the location.⁵³ Generalized statements about the use will not suffice. In the Jorgensen's situation, the lot has a very unusual configuration and a steep slope, which limits its usable area. Any design evaluation affecting 30 Sampson, including consideration of a conditional use permit, must take into account the specific needs and limitations of that parcel and the circumstances of the surrounding area as well as the provisions of the HRL zone.

B. Identifying Detrimental Impacts

In order to grant or deny a conditional use permit, and impose conditions on the use, a local government must identify the reasonably anticipated detrimental impacts associated with that specific use. This follows from the language of the Utah Code, which provides that a conditional use may be approved with conditions to mitigate the detrimental impacts, but denied only if the impacts cannot be mitigated by reasonable conditions.⁵⁴ In order to determine what conditions may be imposed—and whether they will be effective—the use's detrimental impacts must first be identified.

In order to justify additional conditions, the use's impacts must not only be identified, but shown to be potentially detrimental to the municipality, neighboring properties, or nearby land uses. The Steep Slope CUP ordinance focuses on two distinct areas: Protection of hillside environments, and mitigation of "adverse effects on neighboring land and improvements." *Id.*, § 15-2.1-6. This implies that before conditions may be imposed, it must be shown that a structure on a steep slope would have negative effects on nearby properties or to the hillside's environment. It is not necessary that actual injury be shown, but the detrimental impacts must nevertheless be connected to some distinct adverse effect on the use and enjoyment of nearby properties or an effect on an environmental concern. In other words, there must be a "nexus," or a link between

⁵³ See UTAH CODE ANN. § 10-9a-103(5) (A use may be designated conditional because of its potential impacts on neighboring properties or land uses).

⁵⁴ *Id.*, § 10-9a-507(2) and (3).

the use and a potential negative effect. No detrimental impacts may be established without substantial evidence of a connection to a negative effect.

The reasonably anticipated detrimental impacts must be identified specifically for each particular use in each particular location. It is not sufficient to cite general conclusions about the use.⁵⁵ Detrimental impacts, like all aspects of a conditional use, must be established by substantial evidence.⁵⁶ Since the municipality is claiming the need for additional conditions to mitigate a use's detrimental impacts, the municipality has the burden of identifying the specific detrimental impacts.

The Planning Commission's Findings of Fact and Conclusions of Law repeatedly state that the Jorgensen's home has "impacts that cannot be substantially mitigated." However, there is little discussion showing what detrimental impacts were considered, or how they were established. The Commission worked through seven of the nine subsections in the Steep Slope CUP ordinance, finding that the Jorgensen home has impacts that cannot be mitigated.⁵⁷

a. Subsection (1): Location of Development.

In Findings of Fact Number 31, the Commission found that the Jorgensen home "has impacts that cannot be substantially mitigated with respect to LMC § 15-2.1-6(B)(1) 'Location of Development . . .'"⁵⁸ The Commission noted that the proposed buildings "climb up the hill" and "utilize[] virtually the entire lot."⁵⁹ The buildings "are not located on the lot in a manner that reduces the visual impact." These are generalized objections to the proposal, but the Finding does not show that the proposed buildings cause or may cause adverse effects on neighboring properties, or the hillside environment. In short, the Planning Commission did not establish that the location of the Jorgensen home would be

⁵⁵ Uses are designated as conditional because of potential impacts on the municipality, neighboring properties or neighboring land uses. Therefore, it must be shown that each specific use has impacts that detrimentally affect the municipality, neighboring property owners, or nearby land uses. Any reliable and relevant information about a use may serve as evidence of the use's impact; but, that information must be considered along with the specific situation being evaluated, and the impacts determined individually for the each use. Generalized information is not by itself sufficient justification to determine detrimental impacts.

⁵⁶ "A municipality's land use decision concerning the granting or denial of a conditional use permit is arbitrary and capricious only if it is not supported by substantial evidence." *Wadsworth v. West Jordan City*, 2000 UT App 49, ¶ 9, 999 P.2d 1240, 1242 (citations and alterations omitted). Substantial evidence is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *Bradley*, 2003 UT 16, ¶ 15, 70 P.3d at 52 (citation omitted).

⁵⁷ The Planning Commission's analysis does not address subsections (3), "Access" or (4) "Terracing." Evidently, there were no significant issues stemming from those aspects.

⁵⁸ "LMC" means the "Land Management Code," part of the Park City Municipal Code. The standard guiding criterion (1) of the Steep Slope CUP ordinance states that "[d]evelopment is located and designed to reduce visual and environmental impacts of the Structure." PARK CITY MUNICIPAL CODE, § 15-2.1-6(B)(1).

⁵⁹ As has been discussed, the proposed buildings are situated within the building pad (or setbacks) approved by the City. Since a property owner is entitled to use as much of an approved building pad as desired, the amount of the buildable area taken up by a building footprint is, by itself, not a detrimental impact.

associated with any detrimental impacts. It also did not include the design guidelines of the Historic District in its analysis.

b. Subsection (2): Visual Analysis.

The Planning Commission next found that the proposed home “has impacts that cannot be substantially mitigated” based on the language of § 15-2.1.6(B)(2) “Visual Analysis.” See Findings of Fact, Finding Number 32. The Commission determined that the proposal did not include “screening, vegetation protection, or other design opportunities” that could have mitigated visual issues. However, the Commission’s finding does not demonstrate any detrimental impacts on nearby properties or the hillside environment resulting from the proposed home. Instead, it concludes that the proposal does not include conditions to mitigate the unspecified impacts.

The subsection actually requires the applicant to provide a visual analysis, to identify potential impacts and the “potential for Screening, Slope stabilization, erosion mitigation, vegetation protection, and other design opportunities” PARK CITY MUNICIPAL CODE, § 15-2.1-6(B)(2)(b). The language of the subsection thus calls for information needed to properly address these specific factors, and does not provide a standard guiding the type of conditions that could be imposed.⁶⁰

c. Subsection (5): Building Location.

Turning to subsection (5), “Building Location,” the Commission again found that the home has impacts that could not be mitigated, without identifying the specific adverse effects associated with the proposal.⁶¹ Subsection (5) calls for coordination with adjoining properties to “maximize opportunities for open Areas and the preservation of natural vegetation, to minimize driveway and Parking Areas, and to provide variation of the Front Yard.” *Id.*, § 15-2.1-6(B)(5). The Commission cited this language, and concluded that impacts could not be mitigated. However, there was no analysis showing how much open space would be desired, the amount of vegetation that ought to be preserved, or the acceptable size of parking areas; nor was there a showing of a negative effect on adjacent properties associated with those factors.⁶²

⁶⁰ The Utah Code requires that conditional uses be analyzed according to standards. See UTAH CODE ANN. § 10-9a-507. Subsection (2) requires analysis of a few visual aspects, but “determining impacts” and “identifying potential conditions” are basically what constitutes conditional use evaluation, so that language cannot be considered as suitably directing the inquiry and deliberation of the Planning Commission. See *Thurston v. Cache County*, 626 P.2d 440, 443-44 (Utah 1981).

⁶¹ Findings of Fact, Finding No. 33.

⁶² Like the Visual Analysis required by Subsection (2), the language of Subsection (5) requires “coordination” with adjacent properties, but does not provide standards to direct the Planning Commission’s decision-making.

d. Subsection (6): Building Form and Scale.

Subsection (6) focuses on the form and scale of the building, and encourages low-profile buildings and smaller components rather than a single building. Again, the Planning Commission cited the language of Subsection (6), and concluded that unidentified impacts could not be mitigated. The language of the subsection suggests possible actions (low-profile homes or small components) that could be taken when a proposed building is "orient[ed] against the Lot's existing contours," but these are the potential conditions, not the impacts which would justify denying the Steep Slope CUP.⁶³

In addition, the City's planning staff concluded that the home and garage are oriented with existing contours, and that significant portions of both buildings are below ground, reducing the profile of the buildings.⁶⁴ Although the Planning Commission is not required to adopt the recommendations of the City Staff, it must accept the staff's factual representations and interpretations of the proposed building. If the staff determines that the home and garage are oriented to the existing slope, the Planning Commission must abide by that conclusion. If the buildings are oriented with existing slopes, then the Commission cannot find that there are detrimental impacts stemming from the form and scale of the buildings.

e. Subsection (7): Setbacks

According to the City code, the setbacks for a structure subject to a Steep Slope CUP may be increased, to minimize a "wall effect" along a street front or the rear of a lot. *Id.*, § 15-2.1-6(B)(7). If there is no wall effect created by a structure, no increase in the setbacks may be required. In its analysis, the City's staff concluded that there are no "wall effects" on either the front or rear yards. The staff's conclusions are supported by the drawings and plans included in the materials submitted for this Opinion. The garage/elevator building is set back several feet from the street, and the home is situated several feet from the rear property line.

Nevertheless, the Planning Commission found that the Jorgensen's home had impacts that could not be mitigated which related to the building's setbacks. The Commission's findings ignore any perceived "wall effect" and are based on the amount of the building

⁶³ This is also an example of how the specific conditions and limitations of the property should be included in the analysis. Given the limited amount of usable space on 30 Sampson, it is unclear how breaking the buildings into smaller components could feasibly make a difference in the overall impact of the development.

⁶⁴ The Staff's analysis stated that "[t]he top floor of the home walks out to the existing grade of the top of the lot, and the main floor walks out to the existing downhill side of the lot." In addition, approximately 1/3 of the home is below ground, which lowers the profile of the building.

pad occupied by the two structures.⁶⁵ The Planning Commission exceeded its authority with regards to Subsection (7). Setbacks may be increased only to mitigate a “wall effect,” not because the Commission feels that too much of an approved building pad is being used.

Furthermore, the Commission exceeded its discretion by misapplying a portion of Subsection (7). If an increase in setbacks is proposed, “[t]he Setback variation will be a function of the Site constraints, proposed Building scale, and Setbacks on adjacent Structures.” *Id.* This language limits discretion over setback changes, but the Planning Commission turned that language on its head, making it the basis for a finding that the home has impacts that cannot be mitigated. *See Findings of Fact, Finding Number 36.*⁶⁶ This distortion of the ordinance’s language cannot reasonably support the Planning Commission’s findings regarding setbacks.

f. Subsection (8): Dwelling Volume.

Subsection (8) focuses on the volume of a structure subject to a Steep Slope CUP. The volume or mass of a structure may be reduced “to minimize its visual mass and/or mitigate differences in scale between a proposed Structure and existing Structures.” The Planning Commission found that the basement “add[ed] significant volume to the building . . .” *Findings of Fact, Finding Number 37.* There was no discussion of why the basement level constituted a detrimental impact, or how it negatively affected nearby properties.

The Commission further concluded that the Jorgensen’s home was “not compatible with existing historic homes in the neighborhood with respect to height, setbacks, mass, or scale, and the proposed home and garage buildings offer no substantial mitigation measures necessary to show compatibility with the nearby existing structure.” *Id.*, *Finding Number 38.* Although there is a reference to nearby homes, there is again no finding that the volume of the two buildings constituted a potential adverse effect on those properties.

It not sufficient to point out that a proposed structure is larger than nearby buildings. As long as a structure fits within the size limitations of the City’s ordinances, it should be allowed, even if it is significantly larger than nearby buildings. Subsection (8) authorizes the Planning Commission to reduce a structure’s volume. That authority, however, may only be exercised as a condition to mitigate a detrimental impact. Unless it is shown that

⁶⁵ As has been discussed, the building pad is defined by the setbacks approved for the lot. The buildings may be located within that building pad, and the City does not regulate how much of the building pad may be occupied.

⁶⁶ As with the other criteria, the Planning Commission did not identify a specific detrimental impact related to the setbacks for 30 Sampson.

a building's volume is linked to an adverse effect on a nearby property, the Planning Commission may not order a reduction, nor may it simply deny the conditional use permit.⁶⁷

To conclude, the Planning Commission failed to identify any detrimental impacts caused by the Jorgensen home, and so its findings and conclusions are missing a critical analytical component.⁶⁸ The Commission's blanket statements that the home has "impacts that cannot be substantially mitigated" are not supportable without identifying the adverse impacts on neighboring properties (or the hillside environment) attributed to the home. The detrimental impacts must be ascertained and defined in order to decide what conditions could be imposed, as well as find that the proposed conditions cannot substantially mitigate the impacts. It is also insufficient to state generalized impacts associated with a building or use. The impacts must be directly attributable to the particular building or use being scrutinized, and must be based on distinct adverse effects on nearby properties or the hillside environment. Once the specific impacts are identified, the analysis turns to conditions to mitigate those impacts.

IV. Before a Conditional Use Permit May be Denied, Conditions to Mitigate Detrimental Impacts Must be Considered.

After the detrimental impacts associated with a specific use have been identified, the next step is selection and evaluation of conditions to mitigate the impacts. A conditional use permit may be denied only if it is shown, by substantial evidence, that the impacts *cannot* be substantially mitigated by reasonable conditions.⁶⁹ The conditions, therefore, must directly address adverse effects attributed to the use. A land use authority may not impose conditions which are not associated with a use, even if the conditions would be beneficial to the neighborhood.

The Park City Planning Commission denied the Steep Slope CUP for the Jorgensen property without considering any conditions, and without determining by substantial evidence that reasonable conditions could not mitigate detrimental impacts associated with the use. The Commission's analysis is therefore incomplete. It cannot justify denying the CUP without considering conditions to mitigate detrimental impacts. The City argues that it is not obligated to propose conditions, but that the Jorgensens have that responsibility. The Jorgensens counter that the City has the responsibility to propose conditions before the CUP may be denied.

⁶⁷ The Commission's consideration of the ninth criterion, "Building Height" was discussed above, in Section I.C.2, *supra*.

⁶⁸ This does not mean that the Planning Commission has no authority to deny the Steep Slope CUP. If conditional use analysis is needed for the Jorgensen home or the garage/elevator building (see Section II, *supra*), then denial remains within the Commission's authority. As long as it shows, with substantial evidence, that the detrimental impacts associated with the buildings cannot be mitigated with reasonable conditions, the CUP may be denied.

⁶⁹ UTAH CODE ANN. § 10-9a-507(2)(b). "Substantially mitigated" does not mean "completely eliminated." If the adverse effects of a particular use can be reduced in an appreciable manner through reasonable conditions, then the CUP should be approved. The land use authority may also determine that an impact has been sufficiently mitigated, even if neighboring property owners complain about the use.

In reality, both parties have a responsibility to propose conditions that would mitigate the impacts of the use, although it starts with the City. The City correctly notes that it is not obligated to redesign the Jorgensen's home, and the Jorgensen's are also correct that they should not be required to "guess" the type of conditions desired and be asked to submit repetitive plan changes. Evaluation of a conditional use permit, like consideration of most land use applications, is a process involving input from the property owner, a local planning staff, and the land use authority.⁷⁰ As an application is reviewed by staff members, evidence of concerns may be received and addressed, and conditions incorporated into the design before a land use authority considers the application. At a public hearing on the application, if one is held, concerned neighbors and the land use authority itself may provide evidence to identify potential impacts, and may suggest possible conditions. The land use authority bears the responsibility to identify the detrimental impacts, and also should provide guidance on how the impacts may be mitigated. The process reaches a conclusion, of course, when the land use authority approves the conditional use permit with reasonable conditions, or denies it, after finding that the impacts cannot be substantially mitigated.

Because the Park City Planning Commission did not propose or consider any specific condition, this Opinion cannot evaluate that aspect of the conditional use process. By failing to consider conditions, however, the Planning Commission's analysis was incomplete and its denial not supported by substantial evidence. At the very least, the Commission should have indicated how the detrimental impacts could have been mitigated (assuming that detrimental impacts were identified), or suggested conditions to the Jorgensens.

Conclusion

Conditional uses are valuable components of a community's planning and zoning regulation. Some uses require extra scrutiny because of unique characteristics or impacts, including impacts directly associated with a use's location. A local government may choose to more closely evaluate a use before it is approved, in order to address possible detrimental impacts to a community or to neighboring properties.

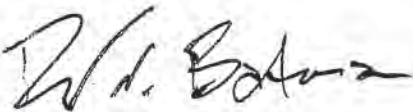
Conditional uses are part of a community's zoning scheme, and must be administered as part of an overall zoning ordinance, not as an exception to it. When considering conditional use applications, local governments should include the design and use standards of the zoning ordinance, plus any approvals previously granted on the property. A local government has some discretion over conditional uses, but that discretion must be limited to the authority granted by the state code and a local ordinance. All determinations associated with a conditional use evaluation must be supported by substantial evidence

⁷⁰ In many locations, conditional use permits are considered by a planning commission. However, other bodies may be designated as the "land use authority," which is the term used in the Utah Code. See UTAH CODE ANN. § 10-9a-103(23).

In order to properly evaluate a conditional use application, the detrimental impacts attributed to that use must be identified. The impacts must derive from the specific use being evaluated. It is not necessary to show an actual injury to a neighboring property, but only the reasonable likelihood that the use will have some adverse effect. Generalized conclusions about the use, without consideration of the particular circumstances will not suffice to show detrimental impacts.

Once the impacts are identified, conditions can be proposed to mitigate the adverse effects. The evaluation is not complete unless reasonable conditions have been considered. Conditions must be directly tied to mitigating detrimental impacts, and may not be imposed as a means to accomplish other objectives. Because conditional use evaluations are processes rather than single actions, the responsibility to propose reasonable conditions is shared with the property owners, planning staff, and the land use authority. At any point in the evaluation process, conditions may be proposed by any party and incorporated into the plans for the conditional use if supported by substantial evidence.

Ultimately, the land use authority has the final decision on whether to grant the use. If the land use authority identifies specific detrimental impacts associated with the use, it must consider conditions to mitigate those impacts. The application may be denied only if the detrimental impacts associated with the use cannot be substantially mitigated by reasonable conditions. A decision to deny the conditional use application requires consideration of conditions, and must be supported by substantial evidence.

A handwritten signature in black ink, appearing to read "Brent N. Bateman".

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees provisions, found in Utah Code § 13-43-206, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Marci Heil
City Recorder
Park City
445 Marsac Avenue
Park City, Utah 84060

On this 28 Day of March, 2014, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.



Office of the Property Rights Ombudsman

Exhibit A

Findings of Fact and Conclusions of Law

Park City Planning Commission

June 26, 2013



July 3, 2013
Michael and Laurie Jorgensen
3648 Wrangler Way
Park City, Utah 84098

NOTICE OF CITY COUNCIL ACTION

Project Description: Steep Slope Conditional Use Permit
Project Numbers: PL-12-01487
Project Address: 30 Sampson Avenue
Date of Final Action: June 26, 2013

Action Taken

On April 10, 2013, the Planning Commission held a regularly scheduled Public Hearing to consider the approval of a Steep Slope Conditional Use Permit (SS-CUP) application for 30 Sampson Avenue. During that same meeting, the Planning Commission voted to deny the requested SS-CUP and directed Staff to draft findings of fact in support of the decision to deny the request based on the evidence and reasoning put forth by the Planning Commission during the same meeting. The Planning Commission met on the June 26 2013, and voted unanimously to ratify the following Findings of Facts and Conclusions of Law:

Findings of Fact:

1. The property is located at 30 Sampson Avenue.
2. The property is within the Historic Residential (HRL) District.
3. The property is Lot 3 of the Millsite Reservation Supplemental Plat, which was recorded in 1995.
4. The Lot area is 7,088 square feet, the minimum lot size in the HRL district is 3,570 square feet.
5. The subject property is very steep ranging from flat areas near Sampson Avenue and climbing uphill with slopes reaching between 30-40% before reaching the main body of the lot.
6. The proposal consisted of a single family dwelling of 4,585 square feet which includes a 453 square foot detached garage, a 350 square foot garage entry and a 106 square foot access tunnel which is located below ground.
7. Plat notes indicate the maximum square footage allowed for this lot is 3,000 square feet with an additional allowance of 400 square foot for a garage.

8. A 1998 letter from the (then) Community Development Director Richard Lewis, determined that the 3,000 square foot maximum only applied to the above ground portion of the future dwelling, and that basement areas would not count against the 3,000 square foot maximum so long as they were constructed fully below the finished grade. This letter was recorded on the title of the property.
9. The Land Management Code has been amended numerous times since 1998.
10. An overall building footprint of 2,272 square feet was proposed. Under the current LMC, the maximum allowed footprint is 2,355.5 square feet, based on the total lot area.
11. The applicant submitted a visual analysis, and renderings showing a contextual analysis of visual impacts.
12. No streetscape analysis was presented to the Planning Commission as requested by the Planning Commission.
13. The cross canyon view contains a back drop of both structures, a two (2) story home up the hill with a two (2) story garage building in front.
14. The proposed design incorporates a driveway from Sampson Avenue on the top slope of the street and provides two (2) legal off-street parking spaces, which meets the minimum parking requirement.
15. The detached garage/elevator building is set back fifteen feet (15') from the front property line, and the main portion of the building (the habitable portion of the overall dwelling) is located approximately 77 feet from the street.
16. At their closest points, the two buildings are approximately nine (9) feet apart from each other and are attached by a deck with footings, which attaches the elevator building to the upper (second) floor of the main house.
17. The proposed height of the main building (home) and the elevator building is twenty seven feet (27').
18. 2,996 square feet of the total 4,041 square feet of building space is above ground.
19. The building locations and the proposed building designs both climb up the hill from Sampson Avenue. The proposal utilizes virtually the entire lot rather than concentrating the structure on one portion of the lot. The structures by their placement, massing and height are not located on the lot in a manner that reduces the visual impact.
20. The lot has been deemed to have eight (8) different sides, and thus a Planning Director determination for setbacks has previously been determined and calculated as outlined within the analysis section of the report.
21. The proposed home attempts to maximize the minimum setbacks on each of the property lines. The proposed garage building maximizes the setbacks on the front and on the south property line.
22. There is no proposed screening of the home from Sampson Avenue due to the fact that the home climbs up the hill from the right-of-way, and that there is proposed parking and driveway area in front of the garage. There is no proposed screening of the home between the elevator building and the home due to the fact that the applicant has proposed an attached deck and patio connecting the two structures, thus minimizing any screening opportunities with exception of adjacent properties that are already screened by existing "Gamble Oaks" and other existing vegetation.

23. The scope of the project requires extensive retention of the hillside, and no substantial mitigation has been proposed to reduce the detrimental impacts to the hillside and the design is not appropriate to the topography of the site. The revised design provided by the applicant since the original inception shows substantial retention and retaining walls around the south property line and substantial retention and retaining walls around the garage building on the north property line.
24. The visual analysis cannot include what could potentially be built around the proposed home as doing so would be purely hypothetical.
25. The lot analysis presented by staff for Sampson Avenue and adjacent properties to the subject property are irrelevant for comparison because the study only takes into consideration lot size and home size, and does not take into consideration the height, setbacks, mass and scale of existing historic homes located on adjacent property, or nearby properties, including those located within the same District on King Road, thus making the analysis dissimilar for compliance with the LMC and General Plan.
26. The Existing Home Size Analysis for neighboring properties in the Staff Report does not reflect current LMC requirements, and most of the homes in the area were built prior to the current code requirements and considerations, and thus should not be used when looking at comparable home sizes consider that some of the homes in the analysis could not be built under the current LMC requirements.
27. There are existing historic homes as listed in the Historic Sites Inventory near the proposed site on Sampson Avenue, including the adjacent 40 Sampson Avenue, (approximately 1,700 square feet), 41 Sampson which is across the street from the subject property (approximately 900 square feet) as well as nearby 60 Sampson Avenue and 115 Sampson Avenue.
28. The proposal does not meet the purpose statement of the Historic Residential-Low (HRL) district, specifically §15-2.1-1(C) *preserve the character of Historic residential Development in Park City.*
29. The proposal does not meet purpose statement (LMC §15-2.1-1)(E) *encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District, and maintain existing residential neighborhoods.*
30. The proposal does not meet purpose statement (LMC §15-2.1-1)(F) *establish Development review criteria for new Development on Steep Slopes which mitigate impacts to mass and scale and the environment.*
31. The proposed development has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(1) "Location of Development" due to the fact that the building locations and the proposed building designs do not reduce visual and environmental impacts because both climb up the hill from Sampson Avenue, and because the proposal utilizes virtually the entire lot rather than concentrating the structure on one portion of the lot. The structures are not located on the lot in a manner that reduces the visual impact.
32. The proposed development has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(2) "Visual Analysis" because the proposal does not provide screening, vegetation protection, or other design opportunities that could have been incorporated into the design to help mitigate these issues.

33. The proposed development has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(5) "Building Location" due to the fact that the proposal does not coordinate with adjacent properties to maximize opportunities for open areas and preservation of natural vegetation to minimize parking areas.
34. The proposal has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(6) "Building Form and Scale" because the applicant is not proposing "smaller components" nor are they proposing low-profile buildings that orient with the existing contours. Both buildings are large and are not broken into the smaller components as encouraged by this sub-section of the LMC.
35. The proposed has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(7) "Setbacks" due to the fact that the proposed setbacks only help to maximize the building site and are not compatible with other historic structures in the neighborhood.
36. LMC §15-2.1-6(B)(7) requires that the variation in setbacks will be a function of the site constraints, proposed building scales and setbacks from adjacent structures, and the proposed buildings do not consider the site constraints and thus cannot be substantially mitigated.
37. The proposed home has impacts that cannot be substantially mitigated with respect to LMC §15-2.1-6(B)(8) "Dwelling Volume" due to the fact that the proposed basement adds significant volume to the building, which was an issue that was raised by the City Council in the minutes of the 1994 City Council meeting to approve the Subdivision that created the subject lot.
38. The proposed home is not compatible with existing historic homes in the neighborhood with respect to height, setbacks, mass or scale, and the proposed home and garage buildings offer no substantial mitigation measures necessary to show compatibility with the nearby existing structures.
39. Height within the HRL District is limited to three (3) stories, and the proposal is for two buildings a main structure (home) and a garage with an elevator building that connects to the home by a patio and a deck. The two buildings appear by their placement to be a five (5) story building. Connecting the buildings in this manner does not meet the intent of the LMC §15-2.1-5(B).
40. The basement proposed does not meet the criteria for not having it count against the overall building size maximum of 3,000 square feet as noted on the 1995 Millsite Supplemental Plat, because there are windows and a window well in the basement, making the basement not fully below grade, which was the criteria as described in the Plat note for the property, as stated in Finding of Fact #8.
41. The visual mass of the proposed dwellings have not been mitigated by this home design.
42. Additional parking beyond the minimum two (2) required spaces might be necessary due to the location of the home on a sub-standard street that offers no off-site parking.
43. This Ratification was continued from the April 24, 2013 Planning Commission meeting.

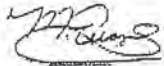
Conclusions of Law:

1. The proposed development does not meet the "Purpose" of the HRL District, specifically with respect to LMC §15-2.1-1(C)(E) and (F).
2. The proposed does not meet the criteria for development on steep slopes, specifically Land Management Code §15-2.1-6(B)(1-2), and (6-9).
3. The proposal is not historically compatible with other buildings within the HRL District, or areas nearby with respect to setbacks, height, mass or scale.
4. The proposed development does not meet the intent of the maximum height requirement restriction of no more than three (3) stories as required in LMC §15-2.1-5(B).
5. The reasonably anticipated detrimental effects of the proposed home and garage buildings on a steep slope cannot be substantially mitigated by the proposal or imposition of reasonable conditions to achieve compliance with the applicable standards specifically LMC §15-2.1-6(B)(1-2) and (6-9).

Order: The Steep Slope Conditional Use Permit for the proposed new single-family dwelling 30 Sampson Avenue is hereby denied for the reason specified within the Findings of Fact and Conclusions of Law listed herein.

The action taken by the Planning Commission can be appealed to the City Council if said appeal is filed within ten (10) days of this final action letter. If you have any questions or concerns regarding this letter, please do not hesitate to call me at 435-615-5063.

Sincerely,



Mathew Evans
Senior Planner

Park City Planning Department
PO Box 1480
Park City, UT 84060

Copy: File

City Council Staff Report



Subject: 2014 Sales Revenue Bond
Author: Nate Rockwood Capital Budget, Debt & Grants Manager
Department: Budget, Debt & Grants Department
Date: July 17, 2014
Type of Item: Legislative

Recommendation

Staff recommends that Council approve the attached bond resolution for the 2014 Series Sales Revenue bond issuance, in an amount not to exceed \$13,000,000, to refund the 2005A Series Sales Revenue Bonds and provide funding for projects specified as part of the Council approved Additional Resort Communities Sales Tax Plan.

Topic/Description

2014 Sales Revenue Bond Resolution – Refunding and New Money

Background

Refunding – The City issued the 2005A Sales Tax Revenue bonds for the purpose of constructing the public safety facility, the ice and fields complex, the China Bridge parking structure, park improvements, Prospect Ave improvements, and a town plaza. In 2009, the indenture was amended to include “Old Town” infrastructure improvements, including street reconstruction, parking supply augmentation, pedestrian-friendly enhancements, utility replacement/improvements and the incorporation of public art into such improvements. These bonds are now callable meaning they can be refunded at a lower interest rate. While these bonds are backed by Park City Sales Revenue, the bonds payments are currently split 15% General Fund, 10% Public Safety Impact Fees and 75% Main Street RDA.

New Money - On November 29, 2012 City Council unanimously passed an ordinance adopting an additional .5% Resort Communities Sales and Use Tax to be levied beginning April 1, 2013. At that time Council confirmed that all revenue generated with the additional .5% Resort Communities Sales Tax be received directly in to the Capital Improvement Fund to be used for, but not limited to, the following capital projects, Historic Park City/ Main Street & Downtown Projects, OTIS, Storm Drain Improvements, Open Space Acquisition and other capital improvement projects as determined appropriate by City Council.

On May 9, 2013, City Council adopted a Sales Revenue Bond Reimbursement Resolution, which allows the City to reimburse itself for expenses related to specific projects currently listed and proposed as part of the Additional Resort Communities Sales Tax Plan. The resolution sets the maximum reimbursement amount at \$10,000,000. It was anticipated that the first Sales Revenue Bonds would be issued in 2014.

The projects which qualify for reimbursement are defined in the resolution as Historic Park City/Main Street and downtown streetscape improvements, OTIS (Old Town street and utility improvement projects), storm drain improvements as specified in the Storm Water Master

Plan, open space acquisition and Deer Valley Drive reconstruction and streetscape improvements.

To date the following expenditures have occurred and may be reimbursed with new money proceeds of the 2014 Series Sales Revenue Bonds:

Project	YTD Expenditure
Open Space – Stoneridge	\$3,966,000
OTIS	\$2,056,919
Storm Drain Improvements	\$693,655
Historic Park City/Main Street & Downtown Projects	\$432,543
Total	\$7,149,117

The new money portion of the 2014 Series Sales Revenue Bonds will be Bank Qualified and therefore set not to exceed \$6,000,000. It is anticipated that the remaining new money portion of the proceeds will be expended in FY 2015 as allocated in the adopted FY 2015 Capital Improvement Plan (CIP). The City collected approximately \$3.3 million in FY 2014, from the Additional Resort Sales Tax.

Analysis

The attached bond resolution sets the parameters of the Sales Revenue bond issuance, delegates final approval of bond terms to a Designated Officer (any one of the Mayor, any authorized Mayor ProTem, the City Manager, and the Finance Manager), and initiates the process of public notice. The resolution sets the maximum principal issuance amount at \$13,000,000 with not to exceed \$6,000,000 to be issued under the Bond Act (New Money) and not to exceed \$7,000,000 to be issued under the Refunding Bond Act. The resolution lists the purpose for issuing the Bonds as:

(a) in the case of the portion of the Bonds issued under the Bond Act, financing Historic Park City/Main Street and downtown streetscape improvements, OTIS (Old Town street and utility improvement projects), storm drain improvements as specified in the Storm Water Master Plan, open space acquisition and Deer Valley Drive reconstruction and streetscape improvements (collectively, the “Project”), (b) in the case of the portion of the Bonds issued under the Refunding Bond Act, refunding a portion of the Issuer’s outstanding sales tax revenue bonds (the “Refunded Bonds”) in order to achieve a debt service savings, (c) funding any required debt service reserve fund, and (d) paying costs of issuance of the Bonds.

The resolution authorizes refunding of the Series 2005A Sales Revenue Bonds in an amount up to \$7,000,000. The Series 2005A Sales Revenue Bonds have an outstanding amount of \$7,130,000 at an average interest rate of 4.14%. The refunding bonds will likely be issued at an average rate of 1.5%. This represents a net present value savings of \$545,000 or about 7.5% of par.

The resolution also establishes the format for public notice for the new money portion of the bonds, which should be published in the Park Record for two consecutive weeks, the first notice not less than 14 days before the public hearing and initiated a 30 day period in which

interested parties may contest the legality of the resolution or the bonds. The Public hearing will take place on August 21, 2014. The refunding portion of the bonds do not require a public notice.

The resolution also establishes, for the new money portion of the bonds, maximum terms of 5% interest for not more than 16 years. These terms are intentionally set high to allow flexibility in the bond structure. Staff anticipates that the actual interest rate of the bonds would be closer to the current rate of 3.2% than the maximum. The maturity of the bonds is expected to be 15 years.

Staff anticipates Council holding a public hearing on August 21, 2014. After the public hearing the Designated Officer may authorize the final terms and sale of the bonds. It is anticipated that the sale of the bonds would occur on or around August 21, 2014. Staff would proceed with the bond closing on or after September 3, 2014. The resolution allows flexibility for the bonds to be sold by competitive, negotiated or private placement sale.

Significant Impacts

The bond resolution is the first step in initiating a bond issuance. This bond issuance is anticipated in the current City Council Adopted Budget. The resolution would allow staff to continue with the current timing of the issuance. It is anticipated that the refunding portion of the Bond will have a net savings of \$545,000 which will be made available to projects in the Main Street RDA.

Alternatives:

- A. Approve the attached bond resolution for the 2014 Series Sales Revenue bond issuance, in an amount not to exceed \$13,000,000, to refund the 2005A Series Sales Revenue Bonds and provide funding for projects specified as part of the Council approved Additional Resort Communities Sales Tax Plan.
- B. Modify the request: Council could choose to modify or reduce the amount of bonds to issue.
- C. Deny the request: Council could choose to not issue bonds.
- D. Continue the Item: Council may feel there is not enough information to make a decision, and have staff return with more information. This would impact the timeline for the bond issuance and would result in a loss of savings on the 2005A refunding.
- E. Do Nothing: This would have the same impact as alternative C.

Departmental Review

This report has been reviewed by the Legal Department, Budget Department, and City Manager.

Staff Recommendations:

Staff recommends that Council approve the attached bond resolution for the 2014 Series Sales Revenue bond issuance, in an amount not to exceed \$13,000,000, to refund the 2005A Series Sales Revenue Bonds and provide funding for projects specified as part of the Council approved Additional Resort Communities Sales Tax Plan.

Attachments:

A – Bond Resolution

Park City, Utah

July 17, 2014

The City Council (the “Council”) of Park City, Utah (the “Issuer”), met in regular public session at the regular meeting place of the Council in Park City, Utah, on Thursday, July 17, 2014, at the hour of 6:00 p.m., with the following members of the Council being present:

Jack Thomas	Mayor
Andy Beerman	Councilmember
Tim Henney	Councilmember
Cindy Matsumoto	Councilmember
Richard Peek	Councilmember
Liza Simpson	Councilmember

Also present:

Marci Heil	City Recorder
Diane Foster	City Manager
Mark Harrington	City Attorney

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this July 17, 2014, meeting, a copy of which is attached hereto as Exhibit A.

The following resolution was then introduced in written form, was fully discussed, and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____, was adopted by the following vote:

AYE:

NAY:

The resolution is as follows:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF PARK CITY, UTAH (THE "ISSUER"), AUTHORIZING THE ISSUANCE AND SALE OF NOT MORE THAN \$13,000,000 AGGREGATE PRINCIPAL AMOUNT OF SALES TAX REVENUE AND REFUNDING BONDS, IN ONE OR MORE SERIES; FIXING THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF THE BONDS, THE MAXIMUM NUMBER OF YEARS OVER WHICH THE BONDS MAY MATURE, THE MAXIMUM INTEREST RATE WHICH THE BONDS MAY BEAR, AND THE MAXIMUM DISCOUNT FROM PAR AT WHICH THE BONDS MAY BE SOLD; DELEGATING TO CERTAIN OFFICERS OF THE ISSUER THE AUTHORITY TO APPROVE THE FINAL TERMS AND PROVISIONS OF THE BONDS WITHIN THE PARAMETERS SET FORTH HEREIN; PROVIDING FOR A PUBLIC HEARING AND THE PUBLICATION OF A NOTICE OF PUBLIC HEARING AND BONDS TO BE ISSUED; PROVIDING FOR THE RUNNING OF A CONTEST PERIOD; AUTHORIZING AND APPROVING THE EXECUTION OF ONE OR MORE SUPPLEMENTAL INDENTURES, A PRELIMINARY OFFICIAL STATEMENT, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, AN OFFICIAL NOTICE OF BOND SALE, AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND RELATED MATTERS.

WHEREAS, the City Council (the "Council") of the Issuer desires to (a) finance Historic Park City/Main Street and downtown streetscape improvements, OTIS (Old Town street and utility improvement projects), storm drain improvements as specified in the Storm Water Master Plan, open space acquisition and Deer Valley Drive reconstruction and streetscape improvements (collectively, the "Project"); (b) refund all or a portion of the Issuer's currently outstanding Sales Tax Revenue Bonds (the "Refunded Bonds"), (c) fund a debt service reserve fund, if necessary, and (d) pay costs of issuance with respect to the Series 2014 Bonds herein described; and

WHEREAS, to accomplish the purposes set forth in the preceding recital, and subject to the limitations set forth herein, the Issuer desires to issue its Sales Tax Revenue and Refunding Bonds, Series 2014 (the "Series 2014 Bonds") (to be issued from time to time, as one or more series and with such other series or title designation(s) as may be determined by the Issuer), pursuant to (a) the Local Government Bonding Act, Title 11, Chapter 14, Utah Code Annotated 1953, as amended (the "Bond Act"), and the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code Annotated 1953, as amended (the "Refunding Bond Act" and collectively with the Bond Act, the "Act"), (b) this Resolution, and (c) a General Indenture of Trust dated as of March 1, 2005, as heretofore amended and supplemented (the "General Indenture"), and as further amended and supplemented by one or more Supplemental Indentures of Trust (the "Supplemental

Indenture,” and together with the General Indenture, the “Indenture”), each between the Issuer and Zions First National Bank, as trustee (the “Trustee”), in substantially the form presented to the meeting at which this Resolution was adopted and which are attached hereto as Exhibit B; and

WHEREAS, the Bond Act provides that prior to issuing bonds under the Bond Act, an issuing entity must (a) give notice of its intent to issue such bonds and (b) hold a public hearing to receive input from the public with respect to (i) the issuance of the bonds and (ii) the potential economic impact that the improvement, facility or property for which the bonds pay all or part of the cost will have on the private sector; and

WHEREAS, the Issuer desires to call a public hearing for this purpose and to publish a notice of such hearing with respect to that portion of the Series 2014 Bonds issued under the Bond Act, including a notice of bonds to be issued, in compliance with the Bond Act; and

WHEREAS, the Refunding Bond Act (the “Refunding Bond Act”) provides that an issuing entity may give notice of its intent to issue bonds under the Refunding Bond Act; and

WHEREAS, there has been presented to the Council at this meeting a form of a bond purchase agreement (the “Bond Purchase Agreement”) to be entered into between the Issuer and the underwriter or the purchaser selected by the Issuer for the Series 2014 Bonds (the “Underwriter/Purchaser”), in substantially the form attached hereto as Exhibit C in the event that the Series 2014 Bonds are not sold pursuant to a public bid with an official notice of bond sale or similar document; and

WHEREAS, in the event that the Designated Officers (defined below) determine that it is in the best interests of the Issuer to publicly offer the Series 2014 Bonds, the Issuer desires to authorize the use and distribution of a Preliminary Official Statement (the “Preliminary Official Statement”) in substantially the form attached hereto as Exhibit D, including a form of an Official Notice of Bond Sale or a substantially similar document for use with or without a Preliminary Official Statement (the “Official Notice of Bond Sale”) in the case where the Series 2014 Bonds are sold at a competitive sale, and to approve a final Official Statement (the “Official Statement”) in substantially the form as the Preliminary Official Statement but including the additional information established at the time of sale of the Series 2014 Bonds, and other documents relating thereto; and

WHEREAS, in order to allow the Issuer (with the consultation and approval of the Issuer’s Financial Advisor, Municipal Bond Consulting Inc. (the “Financial Advisor”)) flexibility in setting the pricing date or dates of the Series 2014 Bonds to optimize debt service costs to the Issuer, the Council desires to grant to any one of the Mayor, any authorized Mayor ProTem, the City Manager, and the Finance Manager (the “Designated Officers”), the authority to (a) determine whether all or a portion of the Series 2014 Bonds should be sold pursuant to a private placement or a public offering (including via a negotiated underwriting or public bid); (b) approve the principal amounts, interest rates, terms, maturities, redemption features, and purchase price at

which the Series 2014 Bonds shall be sold; (c) select the Underwriter/Purchaser of the Series 2014 Bonds or execute a Certificate of Award confirming the sale of the Series 2014 Bonds to the winning bidder pursuant to the Official Notice of Bond Sale; and (d) make any changes with respect thereto from those terms which were before the Council at the time of adoption of this Resolution, provided such terms do not exceed the parameters set forth for such terms in this Resolution (the “Parameters”).

NOW, THEREFORE, it is hereby resolved by the City Council of Park City, Utah, as follows:

Section 1. For the purpose of (a) financing the Project, (b) refunding the Refunded Bonds, (c) funding a deposit to a debt service reserve fund, if necessary, and (d) paying costs of issuance of the Series 2014 Bonds, the Issuer hereby authorizes the issuance of the Series 2014 Bonds which shall be designated “Park City, Utah Sales Tax Revenue [and Refunding] Bonds, Series 2014” (to be issued from time to time, as one or more series and with such other series or title designation(s) as may be determined by the Issuer) in the aggregate principal amount of not to exceed \$13,000,000 (with not to exceed \$6,000,000 of such Series 2014 Bonds to be issued under the Bond Act and not to exceed \$7,000,000 of such Series 2014 Bonds to be issued under the Refunding Bond Act). The Series 2014 Bonds shall mature in not more than sixteen (16) years from their date or dates, shall be sold at a price not less than one hundred percent (100%) of the total principal amount thereof, shall bear interest at a rate or rates of not to exceed five percent (5.0%) per annum, all as shall be approved by at least one of the Designated Officers, within the Parameters set forth herein.

Section 2. Any one of the Designated Officers are hereby authorized to select the Underwriter/Purchaser and specify and agree as to the method of sale (among competitive sale or negotiated sale (including a private placement without the use of an Official Statement) the final principal amounts, terms, discounts, maturities, interest rates, redemption features, and purchase price with respect to the Series 2014 Bonds for and on behalf of the Issuer, provided that such terms are within the Parameters set by this Resolution. The selection of the form of sale via a private placement, negotiated underwriting, or competitive sale, the selection of the Underwriter/Purchaser and the determination of the final terms and redemption provisions for the Series 2014 Bonds by the Designated Officers shall be evidenced by the execution of a Certificate of Award (the “Certificate of Award”) in substantially the form attached hereto as Exhibit E in the case where the Series 2014 Bonds are sold at a competitive sale or the Bond Purchase Agreement if the Series 2014 Bonds are sold at a private or negotiated underwriting sale in substantially the form attached hereto as Exhibit C. The form of the Certificate of Award and of the Bond Purchase Agreement are hereby authorized, approved and confirmed.

Section 3. The Supplemental Indenture in substantially the form presented to this meeting and attached hereto as Exhibit B is hereby authorized, approved, and confirmed. The Mayor or Mayor pro tem (the “Mayor”) and the City Recorder or Deputy City Recorder (the “City Recorder”) are hereby authorized to execute and deliver the Supplemental Indenture in substantially the form and with substantially the content as the form presented at this meeting for and on behalf of the Issuer, with final terms as may be

established by the Designated Officers, in consultation with the Financial Advisor, within the Parameters set forth herein, and with such alterations, changes or additions as may be necessary or as may be authorized by Section 5 hereof.

Section 4. Should the Designated Officers determine to have the Series 2014 Bonds underwritten, as a public offering, the Issuer hereby authorizes the utilization of the Preliminary Official Statement (including an Official Notice of Bond Sale, as needed), in the form attached hereto as Exhibit D in the marketing of the Series 2014 Bonds and hereby approves the Official Statement in substantially the same form as the Preliminary Official Statement with information completing the same from the sale of the Series 2014 Bonds. The Mayor is hereby authorized to execute the Official Statement evidencing its approval by the Issuer.

Section 5. The appropriate officials of the Issuer are authorized to make any alterations, changes or additions to the Indenture, the Series 2014 Bonds, the Preliminary Official Statement (including, but not limited to, the addition of an official notice of bond sale), the Official Statement, the Bond Purchase Agreement, the Certificate of Award or any other document herein authorized and approved which may be necessary to conform the same to the final terms of the Series 2014 Bonds (within the Parameters set by this Resolution), to conform to any applicable bond insurance or reserve instrument or to remove the same, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Council or the provisions of the laws of the State of Utah or the United States.

Section 6. The form, terms, and provisions of the Series 2014 Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption, and number shall be as set forth in the Indenture. The Mayor and the City Recorder are hereby authorized and directed to execute and seal the Series 2014 Bonds and to deliver said Series 2014 Bonds to the Trustee for authentication. The signatures of the Mayor and the City Recorder may be by facsimile or manual execution.

Section 7. The appropriate officials of the Issuer are hereby authorized and directed to execute and deliver to the Trustee the written order of the Issuer for authentication and delivery of the Series 2014 Bonds in accordance with the provisions of the Indenture.

Section 8. Upon their issuance, the Series 2014 Bonds will constitute special limited obligations of the Issuer payable solely from and to the extent of the sources set forth in the Series 2014 Bonds and the Indenture. No provision of this Resolution, the Indenture, the Series 2014 Bonds, or any other instrument, shall be construed as creating a general obligation of the Issuer, or of creating a general obligation of the State of Utah or any political subdivision thereof, or as incurring or creating a charge upon the general credit of the Issuer or its taxing powers.

Section 9. The appropriate officials of the Issuer, and each of them, are hereby authorized and directed to execute and deliver for and on behalf of the Issuer any or all additional certificates, documents and other papers (including, without limitation,

any tax compliance policies or escrow agreements or reserve instrument guaranty agreements permitted by the Indenture) and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this Resolution and the documents authorized and approved herein.

Section 10. After the Series 2014 Bonds are delivered by the Trustee to the Underwriter/Purchaser, and upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the principal of, premium, if any, and interest on the Series 2014 Bonds are deemed to have been duly discharged in accordance with the terms and provisions of the Indenture.

Section 11. The Issuer shall hold a public hearing on August 21, 2014, to receive input from the public with respect to (a) the issuance of the portion of the Series 2014 Bonds under the Bond Act, and (b) the potential economic impact that the improvements to be financed with the proceeds of the Series 2014 Bonds issued under the Bond Act will have on the private sector, which hearing date shall not be less than fourteen (14) days after notice of the public hearing is first published, such notice to be published (i) once a week for two consecutive weeks in The Park Record, a newspaper of general circulation in the Issuer, (ii) on the Utah Public Notice Website created under Section 63F-1-701 Utah Code Annotated 1953, as amended, and (iii) on the Utah Legal Notices website (www.utahlegals.com) created under Section 45-1-101, Utah Code Annotated 1953, as amended. The City Recorder shall cause a copy of this Resolution (together with all exhibits hereto) to be kept on file in the Issuer's offices, for public examination during the regular business hours of the Issuer until at least thirty (30) days from and after the date of publication thereof. The Issuer directs its officers and staff to publish a "Notice of Public Hearing and Bonds to be Issued" in substantially the following form:

NOTICE OF PUBLIC HEARING AND BONDS TO BE ISSUED

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Local Government Bonding Act, Title 11, Chapter 14, Utah Code Annotated 1953, as amended (the “Bond Act”), and the Utah Refunding Bond Act, Title 11, Chapter 27, Utah Code Annotated 1953, as amended (the “Refunding Bond Act” and collectively with the Bond Act, the “Act”), that on July 17, 2014, the City Council (the “Council”) of Park City, Utah (the “Issuer”), adopted a resolution (the “Resolution”) in which it authorized the issuance of the Issuer’s Sales Tax Revenue and Refunding Bonds, Series 2014 (the “Bonds”) (to be issued in one or more series and with such other series or title designation(s) as may be determined by the Issuer) and called a public hearing to receive input from the public with respect to (a) the issuance of that portion of the Bonds issued under the Bond Act and (b) any potential economic impact that the Project described herein to be financed with the proceeds of the Bonds issued under the Bond Act may have on the private sector.

TIME, PLACE AND LOCATION OF PUBLIC HEARING

The Issuer shall hold a public hearing on August 21, 2014, at the hour of 6:00 p.m. at 445 Marsac Avenue, Park City, Utah. The purpose of the hearing is to receive input from the public with respect to (a) the issuance of that portion of the Bonds issued under the Bond Act and (b) any potential economic impact that the Project to be financed with the proceeds of that portion of the Bonds issued under the Bond Act may have on the private sector. All members of the public are invited to attend and participate.

PURPOSE FOR ISSUING THE BONDS

The Bonds will be issued for the purpose of (a) in the case of the portion of the Bonds issued under the Bond Act, financing Historic Park City/Main Street and downtown streetscape improvements, OTIS (Old Town street and utility improvement projects), storm drain improvements as specified in the Storm Water Master Plan, open space acquisition and Deer Valley Drive reconstruction and streetscape improvements (collectively, the “Project”), (b) in the case of the portion of the Bonds issued under the Refunding Bond Act, refunding a portion of the Issuer’s outstanding sales tax revenue bonds (the “Refunded Bonds”) in order to achieve a debt service savings, (c) funding any required debt service reserve fund, and (d) paying costs of issuance of the Bonds.

PARAMETERS OF THE BONDS

The Issuer intends to issue the Bonds in the aggregate principal amount of not more than Thirteen Million Dollars (\$13,000,000), with not to exceed \$6,000,000 issued under the Bond Act and not to exceed \$7,000,000 issued under the Refunding Bond Act, to mature in not more than Sixteen (16) years from their date or dates, to be sold at a price not less than One Hundred percent (100%) of the total principal amount thereof, and bearing interest at a rate or rates of not to exceed 5.0% per annum. The Bonds are to be issued and sold by the Issuer pursuant to the Resolution, including as part of said Resolution, a General Indenture of Trust (previously entered into) and a Supplemental Indenture of Trust (collectively, the “Indenture”) which were before the Council and

attached to the Resolution with the Supplemental Indenture in substantially final form at the time of the adoption of the Resolution and said Supplemental Indenture is to be executed in such form and with such changes thereto as shall be approved by certain designated officers; provided that the principal amount, interest rate or rates, maturity, and discount of the Bonds will not exceed the maximums set forth above.

EXCISE TAXES PROPOSED TO BE PLEDGED

The Issuer proposes to pledge 100% of the Local Option Sales and Use Tax revenues received by the Issuer pursuant to Title 59, Chapter 12, Part 2, Utah Code Annotated 1953, as amended and 100% of the Resort Communities Tax and Additional Resort Communities Tax revenues received by the Issuer pursuant to Title 59, Chapter 12, Part 4 (collectively, the "Sales and Use Tax") to the payment of the Bonds.

OUTSTANDING BONDS SECURED BY PLEDGED TAXES

Other than the proposed Bonds, the Issuer currently has \$_____ of bonds outstanding secured by a portion of the Sales and Use Tax.

OTHER OUTSTANDING BONDS OF THE ISSUER

Additional information regarding the Issuer's outstanding bonds or obligations may be found in the Issuer's financial report (the "Financial Report") at: <http://auditor.utah.gov/accountability/financial-reports-of-local-governments/>. For additional information, including any information more recent than as of the date of the Financial Report, please contact Nate Rockwood the Capital Budget, Debt & Grants Manager at (435) 615-5179.

TOTAL ESTIMATED COST FOR BONDS ISSUED UNDER BOND ACT

Based on the Issuer's current plan of finance and a current estimate of interest rates, the total principal and interest cost of the Bonds to be issued under the Bond Act to finance the Project, if held until maturity, is approximately \$8,000,000.

A copy of the Resolution and the Indenture are on file in the office of the Park City Recorder, 445 Marsac Avenue, Park City, Utah, where they may be examined during regular business hours of the City Recorder from 8:00 a.m. to 5:00 p.m., Monday through Friday, for a period of at least thirty (30) days from and after the date of publication of this notice.

NOTICE IS FURTHER GIVEN that a period of thirty (30) days from and after the date of the publication of this notice is provided by law during which (i) any person in interest shall have the right to contest the legality of the Resolution, the Indenture (but only as it relates to the Bonds), or the Bonds, or any provision made for the security and payment of the Bonds, and that after such time, no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever and (ii) registered voters within Park City, Utah may sign a written petition requesting an election to authorize the issuance of that portion of the Bonds issued under the Bond Act to finance the Project. If written petitions which have been signed by at least 20% of the

registered voters of Park City, Utah are filed with the Issuer during said 30-day period, the Issuer shall be required to hold an election to obtain voter authorization prior to the issuance of that portion of the Bonds to be issued under the Bond Act to finance the Project. If fewer than 20% of the registered voters of Park City, Utah file a written petition during said 30-day period, the Issuer may proceed to issue such Bonds under the Bond Act without an election.

DATED this July 17, 2014.

/s/ Marci Heil
City Recorder

Section 12. The Issuer previously adopted a resolution declaring its intention and reasonable expectation to use proceeds of tax-exempt bonds to reimburse itself for initial expenditures for costs of the Project. Such resolution is hereby confirmed as applicable to the Series 2014 Bonds to be issued for the Project.

Section 13. The Issuer hereby reserves the right to opt not to issue the Series 2014 Bonds for any reason, including without limitation, consideration of the opinions expressed at the public hearing.

Section 14. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall be in full force and effect immediately upon its approval and adoption.

APPROVED AND ADOPTED this July 17, 2014.

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
City Recorder

(Other business not pertinent to the foregoing appears in the minutes of the meeting.)

Upon the conclusion of all business on the Agenda, the meeting was adjourned.

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH
OPEN MEETING LAW

I, Marci Heil, the undersigned City Recorder of Park City, Utah (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the July 17, 2014, public meeting held by the City Council of the City (the "City Council") as follows:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the principal offices of the City on July __, 2014, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting;

(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be delivered to The Park Record on July __, 2014, at least twenty-four (24) hours prior to the convening of the meeting; and

(c) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be posted on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2014 Annual Meeting Schedule for the City Council (attached hereto as Schedule 2) was given specifying the date, time, and place of the regular meetings of the City Council to be held during the year, by causing said Notice to be (a) posted on _____ at the principal office of the City Council, (b) provided to at least one newspaper of general circulation within the City on _____ and (c) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this July 17, 2014.

(SEAL)

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING

SCHEDULE 2
ANNUAL MEETING SCHEDULE

(attach Proof of Publication of
Notice of Bonds to be Issued)

EXHIBIT B

FORM OF INDENTURE

(See Transcript Document Nos. ____ and ____)

EXHIBIT C

FORM OF BOND PURCHASE AGREEMENT

(See Transcript Document No. ____)

EXHIBIT D

FORM OF PRELIMINARY OFFICIAL STATEMENT

(See Transcript Document No. ____)

EXHIBIT E

CERTIFICATE OF AWARD

(See Transcript Document No. ____)



**PARK CITY HOUSING AUTHORITY
SUMMIT COUNTY, UTAH,
March 20, 2014**

I. ROLL CALL-All present

II. NEW BUSINESS

1. Consideration of approval of an amendment to the Flagstaff Development Agreement Affordable Housing Plan in order to align it with the approved Grand Lodge Settlement Agreement

Rhoda Stauffer, Sustainability, stated that this is technicality so that the settlement agreement matches the previous item that was approved during the Council meeting held previously.

Board member Beerman inquired if this would set precedence for future development. Stauffer stated that staff has looked into that and feels that with the special circumstances regarding this development that would not be an issue in the future.

Chair Thomas opened the public hearing. There were no comments made. Chair Thomas closed the public hearing.

Board member Simpson moved to approve an amendment to the Flagstaff Development Agreement Affordable Housing Plan in order to align it with the approved Grand Lodge Settlement Agreement

Board member Beerman seconded

Approved unanimously

III. ADJOURNMENT

Board member Simpson moved to adjourn the meeting

Board member Henney seconded

Approved unanimously



Housing Authority Staff Report

Author: Rhoda J. Stauffer, Affordable Housing Specialist
Subject: Affordable Housing Mitigation Plan
Park City Heights
Date: July 17, 2014
Type of Item: Administrative

SUMMARY RECOMMENDATION: Staff recommends that the Housing Authority conduct a public hearing, discuss the Affordable Housing Mitigation Plan presented by Ivory Homes (Applicant) for the Park City Heights development in fulfillment of their development agreement and approve the plan with Housing Staff's recommended condition of approval.

DESCRIPTION: Review of proposed affordable housing plan required by the Park City Heights Development Agreement.

BACKGROUND: The Park City Heights Master Planned Development is approved for 239 residential units of which 79 will be deed restricted for affordability. The affordable units fall into three categories as follows:

Transferred IHC Units: There are 28 transferred IHC Units [44.78 Affordable Unit Equivalents (AUEs)] that are in fulfillment of the affordable housing obligation associated with IHC/Burbs Annexation. These units fall under Housing Resolution 17-99 that aligns affordability with 100% of Area Median Income (AMI) - \$88,200 for a family of three in 2014.

Park City Heights CT Zone: The MPD is within a CT Zone that triggers an affordable unit requirement of 20% of residential units. This comes to 16 Units (32 AUE's) and these units also fall under Housing Resolution 17-99 which aligns affordability with 100% of Area Median Income (AMI) -- \$88,200 for a family of three in 2014.

Additional City Affordable/Attainable: One of the expressed public purposes for the City's participation in this development and the reason the City continues to hold a Trust Deed on the property is to ensure that additional affordable housing is built. The Applicant will build an additional 35 units as a result of the City's involvement. These units fall under Housing Resolution 20-07 that aligns affordability with 150% of Park City Workforce Wage - \$78,132 for a family of three in 2014.

Disclosure

The City retains a security interest as the holder of a Trust Deed in conjunction with a prior transaction regarding the property. However, the City is not an “applicant” and doesn’t have any current ownership in the property.

Employee/Affordable Housing Mitigation Plan

The Applicant submitted an Affordable Housing Mitigation Plan on July 3, 2014 (attached as Exhibit A). The Developer intends to build out the entire subdivision of 239 homes over a period of 10 years, depending on market demand and absorption. This Staff Report focuses on Phase One that contains the majority of the affordable units and is anticipated to begin construction later this year. Phase One is expected to be a three to five year process with a total of 35 market and 68 affordable units. The expectation is that at the conclusion of Phase One, 86% of the affordable units will be complete. This is consistent with the applicable housing resolutions as well as the Annexation and Development Agreements that require affordable units to be built concurrent with or in advance of market units.

In the first year, the Applicant will build a spec unit for the market rate development that – though larger – will have the same amenities and finishes as the affordable units, and will be utilized to market all units. Park City’s Housing Resolutions require that affordable units built within a market development must have the same finishes and amenities as the market rate units. The Applicant will have some additional options for all buyers to add higher cost amenities to personalize their homes. In the case of the deed restricted, affordable units, add-on options will be limited to the capital improvement cap of 7% of the original sale price.

In addition, the Applicant is proposing to complete ten affordable units in the first year and 8-12 affordable units per year in each consecutive year of Phase One. Market Units will also be built each year. The Affordable Units will be priced to meet both Housing Resolution 17-99 and 20-07 throughout development so that a wider variety of pricing and product can be marketed simultaneously. In the first year, four units will be sold under 17-99 Housing Resolution affordability requirements and six under 20-07 requirements.

Phase 1 – Year 1 Projection = 10 Total Units

	Type	#	#BR	s.f.
Park Home	Single Family	6	3	1,600-2,100
Park Home	Townhome	4	2-3	1,000-1,400

(Table I: see page 2 of Exhibit A)

Sizing and Pricing

The Applicant is proposing to build primarily three bedroom homes, also making a commitment to build a minimum of seven two-bedroom units. The Applicant also proposes to build four bedroom units in future years. Pricing will be set starting at \$240,000 for interior 2-bedroom townhomes and will vary depending on type & size of unit as well as location within the development with a high price set at \$400,000 for the affordable units.

ANALYSIS:

The Applicant's housing plan meets the requirements of both Housing Resolutions –17-99 and 20-07. The first units to be completed will be affordable units and – while the project will build affordable and market simultaneously, the Applicant is projecting that the bulk of affordable units will be completed prior to the market units. And finally, all affordable units will be completed prior to completion of the last 10% of the market units.

The unit types, configuration and pricing proposed will go a long way towards addressing City Council's goal of meeting the needs of young families. Based on the 2010 Census, young families have been moving to surrounding communities in order to purchase their first home. By way of reminder and as reported in the 2012 Affordable Housing Plan, Park City's population only rose by 187 between 2000 and 2010. However, population aged 65 and above increased by over 700 and those aged 45 and below decreased by the same amount. Staff also determined that this demographic desires to purchase detached houses and/or townhomes with yards, rather than condominiums.¹ Thus, many of these households are now living in Kamas, Heber, Snyderville Basin and the Salt Lake Valley.

The Applicant proposes to build two, three and four bedroom units all with unfinished basements (adding approximately 500 square feet). Staff is especially concerned about construction of four bedroom units with unfinished basements simply because the larger units do not meet Park City's demographic. An average household in Park City is 2.6 people.² Finally, the affordability guidelines established by HUD allow for higher income guidelines in larger units. Income limits increase by size of family, therefore, the income limits on larger units are higher. Please refer to Table II below for maximum allowable sale prices in 2014. These limits will vary in future years depending on changes in AMI and workforce wage.

2014 Income and Pricing

Household Size		Resolution 17-99 44 Units		Resolution 20-07 35 Units	
		Income	Max Price	Income	Max Price
3	2	\$ 88,200	\$ 348,641	\$ 78,132	\$ 297,850
4	3	\$ 98,000	\$ 398,079	\$ 84,383	\$ 329,385
6	4	\$113,566	\$ 476,606	\$ 97,512	\$ 395,615

Table II

Please note that affordable sales prices in Table II above are calculated based on monthly housing costs (mortgage, insurance, taxes and HOA fees) amounting to no more than 30% of household income. The calculations are also based on current interest rates and a 30-year mortgage with a down payment of 5%.

Staff is requesting Housing Authority feedback on the Applicant's proposal as to size of units. Is Council comfortable with a large majority of the units being three bedroom units in a range of 1,600 to 2,100 square feet plus 500 square feet of

¹ 2012 Affordable Housing Plan by Park City Housing Staff and 2013 Affordable Housing Strategies and Options by czb, LLC.

² American Community Survey data projections for five-year period ending 2012.

unfinished basement? Is Council comfortable with construction of four-bedroom houses totaling 2,500 square feet plus 500 square feet of unfinished basement? Would Council be more comfortable with increasing the number of planned two-bedroom units (1,000 to 1,400 square feet plus 500 square feet of unfinished basement)?

Deed Restrictions

The Deed Restrictions will require owner-occupancy for all affordable units with a requirement that units be the owner's primary residence. Renting the units will constitute an event of default unless with prior approval of City Housing Staff (approval would only be given for very limited conditions such as mission assignments, temporary job relocation or military duty). In addition, appreciation caps will be instituted and annual compliance reports due in the Fall.

Capital improvements would be limited to no more than 7% of the sale price for the life of individual owners. This is slightly higher than past deed restrictions due to the inclusion of unfinished basement space that new homeowners are likely to want to finish. A cap of 5% over the course of ownership is quite limiting, however 7% is also not too high that if utilized in full will not increase resale value beyond affordable levels within several years. All capital improvements must be approved prior to completion to be added to the resale formula.

Housing staff recommends that we conduct an annual review of progress to determine how many units have been sold, of what type, price and to whom, thus ensuring that City Council's goals are being met. Each year, the plan may need to be adjusted to accommodate changes in Park City Workforce Wage, AMI, market pressures and absorption. Staff recommends that the Applicant report after each 12-month period of construction, as to progress made and any adjustments requested.

Condition of Approval

Staff recommends approval based on the following condition:

- The Applicant returns to the Housing Authority by December of each year beginning in 2015 with a status report that will include the following: number of units built, sale prices, balance remaining, projections for the next year including number of units in each type and pricing for the next year, and any requested adjustments to the Housing Mitigation Plan.

DEPARTMENT REVIEW

Sustainability, Legal and the City Manager reviewed this report.

ALTERNATIVES

- A. Approve the Request:** The Housing Authority could approve the Applicant's Affordable Housing Mitigation Plan with staff's recommended condition of approval.

B. Modify the Request: The Housing Authority could modify the request and stipulate that more two-bedroom units be built. **This is Staff's recommendation.**

C. Continue the Item: The Housing Authority could continue the item and direct Staff to return with additional information.

D. Deny the Request: The Housing Authority could deny the request and direct the Applicant to return with a new proposal.

SIGNIFICANT IMPACTS:

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	+ Balance between tourism and local quality of life	+ Enhanced conservation efforts for new and rehabilitated buildings	+ Residents live and work locally + Cluster development while preserving open space	+ Fiscally and legally sound + Well-maintained assets and infrastructure
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Positive 	Positive 	Very Positive 	Positive 
Comments: The Park City Heights affordable housing will greatly enhance the availability of affordable housing to Park City's workforce and middle income families who can't afford to buy in Park City's current market.				

FUNDING SOURCE:

No City funding is required.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:

Delay in approving the Affordable Housing Mitigation Plan will delay construction at the Park City Heights site since an approved plan is a requirement prior to issuance of the first building permit.

RECOMMENDATION

Staff recommends that the Housing Authority conduct a public hearing, discuss the Affordable Housing Mitigation Plan presented by Ivory Homes (Applicant) for the Park City Heights development in fulfillment of their development agreement and approve the plan with Housing Staff's recommended condition of approval.

Attachment: Exhibit A: Housing Mitigation Plan submitted by Ivory Homes

July 1, 2014

Park City Housing Authority
PO Box 1480
Park City, UT 84060

EXHIBIT A

Park City Heights - Housing Mitigation Plan

Project: Park City Heights Master Planned Development

Developer: Ivory Homes

General:

On May 11, 2011 the Master Planned Development (MPD) for Park City Heights was approved for a mixed residential development consisting of 160 market rate units and 79 affordable/attainable units on 239 acres. An amendment to the MPD was approved on November 6, 2013, this addressed relocation and configuration of lots and streets. As part of the approval the Developer is required to satisfy an affordable/attainable housing requirement with forty-four (44) units approved under the 17-99 Housing Resolution and thirty-five (35) units approved under the 20-07 Housing Resolution.

The units will be large enough to capture all of the square footage necessary under the AUE obligations. All affordable/attainable units are to be for sale units. None of the units are intended to be rented by the Developer or future owners. Restrictions and priorities may include qualification options, sales price limits/range, rental restrictions and affordability terms.

Phasing Schedule:

The Project may be platted and in phases in accordance with the approved phasing plan. The following schedule is provided to indicate the required AUE's to be built in each phase. However, each primary phase may include sub-phases as market conditions dictate and the phases may be adjusted.

Phase 1 – 103 Units

- 68 Affordable/Attainable
- 35 Market Rate Units

Phase 2 – 47 Units

- 5 Affordable/Attainable
- 42 Market Rate Units

Phase 3 – 34 Units

- 2 Affordable/Attainable
- 32 Market Rate Units

Phase 4 – 29 Units

- 4 Affordable/Attainable
- 25 Market Rate Units

Phase 5 – 15 Units

- 15 Market Rate Units

Phase 6 – 11 Units

- 11 Market Rate Units

All Phases 79 Affordable/Attainable Units (or equivalent AUE's)

160 Market Rate Units

Total: 239 Units

Construction Timing:

The general layout and concept plan for Park City Heights dictates that the infrastructure is built from the lowest point of the slope (north) or entrance of the project to the highest point on the mountain (south). Because construction dictates this development pattern and the majority of affordable units are lower on the hill, the affordable units will be constructed at a different rate than market rate units. All of the affordable/attainable units will receive a certificate of occupancy prior to issuance of building permits for the last ten (10) percent of the market rate units. Project and housing requirements dictate that the affordable/attainable units are built in conjunction with the market rate units. The developer is front loading as many affordable/attainable units as possible to ensure that the requirements are satisfied. All of the affordable/attainable units are in the first 4 Phases.

Phase 1 construction will begin in early fall of 2014 for a total of sixty-eight (68) affordable/attainable units. The first Certificates of Occupancy are anticipated to be completed in late 2014/early 2015. The first affordable/attainable unit will be ready for occupancy prior to the first market rate unit. The majority of the affordable/attainable units are clustered at the entrance to the Subdivision and the Developer will ensure that the units are built with high quality building materials and well maintained. Projected absorption rate is 8-12 units per year as dictated by the market.

Phase 1 – Year 1 Projection = 10 Total Units

TYPE OF UNIT	NUMBER OF UNITS	NUMBER OF BEDROOMS	SQUARE FEET PER UNIT
Park Home – Single Family	6	3	1,600 – 2,100
Park Home – Townhome	4	2-3	1,000 – 1,400

Product Pricing:

The intent is to offer a wide range of both product type and product pricing. Pricing in the first building of the Attached Park Home Townhomes product in Phase 1 will begin in the \$240,000 range and go upwards of \$400,000 for the Single Family Detached Park Homes, depending on unit type, bedroom counts, square footage, and construction finishes. Developer will work with Park City Municipal Corp to determine final sales pricing as well as product type and size. It is anticipated that attached units will be priced lower and single family detached units will be closer to the maximum price range, thus having a greater range of diversity.

Marketing Plan:

Developer agrees to give priority to those full-time employees who work within the area of the Park City School District boundaries, particularly essential workers. This area includes but is not limited to Intermountain Healthcare Park City Medical Campus, USSA Headquarters and Training Annexation.

Developer will hold information seminars with these target groups to discuss the qualifications for purchasing deed restricted affordable/attainable housing units. Developer will also provide Credit Repair Services for all of those in need of such services.

Methodology of Affordability:

Affordability Defined

Affordability is defined such that the total amount of the mortgage, basic utilities, taxes, insurance and HOA payments may not account for more than 30% of household income. The median wage of the core Park City workforce is determined annually by the City Council.

Affordable Unit Equivalent

There are two resolutions that govern the affordable/attainable units in Park City Heights. Resolution 17-99 dictates that a two-bedroom unit with 800 square feet of Net Livable Space is considered one Affordable Unit Equivalent; and Resolution 20-07, dictates that a two-bedroom unit with 900 square feet of Net Livable Space is considered one Affordable Unit Equivalent.

Average of Affordability

The intent is to maintain an average rate of affordability. Flexibility must be given in the Housing Mitigation Plan in an attempt to maximize a level of affordability. There may be some single-family units that fall outside of the affordable range, alternatively, providing attached units could keep the average rate of affordability lower delivering a lower average price.

Compliance Standards

It is anticipated that there will be a mix of unit types and standards as outlined below:

- All affordable units will be built to a minimum LEED Certified OR NAHB Green level and appliances & light bulbs shall be Energy Star qualified products.
- Size differentials of the exterior appearance of the cottage home affordable units will be compatible with cottage home market rate units and will use similar exterior materials and guidelines.
- Standard construction practices will be the same for the affordable/attainable and market units and incorporate the same general construction materials in the following areas: insulation, windows, heating systems, and other components related to energy efficiency including landscaping.
- All affordable/attainable units will be constructed in accordance and consistent with the MPD approved Park City Heights Neighborhood Design Guide.
- All affordable/attainable units will be constructed on Park City Heights property (MPD site). This includes the transfer of the IHC units from the Park City Medical Center site to Park City Heights.

Product type/Unit descriptions

Product type in all phases will be determined based on market conditions, lot size, topography, number of stories, adjacent homes, and other factors. Flexibility will be required and a necessity in order to provide the right product at the right price to maintain affordability. Units will be configured in two, three and four bedroom layouts. A minimum of seven (7) – two bedroom units will be provided in the Attached Park Home Townhomes.

Average Median Income/Workforce Housing Wage (Guideline)

Housing Resolution 17-99 uses an Average Median Income (AMI) in Summit County and Housing Resolution 20-07 uses the Workforce Housing Wage (WHW) in Park City. The first ten (10) units will be split with four (4) of the units under HR 17-99 and six (6) under HR 20-07.