

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JUNE 24, 2010**

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, June 24, 2010.

Closed Session

2:00 p.m. Personnel, property and litigation

Ribbon-cutting

3:15 p.m. Snow Creek Cottages

Work Session

4:15 p.m. Council questions/comments

4:00 p.m. Public Art Advisory Board recommendation
Kimball Art Center Sculpture

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4:15 p.m. Public Art Advisory Board interviews

5:50 p.m. Break

Regular Meeting

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

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

IV WORK SESSION NOTES AND MINUTES OF MEETING OF JUNE 10, 2010

P. 7 - 12

V NEW BUSINESS (*New items with presentations and/or anticipated detailed discussions*)

1. Consideration of a Master Festival License for the KPCW Back Alley Bash, as conditioned, on July 2, 2010 to be held on the Town Lift Plaza

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(a) Public hearing

(b) Action

2. Consideration of a construction contract, in a form approved by the City Attorney, with Silver Spur Construction LLC in the amount of \$774,740 for the Holiday Ranch Loop Pathway project

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3. Consideration of two appeals of the Planning Commission's April 28, 2010 approval of a conditional use permit application for the North Silver Lake Lodges Project, submitted by North Silver Lake Lodge LLC - appellants Lisa Wilson, individual, and adjacent owner associations represented by Jones Waldo, Attorneys at Law

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(a) Staff presentation and scope of appeals

(b) Appeal 1- Appellant Eric Lee's presentation

- (c) Appeal 2- Appellant Lisa Wilson's presentation
- (d) Applicant's presentation
- (e) Possible action on Appeal 1/Eric Lee
- (f) Possible action on Appeal 2/Lisa Wilson

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

VII 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 available in Marsac Building on Wednesdays and Thursdays – 4 p.m. to 9 p.m.

Posted: 06/21/10

See www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

July 2010

- 1 PC-SLC Transit Service (work – 45 min)
Supplemental plan and city services agreement for 2010 Arts Festival – KAC
Habitat for Humanity fee waiver
Economic development grant
- 8 **No meeting**
- 15 **Tom gone**
RAB interviews
Environmental update and prioritization (1 hr)
Norfolk Ave Reconstruction (work - 45 min)
Tour of Utah MFL
321 McHenry Avenue plat amendment – KC
SA53 and 53B plat amendment – KC
6808 Silver Lake Drive plat amendment – KW
- 22 **No meeting**
- 29 Quarterly goals

August 2010

- 5
- 12
- 19
- 26

September 2010

- 2
- 9
- 16
- 23
- 30

October 2010

- 7
- 14
- 21
- 28

Pending Items:

Review of two year special event policy
Open space maintenance
U S Postal Service gang boxes in Old Town - MC
Wild land interface issues



City Council Staff Report

Subject: Kimball Art Center Olympic Sculpture
Author: Michael Kovacs and Sharon Bauman
Department: Executive
Date: June 24, 2010
Type of Item: Direction

Summary Recommendations:

Staff recommends City Council review the report, discuss the issues, and provide Staff with direction that the City does not wish to accept the Olympic Sculpture.

Topic/Description:

Kimball Art Center Olympic Sculpture.

Background:

In 2009, the Executive Director of Kimball Art Center approached the Public Art Advisory Board to discuss their interest in accepting the Olympic Sculpture into the City's public art collection. The sculpture was commissioned by General Motors for the 2002 Olympics and is owned by Kimball Art Center. Describe sculpture and support system. At that time, the Public Art Advisory Board recommended acceptance of the sculpture, but were reluctant to select a location until they reviewed a new structural support system. Alternative locations identified by the Board included the Olympic Welcome Plaza on Kearns/Park Avenue and the round-about in Deer Valley Drive (move the cauldron to the smaller round-about on Main Street and 9th and place the sculpture in this larger area). Council concurred with the Board's recommendation to accept the sculpture. Ultimately, the Art Center refurbished the base of the sculpture and it remained on their plaza.

Analysis:

Kimball Art Center recently contacted Staff again with a request to remove the sculpture as soon as possible. Staff looked into various locations the sculpture could be placed and decided the Deer Valley Drive/Marsac roundabout was a possibility if the cauldron could be moved to the Park City Ice Arena to make room for the Olympic sculpture, if and encroachment permits could be obtained from UDOT. Staff had determined that 9th and Main was not feasible due to its size and the Ice Arena management expressed a desire to have the cauldron at the arena. Because the Kimball Art Center no longer has the means to pick up the total cost, the cost to the City for moving both pieces, artist fees and construction work, is estimated to be approximately \$40,000. Possible funding sources identified were the Marsac Art CIP and the Public Art CIP and this expenditure would use most of the funds in either account.

This proposal was presented to the Public Art Advisory Board on June 14, 2010 and they unanimously agreed they did not want to add the sculpture to the public art

Exhibit A - Olympic Sculpture located at Kimball Art Center Plaza

collection because of the cost. Their recommendation to Council is to not accept the Olympic sculpture.

Placing the sculpture in storage until a solution is found is not recommended. There is currently no storage space available on City property and placing the sculpture in a storage unit would result in ongoing monthly costs.

Department Review:

Staff from the Executive and Legal Departments reviewed the report. .

Alternatives:

- A. Approve:** Staff recommends that Council consider the Public Art Advisory Board's recommendation to not accept the Kimball Art Center Olympic Sculpture and direct Staff to advise the Kimball Art Center of its decision to not acquire the sculpture.
- B. Deny:** Council could decide to accept the sculpture and direct Staff to find a permanent location on City owned property; and direct Staff to identify funding sources to pay for moving the sculpture, reconstructing the base to fit the proposed new location, and installing the sculpture in a new location.
- C. Modify:** Council could provide other options for Staff to pursue related to the Olympic Sculpture.
- D. Continue the Item:**
Council could request further discussions and direct staff to return with additional information regarding options for relocation of the sculpture.
- E. Do Nothing:**
Kimball Art Center would likely remove the sculpture from their plaza.

Significant Impacts:

A major impact of accepting the sculpture into the City's public art collection will be the costs associated with disassembly, moving and reassembly of the sculpture at a new location.

Consequences of not taking the recommended action:

Kimball Art Center would remove the sculpture from the plaza.

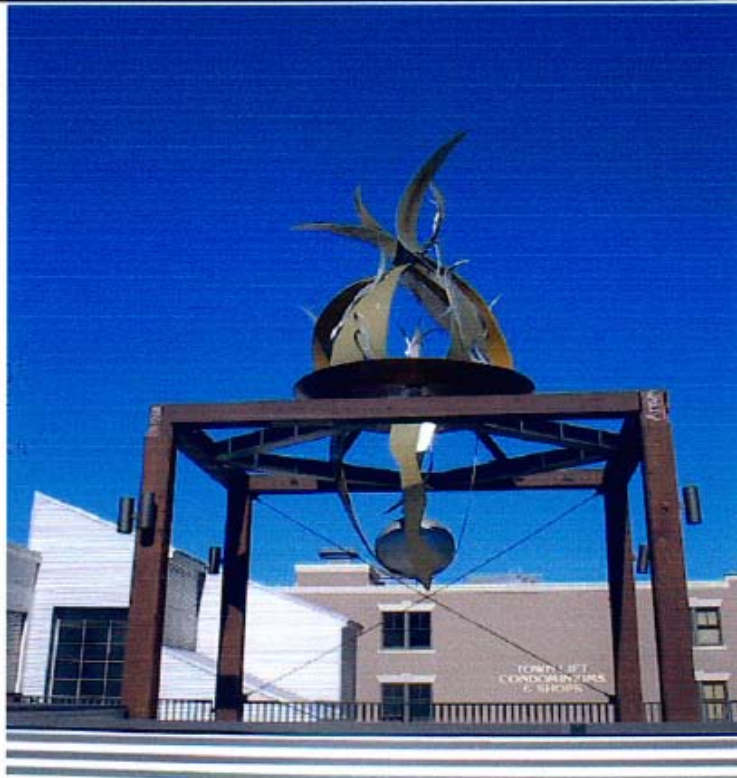
Recommendation:

Staff recommends City Council review the report, discuss the issues, and provide Staff with direction that the City does not want to accept the Olympic Sculpture.

Exhibit A - Photo of Olympic Sculpture

Exhibit A - Olympic Sculpture located at Kimball Art Center Plaza

Olympic Sculpture Sponsored By General Motors
Located at Kimball Art Center Plaza



Date Installed: Fall 2001 Artist Name: Bill Kranstover

Artist Contact info: PO Box 2475 P.C. , UT 84060 435-901-2007

Funding: General Motors Owned By: GM/ Kimball Art Center

Interpretive Signage in Place: Yes ☒ No ☐

Comments/Additional Needs: _____

**PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
JUNE 10, 2010**

Present: Mayor Dana Williams; Council members, Alex Butwinski, Joe Kernan, Cindy Matsumoto, and Liza Simpson

Tom Bakaly, City Manager, Mark Harrington, City Attorney; Sharon Bauman, Deputy City Recorder; and Brooke Moss, Human Resources Analyst

Kathy Hunter, Public Art Advisory Board Executive Director

Absent: Candace Erickson, City Council member

1. Council questions/comments. Cindy Matsumoto reported on the Habitat for Humanity ground-breaking dedication and Library Board business. Alex Butwinski complimented Ron Ivie for his presentation to the Planning Commission on EPA issues and Liza Simpson agreed. She thanked Rory Murphy for naming a building in the Silver Star project after Mr. Ivie. Joe Kernan spoke about emergency management training requirements. The Mayor reported that he, Liza Simpson, Tom Bakaly, Diane Foster and Mark Harrington met with the EPA in Denver this week. The liaison committee met with the Sweeneys again this week and on July 6 and 8, the first community open houses will be held on options for the Treasure Project. He noted that all of the water agencies in the County have been meeting recently which has been productive. The Mayor spoke about the donation of public land for the Habitat project and Ron Ivie's retirement. The Park Silly Sunday Market will start this Sunday for the season. He also spoke about Father Bussen leaving Park City.

2. Public Art Board Strategic Plan. Sharon Bauman introduced Art Board members in attendance. She explained that over the past couple of years, members have been disappointed in the quantity and quality of some of the responses for requests for proposals and concerned about board processes. Boise, Idaho's program is regarded as a model for public art and members agreed that formulating a strategic plan would focus efforts on specific goals and supplement the Public Art Policy and Public Art Master Plan, initially created in 2004.

She cited top priorities to (1) improve the quality, creativity and purpose of public art; (2) improve the public art processes; and (3) identify and prioritize future public art projects and sites and set a timeline for the completion of new and pending projects. High priorities include to (4) develop a plan for future funding of public art projects. Ms. Bauman explained that some CIP projects are required to provide 1% for art. Other goals include (5) develop comprehensive plan to communicate information about the public art program and projects; (6) update public art inventory; (7) update signage for all public art projects; and (8) develop City policy for public art maintenance. Sharon Bauman discussed a number of strategies to achieve the goals and referred to a

community brain-storming meeting hosted in April where a lot of good feedback was received. The Art Board has already identified subcommittees to work on strategies, policies and processes and invites Council direction. The strategic plan will provide members with additional tools to attain targeted goals.

Ms. Simpson remarked on the success of the community meeting held in April, commended formulating a strategic plan and felt updates to Council would be helpful. Cindy Matsumoto asked about the status of the public art budget and Ms. Bauman explained that the board was given \$200,000 in seed money in 2003 and received 1% from the police facility and the Marsac seismic upgrade. The proposed Recreation Center building will also have a public art component and the inclusion of the shell space in the China Bridge Parking Structure was discussed. Ms. Simpson felt that street and water projects could be considered as is done in Boise. Joe Kernan supported the plan. Alex Butwinski, Council liaison, commented on the promotion of Park City as an arts and cultural destination. Kathy Hunter thanked Council for its support over the years and explained that the 1% does not have to be used for the generating project, but can be used in areas lacking art and an associated capital project.

3. Personnel Policies and Procedures Manual. Brooke Moss explained that amendments to the policy occur annually and pointed out one small oversight in the draft document. She referred to implementing a new time keeping system (time clock) which doesn't consider changes in pay during a pay period. The second change deals with the federal Family Medical Leave Act and clarifies *serious medical condition*.

In response to a question from Joe Kernan regarding budgeting for personnel costs, Ms. Moss referred to the last sentence in Section 6.1, *All Pay Plan recommendations and individual employee salary increases or lump merit eligibility are subject to budget constraints and revenue availability and may be altered or rescinded by the City Manager, at any time.* The policy allows for adjustments and other budget policies in place like the recession plan address revenue shortfalls as well.

Alex Butwinski brought up the time involved with semi-annual reviews and questioned if it is necessary for longer-term employees. Joe Kernan agreed that some employees could be exempted. Mr. Bakaly stated that this has been studied to see if there are ways to streamline the review process. He spoke about the value of the review process to communicate performance which is not always done on a regular basis by managers. He understood that there should be a balance and the six month review could be more cursory while maintaining a comprehensive annual review. Liza Simpson believed there is a *middle road* approach. The Mayor felt that meeting every six months is a good practice and the City Manager acknowledged there could be more efficiency.

Prepared by Janet M. Scott, City Recorder

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JUNE 10, 2010**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, June 10, 2010. Members in attendance were Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, and Liza Simpson. Candace Erickson was excused. Staff present was Tom Bakaly, City Manager; Matt Cassel, City Engineer; and Mark Harrington, City Attorney.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

None.

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

Remembering Kevin King – Mayor Williams addressed the loss of Kevin King this past week and the good relationship they enjoyed through the years.

Don Bloxom, designer, spoke about the closeness of members in the design community, acknowledging that some individuals can be adversarial. He spoke about Kevin's passion and steadfastness and he urged people to remember to always place principles before personalities. He will be missed and he indicated his admiration of Kevin for the time he devoted to attempting to affect design and planning especially in Old Town.

Paul deGroot, architect, relayed his respect for Kevin King; he will be missed.

Allegation of wrongful arrest - Bob Vaeth spoke about moving here in October 2009 and buying two homes in Deer Mountain and Bear Hollow and commented at length about getting in shape and enjoying the community. He described the Journey of Hope event to which he and his wife Joy donated \$540,000 last year and he detailed this year's schedule. Mr. Vaeth stated that he met friends at Flanagan's on March 25, 2010 and they were served their first drinks at 7:30 p.m. and paid the check at 8:15 p.m. He had two beers with dinner. He stated that he headed down Swede Alley to Heber Avenue but rolled through the stop sign but it seemed like a pretty complete stop because he knows the reputation of the police here. He did the same thing as he turned right to go up to SR224, the roundabout. As he headed north, he changed his mind about passing a truck and switched lanes and at this point, he was pursued by the police. They pulled into the Frontier Bank apron and in his opinion, he did his calisthenics perfectly but the police felt he was under the influence, had more than two beers, was possibly on drugs and asked him to take a breathalyzer. Mr. Vaeth stated that he was cuffed and placed in the cruiser and left there for about an hour. He did three tests and the officer said he

wasn't blowing hard enough which is the same as refusing to take the test, and he was taken to jail. The officers asked that he sign a form with a list of his belongings but he wanted to make a statement instead, which he wasn't allowed to do, and spent the rest of the night in jail. Mr. Vaeth stated that he was released the next morning and the experience was humiliating. He relayed that his case was subsequently dismissed and then discussed the driver's license hearing where his attorney revealed that the breathalyzer tests were done perfectly and his results were .03. However, the officer did not document the test properly. Mr. Vaeth detailed his field tests but the police officers insisted he couldn't stand up properly. However, his case was dismissed but Prosecutor Kerry Gaines recommended that he take an alcohol rehabilitation class but he refused. The fine was dropped from \$1,500 to \$182 for going through two stop signs but Mr. Vaeth indicated that nobody was stopping unless another car was coming up. He spent \$4,000 to defend himself and he wants his money back. His attorney advised him to go through small claims but that would hurt the taxpayer. This money could have gone to the Journey of Hope. The Mayor asked that Mr. Vaeth summarize. He then asked the City Council to donate \$4,000 to the Journey of Hope pointing out all of the money going to the Police Department. This is wasteful spending and irresponsible government. Council can turn it around and bring the tourists back here. Why do we harass them? He was thrown in jail for a .03 when he did everything perfectly. People are not coming back. Mr. Vaeth again asked for his \$4,000; he doesn't want to file suit. He asked the City Council to get its priorities straight and fund the right things. The number of police cruisers and fire trucks is silliness.

The Mayor referred to a prior phone call with Mr. Vaeth where he encouraged him to use the Police Appeals Review Board. The Mayor added that the City Council has held to its commitment to a number of non-profits in these tough economic times and to ask for \$4,000 at this point in time in the budget process is not realistic. The Mayor explained that the Police Appeals Review Board was established for these types of cases. Mr. Vaeth stated that the \$4,000 is fairly insignificant; instead cut the police force in half. We don't need it all.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF MAY 27, 2010

Joe Kernan, "I move approval of the work session notes and minutes of the meeting of May 27, 2010". Cindy Matsumoto seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

V NEW BUSINESS (*New items with presentations and/or anticipated detailed discussions*)

1. Consideration of a Utah Department of Transportation Construction Agreement with Granite Construction for the construction of Phase 2 of Bonanza Drive in an amount not to exceed \$4,169,311 and in a form approved by the City Attorney – Matt Cassel explained that this contract is for the second phase of construction on Bonanza Drive. The bidding process and contractual agreements are through UDOT because of the federal funding involved. UDOT has officially awarded the contract to Granite Construction who was the low bidder and also the contractor for Phase 1. The bid is below the engineer's estimate and work is anticipated to commence the beginning of July. In response to a question from the Mayor, Mr. Cassel indicated that Iron Horse can not be shut down completely and will be addressed in partial segments. The Iron Horse and Bonanza Drive intersection will remain open.

Liza Simpson, "I move we approve the Utah Department of Transportation Construction Agreement with Granite Construction for the construction of Phase 2 of Bonanza Drive in an amount not to exceed \$4,169,311". Alex Butwinski seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

2. Consideration of a Resolution adopting the revised Personnel Policies and Procedures Manual, effective July 1, 2010, for Park City Municipal Corporation – The Mayor explained Mr. Butwinski's request to continue this for a week so he has more time to review the manual. Liza Simpson, "I move we continue this until next week". Alex Butwinski seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

3. Consideration of a Resolution adopting a final budget for fiscal year 2011 for Park City Municipal Corporation and its related agencies – The Mayor opened the public hearing. There were no comments from the audience. Joe Kernan, "I move we continue New Business Item 3 to June 17, 2010". Liza Simpson seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

None.

VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3:30 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, and Liza Simpson. Candace Erickson was excused. Staff present was Tom Bakaly, City Manager; Jason Christensen, Legal Intern; Tom Daley, Deputy City Attorney; Michael Kovacs, Assistant City Manager; and Mark Harrington, City Attorney. Alex Butwinski, “I move to close the meeting to discuss litigation and property”. Liza Simpson seconded. Motion carried unanimously. The meeting opened at approximately 4:45 p.m. Liza Simpson, “I move to open the meeting”. Cindy Matsumoto seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

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 Janet M. Scott

Janet M. Scott, City Recorder



City Council Staff Report

Subject: KPCW Back Alley Bash
Author: Max J. Paap
Department: Sustainability
Date: June 24, 2010
Type of Item: Administrative – Master Festival License

Summary Recommendations:

Review the Master Festival License application, conduct a public hearing, and approve the license for the KPCW Back Alley Bash, as conditioned, on July 2, 2010 to be held on the Town Lift Plaza.

Description:

Topic:

KPCW Back Alley Bash

Background:

Community Wireless of Park City submitted an application to hold its annual community fundraising music event on the Town Lift Plaza. In recent years this event had been scheduled to coincide with the “Free Friday Local Event” during the opening Friday of the Kimball Arts Festival. For 2010 KPCW wanted to align the event with its 30th Anniversary which is July 2, 1980. The event will again have the elements of amplified music, prepared food, and fund raising activities. The event will begin at 5:00 pm and ends at 10:00 pm. The organizer has met with Special Events staff to go over any logistical challenges or other issues.

Analysis:

This application is being reviewed as a Master Festival License due to the request for amplified music and attraction of large crowds.

The following areas were scrutinized by the Events Team when considering the recommendation to approve the event.

Town Lift Activities

The event organizers have requested to hold their event on Town Lift Plaza. They would begin to take over the plaza at 3:00 pm to facilitate the build out of the venue. The band is scheduled to play between the hours of 6:00 pm to 10:00 pm. During this time there will be food and beverage vendors and fundraising activities programmed on the deck. A site plan has been submitted for review and all appropriate permits have been applied for with PCMC and the UDABC. Music will be oriented in a manner so as to minimize audible impacts to the neighborhood.

The event is scheduled to be finished no later than 11:00 pm. The activities will not impact access to the Town Lift.

Parking

Parking for the anticipated crowd of 500 can be accommodated with the use of adjacent public and private parking lots to the venue. The venue is also on the Park City Transit bus line for those wishing to use public transportation. Parking concerns generated from the baseball tournament will not negatively impact the inventories at the Town Lift venue. The event organizer will use 2 -3 parking spaces on Park Avenue to facilitate load-in and load-out.

Department Review:

All applicable departments have reviewed the application for the KPCW Back Alley Bash and their comments have been incorporated into the report.

Alternatives:

Approve the Request:

Approve the Master Festival License allowing the KPCW Back Alley Bash as described. This is staff's recommendation.

Deny the Request:

Deny the Master Festival License, preventing the addition of the KPCW Back Alley Bash to Park City's schedule of events.

Continue the Item:

The City Council may continue the discussion in order to receive additional information.

Significant Impacts:

Park City has held many similar events to the KPCW Back Alley Bash. Impacts that could be caused by parking inventories are of some concern. By actively addressing those Public Safety impacts should be kept to a manageable level.

Consequences of not taking the recommended action:

The KPCW Back Alley Bash would not take place.

RECOMMENDATION:

Staff recommends the City Council conduct a public hearing and approve a Master Festival for the KPCW Back Alley Bash on July 2, 2010 based on the following Findings of Fact, Conclusions of Law and Conditions of Approval.

Findings of Fact:

1. The KPCW Back Alley Bash will be held on Friday, July 2, 2010. The event will last from 5:00 pm to 10:00 pm and will occur on the Town Lift Plaza.
2. Parking for the anticipated crowd of 500 people can be accommodated within the existing private and public parking lots in and around the venue. The conduct of the KPCW Back Alley Bash will not substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue.
3. The events associated with the KPCW Back Alley Bash will not require the

diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.

4. The event will be held at the Town Lift Plaza. The concentration of persons, vehicles, or animals will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health or safety services.
5. There is one other Master Festival or Special Event license that has been granted for July 2, 2010. The table below will show in column (A) – Geographic separation of the events; column (B) – Proposed time and duration of the events; and column (C) – Anticipated attendance; therefore appropriate findings can be made that both events can occur at the same time.

2010 DATE	EVENT	A – Geographic Separation	B - Proposed Time & Duration	C – Anticipated Attendance
July 2	Back Alley Bash	Town Lift Plaza	5PM-10PM	500
July 2	Firecracker Baseball	PCHS, TMMS, PCSC	9AM-5PM	1400

6. The size of the crowd and nature of the event will not create an imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
7. The applicant has been working with City Staff and applicable departments to address all event concerns. The Applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this Chapter and has not failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.

Conclusions of Law:

1. The application is consistent with the requirements of the Park City Municipal Code, Title 4, Chapter 8.

Conditions of Approval:

1. The applicant, at its' cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided and paid for by the applicant.
2. Applicants shall provide proof of liability insurance in the amount of two million dollars (\$2,000,000) or more as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as additional insured. All Applicants shall further indemnify the City from liability occurring at the event except for any claim arising out of the sole

- negligence or intentional torts of the City or its employees.
3. All amplified music/sound may begin at 5:00 pm and at least cease by 10:00 pm on Friday, July 2, 2010 on the Town Lift Plaza.
 4. The applicant will work with City Staff to orient the music/demonstration stage so as to minimize sound impacts to the neighborhood and the applicant shall monitor the following:
 - (A) The program manager, or his/her designee, shall provide on-site management for the event.
 - (B) A sound technician shall provide on-site monitoring for the event with music, amplified or otherwise, and any amplified event.
 - (C) The program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of 90, as measured twenty-five feet (25') in front of the stage.
 5. All plans for tents, fireworks, stages, signs and other temporary structures shall be submitted to the Building Department for review and permitting by June 25, 2010.

Attachments

Exhibit A- Applicant's Summary of Activities

PARK CITY MUNICIPAL CORPORATION SPECIAL EVENT AND MASTER FESTIVAL LICENSE EVENT APPLICATION - PART I



Special Events
435.615.5150
specialevents@parkcity.org

PART I of the Special Event and Master Festival License (MFL) must be completed and submitted electronically to the Special Events Department no less than 90 days prior to a MFL or no less than 60 days prior to a Special Event. The application will be reviewed by the Special Events Department. *Granting of the permit is not guaranteed.*

APPLICATION FEES - DUE AT TIME APPLICANT SUBMITS PART I

All new applications require a \$100 application processing fee.
All applications for returning events require a \$50 application processing fee.
The Application Fee is **NON-REFUNDABLE**.

ADDITIONAL FEES

Additional fees for other services, including Health Department, Fire Department, and City Services will be estimated and provided to the applicant. Applicant will receive a final invoice approximately two weeks after the event concludes.

APPLICANT AND SPONSORING ORGANIZATION INFORMATION

NAME	Community Wireless of Park City, KPCW	
STREET ADDRESS	460 Swede Alley	
CITY, STATE, ZIP CODE	Park City, UT 84060	
DAY PHONE	435-649-9004	
FAX PHONE	435-645-9063	
E-MAIL ADDRESS	dchambers@kpcw.org	
SPONSORING ORGANIZATION		
Contact Person "ON SITE" Day of Event	Name: David Chambers	Cell Number: 435-714-1106

EVENT INFORMATION

Type of Event (Check all that apply):

Master Festival Criteria: A PUBLIC EVENT (If one box is checked, the event is automatically a MFL)	☒ Attraction of crowds over 500	☐ Street Closure	☐ Use of City park, building or property	☐ Use of off-site parking facility	☒ Use of amplified music
Special Event Criteria: PRIVATE OR PUBLIC EVENT	☐ Causes significant public impacts via disturbance, crowd, traffic/parking	☐ Disruption of the normal routine of the community or affected neighborhood	☐ Necessitates temporary business or liquor licensing	☐ Events signs, visible from public property	☐ Temporary structures
☐ Run/Walk	☐ Parade	☐ Trail Event			
☐ Road Bike Event	☐ Park Festival	☐ OTHER (please specify):			
☐ Street Fair	☐ Concert				
EVENT TITLE:	KPCW Back Alley Bash				
FIRST TIME OR ANNUAL EVENT (IF ANNUAL, HOW MANY YEARS?)	Annual Event for over 25 years				
EVENT DATE (S)	Friday July 2, 2010				
EVENT HOURS	START: 5:00 PM		END: 11:00 PM		
SET-UP	DATE: Friday July 2, 2010		TIME: 10:00 AM		
BREAK DOWN	DATE: Friday July 2, 2010		TIME: 11:00 PM		

ATTENDANCE	PARTICIPANTS: 40	SPECTATORS: 500	TOTAL: 540
LOCATION	Town Lift Plaza		

OVERALL EVENT DESCRIPTION (Briefly explain event and activities): The event will be held on the Town Lift Plaza and will include a live band playing from 6:00 to 9:00 PM, with food provided by three vendors, beer and wine sales, and fund raising activities such as a silent auction.

MARKETING YOUR EVENT (Your Marketing Plan is criteria for approval of your event) Contact the Park City Chamber/Bureau to help market y our event 435.649.6100 www.parkcityinfo.com PLEASE DESCRIBE MARKETING AND PROMOTIONAL EFFORTS FOR YOUR EVENT: The event will be promoted through public service announcements on KPCW, on KPCW's web site, e-mail, printed materials, newspaper reports and in the event calendars of the Park Record and the Park City Chamber of Commerce web site.

RULES AND REGULATIONS • A non-refundable application fee is required at the time the application is submitted to Park City Municipal Corporation. For new events the application fee is \$100, for returning events the application fee is \$50.00. • Part I of the application must be submitted a minimum of 90 days prior to a Master Festival License (MFL) and 60 days prior to a Special Event. Part II of the application for both a MFL and a Special Event must be submitted 45 days prior to the requested event date. • A site plan of your event is required with your application identifying street closures, signs, supply trucks, barricades, tents, activity location, portable toilets, bleachers, other temporary structures, water stations, headquarters, solid waste containers, entrance/exits, walkways and any other details that would assist the Special Event Staff with understanding the setup of your event. • For runs, walks and parades a site plan outlining your route must be submitted along with your Special Event Permit application. If your event will generate additional traffic, or interrupt existing traffic on any city street, a traffic control plan outlining necessary street closures is required before a Special Event Permit will be issued. • Permit Applications may require review by the City Council for approval or denial. Need for review is based on size, location, scope and impact of event. • An applicant must schedule a meeting with Special Event Staff 30 working days prior to event. • A certificate of insurance must be filed with Special Event Services ten (10) working days before the event in the amount of \$2,000,000. The City of Park City requires all certificates of insurance to be submitted on a standard ACORD form, or on the insurance company's letterhead. Park City Municipal Corporation must be listed as additionally insured. If you do not have insurance, the City of Park City is able to provide you insurance, at a cost, through the TULIP Program. Please visit our website at; www.parkcity.org/Special Events & Facilities/applications/index.html. • All debris and trash must be removed from an event site immediately after the event. Failure to do so may require more City Services. All expenses will be the responsibility of the event applicant. It is highly recommended that the applicant provide recyclable receptacles at the event. Please contact a local recycle company (information provided in Application Part II). Thank you. • Depending on the duration of your event and the availability of public restrooms, you may need to rent portable chemical toilets to accommodate participants. Park City Municipal Corporation City Code requires one (1) chemical toilet for every 65 people. The figure is based upon the maximum number at your event during peak time. The total number of toilets will be determined on a case-by-case basis. • You must receive approval for your event before you promote market or advertise your event. Conditional

approval will be made after the event organizer submits the application and it is initially screened. Acceptance of your Special Event Application by the City is not a guarantee of the date, location or an automatic approval of your event.

- Only readily removable barricades may be used for street closures and a 20-ft lane of clearance is required for emergency vehicle access at all times. You may be required to provide advisory signs if your event impacts a major use roadway. Advisory signs are intended to provide advanced notice to the regular users of a roadway of the scheduled closure.
- In some cases, the hiring of officers from the Park City Police Department, a professional security company, or a combination of both may be required in order to obtain a Special Event Permit. The Park City Police Department determines the need, number, and type of security personnel based on expected attendance, location of the event, the presence of alcohol, history of the event, nature of the event, street closures, and the amount of advertising used for an event.
- The Fire Department must review and approve the following: your plans for first aid and/or emergency medical services; your route for emergency vehicle access;
- The Building Department must review parade floats; use of an open flame; use of fireworks or pyrotechnics; handling of vehicle fuel; cooking facilities; the location of power sources; the availability and location of on-site fire suppression equipment; the occupancy and spacing of tables or enclosures; and the use of tents, canopies or any fabric shelters. The Building Department will require an inspection before and/or during the event.
- All temporary structures, i.e. tents, stages, platforms, etc. must be engineered and stamped by a State of Utah Licensed Engineer.
- The applicant(s) shall assume and reimburse the City for any and all costs and expenses determined by City to be unusual or extraordinary, and related to the event for which the permit is sought, including but not limited to:
 - A. The cost of providing, erecting, and moving barricades and/or signs;
 - B. The cost of providing and moving garbage or waste receptacles;
 - C. The cost of city personnel who are required by the city to work overtime hours
- The City may require, as a condition to issuance of a permit, that a sum be deposited with the city to meet such costs. The required deposit shall not exceed one thousand dollars (\$1,000.00).

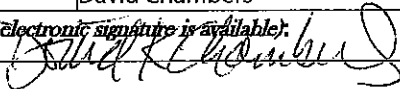
AGREEMENT AND SIGNATURE

I the undersigned representative have read the rules and regulations with reference to this application and am duly authorized by the organization to submit this application on its behalf. The information contained herein is complete and accurate.

Name (printed)

David Chambers

Signature *(if electronic signature is available)*



Date:

April 28, 2010

REMITTAL INFORMATION

Park City Municipal Corporation (PCMC)
ATTN: Special Events
PO Box 1480
Park City, Utah 84060
435.615.5150

If you would like to pay by credit card or make your payment in person please contact Jennifer Byrd at 435.615.5056.

OFFICE USE ONLY

PERMIT APPLICATION #:

ASSIGNED TO:

NOTES:

City Council Staff Report



Author: Heinrich Deters, Matt Twombly
Subject: Holiday Ranch Loop Pathway and Irrigation Line
Award of Construction Contract
Date: June 24, 2010
Type of Item: Administrative - Award of Contract

Sustainability

Summary Recommendation –

Staff requests authorization to proceed with the Holiday Ranch Loop Pathway project and authorize the City Manager to enter into a construction contract in a form approved by the City Attorney's Office with Silver Spur Construction LLC in the amount of seven hundred seventy four thousand seven hundred forty dollars. **(\$774,740)**

Topic: Holiday Ranch Loop Pathway Project Construction contract.

Background:

The Walking and Biking Liaison Committee (WALC) identified the Holiday Ranch Loop Project as a priority for completion in 2010. The scope of the project includes the following: An 8' wide separated asphalt path from the Little Kate Road (end of recent sidewalk project) to the McLeod Creek Trail, and a 6' concrete sidewalk, back of curb, from the McLeod Creek Trail to SR-224 on the East/South side of the roadway. The project entails the narrowing of the roadway, with new roll gutter the entire length. The project also includes installation of storm drains on both sides of the road to tie into the Little Kate storm drain improvements and the replacement of sections of curb on the West/North side of the road as part of the storm drain improvements.

Drip irrigation and drought tolerant landscaping is designed in the buffer between the roadway and the trail. Also proposed are 50 street trees in the landscape buffer along the length of the roadway between the McLeod Creek Trail and Little Kate Road. Improvements also include an extension of the Holiday Ranch Loop Irrigation Line system from the existing piping in Little Kate Road to McLeod Creek (connection to McLeod Creek is not included), raised crosswalk at the McLeod Creek Trail crossing, other walkability improvements and the rotomilling and overlay of this section of roadway due to the roadway crown, grades and drainage. The project budget as identified by WALC is \$922,000.

Staff met with most of the residents along the project corridor over the winter months. In April, a mailer was sent out to the adjacent neighbors, notifying them of the upcoming project. Finally, a public Open House was held on June 1st at the Park City Racquet Club, where six people attended the open house.

Analysis:

The Project was advertised on May 15th and 19th, 2010 in the Park Record and May 20th and 21st in the Salt Lake Tribune. Additionally, the Request for bids was posted on the City's website.

A mandatory pre-bid meeting was held on June 1st, 2010. Only general contractors present at the meeting were able to bid on the project. In addition the request for bidders requires general contractors bidding on the project to be licensed with an E-100 (General Engineering) license.

On June 8th, a public bid opening was held at the Marsac building 3rd floor. The bids are as follows:

Bidder	Bid Amount
Steven's Construction *	\$734,500.00
Silver Spur Construction**	\$782,539.69
Kilgore Paving	\$854,095.75
Staker Parson	\$913,473.95
DRD Paving	\$945,686.11
<i>Engineer's Estimate</i>	<i>\$870,083.00</i>

*Steven's Construction was identified as the apparent low bidder at the June 8th bid opening; however, after reviewing the bid numbers, irregularities were discovered. Staff consulted the City Engineer and Legal Department on the irregularities and the recommendation was to reject the bid. Steven's Construction was notified of this action by telephone on June 10th and a subsequent formal letter was sent on June 11th.

The lowest 'responsible' bidder was Silver Spur Construction at \$782,539.69. The engineer's estimate was \$870,083.00.

**Within the bid, alternates were provided for the irrigation pipe. These alternates specified pipe material and a price associated for the required 2600 linear feet. The Water Department has chosen to use a reinforced pipe which represents a (\$7,800) saving per the original PVC quote provided by Silver Spur Construction. This difference represents the contract total of (\$774,740)

Construction is scheduled to begin by July 15, 2010 after the agreement is executed and all bonds and insurance requirements are submitted to the City. The substantial completion date for the project is October 15th.

Department Review: This report has been reviewed by representatives of Sustainability, Legal, City Engineer, Water, Parks and the City Manager's Office and their comments have been integrated into this report.

Alternatives:

- A. Approve the request, and authorize the City Manager to award the contract as attached: (Staff recommendation)**
- B. Modify the request: Council could choose to modify the project and re-bid, which would likely delay the schedule of the project.
- C. Deny the request: Council could choose to not continue with the project at this time.
- D. Continue the Item: Council may feel there is not enough information to make a decision, which will delay the project and the proposed schedule.
- E. Do Nothing: Same effect as continuance.

Significant Impacts:

There is currently approximately \$922,000 budgeted for the Holiday Ranch Loop project in WALC bond funds based on WALC recommendations. Additionally, the irrigation line costs are approved in the Water Department FY2011 CIP budget. Sustainability and on a limited basis other City staff resources will be required to complete the project.

Landscaping

Staff is proposing three different 'zones' of landscape treatments along the corridor. All three represent different approaches to sustainable practices. The zones include xeriscaping, drought tolerant sod and drought tolerant native grass. The trees, xeriscape plantings and native grass zone will use drip irrigation.

Benefits of Street trees

As stated, the project will have a landscape buffer between the pathway and roadway. This represents the highest level of service for walkability. Within this buffer, 50 street trees are proposed. These trees may create a variety of benefits to the community which partially include but are not limited to:

- 1. Reduction of traffic speeds. (from 3-15mph have been noted)
- 2. Reduction of harmful automobile emissions.
- 3. Carbon sequestration.
- 4. Added real estate value to homeowners.
- 5. Improves asphalt lifespan up to 60%.
- 6. Aesthetics and creation of place.

Source: <http://www.ufe.org/files/pubs/22BenefitsofUrbanStreetTrees.pdf>

Operations and Maintenance

The annual maintenance costs associated with the project include the following:

8' asphalt path: **\$3,955**

6' concrete sidewalk: **\$1,134**

Landscaping: **\$2,800**
Total: **\$7,889**

These numbers do not include sign replacement, striping and replacement of the concrete crosswalks.

Snow removal

Staff is recommending that the Holiday Ranch Loop pathway does NOT receive plowing services during the 2010-2011 Winter. As set forth in the 2004 snow plow policy, the Holiday Ranch Loop path does not meet the criteria for service. Specifically, Public Works does not have the resources, another sidewalk plow and personnel, available to provide this service.

Sustainability and Public Works are working together and will submit a request in the 2012 FY Budget for additional snow removal resources, approximately \$120,000 sidewalk plow, and personnel, .5 FTE (\$23,000), to allow for this service to be implemented in 2012. Furthermore, these additional resources will be able to provide Public Works with the capacity to provide snow removal services to the newly constructed Little Kate sidewalk, which is currently serviced through contract, as well as, the proposed Comstock pathway to be constructed in 2011.

Water Impact Fees

There will be water Impact fees for addition landscaping in the amount of **\$1,498**.

Staff Recommendations:

Staff requests authorization to proceed with the Holiday Ranch Loop Pathway project and authorize the City Manager to enter into a construction contract in a form approved by the City Attorney's Office with Silver Spur Construction LLC in the amount of seven hundred seventy four thousand seven hundred forty dollars. (**\$774,740**)

Exhibits:

Exhibit A - Contract

EXHIBIT A

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the state of Utah (hereinafter "City"), and (Silver Spur Construction LLC, Silver Spur Construction LLC, 392 E 12300 S Ste E1 Draper, UT. 84020 which is a (*check one*) ____ corporation ____ partnership ____ sole proprietorship x limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as the Holiday Ranch Loop Pathway and Irrigation Line 2010 Project (hereinafter "Project"), which consists of approximately 2,800 linear feet of existing gutter removal and installation of new roll gutter and asphalt pathway; 250 linear feet of concrete sidewalk; boulder retaining wall; 95,000 square feet of existing rotomill and asphalt overlay; 380 linear feet of new storm drain and inlets; 2500 linear feet of 18" irrigation pipe and manholes, installing precast flume/manhole structure, intersection repair, reinforced colored concrete crosswalk, landscaping including irrigation, planting, boulders, rock mulch, street tree plantings; and landscape restoration ..

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

SECTION 1. SCOPE OF WORK. Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Information for Bidders as the Basic Bid, and the following additive alternates: 18" ADS N12 Irrigation Pipe and 18" ADS N12 Mega Green WT IB Irrigation Pipe, as specifically set out in the contract specifications, which is made a part hereof by reference, herein called the "Project."

The Project will be bound by the specifications referenced herein, according to the Advertisement for Bid, the Information for Bidders, the General Project Requirements and Specifications, the Bid of the Contractor, Bid Bond, Drawings, Notice of Award and Notice to Proceed, collectively referred to as the Contract Documents, all of which are incorporated herein by reference and on file in the Sustainability Department. To the extent that this Agreement conflicts in any way with a proposed form agreement which may have been submitted as part of the bid specifications, this Agreement shall control.

If any of the work performed by Contractor in any phase of the Project does not meet City standards as outlined in the bid documents and specifications, then Contractor shall immediately repair or correct the work at no additional cost to City.

A. SUBCONTRACTORS. No part of this contract shall be subcontracted by the Contractor without prior written approval by City through the Project Manager/Engineer. The Contractor shall be fully responsible to the City for the

acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

The Contractor shall, within ten (10) days of submittal of request for final payment, include an affidavit showing satisfactory evidence that all claims of subcontractors, laborers and material men who supplied services or materials to the Project have been fully paid, discharged, or waived. The Contractor shall submit lien waivers for each pay release.

If the City reasonably believes that Contractor has failed to pay Subcontractors, material men, or laborers for work on the Project within a reasonable time of when payment is due, then City may, after having notified the Contractor, either pay unpaid bills or withhold from the release of Contractor's payment bond for this Project, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged and a ten percent (10%) fee for administering such claims.

B. STANDARDS OF WORKMANSHIP. Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where Park City specifications exist (for example, asphalt, concrete, irrigation, sprinkling system and landscaping), they shall provide the benchmark for determination of acceptability.

C. INSPECTION AND TESTING. All materials and equipment used in the construction shall be subject to inspection by the Project Manager/Engineer. If laws, ordinances, rules or regulations of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than Project Manager/Engineer, the Contractor shall give the Project Manager/Engineer timely notice of readiness. Inspections, tests or approvals by the City or appropriate authorities will not relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents and/or provisions. The Project Manager/Engineer and other designated persons will at all times have access to the work. All work shall ultimately be inspected for final acceptance by the Project Manager/Engineer within a reasonable time upon receipt of notice from the Contractor that work is complete and ready for final inspection.

During construction, the work will be inspected and observed by the Project Manager/Engineer or his designated representative. All work that is deficient or does not meet specifications shall be removed and replaced with proper material at Contractor's expense.

D. WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in

writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one (1) year following the date of substantial completion of the Project under the terms of the performance bond or as provided in the project specifications and construction documents, whichever is longer.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of one hundred percent (100%) of the Contract Amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

The Contractor shall provide Park City Municipal Corporation a Certificate of Insurance evidencing:

A. Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

The Contractor shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63-30d-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

B. Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.

C. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident \$500,000 each accident;
Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit

Park City Municipal Corporation shall be named as an additional insured on the insurance policies and a copy of the endorsement naming the City as an additional

insured shall be attached to the Certificate of Insurance. The City reserves the right to request certified copies of any required policies.

The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor the total sum of seven hundred seventy four thousand seven hundred thirty nine dollars and sixty nine cents. **\$774,739.69** ("Contract Amount") for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the Scope of Work described in Section 1.

SECTION 5. PERMITS AND FEES. As set out in Section 4 above, the Contract Amount includes the price of all normally applicable fees and permits. The City may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

SECTION 6. TERMS OF PAYMENT. The City shall pay for services provided hereunder according to and in an amount not to exceed that detailed in the attached payment schedule (Attachment A) and only upon Contractor's request on forms approved by and submitted to the Project Manager. The City shall make payment within thirty (30) days thereafter. Requests for a more rapid payment may be considered if a discount is offered for early payment. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

A. RETAINAGE. The City may, in its sole discretion; (1) retain five percent (5%) of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Agreement by the Contractor; or (2) retain the final payment of up to five percent (5%) of the total project amount. As work nears completion and solely at the City's discretion, the City may reduce the retainage to an amount more in line with the work remaining. The City reserves the right to retain all amounts previously withheld or due, including any liquidated damages, until all services specified herein are complete. Any money withheld pursuant to this section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

Before final payment is made, the Contractor must submit evidence satisfactory to the City that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the Project have been paid for.

The City may withhold a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person who supplied work or materials to the Project plus ten percent (10%) of such indebtedness as the City's cost of administering such claims until Contractor supplies a release satisfactory to the City, signed by all persons who have supplied labor or materials to the Project or, at the City's option if no claim is made, until 105 days after the date on which any person performed the last of the labor or supplied the last of the material for the Project and upon written request from the Contractor.

The Contractor shall supply to the Project Manager/Engineer within a reasonable time after his request a signed statement verifying all the suppliers, subcontractors and other persons who have supplied labor or materials to the Project.

B. FINAL PAYMENT. Acceptance by the Contractor of the final payment from the City shall release the City of all claims, demands and liability of the Contractor, its officers, agents, employees and subcontractors, whether communicated or not by the Contractor, except with respect to those matters referred to in writing delivered to the Contractor and approved in a signed writing by the Project Manager.

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten days of receipt of the Notice to Proceed and shall be completed by **October 15, 2010**. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City, five hundred dollars (\$500), for items set forth in addendum #2 of the bid documents. (NOTE: liquidated damages clause must be agreed to by Contractor, if no mutual agreement, then no liquidated damages) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate

of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in order of precedence listed below:

- A. An agreed lump sum; or in the event the parties cannot agree; then
- B. The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then
- C. The actual cost for: (1) labor; (2) materials; (3) supplies; (4) equipment; (5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City); and (6) other services necessary and approved by the City to complete the work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional ten percent (10%) of the actual cost of the work, not including direct overhead or bond costs, to cover the cost of general overhead and profit. The Contractor may also charge the City for actual cost of the net increase in bond costs as a result of the overall change to the Contract Amount. The City specifically reserves the right to request documentation, including but not limited to payroll stubs, bond bills, and invoices, to validate the Contractor's calculations.

SECTION 9. DISPUTES. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to the Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the

City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

SECTION 10. DEFAULT, REMEDY AND TERMINATION. The City may terminate this agreement upon the occurrence of one or more of the following events:

- A. If Contractor or any Subcontractor should substantially violate any of the provisions of this contract;
- B. If Contractor substantially fails to perform any part of this Agreement;
- C. If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of seventy-two (72) hours;
- D. If Contractor (1) shall become insolvent in a bankruptcy sense; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. '101[10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (4) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (5) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (6) shall be dissolved; (7) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (10) shall take action for the purpose of any of the foregoing,

After serving ten (10) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such

notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the service herein.

The Contractor shall be entitled to a hearing before a City hearing officer upon the issue of termination if it submits a written request therefore within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer(s).

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

The Contractor shall continue the performance of this agreement to the extent not terminated under the provisions of this section.

The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

SECTION 12. CONTROLLING LAW. These general conditions shall be construed in accordance with and enforced under the laws of the State of Utah. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

SECTION 13. ASSIGNMENT. The Contractor shall not assign nor transfer any interest in this agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

SECTION 14. SAFETY AND TRAFFIC CONTROL. Contractor shall take all reasonable precautions to protect the safety of pedestrians, school children, motorists, and others who may use or come near to the Project site, including but not limited to compliance with the Manual of Uniform Traffic Control Devices.

SECTION 15. SAFETY AND PROTECTION OF THE WORK. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the project work. Contractor shall provide reasonable protection to prevent damage, injury or loss to employees on the Project work and all other persons who may be affected thereby, materials and equipment, whether on or off the site, and other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. In addition, the Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall erect and maintain, as required by the existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, setting safety regulations, and notifying owners and user of adjacent utilities.

The Contractor shall promptly remedy all damage or loss to any property referred to in this Section caused in whole or in part by the Contractor, any subcontractor, sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except for acts or omissions by the City or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. Contractor shall remove from the site all cuttings, debris, equipment and unused material.

SECTION 16. UNENFORCEABLE CONTRACT, WAIVERS. In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

SECTION 17. ENTIRE AGREEMENT. This contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written modification signed by both parties.

SECTION 18. COMMENCEMENT OF WORK. Contractor will commence work as required by the specifications within ten calendar days after receiving the NOTICE TO PROCEED.

SECTION 19. UTILITIES. The right is reserved to the owners of public utilities and franchises to enter upon the street or work site for the purpose of making repairs or changes of their property that may become necessary by the work. The City shall also have the privilege of entering upon the street or work site for the purpose of repairing culverts, storm drains, water system repairs or adjustments and any and all other necessary City work.

The Contractor takes the whole risk, responsibility and expense with respect to the location of utilities, and in working with utility owners about locating, moving, repairing, and modifying utilities. All utility locations shown on the plans and specifications are approximate and are marked on the plans, if at all, only for convenience. The City makes no representation about the location of any such utilities, and Contractor is encouraged to contact utility companies and owners about the location of all utilities that may be impacted by or impact the Project work.

SECTION 20. HOURS AND DAYS OF WORK. All work performed by the Contractor, its subcontractors, material men, agents and employees shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

- A. Interior work on individual single-family home construction or addition projects not involving materials or supply deliveries

- B. Construction of decks, patios, landscape walls less than 4 feet in height, and fences on individual single-family lots
- C. Non-mechanized exterior painting on individual single-family residences
- D. Non-mechanized landscaping on individual single-family residences
- E. Survey work not involving grading or use of power equipment to cut vegetation.

Extended Hours Special Permit. The Building Official may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation or modify or waive the hours of work on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants. In such cases, the Building Official shall issue a Special Permit identifying the extended hours. Contractor shall display the special permit on site.

Special Event Regulations. The Building Official and/or Police Chief may, at their discretion, restrict construction activity, including governmental or special improvement agencies, in order to assure the public safety during special events within the City. Special events shall include, but not be limited to the Art Festival, Film Festival, ski events, and holiday events.

SECTION 21. CONSTRUCTION MANAGEMENT PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the Community Development Department, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the Community Development Department.

A. Hours and Days of Operation. The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.

B. Parking. The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also include anticipated temporary parking, e.g. delivery vehicles, large equipment parking.

C. Deliveries. The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies including concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

D. Construction Phasing. Due to the narrow streets, small lot configuration, topography, traffic circulation, weather, construction parking and material staging problems, projects in the Historic District and other areas of the City may be required to be phased if more than one project is under construction in close enough proximity to create public safety or nuisance problems. In cases where phasing is deemed necessary by the Community Development Department, the first project to receive a building permit shall have priority, however, the Building Official shall have the authority to phase projects as necessary to assure efficient, timely and safe construction.

E. Trash Management and Recycling. Construction sites shall provide adequate storage and a program for trash removal.

F. Control of Dust and Mud on Streets. A program for the control of dust or other airborne debris shall be required. Provision must be made to eliminate the tracking of mud on streets and a program shall be required to remove any such mud daily.

G. Noise. Construction activity shall not exceed the noise standards as specified in Section 6-3-9 of the Park City Municipal Code.

H. Grading and Excavation. Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted.

I. Construction Sign Requirements. A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

1. Name, address and phone number of contractor;

2. Name, address, and phone number of person responsible for the project; and
3. Phone number of party to call in case of emergency.

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

A. The Contractor shall obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such construction refuse shall be maintained in a closed container at all times, until transferred to the landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street or to accumulate on the site outside of the container, or on transit to the landfill or dump. The owner or contractor shall service the container as frequently as needed to prevent trash from over-flowing.

B. The Project site shall have permanent toilets, or an approved temporary toilet facility positioned in a location approved by the Building Department, at the rate of one toilet per fifteen on-site employees (1-15 employees = one toilet, 16-30 employees= two toilets and so on).

SECTION 23. OBEY LAWS. Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.

SECTION 24. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to:

employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

D. If any assignment or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

SECTION 25. THIRD PARTY RIGHTS. Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 26. PROJECT MANAGER/ENGINEER. The Project Manager/Engineer for this Project is Matthew A. Twombly, or such other person designated by the City Engineer or Public Works Director to the Contractor orally or in writing.

SECTION 27. PARTIES' REPRESENTATIVES. For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or mailed, or sent by facsimile transmission certified mail, postage pre-paid, to the parties at the following addresses:

Silver Spur Construction LLC
392 E 12300 S Ste E1
Draper, UT. 84020

Contractor: Shawn Hayward, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;

Park City: Project Manager shall be Matthew A. Twombly and Construction Manager Heinrich Deters, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

SECTION 28. SEVERABILITY. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

IN WITNESS WHEREOF, the parties have entered into this agreement on the day and year set out at the top of this Agreement.

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

CONTRACTOR

Silver Spur Construction LLC
392 E 12300 S Ste E1
Draper, UT. 84020

Shawn Hayward, Owner

5841209-5501

Utah Contract License No.

Corporate Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2010, personally appeared before me Shawn Hayward, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he/she is the owner of Silver Spur Construction LLC by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said Corporation executed the same.

Notary Public

City Council Staff Report



Subject: North Silver Lake Lot 2B
Author: Katie Cattan
Date: June 24, 2010
Type of Item: Quasi-Judicial - Appeal of CUP Application

PLANNING DEPARTMENT

Summary Recommendation

Staff requests that the City Council review the appeal of the Conditional Use Permit (CUP) and consider upholding the Planning Commission's approval of the CUP for North Silver Lake Lot 2B.

Topic

Appellants: #1: Eric Lee, Attorney representing adjacent property owners, and
#2 Lisa Wilson, resident
Location: Lot 2B Subdivision of Lot 2, North Silver Lake
Zoning: Residential Development (RD)
Adjacent Land Use: Ski resort area and residential
Reason for review: Appeals of Planning Commission decisions are reviewed by City Council

Background

The remanded North Silver Lake Lot 2B Conditional Use Permit was approved on April 28, 2010 by the Planning Commission. The approval was appealed by two separate parties. On May 7, 2010, Eric Lee submitted an appeal (Exhibit A). On May 10, 2010, Lisa Wilson submitted an additional appeal (Exhibit B). The Land Management Code (LMC) section 15-1-18 requires that final action by the Planning Commission on CUPs be appealed to the City Council within ten calendar days of the final action. Because the tenth calendar day fell on a Saturday, the following Monday, May 10th, 2010 was the deadline.

Under the Deer Valley Resort Master Plan Development (MPD) the North Silver Lake Subdivision Lot 2B is permitted a density of 54 residential units and 14,552 square feet of commercial and support space. The Deer Valley MPD requires that all developments are subject to the conditions and requirements of the Park City Design Guidelines, the Deer Valley Design Guidelines, and the conditional use review of LMC Section 15-1-10.

The original CUP application was before Planning Commission on five different occasions (August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009, and July 8, 2009). During the July 8, 2009 review, the Planning Commission approved the application with a 3 – 1 vote. One Commissioner abstained.

On July 17, 2009, the neighboring property owners submitted an appeal of the Conditional Use Permit (CUP) approval of the North Silver Lake Subdivision Lot 2B. The City Council reviewed the appeal on October 15, 2009. During this meeting the City Council asked staff and the applicant for more information and continued the appeal to November 12, 2009. The City Council requested staff to review the open space calculation for accuracy. The Council also requested that the applicant return with a clearer visual analysis. During the November 12, 2009 meeting, the City Council remanded the CUP application to the Planning Commission with specific items included in the order to be addressed.

The final Order from the appeal stated “The appeal is granted in part and denied in part. The CUP is remanded to the Planning Commission for further consideration of only the following matters:

1. The height, scale, mass and bulk of Building 3 shall be further reduced to meet the Compatibility standard;
2. Further specificity regarding a final landscape plan and bond with consideration for Wild Land Interface regulations shall be reviewed and/or further conditioned; and
3. Construction phasing and additional bonding beyond public improvement guarantee shall be required.”

1. The height, scale, mass and bulk of Building 3 shall be further reduced to meet the Compatibility standard. The City Council adopted the following findings of fact:

#23 In determining Compatibility, the Deer Valley MPD does create a baseline for the area plan but specific neighborhood impacts must still be mitigated with as built conditions.

#24 The height of Building 3 is incompatible because the maximum MPD height (45') used at a site location that steps down the hill magnifies the scale of the resulting façade (nearly 79') as compared to adjacent uses (33') and designated view points.

#25 The impacts of the incompatible height, scale, bulk and massing of Building 3 have not been mitigated because of its site location on the most exposed area, maximized height due to stepping downhill and 220' long façade that is disproportionate in scale to the neighborhood. The proposed vegetation will not screen the façade to the same degree as the other structures within or near the project based upon the View Analysis provided.

#26 Comparison of internal unit size is not an objective evaluation of Compatibility with adjacent uses or the neighborhood as such bears little relation to external scale and massing.

2. Further specificity regarding a final landscape plan and bond with consideration for Wild Land Interface regulations shall be reviewed and/or further conditioned. The City Council adopted the following finding:

#29 Wild Land Interface Regulations will likely further limit proposed mitigation by requiring the elimination of vegetation proposed to screen various portions of the project.

3. Construction phasing and additional bonding beyond public improvement guarantee shall be required. The City Council adopted the following finding:

#28 Construction phasing and bonding is necessary to mitigate visual and construction impacts that would result if the external ring of units were allowed to be completed without the central structures and parking due to disproportionate site exposure of the interior of the site.

The scope of the review by Planning Commission of the revised Conditional Use Permit was limited to the items remanded by City Council. Since the remand, the applicant has been on two Planning Commission work sessions on November 11, 2009 and January 13, 2010 and two Planning Commission regular agenda meetings on March 10, 2010 and April 28, 2010 to address the order and findings of the City Council. The Planning Commission approved the revised conditional use permit with a four to one vote on April 28, 2010. (Exhibit C: staff report April 28, 2010; Exhibit D: minutes of March 10, 2010 and April 28, 2010, Planning Commission meetings)

There is a full sized set of plans (24" by 36") in the Planning Department. To set up an appointment to review the full size set please contact Katie Cattan at kcattan@parkcity.org. The design for Building 3 decreased the overall square footage of the Building 3 twenty-five percent (25 %), reoriented the building on the site, and divided the original single building into two interconnected buildings of smaller scale and size than the original single building.

Burden of Proof and Standard of Review

Pursuant to LMC 15-1-18(G) the appellant has the burden of proving that the Planning Commission erred. The Council "shall review factual matters de novo and it shall determine the correctness of a decision of the (Planning Commission) in its interpretation of application of the land Use ordinance. "

Analysis and Discussion

Summary of Deer Valley Master Plan Parameters

Lot Area 2D	5.96 acres
Allowed Density	54 Units
Height	45 feet from existing grade (5' exception from LMC)
Unit Size	Except for units with relation to which the owner elects to or is required to utilize the Unit Equivalent formula, there shall be no size limitation for units constructed on any parcel provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with the Deer Valley MPD and all applicable zoning regulations.
Open Space	Minimum of 60% open space. Lot 2D may utilize lot 2B towards the open space calculation less a ¼ acre that was utilized for the Bellemont Subdivision. Lot 2B is 4.03 acres. The definition of Landscaped Open Space under LMC is applied to all land (including trails/ski runs) not including structures, roads, and parking lots.
Sensitive Lands Overlay Zone (SLO)	For projects within the DV MPD, the density limitations of the SLO do not apply because MPDs approved prior to the adoption of the SLO are vested in terms of density. Site planning standards can be applied only to the extent that they do not unequivocally reduce vested density. Limits of disturbance, vegetation protection, and building design standards do apply.
Off-Street Parking	Reviewed within LMC at time of CUP review
Support Commercial	Retail: 8000 square feet. Admin., Support & other: 6525 square feet. And support commercial shall be permitted and used as defined in the Code, as amended, at the time of application.

The Land Management Code

Lot 2B of the North Silver Lake Subdivision is located in the Residential Development (RD-MPD) zone. The Deer Valley MPD also requires that the development receives a Conditional Use Permit. The sections of the LMC that are applicable to the project are 15-2.13 (RD) and 15-1-10 (CUP). The following summarizes the parameters of the LMC.

CUP Criteria LMC 15-1-10	Planning Commission must review the 15 conditional use permit criteria and must conclude that: 1) the application complies with all requirements of the LMC 2) the use will be compatible with surrounding structures in use, scale, mass and circulations 3) the use is consistent with the Park City General Plan, as amended; and 4) the effects of any differences in use or scale have been mitigated through careful planning.
Residential Development Zoning District LMC 15-2.13	
Front yard	20'
Rear yard	15'
Side yard	12'
Height	Height is measured from existing grade (LMC) or back of curb whichever is lower (North Silver Lake Subdivision plat note)
Building Height exceptions	1) Gable, hip, and similar pitched roofs may extend up to five feet above the zone height if the roof pitch is 4:12 or greater.
Exceptions to Unit Equivalent within common space	Residential Accessory Uses: residential accessory uses include those facilities that are for the benefit of the residents of a commercial residential use, such as a hotel or nightly rental condominium project which are common to the residential project and are not inside the individual unit. Residential Accessory Uses do not require the use of Unit Equivalents. (ski/equipment lockers, lobbies, registration, concierge, bell stand/luggage storage, maintenance areas, mechanical rooms, laundry facilities, storage, employee facilities, common pools, saunas and hot tubs not open to the public, telephone areas, public restrooms, administrative offices, hallways and circulation, elevators and stairways, back of house)

Appeal #1: Eric Lee, Representative

Appeal #1 is attached as Exhibit A. The main focus of the appeal is “the Commission’s failure to address the construction phasing plan” as specified in the City Council’s remand. The appellant elaborates on the City Council findings and expresses that the Commission “improperly delegated its responsibility to the Building Department and did so using language that offers no direction regarding the kind of mitigation measures the construction phasing plan should implement.”

The appellant identified two specific errors in regards to construction phasing. First, they state that “the Commission erred in delegating its responsibility to the Building Department”. The second point the Appellant made is that “the Commission erred in characterizing the construction phasing plan as a site restoration scheme.”

Staff response: The Planning Commission required that “A phasing and bonding plan to ensure sight restoration in conjunction with building phasing beyond a public improvement guarantee must be approved by the Building Department. The plan shall include re-vegetation for perimeter enhancement and screening into the project, soil capping for any new disturbance and previous disturbance of the site, and clean-up of all staging areas.” within condition of approval #17. Staff did require a phasing plan to be approved by the Building Department at the time of issuance of a building permit.

During the initial CUP review by the Planning Commission, the Planning Commission asked the applicant whether or not the phasing could be contained within the site. At that point, the applicant put together a phasing plan showing that the project could be phased on site. The Chief Building Official reviewed the phasing plan and confirmed that all the phasing could take place on site. The purpose of the phasing plan was solely to show that the phasing could be done within the site. The phasing plan was not tied to the approval. The real estate market and site constraints will determine the phasing of the project with approval by the Building Department. Staff would not recommend that a phasing plan be required as part of the CUP approval as it is not a requirement of the criteria of the CUP, it was not a requirement imposed by Council, and in an effort to not interfere with the economic viability of the project. At the time of the building permit review, a phasing plan will be required and the Building Department will review the phasing plan. This phasing schedule is typical and is advised by staff.

During the remand, the City Council made a new finding on the project that construction phasing and additional bonding beyond a public improvement guarantee shall be required. Staff suggested during the March 10th, 2010 Planning Commission meeting that the following condition of approval be added to the CUP:

“A phasing and bonding plan beyond a public improvement guarantee must be approved by the Building Department in which phasing shall ensure site restoration with re-vegetation including the existing disturbance to mitigate visual and construction impacts within each phase of construction. “

During the March 10th Planning Commission meeting, the Commission requested that Staff return with a revised condition of approval that sets clear parameters for the bonding and phasing.

The City Council discussed the bonding and phasing during the November 19, 2009 meeting. During this meeting, the Council clarified that they were not asking for a completion bond. They specified that the intent was to ensure throughout the stages of construction should there be abandonment that the City would be able to restore the site back to a visually acceptable level. They expressed that the project should be staged and that the building department should manage the bonding with the notion that the bonding shall be addressed to ensure sight restoration in conjunction with building phasing.

Staff met with Ron Ivie to discuss the minutes from the City Council meeting and create clear parameters to the bonding and phasing. In discussions with Ron Ivie, this would require enough bonding to ensure perimeter enhancement and screening into the project, soil capping for any new disturbance and previous disturbance of the site, and clean-up of all staging areas. He would require that each stage, as approved by the Building Department, be bonded to these requirements. Staff modified the previous condition to set clearer parameters to the bonding for site restoration and phasing:

Condition of Approval #17 “A phasing and bonding plan to ensure site restoration in conjunction with building phasing beyond a public improvement guarantee must be approved by the Building Department. The plan shall include re-vegetation for perimeter enhancement and screening into the project, soil capping for any new disturbance and previous disturbance of the site, and clean-up of all staging areas.”

The Chief Building official also recommended that an additional condition of approval be added to mitigate the existing impacts on the site. He suggested that the applicant be required to mitigate the existing disturbance at the site if the CUP were to expire or be extended. The impacts that should be addressed are soil capping in the existing rock area, import enough soil for capping and re-vegetation, and perimeter enhancement and screening into the project. Condition of approval #18 states:

“A bond shall be collected at the time of Conditional Use Permit Approval to ensure that the existing impacts of the site will be repaired at the time of CUP expiration or extension. At such time, the existing rock area of the site shall be capped with soil and re-vegetated and new landscaping along the perimeter

entrance shall screen the view into the project. If a building permit is issued within one year, this bond shall be released.”

Staff does not agree with Appellant that there are two errors in the Construction Mitigation. Construction phasing is monitored and approved by the building department traditionally. During the original appeal City Council made several comments that they would not like that delegation to change. Staff also does not agree with the second part of the appeal that “the Commission erred in characterizing the construction phasing plan as a site restoration scheme.” The Commission addressed construction phasing as well as site restoration within the amended conditions of approval.

Appeal #1 Continued: Supplemental Appeal Letter.

On May 10, 2010, the Appellant, Eric Lee, submitted a supplemental appeal letter (Exhibit A). The supplemental letter appealed the condition of approval regarding lock out units. During the City Council remand, condition of approval #12 stated “no lockout units are permitted within this approval”. During the Council review there was discussion of amending the condition of approval but the application was remanded to the Planning Commission without the condition of approval, due to staff error. The condition was not included during the Planning Commission April 28, 2010 approval. This was identified during the public hearing. When the CUP was approved, the motion included adding the condition of approval #19 that “Lockout units have not been included within the current application. The addition of lockout units would be a substantial deviation from the current plan and must be approved by the Planning Commission.” During the Planning Commission meeting, staff was unable to locate the original language discussed at the City Council meetings. Staff agrees with the appellant that condition of approval #19 should read “no lockout units are permitted within this approval” and has modified that language. The applicant agrees with the addition of the condition.

Appeal #2: Lisa Wilson, Neighbor

Appeal #2 is included as Exhibit B. The appellant’s comments are numbered and *italicized*. Staff response follows each of the appellant’s points

1. The April 28, 2010 North Silver Lake Lodge Planning meeting was not properly noticed to affected property owners. A notification was not posted and standing on the parcel for 14 days prior to the Planning meeting. “Affected” property owners did not receive notification by mail of the Planning meeting that approved a large hotel within a residential neighborhood.

Staff response: Staff has followed the LMC noticing matrix (Section 15-1-21) throughout the CUP review. A CUP requires a posted notice 14 days prior to the hearing before the Planning Commission, courtesy mailing 14 days prior to the hearing before the Planning Commission to owners within 300 feet, and publishing (in the Park Record) once 14 days prior to the hearing before the

Planning Commission. The courtesy noticing had been mailed for the March 10, 2010 meeting. The Planning Commission continued the public hearing from March 10, 2010 to April 28, 2010. No second courtesy noticing is required when an item is continued. The property was posted for 14 days and the item was listed on the agenda in the Park Record within the 14 day window for both meetings. Although the notice may have fallen down, the sign was still on the property and Appellant was aware of the contents of the sign as she was present at the meeting. There is no requirement that "affected" property owners be separately noticed.

2. The April 25th, 2001 8th Amendment to the Deer Valley Master Plan changed the 60% open space requirement defined in the Deer Valley Master Plan for the North Silver Lake zone. The change allowed 2D to be used as open space for parcel 2B. The 8th Amendment decreased the open space necessary for construction on parcel 2B. Property owners in Evergreen, Bellevue, Belleterre, Bellemont, Belle Arbor were not notified that the 8th Amendment could adversely affect them. Property owners were not notified by mail of a Planning Hearing to change the 60% open space requirement defined for the area. The parcel had been 60% open space up until April of 2001 change.

North Silver Lake Lodge currently has approximately 48% open space instead of the 60% defined in the DV MPD. The Deer Valley Master Plan is a private document that is not available to the public. The Deer Valley Master Plan does not show up when Googled on the internet or available on the City website parkcity.org. At this time most affected property owners are unaware a 360,000 hotel was just approved for a Conditional Use Permit in the midst of a residential neighborhood. The change in zoning that allows for less than 60% open space is not identified on the official zoning map or the plat maps for the parcel. Other subdivisions within the North Silver Lake zone have approximately 60% open space or more.

Staff Response: The time to appeal the 8th Amendment to the Deer Valley Master Plan expired back in 2001.

The Deer Valley Master Plan is a public document that the public can request from the Planning Department. The sixty percent open space requirement for the project has been met. The open space of the current design is 70.6%. Within the DV MPD the applicant is allowed to utilize the open space of lot 2D toward the total open space calculation for the project. Noticing of a previous application (8th Amendment of DV MPD) is not applicable to this application.

3. Changes in the Land Management Code have increased the square footage of the North Silver Lake Lodge beyond what was defined in the code at the time the North Silver Lake zone was platted. "Affected" properties have not been made aware of Code changes that increased the size of the project and the amount of commercial development within a residential neighborhood. Resort Accessory Uses and the Unit Equivalents section of the code 15-6-8 occurred

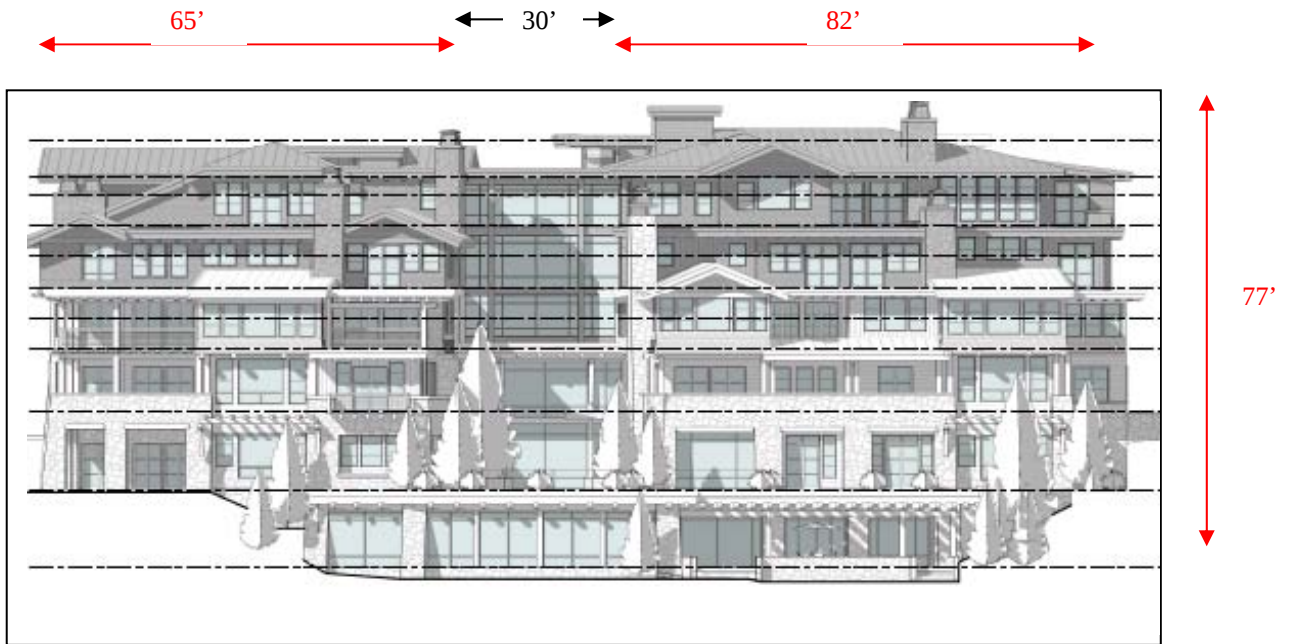
after many affected owners purchased property within North Silver Lake zone without notification. The Land Management code changes added approximately

123,000 square feet of common area to the North Silver Lake Lodge. Most of the common area could be used for public and commercial use for the Hotel. Affected property owners were not notified by mail of the changes to the Land Management Code that increase the scope of development within a existing residential neighborhood.

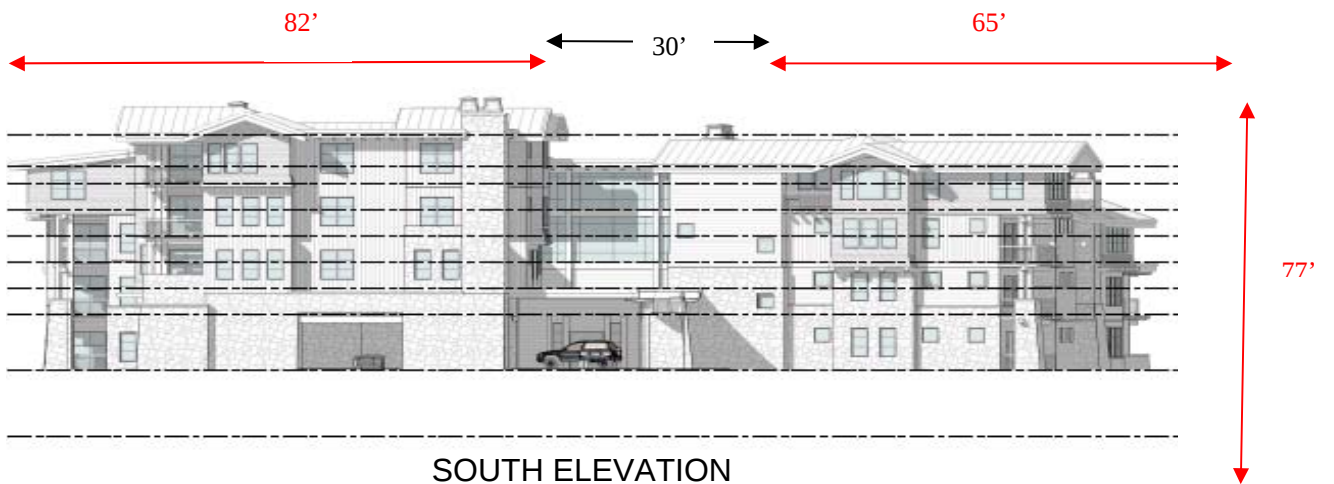
Staff response: Not applicable. This is regarding a previous application not the application under review. The time to appeal the 8th Amendment to the Deer Valley Master Plan expired back in 2001.

4. North Silver Lake Lodge is not Compatible with the existing area. The Height, Mass and Bulk are significantly greater than the existing neighborhood. The hillside development with significant Mass and Bulk within the North Silver Lake Zone is a potential landslide danger. Land slides have occurred in the surrounding area in Deer Valley and Park City. The large towers terrace up the hill and are close together and will appear as one solid Mass from Main Street. Large, deep underground foundations for parking structures will affect the below grade aquifer and hinder water flow to the forest below the project. A drainage plan does not exist and heavy run-off could adversely affect the forest below the project. Such a large development on 5.96 acres without a drainage plan could flood the forest below.

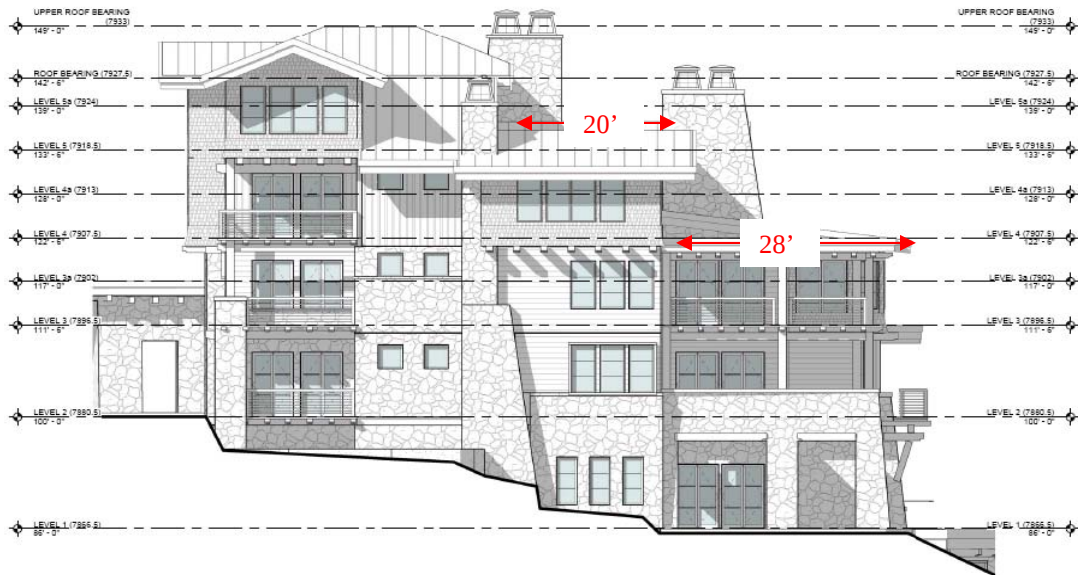
Staff response: The only building subject to the remand was building 3. The other buildings met the criteria of the CUP. The following are images of the new design.



NORTH ELEVATION



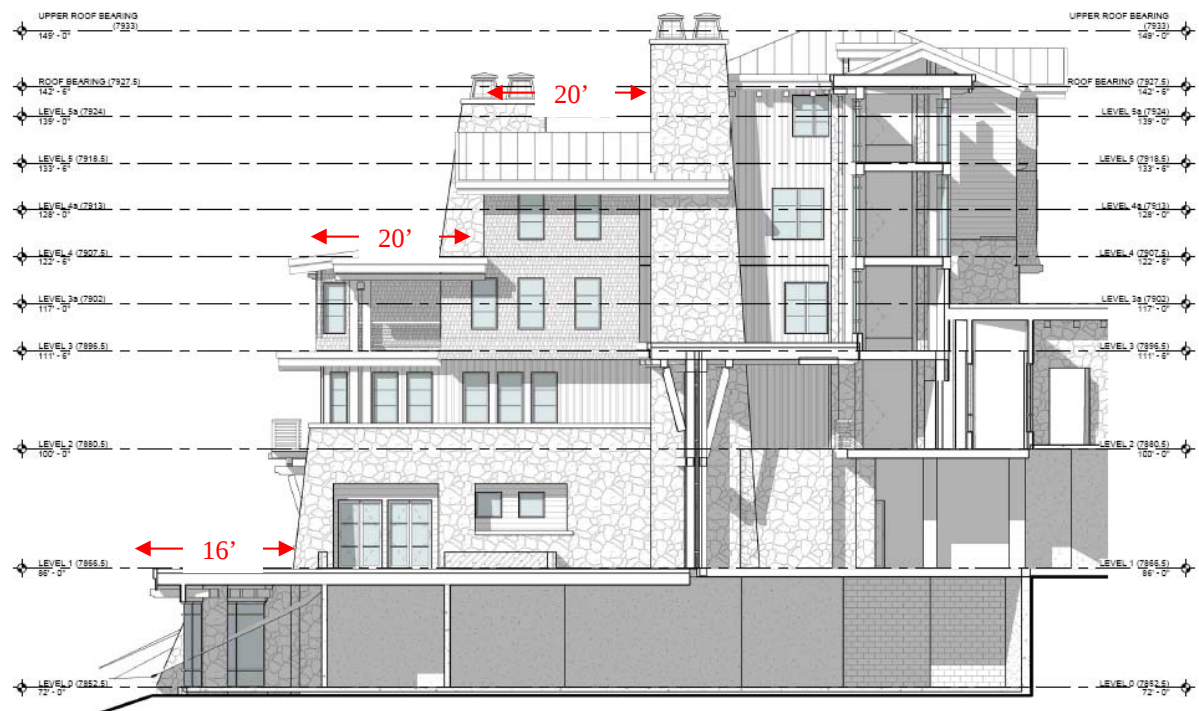
SOUTH ELEVATION



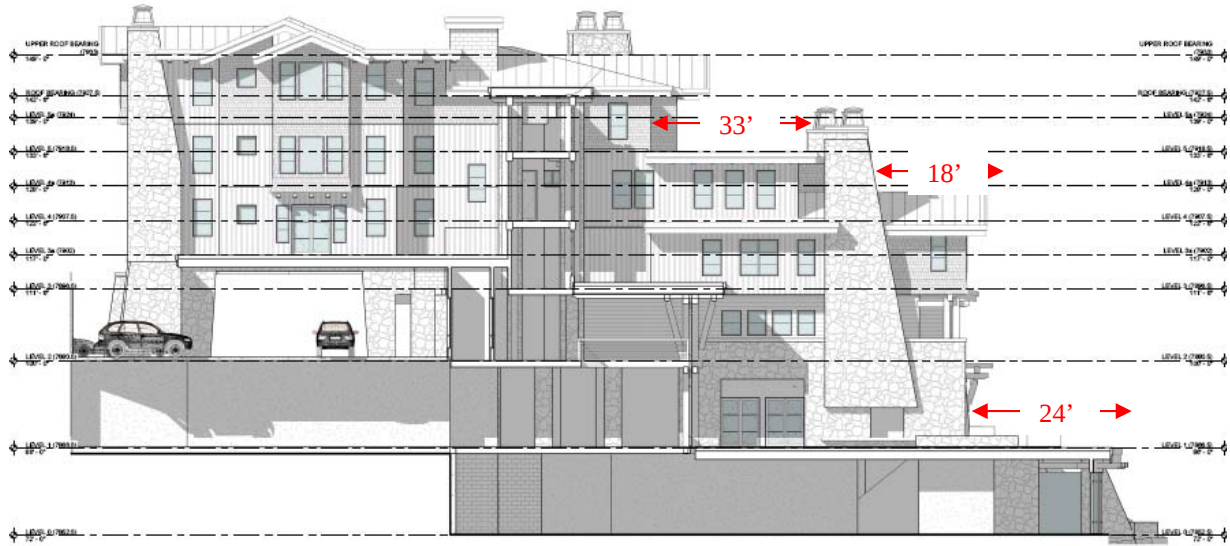
BLDG. 3A EAST ELEVATION
1/8" = 1'-0"

1
903.02

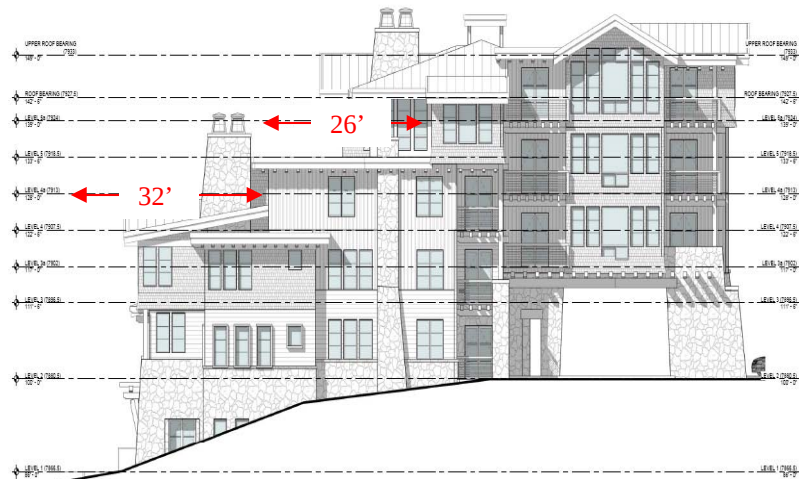
EAST ELEVATION (3A)



WEST ELEVATION (3A)



EAST ELEVATION (3B)



WEST ELEVATION (3B)

Compatibility is defined in the LMC (Section 15-15-1.55) as “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, environmentally sensitive areas, and building patterns.”

Within the revisions, the applicant has split Building 3 into two smaller buildings which are connected through the basement floor and an above ground hallway

connecting each level. The original design had a front façade of 220 feet. The current design creates a differentiation between two portions of the revised Building 3. Building 3A is 65 feet wide at the widest point. Building 3B is 82 feet wide at the widest point. The section between the two buildings is 30 feet wide. This middle section is a hallway connection between the two buildings. It is set back 65 feet from the northern façade of Building 3A and 3B facing north. The entire building including 3A, 3B, and the hallway is 195 feet wide. This is 25 feet less than the original design and includes the 30 feet wide hallway that is set 65 feet back.

Building 3 has been rotated approximately 29 degrees toward the east to decrease the visual impact from afar. In regards to landscaping as screening the façade, the landscape plan has been revised. The original plan saved 17 existing trees in the area in front of the Building 3. The original landscape plan added 6 large specimen trees to be planted in front of Building 3. The current plan saves the 17 existing trees and introduces 46 large specimen trees to be planted. The additional trees have been placed to help buffer the view of the Building 3 from Main Street and Heber Ave.

The new design has also decreased the amount of disturbance to the natural grade of the site. The original design had lowered the final grade along the north façade of the building, exposing greater height along that elevation of the building.

The Planning Commission was tasked with reviewing the revised design and deciding whether or not the new design has adequately addressed the remand order that “The height, scale, mass and bulk of Building 3 shall be further reduced to meet the Compatibility standard”. The Planning Commission made a finding that the height, scale, mass and bulk of Building 3 were further reduced to meet the compatibility standard.

The appellant also addressed concern for the area beneath grade. The overall area beneath grade has increased slightly in the revision of Building 3. The previous plan included 14,763 square feet below grade. The current plan has 15,452 square feet below grade. The overall increase below grade is 689 square feet. The overall square footage of the building has decreased from 95,552 square feet to 71,289 square feet. This is a 25% reduction in overall floor area.

The City Engineer will review the drainage plans to make sure that drainage impacts are mitigated and that the post-development run-off does not exceed pre-development run-off. Conditions of Approval #3 and #6 address drainage and review by the City Engineer.

Condition of Approval #3: City Engineer review and approval of all appropriate grading, utility installation, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit

issuance.

Condition of Approval #6: The developer shall mitigate impacts of drainage. The post-development run-off must not exceed the pre-development run-off.

5. The number of existing natural trees left on Parcel 2B after construction is completed will be significantly less than what is represented by the developer.

Staff response: During the City Council review, members of the public raised the concern that the landscape plan had not been reviewed for Wild Land Interface regulations compliance and therefore, more trees may have to be removed. The City Council ordered that the final landscape plan be reviewed for compliance with the Wild Land Interface regulations. The Building Department has reviewed the proposed landscape plan for compliance with the Wild Land Interface regulations. During the review, six trees were identified which must be removed due to fire risk and proximity to the proposed buildings. The six trees to be removed will be replanted according to the tree mitigation plan.

The mitigation plan proposed by the applicant replaced each high quality tree with two 20'-30' trees and all second tier trees at a ratio of 1.5 20'-30' trees to 1 second tier tree. This is included in the Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009. In the July 8, 2009 approval, Condition of Approval #4 states "The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be adhered to. A member of the Planning Staff and Planning Commission will be invited to attend the pre-installation conference. Prior to operating any excavation machinery, all operators of any excavation machinery must sign off that they have read, understand, and will adhere to the Temporary Tree and Plant Protection plan."

Bonding of the landscape plan was also included in the remand. Staff added a new condition of approval to create a bond to cover the cost of the proposed landscape plan. Condition of Approval #16 states "A bond shall be collected prior to issuance of a grading or building permit to cover the cost of the landscape plan."

6. The previous Conditional Use Permit lock outs were prohibited. This has been changed and greater than 54 rentable units could be entitled for the parcel. There will likely be more than 54 units for the hotel. This is beyond what is indicated in the Deer Valley Master Plan at the time we purchased our property.

Staff response: As stated previously, during the City Council remand, a condition of approval was added (#12) stating "no lockout units are permitted within this approval". During the Council review there was discussion of amending the condition of approval but the application was remanded to the Planning Commission without the additional condition of approval due to staff error. The

condition was not included during the Planning Commission April 28, 2010 approval. This was identified during the public hearing. When the CUP was approved, the motion included adding the condition of approval #19 that "Lockout units have not been included within the current application. The addition of lockout units would be a substantial deviation from the current plan and must be approved by the Planning Commission." During the meeting, staff was unable to locate the original language discussed during the City Council meetings. Staff agrees with the appellant that condition of approval #19 should read "no lockout units are permitted within this approval" and has modified that language to reflect the original approval.

7. There is not a phasing plan to complete the project. The developer can do a little site work on the project each year, maybe build a condo or two in order to maintain their entitlements. This has been done by the Sweeny's for Treasure Hill. It is unlikely the project CUP will simply expire if the developer is unable to obtain financing for the entire project within the next year.

Staff response: Staff created conditions of approval to require a phasing plan be approved by the building department and to ensure that the project begins within a twelve month period.

Condition of Approval #10 states "This approval will expire *June 24, 2011*, 12 months from *June 24, 2010*, if no building permits are issued within the development. Continuing construction and validity of building permits is at the discretion of the Chief Building Official and Planning Director."

Condition of Approval #18 states "A phasing and bonding plan to ensure sight restoration in conjunction with building phasing beyond a public improvement guarantee must be approved by the Building Department. The plan shall include re-vegetation for perimeter enhancement and screening into the project, soil capping for any new disturbance and previous disturbance of the site, and clean-up of all staging areas."

LMC section 15-1-10(G) states "Unless otherwise indicated, Conditional Use permits expire one (1) year from the date of Planning Commission approval, unless the Conditionally Allowed Use has commenced on the project. The Planning Commission may grant an extension of a Conditional Use permit for up to one (1) additional year when the Applicant is able to demonstrate no change in circumstances that would result in an unmitigated impact. Extension requests must be submitted prior to the expiration of the Conditional Use permit, notice, and processed with a public hearing the same as a normal Conditional Use permit."

8. The North Silver Lake area was platted around 1987 or 1988. Property owners within the North Silver Lake Zone were not notified when plat amendment changes were made within the North Silver Lake zone.

Staff response: Not applicable. This is regarding a previous application not the application under review.

Process

The City Council action on this matter shall constitute Final Action. The City Council's decision on this appeal may be appealed to the District Court within 30 days of Final Action.

Notice

Property owners who received mailed notice for the original Planning Commission hearing were sent a courtesy mailing seven days prior to the appeal hearing. The property was properly posted and legally noticed seven days prior to the appeal hearing.

Public Input

Staff has not received additional public input concerning the appeal at the time of writing this report.

Alternatives

- The City Council may affirm the Planning Commission's decision to approve, in whole or in part, the North Silver Lake Cottages CUP as conditioned or amended; or
- The City Council may reverse the Planning Commission's decision and deny the North Silver Lake Cottages CUP, in whole or in part, and direct staff to make Findings for this decision; or
- The City Council may remand the matter to the Planning Commission's with direction on specific items; or
- The City Council may continue the discussion on the appeal of the North Silver Lake Cottages CUP to a date certain, or a date uncertain.

Recommendation

Staff recommends the City Council review the appeal and consider affirming the Planning Commission decision to approve the North Silver Lake CUP as amended and conditioned, with minor corrections to the findings and conditions approved by Planning Commission as underlined:

Findings of Fact

1. The subject property is at 7101 North Silver Lake Drive. This property is also known as Lot 2B of the North Silver Lake Subdivision.
2. The proposed development is located within the Deer Valley Master Plan Development.
3. Within the Deer Valley Master Plan, the North Silver Lake Subdivision Lot 2B is permitted a density of 54 residential units and 14,552 square feet of commercial and support space.
4. The applicant has applied for a conditional use permit for the development of 54 units located on Lot 2B of the North Silver Lake Subdivision. The

applicant has included 5102 square feet of support commercial space within this application. The project consists of 16 detached condominium homes and four condominium buildings containing 38 condominium units. The remaining commercial units are not transferable.

5. The North Silver Lake Subdivision Lot 2B is 5.96 acres in area.
6. The Deer Valley Master Planned Development (MPD) requires that all developments are subject to the conditions and requirements of the Park City Design Guidelines, the Deer Valley Design Guidelines, and the conditional use review of LMC chapter 15-1-10.
7. The Deer Valley MPD determines densities on parcels as an apartment unit containing one bedroom or more shall constitute a dwelling unit and a hotel room or lodge room shall constitute one-half a dwelling unit. The Deer Valley MPD does not limit the size of units constructed provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with MPD and all applicable zoning regulations.
8. Within the Deer Valley MPD development parcels exhibit there is a note for the NSL Subdivision Lot 2D Open Space stating "This parcel has been platted as open space, with the open space applying to the open space requirement of Lot 2B." Lot 2D is 4.03 acres in size.
9. Within the original North Silver Lake Subdivision, the Bellemont subdivision was allowed to also utilize Lot 2B towards the 60% open space requirement. The Bellemont Subdivision utilized $\frac{1}{4}$ acre of the Lot 2B parcel to comply with the open space requirement.
10. The current application site plan contains 70.6% of open space on the site including the remainder 3.78 acres of open space on Lot 2D.
11. The property is located in the Residential Development zoning district (RD) and complies with the Residential Development ordinance.
12. The property is within the Sensitive Lands Overlay Zone and complies with the Sensitive Lands Ordinance.
13. The height limit for Lot 2B was established at 45 feet within the Deer Valley Master Plan. The development complies with the established height limit, with the allowance of five feet for a pitched roof.
14. The onsite parking requirements for the four stacked flat condominiums have decreased 25% in compliance with section 15-3-7 of the Land Management Code. The Planning Commission supports a 25% reduction in the parking for the stacked flats within the development.
15. The Planning Commission held public hearings on August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009, and July 8, 2009.
16. The Planning Commission approved the CUP on July 8, 2009.
17. An appeal of the CUP approval was received July 17, 2009 within ten days per LMC 15-1-18.
18. The City Council reviewed the appeal of North Silver Lake lot 2B on October 15, 2009 and on November 12, 2009.
19. On November 12, 2009, the City Council remanded the Conditional Use Permit back to the Planning Commission with three specific items to be addressed within the order.

20. The Planning Commission reviewed the North Silver Lake Conditional Use Permit remand on November 11, 2009 and January 13, 2010 and two Planning Commission regular agenda meetings on March 10, 2010 and April 28, 2010. The Planning Commission approved the revised Conditional Use Permit on April 28, 2010.
21. The Conditional Use Permit was appealed by two separate parties within ten days of the Planning Commission approval.
22. The design for Building 3 decreased the overall square footage of the Building 3 twenty-five percent (25 %), reoriented the building on the site, and divided the original single building into two interconnected buildings of smaller scale and size than the original single building.
23. The landscape plan was modified to comply with the Wild Land Interface regulations.
24. Construction phasing and additional bonding beyond a public improvement guarantee has been required.

Conclusions of Law

1. The application is consistent with the Deer Valley Master Planned Development and the Park City Land Management Code, particularly section 15-1-10, Conditional Use Permits.
2. The Use is compatible with surrounding structures in use, scale, mass, and circulation.
3. The Use is consistent with the Park City General Plan.
4. The effects of any differences in Use or scale have been mitigated through careful planning.
5. The Planning Commission did not err in approving the application.

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. This plan must address mitigation for construction impacts of noise, vibration, and other mechanical factors affecting adjacent property owners. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be included within the construction mitigation plan.
3. City Engineer review and approval of all appropriate grading, utility installation, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.
4. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be adhered to. A member of the Planning Staff and Planning Commission will be invited to attend the pre-installation conference. Prior to operating any excavation machinery, all operators of any excavation machinery must sign off that they have read, understand, and will adhere to the Temporary Tree and Plant Protection plan.

5. A landscape plan is required with the building permit. The landscape plan must reflect the site plan and existing vegetation plan as reviewed and approved by the Planning Commission on April 28, 2010.
6. The developer shall mitigate impacts of drainage. The post-development run-off must not exceed the pre-development run-off.
7. Fire Marshall review and approval of the final site layout for compliance with City standards is a condition precedent to building permit issuance. The proposed development shall comply with the regulations of the Urban Wild Land Interface Code. A thirty foot defensible space will be mandatory around the project, limiting vegetation and mandating specific sprinklers by rating and location. The Fire Marshal must make findings of compliance with the urban wild land interface regulations prior to issuance of a building permit.
8. Approval of a sign plan is required prior to installation of any signs on the property.
9. Staff review and findings of compliance with the lighting regulations of LMC Section 15-5-5(l) are required prior to the issuance of an electrical permit.
10. This approval will expire June 24, 2011, 12 months from June 24, 2010, if no building permits are issued within the development. Continuing construction and validity of building permits is at the discretion of the Chief Building Official and Planning Director.
11. Approval is based on plans reviewed by the City Council on June 24, 2010. Building Permit plans must substantially comply with the reviewed and approved plans. Any substantial deviation from this plan must be reviewed by the Planning Commission.
12. The SWCA wildlife mitigation plan dated April 15, 2009 must be included within the construction mitigation plan and followed.
13. The two ADA units are to be platted as common space and cannot be separately rented without renting another unit.
14. The Sustainable Design Strategies created by Living Architecture as reviewed by the Planning Commission on April 28, 2010 must be adhered to within the building permit process. Any substantial deviation from this plan must be reviewed by the Planning Commission.
15. The final condominium plat for North Silver Lake Lot 2B may not exceed the square footage for common space, private space, and commercial space as shown in the plans approved by the City Council on June 24, 2010.
16. A bond shall be collected prior to issuance of a grading or building permit to cover the cost of the landscape plan as approved.
17. A phasing and bonding plan to ensure site restoration in conjunction with building phasing beyond a public improvement guarantee must be approved by the Building Department. The plan shall include re-vegetation for perimeter enhancement and screening into the project, soil capping for any new disturbance and previous disturbance of the site, and clean-up of all staging areas.
18. A bond shall be collected at the time of Conditional Use Permit Approval to ensure that the existing impacts of the site will be repaired at the time of CUP expiration or extension. At such time, the existing rock area of the site shall be capped with soil and re-vegetated and new landscaping along the

perimeter entrance shall screen the view into the project. If a building permit is issued within one year, this bond shall be released.

19. No lockout units are permitted within this approval.

Order:

1. Appeal #1 from Eric Lee is denied in whole. The MPD is approved with the amended Findings of Fact and Conditions of Approval as stated within the staff report.
2. Appeal #2 from Lisa Wilson is denied in whole. The MPD is approved with the amended Findings of Fact and Conditions of Approval as stated within the staff report.

Exhibits – (see separate packet on-line at parkcity.org)

- A. Appeal #1 from Eric Lee
- B. Appeal #2 from Lisa Wilson
- C. April 28, 2010 Planning Commission staff report
- D. March 10, 2010 and April 28, 2010 Planning Commission minutes
- E. Applicant's Exhibit