



**PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
JUNE 14, 2023**

COMMISSIONERS IN ATTENDANCE: Chair Laura Suesser, John Kenworthy, Vice Chair Sarah Hall, Bill Johnson, Christin Van Dine, John Frontero, Henry Sigg

EX OFFICIO: Rebecca Ward, Assistant Planning Director; Alexandra Ananth, Senior City Planner; Virgil Lund, City Planner; Charles Pearlman, City Attorney's Office; Mark Harrington, City Attorney

1. ROLL CALL

Chair Laura Suesser called the meeting to order at approximately 5:30 p.m. She reported that all Commissioners were present.

2. MINUTES APPROVAL

A. Consideration to Approve the Planning Commission Meeting Minutes from May 10, 2023.

MOTION: Commissioner Van Dine moved to APPROVE the Planning Commission Meeting Minutes from May 10, 2023. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

B. Consideration to Approve the Planning Commission Meeting Minutes from May 24, 2023.

MOTION: Commissioner Sigg moved to APPROVE the Planning Commission Meeting Minutes from May 24, 2023. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

3. PUBLIC COMMUNICATIONS

There were no public communications.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

There were no Staff communications.

Commissioner Kenworthy thanked the Commissioners and Staff and stated that it had been a pleasure working with them and serving on the Planning Commission. In reflecting on the Liaison position he held on Transportation, there had not been a lot over the last couple of years, especially with COVID-19.

Commissioner Kenworthy wished to nominate Commissioner Frontero to take over his Liaison position for Transportation to serve with Chair Suesser. After some discussion regarding the timing of a vote on the nomination, Commissioner Kenworthy announced that he would resign today as Transportation Liaison and nominate Commissioner Frontero. City Attorney, Mark Harrington reported that Staff would put the matter on the agenda for the next meeting at which time the Commission could vote on Commissioner Kenworthy's nomination.

Commissioner Hall disclosed that concerning the HOPA Affordable Master Planned Development ("AMPD"), she serves on the Board of the Community Foundation, which held a regular Board Meeting the day prior where there was a presentation about HOPA. She noted that the Community Foundation is affiliated with affordable housing. Commissioner Hall reported that she left the meeting during the presentation.

Chair Suesser asked City Attorney Harrington to indicate whether it would have been appropriate for Commissioner Hall to attend that presentation. City Attorney Harrington stated that this is a small community and they all wear many hats, with non-profits in particular. He stated that the Commissioners should try to avoid one-on-one *ex parte* communications on administrative matters; however, oftentimes a Commissioner cannot avoid discussions or presentations made as part of a group setting. It would be on those occasions where a disclosure should be made at the meeting where the item was back before the Commission. He stated that the substance of the disclosure was to ensure that all parties have a fair opportunity to hear everything heard by a Commissioner before a decision is made.

5. CONTINUATIONS

A. 729 Rossie Hill Drive - Conditional Use Permit - The Applicant is Requesting a Nightly Rental Conditional Use Permit in the Historic Residential Low-Density (HRL) Zoning District. PL-23-05604.

Assistant Planning Director, Rebecca Ward, reported that the applicant requested additional time. Staff recommended continuing the item to June 28, 2023.

Chair Suesser opened the public hearing. There were no public comments. The public hearing was closed.

MOTION: Commissioner Van Dine moved to CONTINUE 729 Rossie Hill Drive – Conditional Use Permit, and the public hearing thereon to June 28, 2023. Commissioner Hall seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

- B. 755 Rossie Hill Drive - Conditional Use Permit - The Applicant is Requesting a Nightly Rental Conditional Use Permit in the Historic Residential Low-Density (HRL) Zoning District. PL-23-05605.**

Chair Suesser opened the public hearing. There were no public comments. The public hearing was closed.

MOTION: Commissioner Sigg moved to CONTINUE 755 Rossie Hill Drive – Conditional Use Permit, and the public hearing thereon to June 28, 2023. Commissioner Hall seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

6. REGULAR AGENDA

- A. 741 Rossie Hill Drive - Conditional Use Permit - The Applicant is Requesting a Nightly Rental Conditional Use Permit in the Historic Residential Low-Density (HRL) Zoning District. PL-23-05603**

Chair Suesser reported that the above item was withdrawn.

- B. 3267 West Deer Hollow Road - Condominium Plat - The Applicant Proposes 19 Market Rate Residential Units and One Affordable Unit as Part of the Phase II of the Founders Place Condominium Project. PL-23-05597.**

City Planner, Virgil Lund reported that the above item was a Condominium Plat for Founders Place, Phase II at 3267 West Deer Hollow Road. The project is located in Wasatch County and the Founders Place Phase II Plat was subject to the Master Planned Development (“MPD”) and Conditional Use Permit (“CUP”) approved on January 12, 2022. He added that the Phase II Plat was also subject to the 1995 Settlement Agreement and the Wasatch County Density Determinations.

Planner Lund reported that the Phase II Plat includes 19 market-rate residential units totaling 49,374 square feet, along with one affordable housing unit. A screenshot from the applicant’s website was shown to the Commission. Planner Lund indicated that it illustrates the Founders Place project in relation to the Deer Valley area. The proposed Plat Amendment will occur on Lot 2. He stated that the Founders Place Project as a whole was approved for 78 residential units for all three phases. The setbacks for the project were determined according to the Wasatch County Density Determination. The Density Determination requires a 40-foot setback from Deer Hollow Road and a 25-foot rear setback. Additionally, a Party-Wall Agreement was submitted for the side setback with Lot 1 because the buildings will be adjoining.

Planner Lund stated that the Founders Place Phase II Plat complies with the requirements of the Housing Mitigation Plan, modifications to the MPD, and the Multi-Unit Dwelling CUP with regard to Density, Open Space, and Affordable Housing obligations. The Park City Municipal Development Review Committee reviewed the application and did not require any Conditions of Approval. The Wasatch County Development Review Committee also reviewed the application and required the submission of a Storm Water Runoff Protection Plan.

Staff recommended the Planning Commission review the proposed Condominium Plat for Phase II, open a public hearing, and consider forwarding a positive recommendation for City Council's consideration on July 6, 2023. He noted that the applicant prepared a brief presentation and left it to the discretion of the Commission if more information is required. The Commissioners asked to hear the applicant's presentation.

The applicant's representative, Bill Fiveash from East West Partners, stated that they are very excited about moving on to Phase II of the project. He reported that Carder Lamb, Project Manager from East West Partners, had a 12-page presentation for the Commission that was recently shared with Mayor Nann Worell. The presentation focused on the status of Phase I, the plans for Phase II, and specifically the applicant's employee housing efforts.

A rendering of Phase I was presented to the Commission and it was noted that this project is below the St. Regis, which is a 13-story building at the top of the hill. Applicant Fiveash stated they began Phase I in October and it had been nothing but a nightmare given the weather this winter. He noted that while they had approximately 600 inches of snow on-site, they were able to stay on track and were only 30 to 45 days behind schedule. He lauded the General Contractor, SMC Construction, and noted that the applicant worked with Deer Valley for 20 years and was able to keep people skiing during construction.

Applicant Fiveash indicated that they still expect substantial completion in September of 2024 on this Phase, and presented a photograph taken in January. Phase I is comprised of three components including Edgar East and Edgar West, which are the two residential buildings, and the Polly, which is the amenity building. In mid-January, they were still going down into the ground on Edgar and were starting to pour concrete on Edgar West.

Applicant Fiveash presented an image that showed the status in May when there was still a lot of snow on the mountain. He commented that they were proud of SMC Construction and the work they were able to do with Deer Valley to keep the site and the community clean. He noted that it was remarkable that they had 600 inches of snow on site, and they were able to contain the mud. In Phase I, there are 32 residences, all of which are under contract with binding agreements with new homeowners. He estimated that they will close in October 2024. He added that Phase I included four one-bedroom employee housing units that are approximately 850 square feet each. These would be delivered at the same time in October 2024.

Applicant Fiveash offered up a Transfer Fee that would go toward the City's employee-housing effort and shared that when they close the residences in October 2024, the applicant would transfer a check for \$835,413 to the City Housing Fund. With regard to Phase II, Applicant Fiveash advised that the design was completed and they were ready to move forward. Phase II will have 19 residences that will go on the market this summer. They hoped to break ground by the end of the summer if they were able to get the Plat in place, as well as the sales. In the State of Utah, in order to have binding contracts they must have the Plat recorded, which also dictates when they can begin construction. Applicant Fiveash stated they hoped to have the Plat approved by the Planning Commission tonight and approved by the City Council at the end of the month.

If Phase II moves forward, he expected those residences to close in March 2025 and generate an additional \$540,000 in benefit to the Community Housing Trust, as well as a Phase II two-bedroom employee housing unit for a total of five employee housing residences in Phases I

and II. When Founders Place is complete, it will have 78 residences in three different Phases. There will be a total of six employee-housing units.

Applicant Fiveash shared that the cost of the six employee housing units in today's market numbers is \$7.3 million. He noted that it was something they want to do but added that it was a scary number as they move forward into the future and try to deliver additional employee housing. He clarified that the \$7.3 million was just the hard construction costs. He further explained that there was a 13% increase in the hard cost numbers for Phase I, received in July 2022, and the Phase II numbers received in February. They were well in the \$700 per square foot range to build these structures in Deer Valley.

It was noted by Applicant Fiveash that the good news was they would expect the Transfer Fee that would go into the Housing Fund through 2040 would generate approximately \$3.2 million. In addition, because the applicant only pledged half of the Transfer Fee on the original sale, the full Transfer Fee would go to the City. On all subsequent sales, half of it through 2040 would go to the City. He added that the remainder of the money would stay within the Founders Place Community Foundation and would be spent within the community. One of their goals was to engage the new homeowners at the same level they were all engaged in looking after the community. One of the ways to do that would be to encourage participation in charities. The Transfer Fee would fund the Community Foundation made up of those homeowners, and the Charter of the Community Foundation would be to benefit the community.

Applicant Fiveash stated that in total, he felt they would generate \$12.476 million in value through 2040 with the Transfer Fee and employee housing units. He stressed that it was important that they stay on track because if they get the project done, these benefits would happen.

In response to an inquiry from Commissioner Kenworthy, the applicant advised that the second homeowner percentage of the 32 units was 100%. Applicant Fiveash added that they were seeing a little change at Argent, which is a project that came before the Commission a few years ago. Two homeowners were spending a lot more time in their homes.

Commissioner Kenworthy recalled discussions regarding the Sunset Clause and noted that the applicant did not seem worried about that. Applicant Fiveash stated he was concerned since they still had 27 more units after this Phase. He mentioned that the lending environment in this community was very scary. The Phase I project was financed through Western Alliance Bank, which was a great lender; however, he wished they were not in the news.

Applicant Fiveash commented that the number of banks who want to lend on projects in the resort communities was down to virtually zero, and without their 40 years of experience and relationships they likely could not get banks to respond at this time. Project Manager Lamb added that this had broadened beyond the resort communities and was occurring across the entire nation. The banks have no money to lend because no one was paying off loans. He stressed this was a unique environment. Applicant Fiveash offered that they were lucky to be in a great community where with the 19 residences that would be brought into the market this summer, and the pre-sales in place.

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

Commissioner Hall asked about the timing for the recordation of the Party Wall Agreement. Planner Lund explained that was a Condition of Approval as part of Phase I, and the applicant submitted the Party Wall Agreement, which would be reviewed by the City Departments. He felt that the Party Wall Agreement would be submitted for recordation with the County just before the Mylar was to be submitted. Commissioner Hall asked if the plat notes for Phase I would be copied over to this proposed Plat. Planner Lund explained that Phase II would have separate plat notes, and that would essentially mirror the Phase I plat notes. Project Manager Lamb confirmed that the requirements of the Phase I Plat were copied onto the Phase II Plat.

Commissioner Frontero asked if the plat notes would be a part of the recording with the County. Project Manager Lamb confirmed that they would be part of the recorded document.

MOTION: Commissioner Kenworthy moved to forward a POSITIVE recommendation for the City Council's consideration on July 6, 2023, for 3267 West Deer Hollow – Founders Place Phase II Condominium Plat, based on the Findings of Fact, Conclusions of Law and Conditions of Approval as follows:

Findings of Fact

Background:

1. The Founders Place Phase I Condominium Plat was approved by the Park City Council on January 27, 2022, and recorded with the Wasatch County Recorder on July 5, 2022.
2. The Founders Place Phase II Condominium Plat includes 19 market-rate condominium units and one affordable unit.
3. The Founders Place Phase II Condominium Plat complies with the Recreation Commercial Zoning District requirements.
 - a. The Founders Place Phase II Condominium Plat complies with the Front, Rear, and Side Setback Requirements.
 - b. The Founders Place Phase II Condominium Plat complies with Open Space requirements established in the Master Planned Development Review.
4. The Founders Place Phase II Plat complies with the requirements of the Land Management Code, Housing Mitigation Plan approved by the City Council on June 28, 2022, modifications to the Master Planned Development, and the Multi-Unit Dwelling Conditional Use Permit which were approved by the Planning Commission on January 12, 2023.

Conclusions of Law

1. There is Good Cause for the Founders Place Condominium Phase II Plat because it complies with the requirements of the Master Planned Development Modification and Multi-Unit Dwelling Conditional Use Permit.

2. The Condominium Plat is consistent with the Land Management Code, including Chapter 15-2.16 Recreation Commercial Zoning District, and § 15-7.1-6 Final Subdivision Plat.
3. Neither the public nor any person will be materially injured by the proposed Plat Amendment.
4. Approval of the Condominium Plat, subject to the conditions stated below, does not adversely affect the health, safety, and welfare of the citizens of Park City.

Conditions of Approval

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the Plat for compliance with State law, the Land Management Code, and the Conditions of Approval, prior to recordation of the Plat.
2. The Applicant shall record the plat with Wasatch County within one (1) year from the date of City Council approval. If recordation has not occurred within one (1) year's time, this Plat approval will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. The plat shall note that fire sprinklers are required for all new construction.
4. The City Engineer shall review and approve all Lot grading, utility installation, public improvement, and drainage plans for compliance with City standards prior to issuance of any building permits.
5. The Applicant shall submit draft deed restrictions in compliance with the approved Housing Mitigation Plan for review and approval by the Planning, Housing, and Legal Departments prior to submitting a condominium Mylar for the one affordable unit within Phase II. The deed restrictions shall be approved, executed, and recorded simultaneously with the condominium Mylar.
6. No Certificate of Occupancy for any market-rate unit for Phase II shall be issued by the City until the affordable unit required for Phase II is complete and deed restrictions, in a form approved by the City Attorney's Office, are recorded.
7. Site plans and Building Design must resolve snow release issues to the satisfaction of the Chief Building Official prior to issuance of a Building Permit.
8. The submitted Storm Water runoff protection plan must be approved by Wasatch County prior to building permit issuance.

Commissioner Hall seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

C. Huntsman Estates – Plat Amendment – The Applicant Proposes to Amend Plat Note 3 to Clarify the Building Envelope and Limits of Disturbance Shown on the Huntsman Estates Plat. PL 23-05540.

Senior City Planner, Alexandra Ananth, reported that the applicant was attending remotely, and would offer a presentation after Planner Ananth's report to the Commission. She advised that Huntsman Estates is a 15 Lot Subdivision approved by the City Council in July 2020. It consists of a 40-acre site located off of Royal Street up towards the Silver Lake community. The property is zoned Residential Development ("RD") and is located within the Deer Valley MPD.

Planner Ananth presented an image of the recorded original Subdivision, which includes 15 Lots and a Common Area parcel. The original Huntsman House remained on Lot 12, which is larger than the rest of the Lots. Two additional lands might be developed in a future phase. She reported that Limits of Disturbance ("LOD"), Maximum House Size, Significant Vegetation, and Neighborhood Compatibility were all topics of discussion at both Planning Commission and City Council meetings held on this project. At the time of application, the applicant strongly opposed a Maximum House Size limit, and noted there were no limits in the Deer Valley MPD.

Planner Ananth advised the Plat was originally approved with Building Envelope ("BE") LODs, which were the area within which a house could be built. She noted that it was somewhat unusual that the Building Envelopes and the LODs were combined on the Plat, and it placed the responsibility on the applicant or eventual homeowner to build within the LOD. She noted that it was more typical that the Plat would show either the Building Envelope or the LOD, and they were not usually combined. The combination of the Building Envelope and the LOD had caused some confusion for the buyers and architects of these Lots. She explained that LODs were typically larger and extended out from the Building Pad and Building Envelope, to allow for temporary construction disturbance beyond the Building Envelope that would be re-vegetated after construction.

Planner Ananth stated that Condition of Approval 7 of the original application read as follows: "A plat note shall indicate that all Buildings must be within the LOD area shown on the Exhibit dated 4/15/20. Minor adjustments to the LOD are allowed by the Planning Director so long as the size of the LOD area on the Lot remains the same." She explained that when this plat note was transferred onto the Mylar, it was written down as BE/LOD, and that was how the Plat was recorded.

In response to an inquiry from Chair Suesser, Planner Ananth stated the reference to BE/LOD was not in the Conditions of Approval; however, the Plat Note that was transferred to the Mylar and recorded stated that all buildings must be within the Building Envelope's Limits of Disturbance shown on the Plat. She presented an exhibit that was submitted as part of the original approval, which addressed Lot Area and the LOD. She calculated the BE/LOD in terms of square footage and noted that LODs ranged from 9,148 square feet to just over 25,000 square feet depending on the Lot Size.

Planner Ananth advised that the applicant has proposed to modify Plat Note 3 to exclude driveways from counting toward the Building Envelope LODs. She explained that because the Plat did not show driveways, Staff had been interpreting it as applicants were allowed a certain amount of disturbance, and the driveway had to come out of the LOD. She reiterated that the applicant's proposal was to clarify that driveways be excluded. She reported that the applicant also proposed that the BE/LOD would become the Building Envelope, and allow for temporary

construction disturbance for 10 feet beyond the Building Envelopes. As a concession, the applicant proposed to limit Maximum Home Size to 12,000 square feet. She noted the applicant was not originally inclined to limit the Maximum House Size.

Planner Ananth presented to the Commission an illustration to show the impact of the applicant's proposal. She noted that the black outline on the graphic was the BE/LOD on the recorded Plat. In order to build a house within the BE/LOD, the Building Footprint would typically have to be smaller. She outlined the typical Building Pad in green on the graphic. She explained that the applicant proposed that the black outline on the graphic become the new Building Envelope, and therefore they would be allowed to expand beyond that with temporary construction disturbance ten feet out from the Building Envelope.

Planner Ananth stated that the applicant noted the original LODs were fairly restrictive and were more restrictive than the standard RD Side Setbacks of 12 feet. She advised that they kept the Building Envelopes towards the front of the Lots to prevent long driveways and more site disturbance. Staff spent a lot of time with the applicant on this application trying to arrive at a compromise. With regards to the original proposal, Staff had concerns that the House Size was limited to 12,000 square feet rather than the Lot being limited to 12,000 square feet of total construction. She explained that even if limited to 12,000 square feet, the Gross Residential Floor Area would exclude things such as unenclosed areas like patios and decks, 600 square feet of the garage area, and all basements below grade. Accessory Buildings are not limited in number, and it was not clear if they would count against the Gross Residential Floor Area.

Planner Ananth reported that the Planning Department's general consensus was that the LODs gave ample opportunity for reasonable-sized houses, and the applicant had shown that the average house size in the surrounding neighborhood was approximately 7,000 square feet. Therefore, a 12,000-square-foot house was larger than the average house size in the area. She noted that the Planning Commission tried to limit home sizes initially, and 10,000 square-foot limits were considered in order to be consistent with Red Cloud. Because the Commission discussed protecting Significant Vegetation at length, expanding beyond the LOD would increase Site and vegetation disturbance.

In order to try and deal with some of these issues, Planner Ananth stated that they compromised on Plat Note 3, and proposed the following:

All Lots shall be limited to a Maximum Gross Residential Floor Area of 12,000 square feet, including all Accessory Buildings/Uses, and all development must occur within the Building Envelope. Limits of Disturbance may not extend beyond 10 feet from the Building Envelope. Driveways, utility corridors, paths, and drainage features are exceptions to this restriction. Driveways shall not exceed 20 feet in width. The LOD must be re-vegetated prior to the Certificate of Occupancy. The Gross Residential Floor Area shall be defined per the Land Management Code, except that no more than one basement level shall be allowed on any Lot. Basement shall also be defined by the LMC. Residential Development Lot and Site requirements, including Setbacks and Building Heights, shall continue to apply to all Lots. Lot 12 would be excluded from the Maximum Gross Residential Floor Area.

Planner Ananth stated that the proposal to modify Plat Note 3 complied with the LMC requirements for the RD District, and the Planning Commission should discuss if they could find

good cause for the proposed Plat Amendment. She concluded her presentation to allow the applicant's team present to the Commission.

Benjamin Wu advised that he was appearing on behalf of the developer. He introduced Michael Demkowicz, Alliance Engineering, Paul Huntsman, and Greg Gendrin, Stein Eriksen Lodge. He mentioned that the property was branded and run by a Stein Eriksen team, and was known as Stein Eriksen Estates. The architectural team for Lot 2 was also present to answer any questions.

Applicant Wu felt that Planner Ananth's presentation was a fair representation of what they had been working through. He stressed that they were coming into this as a clarification of the Plat Note, and he felt it was something that did not come to light until the Lot owners were looking to build their homes. There was a difference of opinion as to how to interpret certain Plat Notes, which ultimately led to this point of trying to find a clear guideline as to how to design and build a home.

Applicant Wu also stressed that this was not an attempt to try and build larger homes. It was not the applicant's intent to have big homes on the property, and they had also approached this by recognizing there were no limits in the neighboring areas such as American Flag. They would like to keep that approach, but at the same time, they do not want a neighborhood of fifteen 12,000 square-foot homes. When they ultimately set up this Plat with that intention in mind, he explained that they intentionally set their Building Envelopes to be more restrictive on the length of the LODs. They did not want to take the approach of setting the typical 12-foot Setback; rather, they extended it to 20 feet because they did not want homes right next to each other. He explained that they approached it as though it was the Building Envelope and not necessarily the LOD, which is where the confusion started. As homes were being designed, owners were finding it harder to build within those guidelines without a clear definition of what those lines were.

Applicant Wu stated that ultimately, they were creating larger Setbacks to ensure that the homes would not be so large. He also pointed out that the Lots were fairly slanted, so despite the LOD being larger than in neighboring areas, the actual buildable space was not quite as large as the Envelope would indicate. He reiterated that this would provide a good clarification for the neighborhood, but at the same time, they were willing to set a Maximum House Size limit to ensure that homes would not get out of control and there would be no gamesmanship with the language.

Applicant Wu expressed appreciation for Planner Ananth's work and collaboration on this application and felt it would be a fair amendment to be considered.

Engineer Demkowicz advised that the slides he prepared were presented by Planner Ananth. He added that they had a 3-D model available.

Chair Suesser asked to see the recorded Subdivision Plat, and specifically the Plat Notes. Planner Ananth read Plat Note 3 on the recorded Subdivision Plat as follows: "All Lots are limited to single-family dwellings and accessory units. All buildings must be within the Building Envelope/Limit of Disturbance shown on the Plat. Minor adjustments shall be allowed by the Planning Director so long as the size of the Building Envelope/LOD remains the same."

Planner Ananth advised that when they permitted one house in the Subdivision, they made a small adjustment that reduced the size of the Building Envelope/LOD. The owner was also required to subtract the driveway area from the Building Envelope/LOD. She added that the other Lots that were getting closer to permitting had essentially asked for this Plat Amendment.

Chair Suesser asked if the Lot sizes and Building Pads shown on the recorded Plat were the same as Exhibit C submitted by the applicant that showed the Open Space calculation. Planner Ananth answered in the affirmative. She reported that she picked up on that issue and believed that the requirement was that the development maintain 88% Open Space. Planner Ananth explained that because Lot 12 was so large, the applicant was able to maintain the required percentage.

Chair Suesser asked if expanded LODs would allow the applicant to maintain 88% Open Space. Planner Ananth advised that the LOD would be re-vegetated and would not count against Open Space; rather, only the Building Envelopes would count against Open Space. With total Building Envelopes of 183,000 square feet worth of Site Disturbance, the applicant would still maintain 88% of the total 40-acre site.

Commissioner Kenworthy asked if that calculation included the two Lots. Planner Ananth responded that the two Lots were counted as 100% Open Space now because there was an adjacent parcel owned by the Huntsmans that could potentially be donated. Applicant Wu commented that the Site only has 15 density units, and the Huntsmans own the 20 acres to the north that border Marsac. He stated that at the right time, they would like to have the conversation about putting that land into some sort of Conservation Easement with the City. Currently, there was a private trail across that land. He stated that Land A and Land B were not entitled or platted as buildable Lots. He noted that an Accessory Unit on Land A was part of Lot 12.

Chair Suesser referenced the 4x4 trail mentioned in the applicant's Exhibit C and noted she did not see that trail in the original Subdivision Plat. Applicant Wu advised that on Lot 3, they planned to install the trail that goes across Lot 3. Currently, the trail drops people off at the end of Marsac Avenue and follows Marsac Avenue down to Old Town. The trail splits off onto the 20-acre Huntsman property, and they do not maintain it. They would like to connect that trail so that it would go from Old Town to Royal Street.

Chair Suesser expressed surprise that this was not part of the initial approval. Planner Ananth noted there was a dirt road running through the Subdivision that follows the Snyderville Basin sewer line. She stressed this was not an active trail. Chair Suesser referenced a note on Exhibit C that noted a relocated 4x4 road. Applicant Wu explained that the trail seen on the map used to be the trail they used to maintain the property. Because the Lots go over that trail, they placed the trail on the side in the new drawing.

Planner Ananth noted there was an active hiking/biking trail that crosses the applicant's property for which they granted an easement in Phase I. That trail was dedicated to the City prior to recording the Phase I Plat, along with a \$25,000 contribution for the City to maintain that trail. She confirmed there was an active recreation trail on the side, and then a private trail seen in the aerial image.

Chair Suesser wondered when the trail was put in and for what purpose. Planner Ananth recalled that the trail had existed for a long period of time. Applicant Wu explained that the

thought process was that they were thinking of putting in a 4x4 trail, as there was no easement in place for that trail.

Chair Suesser wanted to know how the relocated 4x4 trail outside the Subdivision came about, and whether the applicant would construct the building sites using the 4x4 trail rather than Legacy Road. Applicant Wu did not feel that the 4x4 trail would be built. Planner Ananth understood that was access to the sewer line, and it was not proposed to remain.

Applicant Huntsman agreed with Planner Ananth and added that the trail seen on Google Maps was not going to be used for construction. He described it as an old trail that went back to the early to mid-1980s.

Commissioner Van Dine understood that the Plat Amendment would restrict the House Size to 12,000 square feet on all subsequent Lots, but there would be no restriction on the Lot 12 home expansion. Planner Ananth stated that as written, Commissioner Van Dine's understanding was accurate. Commissioner Van Dine wanted to address this issue.

Commissioner Sigg asked if the definition of Basement included everything below grade and not opening out. He specifically referenced downhill Lots and wondered if they were referencing basements that were truly subterranean or basements that had three subterranean walls and periscope windows looking out to find the grade at a lower elevation on the site.

Planner Ananth explained that if it met the definition of a Basement, it would not be counted. She read the definition of Basement as follows: "Any floor level below the first story in a building. Those floor levels in buildings having only one-floor level shall be classified as a Basement unless that floor level qualifies as a first story. Basement Area below Final Grade is the area located under a ceiling that it below Final Grade." Therefore, she advised that if a Basement were below Final Grade it would not count; if it a Basement was partially above Final Grade, she believed a portion of it would count towards square footage.

In response to Chair Suesser's inquiry regarding the driveway, Planner Ananth explained that a driveway that was located inside the Building Envelope would not count; only the area connecting the Building Envelope to the Right-of-Way would count. She confirmed that it would be only that section that would be subject to the 20-foot limit. Planner Ananth added that if an owner wanted to use a portion of their Building Envelope as a carport area that would be allowed within the LOD, but it would not count as part of the Building's square footage. Chair Suesser observed that currently, the driveway would count, and noted the distinction was that they wanted to exclude driveways.

With respect to driveways, Commissioner Frontero asked where the confusion was in Plat Note 3, which excluded driveways. Planner Ananth offered that there was no confusion with regard to the driveway area; rather, the confusion was that architects were looking at the BE/LOD as the BE and designing houses to the BE, thinking they could have LODs outside of the BE. Planner Ananth stated that they had been clear that the connection of the driveway would not count against the total allowed LOD. She agreed there was no confusion that way it was currently written that the driveways were not excluded.

Commissioner Frontero observed that the applicant was now asking for exclusion of the driveways. Planner Ananth mentioned that in other Subdivisions, it was more typical that the Plat Note discussed whether driveways were counted or excluded from LOD. Commissioner

Frontero responded that other Subdivisions also have Maximum Square Footages in place, and he did not necessarily see any consistency with that argument.

Applicant Wu commented that the Note did not address driveways. The only neighborhood in the area with a Maximum House Size was Red Cloud. Huntsman Estates was closer to American Flag than Red Cloud, and every neighborhood in the periphery was the same way.

Chair Suesser found it interesting that they went to the trouble of noting the driveway easements necessary for the three southern Lots. It was noted by Engineer Demkowicz that those three Lots were on the hillside above Legacy Way, and the road in front of those Lots was lower than the terrain where the building would be ideally placed. Therefore, on the original Plat, they created driveway easements, which they wanted to maintain in this Plat Amendment. The idea was that Lot 15 could start a little higher on Legacy Way across the Open Space parcel, which would allow the driveway at an elevation that would have been less accessible if they did not have the driveway easements. He added that also spoke to the reason they wanted to be careful about having too much of the driveway area count towards the Building Envelope. He reasoned that Lots 13, 14, and 15 would need a slightly longer driveway to get to the ideal position on the Lot. Some of the Lots off the cul-de-sac on the other side of the Subdivision would require some minor modifications to allow them to be away from each other. If they have a longer driveway to allow for this situation, they would not want an excessive amount of the driveway to be counted towards the Building Envelope size.

Engineer Demkowicz stressed that this was why they wanted a clear distinction for these homes to build driveways, and for Lots 6 – 11 it would be difficult to build extravagant driveways and be able to build the house they want to build. He felt that the Lots on the hill would have longer driveways to allow for them to be positioned above the neighbors' homes. Additionally, longer driveways would be needed at Lots 2 and 3 to get more separation between those homes. For a majority of the homes, however, driveway lengths or areas were not too much of a concern or would be too excessive because it would take away from the owners' ability to put in a house and landscape features.

Commissioner Hall asked if they were proposing to draw LODs around the Building Envelopes, or whether they were just amending Plat Note 3 to clarify the Building construction activity. Planner Ananth explained that they would adjust Plat Note 3 to clarify that what was shown on the Plat was Building Envelopes rather than BE/LODs and that the LOD would be allowed 10 feet beyond the Building Envelope.

Commissioner Johnson sought clarification that they would add a 10-foot buffer around the existing BE/LOD that would be the LOD and the existing depiction on the Plat would be the Building Envelope. Planner Ananth confirmed. In terms of the 12,000-square-foot limit, Commissioner Johnson asked how it would affect the chart included in the Staff Report. He observed that at face value, half of the homes would be allowed to go above 12,000 square feet. Planner Ananth explained that the additional column depicted the square footage of what would be classified as BE; therefore, Lot 2 would have a very extensive Building Envelope of 25,000 square feet. A 12,000-square-foot house could easily fit within that existing BE; however, on some of the smaller Lots where the LOD was limited to 9,000 square feet, the footprint of the house would push the envelope in terms of the Building Envelope.

Planner Ananth reiterated that all Lots would be limited to 12,000 square feet, with the exception of Lot 12. The applicant added that this chart reflects the smaller Lots where an owner would

not realistically build up to the 12,000 square foot maximum because it would not fit. The reason the applicant wanted to keep it at 12,000 square feet was there were only a couple of Lots where they could build to that size.

Commissioner Johnson expressed comments that were largely inaudible.

Commissioner Hall sought confirmation that the new language for Plat Note 3 would state that the outline was the Building Envelope on the existing Plat. Planner Ananth agreed and stated further that the footprint of the house would be required to be contained within that outline. With regard to Footnote 13 on the existing map, Commissioner Hall noted that it also referenced the Building Envelope/LOD. For consistency, she suggested removing reference to BE/LOD in the future and felt it was confusing to have BE/LOD. She wondered if there was a way to clarify that it was the Building Envelope that was around it. In the second sentence, she would change the language from "this restriction" to "exceptions to this LOD" to clarify that the restrictions were in reference to the LOD.

Commissioner Hall supported maintaining the language in prior Plat Note 3 that allowed the Planning Director the authority to not change the limit but could approve minor tweaks. She would also be in favor of not allowing Lot 12 to increase its square footage over what currently existed. Commissioner Van Dine added that would include outbuildings. Chair Suesser noted there was an existing garage on Lot A. Commissioner Hall felt that a 12,000-square-foot home was pretty intense for a majority of the Lots that are on a half-acre. She would be in favor of at least limiting it to 12,000 square feet, as proposed. She felt that even with the Setbacks, 12,000 square feet seemed like a massive house. She commented that it was an error to not include the driveways in the Plat Note, especially since it was also an error to include BE/LOD. She would like to correct this.

Chair Suesser agreed with Commissioner Hall's comments about the 12,000-square-foot limit and did not view it as a concession. Commissioner Sigg interjected that he was still concerned about the definition of a Basement, and the habitability of what might be defined as a Basement. He stated that every diagram in the Code shows exactly the scenario and makes a distinction between a first floor and a Basement. If Basements were excluded, and a Basement had a 5,000 square foot footprint, an owner could add 5,000 square feet to the 12,000 square foot maximum. He added that could be 50% of the 5,000 depending on the slope of the hill and how much was below grade.

Chair Suesser asked Commissioner Sigg if he would be amenable to a 12,000-square-foot Maximum House Size inclusive of Basement. Commissioner Sigg stated he was not as concerned with the 12,000 square foot limit as he was about how a Basement could be construed as adding square footage, especially on a downhill Lot.

Chair Suesser noted that the Planning Commission would need to make a finding of Good Cause, and she requested the Commission to think about if the developer made the public trail connection as a public benefit that would help them get to the Good Cause needed for this application.

Commissioner Frontero reviewed the notes from 2020 to familiarize himself with that process. He noted there were a lot of discussions before the Planning Commission and City Council about protecting Significant Vegetation. He sought clarification that the amended Plat Note 3

would add an additional ten feet to the LODs on each of the Lots. Planner Ananth confirmed that was correct.

Commissioner Frontero felt this was counter to the 2020 discussions regarding limitations to help protect Significant Vegetation. He understood the applicant proposed re-vegetation; however, he observed that was not the same thing. He considered this to be a major disturbance and offered to add up the square footage of that extra 10 feet over 14 Lots. Commissioner Frontero stated this would be a new disturbance that was not granted in 2020. He expressed concern about allowing an additional 10 feet around each Lot's LOD.

Applicant Wu stated it would come down to an interpretation; from the applicant's perspective, they viewed this as a Building Envelope, therefore whether it was 10' or 15' outside the Building Envelope, that was contemplated when they initially recorded the Plat. He felt it was difficult to state that this was new land they were planning to disturb when the applicant felt that this was land that was already agreed to be disturbed. This illustrated the disagreement of whether this was the Building Envelope or the LOD.

Engineer Demkowicz stated they would not be adding 10 feet to the entire perimeter of the rectangular shapes on the drawing; rather, the 10 feet were to allow for the construction of the house. They needed to be able to place the building lines at the Building Envelope and build the house. Without a temporary construction disturbance, they would have to build the house from the inside. They would therefore have to move the building lines in even further than intended, and by setting those additional Side Setbacks of 20 feet, they were already trying to place the buildings further away from each other. He stated that it would not be a 10' disturbance around the perimeter of the entire Building Envelope, other than the disturbance necessary to build the structure. Where they have landscape features, site features, and patios, there would not be a need to disturb significantly beyond those areas because those areas could be built with less disturbance. He stressed that a house needs to be built with access around the perimeter, and that was the intent of the 10-foot disturbance.

Commissioner Van Dine observed that the 10 feet of disturbance might be required on the smaller Lots; however, Lots 2 – 5, and 13 have pretty large Building Envelopes. To grant these Lots 10 feet more on the already large Building Envelopes seemed excessive.

She acknowledged the applicant's intent in this regard but noted that the applicant would not be limited by the 10-foot disturbance around the entire perimeter. Commissioner Sigg asked if there were owners who had already designed their houses. He opined that it likely was these designs that dictated the need for the 10 feet. If they changed the design, they might not need the 10 feet.

Commissioner Sigg agreed that 10 feet around the house would be needed for construction activities; however, they were looking at houses that were already designed, and now the applicant had requested the additional 10 feet to conform to the designs, rather than designing to the criteria of the Lot.

Chair Suesser commented that this led her to believe that these were LODs and not Building Envelopes, because the homes had not yet been designed. Initially, the developer wanted a Plat in place, yet they had not designed the homes. She felt this meant that they were LODs, not Building Envelopes.

Planner Ananth offered her belief that there was a misunderstanding between the applicant and Staff. She always interpreted those as LODs, but it was fair to say the applicant interpreted them as Building Envelopes or Building Footprint Pads.

Applicant Wu highlighted that was the reason they set the Setbacks longer than those required in the RD zone. Engineer Demkowicz agreed and stated that if they had anticipated this discussion, they probably would not have set a Building Envelope at 20 feet and/or potentially would not have created Building Envelopes, to begin with, and keep these as 15 Single Family Lots. He added that the idea of the Building Envelope was to create a little more space between the Lots and position the homes more appropriately, but not at the detriment of an architect designing a house that the owner liked. He noted the houses would have to continue to decrease in size because they would have to account for the track hoe being operated on the BE/LOD. If they were to call it an LOD, they would have likely asked for more area definitely on some of the smaller Lots.

Applicant Huntsman stated that the smaller Lots would have their houses significantly impeded by not having a new Plat Note 3 that would bring more clarity to the Plat.

Commissioner Kenworthy referenced Commissioner Sigg's comments about the 12,000 square feet being inclusive of the Basement, especially on the very small Lots. He stated that if he were an owner of one of the small Lots, he would want to keep the Significant Vegetation between the Lots. He noted that some of those Lots had some very nice views, and there was some older Significant Vegetation towards the back of Lots 5 - 11. Commissioner Kenworthy wanted assurances that this Significant Vegetation would not be disturbed, and he would not want to see an extra 10 feet of disturbance, especially on the back of those Lots. He understood and appreciated that the applicant provided 20-foot Side Setbacks. He imagined the contractors and designers would try and keep the Vegetation on the back of those Lots.

Commissioner Kenworthy felt that the discussions referenced by Commissioner Frontero related to the Significant Vegetation at the back of these smaller Lots. The 12,000 square feet was a trade-off, especially on the bigger Lots; he noted that an enormous house could be built on Lot 3. Commissioner Kenworthy would like some definition of these issues and echoed Commissioner Hall's statement that we do not want to keep coming back on this issue.

Chair Suesser recalled that a visual analysis was done due to the concern that they would see these homes looming over Old Town. She noted that the Maximum House Size in the visual analysis was 10,000 square feet, which was consistent with the Maximum House Size at Red Cloud. She felt the Commission should consider this when considering the applicant's request for a Maximum House Size of 12,000 square feet.

Engineer Demkowicz understood Chair Suesser's point, and noted that this development was not seen from all of the vantage points listed in the LMC, including the bottom of Main Street. He stated that was the vantage point they spent some time on in the Sensitive Land Overlay Analysis for the original Plat. He stated that in 2020, they did modeling when they used 100' x 100' rectangles as a footprint. With an increase to 12,000 square feet, the houses would still not be seen from the Vantage Points in the LMC. In general, he noted that this Site is very isolated from adjoining areas, and not too many would be impacted by an increase from 10,000 to 12,000 square feet. The neighboring communities largely would look down on this neighborhood, as opposed to being within their view.

Engineer Demkowicz stressed that these homes would not be in a location to be seen regularly by everyone in town. He felt that no one would know the difference between a slightly larger house on this particular Site due to its location.

Chair Suesser asked if the Vantage Points in the LMC changed since 2020. Planner Ananth stated that they had not; however, the Visual Analysis from 2020 showed there was very limited visibility of the Site. Commissioner Frontero observed those conclusions were based on 10,000 square foot homes.

Commissioner Hall referenced Commissioner Kenworthy's comments regarding the north end of the property in terms of the Building Envelope and LOD. Engineer Demkowicz showed a graphic to the Commission, and noted that the west side Lots looked down into Old Town. The graphic showed where the applicant set the Building Envelope and the additional area given by the applicant on the Side Setbacks. He stated there were only a handful of trees that were directly outside the Building Envelope line, and they likely would not see a significant number of trees removed. He noted that if there were sensitive trees, they would likely be on the edge of the Lot and therefore maintained.

With regard to the side yards, Engineer Demkowicz stated that part of the reason they set the 20-foot Side Setbacks was to allow them to keep some of the large, mature trees between the homes. If the Side Setbacks were at the zoning requirement of 12 feet, he expressed concern that homes would have to be built at the Lot line, and the trees on the Lot line would have to be removed. By having a 20-foot Setback, the intent was to provide space to maintain some of the mature trees.

Commissioner Sigg asked if there was an exhibit prepared that identified the Significant Vegetation. The applicant understood that would be handled at the Building Permit stage. Each Lot would identify each Significant tree, and which trees would be removed. It would be difficult to do this at the time of the original Plat, and today, to anticipate the various creative architectural floor plans.

Commissioner Sigg would like to see some sort of identification of Significant trees. He suggested a site visit to see what was present and commented that if they knew what was there, they could see the true impact of granting the applicant's request. He stated that everyone would be required to re-vegetate; however, many of the evergreens were big trees. He was not that opposed if there was a really good plan, but he wanted to see what major trees would be removed and what the giveback for those might be. He also would like to see what Lots might be excluded from the expansion of the LOD because of those trees. He reiterated that it would be helpful to his decision to know how the expansion of the LOD beyond the Building Footprint would impact the Significant Vegetation. Chair Suesser commented that this was all contemplated in the Visual Analysis from 2020, and the restrictions on the LODs so the Significant Vegetation would be maintained. She observed that the applicant's request would change a lot of what was already determined about this Subdivision.

Commissioner Hall asked if the Commission wanted to include language that Significant Vegetation could not be removed outside of the Building Envelope. She asked if the Commission agreed that the large trees on the north end of Lot 10 should be preserved. She then commented that Lot 2 had scrub Oak.

Commissioner Sigg felt the context was the number of trees. He recognized that they had to do what they needed to do for construction, but if they were talking about 100 trees that were 50 – 60 feet tall that was a different story. He noted that they were already losing many of those trees at a rapid rate.

Commissioner Hall asked if there was interest in a Condition of Approval stating that No Significant Vegetation could be removed outside of the Building Envelope, even if the builder could have construction activity within the 10-foot extension. Commissioner Van Dine was agreeable with that language.

Commissioner Sigg noted the builder could boom crane materials into the Building Envelope.

Chair Suesser opened the public hearing.

Josh Arrington stated that he works with Upwall Design, and was one of the architects that went through the planning process and was surprised by the limitations on these Lots. He opined that applicant's proposal was a good way to clarify the Building Envelope versus the LOD because when they see Lots on the Plat that do not connect to the road, they initially determine that a driveway would require an exclusion. He reported that the current Plat Note reads as though the Planning Director would have to approve every single Lot because there would be a Building Envelope adjustment for each Lot. Speaker Arrington did not believe that was the intent. He added that his client owned Lots 7 and 8, and wanted to ensure that there would not be any other surprises moving forward. Speaker Arrington noted the addition of requiring re-vegetation before issuance of the Certificate of Occupancy. He agreed there needed to be some sort of contingency on re-vegetation, but the concern was if the house was completed in January, re-vegetation could not occur until May or June. He wondered if there was a way to add a note that would provide a 6-month grace period and would allow for the recording of a bond to ensure that re-vegetation occurs within that time period.

Speaker Arrington added that the Plat required that each Lot obtain their own Arborist Report to label and indicate which trees were Significant, and which trees needed to be saved. He also mentioned a Note regarding the fire safety of having a certain distance from the Building Envelope. He reiterated that his primary concern was making sure there was a means for re-vegetation if a project was completed during the winter season.

There was no further public comment. Chair Suesser closed the public hearing.

Chair Suesser asked Planner Ananth if Staff ever suggested that they just exclude the driveway connection to Legacy Road. She observed that would get the applicant to where they needed to be. Planner Ananth indicated that Staff proposed the applicant exclude the driveway connection. Applicant Wu stated that would be the applicant's more pressing issue. He stated that if there was a possibility to do that first while they focus on the other issues, that would address the Lot owners' concerns that there be an exclusion for the driveways so they could proceed with their building plans.

Commissioner Kenworthy did not have an issue with that and felt that Speaker Arrington made a good point about the Certificate of Occupancy for homes completed in the winter. He suggested a Condition of Approval that would allow an owner who completed their home during the winter to get a Certificate of Occupancy and bond something over until spring.

Commissioners Hall and Van Dine agreed. Chair Suesser added that she would require a Re-Vegetation Plan along with the bond.

Commissioner Frontero asked if a six-month time frame would be sufficient. Applicant Wu felt that would be acceptable.

Commissioner Hall referenced Water Wise Landscaping and recalled that five-feet outside the house was required to be a clear area that would not be re-vegetated from a fire safety standpoint.

Assistant Director Ward explained that with any Significant Vegetation impacted by the requirements of the Wildland Urban Interface Code, the owner would be required to come up with a replacement plan that would be reviewed by the Forestry Board. There would be a distance required between the structure and some of the Significant Vegetation. She confirmed that there would be reasonable flexibility for when owners re-vegetate.

Chair Suesser observed that the Commission was moving in the direction to amend the proposal. She mentioned the discussion regarding the inclusion of any Basement square footage within the 12,000 square-foot Maximum Home Size. There was consensus for this, as long as they could define Basement.

Commissioner Frontero asked Planner Ananth to re-read the definition of Basement. Planner Ananth stated that a Basement was any floor level below the first story. Those floor levels in buildings having only one-floor level are classified as a Basement unless it qualifies as a first story. Commissioner Frontero understood there was a consensus to include Basement included in the 12,000 square feet, and accepted Planner Ananth's suggestion that the 12,000 square feet Maximum would be on the Lot, not just the Building. Planner Ananth confirmed that if additional Accessory Structures were built, they would count toward the total square footage.

Commissioner Van Dine also mentioned discussions regarding limitations on the house size on Lot 12 to its current square footage and outbuildings, with no expansion. Chair Suesser expressed disagreement with that, given the size of the Lot. Commissioner Van Dine stated that it was already a 22,000-square-foot house.

Chair Suesser noted the house on Lot 12 was very isolated, and she did not see the need to include that restriction. She asked the Commissioners if there was a consensus on putting a limit on the home size on Lot 12. Commissioner Hall and Commissioner Frontero supported limiting the home size to its current square footage.

Chair Suesser asked if the proposal was to add up the square footage of the existing home and any Accessory Buildings and limit the Lot to that number. Commissioner Frontero agreed.

Commissioner Sigg was also in agreement with the limitation on Lot 12. Commissioner Kenworthy agreed and would be okay if the applicant would come back and move the Accessory square footage over to the other Lot, especially if they would make a deal with the City to trade for the two additional Lots in exchange for the 20 acres to the City.

Chair Suesser clarified that any development on the east and west Lot would require additional approval. Planner Ananth confirmed that it would. Commissioner Kenworthy suggested that he

would move the building on Lot A over to the 22,000-square-foot home if the applicant was willing to make the trade.

Planner Ananth explained that currently, Lot 12 included that land, and would be reduced in size. Commissioner Kenworthy understood and would give the applicant the square footage from that Accessory Building to the reduced Lot 12 if the applicant wanted to make a trade. Chair Suesser felt that was consistent with the discussions about limiting the square footage on Lot 12.

Commissioner Frontero raised the issue of Good Cause, and Chair Suesser's suggestion of continuing the trail as a community benefit that would go towards Good Cause. He asked if there was consensus about conditioning the approval with something like that.

Planner Ananth asked if they were referencing the trail on the adjacent property. Chair Suesser clarified that they were referencing the trail that went over Lot 3. Planner Ananth advised that was not a real trail and was not open to the public. She added that there was a bike trail on the adjacent property, which was the one they discussed getting an easement on when and if the applicant returned for the additional Lots.

Planner Ananth explained that the Deer Valley MPD would have to be amended to allow for that to happen, which was the real reason it had not happened to date. She stated there had not been a real appetite to amend the MPD to allow for two additional units.

Chair Suesser referenced the original Subdivision Plat and the zigzagging trail. Applicant Wu advised that the trail shown on the Plat did not exist today and the applicant would be putting it in. He added that it connects down Marsac Avenue, where a user could go along the side of the road to get back to Old Town or continue up Marsac Avenue.

Planner Ananth acknowledged she had been looking at the wrong trail. She stated that the trail just described was conditioned on the Plat to be dedicated with an easement to the City, and that had occurred. She confirmed that the trail that zigzags along Lot 3 was public, and added that it went into the applicant's 20 acres and connected through. Applicant Wu confirmed there were two connections to that trail.

In response to an inquiry, Planner Ananth advised that the Deer Valley MPD would need to be amended to bring the additional parcel into the MPD and get the additional units of density.

Chair Suesser asked if the applicant could make that connection now, given that it owns the land. Planner Ananth believed it was prohibited because that parcel was not currently in the Deer Valley MPD and there was no density associated with it.

Chair Suesser noted the Commission was looking for Good Cause to approve this application, and she felt that it would be reasonable to request the developer to make that trail connection. She noted the developer was already required to dedicate the trail shown on the map, but the connection did not continue. Applicant Wu stated the trail did connect, and noted that two trails connect to this one trail. One trail goes through the applicant's 20 acres, and the other was currently a public trail that followed Marsac. He commented that the drawing on the Plat looked like it was not finished, but that was only because the drawing stops at the applicant's property line. He confirmed that the trail continued down.

Chair Suesser invited the applicant to express the good public benefit that would allow the Commission to approve this Plat. She suggested it might be related to trails in this area.

Applicant Wu stated the applicant was amenable to everything discussed, but he felt it was a broader conversation that would take some time. He stated that the pressing issue now was excluding the driveways so that owners could build something that would connect their Building Envelopes. He recognized that all of these issues were getting tied together, but the applicant would like to separate the issues because those other issues would take time. He felt there was a lot of work the applicant could do to show the Planning Commission the different options, and he was not prepared at this meeting to discuss those. Applicant Wu reiterated that the focal point was to get some sort of exclusion of the driveway so that owners could start designing their homes.

Chair Suesser queried why they could not just exclude from the square footage any driveway that falls outside the LOD. Planner Ananth stated that could be accomplished with the Plat Amendment, and noted that was what the applicant proposed.

Chair Suesser commented that the applicant proposed extending 10 feet beyond the current Building Footprint on all sides. Just excluding the driveway outside of those diagrams was less than 10 feet beyond the footprints shown on the diagrams.

Planner Ananth understood that Chair Suesser was asking if the applicant could live without expanding the LOD if the Planning Commission gave them the driveway. Chair Suesser stated it would exclude any driveway that would fall outside of the LOD from the square footage. That would allow owners to connect to Legacy Road.

Applicant Wu expressed that in the interest of moving forward, he would be inclined to accept that; however, he wanted to check with his team and partners to ensure that it would work. He reiterated that was the more pressing issue, and believed it would work to allow owners to connect their Building Envelopes.

Planner Ananth asked if the applicant was suggesting this item be continued to a date certain. Chair Suesser suggested the Commission could pass a motion excluding driveways from the square footage, and then if the applicant needed the LOD area, they could come back. Applicant Wu was agreeable to that process.

City Attorney Harrington asked Planner Ananth to prepare a redline to the proposed Condition of Approval 3 to address the Commission's direction on Basements. Chair Suesser asked the Commissioners if they would prefer limiting this approval to the driveway exclusion, rather than including the other issues such as LODs and Significant Vegetation. Commissioner Frontero was agreeable and offered that he was most concerned about the LODs

Chair Suesser clarified that any driveway within the LOD would count towards the square footage; it would be the driveway outside the LOD that would not count towards the square footage.

Engineer Demkowicz did not feel that gave the applicant much as it would be a small amount of area, and would not help them with Lots 13, 14, and 15 which would need a longer driveway. To include the rest of the driveway as part of the Building Size was a restriction they would not want to accept. He went back to the issue of the 20-foot Side Setback and stated that if they

knew the driveways inside of the Building Envelope would be part of the total square footage, they would not have restricted themselves by virtue of agreeing to the 20-foot Setbacks. He understood the sensitivity of allowing a 10-foot disturbance and commented that it represented a reasonable amount of space to construct the buildings and to allow for clearance for fire safety.

Commissioner Frontero understood the applicant's comments but stressed that the Commission was having an issue with the fact that the applicant's misunderstanding of this language was not the Commission's problem. He emphasized that the applicant misunderstood how this was written, and now the applicant realized the problem after these homes were designed. He commented that Planner Ananth has stated her belief that there was never a misunderstanding. Planner Ananth corrected this and stated her belief that there was a misunderstanding; she also assumed those were LODs and believed the applicant when they represented that they felt they were Building Envelopes.

Commissioner Frontero stated that Planner Ananth never thought it was an issue because she thought it was an LOD, and noted that he felt it looked like an LOD. The applicant now thinks there was confusion, and he was unsure that the applicant's confusion now that the plans have been prepared was something that the Planning Commission was required to solve. He stated the Commission was trying to work with the applicant, who stated the pressing issue was the driveway, yet the applicant objected to Chair Suesser's solution to this issue. Applicant Wu felt that getting a connection to the Building Envelope sounded reasonable; however, he stated that he needed to speak with his team to determine if he had a different opinion.

Engineer Demkowicz stated that it was not that they were confused; rather, as the architects were proceeding through the Building Permit process, the interpretation they received from the City was taking more and more area from what was intended to be site development. He felt the response was to still call these LODs, and then require the walls inside of that area; in that case, they would not have set up a 20-foot Side Setback. Applicant Wu felt this was a conversation the applicant team would need to have. For the purposes of this meeting, he would like to make sure they could connect the driveways from the BE/LOD to Legacy Way. He stated that they could revisit these other issues during the next meeting. He did not feel they would get to the BE/LOD answer during this meeting, and out of respect for everyone's time suggested they come back in a couple of weeks.

Chair Suesser asked Planner Ananth to revise Note 3 to just reflect that the driveway connection to Legacy Way would be excluded. Planner Ananth stated she would work on the proposed draft with the Legal Department prior to this going to City Council, and she would email it to the Commission. She acknowledged that it would essentially add language stating that the driveway connection to Legacy Way shall not be included in the LOD.

Commissioner Johnson asked if they wanted to include the utility corridors as well. Chair Suesser felt Planner Ananth understood, but did not state it correctly. Commissioner Hall suggested a short break to allow Planner Ananth to work on the language. Following a short recess, Chair Suesser called the meeting back to order.

Planner Ananth reported that they would return to the existing Plat Note 3, with a few adjustments to clarify that all Footprints must be within the LOD. She, therefore, struck all references to Building Envelopes. She stated that the Planning Director would still allow minor adjustments to the LOD so long as the LOD remained the same. Driveway connections

between the LOD and the Right-of-Way shall not count against the LOD. Driveways outside the LOD shall not exceed 20 feet in width but could be widened once into the LOD.

Chair Suesser felt that driveway connections between the LOD and the Right-of-Way should not count against the square footage, and was not sure what was meant by “count against the LOD.” Commissioner Hall offered that it was an exception to the LOD because it would allow disturbance of land outside the LOD. Chair Suesser confirmed that this would only apply to the driveway outside of the LOD. Planner Ananth stated they had the total square footage of the allowed LOD, so they could state that the driveway connections between the LOD and the Right-of-Way shall not count against the total LOD square footage allowed.

Commissioner Johnson asked if they wanted to include utility corridors. Commissioner Hall felt this was a very valid point. Planner Ananth stated that they really would want the utility corridors in the driveway. Commissioner Johnson understood that, but noted that sometimes the utility companies pigeonhole property owners.

Chair Suesser wanted confirmation that the reference to the total LOD square footage was clear, and suggested referencing the chart. She added that there was consensus to add an additional Note requiring the re-vegetation prior to the Certificate of Occupancy.

Commissioner Hall believed that only applied to disturbances outside the 10-foot increased LOD. Applicant Wu felt there was already re-vegetation language within the current LOD.

Chair Suesser mentioned that Staff said they would remove all references to Building Envelopes, yet there were still a lot of references to Building Envelopes on the Plat. Planner Ananth stated she could strike all references in Building Envelopes in the other Plat Notes and specifically mentioned Plat Note 13 and the table in the upper right-hand corner.

Chair Suesser referenced discussions during the break. City Attorney Harrington did not recommend references to items submitted by an applicant on a Plat that was not containing a citation to anything specific. He felt it was fine as is, and thought they were going in the wrong direction. Chair Suesser asked if the total LOD square footage allowed was clear in the second to last sentence of Note 3.

City Attorney Harrington felt all of these were qualifications for the first sentence, which just referenced LOD. Adding more verbiage to what they had in the first sentence could just allow someone to argue something else. Chair Suesser suggested ending with “against the LOD” and removing the word “total.”

Planner Ananth asked if the Commission wanted a Condition that any references to Building Envelopes would be stricken. Chair Suesser suggested they could state that all Building Envelopes must be within the LOD.

Commissioner Hall felt the confusion came from use of the term Building Envelope. She understood the applicant’s confusion and would like to do what they could to correct the language. She felt that striking Building Envelope everywhere would clarify the provision.

Chair Suesser asked if anyone wanted to include the Maximum House Size in the amended language. Commissioner Frontero wanted it included in the concession on the driveway. Commissioner Van Dine agreed. There was a consensus to impose a Maximum House Size of

12,000 square feet, inclusive of the Basement. Commissioner Johnson expressed indifference but was comfortable moving forward with that restriction.

Applicant Wu stated that the applicant would not be agreeable to that restriction at this point. He felt that putting a restriction on Home Size in conjunction with the BE/LOD issue was separate. The practical issue they were dealing with was the driveways. Owners were having a difficult time just building within the Building Envelope and LOD because of the driveway issue. He wanted to just fix the driveway issue and noted that they were all aware of the intent when they did this two years ago, and he did not feel the driveways should be the controversial issue. He would be happy to have further discussions on the BE/LOD issue but stated that owners could not build homes right now. Applicant Wu expressed disappointment as he felt they were at a place where owners could get going with their projects.

Chair Suesser asked the Commission if there was a consensus to remove the Maximum House Size from the Conditions to enable the change to allow the driveways to be put into place. Commissioner Sigg questioned the implications of removing the Maximum House Size restriction. Commissioner Hall was agreeable, as she felt it was an error by the Commission to not address the driveways in the first place.

Commissioner Frontero was agreeable to removing the square footage in granting the exclusion for the driveway. Commissioner Kenworthy agreed. Commissioner Van Dine did not like it but was willing to agree. Commissioner Johnson supported removing the Maximum House Size amendment.

Chair Suesser stated that the applicant that the Commission was willing to move forward with giving the applicant the exclusion of the driveway as discussed. Applicant Wu expressed his appreciation.

MOTION: Commissioner Kenworthy moved to forward a POSITIVE recommendation for City Council's consideration on July 13, 2023, on Huntsman Estates – Plat Amendment, amended as follows:

Findings of Fact:

1. The Huntsman Estates Subdivision contains 40.69 acres, is zoned Residential Development, and is located within the Deer Valley MPD Overlay (RD-MPD).
2. The Parcel was originally known as the Westview Parcel located in the North Silver Lake Community of Deer Valley and is assigned 15 Units of Density in Exhibit 1 of the Twelfth Amendment and Restated Deer Valley MPD, with one Unit already developed.
3. The Subdivision is classified as a Major Subdivision according to LMC Section 15- 7.1-3(A)(2) as it contains four (4) or more lots. The subdivision contains 16 lots including one common parcel.
4. On July 9, 2020, City Council approved Ordinance 2020-31 and vacated the previous Westview MPD.

5. Building Height is limited to 28 feet with an exception for the existing residence on Lot 12, which was granted in 1987 as part of the Conceptual MPD approval for the Westview MPD.
6. The proposed Plat Amendment was reviewed for compliance with all Sections of LMC Chapter 15-7, Subdivision General Provisions.
7. Single-Family Dwellings are an allowed Use within the RD District.
8. Lockout Units require a CUP.
9. Accessory Apartments require an Administrative Permit.
10. Nightly Rentals are allowed subject to an active business license and compliance with Municipal Code Section 4-5-3 unless Homeowner Association rules prohibit them.
11. All future buildings shall be reviewed for compliance with the Architectural Design Guidelines of LMC Chapter 15-5.
12. The Applicant submitted a Forrest Assessment from a certified arborist with their original Subdivision Application that evaluated the health and viability of the site and makes recommendations on thinning and removing dead standing trees to balance the need for tree removal for forest health, build-out, and wildfire prevention with the visibility of the site.
13. Care shall be taken in the siting of houses, accessory buildings/uses, and driveways to limit long driveways and the removal of Significant Vegetation.
14. The Applicant submitted BE/LOD Areas for each of the individual lots in a file titled Lot Exhibit dated 4/15/20. The Applicant is now proposing that the BE/LODs be considered Building Envelopes, as noted in new Plat Note 3.
15. The property is located outside the Park City Landscaping and Maintenance of Soil Cover Ordinance.
16. This Plat Amendment seeks to clarify Plat Note 3 and to add a Snyderville Basin Water Reclamation District easement to the Plat.

Conclusions of Law:

1. There is Good Cause for the Plat Amendment. The proposed Amendment complies with the Land Management Code requirements and the Deer Valley MPD and is within the Density approved for the parcel in 1987.
2. The Amendment is consistent with the 2014 Park City General Plan and the Park City Land Management Code including Sections 15-7.1-3(C) and 15-12-15(B)(4) and (9) and applicable State Law regarding Subdivisions.

3. Neither the public nor any person will be materially injured by the proposed Amendment.
4. Approval of this Amendment does not adversely affect the health, safety, and welfare of the citizens of Park City.

Conditions of Approval:

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the Plat Amendment for compliance with State Law, the Land Management Code, and the Conditions of Approval, prior to recordation of the Plat.
2. The Applicant will record the Plat at the County within one (1) year from the date of City Council approval. If recordation has not occurred within one (1) year's time, this approval will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. All Plat Notes on the Huntsman Estates Subdivision Plat shall be carried forward except for Plat Note 3, which shall be modified as noted below. ~~All Lots shall be limited to a maximum Gross Residential Floor Area of 12,000 square feet including all Accessory Buildings/Uses, and all development must occur within the Building Envelope.~~ Limits of Disturbance (LOD) may not extend beyond 10 feet from the Building Envelope. Driveways connections outside the LOD, utility corridors, paths, and drainage features ~~are exceptions to this restriction and will be excluded from the calculation of LOD square footage.~~ Driveways shall not exceed 20 feet in width. ~~The LOD must be re-vegetated prior to issuance of a Certificate of Occupancy.~~ Gross Residential Floor Area shall be defined per the Land Management Code in place at the time of application for building permits. No more than one basement level shall be allowed on any Lot. Basement shall be defined per the Land Management Code in place at the time of application for building permits ~~and will count toward the total square footage.~~ Residential Development (RD) Lot and Site Requirements including Setbacks and Building Height shall apply to all Lots. Lot 12 is excluded from the Maximum Gross Residential Floor Area limit.
4. Prior to the issuance of a building permit for individual Lots, the Applicant or owner of the Lot shall submit a certified arborists assessment of the Lot that analyzes the health and viability of all Significant Vegetation on the property within 100 feet of the principal dwelling and any accessory buildings/uses, including a tree preservation plan that indicates trees proposed for removal, how trees will be protected during construction, and a tree replacement plan. The plan shall indicate that trees shall be limited within a 15-foot radius of any structure, and that diseased or dead trees within 100 feet of any structure will be removed, consistent with the Forest Assessment dated March 28, 2020. This includes vegetation that is no longer standing. A 30-foot vegetation protection area will be required around dwellings with limited existing or new tree landscaping as approved by Park City Municipal Corporation and the Park City Fire District.

5. Should the Applicant move forward with Phase 2 of this project (Additional Land A and B), a Condition of Approval shall be placed on the Plat Amendment that the Applicant shall deed adjacent parcel PC-S-46-B-1 to the City as natural Recreational Open Space.
6. A Construction Management Plan that explicitly prohibits parking on Royal Street during construction will be required prior to the issuance of any Building Permits.
7. The Huntsman Estates Subdivision development exceeds one (1) acre and shall meet the requirements of the municipal separate storm sewer system (MS4) stormwater program. A plat note shall indicate that each lot within this common development shall be required to obtain an MS4 stormwater permit prior to any construction activity.
8. A Plat Note shall indicate that the Subdivision shall be served by an on-call van shuttle service that will transport owners/guests to the Silver Lake or Snow Park area as well as the Main Street core and the surrounding resorts during peak vacation/holiday weeks to minimize the traffic impact from this subdivision. At a minimum, this shall include holiday weeks and three-day weekends in perpetuity. The shuttle van shall utilize Royal Street and shall not utilize Hillside Avenue.
9. A Plat Note shall indicate that the Plat is subject to Ordinance 2023-XX.

Commissioner Hall seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

D. Land Management Code Amendments – Appeals – The Planning Commission Will Review Amendments to Sections 15-1-8 Review Procedure Under the Code and 15-1-18 Appeals and Reconsideration Process to Remove the City Council as an Appeal Authority. PL-23-05689.

City Attorney Harrington introduced Charles Pearlman, a Law Clerk with the City Attorney's office. He advised that Mr. Pearlman came to Park City from Notre Dame and the University of Southern California, was recently married, passed the Bar, and was now making his first presentation before the Commission. Clerk Pearlman appeared to discuss alternatives to City Council acting as the City's appeal authority for MPDs and CUPs. He explained that the proposed changes were occasioned by changes to State law, compatibility between Legislative and quasi-judicial roles, the complexity of legal issues, evidence issues, and limits on *ex parte* communications.

With regard to changes in State law, Clerk Pearlman advised that Utah's Land Use, Development, and Management Act ("LUDMA") was amended to encourage municipalities to change their appeal authority away from their Legislative bodies. These changes occurred over the past 20 years, and most municipalities have moved away from using their Legislative bodies for appellate processes. Park City was one of the few municipalities remaining that had not made that change.

In terms of compatibility between Legislative and quasi-judicial roles, he explained that a quasi-judicial action required an objective determination based on evidence and law; whereas, a legislative action was discretionary, and involved the establishment of policy. This put City Council in a difficult position wherein the law in place might be contradictory to public opinion; in order to faithfully apply the law, they sometimes have to go against public opinion. He noted that City Council serves as representatives of the citizens, and not everyone might understand the distinction when they have to make an objective legal determination that might go against the will of the citizens.

Third, the complexity of legal issues in the appeals had increased over time. Clerk Pearlman noted that many applicants were using attorneys for these appeals; as a result, more legal and land use expertise on the part of the appellate body was required to make correct determinations. This would also lead to decreased litigation and reduce the likelihood of appellate decisions being overturned in court. Clerk Pearlman commented that evidence issues raised similar concerns as the complexity of legal issues. He noted that many cases turned on difficult evidence issues that might be difficult for City Council members to understand without a background in land use or law.

The final reason supporting this change was limits on *ex-parte* communications. He stated that City Council members were in a difficult situation if they violate the rules on *ex parte* communications because the decision would likely be overturned as a due process violation. On the other hand, if they follow the rules, that would limit their communication with the public on important development issues. He commented that the public expected to be able to communicate with their Council Members on what is going on in the City.

Clerk Pearlman stated that the City Code already contained provisions regarding qualifications for an appeal panel. Currently, City Council only appoints an appeal panel when there is a conflict of interest on a particular appeal. The proposed changes would appoint an appeal panel for three-year terms, as opposed to on a case-by-case basis.

Clerk Pearlman reported that Staff recommended the Commission review and consider the proposed amendments, conduct a public hearing, and recommend one of the two appeal authority alternatives for the Council's consideration on July 13, 2023. The other alternative was an individual Appeal Hearing Officer.

With regard to qualifications for the panel, Chair Suesser asked if they should have a provision that required the individuals to not have any conflict of interest with respect to the issue. City Attorney Harrington stated that was already included, and noted Chair Suesser's assistance when they addressed this issue for Treasure. He noted there was a section stating that "absent any conflict of interest" the appeals officer retained the ability to impartially render a decision. He added that conflicts of interest would be subject to the ethics code just like anyone else. There were also due process limitations with an affirmative obligation to disclose.

Chair Suesser understood it was not a recusal situation; rather, an individual would not be appointed if they had a conflict of interest. City Attorney Harrington explained that it applied to appointments, particular matters, and issues that would arise during a hearing.

Commissioner Hall lauded the presentation. She felt that the points raised in the Staff Report and during the presentation were valid, and she would support the notion of recommending a three-person panel. She assumed there would be a cost, but it would be relatively nominal, as it

would likely operate like the Planning Commission. City Attorney Harrington stated that most communities use a Hearing Officer, which is more efficient but more expensive because a Hearing Officer would typically be a higher qualified individual such as an Administrative Law Judge or lawyer who tends to charge significantly more per hour. He reiterated that under the prior Planning Commission's consideration during Treasure, they felt that a more community-based panel would have better accountability to the community and would be more cost-effective.

Commissioner Hall stated she supported this for MPDs and CUPs, and wondered if more issues should go before the appellate panel. City Attorney Harrington stated the Commission could have the same discussion with regard to those other issues.

Commissioner Frontero supported a three-person panel. He asked how many appeals they received each year. City Attorney Harrington advised that it varied widely, but they typically saw 3 – 4 appeals in a year.

Commissioner Sigg and Chair Suesser both supported the idea of a panel.

Chair Suesser opened the public hearing.

Deb Rentfrow agreed with a three-person panel and noted that the Planning Commission had spent a lot of time just getting to this item on the Agenda. She appreciated the Commission's time and effort in the service that they provide to the community.

There were no further public comments. Chair Suesser closed the public hearing.

MOTION: Commissioner Van Dine moved to forward a POSITIVE recommendation for the City Council's consideration on July 13, 2023, for Land Management Code Amendments – Appeals, per Planning Staff's recommendation to create a Permanent Appeal Panel with members serving terms of three years to hear appeals for MPDs and CUPs. Commissioner Sigg seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

7. WORK SESSION

A. Land Management Code Amendments – The Planning Commission Will Conduct a Work Session to Review the Vibrancy Ordinances Outlined in Land Management Code Chapters 15-2.5 Historic Recreation Commercial and 15-2.6 Historic Commercial Business and Section 15-15-1 Definitions to Determine Whether Additional Amendments are Recommended. PL-23-05564.

Assistant Director Ward reported that in the fall of 2022, the Planning Commission asked for a summary of the regulations enacted over the years to help protect the Historic character, vibrancy, and unique character of Main Street. Staff communication was provided in December 2022, and as part of the LMC Amendment priorities, the Commission requested a Work Session to evaluate whether there were opportunities or issues within the Code the Planning Commission might want to explore. She explained that all of the Codes enacted over the years were outlined as Goals and Recommended Strategies in the General Plan. The first one

enacted addressed vertical zoning, wherein the Code was amended to put active uses at the street level. This would include restaurants, bars, and businesses open to the public. Uses such as office space and private clubs would be directed towards those areas not along the streetscape.

Assistant Director Ward noted some uses were vested and have continued; however, as those use change over time, more active public uses would be required for those spaces. She next addressed the Vibrant Commercial Storefront Incentives. Assistant Director Ward explained that Code amendments were enacted that required vibrancy and required businesses to be open and activated during the year. The businesses are required to be active for at least 60 days per quarter. The Finance, Planning, Building, and Economic Development Departments conduct a quarterly walk on Main Street to ensure that these requirements were being met.

Assistant Director Ward reported that to date this year, five businesses were non-vibrant, and notifications were sent to the owners. She noted there were some exceptions in the Code, such as an active Building Permit for renovations. If the properties are not vibrant, they do not qualify for a one-time liquor or temporary sign installation. She noted this program had worked well overall.

Assistant Director Ward next addressed regulations on Conventional Chain Businesses to regulate the number in two Commercial Historic zones. Conventional Chain Businesses are businesses that have more than 10 locations and have standardized menus or products. She stated that currently, the Conventional Chain Businesses south of Heber were full at seventeen. North of Heber, five of seven Conventional Chain Businesses were full. These apply to the storefront properties that have a presence along the street front.

With regard to Storefront Enhancement Zoning, Assistant Director Ward advised that this sought to ensure that new development or re-development of properties that were not designated Historic had limitations on width, as well as similar street presence as Historic structures. The purpose was to maintain the rhythm and scale of the Commercial Historic Districts.

Assistant Director Ward explained that these Code Amendments started in 2007, and extended through 2017. She noted there was a lot of community outreach, partnership with the Historic Park City Alliance ("HPCA"), and studies. In 2022, Staff moved forward with some clarifications to help make connections between these different regulations in the LMC. She noted there were no substantive changes to the Code at that time. She stated that Staff had been in contact with HPCA to obtain a sense from business owners within these areas of their experience and whether they had any issues or concerns they wanted to be identified through Code Amendments. At this time, the HPCA had an overall consensus to keep the Code as is. They had a policy question that would be unrelated to Code Amendments, wherein they would like some consideration of opening some of the regulations during Sundance for a temporary allowance. As far as the land use regulations, at this time the HPCA had no recommendations.

Assistant Director Ward explained that this Work Session was scheduled to allow the Commission to identify issues they would like Staff to look into, coordinate with HPCA, and perform community outreach for potential Amendments. Commissioner Kenworthy queried whether they would address the Sundance issue and the 17 Conventional Chain Businesses that were full during this Work Session. Assistant Director Ward understood that would not be a

Code Amendment, but more of a policy discussion with those under the Sundance umbrella. She believed that would occur under the Special Event Permit process rather than the Code.

City Attorney Harrington offered that to the degree the Commission wanted to provide feedback during this Work Session on that issue, it would be appropriate. He felt it was within the realm of discussion on this Work Session topic.

Commissioner Kenworthy stated that many people were surprised about the 17 Conventional Chain Businesses and their limitations. He recommended they lift that limitation for the Sundance Film Festival. Many of the tenants make a lot of money during Sundance, and he felt it would give Sundance more vibrancy on Main Street. He added that he spoke with Sundance's new Director who was looking to bring it back to Main Street. Commissioner Kenworthy mentioned that the Director stated that he wants to bring it back to the level of the mid-1990s when the vibrancy was incredible along Main Street. Commissioner Kenworthy felt this would help him do that and would help many of the businesses that sell along Main Street. He stated that he had never rented out along Main Street, but he would support his neighbors that do that during Sundance, and the efforts from Sundance to increase that vibrancy.

Commissioner Kenworthy commended City Attorney Harrington and stated that the numbers were perfect for the balance they were looking for. He asked if the City was ever challenged.

City Attorney Harrington responded they had not been challenged yet. He added that the Commission and City Council spend a lot of time on whether to have a Sundance exception. He reminded the Commission of the two components of the Sundance exception and stressed there was a balance. One of the reasons they did not extend the exceptions was that as with any regulation, the more exceptions there are the more vulnerable they become to challenges. He felt they had a good methodology for the math behind the original recommendation, and one of the considerations was that an exception during Sundance lessened the argument. If they do not allow them, then they might have to deal with Equal Protection or some other discriminatory claim.

City Attorney Harrington stated it was a fine balance and this Ordinance was cutting edge in terms of its successful implementation. He advised caution if they wanted to open the exceptions more broadly. Staff could provide the pros and cons when the Ordinance came back before the Commission, or if they look at it through the Special Event licensing process. He stated they do not get to pick and choose on this type of regulation, and it still required the same rational basis, good reasons, and data to support the decision.

Chair Suesser asked if it were possible that someone involved in another event in town would challenge the Sundance-only exclusion. City Attorney Harrington responded there would be that possibility, but noted that they do not just regulate Sundance; rather, they regulate certain types of permits that are pragmatically only available during Sundance. If other events qualify, they might be able to take advantage of the exclusions as well. With regard to the vertical zoning issue, Chair Suesser wanted to see something in the amendments that would encourage the expansion of retail on the second floor of Main Street establishments. She felt that these types of businesses would help with vibrancy.

Commissioner Hall agreed with Chair Suesser and stated she would like to see more upper-level businesses that were open to the public. She asked how they would classify that, as she

felt there was an error with the area north of Grappa, which created an exception to the requirement of public storefront businesses.

Assistant Director Ward stated they would look into the history of that, but the way it was currently drafted, residential uses on the street level were prohibited. Commissioner Hall referenced the exception for uses 6 inches or 6 steps below street level. She would like to tweak the language, and would be in favor of incentivizing either second-story or basement-level uses.

Chair Suesser referenced the private club on Lower Main Street that somehow avoided this restriction because they had to take one step up, so it was not considered street level.

Commissioner Hall felt that what they had was a great starting point, but there were potential tweaks to enhance the intent. She understood they might not want to touch an ordinance, as tweaking it might expose them to potential adversaries. In terms of adding clarity to prevent problems they have seen in an existing implementation, City Attorney Harrington felt that would be a good reason to revisit the Ordinance. It was the expansion and/or further restriction that they should be cautious of moving forward.

Commissioner Kenworthy asked about the definition of Street Level. Assistant Director Ward stated that while Street Level was not defined, the term Storefront Property formed the basis for how these regulations were applied. She advised that a Storefront Property was defined as a "separately enclosed space, floor area, tenant space or unit that has a Storefront window or Storefront entrance that fronts on a public street." She added that the definition "includes a Storefront window and/or a Storefront entrance that is not more than 8 feet above or below the grade of the adjacent public street." She noted there was an exception if there were service or emergency entrances. Assistant Director Ward stated the definition was triggered by having the presence on the street within 8 feet above or below. She stated that Staff could look into the properties referenced to see when those were constructed.

Commissioner Sigg asked about buildings like the Galleria where the storefronts are in the breezeway, but not on the street front. Assistant Director Ward advised that Staff has interpreted that as whatever had the presence on the street front that same presence was not on the Swede Alley side of the building. Commissioner Sigg asked about the businesses in between, while Chair Suesser stated that they should include Heber.

Assistant Director Ward stated that Heber was included. She explained this applied within Historic Commercial and Historic Recreation zones, which would include Main Street, Swede Alley, and Heber. When these ordinances were enacted, there were carve-outs in the footnotes of the Code. She provided the example of the interior plazas to the MPDs on Lower Main Street and stated that if a business were interior to the plaza, they would be carved out as an exception. She added there were also some residential properties along Park Avenue that were excluded as well. Commissioner Kenworthy observed that Burton was not counted as one of the five because it was set back.

Chair Suesser inquired about the realty offices on the Lower Main Plaza. Assistant Director Ward stated there was a list of properties that were real estate offices when the Code Amendments were enacted. Some of those remain vested as long as the business use remained.

Commissioner Hall recognized the consensus that the Commission would like to upgrade the Code without causing vulnerabilities. She sought input as to the best mechanism to do this. Chair Suesser suggested eliminating the grandfather clause to prohibit passing on a business that was grandfathered in.

City Attorney Harrington stated that they could not change the non-conforming rules that were established by State Code. He again cautioned the Commission against looking to prohibit things as a matter of course and advised them to stick to the justifications that supported the Ordinance. The Main Street vibrancy was the soundest rationale, and the more they get away from those corridors, they would need to articulate another reason to regulate.

City Attorney Harrington added that Staff could define the picture in terms of existing non-conforming businesses. If they identified others that took advantage of a definition that could be tighter, or expand the boundary of an application, Staff could bring that back before the Commission.

Commissioner Hall asked if there was a way to incentivize the conversion of a business that was grandfathered in. City Attorney Harrington suggested they could have someone from the Economic Development Department to provide a snapshot of what had been done in terms of vibrancy. They could also have a cultural component as to whether it was the right type of vibrancy that would be sustainable with the General Plan. He noted that although money was not the only part of it, it was the easiest to measure.

Commissioner Kenworthy touched on the issue of newer private restaurant clubs. He understood that business on the street level had to be open to the public, but upstairs or downstairs could be members only. He mentioned the Marcella Club. He noted the street level, which could include steps going down. Assistant Director Ward stated that vertical zoning would fall under the Storefront property; therefore, if it fell within the definition of that Storefront property, then those uses would be prohibited.

City Attorney Harrington stated that they had the original measurement exhibits from the first Ordinance that looked at Lower Main very extensively. He stated they could bring those back next time to show the Commission which ones were in and which were out.

Commissioner Kenworthy suggested transparency with the community and the HPCA as to what direction the Historic buildings would be going.

Commissioner Sigg mentioned multiple points of access in different planes of the building. In the Zoom, one could walk in off the big patio on the south side, or walk in on the west side which could be argued was street level. He asked which entry would apply.

Commissioner Hall wanted to know what tools they had to incentivize businesses to enhance and ensure that Main Street was not just residential or office on second floors. Her biggest deterrent in coming to Main Street was the absence of places to go in the middle of the day.

Commissioner Sigg asked what would happen if an occupant used both the first and second floors. He inquired whether they could have a private club upstairs and a public facility downstairs.

Assistant Director Ward stated they could return with the exhibits. She added that they had been working on updated maps that show the properties that have different entrances that were currently excluded in the Code for the plaza access. She stated it might be helpful to conduct a walking tour as well. They could also provide the Commission with information on what businesses were vested and approved prior to the vertical zoning and what had been constructed since then.

Chair Suesser referenced the following language: "If vested, non-conforming uses terminate, the new use will be required to comply with vertical zoning." She would consider a real estate office as "office space." She asked why this would not apply if a realtor left a vested site and another realtor stepped in.

City Attorney Harrington explained that the Code focused on the use. He confirmed that if the lease of a vested realtor expired, another realtor could lease the space and occupy the office space on a Storefront. He stressed that the keyword was the use, not the tenant. Use is defined by year-to-year business licenses and was not individual specific; rather, use was property specific.

Commissioner Frontero observed that if a realtor terminated its use, and a clothing shop moved in, that would be a termination of the use, and then it could not go back.

Commissioner Kenworthy spoke off the microphone. He mentioned the 7-11 store, which was a nice amenity for workers; however, ideally, they want to keep these types of businesses to a minimum.

Commissioner Hall noted the parking spot trade for outside dining and queried whether that was a policy decision versus an LMC issue. She felt that something like wider sidewalks would add to the vibrancy, but it would have nothing to do with the LMC.

City Attorney Harrington stated they could bifurcate a broader discussion during the General Plan discussions because they involved broader policy considerations. He stated there could be Code overlap in terms of allowing it, but it would be appropriate to have a broader discussion. Given the Commission's prioritization of LMC Amendments, he suggested they might want to stay focused on those and compartmentalize these other policy discussions.

Commissioner Johnson asked about incorporating the public Right-of-Way into the Vibrancy Ordinances and understood that would more likely be a General Plan discussion. He was referring to utility infrastructure and Historic public Right-of-Way and wondered if they could add an additional layer of review or regulation. He assumed that State and Federal regulations would supersede them from adding anything to the LMC. He specifically referenced small cell infrastructure on Main Street, and how utility infrastructure could be placed in front of the vibrancy they want to promote. He inquired whether there was a way to regulate that infrastructure.

City Attorney Harrington recalled that when the small cell applications came through, it was explained what the limitations were. Staff would have to bring that back in terms of whether the City could be more restrictive on that placement. He noted it was a Historic District, so they had a bit more leeway than other jurisdictions. They looked to strike a balance with the providers as they came in with their proposals. He did not think it made sense to address that issue as part of the vibrancy discussions.

Commissioner Sigg asked if there was a contingency plan for events such as the creation of pedestrian-only areas. City Attorney Harrington advised that most of the larger festivals had annual supplemental plan requirements, so they were not carved in stone and could be adjusted to different factors. He felt they had partnered with these events to create the same sense of gathering that the General Plan has encouraged. He noted that there was balance, and it was not as easy from a security and a functional perspective as it might appear; he added there was a deliberate efficiency in the way Park Avenue and Swede Alley support Main Street, and there were logistical challenges presented by a pedestrian-only configuration.

Commissioner Kenworthy mentioned equity and stated that the events on Lower Main Street hurt Upper Main Street. He felt they learned a lot in COVID-19, so they could balance things better during these events.

Assistant Director Ward thanked the Commission Members for their input.

8. ADJOURN

MOTION: Commissioner Kenworthy moved to adjourn.

The meeting adjourned at approximately 9:20 p.m.