PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
MAY 13, 2020

COMMISSIONERS IN ATTENDANCE:

Chair John Phillips, Sarah Hall, John Kenworthy, Mark Sletten, Doug Thimm, Christin Van Dine

EX OFFICIO: Planning Director Bruce Erickson; Rebecca Ward, Planner; Alexandra Ananth; Planner; Laura Kuhrmeyer, Planner; Mark Harrington, City Attorney

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The Planning Commission meeting was conducted virtually via Zoom.

The public was able to submit eComments during the meeting.

ROLL CALL

Chair Phillips called the meeting to order at 5:33 p.m. and noted that all Commissioners were present except Commissioner Suesser, who was excused.

APPROVAL OF MINUTES

April 22, 2020

Planning Director Erickson referred to page 2, fourth paragraph, first sentence, and noted that the name of the IT person who had set up the meeting is **Scott** Robertson; not Sky Robinson as stated in the Minutes.

MOTION: Commissioner Thimm moved to APPROVE the Minutes of April 22, 2020 as amended. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS
No comments were submitted on items not on the agenda.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Erickson reported that the next meeting on May 27th will have a full agenda. The Staff was working through details on the PCMR pre-application request and would like to bring that application to the Planning Commission on May 27th. Director Erickson recognized that it might be premature, but the applicant wanted to hear from the Planning Commissioner earlier rather than later.

Director Erickson stated that he had asked to postpone the Sustainability Land Use Codes to the June meeting as the Staff works through issues on what they call the "Stretch Code". It is a new concept that provides incentives to developers for additional environmental and energy restrictions to get to net zero. Director Erickson remarked that they were trying to figure out how to make it enforceable and who it would be enforced on. Once the developer is gone, the responsibility is on the building owner.

Director Erickson anticipated holding virtual Planning Commission meetings through June. The Planning Commission meetings are back on the normal schedule of the second and fourth Wednesday of the month.

Regarding the Stretch Code concept, Commissioner Thimm suggested that it not only be enforceable but also verifiable. He noted that the concept is no good unless it is fully tested and vetted. Director Erickson agreed. He explained how the Stretch Code works. An energy compliance document must be produced every year and delivered to the municipality. The Planning Department and the Sustainability Department are trying to determine whether or not this is valid.

Commissioner Thimm remarked that if the developer or the property owner is getting incentives, it is important to make sure that the reason for those incentives remain in place. Director Erickson pointed out that this item was not on the agenda for discussion. However, there is a range of incentives and, the Sustainability Department is only asking for an expedited approval process. They do not understand additional density, height, or parking reductions; whether or not they are on top of an affordable housing request, and the Staff was working through all those issues before coming to the Planning Commission.

Chair Phillips asked for an update on the wall at the top of King Road. He drove by the property a week ago and it looked like they were preparing to put stone on it. Director Erickson noted that the applicant withdrew the application for the wall higher than 6-feet; and, therefore, it was not regulated. The applicant moved forward with the wall under the building permit and the subdivision. Director Erickson reported that the City Engineer had approved the changes to the geometry.

Commissioner Sletten assumed the geometry included the wall where the road was turning. He asked if all that comes into play and not just the wall height. Director Erickson stated that information on additional turning movement was submitted during the CUP process showing that it was easier for fire apparatus to make the turn with the wall in the new location. That was the geometry that the City Engineer approved.

Commissioner Hall commented on an email from a resident regarding a ridgeline. Director Erickson provided an update on 955 Saddleview Way. He noted that it was not schedule on the agenda and the Commissioners could not have a discussion. Director Erickson stated that the Planning Department was providing information to the City Manager and the City Attorney. A visual simulation was conducted before the house was approved, in accordance with the Finnegan's Bluff approval. They were looking at that visual simulation. Surveyors were sent to check the height of the building consistent with what was approved. They are now requesting additional simulation and sections cut from the viewpoints required in the Finnegan's Bluff approval. Several of the Staff were working on the situation and it will come back to the Planning Commission at some point. Director Erickson stated that the Building Department has had conversations with the contractor. The contractor will continue to work on the building, but not in the cupola third floor until the Staff review is complete.

CONTINUATIONS - (Public Hearing and Continue to Date Specified)

5.A. 84 Daly Avenue – Steep Slope Conditional Use Permit – The Applicant Proposes to Construct a Single-family Dwelling on a Lot Containing 3,858 square feet with a Building Footprint in Excess of 200 square feet Projecting Over an Existing Slope of 30% or greater. (Application PL-20-04480)

Director Erickson reported that the Staff was requesting a continuation to May 27, 2020 while they obtain additional information on steep slopes and excavation on the lot.

Director Erickson explained that this application is a full conditional use permit because the lot is larger than a standard 25' x 75' lot. If the lot was 25' x 75', this Steep Slope CUP would be handled administratively.

Chair Phillips clarified that it was coming to the Planning Commission because of the lot size and not due to the excess footprint. Director Erickson answered.

Chair Phillips opened the public hearing. No comments were submitted. Chair Phillips closed the public hearing.

MOTION: Commissioner Kenworthy moved to CONTINUE 84 Daly Avenue Steep Slope Conditional Use Permit to May 27, 2020. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

6. WORK SESSION

6A. Work Session – Staff compiled the Planning Commission's Goals and Priorities for 2020 Land Management Code Amendments and will Present a Schedule for the Commission's Review.

Planner Rebecca Ward reported that the Planning Staff had compiled a list of proposed work sessions and LMC Amendments for the coming year, based on the input from the Planning Commission at the February 26th Work Session. The Staff had also scheduled two Planning Commission discussions for July 8th and September 23rd to respond to their request for quarterly discussions on the LMC. The scheduled topics and dates were outlined in the Staff report.

Planner Ward presented a slide of the top five priorities, which included affordable housing, sustainability, connectivity, general plat amendments specific to Bonanza Park, and transfer of development rights. The Staff also added to the schedule a work session on Lot combinations in the Historic District, as well as a Land Management Code Amendment to cap nightly rentals in the HRL zone, based on their input on March 11th.

Planner Ward noted that Exhibit A outlines the proposed schedule. She asked if the Planning Commission had further comments, if the Staff left anything off the list, or whether the Commissioners wanted to re-prioritize any items for the coming year.

Director Erickson remarked that Planner Ward had just summarized a lengthy and complete Staff report. He asked the Commissioners to recognize the need for a good, solid policy analysis on each of these items.

Chair Phillips thought the schedule looked good. He hoped they would be able to work through the schedule for the remainder of the year.

Chair Phillips commented on the ADU portion and suggested a discussion regarding tiny homes. He was interested in knowing whether the Code addressed anything that would apply to tiny homes. Director Erickson replied that nothing in the Code precludes tiny homes. However, there are technical details such as needing to be on a foundation. Currently, they were working through the issues such as whether an accessory development unit needs to have a separate water and sewer connection, or whether it can come through the meter and the current sewer.

Commissioner Thimm stated that in looking through his notes, one of the points for affordable housing was additional discussion on the potential for setback adjustments. He also recalled talking about affordable housing targets in relationship to the AMI, and whether or not varying amounts of deeper targeted affordable housing might have some sort of sliding scale in terms of the benefits.

Planner Ward stated that those items would be included in the Housing Resolution discussion and she would make a note to bring them forward.

Commissioner Sletten thought the discussion on affordable housing would be ongoing and would require more than one work session. He believed it was one of the most critical elements on the schedule and asked if it was possible to move it up on the list in anticipation of additional work sessions.

Planner Ward stated that the City has a consultant who was researching accessory dwelling units and Phase 2 increased height and decreased parking amendments. The initial work sessions were scheduled based on that research. She would follow up with additional work sessions.

Commissioner Van Dine did not have additional comments at this time. She thought the schedule looked good. Commissioner Van Dine agreed with Commissioner Sletten about having additional time for ongoing discussions. Her main concern was timing to make sure the schedule moves forward. Commissioner Van Dine thought they should either be flexible with the schedule or schedule extra time at the end if it becomes necessary to move an item back to accommodate something that might require additional time.

Chair Phillips thought it was good that the schedule was aggressive. The key will be to stick to those dates for the initial work sessions, and schedule follow-up work sessions as an additional item on the agenda.

Commissioner Kenworthy agreed that Affordable Housing was a number one priority and that they should schedule multiple work sessions for those discussions. Within those discussions, Commission Kenworthy assumed they would address removing the height restriction, parking, and why the public/private aspect failed. He asked if all three of those issue would be included for the work sessions.

Director Erickson thought Commissioner Kenworthy was overstating the case about removing the height restriction. The first question to be answered is where additional height can be resolved without impacting the neighborhoods. Director Erickson stated that there is not good scientific evidence that height affects affordable housing. He noted that the Planning Department has a list of priorities. They need to make a distinction between international seasonal workers versus non-international seasonal workers versus 80% of AMI with families versus 120% AMI with families when determining how to do the analysis. Director Erickson commented on the difficulties of that conversation. For example, if someone is allowed an additional story, they will be able to make it work because going above a certain height results in looking at elevators and exiting, and the construction techniques change. Director Erickson emphasized that additional height is not as simple as it sounds.

Commissioner Kenworthy remarked that setbacks would give additional density to the developers. He stated that for many years a goal has been to get public/private working in the City; however, they never got over that hump. Director Erickson replied that the hump was not due to the regulatory process at this point. He was waiting to see what happens with Prospector Lot G, because the owner is a long-term apartment developer and does not intend to flip the project. If the developer is successful, they can build on that model. Director Erickson stated that in the outset, it is easier to build a high-end house and walk away with a significant profit than it is to build affordable housing. He noted that Mountain Lands Housing Trust has been very successful in delivering projects, but they are also very good at understanding federal funding models.

Director Erickson reported that the Planning Department hired a consultant to provide information on the various types of markets the City is trying to serve to help identify the constraints. Commissioner Kenworthy stated that he would hate to miss the scheduled dates with those recommendations. Director Erickson did not think that would happen, but it is not as easy as it appears. Commissioner Kenworthy thought tax subsidies, height, parking, and any other issues that might come into play should be addressed with the Affordable Housing discussions. He did not think they should look to City Hall to build out of this problem. Director Erickson stated that they would not get built out of the problem because there is a million square feet of retail on Main Street that is not required to deliver housing. Only 10-20% of the resort employees require delivering housing. The City is far down on the requirement to accomplish the goal. Director Erickson offered to provide additional resource information as quickly as possible.

Commissioner Kenworthy noted that TDRs was the fifth priority on the list. He noted that TDRs have never been achieved and he questioned whether or not it should be priority. Director Erickson replied that TDRs was added as a priority because Planner Ward tried to respond to the requests from the Planning Commission. He noted that there are fundamental flaws in the ordinance in that the value of the TDR is established by the buyer and not by the seller. The buy has no assurance as to the value of the TDR until the Planning Director makes the determination on the value of the property it is to be transferred to. A second issue is that none of the main locations that require a TDR or are allowed to have a TDR want the additional density. The Staff was making adjustments to make TDRs part of the additional density ability for affordable housing. Director Erickson thought there may be an opening where a TDR could be done to support affordable housing rather than some of the other incentives. The Staff believes there are properties in the Historic District that could be eligible for TDRs, and they would like to see that occur. Director Erickson pointed out that the banking portion of TDRs does not work and that presents a problem.

Commissioner Kenworthy stated that he was in favor of cleaning up the valuations. Director Erickson remarked that instead of incentivizing developers to do pure growth for housing, they would like to be able to use the TDR Code to make it easier to have the density.

Based on the explanations, Commissioner Kenworthy was comfortable leaving TDRs as a priority.

Commissioner Hall referred to the August 12th meeting to discuss private driveways on platted unbuilt rights-of-way. She recalled that the Planning Commission had talked about expanding that discussion to include private use of any City land. She preferred to expand the scope of the discussion. Planner Ward stated that it would follow the City Council work session on encroachments in the right-of-way. She would make a note to expand the discussion.

6B. Work Session – Discussion on Proposed Amendments to Land Management Code Chapter 15-6, Master Planned Developments (MPDs) (1) to Clean Up Remnant Code from Formerly Required Pre-MPDs; (2) to Allow the Planning Director Approval of Minor MPD Modifications and to Outline Substantive MPD Modifications that Trigger Commission Approval; (3) to Require an MPD and Development Agreement Amendment to Increase Density within an MPD; (4) to Clarify the Conversion of Units to Unit Equivalents; and (5) to Remove Support Commercial, Residential, and Resort Accessory Uses.

Planner Ward reviewed the proposed amendments to Chapter 15-6 of the LMC for Master Planned Development. The Staff was proposing five substantive amendments; and this was the first of many work sessions for some of the topics.

Planner Ward stated that the first three amendments were straightforward. It primarily cleans up language from prior amendments; clarifies modifications that trigger amendments to an MPD; and clarifies that when a Master Planned Development is approved, that that is the maximum density and any request to increase the density on a specific parcel within the MPD requires an evaluation of the entire MPD.

Planner Ward stated that the fourth and fifth proposed amendments would clarify the conversion of units to unit equivalents; and to either remove or cap exemptions to unit equivalents. The last two amendments would take a lot of time and include public outreach and future work sessions. The Staff was bringing these amendments forward this evening to get initial feedback and input from the Commissioners as they move forward.

Chair Phillips clarified that unless the Planning Commission had issues with the first three amendments, the Staff was prepared to move forward on those; and that the fourth and fifth proposed amendments would require more time and public outreach. He asked Planner Ward to explain the next step in the process for the first three amendments following this work session. Planner Ward stated that based on the discussion this evening, she would draft the Code and bring it back to the Planning Commission in the near future.

Planner Ward stated that the next work session to continue the discussion on amendments four and five will tentatively be scheduled for July 22nd. Director Erickson stated that the Planning Department reached out to the Resorts and they were trying to figure out the relationship between the proposed amendments and the Development Agreements. The Planning Commission will see commentary from Planner Ward as to whether this is forward looking, backward looking, or both as they move forward. Director Erickson reported that the Planning Department received comments from Deer Valley Resort on these amendments.

Planner Ward stated that the Staff had done some very basic clean-up changes as shown in the attached redlines, for consistency and updates to clarify the Code. The first proposed amendment was a clean-up amendment. She explained that a few years ago the pre-application requirement for MPDs was removed from the Code; however, some provisions still have the pre-application language. The Staff verified that the pre-application conference with Staff is optional; and clarified the requirements so MPD applicants can schedule a work session with the Planning Commission before bringing their final project forward.

Planner Ward reported that the second amendment is to clarify modifications that trigger full MPD amendments. These include changes in square footage or use that trigger more parking, changes that generate greater traffic, a reduction to open space, a request to modify one of the Planning Commission's conditions of approval, and also to clarify Planning Director authority to approve minor modifications that comply with the

MPD approval and the LMC, and that any Planning Director approval would be appealable to the Planning Commission.

Planner Ward stated that the third amendment is to clarify that the MPD approval is the maximum density and any request to increase the base zoning will require an amendment. She noted that when individual properties within an MPD forward, this amendment will ensure that the full conditions of approval for the MPD are retained over time. This started in the early 1980s LMC that required a document outlining the MPD approval be recorded with the County because MPD zoning might be more or less restrictive for individual persons than the underlying zone. This amendment would ensure that as they move forward with approvals that are part of an MPD that it will comply with the initial approval.

Commissioner Sletten referred to the 5% regarding square footage in the second amendment. He asked how 5% is measured with respect to traffic, etc. He wanted to know it it requires a traffic study or whether it is subjective based on what the applicant submits. Planner Ward replied that it would be based on a traffic study. Director Erickson stated that it is based on traffic and parking, and whether the building needs to be modified. Commissioner Sletten thought parking was quantifiable; but the traffic study would have some variances.

Chair Phillips asked if they were considering any changes regarding back of house. Planner Ward replied that back of house would be discussed under Amendment 5.

Commissioner Sletten referred to 15-6-2(b) and asked why it was less than 20,000 square feet or 10 UEs versus more than, so they could allow ten units or ten lots. He asked how the Staff determined a 9.9 lots subdivision. Commissioner Sletten noted that it is easier to do in UEs than it is in square footage. Planner Ward stated that Commissioner Sletten made a good point and she would look into it. However, 15-6-2 is written such that Section A is where the MPD is required and Section B is where the MPD is allowed. Planner Ward explained that under Section A the square footage would trigger an MPD. She offered to work through the language to see if it could be better clarified. Commissioner Sletten thought it would be easier to quantify as “more than” rather than “less than”.

Commissioner Kenworthy thought it appeared that 15-6-3 was being eliminated. Planner Ward replied that he was correct. She noted that 15-6-3A is duplicated in 15-6-5A. The 15-6-3 header is specific to Uses and, therefore, the Staff eliminated the density discussion. However, that language is still included in the Code under 15-6-5A. Commissioner Kenworthy asked if they changed the language or just removed duplicated language. Planner Ward replied that they only removed duplicated language. The language was not changed.

The Commissioners had no further comments or questions on the first three amendments.

Planner Ward reiterated that Amendments 4 and 5 would require several discussions as they work through the amendments. She stated that one issue in the MPD Code is the way density is established. The Code states that an MPD shall not exceed the maximum density in the zone, except as otherwise allowed in the Section. The Section outlines Planning Commission discretion to increase the density by 10% if an applicant meets one of these three criteria; 1) donating open space to the City or other entity that will conserve the open space; 2) providing more than 30% of UEs as affordable housing or; 3) preserving more than 80% of the project as open space. Planner Ward stated that the intent is to clarify a challenge when they determine the maximum density for each zone. Currently, there are three different ways of determining the density in the Code. One is a volume-based determination that ends up with an envelope based on the lot size, setback, height restrictions, and in some zones a building pad amendment. Some zones are based on a Floor Area Ratio and others that are units per acre.

Planner Ward stated that the challenge is specific with the volume-based method. The Staff is trying to find a consistent way to come up with a method of one unit equals this unit equivalent for those zones. The Staff was still working through the details and coming up with the result if they went to a base Floor Area Ratio versus a unit per acre for MPDs that based in the volume-based zones. The intent this evening was to bring this to the Commissioners' attention.

Director Erickson stated that with the exception of one or two MPDs, all the MPDs involve some type of density transfer from larger areas. For example, the zoning density was transferred off of Park City Mountain Resort to the base area. Therefore, the base area density is far greater than what the zone would allow. The same occurred on the Town Lift, in Deer Valley, and in Empire Pass. Director Erickson explained that when the annexation was done between PCMR and Empire Pass, County allowed density was transferred between the two ski areas. Director Erickson pointed out that the "not to exceed the base density zone" still needed to be cleaned up. The Staff was working on it and it is not a simple problem. Planner Ward stated that the Staff would continue to work on it and bring it to the Planning Commission in a future work session.

Commissioner Thimm understood that the challenge was determining the maximum density; and the three choices were volume-based, FAR, or units per acre. He asked if the thinking is that at some point there will be a recommendation to choose one of those three as the way to establish the density in the zone. Planner Ward stated that under the current Land Management Code, those are the three determinations for density. When they do an MPD in a zone that has a Floor Area Ratio or a unit per acre determination, it can be straightforward to convert that to a unit equivalent under the MPD Code. The challenge is with the volume based. Planner Ward stated that volume based density would remain in the base density, but for a specific MPD in those zones, they would look to establish something similar to either a Floor Area Ratio or unit per acre specific to the MPD process within those volume-based Codes.

Director Erickson remarked that the MPD also requires clustering. For example, a zone may allow three units per acre, but when they cluster all the units that are stripped off the density, the result is 40 units per acre. Director Erickson stated that the UE is designed to limit the size of units based on the number of units approved. Commissioner Thimm appreciated the explanation. He was wanted to know whether the Staff was only honing in on one trigger, but he understood that was not the case.

Commissioner Sletten stated that he was struggling with this issue as well. When they are working with a particular developer and have height and setback restrictions to the extent that the applicant requests additional density, he thought there might be good reason to allow a height increase. Commissioner Sletten thought this comes into play when they try to forego another Treasure Hill experience, where an approval for 400,000 square feet of volume turns into a million square foot application. He believed the answer was a combination of all those things, because if they over restrict these projects, they cannot be successful. A building needs to have common areas, access and other necessities. Commissioner Sletten anticipated a complex set of discussions in order to wrap their heads around how to allow for all those things and still have a project that is manageable.

Director Erickson clarified that the Staff was not restricting the ability inside an MPD to request additional height at this point. In the case of the base of PCMR or Deer Valley Resort, the height is approved by the Planning Commission given good site design and all other aspects of the MPD process. Director Erickson stated that the issue is trying to define what the UE is and how to grow it, especially in the General Commercial Zone. He noted that arts and culture live in the General Commercial Zone, and there is no way to figure out how unit equivalents are allowed for an MPD in that zone. Director Erickson stated that all the open space behind PC Market came in under an MPD that allowed the grocery store to be built. He thought Planner Ward had done a nice job in managing IHC Hospital because they had a unit equivalent calculation that was manageable. Director Erickson emphasized that they were not taking away the ability to have additional height.

Commissioner Kenworthy asked about process. Planner Ward stated that Amendments 4 and 5 will require several work sessions to make sure all the issues are addressed. If the Planning Commission is comfortable with moving Amendments 1-3 forward, the Staff would bring back the redlines for their consideration. Commissioner Kenworthy understood that if an application comes in before the City Council adopts the new amendments, that application would be subject to the existing Code. Planner Ward replied that he was correct.

Chair Phillips asked about public outreach on Amendments 4 and 5. Planner Ward replied that they had already begun the public outreach and would continue to do so.

Planner Ward stated that Amendment 5 were the unit equivalents exemptions. The purpose of the unit equivalents allows a lot of flexibility and mixed uses in site specific designs within the MPDs. In the Code, there is a section that exempts certain uses from unit equivalents. Planner Ward noted that when there were MPDs in the 1980s and 1990s, the LMC had caps on these exemptions. For example, support commercial facilities were capped to a total of 10% of the total gross square area of a project. Each individual facility was capped at 2,000 square feet. There were restrictions on signage. It could only be viewed on site. It could not be viewed on public rights-of way. The commercial facilities could not be oriented to adjacent public streets or off-site areas. Planner Ward remarked that the support commercial exemption from UEs started out with some fairly defined boundaries.

Planner Ward reported that the LMC was substantially rewritten in the 2000s and some of the caps and boundaries on the exemptions from UEs were removed. The 10% cap on support commercial was removed. The 2,000 square foot cap for facilities was removed. There was also an addition of residential accessories and resort accessories that were exempt.

Planner Ward commented on the challenges with some of these exemptions. Some of the uses that are originally designated for onsite patrons, over time might be open to the public. There are a few instances where that has been proposed or has already occurred; and because it was originally exempt from UEs, no parking was provided to support opening the use to the public. It might also impact open space or other conditions of approval.

Planner Ward stated that the second challenge relates to MPD density, where the Code allows the Planning Commission to grant a 10% increase if the applicant meets certain criteria. Planner Ward stated that when UEs are exempt, it might create density or building volume that exceeds that increase. She noted that certain exempted unit equivalents do not trigger affordable housing obligations, which are based on residential unit equivalents for residential developments.

Planner Ward stated that the third challenge is that the goal of the MPD is to strengthen the resort character and to encourage opportunities for economic diversification and development; and also to protect residential uses in neighborhoods from the impacts of MPDs. There needs to be a positive contribution to the community and the goals need to be balanced.

Planner Ward stated that the Staff sees the proposed amendments as being forward looking for approvals for new Master Planned Developments. They could potentially remove or cap some of these exemptions or reinstate some of the original limits that were in the Code in the 1980s and 1980s. In terms of backward looking, for existing MPDs and amended MPDs they want to make sure they clearly define what is exempt from these unit equivalents.

Planner Ward clarified some provisions in the Code. For example, the MPD Code addresses support commercial within residential MPDs and places a 5% cap on total square area for these types of support commercial. However, in the definition of Support Commercial Use, the cap can apply to the entire development. She stated that because the 10% is being removed, the Staff would like to look into some type of boundary for that support commercial use.

Planner Ward noted that the MPD Code does not explicitly state that resort support commercial is exempt from unit equivalents. However, in the definition section, resort support commercial has been treated as support commercial and has been exempt from unit equivalents. Planner Ward stated that support commercial use is limited to onsite patrons of the development. The resort support commercial opens that up to include visitors.

Director Erickson clarified that many of the definitions live inside the Development Agreements and not inside the Code, and each resort has slightly different definitions for these uses. He stated that not only is the Code the controlling document, but the Development Agreement is the agreement between the City and the Resort. Director Erickson remarked that clauses inside of the Development Agreements require things to be brought up to Code, and clauses that ignore what is being exempted. Director Erickson used Treasure Hill as an example of a project that was using the 5% resort support, as well as an additional 5% for the conference center space, and that contributed to the million square feet.

Commissioner Kenworthy asked Planner Ward where she was referencing the 10% for the support use. Planner Ward replied that it was in the 1980/1990 Code. It is no longer in the Code. Chair Phillips understood that it was the same time the original Treasure Development Agreement was written. Director Erickson replied that it was generally within that time frame. It was also the same time they went through the 5th and 6t Agreement on Park City Mountain Resort. The PCMR Development Agreement is dated 1997.

Planner Ward commented on residential accessories that are exempt. She stated that this could result in density beyond the base zoning density, without contribution of open space or affordable housing units. It can also go beyond a 10% increase in density. If that is the desired outcome, they need to make sure it is reflected in the Code. Planner Ward noted that the residential accessory uses are listed in the Code to include things that support a hotel or a nightly rental condominium.

Planner Ward stated that resort accessories uses may not be problematic. They include information booths, lost and found, ticket sales, circulation and hallways for public locker and restroom, and employee facilities.

Planner Ward remarked that as they look forward to support commercial and potential amendments, the Staff would like feedback on whether there should be a cap for support commercial, similar to what was in the 1980s and1990s Code, and whether they should go back in and specify some of the restrictions that were originally placed on support commercial. They would also need to clarify some of the definitions of these support commercial uses that are exempt.

Chair Phillips assumed that the contradictions between the Development Agreement and the Code were a result of the LMC changing over time. He asked if they go back to the earlier Codes and determine an amount to cap the support commercial based on the gross floor area, whether they would have the discretion to allow something different than the Code in a specific development agreement or MPD. He wanted to know if the cap would be the absolute maximum because it is in the Code.

Director Erickson replied that the Development Agreement controls. For example, if they were working in the Historic District, the Historic District Guidelines would be a guide on what to do, but it would not supersede the underlying zoning. Director Erickson stated that the MPD process is designed to be negotiated and allows varying from the underlying zones in order to accommodate some other action. The Development Agreement becomes a contract between the City and the Developer. Director Erickson pointed out that in an MPD they move density and address traffic, transit, parking reductions, height, and setbacks. Those issues are not controllable within the zone. They are only controllable inside the MPD. That is the reason why the Development Agreement controls.

Director Erickson stated that support commercial activities is not the problem as much as the fact that they change to public uses in the future, which creates parking and sign issues, and no affordable housing.

City Attorney Harrington clarified that it was still a case by case determination because different agreements have different provisions. Some clearly include future Code changes and specific references. Mr. Harrington did not want to completely preclude the Planning Commission's opportunity to look at different options as they may reflect existing development agreement language because some of the changes may be able to be incorporated into certain provisions. In addition, there are standards that may trigger a backward-looking affirmative change. Mr. Harrington stated that some of those agreements also have what is called a "Reservation of Legislative Authority Provision" in them. There are instances where they reserve judgement on a particular issue with regard to a particular development agreement at hand.

Commissioner Thimm commented on the unit equivalents and the notion of looking back at what was once in place in the 1980s in terms of the 10% and making support commercial more inwardly focused. He assumed that was put in place because of the intensity of use. For example, if 100 people are in a building using the facilities that are dedicated to only them, the use would be less intense than having those 100 people and an additional 50 people coming to use the facilities. Commissioner Thimm stated that if that was the original intent, it was a good intent. He was not opposed to returning to those restrictions, but whether or not 10% is the correct number is debatable. He could support at least 10%. He thought the 2,000 square foot per UE made sense in terms of size, use, and whether or not they can draw from off-site.

Commissioner Thimm thought the list of residential accessory uses had a lot to do with the efficiency of design. He stated that normally when working with these types of projects, they look for efficiency of approximately 80% in terms of usable space versus hallways, back areas, corridors, etc. Commissioner Thimm suggested allowing something in the range of 25% for residential accessory uses.

Commissioner Thimm thought there was some redundancy in looking at residential accessory versus resort accessory. Circulation to hallways was mentioned in both, and he thought it only needed to be mentioned in one or the other. Commissioner Thimm thought they should try to eliminate some of the redundancy. Commissioner Thimm thought the service accessory made sense. Once again, it allows for the residents or patrons to use the facilities onsite. Regarding any additions of square footage or uses that support the residential, Commissioner Thimm suggested that if there is additional intensity in terms of staffing or employees that come to the site as a result of the square footage exemptions, both should be taken into account in terms of the intensity and the impacts it causes to both traffic and parking.

Commissioner Kenworthy referred to page 76 of the Staff report and noted that line 682, off-street parking, was crossed out. He asked how if they were completely deleting all of those guidelines. Planner Ward explained that Off-Street Parking in 15-6-7 is under the Master Planned Affordable Housing Development section, and in that section the Code states that all other MPD sections apply. The off-street parking was removed because all the parking requirements would apply to the affordable housing development. The exact language is given in 15-6-5(e), which is line 400 of the proposed Code. Planner Ward emphasized that there was no change to the parking, but it would only be shown in the Code once instead of being duplicated.

Director Erickson summarized that the definitions need to be cleaned up on some of the items shown on the slides this evening, and that will help the City negotiate with the resorts. They also need to make sure they are in compliance with the development agreements. Director Erickson stated that one of the things being considered is if a use shifts from an accessory use to being open to the public, at a minimum, it would trigger an affordable housing requirement, even if there were no unit equivalents available to make that transition. He noted that there may not be unit equivalents that transition to a public use, but it would trigger some type of action for employee housing.

Director Erickson noted that the Planning Department has a proposal from one project that is trying to use resort support commercial to develop a restaurant. The restaurant will be open to the public without the use of unit equivalents, which does not trigger any of the affordable housing requirements. Parking can be multiple use. If the restaurant is busy during the day, parking might be an issue. If the restaurant is open at night and someone else uses the parking during the day, that would not be an issue. Director Erickson stated that as they move through the amendments, the intent is to do a bottom up approach starting from saying no to what they can say yes to.

Commissioner Thimm clarified that the point he was making in his earlier comment was if the City has a parking requirement for patrons, but additional parking is needed for employees and staff, or if there is additional traffic and trip generation resulting from the staffing, that should be taken into account. Director Erickson agreed.

Commissioner Kenworthy was having a difficult time understanding how they can balance all the proposed changes. Director Erickson pointed out that this was only a work session. He anticipated three months of work before they come back to the

Planning Commission. Planner Ward stated that the plan is to come back on July 22nd and several times after that. This would be an ongoing discussion. Commissioner Kenworthy appreciated the workload and the work the Staff has done.

In looking at the redlines, Commissioner Kenworthy noted that support commercial and residential accessory uses were blocked out. Planner Ward replied that for the initial MPD amendments it would remain in the Code. She plans on discussing those further at the July work session. Commissioner Kenworthy stated that he was looking at line 772 through 776 and it was all blocked out. Planner Ward stated that those changes and any amendments to Section 15-6-8 of the Code will be determined at a later date. The Staff was not proposing any changes or redlines this evening. Commissioner Kenworthy clarified that no one was proposing to eliminate or make changes within f, g, or c at this time. Planner Ward replied that he was correct.

Commissioner Sletten thought they needed to look further at capping on a per use basis. He stated that things are changing a lot right now and ski areas such as a ski locker area for a hotel might require more square footage because of the social distancing requirements that will be part of life for a very long time. At the same time, the fitness facilities might diminish in size and exercise equipment distributed elsewhere. Commissioner Sletten wanted to make sure they were not getting too restricted. He suggested looking at the overall percentage, but at the same time be careful about restricting a square footage cap on any particular use. Director Erickson thought Commission Sletten made a good point. He noted that the Staff was trying not to make changes inside existing structures. If someone wants to remodel and the uses do not change, that would not be a concern.

Commissioner Kenworthy agreed with Commissioner Sletten. Hard caps are difficult and it would be better if they could find a way to balance it without a hard cap.

Commissioner Thimm thought it should remain enforceable. Recalling many late night discussions during Treasure Hill, he emphasized the importance of having a proper definition that is enforceable. Chair Phillips concurred.

Commissioner Kenworthy agreed with being enforceable. He referred to nightly rental and believed the Planning Commission did a fabulous job by doing territories instead of caps. The result was a 46.4 balance number on nightly rentals throughout town. He suggested that doing that type of approach keeps the project balanced as opposed to a set cap.

Planner Ward presented her last slide. She stated that when MPDs were first placed in the Code in the 1980s they were processed as a conditional use permit. Currently, there is a section in the MPD Code that outlines the zoning districts where MPDs are allowed, where they are required, and where they are optional. As the LMC was amended, the use tables were not updated with the zoning outlined in the MPD Code. Therefore, in some zone an MPD is a conditional use, and due to changes in State law on the way conditional use permits are approved, it may be time to separate the MPD approval process from the conditional use permit process. It would give the Planning Commission the flexibility and the discretion through the MPD Code on these projects. Planner Ward stated that if they were to separate the MPD process from the CUP process, they would go through the CUP Code and look at the criteria that is not currently considered in the MPD Code, to make sure those criteria are still addressed in the MPD approval.

Planner Ward requested initial approval on whether all MPDs should be processed as a conditional use permit, or whether there was support to begin looking at potentially separating the two review processes.

Commissioner Thimm asked what it would be if it was not a CUP. Planner Ward replied that it would be an approval process for the underlying allowed uses. Commissioner Thimm asked if it would still be an action by the Planning Commission. Planner Ward answered yes.

Director Erickson stated that nothing would change in a global sense, but the MPD would become a process unto itself. They would not see the duplicative review process between the MPD criteria and the CUP criteria. Director Erickson noted that the MPD is not in the State Land Use Law. Park City invented the MPD inside its Code. The CUP is in State Land Use Law. Tiering the MPD to a conditional use allows the City to be better aligned with State Law; however, if the State Legislature takes away conditional use permits and makes it an allowed use, they need to be prepared to put the MPD somewhere else in the zone.

City Attorney Harrington believed that originally the City Council and Planning Commission used special exception permits and variations of what are now called Master Planned Development approvals. Those had phases, and subsequent phases came through in a process defined by the Code as small-scale master planned developments. At some point the City decided to do away with the small scale MPD section, and when that was done, they substituted conditional use permit criteria for the small-scale subsequent phase review. Mr. Harrington did not believe there was any desire to make Master Planned Development, which by definition, had criteria that was more legislative because they also created a legislative overlay zone for MPDs, to duplicate that with lesser conditional use criteria. Mr. Harrington stated that it became a stop gap substitution when CUPs were still fairly discretionary. He thought Planner

Ward was correct in recommending this change. Now that the law regarding conditional use permits is really to codify stronger and stronger towards administrative non-discretionary decisions, it does not make sense to use it as a vehicle where there is some overlap lingering in the Code, nor where there are phased approvals. Mr. Harrington remarked that the Planning Commission needs to address what level of review they want for those subsequent phased reviews where they approved a broad Master Planned Development, such as in an annexation. They want it to come back to the Planning Commission and not be purely administrative, but they also do not want it to go through a complete MPD redo. He thought Planner Ward was right in taking the first step to eliminate the overlaps that currently exist, because there is no reason for Master Planned Developments to be listed as a conditional use in the Code.

Commissioners Thimm, Phillips, Sletten and Kenworthy supported the change. Director Erickson stated that he, Mr. Harrington, and Planner Ward would have a hard conversation about how the MPD lives in the zone. The MPD section states that MPDs are required in certain zones and they may be required in other zones. They will need to work through it a little before coming back to the Planning Commission.

City Attorney Harrington stated that Master Planned Developments are an approval process or a performance zoning approval in and of themselves. They are not a use. Master Planned Developments do not belong in a use table.

Chair Phillips understood there would be ongoing discussions, but he liked the direction this was going and how the Staff was approaching it by first defining and then determining how to control it. He looked forward to future discussions.

Commissioner Kenworthy asked if Planner Ward could show through different colors which redlined items were being removed because of duplication. Planner Ward liked that idea.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

7.A. <u>Land Management Code Amendment – Amending LMC Section 15-10-5 to Allow the Board of Adjustment Alternate to Count Towards Establishing a Quorum</u>. (Application PL-20-04459)

Planner Ward stated that the proposed amendment to the Land Management Code would allow the Alternate Board of Adjustment member to count towards a quorum. She explained that because the Board of Adjustment does not have regularly scheduled meetings, it can be difficult to find enough members available to form a quorum to consider land use appeals and variances.

Planner Ward stated that the LMC requires at least three Board of Adjustment members to form a quorum; however, the Code exempts the non-voting alternate from counting towards the quorum. She had reached out to the Board of Adjustment regarding this amendment. Allowing the alternate to count towards a quorum will help the Board of Adjustment as they schedule these appeals and variances moving forward.

The Staff recommended that the Planning Commission open the public hearing and consider forwarding a positive recommendation to the City Council for consideration on June 25, 2020.

Chair Phillips asked if there were currently five members on the Board of Adjustment. Planner Ward replied that the Mayor appoints five members to the Board and there is one non-voting alternate. Chair Phillips wanted to know how the non-voting alternate functions. Planner Ward explained that the non-voting alternate can attend the meeting, and if there is a quorum of voting members, the non-voting alternate can vote. However, if there is not a quorum of three voting Board members, the non-voting alternate member cannot vote because they do not count towards the quorum.

Chair Phillips understood that the proposed amendment would allow the alternate to be the third person to make a quorum. Planner Ward replied that he was correct. Chair Phillips asked if the alternate member regularly attends the meetings. Planner Ward answered yes.

Commissioner Sletten stated that he served on the Board of Adjustment in the past. He strongly favored this amendment based on his own experience on the Board. He thought it was a great change. Commissioners Kenworthy and Hall agreed.

Chair Phillips opened the public hearing.

No comments were submitted.

Chair Phillips closed the public hearing.

MOTION: Commissioner Thimm moved to forward a positive recommendation to the City Council for the proposed amendment to allow the Board of Adjustment Alternate to Count Towards a Quorum for their consideration on June 25, 2020. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

7.B. <u>1121 Norfolk Avenue – Plat Amendment – The 1121 Norfolk Avenue Plat Amendment Proposes to Combine Lot6 and Lot 7 of Block 17 of Snyder's Addition into one Lot of Record.</u>

Planner Laura Kuhrmeyer reviewed the application for a plat amendment for 1121 Norfolk Avenue. Currently, there is a single-family dwelling straddling the property line between the two historic 25' x 75' lots. The applicant was proposing to remove the interior property line to combine the two lots into one.

The Staff recommended that the Planning Commission conduct a public hearing and forward a positive recommendation to the City Council for the requested plat amendment.

Chair Phillips opened the public hearing.

No comments were submitted.

Chair Phillips closed the public hearing.

MOTION: Commissioner Thimm moved to forward a POSITIVE recommendation to the City Council for the 1121 Norfolk Avenue Plat Amendment based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the draft ordinance. Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

<u>Findings of Fact – 1121 Norfolk Avenue</u>

1. The subject property is located at 1121 Norfolk Avenue.
2. The Site is within the Historic Residential (HR-1) District.
3. The Site is currently improved with a Single Family Dwelling.
4. The Plat Amendment application is a request to combine Lot 6 and Lot 7 of Block 18` of Snyder's Addition into one (1) Lot of Record.
5. The proposed Lot consists of 3,750 square feet and meets the minimum Lot Size for a Single Family Dwelling (1,875 square feet) and for a Duplex (3,750 square feet) which requires a Conditional Use permit.
6. The proposed Lot size is consistent with neighboring properties, as a number of Lots along Norfolk have already been combined into double-wide Lots of 3,750

square feet.
7. The proposed Lot measures fifty feet (50') wide and seventy-five feet (75') deep and meets the minimum Lot Width of twenty-five feet (25').
8. The minimum required Front and Rear Setbacks for the proposed Lot would be 10 feet.
9. The minimum required Side Setback for the proposed Lot would be five feet (5').
10. There are existing retaining walls that encroach across property lines on the north, south and west sides of the Site. These shall be removed or an Encroachment Agreement recorded prior to the recordation of the Plat.
11. The proposed Lot Size is compatible with existing lots in the neighborhood and in the overall Historic District.
12. The maximum building footprint for a Lot this size is 1,519 square feet.
13. The maximum Building Height for this zone is twenty seven feet (27') from Existing Grade. The survey submitted shows the existing Structure at 28.68 feet from Existing Grade.
14. There are existing encroachments on Site that may require an Encroachment Agreement or removal.
15. Staff finds Good Cause for this Plat Amendment as it will combine two smaller lots into one larger lot potentially allowing for a Single-Family Dwelling (or Duplex with a Conditional Use permit) that does not straddle (is not built across) lot lines. The proposed new lot is consistent with the surrounding HR-1 neighborhood and meets the Lot and Site requirements for the zone. Furthermore, encroachment agreements or the removal of encroachments will resolve existing nonconformities. Finally, it is a Condition of Approval that a Public Snow Storage Easement will be recorded with the Plat.
16. All findings within the Analysis section and the recitals above are incorporated herein as findings of fact.

<u>Conclusions of Law – 1121 Norfolk Avenue</u>

1. There is good cause for this Plat Amendment.
2. The Plat Amendment is consistent with the Park City Land Management Code and applicable State law regarding Plat Amendments.
3. Neither the public nor any person will be materially injured by the proposed Plat Amendment.
4. Approval of the Plat Amendment, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

<u>Conditions of Approval – 1121 Norfolk Avenue</u>

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 at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the plat 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 or renovation construction on this lot, to be approved by the Chief Building Official.
4. A ten foot (10') public snow storage easement along Norfolk Avenue shall be noted on the Plat.
5. The property is not located within the Park City Landscaping and Maintenance of Soil Cover Ordinance (Soils Ordinance) and therefore it is not regulated by the City for mine related impacts. However, if the property owner does encounter mine waste or mine waste impacted soils they must handle the material in accordance to State and Federal law.
6. City Engineer review and approval of all lot grading, utility installations, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.

7.C. 802 Empire Avenue – Subdivision – The Applicant is Requesting to Combine Multiple Parcels into a New Tow (2) Lot Subdivision. (Application PL-18-03949)

7.D. 802 Empire Avenue – Conditional Use Permit – The Applicant is Requesting to Construct a Shared Driveway Over the Platted Unbuilt City Right-of-Way. (Application PL-19-04113)

These items were discussed simultaneously. Each item had its own public hearing and action.

Planner Alexandra Ananth noted that the applicant, Tom Peek, with Old Town Lands LLC, the project architect, John DeGray, and Martina Nelson from Park City Surveying, were also participating online. Corey Legge, the Public Improvements Engineer, was also online to answer questions.

Planner Ananth reported that this item came before the Planning Commission on February 12th. The applicant was requesting to combine 7 small vacant parcels into a new two-lot subdivision. The applicant was simultaneously seeking a conditional use permit to locate a shared driveway over the platted unbuilt Empire Avenue right-of-way. Planner Ananth stated that these seven parcels steeply slope down from Empire Avenue to Crescent Tram. The lots have frontage on both streets.

Planner Ananth presented a slide showing the seven existing parcels and noted that none of the parcels are large enough to be built on individually. None of the parcels meet the Old Town minimum lot size requirement of 1,875 square feet.

Planner Ananth reported that during the Planning Commission meeting in February, the Commissioners asked the Staff to provide better visuals showing where this site sits in Old Town. Based on that request, The Staff provided a zoomed out aerial view with 802 Empire in the middle at the bend between Crescent Tram to the right and Empire Avenue just to the left. The Old Town lift goes over the Treasure Hill parcel just south of the property. Planner Ananth presented a slide with a zoomed in view with the combined 802 parcels outlined in green. The Treasure property immediately south of the subject property was outlined in blue. To the right of that were four parcels outlined in purple that are also owned by Old Town Lands off Crescent Road and bisected by a City easement for the Crescent Tram path. Planner Ananth stated that the easement separates Old Town Land's two projects and it crosses over on the 732 parcels, as well as crossing over the Treasure parcel. However, it does not intersect the 802 Empire property.

Planner Ananth stated that another question raised at the last Planning Commission meeting was clarification on how the frontage is being measured. She explained that because these lots have frontage on both streets, the frontage was being measured off of Crescent Tram, even though the City was recommending that vehicular access come from Empire Avenue due to Crescent Tram being narrow and steep.

Planner Ananth stated that a question was raised at the last meeting regarding vegetation on the site. She presented a photo showing the existing vegetation. She indicated a significant spruce tree on the lot line, as well as other trees on the site. Planner Ananth noted that these lots are in the Historic District and would require an HDDR application. If existing vegetation is proposed to be removed, a landscape plan and a tree replacement plan will be reviewed through the HDDR process.

Planner Ananth commented on the questions regarding the steepness of the driveways and whether these lots conform to City standards of 15-3-3. She noted that the applicant had revised the driveway slopes very slightly. The Engineering Department had re-reviewed the revised plan; and based on the difficulties of access of Crescent, the Engineering Department was approving a slope greater than 2% within the transition area. Planner Ananth remarked that the findings of fact and conditions of approval attached to the Staff report cite recommended findings and conditions from the Engineering Department for this project.

Planner Ananth stated that the two lots the applicant was proposing met all lot and site requirements of the LMC. Any buildings developed on those lots will need to comply with setbacks, building height, and allowable footprint.

Planner Ananth reported that a neighborhood was done as discussed in February, and the lots are fairly consistent with other lots developed in the area. If the lot were to remain a single lot, it could support a single-family dwelling or a duplex, and would be one of the larger lots in the neighborhood. As proposed, Lot 1 and Lot 2 are consistent with the neighborhood median lot size.

Planner Ananth stated that a number of questions were raised about a potential staircase in the neighborhood. She had spoken with the Trails and Open Space Coordinator regarding this project and found that the City has prioritized a future 6th Street Stairs as the number one priority. These staircases are expensive to build and cost approximately $200,000 for each lot. Planner Ananth reported that after the 6th Street staircase, another staircase is identified on 9th Street. There are no current plans to build the 9th street stairs, but it would most likely be the next priority. Planner Ananth remarked that an 8th Street staircase, which would be the closest to this property, would be third in line. Planner Ananth stated that even though the future 6th Street stairs were prioritized and money was going to be allocated in next years budget, due to changes in the economy, that allocation has been pulled out and the City is not moving forward with the 6th Street stairs. Therefore, the potential 8th Street staircase is pushed further into the future.

Planner Ananth presented a slide showing that there could be a staircase that links from the pedestrian path of Crescent Tram on City-owned Treasure property, up through and probably cross the driveway that an abutter already has an easement for on to the property, through to Empire Avenue or a trail that exists on Treasure. She emphasized that there is plenty of room on this parcel for a staircase on City property without any need to encroach on the applicant’s property at 802 Empire.

Chair Phillips had visited the site and he appreciated that the applicant had staked out the site. He understood the reason for combining the seven parcels and he thought the analysis this evening was helpful in showing that without the subdivision the one lot would be oversized.

Chair Phillips stated that during his site visit, he noticed that the unique shape of the property. He thought the property line placement between the two lots was as good as they could do because of the shape. Chair Phillips was concerned how putting the driveway at the top and that being the front of the houses would impact the streetscape of Crescent, having that be the back of the houses. Chair Phillips believed the houses would be most visible from Crescent. He assumed the streetscape on the Crescent side would be addressed in the HDDR process.

Chair Phillips understood the Engineering Department's reasoning for wanting the access to come from above because it is not ideal to come up Crescent. However, this is Old Town and there are many unique roads and accesses. Chair Phillips stated that in his opinion, the northerly lot is much wider and the house above it has their driveway going into the garages. It felt to him like that should be the front of the house. He suggested having the access to one house off the flatter portion of Crescent where the road is straight. The other lot could be accessed from the top, which would eliminate the shared driveway. Chair Phillips reiterated that his biggest concern was impacting the streetscape on Crescent.

Tom Peek, the applicant, pointed out that access from the top was not their idea. He noted that former City Engineer, Matt Cassel, made that suggestion and thought it could be done fairly easy. They finally warmed up to the idea because they saw the downhill side as an exciting opportunity to have a building that instead of looking like the back of a home it looks like the front of a home with no garage.

Jonathan DeGray, the project architect, agreed with Chair Phillips that his concerns about the streetscape would be addressed in the HDDR process. Mr. DeGray thought it was likely that they would end up with a main entrance to the home off of Crescent because that is how the Staff will want to see the streetscape developed to maintain the character of Crescent. Mr. DeGray anticipated a more pedestrian oriented entrance to the homes with the garage entrance relegated to the rear.

Chair Phillips understood that the Engineering Department made this recommendation and he trusted the applicant and Mr. DeGray because they know this property. However, he felt that because the former City Engineer made that decision, they continued down that path, which is why the applicant was trying to come in from above. Chair Phillips asked if the applicant had any interest in doing one driveway from below and one from above, or whether they were too far into the design process. Chair Phillips pointed out that there are many aspects and Engineering only looks at one portion. He asked Mr. Peek if the proposed plan was their preference.

Mr. Peek felt that they did get funneled into it because the original idea was to come from below. He noted that the two homes to the north all have driveways that are set back reasonably from Crescent Tramway. However, in most cases people have said they have trouble walking on the road because it is slippery and the snowbanks build up. There have been discussions about putting a sidewalk on the uphill side of the street or other measures. Mr. Peek deferred to Jonathan DeGray as to whether the option suggested by Chair Phillips was possible.

Mr. DeGray thought it would be possible to put the north driveway off Crescent and the south driveway up above. He stated that they followed the recommendation of the Engineering Department with support from the Planning Staff on where to place the driveways, but he felt certain he could make the other option work as well. Mr. DeGray thought it was doable and the projects would be successful. He also thought the issue of having the main entrance on Crescent was important to both of the homes. Mr. DeGray did not believe having a garage off Crescent was a deal breaker either way. He thought having a garage off the back would make these homes special and the access would be easier. The street presence on Crescent would be in context with the other homes. Mr. DeGray thought this was a more desirable option. Having the garage in the back has more pros.

Commissioner Sletten stated that he had visited the site and walked around the property with Tom Peek. In looking at the surrounding properties, he personally thought that having a pedestrian access from Crescent Tram and the vehicular access up above, he thought the new option would make the building look more compatible with the Old Town character.

Commissioner Kenworthy stated that he also visited the site and met with Tom Peek. Commissioner Kenworthy asked for the elevation difference from the existing pads on Crescent to the driveway on Empire. Martina Nelson offered to look for the numbers. Commissioner Kenworthy clarified that he was looking for the distance from the top of the roof to the pad.

Mr. DeGray clarified that there are exemptions in the Code for single car garages and entries on downhill lots that allow exceeding the 27’ height limit. He was unsure whether that was the case in this situation.

Commissioner Kenworthy understood that Crescent has its issue. It is narrow and people back out across the street because they do not have garages. It is a very difficult situation. Commissioner Kenworthy stated that Chair Phillips had mentioned all the things he was thinking about in his conversation with Tom Peek. Commissioner Kenworthy thought one of the homes should come from Crescent. He liked the idea of the pedestrian entrance below. He personally would like to have a master bedroom on top with a great view instead of having a garage at the top floor.

Chair Phillips stated that one of his questions was whether this would then lead to the exception for the height requirement for garages. It was an issue that needed to be considered.

Mr. DeGray stated that the driveway exhibit shows that the adjacent grade to the end of the driveways is basically Elevation 70. They were saying the driveway elevation is 8. It is a 27' height limit and at least the westerly edge of the garage would be in compliance with the height.

City Attorney Harrington understood from their comments that some of the Commissioners had site visits and contact outside of this public meeting. Anyone who had a discussion with Tom Peek onsite needs to disclose it on the record and include the substance of the conversation at the site visit. Mr. Harrington stated that typically the Staff tries to organize site visits.

Commissioner Kenworthy stated that he received an email that he thought was sent to all the Commissioners. From reading the email he thought it was appropriate to visit the site. Commissioner Kenworthy disclosed that he met with Tom Peek and Commissioner Sletten was also there when he arrived. Mr. Peek had staked the property and the conversation was very general. Mr. Kenworthy clarified that he never mentioned anything he was talking about this evening because he did not believe it was appropriate. This was the first time Mr. Peek was hearing his questions.

Commissioner Sletten echoed Commissioner Kenworthy. He disclosed that the only pertinent discussion he had with Mr. Peek was being down on Crescent Tram looking up and wondering what the impact would be in terms of the entryway. Commissioner Sletten thought all the Commissioners were invited to visit the site and he assumed it was acceptable. Commissioner Sletten clarified that he was there a short time before John Kenworthy arrived. Nothing substantive was discussed.

Martina Nelson, the Surveyor, stated that she received an email from the Planning Staff asking if she could stake the lot boundaries to make it easier to visualize on the ground. She did stake the property and hoped it was easy for everyone to visualize the overall boundary and the slice where they propose to subdivide the lots.

Mr. Peek stated that he had sent out the invitation a couple weeks ago, and Planner Ananth suggested that he remind everyone on Friday once they received the packet. Mr. Peek stated that it was so well staked that he thought it would be helpful if the Commissioners could stop by to see it. He was there just in case someone wanted him to walk them around the property.

Chair Phillips stated that he visited the site late at night and no one else was there.

Commissioner Thimm noted that this was the third meeting on this application and the Planning Commission has had considerable discussion on the project. He had questions relative to the driveway, but his questions were answered by reading the letter from the City Engineer. Commissioner Thimm did not have a strong opinion as to whether the driveway comes in from Crescent or Empire. However, he thinks the houses will need to be four-sided houses, and the architecture will need to address frontage. Commissioner Thimm thought that would be heavily addressed through the HDDR process.

Commissioner Sletten referred to a comment that came in as public comment from the attorney representing a resident. With respect to the landing of the potential future staircase, the attorney included a copy of the easements and the court order. Throughout the letter the term that struck him was non-exclusive easement. Commissioner Sletten understood that the easement is over City-owned property through the open space. He asked Mr. Harrington to explain how that works and who has the right to use.

City Attorney Harrington stated that he did not have a concrete proposal to evaluate, and the analysis and recommendation came from the City Engineer on something that has not been fully proposed at this time. In terms of the stairway, Mr. Harrington advised the Planning Commission to exercise caution. He suggested that they soften condition of approval #7 by adding "if necessary". He thought the condition as written reads as though it was pre-approved by the Planning Commission and mandated. Mr. Harrington believed the language was strong in the sense of requiring the use of that property, since that encroachment will likely require further action by the City Council and in conjunction with a specific approval of a proposal. Mr. Harrington remarked that the Engineering Department provided a recommendation for that turning radius; however, he anticipated further analysis on that to determine whether there is a different solution. He did not want to preclude a different solution if something else comes forward. Mr. Harrington stated that a partial driveway encroachment easement going over an existing driveway easement did not cause him much concern. However, he would modify the condition #7 as he previously suggested. The Commissioners agreed to make the adjustment to the conditions of approval as suggested.

Chair Phillips asked if these buildings would need to come in for a Steep Slope CUP. Planner Ananth replied that the analysis had not yet been done because the house is not designed, and she did not know exactly where it would sit on the lot. However, from looking at the lot, she was fairly certain that it would require Steep Slope CUPs. It would at least be Administrative, and she was unsure whether it would come to the Planning Commission.

Martina Nelson responded to Commissioner Kenworthy's earlier request. She had done a very rough calculation looking at the contour map, and from the center of the graveled parking area at the top of Empire down to a contour as the crow flies on Crescent, she estimated a 22 to 24 feet difference in elevation.

Commissioner Kenworthy was concerned about making that footage work with a garage with a roof. Mr. DeGray thought it appeared to work. In looking at the elevation and the contour at the end of the driveways, it is 17' feet above the driveway. The grade does not fall away that fast and from what he could see, there is ample room to have a single car garage structure given the height restriction of 27'.

Commissioner Thimm stated that based on that explanation, he asked if the applicant would be open to a condition that would eliminate the use of the exception in the building height.

Chair Phillips stated that his biggest concern at this point was anticipating the need for an exception to the building height with it being a garage. He was not in favor of forcing this application into the exception allowed by Code when there was another option.

Commissioner Thimm understood from Mr. DeGray's comments that he could make it work without the exception. Mr. DeGray replied that just looking at it quickly, he thought it could be done; however, he was not willing to commit to that without actually coming up with a design that was reviewed in a design review team meeting. Mr. DeGray did not think they should eliminate the exception option this early in the process.

Mr. Peek noted that they had not begun working on the design because Mr. DeGray suggested that they wait to get the initial approval. They have talked about the driveway and elevations of the driveway and where there could be some modifications. Mr. Peek remarked that the intention is not to push for taller buildings. They were dealing with access and the driveways at the top because they were funneled into that approach by the City Engineer. Mr. Peek pointed out that they have done 17 projects in Old Town and all have stayed within the limits.

Chair Phillips thought the unique shape of the lot could possibly push this into a height exception. If that is the case, it was important to have this discussion ahead of time. He preferred to wait until they have a design to know whether or not it is necessary.

Planner Ananth did not believe the HDDR process would look favorably on a height exception and would encourage alternative analysis before considering the exception.

Chair Phillips clarified that nothing was forcing the applicant to come from above, but it was still an option if through the design process they conclude that it is still the better solution. Mr. Peek stated that Matt Cassel made it clear in his initial discussions and recommendation that he would strongly resist accessing off of Crescent Tram. At that time, they did not think they had a choice.

Corey Legge, Public Improvements Engineer, stated that before Matt Cassel left the City, they walked the site together and Mr. Cassel outlined his concerns with access from Crescent Tram. Mr. Legge noted that since then he has reported that prior comments were provided to the applicant to encourage access to come off of the unplatted driveway located above on Empire Avenue. Mr. Legge stated that once the new City Engineer, John Robertson, was hired, he walked the project with Mr. Robertson before this Planning Commission meeting to get his thoughts and understanding of the site. Mr. Robertson supported the idea of the driveway coming from above for the same reasons Mr. Legge had outlined in his engineering memo. He remarked that looking at the site, it is difficult for motorists to maneuver along Crescent Tram given the existing structures that abut right onto the roadway. That worsens during the winter period as snow storage further encroaches into the travel lanes and Crescent Tram becomes a slippery slope. Mr. Legge stated that Engineering looks at the site holistically and from a public safety standpoint. They focused on the general public navigation of that corridor, which is why they made the recommendation to access from above as a shared driveway on Empire Mr. Legge clarified that the access off Empire Avenue is only supported on a condition that vehicles are able to pull out of Empire Avenue and not back out of the existing lots. In looking at Lot 1 versus Lot 2 and which lot could face off Crescent Tram, he recommended that if it is Lot 2 and the access would still come off Empire, that the driveway be extended to allow a motorist to pull on to Empire Avenue rather than backing out.

Commissioner Hall asked whether the Staff wanted to address any of the public comments related to community concerns about the access and future staircase. Planner Ananth read through some of the comments that were submitted. She noted that Cheryl Shoshnick was requesting that the Planning Commission ask that the property owner participate financially in the construction of a staircase. Commissioner Hall asked if that has ever been discussed, since the applicant is getting the benefit of using part of City-owned land. Planner Ananth replied that it has been done before so there is a precedent; however, not necessarily in exchange for using City land. She explained that they would need to show a clear and proportionate nexus between a condition that requires a financial contribution to a staircase. Commissioner Hall understood that in this case they would say that the area traditionally use now will become a be a private driveway which is the exchange for financially contributing to a pathway.

Mr. Peek stated that currently no one uses that access because it does not go to an access point. The driveway goes into the tail of the Treasure project. Above that is where the driveway goes into the adjoining property on Empire. That has been blocked off for so many years that no one uses that area. Mr. Peek had read Ms. Shoshnick's letter. He thought she was most concerned about getting a set of stairs up 9th Street. There was also verbiage about participating in the cost. Mr. Peek was unsure when or if these stairs would ever be built. He is a proponent of stairs and he would like to see them go in. Stairs would be a positive benefit for these properties and other properties in that part of the community. Mr. Peek commented on other ways to get up the hill.

Planner Ananth referred to public comment received from Mary Whiteside who supported the right-of-way for access to these two properties from Empire Avenue.

Director Erickson recommended that the Planning Commission open the public hearing before further discussing public comment.

Chair Phillips opened the public hearing.

Jessica Nelson reported that she received one e-Comment that came in during the meeting from Nick Frost, who was representing Rick Kienzle. Mr. Frost had emailed a comment earlier in the day and he had additional comments to add. Jessica Nelson read Mr. Frost's comments into the record. His email noted that in addition to the proposed driveway encroaching onto the Treasure Hill open space, the proposed encroachment also encroaches onto Mr. Kienzle's Driveway Easement and violates the Court Order governing the Driveway Easement. Secondly, Mr. Kienzle is concerned about the City's proposed location of the public stairs as depicted in the Staff report. Mr. Frost understood that the Planning Commission was not making a determination on the stairs this evening, however, in his email he pointed out several factors the Commissioner's should be aware of before making a final determination on Mr. Peek's project as it relates to the location of the stairs. Specifically, the current location of the stairs, which terminates onto Mr. Kienzle's driveway is a direct violation of the Court Order and therefore is illegal. He suggested that instead of locating the public stairs onto the Driveway Easement, it was more viable to locate the public stairs to the south of the proposed project with a termination point onto the proposed location of driveway for the proposed projects, as recommended in Corey Legge's memorandum. Mr. Frost urged the Planning Commission to discuss this at a cursory level before any final determination is made on the current proposal. The concern is that approval of the project may foreclose on the City's ability to utilize Peek's property if that becomes necessary.

Jessica Nelson noted that under the line Position on the eComment, Mr. Frost had put opposed.

This was the only public comment that was received during the meeting. Public comment that came in prior to the Staff report being distributed was included in the Staff report and became part of the record.

Six new public comment emails were received earlier today from Cheryl Shoshnick, Mary Whitesides, Scott Dubois, representing Rick Kienzle, Peg Bodel, Frederique Bouty, and Don Nibouar, and those were forwarded to the Planning Commission. Those emails, as well as the eComment this evening, were also entered into the record.

Chair Phillips closed the public hearing.

Chair Phillips asked Planner Ananth to address the comments from Mr. Frost, and to also pull up the aerial view showing the line where the potential stairs would be located. Planner Ananth thought Mr. Frost was describing his driveway easement and saying that the shared driveway illegally encroaches. Planner Ananth pointed out that through her research she determined that the gravel driveway has been there since the 1950s. It has not been improved and it is often used to help the neighborhood with construction impacts from other projects and parking. She believed this proposal would clean up that use in that it would be a shared driveway, and no parking would be allowed on that platted unbuilt right-of-way.

Commissioner Kenworthy was having a hard time visualizing the garage and how the driveway turns around and comes out of Empire without backing onto the road. He was concerned that extending the driveway easement into the Treasure space would be more problematic.

Planner Ananth pulled up the slide showing the proposed driveway. Planner Ananth stated that currently the plan was not showing any encroachment. It actually states, "the existing gravel parking area to be removed". Planner Ananth remarked that the Engineering Department has suggested that it may be beneficial to continue that existing encroachment. She had not done a turning radius analysis. Chair Phillips stated that under the current proposal the existing gravel will be removed and the plan they were seeing this evening is what would occur. He thought the proposal would actually improve what exists now. Planner Ananth stated that it was her position as well.

Commissioner Kenworthy questioned how the car in Lot 2 faces forward and comes out of Empire. He asked if they would be required to extend what was shown on the map.

Director Erickson referred to the Engineering Report and noted that Mr. Legge was requiring a turning analysis. The purpose of the encroachment onto public lands is to make sure there is no opportunity to back out onto the road. Both cars must have turning radiuses that work.

Commissioner Kenworthy agreed, because that was one of the reasons for taking the access off Crescent. He suggested that if Lot 2 has the ability to front on Crescent, it would potentially take care of that issue.

Director Erickson pointed out that there is no opportunity to have a front facing driveway on the Crescent side. In addition, Crescent is between 6-8 feet narrower than Empire, and Empire was reconstructed with curb and gutter. There are also encroaching garages on the downhill side of Crescent. Director Erickson stated that while this was not the most ideal solution, it was the least damaging way of handling the problem. Planner Ananth believed that backing out of Lot 2 on to Empire was at least as complicated as making a three-point turn to face forward exiting on to Empire.

Mr. Legge stated that given the proposed driveway and the existing berm, as well as the retaining that would need to be installed for the shared driveway, he would not support backing out of Lot 2. A motorist would not be able to see any northbound traffic on Empire as it travels around the horseshoe bend. As stated in the Engineering memo, the Engineering Department supports the shared driveway off of Empire Avenue provided that vehicles are not able to back out, and it is deemed that vehicles must pull out on to Empire Avenue. Based on review of the site plan, Mr. Legge thought it appeared that the southerly property line is extended through the right-of-way. In that case, a vehicle would not be able to perform that turning movement out of Lot 2 as shown. The drive would need to encompass the existing gravel area, which would require an encroachment agreement on the Treasure Hill parcel.

Chair Phillips stated that from what he was hearing, the proposed plan that they were being asked to forward to the City Council would need to be changed in order to satisfy the Engineering Department. He was unsure how they should address this issue. The Planning Commission could verbally discuss it and provide direction to the Staff, but the applicant would also need to update the plan so when it goes to the City Council, the Council has the accurate plan to consider approving.

Planner Ananth pointed out that the engineering memo only came out last Thursday and the applicant did not have sufficient time to respond or create a new plan. However, she thought they could address the issue with a finding stating that if it is determined necessary because of turning radius issues, the Planning Commission has approved a small encroachment onto the Treasure property as suggested in the engineering memo. Chair Phillips thought it needed to be addressed verbally with an amendment or some direction to the Staff before it goes to the City Council. Chair Phillips noted that the gravel has existed there for a long time and it is somewhat of a grandfathered use. He was unsure whether there was more to the page that was cut off on the screen, but he would like to see how far the existing gravel extends. Planner Ananth stated that she zoomed in on the slide to make it as legible as possible and some part may have been cut off. She remarked that the gravel extends quite a ways, but it would not need to extend as far as it does not.

Chair Phillips stated that without actually being able to see it, he assumed the future three-point turnaround would not extend out as far as the gravel that exists now. He believed it would be an improvement on the existing use by shortening the length of the gravel area and only using what is necessary. Chair Phillips thought he could be comfortable with it as long as it does not extend further than what already exists. If it did extend further, he would need to relook at it.

Director Erickson noted that there was another drawing in the CUP application that showed the extent of the gravel. Director Erickson understood from the comments that the Planning Commission was not comfortable moving forward without seeing a complete proposal on the CUP. Chair Phillips clarified that he was comfortable moving forward as long as the Commissioners verbalize what they feel comfortable with. Chair Phillips remarked that his point was that the Planning Commission would be forwarding a recommendation on something they could not actually see. He emphasized that he was comfortable with the page being adjusted with enough room for a turnaround, because it is in the best interest of public safety to pull out forward. The caveat is that it would not encroach more than the existing grandfathered use.

Commissioner Kenworthy preferred to see the modification rather than rush a recommendation. The issue is not whether anyone is allowed to back out because no one should be backing out. Going back to an earlier statement, he thought it was important to know the height from the existing pad to the proposed shared driveway on top. Commissioner Kenworthy wanted to have all the specifics before moving forward. He noted that many major parts were changing and the City was giving some concessions; and they were also considering problems that are more major on Crescent to accomplish this. He wanted to make that since the City is giving these concessions that everything is well-defined and works out for the best for the community.

Director Erickson looked up the height exception in the LMC for the HR-1 zone and found that it is actually a Planning Commission action. He read from Section 15-2-2.5, Item 4 – Garage on Downhill Lot, “The Planning Commission may allow.....” Commissioner Kenworthy asked for the maximum it could be extended. Director Erickson replied that it could be extended to 35’ in order to accommodate a tandem garage, but not a single-car garage. From his reading of the Code, he did not think there was an exception for a single-car garage.

Director Erickson asked what the other Commissioners thought about the CUP action and making sure the subdivision action that is forwarded to the City Council illustrates what is coming in the CUP. He noted that the subdivision, the encroachment agreement, and the use of public right-of-way will be City Council actions.

Chair Phillips agreed with Commissioner Kenworthy about not rushing a recommendation this evening.

Martina Nelson informed the Planning Commission that the distance from the south lot line of the proposed plat amendment to south of the gravel was 19’.

Director Erickson noted that the subdivision documents were reflecting the driveways that the Commissioners were not comfortable with until they could see the final plan.

Commissioner Thimm suggested continuing both the Subdivision and the CUP. However, he asked if Chair Phillips would consider taking a straw poll to find out if the Commissioners understand the turning radius, if they were ready to take positive action on the merits of the rest of the proposal for both initiatives. Chair Phillips asked if Commissioner Thimm was suggesting that they set this one issue aside and move forward on the rest. Commissioner Thimm clarified that his preference was not to separate the issue, but this has been before the Planning Commission three times and he was hesitant to ask the applicant to come back a fourth time. If the Commissioners had any other issues with the proposal, he would like the applicant to hear those now rather than later. Chair Phillips agreed.

Chair Phillips thought they should also take into consideration the fact that the engineering letter did not come in until last Thursday, and it was unforeseen by the applicant. Commissioner Thimm stated that the driveway turning radius was the only issue he had at this point.

Commissioner Kenworthy stated that in addition to the turning radius, he also wanted to see the height. He did not want a driveway 25' above the existing pad because that would create another issue; especially if Director Erickson is correct and there is no exception. He needed to feel comfortable about those issues before moving ahead with a vote.

Chair Phillips stated that since the complete driveway was a primary factor, and he also agreed that the height should be analyzed, he called for a straw poll.

Mr. Peek thought Exhibit B under the conditional use permit, which is the 802 Empire driveway plan, would answer their question. Planner Ananth did not believed it answered their question because the Exhibit does not show what it will look like.

After hearing input from the other Commissioners, Commissioner Thimm wanted to see the height addressed as well.

Commissioner Hall echoed Commissioners Thimm and Kenworthy regarding the follow-up issues. She understood that the 8th Street staircase was not a high priority for the near future, but she thought it would be bad for the community if it was limited. Commissioner Hall wanted to make sure that is addressed when they look at the CUP and the terms and conditions to make sure this proposal will not interfere with a future staircase.

Commissioner Van Dine had nothing additional to add. She agreed with the Commissioners Thimm and Kenworthy on seeing what the driveways will look like and the turning radius, as well as the height.

Commissioner Thimm noted that the Planning Commission would need an updated Exhibit because currently it says that the gravel driveway will be removed.

Commissioner Sletten concurred with his fellow Commissioners. He thought the driveway issue could be easily resolved with a condition of approval, but he was not opposed to waiting until the two issues were addressed.

Planner Ananth suggested continuing the subdivision and the CUP to June 10th. Mr. Peek thought they could have everything ready by June 10th.

Mr. Peek appreciated the comment from Commissioner Thimm about this being their third meeting. Each time there are new issues and he was anxious to move on from here. He was willing to accept additional conditions if that is required to move ahead.

Director Erickson stated that most of the time in the application process was trying to sort out how to do the subdivision, which is the front yard, and how the access works. The last time this was continued was due to the driveway issue and not meeting the multi-family driveway standards of 20'. They needed to get an official determination from the engineer. Director Erickson thought it was best to continue to June 10th and give Planner Ananth the opportunity to meet with Jonathan DeGray to resolve these issues.

MOTION: Commissioner Thimm moved to CONTINUE the 802 Empire Avenue subdivision to June 10, 2020. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

Chair Phillips opened the public hearing on the conditional use permit.

All the public comments that were submitted and entered into the record on the Subdivision were also entered into the record for the CUP.

No additional comments were submitted during this meeting.

Chair Phillips closed the public hearing.

MOTION: Commissioner Thimm moved to CONTINUE the conditional use permit for the construction of a shared driveway over a platted unbuilt City street at 802 Empire Avenue to June 10, 2020. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

The Planning Commission Meeting adjourned at 8:50 p.m.

Approved by Planning Commission: ____