PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
APRIL 12, 2023

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

EX OFFICIO: Gretchen Milliken, Planning Director; Rebecca Ward, Assistant Planning Director; Spencer Cawley, City Planner; Jason Glidden, Affordable Housing Manager; David Gustafson, Engineering Department Project Manager; Jack Niedermeyer, City Planner; Olivia Cvetko, City Planner; Mark Harrington, City Attorney

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1. ROLL CALL

Chair Laura Suesser called the meeting to order at 5:30 p.m. She confirmed the presence of all Commissioners.

Chair Suesser reported that the site visit scheduled for today at 327 McHenry Avenue was canceled and rescheduled for May 10, 2023.

2. MINUTES APPROVAL

A. Consideration to Approve the Planning Commission Meeting Minutes from March 8, 2023.

MOTION: Commissioner Johnson moved to APPROVE the Planning Commission Meeting Minutes from March 8, 2023. Commissioner Van Dine seconded the motion.

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

B. Consideration to Approve the Planning Commission Meeting Minutes from March 22, 2023.

Commissioner Johnson noted that an emoji was inadvertently included in the first sentence of the sixth paragraph on page 27.

MOTION: Commissioner Johnson moved to APPROVE the Planning Commission Meeting Minutes from March 22, 2023, as amended. Commissioner Van Dine seconded the motion.

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

3. PUBLIC COMMUNICATIONS

There were no public communications.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

Planning Director, Gretchen Milliken indicated that there were no Staff Communications.

Commissioner Hall stated that because she was remote for this meeting, she assumed that someone in the Chambers would serve as Chair Pro Tem for the Homestake item on tonight's Agenda.

Chair Suesser stated that Commissioner Van Dine agreed to serve as Chair Pro Tem for the Homestake matter. Senior City Attorney, Mark Harrington opined that the last motion that appointed Commissioner Van Dine as Chair Pro Tem for this item would suffice in her serving in that capacity at tonight's meeting. Commissioner Hall stated that as a matter of practice, she would prefer to not serve as Chair for any meeting that she attends via Zoom. She suggested appointing a second Chair Pro Tem if both she and Chair Suesser were unable to serve in that capacity at any future meetings. Chair Suesser was comfortable appointing someone to fill that role if and when the situation arises. The Commission Members agreed to address the situation on a case-by-case basis.

Chair Suesser stated that there had been inquiries regarding the reasons for her recusal from the Homestake matter. She decided that she could not be impartial on the project because she has a conscientious objection to the project due to the potential adverse health impacts on residents living in such close proximity to the transmission facility. She noted that the transmission facility might be upgraded at some point in the future.

A. General Plan Work Session - Due to a Full Agenda, the General Plan Work Session will be Scheduled for a Later Date.

Chair Suesser reported that the General Plan Work Session scheduled for this meeting would be postponed.

B. Land Management Code Amendments Schedule Update.

Director Milliken reported that most of the information is contained in the Staff Communication included in the Packet. She mentioned that the update involved the status of the Request for Proposal ("RFP") for the consultant, as well as the Land Management Code ("LMC") priorities for the rest of the year. She invited any questions to be presented to Staff.

5. CONTINUATIONS

A. 327 McHenry Avenue – Conditional Use Permit – The Applicant Proposes to Construct a Private Recreation Facility (Pool) in the Rear Yard. PL-22-05389.

City Planner, Spencer Cawley reported that the site visit was continued to May 10, 2023, so that it would remain in line with the continuation of the review of the application on that date.

Chair Suesser opened the public hearing. There was no public comment. Chair Suesser closed and continued the public hearing.

MOTION: Commissioner Johnson moved to CONTINUE 327 McHenry Avenue – Conditional Use Permit, and the public hearing – to May 10, 2023. Commissioner Frontero seconded the motion.

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

B. 1325 Empire Avenue and Parcel SA-200 – Plat Amendment –The Applicant Proposes a Plat Amendment to Amend the Knudson Subdivision and Parcel SA-200 and Re-Subdivide the Vacant Lots into Four Lots to Eventually Construct Four Single-Family Dwellings. PL-22-05357.

City Planner, Jaron Ehlers stated that there was nothing to add to the requested continuance.

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

MOTION: Commissioner Van Dine moved to CONTINUE 1325 Empire Avenue and Parcel SA-200 – Plat Amendment – to May 10, 2023. Commissioner Johnson seconded the motion.

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

6. REGULAR AGENDA

A. 475 Woodside Avenue - Steep Slope Conditional Use Permit - Applicant Seeks to Demolish an Existing Single-Family Dwelling and Construct a New Single-Family Dwelling on a Steep Slope. PL-23-05585.

Director Milliken reported that the above application was withdrawn.

B. 1875 Homestake Road, Homestake Affordable Master Planned Development - Development Agreement - The Planning Commission Will Review the Development Agreement for the Homestake Affordable Master Planned Development, a Project Proposing 99 Affordable and 24 Market-Rate Units in the General Commercial Zoning District. PL-22-05288, PL-22-05300.

Chair Suesser recused herself from the above item and left the meeting. Chair Pro Tem Van Dine assumed the Chair.

Planner Cawley reported that this item addresses ratification of the Development Agreement that outlines the Affordable Master Planned Development ("AMPD") approvals that would be recorded with the County. The Planning Commission determined that the Homestake AMPD meets the requirements of the LMC and unanimously approved the project on October 26, 2022. The Staff Report outlined the scope of review for ratifying the Development Agreement. Following the publication of the Packet, Staff received public input and those emails were forwarded to the Commissioners. Staff would address any questions raised by that public input.

Planner Cawley reported that Staff recommended the Planning Commission review the draft Development Agreement for consistency with the Commission's October 26, 2022 approval, and consider ratifying the Development Agreement attached as Exhibit 1 to the Staff Report.

Chair Pro Tem Van Dine sought confirmation from the Commissioners that they had the opportunity to review the materials provided on this matter. The Commissioners confirmed that they reviewed what was provided. Chair Pro Tem invited comments or questions from the Commission. She understood that they were looking at this based on what is required by the LMC for a Development Agreement. City Attorney Harrington confirmed that was accurate.

On behalf of the applicant, J Fisher Companies, Rory Murphy reported that they met every condition for ratification of the Development Agreement. He was present with his business partner, Ryan Davis, and their legal counsel, Craig Terry. Applicant Murphy stated that the concerns raised during the previous meeting were hopefully addressed in the Staff Report. They were prepared to answer questions.

Commissioner Kenworthy thanked Staff for including his November 5 letter and appreciated the transparency in having that letter included in the record. He stated that City policy will affect the surrounding and abutting properties and he questioned whether the City had considered those impacts. He observed that they were setting a precedent with a four-story 40 to 50-foot building that could potentially encircle this electrical substation. Commissioner Kenworthy stated that City Hall had an applicant who has the responsibility to have those studies that were done on the electromagnetic fields include the precedent-setting that his letter indicated six months ago. He queried where they would be comfortable with the Setback line, and who would be responsible for this Setback line precedent for the AMPD Codes that were met on this property.

Commissioner Kenworthy asked if this decision would be setting a precedent that Electromagnetic Fields ("EMFs") do not require any mitigation at this site. City Attorney Harrington stated that it would not. He explained that the Commission made its decision in October based on the record regarding whether the project complies with the policy direction from the City as embodied by the General Plan and the Land Management Code. He stressed that those were the only two things that controlled the Commission's review. The Commission made its decision in accordance with those two documents.

City Attorney Harrington added that there was a finding or a statement in the record that acknowledged that there is not a current national, State, or local standard regarding EMF distances for proposed residential or other development. He understood that there was no evidence showing adverse impacts from the distances and there was testimony that there was no evidence that was controlling. He noted that the Commission recently received evidence that provided further clarification and was included in the Council's report on March 9. He commented that this is outside of the Commission's record but they added it as a recital to the Development Agreement as requested by Commissioner Johnson.

City Attorney Harrington explained that should the Commission receive evidence in a future decision they could consider that evidence on a case-by-case basis. Additionally, if the Commission wished to direct Staff or the Council to embark upon a more serious study of EMF levels throughout the City and propose a residential standard, that could be explored. He reiterated that the Commission would not be setting a precedent in moving forward with this application.

Commissioner Kenworthy felt that the Commission voted on this project based on the LMC and they had the EMF issue. He does not have a degree in science or medicine and did not have the LMC to guide him at that particular stage. When he and Commissioner Johnson requested additional information, Commissioner Kenworthy requested in his November 5 letter that they have a reliable baseline.

Since then, they have had several different studies to satisfy some of the points raised by Commissioner Johnson. Commissioner Kenworthy expressed concern that there was no reliability in the baseline that was presented. He noted the disclosure from EMF Utah, LLC that made no claims regarding the health and safety, current, past or future, of the survey site based on EMF levels measured.

Commissioner Kenworthy referenced the report that stated that City Hall and the Council were "advised to read the current health and safety documentation provided by Federal, State, County, and City environmental safety divisions, along with third-party environmental and technical organizations before making their own determination regarding the health and safety risk of the survey site." Commissioner Kenworthy asked if this was what Park City wanted, and noted his qualifications for having this included in the process. He was troubled, and he heard the same from Chair Suesser when she explained the reasons behind her recusal. He strongly recommended that City Hall never again serve as the applicant, advocate, judge, and jury because it just does not work.

Commissioner Johnson asked if there were any plans by the City to bury the transmission lines in the Homestake area. Affordable Housing Manager Jason Glidden referred that question to Engineering Department Project Manager, David Gustafson. Manager Glidden understood that Rocky Mountain Power was working on the burial of distribution lines. Manager Gustafson advised that currently the distribution lines that run from the Snyderville Substation to the Munchkin Substation were being undergrounded. There was no intention on the part of Rocky Mountain Power to bury transmission lines. They presented to Council the option of doing a small section, but the cost was $5.3 million, and he did not expect that to happen in the future. Commissioner Johnson understood that the burden of burying transmission lines would be totally on the City and Rocky Mountain Power would not contribute any monies towards that.

Commissioner Kenworthy asked how the future electrical needs of the community would be addressed if the City was not going to use Rocky Mountain Power's Substation at this site to increase voltage. Manager Gustafson explained that currently, Rocky Mountain Power had no intention to upsize to the 138,000 volts at this substation. The infrastructure being installed along State Route 224 was sized for 138,000 volts; however, based on a study in 2012, Rocky Mountain Power made some adjustments to other substations.

Manager Gustafson advised that there were three substations tied into the Munchkin Substation and Rocky Mountain Power made adjustments to those facilities so that they would not have to increase the voltage at the Munchkin Substation to 138,000 volts. He stated the 46,000 voltage was good for right now.

Commissioner Kenworthy reiterated his question on the future electrical needs of the community. He noted the national conversation that 30% of cars sold by 2030 would be electric. If that comes into play, he questioned whether the electrical load would be enough to recharge cars without any future development like Homestake, Deer Valley, or Park City Mountain. He wondered how they would satisfy these national and statewide movements.

Manager Gustafson stated that the documentation he has received from Rocky Mountain Power stated that they have no intention of upgrading to 138,000 volts at this time. He acknowledged that no one know what would occur in the future.

Commissioner Kenworthy noted there was no guarantee on a cap or ceiling of how high the voltage could go in the future. Manager Gustafson was unable to answer that question. Manager Glidden added that based on communications received from Rocky Mountain Power, even if they were to increase the power into that substation, the geographical space there currently would not be enough. In other words, Rocky Mountain Power would need more space in that area to expand the substation. He acknowledged there is property next door that they could possibly use. He added that according to the Rocky Mountain Power engineer, they would decommission the capacitors that are closest to the Homestake site, which would mean that they would not be emitting any EMF. Manager Glidden further understood that all of the equipment would then be pushed toward the east.

Manager Gustafson commented that the distance from the 138 lines coming into the substation would be further away from the Homestake project than the capacitor currently is from the site. Manager Glidden noted that in all likelihood, they would see more distance, which would actually reduce the EMFs coming into the project. Manager Glidden also addressed Commissioner Kenworthy's comments regarding EMF Utah and noted that EMF Utah was hired as a vendor to take readings, not to make assumptions about the health impact of those readings. This explained the disclaimer in their report since they were hired only to take readings to establish the baseline as requested by the Planning Commission. He added that they included Commissioner Johnson in this process to ensure that they met the standards of what he wanted for a baseline, as the Commission appointed him as the point person. Manager Glidden reiterated that EMF Utah was hired only to take readings, not to interpret them and determine the health and safety of those readings.

Commissioner Kenworthy appreciated this clarification and expressed his understanding. He noted that the disclaimer stated further, "these electrical field survey readings are a snapshot in time, and are not predictive of what the readings will be at any point in the future or indicative of what the readings were in the past. These can and do change for a variety of reasons."

Commissioner Kenworthy referenced his November letter that highlighted reliability as the key issue. He felt this was what they asked for after the matter was carried over after the vote, and he had to rely on what is written. At the end of the day, for him it was an issue of accountability and who would be accountable. He addressed that in the November 5 letter as well.

City Attorney Harrington was unsure if Commissioner Kenworthy's comments were properly pointed. He stated that the Commission and Commissioner Kenworthy were accountable for a decision under the Land Management Code, no more and no less. These other issues are of great public concern and he noted that they had been appropriately raised for the City Council's consideration as they decide whether or not to move forward with the project or address the issues in the ground lease. He added that the City Council could also address these issues in terms of additional terms with the potential future residents. These issues were requested to be carried forward to City Council, and City Attorney Harrington assured that they had been communicated to the Council.

City Attorney Harrington stressed that ultimately the legislative body would be the body accountable for the project moving forward or not, not the Planning Commission. He stated that the Planning Commission was responsible for LMC compliance, and because this is a City project, they always subject themselves to these greater good questions for the benefit of the community when it goes through the Planning Commission. He commented that discussion of these issues at this time had nothing to do with the Commission's evaluation of the ratification of the Development Agreement pursuant to an approval voted on several months ago. He reiterated that accountability for some indiscernible liability in the future would ultimately lie with the property owner, not the Planning Commission as long as the Commission acted pursuant to its authority under the Land Management Code.

Commissioner Kenworthy asked if City Attorney Harrington understood his point about the applicant being the advocate and the jury. City Attorney Harrington stated his statements were not advocacy; rather, it was the job he does for every single applicant that comes before the Planning Commission. He felt that as part of their Commission appointment, most of the Commissioners were asked what they would do in regard to a project that they might not like, but that met the LMC. He explained that was the reason why the Council would ask that question, and he acknowledged it was a difficult question to answer. City Attorney Harrington reiterated that he was not advocating for this project; rather, he was suggesting that the Planning Commission's authority was to apply the Code to the project.

Commissioner Kenworthy understood, but still adamantly felt that the public saw it as advocacy since City Hall is the applicant, and different sections within City Hall were the judge and the jury in this process. He felt there was a better way to do this, and stressed that he did not like the position he was in.

City Attorney Harrington commented that the Commission had been successful in moving the direction of the ship because that was why the Council entertained a public/private partnership and had the private partner serve as the primary applicant. Commissioner Kenworthy observed that through previous administrations, the City felt it could build its way out of this. Taking away the political messaging, he stated that we failed miserably in trying to build their way out of it, and a public/private was the logical next step. His goal was that everyone would get an education about what the evaluation of the public process did; they heard more than anything else that they were desperate. He noted that he employs over 100 people in these two counties and knows the desperation out there. Commissioner Kenworthy commented that desperation was not in the LMC; however, he felt that desperation was pushing this project and was probably a lot of what caused this.

Commissioner Sigg had the disadvantage of starting his review of this project once it was pretty far along, and he was not really involved in everything leading up to the approval. He stated that some of the underlying miscues included the desperate need to create housing. He applauded the City and the Housing Authority for ramping this up; however, he noted he looked at close to 500 units of workforce housing and there were multiple other sites under consideration. For the developer group, these studies were not considered pre-site plan approval. He felt the most fundamental way to solve these distancing issues was to pull the units further away from the sub-station. While acutely aware of the costs involved in terms of where the project currently sat, Commissioner Sigg felt those would have been fundamental precursors to laying out any kind of site, whether they believed the science or not. He felt they were looking at this after the fact and wondered why it was coming up now.

Commissioner Sigg felt this issue could have been solved with different site planning on the front end, and he struggled with this. In addition, he noted the formation of two committees on Bonanza. He felt this project seemed like it was in advance of what the study would show should happen in the Bonanza District. Commissioner Sigg stressed he was supportive of affordable housing, but they were looking at master planning an area, and they had a building with a certain shape and location but for which they had not master planned for circulation or traffic. They received a promise that Homestake Drive would be improved simultaneously with this development, which he felt was an absolute necessity because they heard it would be a failure if this project were developed without those improvements.

Commissioner Sigg felt there were a lot of cases where the cart was leading the horse, and he had a lot of questions in terms of how they got to this point when they could have had these studies in the beginning and sited the buildings in such as a way that they would not even be having these discussions. He recognized that these were not questions related to the black-and-white of the Development Agreement, and what they were mandated to consider. He expressed discomfort at coming into this at the last minute and was forced to take a vote. Commissioner Sigg stressed that it was difficult to vote against City Hall because they do not want to be perceived as being against workforce housing. He emphasized that workforce housing was a good thing and the City needs it; however, there were also fundamental aspects that they looked at in terms of occupancy and density and whether it would essentially become a bunkhouse for workers. He felt those issues could be worked out, but he struggled with this issue being decided in desperation.

Commissioner Sigg felt this was moving at a very rapid pace. He stated that while he supports workforce housing, the longer that the City allows workforce housing to be used as an incentive tool for Nightly Rentals, which is the systemic cause of why they have a housing shortage, they would have to be more cognizant of that when they approve projects. He mentioned an unnamed project where he voted against his conscience and commented that it was driven by a mandated agreement that was already in place and was the lesser of two evils. He noted they gave away a lot more of the same systemic causes of this housing shortage that makes this unsustainable. The reason they are in the situation they are in is because they give too many Nightly Rentals out as an incentive in exchange for workforce housing.

Commissioner Sigg added that during a recent visit to Steamboat, it was refreshing to see the resort there purchase three hotels for their workforce housing. He felt there was more of an effort by the private partner to do something about the issue and not just dump it on the municipality. He added that Steamboat also changed zoning in many of their areas to disallow Nightly Rentals. He understood that Utah is a property-right State so it might be difficult for something like that to happen here; however, he felt they had to be careful about giving away the ranch for housing. Housing is very important, but he felt there was a disconnect.

Chair Pro Tem Van Dine confirmed that the public hearing was conducted during the last meeting on this item, and there would not be public comment on this item at this meeting.

Commissioner Johnson appreciated City Attorney Harrington's comments and stated it explained how he was looking at this. He felt this was one of those situations where the AMPD was approved, and it could not be revisited at this point. He stated that this Development Agreement aligned with that approval. He explained his views on the EMF issue and stated that 10 years ago there was a proposal to move this substation next to Iron Horse Apartments, which is a lower income facility. Historically, he looked at the uses surrounding this substation and transmission lines, and noted there is a Recycle Center, a maintenance and storage facility for the resort, and a parking lot. He added that the storage units in the area were strategically planned as a buffer for the substation. He felt the EMF issue had not just come out of nowhere; rather, it has always been a concern, which is why that area had been designed in the manner that it has.

Commissioner Johnson agreed with Commissioner Sigg's comments that some of the EMF information might have been better considered when addressing the site plan. He noted that every 10 feet results in a decrease of 60 – 70%. Commissioner Johnson noted that the highest readings were at the 30 – 40 foot level. That was not due to the substation as the power gets stepped down from the transmission lines into the substation. He felt that burying the transmission lines would be a great way to mitigate this, as would increasing the Setback.

Commissioner Johnson was ready to proceed and acknowledged it was a difficult position where they became aware of ways to mitigate it after the fact. This was a lesson he would take moving forward into the future. He understood they could not mitigate the Setbacks because the Site Plan was already approved. While they could have looked at the situation and realized that the highest levels were coming from the transmission lines. He suggested the City could ask the applicant to contribute to the City's cost to put some of these transmission lines underground. This is why this did not sit well with him, but based on the Code and the Commission's role he felt he would look to ratify the Development Agreement.

Commissioner Frontero agreed with many of the comments made by Commissioner Kenworthy and Commissioner Sigg. He understood that if the Commission ratified the Development Agreement, it would then go to City Council. It would be City Council who would make the final decision on whether to move forward with this project.

City Attorney Harrington explained that the Development Agreement would go to the Mayor for signature. The City Council would have to approve the ground lease and any other transactional documents for this project to move forward, and that had not yet occurred. He confirmed that ultimately the City Council had the final authority to decide whether this project would move forward, including the issues the Commission had requested the Council to consider. He stated that for the project to move forward, the Mayor must sign the Development Agreement, and the Council must approve the ground lease and the terms of the project. These documents had not yet been presented to City Council.

In response to Commissioner Frontero's inquiry, City Attorney Harrington stated that the Mayor would be limited to the same Code authority as the Planning Commission in terms of signing the Development Agreement. The signing of the Development Agreement by the Mayor was an administrative act that is Code-based.

Commissioner Frontero commented that based on his review of the Development Agreement, the only area he identified as something that might prevent him from voting to ratify was in Recital E, which he read as follows:

> "Developer is willing to design and develop the Project in a manner that is in harmony with and intended to promote the long-range policies, goals, and objectives of the Park City General Plan, and to address other issues as more fully set forth below."

City Attorney Harrington advised that was a Recital and if they want to eliminate Recital E, it was not material and it could be eliminated. Chair Pro Tem Van Dine did disagree with removing Recital E because she felt there was more to the project than the EMF issue. Commissioner Frontero was not in favor of removing that paragraph; rather, he suggested that he might look to Recital E as potentially a reason to vote against ratifying the Development Agreement. He was not sure that this project was in harmony and would promote the General Plan. He felt it was clear that many of the Commissioners had concerns about the process and the timing and inconclusiveness of some of the reports. He understood that if they moved forward with this, the Mayor would likely sign it.

Commissioner Frontero asked if there was any scenario wherein they approved the Development Agreement and it did not move forward. City Attorney Harrington answered in the affirmative and reiterated that the City Council could still consider the Commission's concerns and any other concerns from the community. He noted that the process was still ongoing and there were active negotiations wherein the deal points and financial considerations were all still to be considered. There would be many scenarios where this project would not go forward; the Development Agreement was the first step in terms of defining the development entitlement consistent with the Code.

City Attorney Harrington explained that Recital E was meant to capture a finding already made by the Commission, but it was a redundancy that they typically include in the event there is litigation down the road in terms of good faith. He noted that Recitals are not substantive to the agreement; rather, they provide context. He stressed that the Commission could discuss modifying or changing that Recital, but noted it was not material to the review criteria under the LMC because the compliance with the General Plan was already found in the conclusions contained in the Final Action Letter. They were not to revisit that finding during this meeting. He understood the concerns given new information and general planning issues, and it would be completely appropriate for the Commissioners to continue to raise these issues with City Council. City Attorney Harrington encouraged the Commissioners to raise concerns to Council as he was not advocating against that, but it was not appropriate for what was presently before the Commission.

Commissioner Frontero addressed City Council directly and hoped to see additional review of the EMF and asked that the City Council find further mitigation going forward.

Commissioner Hall referenced her prior comments on this item and stated that in October, they had unanimous approval for this project, with the exact same Commissioners. They hear often that the Planning Commission is required to follow the LMC and not vote their conscience or their heart or personal preference. Rather, they are only supposed to apply an application to the LMC for compliance. She stated that this was done in October and there was unanimous approval for this project.

Commissioner Hall emphasized that they were only looking at the terms of the Development Agreement. She expressed frustration because she felt they needed to be spending their time following the Code, which requires them to be looking at the terms of the Development Agreement and whether it was consistent with the unanimous approval. She noted that the LMC was amended after many years of having an AMPD in the Code, under which not a single application was processed because it was ineffective. The Commission decided that public/private partnerships would possibly be an avenue to get some much-needed affordable housing. The Code was amended for that purpose, and they now had many applications where the City is not the sole applicant. She noted that in this case, the City was a co-applicant, but the developer was leading the charge because they would be building the structure.

Commissioner Hall did not feel any pressure to have this go through and noted that the application simply met the LMC. The applicant could have asked for more, yet they did not even ask for the exceptions they were offered through the AMPD. Commissioner Hall was frustrated that they were not actually following the LMC and they were having a lot of discussion that was irrelevant to the scope of the Commission's review.

MOTION: Commissioner Johnson moved to RATIFY 1875 Homestake Road – Development Agreement. Commissioner Hall seconded the motion.

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

Commissioner Kenworthy trusted that the Mayor and City Attorney would allow the follow-up matters.

The Commission took a short recess after which Chair Suesser rejoined the meeting and assumed the Chair.

C. 2426 Iron Canyon Drive – Plat Amendment – The Applicant Proposes to Relocate the Building Pad Located on the Lot. PL-23-05566.

Director Milliken introduced City Planner, Jack Niedermeyer, to the Commission. Planner Niedermeyer has been with the Planning Department for approximately one year and this would be his first presentation before the Planning Commission. Planner Niedermeyer reported that after publication of the Staff Report, the applicant submitted a revised amended Plat that showed a minor reduction in Building Pad square footage from 4,000 square feet to 3,998 square feet. Lot 8 of the Iron Canyon Subdivision was recorded in 1989. All Lots within the Subdivision have 4,000-square-foot platted Building Pads. The existing Single-Family Dwelling was constructed in 1990, without consultation as to the Building Pad location.

Planner Niedermeyer stated that the applicant proposed to amend the existing Building Pad to encompass the existing Single-Family Dwelling and to allow for future deck expansion. A graphic was presented and it was reported that the area highlighted in pink would be the area for future deck expansion. The area for the future deck expansion was included in the calculation of 3,998 square feet. Planner Niedermeyer stated that the current Single-Family Dwelling and proposed Building Pad were compliant with the Single-Family zoning Setbacks and the Sensitive Overlay requirements. The Development Review Committee reviewed the application and raised no concerns. A graphic was presented showing the area of the proposed deck, which will attach to the existing deck on the second story.

Planner Niedermeyer explained there was good cause for this proposal, as it would resolve an existing issue and Non-Conformity. It would be consistent with the pattern of development in the neighborhood, and the area of the Building Pad would not be increased, nor would it disturb more area than previously allowed. The change would be consistent with the Iron Canyon Subdivision. The Planning Commission and City Council have approved similar proposals within the Iron Canyon Subdivision on seven occasions. The City Council was scheduled to consider Lot 45 on April 27, 2023, and Lot 25 received a positive recommendation from the Planning Commission on March 22, 2023.

With respect to Conditions of Approval, Planner Niedermeyer explained that all other Conditions of Approval and plat requirements for the Iron Canyon Subdivision would continue to apply and would be noted on the Plat. Condition of Approval 5 was referenced, which states that the applicant shall show the bearings and distances of the final proposed Building Pad on the recorded Plat. Condition of Approval 6 provides that, “any expansion of the Building Footprint shall be fully encompassed within the amended Building Pad, including footings.”

Condition of Approval 9 was read as follows: “The final Building Pad shown on the Plat shall not exceed 4,000 square feet, including footings for decks and roof forms.” Planner Niedermeyer highlighted that the existing Single-Family Dwelling had an Existing Non-Conforming roof form that was measured at 34’-10” from existing grade. Per the zoning requirements, no structure shall be erected to a height greater than 28’ from existing grade. However, a gable, hip, Barrel, or similar pitched roof may extend up to 5’ above that zone height if the roof pitch is 4:12 or greater. The roof pitch on the existing home was 5:12, so the 5’ exception would be allowed to a Maximum Building Height of 33 feet. This home exceeds the Maximum Building Height by 1’-10” so they included Conditions of Approval 7 and 8. Condition of Approval 7 provides that “no expansion of the existing Non-Conforming roof form measured at 34’-10” from existing grade is permitted.” Condition of Approval 8 states, “Any new construction shall comply with Land Management Code Section 15-9-5, Moving, Enlarging or Altering Non-Conforming Uses.”

Staff recommended the Planning Commission review the proposed Plat Amendment, conduct a public hearing, and consider forwarding a positive recommendation for City Council’s consideration on April 27, 2023.

The applicant, Patrick Flaharty, was present and had nothing to add.

Chair Suesser suggested that the word “proposed” be deleted from Condition of Approval 5. She stated that the recorded Plat should show the actual bearings and distances of the final Building Pad rather than the proposed Building Pad.

Commissioner Hall accepted this suggestion, but as a matter of process noted that the applicant would have to record the Plat in order to make any changes. Chair Suesser believed that the Condition of Approval would be printed on the Plat, as would the bearings and distances.

Director Milliken agreed with Chair Suesser’s point and noted that the word “proposed” was included because it was currently proposed; however, as a Condition of Approval, it would be odd to include “proposed” on the Plat. Staff would delete the word “proposed.”

Commissioner Frontero had no questions and observed that Planner Niedermeyer did a good job of aligning the issues and setting out the requirements. Commissioner Sigg understood this involved an existing house and had no questions.

Chair Suesser opened the public hearing. There was no public comment. Chair Suesser closed and continued the public hearing.

MOTION: Commissioner Van Dine moved to forward a POSITIVE recommendation for the City Council’s consideration on April 27, 2023, for 2426 Iron Canyon Drive – Plat Amendment, based on the Findings of Facts, Conclusions of Law and Conditions of Approval, as amended, contained in the Draft Ordinance as follows:

Findings of Fact

1. The property is located at 2426 Iron Canyon Drive.

2. The Lot is within the Single-Family Zoning District.

3. The subject property is Lot 8 of the Iron Canyon Subdivision, approved by the City Council in 1989.

4. The Lot contains 0.39 acres.

5. The Plat Amendment proposes to adjust the Building Pad area shown on the Iron Canyon Subdivision Plat.

6. The proposed Building Pad is proposed to be 4,000 square feet, including footings.

7. The City Council has approved the following adjusted Building Pads for Lots of the Iron Canyon Subdivision: Lots 4, 5, 11, 29, 33, 42, and 43.

8. The proposed Plat Amendment is consistent with the pattern of development in the neighborhood.

Conclusions of Law

1. There is Good Cause for this Plat Amendment because it brings a non-complying structure into compliance by moving the location of the Building Pad to encompass the existing Single-Family Dwelling.

2. The Plat Amendment is consistent with the Land Management Code, including Chapter 15-2.11 and § 15-7.1-6 Final Subdivision Plat.

3. Neither the public nor any person will be materially injured by the proposed Plat Amendment.

4. Approval of the Plat Amendment, subject to the conditions stated below, does not adversely affect the health, safety, and welfare of the citizens of Park City.

Conditions of Approval

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.

2. The applicant shall record the plat at the County within one year from the date of City Council approval. If recordation has not occurred within one year's 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. Any new construction shall comply with Land Management Code Chapter 15-2.11 regarding Setbacks, Building Height, Building Envelope, Building Pad, etc.

4. All other Conditions of Approval and platted requirements for the Iron Canyon Subdivision continue to apply and shall be noted on the plat.

5. The Applicant shall show the bearings and distances of the final Building Pad on the recorded Plat.

6. Any expansion of the Building Footprint shall be fully encompassed within the amended Building Pad, including footings.

7. No further expansion of the Existing Non-Conforming roof form, measured at 34'-10'' from existing grade, is permitted.

8. Any new construction shall comply with Land Management Code Section 15-9-5 Moving, Enlarging, or Altering Non-Conforming Uses.

9. The final Building Pad shown on the Plat shall not exceed 4,000 square feet, including footings for decks and roof forms.

Commissioner Sigg seconded the motion.

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

D. 593 Park Ave – Plat Amendment – The Applicant Proposes to Combine Two Vacant Lots in the Historic Residential (HR-1) Zoning District. PL-23-05539.

City Planner, Olivia Cvetko reported that the application proposes to combine Lots 22 and 23 of Block 5 of the Amended Park City Survey. A graphic was presented showing that the Lots are currently vacant. Both Lots are standard 25' x 75' Lots that are common in the area, which is zoned Historic Residential-1 ("HR-1"). Planner Cvetko stated that the combined proposed Lot will be 3,750 square feet in size. An Ordinance approving an identical Plat Amendment for these Lots was adopted in 2009, and the owners filed a Historic District Design Review ("HDDR"), but failed to record the Plat, resulting in expiration of the Ordinance. Additionally, the HDDR was discontinued as requested by the applicant.

The current applicants are the new property owners who have requested to combine the two Lots. As proposed, the Lot will comply with the HR-1 Lot size requirements. The new Lot size will be consistent with other single-family homes in the area, especially on the same street. There were quite a few condominiums along this street and the proposal would be consistent with those structures as well. Planner Cvetko stated that if adopted, the Maximum Building Footprint would be 1,519 square feet. Screenshots from Google Earth were presented showing the location of the Lots.

Staff found good cause for the Plat Amendment. Planner Cvetko referenced the Code that states that the purpose of the Zoning District is to encourage single-family development on combinations of 25' x 75' Historic Lots. The creation of this Lot will allow the applicant to develop a single-family home, which will decrease the intensity of allowed development.

Planner Cvetko stated that this proposal will not vacate or amend any right-of-way and no easements will be vacated or amended. The Development Review Committee reviewed this application and did not find any issues. Staff recommended the Planning Commission hold a public hearing and consider forwarding a positive recommendation for City Council's consideration on May 11, 2023, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as set forth in the Draft Ordinance.

Chair Suesser noted that they have looked at the Purpose contained in Section 15-2.2 for the Historic Residential District in the past. They debated the third provision, which is to encourage structures that contribute to the character and scale of the Historic District, and whether that was consistent with encouraging Single-Family development on combinations of 25' x 75' Lots. She has argued that this provision was not meant to encourage the combination of these Lots; rather, it was meant to apply to development on 25' x 75' Lots. She noted that the Commission might want to clarify this as they look to the revisions to the Land Management Code.

Given the purpose of this Zoning District, Chair Suesser could not find that combining these two Lots was consistent with contributing to and encouraging the character and scale of the Historic District. She did not find good cause for this application. The Lots were a nice big green open space, and there are condominiums on the street; however, this was contemplated to be a Single-Family home across two Historic Lots. Chair Suesser did not care for the photographs selected for this presentation and suggested that in the future, more photographs would helpful. She drove past this location and pulled it up online to get a better sense of the Lots.

Chair Suesser opened the public hearing. There was no public comment. Chair Suesser closed and continued the public hearing.

Commissioner Van Dine felt this would be a good use of this space because it would be subject to Historic Design and would incorporate into the neighborhood well.

Commissioner Johnson understood the concept of Chair Suesser's comments and felt it would be good for the Commission to revisit that as part of the Land Management Code amendments. He struggled with interpreting this provision as well.

Commissioner Kenworthy agreed with Commissioner Johnson and Chair Suesser that they should address this, and adjust the Code. He felt that 50 feet was reasonable, but going beyond that was not for the continuity of the district. Commissioner Van Dine agreed.

MOTION: Commissioner Van Dine moved to forward a POSITIVE recommendation for City Council consideration on May 11, 2023, for 593 Park Avenue – Plat Amendment, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval contained in the Draft Ordinance as follows:

<u>**Findings of Fact**</u>

1. The property is located at 593 Park Avenue.

2. The property is listed with Summit County as Lots 22 and 23 of Block 5 of the Amended Park City Survey.

3. The property is in the Historic Residential (HR-1) Zoning District.

4. The Applicant seeks to remove an existing Lot Line to create one Lot. 5. The property is currently vacant.

5. Ordinance No 09-37, an Ordinance approving a Plat Amendment Combining Lots 22 and 23 was Adopted in 2009 but never recorded. The Plat Amendment has since expired.

6. The current minimum Lot Size in the HR-1 District is 1,875 square feet.

7. The Proposed Lot is 3,750 square feet.

8. The current minimum Lot Width in the HR-1 District is 25 feet.

9. The Proposed Lot is 50 feet wide.

10. No remnant Parcels are created with this Plat Amendment.

11. The Proposed Lot Size is consistent with adjacent Lots.

12. The findings in the Analysis section of the Staff Report are incorporated herein.

Conclusions of Law

1. The Plat Amendment is consistent with the Park City Land Management Code, including LMC Chapter 15-2.2, Historic Residential (HR-1) Zoning District, and LMC § 15-7.1-6, Final Subdivision Plat.

2. Neither the public nor any person will be materially injured by the proposed Plat Amendment.

3. 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.

Conditions of Approval

1. The Planning Department, City Attorney, and City Engineer will review and approve the final from 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 (1) year from the date of City Council approval. If recordation has not occurred within one (1) year's time, this Plat approval will be void, unless a request for an extension is

made in writing prior to the expiration date and an extension is granted by the City Council.

3. Any new development on 593 Park Avenue, must comply with the Land Management Code.

4. Any new development on 593 Park Avenue must undergo the Historic District Design Review Process.

5. The Plat shall note that this Lot is subject to Ordinance 2023-xx.

Commissioner Kenworthy seconded the motion.

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

E. Fractional Use of Dwelling Units – Land Management Code Amendments – The Planning Commission Will Review Code Amendments to Comply with Senate Bill 271 Enacted by the Utah Legislature to Remove Fractional Use Regulations from the Land Management Code.

Assistant Planning Director, Rebecca Ward noted that the Commission is very familiar with this item and provided a brief summary. She explained that the proposed draft Ordinance will remove the Fractional Use of Dwelling Unit regulations that were codified in Fall 2023 to comply with new changes to State Code that would go into effect in May 2023. Assistant Director Ward also reported that the Chatham Crossing Subdivision and the West Ridge Subdivision both requested that the Planning Commission consider prohibiting Fractional Use and Nightly Rentals in those subdivisions, which was included in the Ordinance scheduled for City Council review on April 27, 2023.

Assistant Director Ward explained that Senate Bill ("S.B.") 271, which was enacted this year and prohibits municipalities from regulating Fractional Use models, expressly preserves the ability of Homeowners Associations ("HOAs") to address Fractional Use in their Covenants, Conditions, and Restrictions ("CC&Rs"). The HOAs that had pending amendments before the Planning Commission and City Council were notified of that legislation. Staff recommended that the Planning Commission consider forwarding a positive recommendation for City Council's consideration on April 27, 2023, as outlined in the Draft Ordinance that would remove the regulations of Fractional Use from the Land Management Code.

Commissioner Van Dine asked if they would be allowed to communicate with the HOAs to make sure they are aware of this legislation, and that they would have to come before the Commission. Director Milliken stated that would be allowed, and added that Staff had already communicated with HOAs that had already put in an application. Assistant Director Ward stated that in the public notice for the citywide e-mail, that information was provided to community members, and was also included on the City's website. They have a list of HOAs that are registered with the City that could be notified. Commissioner Van Dine asked for that to be done in light of this new law.

Commissioner Kenworthy asked if it would be illegal for the Commission to not say "yes." City Attorney Harrington confirmed that that was correct.

Commissioner Hall was disappointed with the State on this issue but was ready to move forward. Commissioner Johnson thanked the Commissioners, Staff, and community members who put so much time into something just to get it shot down at the last second. He mentioned the meetings at the Library and the public outreach conducted on this issue.

Commissioner Sigg disclosed that he is a property owner in one of the two Subdivisions that have applied to prohibit Nightly Rentals. City Attorney Harrington stated that the disclosure was sufficient. Commissioner Sigg asked about the timeline and understood that this Ordinance would repeal any language as it pertained to Fractional Ownership. The burden would be on any HOAs that might want to prohibit these uses within their respective CC&Rs. He asked what would happen if someone made an application and wondered if residents would rush to file applications before the HOAs prohibit the uses.

Director Milliken explained that Fractional Use is not necessarily an application. Rather, it is a land use wherein an entity or persons buy a home and then sell fractions of it. There is a Planning Use application associated with it and these entities still have the right to purchase a home if the CC&Rs were not in place at the time of purchase.

Chair Suesser referenced Commissioner Sigg's disclosure and the mention of Nightly Rentals. Commissioner Sigg corrected his statement and indicated that he meant to refer to Fractional Use.

Chair Suesser opened the public hearing. There was no public comment. Chair Suesser closed and continued the public hearing.

MOTION: Commissioner Johnson moved to forward a POSITIVE recommendation for the City Council's consideration on April 27, 2023, for the Fractional Use of Dwelling Units in Chatham Crossing and West Ridge Subdivisions – Land Management Code Amendments, as outlined in the Draft Ordinance. Commissioner Van Dine seconded the motion.

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

F. Land Management Code Amendments - Accessory Uses in Master Planned Developments - The Planning Commission Will Consider Amendments Regarding Support Commercial, Residential Accessory Uses, and Resort Accessory Uses Outlined in Land Management Code Chapter 15-6 Master Planned Developments, Section 15-6-8 Unit Equivalents, and to Clarify that Resort Support Commercial Uses in Recreation and Open Space Section 15-2.7-2 Uses, Residential Development Section 15-2.13-2 Uses, Residential Development Medium Section 15-2.14-2 Uses, Regional Commercial Overlay Section 15-2.17-2 Uses, General Commercial Section 15-2.18-2 Uses, and Light Industrial Section 15-2.19-2 Uses are Linked to Approved Master Planned Developments. PL-22-05447.

Assistant Director Ward reported that the proposed amendments incorporate Planning Commission input from the December 14, 2022, and February 8, 2023 Work Sessions. Accessory Uses in Master Planned Developments ("MPDs") allow for a type of density bonus that does not count against Unit Equivalents ("UEs") for the MPD. The Commission's input was to re-evaluate the allowances and to refine and restrict some of the Uses. The proposed amendments for Support Commercial would limit signage for Support Commercial Uses intended for people already on the site. Therefore, signage would be directed to interior spaces only, with limited marketing to the primary users on the site. There was also an allowance in the current Code regarding meeting space, wherein up to 5% of the total project square footage could be allocated for meeting space. Assistant Director Ward recalled the Commission's concerns with that being converted over time and being expanded into other uses. That meeting space allowance was removed. While meeting space would still be allowed for MPDs, it would count toward the UEs for the project.

Assistant Director Ward stated that pursuant to the current Code, Support Commercial Uses could be used for both hotel development and residential condominiums. The Commission directed Staff to remove it from residential condominiums and limit Support Commercial Uses to hotels under one ownership. The amendments also captured affordable housing obligations for employees generated from these Support Commercial Uses and would establish a maximum square footage of 5% of the total project, or 5,000 square feet total. The amendments would also prohibit conventional chain businesses from these Uses.

In terms of Residential Accessory Uses, Assistant Director Ward presented a list of what was currently allowed under the Code. The Planning Commission directed Staff to amend the Code to allow for only functional uses, which were limited to electrical, heating and ventilation, air conditioning, and ductwork necessary for the operation of the building. Laundry facilities and storage, employee facilities, hallways and circulation, elevators, and stairways would remain in the Code as a Residential Accessory Use. Pursuant to Commission direction, they also included Child Care Facilities, which would be exempt from UEs.

Assistant Director Ward asked if the Commission wanted to include Enclosed Bicycle Storage that exceeded the requirements of the new Code. The new Code that would require enclosed bicycle parking for new projects is scheduled for Council review on April 27, 2023. She asked if a developer exceeded the square footage requirements and whether that could be considered for a density bonus.

Assistant Director Ward next addressed Resort Accessory Uses and advised that they removed Administration and Instruction Facilities from the list. Where Resort Support Commercial is allowed in the Code, there is a footnote that links it to approved MPDs, except for the following three zones: Recreation and Open Space, General Commercial, and Light Industrial. The amendment included a footnote adding that those commercial uses were allowed if approved as part of the Resort MPD. Staff recommended the Commission conduct a public hearing and consider forwarding a positive recommendation for City Council's consideration on April 27, 2023.

Chair Suesser's opinion was that for Residential Accessory Uses, Storage should be separated from Laundry Facilities and defined. She questioned whether Storage would be for the hotel, owners, or guests. In terms of Employee Facilities, Chair Suesser asked if that referred to day-use facilities for employees, such as locker rooms, or whether it was employee housing. She asked where parking came in relative to these amendments. Assistant Director Ward stated that as far as Support Commercial Uses go, there were parking requirements under the current Code. Chair Suesser asked if parking structures go toward density in a project, and felt that was something the Commission struggled with in the past and was worthy of discussion.

Assistant Director Ward explained that for Support Commercial Uses, the Code requires five spaces per 1,000 square feet; therefore, it is similar to the parking requirements for convenience stores. For Resort Support Commercial and Residential Accessory Uses, a Child Care Center would trigger the parking defined for that use.

Chair Suesser understood that a parking structure did not go toward a project's density. Assistant Director Ward believed that to be correct as far as UEs were concerned. She noted the Setback and Building Envelope regulations would remain. Chair Suesser reiterated her concern about the vagueness of the terms "Storage" and "Employee Facilities." Assistant Director Ward offered that those facilities could include lockers, housekeeping, and those types of facilities that Staff could further define.

With regard to Storage, Chair Suesser felt the term was vague and suggested deleting it. Commissioner Sigg agreed that Storage is vague and could be interpreted in a way that every resident would get a 500-square-foot storage unit, which would be a generous Accessory Use. He felt that unless it could be defined as something appurtenant to the operation of the building or the maintenance of the building, it was too general. Chair Suesser expressed her preference to strike Storage from the list.

In terms of Employee Facilities, Commissioner Sigg felt that could include an employee's lounge that could be 4,000 square feet for everyone that works at The Canyons. It is also vague but understood if it was a changing area, lockers required for employment in the facility, and other similar uses. As written, it could include any kind of benefit that employees use or enjoy that could result in a large amount of square footage. He mentioned a bowling alley and a lounge, or something similar.

Chair Suesser suggested the term "employee lounge or locker room." Commissioner Sigg suggested, "Employee Facilities directly related to the operation of the building or property." Chair Suesser liked this suggestion.

Commissioner Johnson struggled with Resort Accessory Uses and wanted the list trimmed down significantly. Many of the uses are part of running a successful business. He would remove Ski School, but keep Daycare Facilities. He would also remove Lost and Found. He struggled with Employee Restrooms, but liked the inclusion of Public Lockers and Public Restrooms, as those would be a benefit to the community. He offered that Ticket Sales and Equipment/ski checks would all be part of running a successful resort or business. Commissioner Johnson reiterated his struggle with including these uses based on the current climate in town. He noted that Park City is already a resort community with two very successful businesses, and they did not need to incentivize these types of development.

Chair Suesser agreed with Commissioner Johnson's comments and stated that the point of this exercise was that these projects had ballooned because they were being approved at a certain density, and all of these extra Uses were added on top of what was approved. She felt that many of these Uses should be wrapped into the original approval rather than be add-ons. She agreed that this list could be trimmed down significantly. She felt that Ski School should be stricken and stressed that this was not to say that she was not in favor of Ski School facilities; rather, she felt it should not be a bonus on the project.

Commissioner Sigg agreed with the comments of Chair Suesser and Commissioner Johnson that many of these Uses were part of the operating model of the resorts. He did not feel they needed to incentivize Vail or Alterra and many of these square footage allowances listed should be part of their capex, with the burden on the developers to pay for them. He added that many of the Uses on the list relate to the operation and potential profit centers within the resorts. These developers are doing well and should be included in their capex and their operating model.

Commissioner Sigg suggested striking Mountain Patrol, and while this is a public amenity and health and safety issue, it was there for the developer to run their mountain safely. He would also strike Lost and Found, and Public Lockers. He would keep Emergency Medical, Public Restrooms, and Employee Restrooms on the list of Uses, and added that restrooms were fundamental to any structure. Commissioner Sigg felt that a Ski School was a moneymaker for the developer, as was Daycare.

Chair Suesser asked if they should incentivize the developers by keeping Daycare as a bonus. She would like to encourage Daycare facilities and noted they seemed to have dropped by the wayside in many plans in the last few years. Commissioner Sigg stated that they should not incentivize Daycare Facilities if these facilities would raise everyone's taxes to solve the daycare problem in Park City. Commissioner Johnson wanted to keep Daycare Facilities on the list and felt it was a major need in the community. Commissioner Van Dine agreed wholeheartedly. Commissioner Sigg suggested defining Daycare as a daycare, versus ski programs that charge to put children in a program. Commissioner Johnson suggested changing it to Public Daycare Facilities. Commissioner Frontero suggested Employee Daycare. Commissioner Sigg was not opposed to daycares but he did not want it to be like the Reindeer Program where families not only had a difficult time getting in, but when they did, they paid a lot of money.

Commissioner Kenworthy supported incentivizing Daycare Facilities and was unsure how they could define it differently. He felt the City was in a desperate situation, and they should want to do all they can with all projects to incentivize daycare like they incentivized affordable housing at Studio Crossing. He would like to keep as much of that as possible. In response, Commissioner Sigg stressed that he likes daycares but emphasized that Daycare Facilities should not become a profit center for Alterra. He would not support providing incentive bonuses to create another profit center; rather, if it was for public use for the community and employees, he felt it was a great idea.

In response to an inquiry from Commissioner Kenworthy, Assistant Director Ward explained that these LMC Amendments, if enacted, would impact new applications from the date the Ordinance was adopted going forward. The Development Agreements for the Deer Valley and Mountain Resort developments outlined the Accessory Uses specific to those projects. Commissioner Kenworthy observed that these changes would not affect those projects.

City Attorney Harrington cautioned against oversimplifying it either way, as they would not want to create a record against them and referenced the Treasure development. He encouraged the Commission to analyze these proposed amendments with an eye toward moving forward and what applications would be subject to these provisions when they are presented in the future. Commissioner Johnson was looking at it from some future resort use coming into play and mentioned mountain biking. He added that was why he wanted to see the list more restrictive.

City Attorney Harrington commented that the more the Commission could phrase their concerns with the Uses, rather than using for-profit or not-for-profit as the marker. Using the term "external uses" would be a better way to define many of the commercial Uses. He noted they have a couple of Support Commercial Uses coming back that were limited to on-site residents, and some of those businesses were being challenged with operational restrictions that might result in them coming back to ask for reconsideration of those restrictions.

As with restaurants, he suggested focusing on the use of Daycare Facilities and whether the use would have impacts on external clients, or whether it would be limited to internal uses. He suggested categorizing the Uses more in terms of the impacts that would be mitigated by the proposed Use as opposed to whether it would be a profit center.

Commissioner Frontero asked if there was anything in place to keep Resort Support Commercial Uses under a certain percentage. Assistant Director Ward stated there was no cap. Commissioner Frontero suggested that might be an option to consider, but acknowledged that they would have to revisit that issue, so he stated they should leave that aside for now. He agreed with Commissioner Sigg that, generally speaking, he would be against giving a bonus for any Use that would generate revenue. He stated that Lost and Found would not generate revenue, but it would be an operational item for which he could go either way. He would support cutting First Aid, but keeping Emergency and Maintenance.

With regard to Public Lockers, Commissioner Frontero assumed those would be paid lockers and felt that was part of running the operation. He recalled his prior statements that he would eliminate all of these Uses and was leaning towards trimming down this list. He would include incentives for employee amenities. Commissioner Frontero suggested deleting Ticket Sales and Ski Check.

In line with City Attorney Harrington's comments, Director Milliken asked if it was possible to go through the list with the Use in mind, relate them to an interior or exterior use, and still arrive at the same result. She understood that they should not focus on financial gain; rather, they would focus on whether a Use was for the internal use of the resort versus an external use that could potentially result in profit.

Commissioner Frontero felt that in terms of the envelope of a building, he would consider stairs, HVAC, elevators, and other things to run the building. He would not include things to run the operation necessarily. In his mind, he felt the uses to run the operation should not be included on the list.

Chair Suesser asked if that included employee amenities, such as employee restrooms, break rooms, and dining. Commissioner Frontero was willing to make a carve-out for employee items. Chair Suesser would delete Employee Dining Areas from the list. She looked at this in terms of developers abusing this by adding things that would not add to density. She would like to restrict it so that it would be reasonable and felt that dining would be included in Break Rooms.

Commissioner Frontero agreed with Chair Suesser's comments. He noted that the inclusion of Daycare was challenging and wondered if they would be providing daycare for people paying $250/day for a lift ticket. Chair Suesser liked the idea of changing it to Employee Daycare Facilities, and hopefully, that would encourage daycare facilities open to the public; however, the Employee Daycare Facilities seemed like a reasonable bonus to provide developers.

Commissioner Van Dine understood Chair Suesser's suggestion that Daycare, as an external use, would not be an Accessory Use; however, as an internal use, it would be included. Chair

Suesser liked the idea of Daycare Facilities; she just did not think they needed to incentivize developers to include public facilities serving as a bonus.

Commissioner Sigg suggested there might be language as to how that might be deed restricted because it would be easy for a developer to repurpose the space if none of the employees had children. He stated that if they were going to identify a particular Use, they should ensure that it stays that Use through a deed restriction or something along those lines.

Chair Suesser referenced Meeting Space and noted that they were talking about Convention Space as well. She noted that Convention Space usually counted toward density, but wanted to ensure that they removed Meeting Space. Assistant Director Ward stated that they removed the full Meeting Space allowance; however, Meeting Space would still be allowed through an application process and would count toward the UEs. She would have to look into whether Convention Space always counted towards UEs. Commissioner Van Dine commented that if they did not remove some of these Uses, they would go toward the developer's housing obligation.

In terms of Maintenance and Storage Facilities, Commissioner Sigg felt it was broad. He could think of an example of Maintenance Facilities and wondered whether it would include eight garages for maintenance equipment. He felt the idea would be appurtenant to a specific building structure. He would not want Maintenance to explode in size.

Commissioner Kenworthy mentioned the Golf Course and the maintenance items that were not in the parking lot. He felt that Maintenance and Storage should be considered because it is a huge need in a seasonal community. He felt they have not been able to solve the problem, and now they would further squeeze projects, which did not bode well. Chair Suesser disagreed by stating that they would just state it would count towards density. Commissioner Kenworthy commented that storage needs for businesses were significant, and pointed out that they had not solved it.

Commissioner Sigg suggested defining it for the operation of the residential buildings. He agreed that Maintenance and Storage were required to run a building. Chair Suesser commented that it was part of the operation's needs that they were eliminated from the density bonus. Commissioner Kenworthy responded that they did not want others to solve it the way the Commission had done in the past, which was to take over parking. He stressed that buildings need storage and maintenance and he wanted to keep the bonus for Storage and Maintenance Facilities and make sure the space would not turn into something else.

Assistant Director Ward asked the Commission if they wanted to clarify Maintenance and Storage Facilities similar to how they did with Residential Accessory Uses wherein they would be specifically related to the resort operation. Commissioner Sigg agreed, as long as a developer did not get eight garages for equipment or parts. He suggested precluding things such as vehicular equipment. He understood that buildings require reasonable maintenance and storage to operate, but he felt that people would abuse the system and create 6,000 square feet of maintenance for a 10,000-square-foot building and claim the Maintenance and Storage Uses were necessary. Commissioner Kenworthy stressed that it would be an enforcement issue.

Commissioner Johnson was okay with moving forward with what was proposed. Chair Suesser would like to eliminate Storage Facilities and limit them to Maintenance.

Commissioner Hall suggested removing Information and Lost and Found. She would keep First Aid, as she felt that health and safety was a priority and it would work in conjunction with Emergency Medical Facilities. In addition, she would add a blanket Daycare, and noted that local residents used much of the current resort daycare year-round. These facilities were some of the more cost-effective daycares in the community. The high cost charged to the day-users actually subsidizes a lower annual cost for locals. She agreed with Commissioner Kenworthy's comments that they were in a desperate situation in terms of Daycare Facilities.

Commissioner Hall was agreeable to remove Public Lockers but would keep Equipment and Ski Check because that was a huge component for the City's transportation goals. She would like to incentivize a resort to have amazing ski checks that would make it easier to people to use transit to the resort. She wanted to see Enclosed Bike Storage included in Residential Accessory Uses.

Commissioner Van Dine stated that her opinions aligned with Commissioner Hall's and felt that First Aid and Mountain Patrol, and Emergency Medical be included. Providing areas for those essential workers on the mountain was needed. She agreed with Commissioner Hall's comments regarding Daycare Facilities and noted that locals pay less at Deer Valley during the summer because the resort charges more to the day users during the winter. If Daycare is an internal use, such as employee daycare, she would be supportive; however, she also was agreeable with keeping Daycare Facilities on the list.

Commissioner Van Dine agreed with keeping Equipment and Ski Check for transportation issues. She would like to keep Employee Dining Areas on the list, as it went along with the First Aid and Patrol by providing areas for the workers. She reiterated that this all gets tied back to housing obligations. It would not be to the developer's benefit to building huge areas, because although they would get a density bonus, they also want to make money from these areas. Commissioner Van Dine was agreeable to deleting Information and Lost and Found, as well as Administration. She was also agreeable to removing Storage Facilities, and just keeping them as Maintenance Facilities. Chair Suesser agreed with the changes suggested by Commissioners Van Dine and Hall.

Assistant Director Ward asked if there was a consensus on removing the items highlighted in yellow as presented to the Commission. Commissioner Johnson suggested deleting Employee Dining areas, and he would agree with the remainder of the revised list. Chair Suesser worried about the abuse referenced by Commissioner Sigg, and the conversion of space to other for-profit or external uses after the fact. Commissioner Van Dine noted that Deer Valley decreased some of its usable space for regular dining to increase the employee dining space because it was difficult to get employees in and out during their lunch breaks in an efficient time frame. Chair Suesser felt Employee Dining was redundant and commented that Locker Rooms, Restrooms, and Break Rooms were sufficient.

Commissioner Sigg asked what would happen if a developer sought a density bonus by deciding to have all of their employee locker rooms, restrooms, break rooms, and dining in one building. He posited that if a developer used one building in a multi-building project for Accessory Uses, that building would receive a pretty good entitlement. Chair Suesser noted that when these projects come before the Commission, the applicants state they are entitled to these Uses to double the project. It is never broken down as a density bonus.

Commissioner Sigg observed that the constraints would be more intense for a small building where these things might become more usable and important as opposed to a larger site with multiple buildings. Commissioner Frontero felt this was a good point, which was why he suggested considering a maximum percentage of the overall project. He thought that would address Commissioner Sigg's concerns and those of the entire Commission, and would help with keeping an eye on what a developer could do. These Uses had become an entitlement and he was in favor of including a hard percentage. Commissioner Frontero acknowledged that would be difficult to determine; however, a percentage would help against this getting out of control.

In response to Chair Suesser's inquiry on this issue, Assistant Director Ward explained that when they reached out to other resort communities, they learned that Park City was unique in terms of how they permit these projects. As far as percentages for Support Commercial for users on site, they found it was fairly common to have a cap, which is already in the Code. She stated they could look into a cap for Resort Accessory Uses.

Assistant Director Ward asked if the Commission was thinking that the cap would be established based on whatever the development was proposed to be at that time, or whether they would want to establish the cap based on the total square footage of the site.

In response to an inquiry, she stated that they would be potentially looking at future development as well as amendments or modifications. They could base the cap on the time the application came before the Planning Commission. Commissioner Frontero liked that suggestion. Since it would be part of the Code, Commissioner Sigg concurred with Commissioner Frontero and added that he liked the notion of square footage; however, noted that it might be defined as a very minimum square footage, wherein they let the developer justify why they might need more.

Commissioner Frontero agreed they could do that by lowering the percentage. Commissioner Sigg stated that a developer's request for more than the minimum percentage should be tied to the Code so that the Commission would have the authority to reject a request for a larger percentage. If they kept the percentage at a stringent minimum, it would send a good message.

Commissioner Sigg understood that if a developer demonstrated the need for more space for an Accessory Use that met the criteria that would be fine. He expressed concern about setting a percentage that would result in more space than needed. The percentage cap should be minimal, while also giving the applicant the right to make their case for more space.

Director Milliken stated that with the current list, a resort could use all of these Accessory Uses in their project, in which case a percentage would be reasonable. Alternatively, a developer could choose to only include two or three Accessory Uses in which case the percentage would be excessive.

Commissioner Frontero envisioned something along the lines that Resort Accessory Uses would be limited to a maximum percentage, and of that, list the allowable Uses. The developer could then decide which Uses they would want to use within the allowable percentage. He opined that the resorts would still build what they need to operate these facilities. The question was just how many of these freebies they would give them.

Commissioner Sigg noted that people come to Deer Valley because they like handing in their skis and getting a ticket. This is great for Deer Valley because they sell more tickets, and it is part of their model. He added that it is a service they provide, which in turn draws the consumer back to the resort regularly and contributes to their success. The problem with the percentage model was that if there was a very large resort, even a small percentage of the volumetric might exceed what it would need. He mentioned a large parking lot with hundreds of thousands of square feet, where 5% of that total square footage would be significant. Commissioner Frontero mentioned using a scale so the total square footage would not defeat the purpose and was interested to hear what other resorts did in this regard.

Chair Suesser commented that while they might want to set up a percentage, they also would not want to capture all types of Resort Accessory Uses that they do not want to give as a bonus. Assistant Director Ward commented that based on their review of other resorts, they did not find one that used Accessory Uses in this manner; however, the current Code does not have caps. She explained that some of the projects they have seen had hundreds of thousands of UEs, so applying a percentage might be difficult to gauge because the size of the project could be significantly different from project to project.

Currently, Resort Accessory Uses are outlined in the Code as a “give” to the developer. There was some question as to whether they could amend the Code to state that the Planning Commission would establish the square footage of allowable Resort Accessory Uses. This would give the Commission the flexibility to evaluate impacts and mitigation and to look at the project as a whole without giving the developer a certain percentage.

Commissioner Frontero understood that Assistant Director Ward suggested that the Code would list the allowed Resort Accessory Uses, and state that the square footages must be brought to the Planning Commission for approval. Assistant Director Ward confirmed that the language could state that these Uses and square footage would require Planning Commission approval.

Commissioner Johnson liked this suggestion because they could look at each project. Commissioner Frontero agreed. Commissioner Sigg was agreeable, as long as there would be a mechanism wherein the Planning Commission could deny a request on a given project. He wondered if there was a way to incentivize Accessory Uses that would be a tangible giveback to the freebie that the developer would receive. Chair Suesser mentioned that there seemed to be consensus on the language proposed by Assistant Director Ward. She asked if Staff had enough feedback to retool the Draft Ordinance and return it.

Assistant Director Ward summarized the discussions from this meeting as follows:

- There was consensus for the Support of Commercial amendments;
- There was consensus to limit Residential Accessory Uses to what would be required for the function of the building;
- Under Laundry Facilities, they would remove Storage;
- Employee Facilities would be amended to include those employee facilities related to the operation of the residential structure;
- There was consensus to allow for Enclosed Bicycle Storage that would exceed the Code requirements;

- For Resort Accessory Uses, she presented a slide and explained that they would remove those Uses highlighted in yellow and red. The Uses highlighted in teal would remain on the list; and
- There was consensus to include an amendment that would require that these Resort Accessory Uses be subject to Planning Commission review and approval, and as part of that language, they would include that the square footage would also be subject to Planning Commission review and approval.

She noted that these amendments would be at lines 66, 67, and 88 – 102 of the Draft Ordinance.

Assistant Director Ward asked if there was any concern about updating the Use Tables at the footnote. If there was consensus on these items, they could move this forward to City Council after a public hearing. If there was not, they could return with the revised Draft Ordinance.

Commissioner Johnson suggested spending 10 minutes to clean up the Draft Ordinance and then move it forward. Commissioner Sigg agreed to work to move this forward tonight.

Chair Suesser wondered if they wanted Planning Commission approval on the Residential Accessory Uses, and referenced Sommet Blanc. She felt that the project got away from them in terms of what they approved and all of the Accessory Uses put into that project. She asked whether Sommet Blanc would fall under Resort or Residential. Assistant Director Ward stated that Sommet Blanc would fall under Residential and the items that were included were removed. The current Code allowed for saunas, hot tubs, and exercise areas, and it was through those exceptions that they brought forward their Residential Accessory Uses. The proposed amendments would limit that to Mechanical Equipment necessary to operate the building. Chair Suesser noted that they gave Sommet Blanc a lot of bonuses, and they might see more condominium/hotel projects where these amendments would limit the bonuses.

In response to an inquiry from Commissioner Sigg, Assistant Director Ward stated that the current Code states that Residential Accessory Uses include typically back-of-house uses and administration facilities for the benefit of the residents of a commercial residential use such as a hotel or Nightly Rental. The proposed amendments would remove that language, so it would only apply to residential development and would limit Accessory Uses to Mechanical Rooms and Shafts, Childcare Centers, and Enclosed Bicycle Storage.

Chair Suesser asked if the Commission wanted the same control for these limited Residential Accessory Uses as they implemented for Resort Accessory Uses. Assistant Director Ward clarified that for the Residential Accessory Uses, the residential units were currently based on UEs; therefore, 2,000 square feet of residential use equaled one Unit Equivalent. This was the residential use, not necessarily the Accessory Uses beyond that. The Setbacks, Heights, and other restrictions come into play to further restrict the residential development. She did not feel they needed the language suggested by Chair Suesser because it was already restricted by the UE square footage in the Code which is different from Resort Accessory Uses where there are no UEs.

Commissioner Sigg understood Assistant Director Ward stated that the Code provided that a UE of 2,000 square feet could claim an Accessory Use. Assistant Director Ward explained that the amendments would allow only for the Mechanical Equipment for the function of the building. Therefore, with these amendments, a sauna or anything along those lines would be excluded.

Assistant Director Ward presented the Draft Ordinance with the Resort Accessory Uses and noted that they removed the language that the listed uses were "considered typical back of house uses." They could insert language that states "These Uses and square footages require review and approval by the Planning Commission, and may include…" followed by the amended list. There was consensus to include this language.

In terms of the Resort Accessory Use table, she reiterated that everything she highlighted in yellow would be removed, along with the redlined language. The language highlighted in teal would be included. Commissioner Frontero agreed with the list.

Chair Suesser suggested that the added language read: "….require review and approval by the Planning Commission, *but* may include…" Commissioner Frontero suggested the following: "These Uses and square footages require review and approval by the Planning Commission. These may include…" Chair Suesser agreed with this change.

Chair Suesser thanked Assistant Director Ward for her work on these amendments.

Chair Suesser opened the public hearing. There was no public comment. Chair Suesser closed and continued the public hearing.

MOTION: Commissioner Johnson moved to forward a POSITIVE recommendation for the City Council's consideration on April 27, 2023, for Land Management Code Amendments – Accessory Uses and Master Planned Developments, as amended. Commissioner Kenworthy seconded the motion.

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

7. ADJOURN

The meeting adjourned at approximately 8:30 p.m.

[4/12/23/Planning staff responses are redlined below]

Homestake Statement – Planning Commission 4/12/2023

Understanding the Planning Commission is not able to respond to questions in this forum on an application or project, please consider the following taken from the Staff Report and it's linked documents as you prepare to ratify the Homestake DA:

1) On page 2, it states that 'All reconsideration and appeal deadlines have run' and footnotes LMC 15-1-18. Per 15-1-18, it states that appeals must be filed within 10 days of final action. However, for Reconsideration, it states:

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

   I do not see a timeline or deadline included in this portion of the code. Does this mean if a majority of the Commissioners vote to reconsider the decision, then it may be reconsidered at any time?

   No- The AMPD approval is not legislative and may not be reconsidered by a new vote, beyond the original Final Action date.

2) Looking at the timeline provided by Staff, one might question how the project was placed on the agenda for the Planning Commission to take final action when the baseline EMF study had not yet been provided and therefore was written in as a Condition of Approval (COA). Unfortunately, it would appear the condition of approval was met but left Commissioners with concern and additional questions. Perhaps going forward, there should be a caveat to such COA's that should the commission not find the results of a COA favorable, they may rescind their approval on the application. Along with this, it would appear any additional EMF Surveys completed (November 11th and December 13$^{th)}$ are in effect meaningless as the Commission cannot reconsider its action. Essentially, the COA is worthless – we just have additional information which is to be ignored.

   The Baseline information was not a Condition of Approval. Commissioner Johnson requested and the Planning Commission agreed for an additional baseline submission as part of Finding of Fact 39 for future use on other applications simply as a reference point. The applicant met that deadline but subsequently agreed to additional testing points clarified in the field with Commissioner Johnson. Both Commissioner Suesser and Hall agreed and authorized

Commissioner Hall to execute the Final Action letter on 12/23/23, due to the unavailability of Commissioner Suesser at that time. No Condition of Approval was at issue.

3) On December 23rd, the Final Action letter was signed by the Chair Pro Tem. Why not the Chair? Why has the Chair recused herself since this time? Should that not be public record? Given she participated in the meetings and was part of the process, this should be a red flag to the community.

Commissioner Suesser authorized Commissioner Hall to sign the 12/23/22 Final Action Letter. It appears Commissioner Suesser received a duplicative electronic request in January that had not been disabled since she authorized Commissioner Hall to sign in December. Assuming this was a new request, she sent an objection letter to the Mayor on January 20, 2023. Commissioner Suesser subsequently withdrew that objection on March 9, 2023, and indicated her decision to recuse from the discussion going forward. The basis for her recusal was inadvertently not clearly stated at the March 22nd Commission meeting. This occasionally happens and Commissioners often clarify at a subsequent meeting or by adding the basis to meeting minutes.

4) On February 8th, the DA was scheduled for review and ratification, but **PLANNING STAFF requested it be continued** to allow City council to receive an update. The 10 days for appeal had run out in November and based on the staff report, reconsideration by the Commission was not an option either. One must ask why staff desired it to be continued? If we're sticking with the staff's declaration at the beginning of their report, any update or new information is irrelevant to the approval and ratification. Again, we have additional information which is to be ignored.

The DA ratification is a separate action from MPD vote. The DA ratification was postposed so the Planning Commission concerns could be included in the March update to Council and the Planning Commission could provide further input on matters outside the scope of their LMC review. Last meeting, Commissioner Johnson also requested a reference to the March 9th Council exhibits as a "Whereas" in the DA for alignment of the record.

5) The staff report states that 'any follow-up matters...that individual Planning Commissioners wish to pursue should be done through the City Council...' Have the steps to be taken been clearly outlined for the any individual commissioner? Will their correspondence / communication with the Council be part of the Public Record when the matter comes before the Council?

Those matters were all included in the March 9th City Council report and Planning Commissioners were invited to personally intended and comment directly if they wished. Please refer to the packet and meeting minutes of March 9th City Council. The Planning Commission may continue to provide the Council with additional information as stated in the staff report and confirmed with the Mayor.

6) On March 28th, 2023, an email from PacifiCorp indicates there are no plans to upgrade the substation to 138kV. Then, on April 5th, 2023 (approximately a week later), there is an email from RMP stating that, yes, they are rebuilding the transmission lines to 138kV but will continue to operate at 46kV; the reason given is fire mitigation. However, does this not then set them up to operate at 138kV down the road? Does anyone believe they would do this simply for safety

with no plans for expansion? With the amount of development in the pipeline, is it even reasonable to assume expansion will not be necessary? Nearby development in the works significantly increasing demand & density includes but is not limited to Holiday Villages, Parkside, Bonanza/Arts and Culture, the High School, the Yarrow and so on. What companies can you list that make this type of capital expenditure without an anticipated return on investment?

These questions appear outside the scope of the LMC review of the ratification of the DA, but you are free to follow up directly to the Council. RMP's latest communication speaks for itself and appears to re-confirm the footprint at the existing substation cannot accommodate a 138V upgrade given current technical requirements. An expansion of the substation would currently require a Conditional Use Permit through the Planning Commission.