



**PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
February 23, 2022**

COMMISSIONERS IN ATTENDANCE: Chair John Phillips, John Kenworthy, Sarah Hall, Laura Suesser, Doug Thimm, Christin Van Dine

EX OFFICIO: Gretchen Milliken, Planning Director; Rebecca Ward, Assistant Planning Director; Jeron Ehlers, Planning Department; Jason Glidden, Affordable Housing Manager; Rhoda Stauffer, Affordable Housing Project Manager; Elyse Kats, Affordable Housing Specialist; Lillian Lederer, Planner I; Browne Sebright, Planner II; Mark Harrington, City Attorney

1. ROLL CALL

Chair Phillips called the meeting to order at approximately 5:30 p.m. He confirmed that all Commissioners were present, with the exception of Commissioner Bill Johnson who was traveling and would try to join if possible.

The following written determination was read:

The Chair issued a written determination that because of the public health emergency, conducting a meeting with an anchor location presents a substantial risk to the health and safety of those who may attend in person. This determination is based on the ongoing risks and infection rates statewide and in Summit County. For these reasons, this meeting will be an electronic meeting without an anchor location. Planning Commission members will connect electronically.

Public comments will be accepted virtually. To comment virtually, use eComment or raise your hand on Zoom. Written comments submitted before or during the meeting will be entered into the public record but will not be read aloud. For more information on attending virtually and to listen live, please go to www.parkcity.org.

2. MINUTES APPROVAL

There were no minutes to approve.

3. PUBLIC COMMUNICATIONS

There were no Public Communications.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

Planning Director, Gretchen Milliken, reported that she received an email from the applicant for the Park City Base Mountain Development. They felt more time was needed to provide the requested information and asked that the March 23, 2022 meeting be continued. She stated that the next available date would likely be at the end of April 2022.

Commissioner Suesser asked if the timing for the applicant's memorandum and Staff Report was still on track. Director Milliken stated that because Staff requested the applicant provide their information two weeks in advance of the meeting, the applicant wanted to make sure that they had the time to gather that information and provide it as agreed. She confirmed that the Commission would still receive the submissions two weeks before the meeting.

Commissioner Kenworthy requested that the applicant provide copies of any and all executed leases with regard to mitigating the off-site parking, and specifically referenced Kimball Junction, Richardson Flat, the High School, and The Canyons. Director Milliken stated that she would pass along the request. Director Milliken also reminded the Commission of the Joint Session with the Council on March 15, 2022, at 5:00 p.m. There would be regular Planning Commission meetings on March 9 and 23, 2022. The first in-person meeting would be held on March 9. Director Milliken added that there would be both an open and closed session during the Joint Meeting.

A. Housing Department Update

Affordable Housing Manager, Jason Glidden, introduced Affordable Housing Project Manager Rhoda Hauser, and Affordable Housing Specialist, Elyse Kats.

Manager Glidden reported that they created a Housing Task Force at the direction of the City Council following the Fall Retreat. Housing falls under the Social Equity and Affordability pillar of the City. The Housing Task Force will seek input from the local stakeholders. He noted that the issue of housing is important enough for the City Council to direct the Housing Department to create its own task force, for which there was an overwhelming response of persons interested in serving. The Housing Task Force was formed along with four Subcommittees consisting of the following:

- The Subcommittees cover Health and Housing;
- Department and Financing;
- Business and the Economy; and
- Diversity, Inclusion, and Equity.

The groups had met several times over the past six months.

Manager Glidden stated that the focus of each group was why housing is so important. The responses were interesting. He presented the Commission with a chart summarizing the responses. The three over-arching themes were:

1. The need for workforce housing;
2. Creating a complete community; and
3. Focusing on a vulnerable population.

He stressed that these responses were representative of the many different stakeholders in the community and for all of them to include these three responses helped the Department to focus on why housing is so important.

Manager Glidden presented a timeline showing that Park City has been working on housing issues for 40 to 50 years. In the late 1970s, the City began providing gap funding for early projects. As they moved forward into the 1990s, the City created its first Housing Resolution, and in the late 1990s, the City hired its first employee with experience in housing. Phyllis Robertson provided insight and set up a great foundation moving forward. Manager Hauser joined the Staff in the mid-2000s while Manager Glidden was hired four years ago followed by the Department's third full-time Staff member, Housing Specialist Kats. He reminded the Commission that the City's housing goal is 800 units by 2026. This goal was set in 2016 and based on the Means Assessment from that year that found that to maintain the idea of having 15% of the workforce live within City limits, they need to create 80 units per year.

Manager Glidden added that it was always anticipated that the City would not necessarily be responsible for the development of all 800 affordable housing units; rather, it would come through various tools and means within the public and private sector. He reported that the current direction from the City Council was to focus on developments within City limits. While that does not mean that they would ignore a good opportunity outside the City limits, the focus has been on how they create the most housing within the City limits.

Since 2016, they have been very successful in their housing development efforts. The City developed and created 33 units, while the private sector has built nearly 100 units. The City has several different projects that are being reviewed that would create 375 units. The private sector planned units come from the inclusionary zoning and housing requirements on private developers. There are plenty of large Master Planned Developments pending and through those, they expect to derive approximately 300 units from the private sector.

Manager Glidden commented that they are on a good path and noted that the planned units are only estimates and could change. In addition, the timeline was key in determining whether these units would be completed by 2026. In terms of funding, he reported that they still have remaining funds from the \$25 million bond. There is a balance of the fee in lieu, the majority of which came from Intermountain Health Care ("IHC") and the expansion of the Surgical Center. The City accepted a fee in lieu of \$840,000.

Manager Glidden also referenced two other funding sources that the City Council directed go toward housing. One was for a possible new Senior Center that did not come to fruition, and the sale completed by Quinn's Junction for the New Fire Station.

Commissioner Kenworthy asked how much the City spent on the 33 units already built. Manager Glidden stated that he did not have the information on hand, but would provide it. He estimated that the City spent somewhere between \$15 – 20 million. In terms of what was spent to construct the Retreat and Woodside Phase 1, and including the planning with some of the others, he felt they were closer to \$15 million.

He agreed with Commissioner Kenworthy that as developers, the City does not have a chance to come close with \$29 million. Manager Glidden felt that going forward, they have a good plan in

place and the City Council discussed how to get ongoing funding for housing. While they have a significant amount of funding, it will not be enough for the City to continue to build its pipeline.

Manager Glidden stated that in 2018, the City Council began looking at City-owned properties and those that would be the best for possible development of affordable housing. The City Council prioritized a list of properties for the Housing Department to evaluate for potential development. He presented a map of the listed properties to the Commission. He reported that City acquired the Mine Bench in 2017. It is a fairly large parcel but has some steep slope issues, zoning issues, and the mine is historic in nature. There are current tenants on the property that would need to be mitigated if that site, or portions of the site, were developed. Currently, the City Council has recognized some of the major issues with the property and de-prioritized it slightly. If there were an opportunity from the private sector to develop this property, the City would be receptive.

Commissioner Suesser asked if there was anything on that site that would have to be preserved as historic. Manager Glidden understood that the structures on site are not listed as historic structures; however, there is some Park City history that they would want to be sensitive to if the lot was developed. In response to an inquiry from Commissioner Kenworthy regarding the Jordanelle Special Service District ("JSSD") operations, Manager Glidden stated that a portion of this site was not owned by the City but rather owned by JSSD. They would have to work through this issue if the City were to develop it. He understood that JSSD was the only other owner on that site, other than the City.

Manager Glidden added that the site contains a flat area that houses the current buildings and parking lots. The upper portion could present a potential development site.

The next City-owned property he referenced was the Clark Ranch parcel that the City acquired in 2004. At the time of purchase, there were discussions about dedicating a portion of the property to affordable housing. That was still a possibility and they were allowing the annexation process to go through before targeting it as a potential site for the development of affordable housing. In response to an inquiry regarding connecting the site to Park City Heights, Manager Glidden thought that a frontage road could provide access to the property, but he would look at any connection into Park City Heights as a secondary access to the property.

Manager Glidden added that the City Council supported conducting a Feasibility Study for this site, however, that was on hold until the annexation is finalized. Once they delve further into potential development, they will look at issues such as access, slope analysis, and soils analysis to determine the feasibility of development.

The Woodside Park, Phase 2 parcel involves a long history where there was an appeal of the Master Planned Development ("MPD"). Manager Glidden noted that the Board of Adjustment found in favor of the Appellant on one of the issues. As a result, the City took a step back to decide how to move forward. He reported that they were still looking at options for the best use of that parcel. He also referenced the Senior Center and the importance of working with them to determine how best to use that parcel. He added that the current direction from City Council was to submit a plat amendment to clean up some of the lot lines to ready the parcel for development.

Commissioner Suesser commented that when the original MPD that was approved by the Commission was appealed, it was to move forward without the inclusion of the Senior Center. It was noted that another location was being considered for the Senior Center. She asked if the City has changed direction and wanted to incorporate the Senior Center into Woodside Phase 2.

Manager Glidden responded that no decision had been made. He noted that they would be before the City Council in a March Work Session for a much deeper dive into housing as a follow-up to the retreat held a couple of weeks ago. He imagined that Woodside would be part of the discussion but they would need Council direction on where they want to go with that site. He confirmed that the site was not being redesigned until they receive further direction from City Council.

Manager Glidden next addressed the Homestake lot that was purchased by the City in 2017. He reported that they are currently in negotiations with a private developer to develop the property. They signed a Memorandum of Understanding ("MOU") with the developer in December and the City has retained an owner's representative to assist in the negotiations. He anticipated an Affordable MPD application to be part of the process. This developer was looking to build 80% of the rental units to be affordable, with an Average Median Income ("AMI") of 60%. Manager Glidden added that this process was just beginning and they were just getting past some of the testing to better understand the site so that they can start more in-depth conceptual designs.

Commissioner Kenworthy noted that the applicant for Park City Mountain Resort ("PCMR") recently presented a plan to the Commission that involved the Munchkin lot. He believed that the Recycling Center would be moving away at some point and this site backs up to the Iron Horse Subdivision that was just continued. He commented that there were a lot of connected properties in this area and strongly suggested that a comprehensive, high-level overview of the Homestake lot might not be the right direction.

In response to an inquiry, Manager Glidden stated that there was no date for the Recycling Center to leave at this point. Commissioner Kenworthy commented that when the Homestake lot was discussed, it was considered a peninsula and not impacted by anything else. Now, however, it is surrounded by future development and re-zoning.

Commissioner Kenworthy commented that he is a big supporter of affordable housing for employees in the community but felt it was a mistake to go forward given all of the moving pieces surrounding the lot.

Manager Glidden appreciated the comments and commented that a balance is involved. He stated that Master Planning will likely be a two-year process and they await direction from Council. He noted that the Iron Horse Commercial District is privately owned. The Power Station that sits in the middle of the area raises some issues and they have looked at the reworking of Homestake and the expansion of Munchkin Drive to improve walkability and traffic through that area.

Commissioner Kenworthy focused on the Munchkin lot and PCMR's plan to use it as a transit point for the resort. Transit would be significant but there might need to be trade-offs to determine what works best for the area and access to both developments. He stressed that transit would impact the entire site and felt that not addressing it now could result in a missed opportunity.

Commissioner Kenworthy stressed that looking at the other developments with regard to transit in that area would result in a completely different view than what is currently being done with the Homestake lot.

Manager Glidden appreciated the feedback and stated that he would pass it along to the City Council. He commented that the issue was discussed at the Retreat and it seemed like the Council was worried about delaying development of this site given City's the housing needs.

Chair Phillips added that it would be wise to check in with Rocky Mountain Power to ensure that they do not have any immediate upgrades planned for that substation that might impact the Homestake lot development. He recalled that when they were before the Commission approximately 7 years ago, it was a significant topic that was before the Commission for months.

Commissioner Kenworthy asked about the 60% AMI for Park City. Manager Glidden responded that for a family of four it is approximately \$70,000. Manager Hauser explained that a 100% AMI for a family of four is over \$120,000, so 60% of that would be approximately \$70,000.

Commissioner Suesser asked if 20% of the housing for the development that would not be considered "affordable" would be "attainable" or market rate. Manager Glidden stated that currently, they are contemplating more market-rate housing for that 20%; however, the developers were open to negotiations in terms of ways to add increased affordability to the project. He reiterated that they were still in the early stages, and noted that when the City sent out the Request for Quotation ("RFQ") for this development, it stated that it was looking for something that would be 80% affordable and 20% market rate. It was also contemplated that this development might have a small amount of support commercial. The balance had yet to be determined and they were still working through it.

Manager Glidden mentioned some of the additional housing initiatives they are working on currently. He stated that they updated the City's Housing Resolution just over one year ago, and started looking at it again in terms of updates. They normally update approximately every two years but as the program continues to grow they are finding new ways of updating and strengthening the Resolution. He noted that over the past year, Housing Specialist Kats has worked hard on the Light Deed Restriction Program and they hope to get final direction from the City Council in the coming months. This program would allow the City to pay cash to homeowners who are willing to put a light deed restriction on their property that only restricts the property to owner-occupied or long-term rentals. This program would not cap equity, nor does it have income qualifications for residents. The program would encourage vibrancy in neighborhoods and help to build community by having more full-time residents living in homes.

Manager Glidden also reported that they have been working on re-writing much of the Land Management Code ("LMC") as it pertains to Accessory Apartments and Accessory Dwelling Units ("ADUs"). They continue to watch at the State level to see if any additional changes are implemented. He also reported that they are also working through Housing Mitigation Plans. He mentioned the PEG development, Deer Valley, and Phase 2 of the Studio Crossing at the Film Studio. They had very productive discussions with the Crandall's on the Film Studio despite that project not having a housing requirement. He noted that part of the application to amend the MPD includes affordable housing as a community benefit.

He reported that Manager Hauser has been working on a new software program called Rock Solid, a customer relations management software that will help the Department better manage the Housing Program. On the front end, it is projected to enhance the ability of anyone who wants to fill out an application. On the back end, it will help out with compliance and tracking.

Manager Glidden reported that they held a great Senior Housing listening session with a group of seniors. A lot of good feedback was received with regard to what seniors are looking for in terms of housing and continuing housing throughout one's life. He added that a lot of seniors do not want to leave the community and they discussed the types of units they are looking for and how the Department can help accomplish that. The Department is completing an updated Housing Needs Assessment. He recalled that the goal of 800 units came from the 2016 Housing Needs Assessment. Manager Glidden commented that they update this assessment every five years and they would have new data to share regarding where they are currently and what needs to be done to either maintain or increase the goals.

Manager Glidden highlighted the creation and approval by the Commission of the Affordable Master Planned Development ("AMPD") section of the LMC. He stated that this was important for the Department in terms of providing a new tool to help incentivize affordable housing, not only through public/private partnerships but from the private sector to create more affordable opportunities for the City's workforce. He reported that the new laws are working. They have had a handful of meetings with private developers that have an interest in using the Code, some for large redevelopment. He felt there would likely still need to make adjustments to the Code, but it is a step in the right direction by getting the private sector to consider this as an option.

Manager Glidden explained that the AMPD is allowed in almost every zone except the Historic Zones. It is similar to the regular MPD process but is on a different track with different requirements. He highlighted the requirement that at least 50% of the development is affordable and the attendant reduced open space requirements and setbacks if that is achieved. He added that meeting this requirement also allows height increases of up to 45 feet and opportunities for reduced parking with the mitigation of impacts. The AMPD also allows for some mixed-use development if appropriate.

Commissioner Kenworthy referenced the managing aspect of the Department. He asked who was measuring the residents of these units and if it was akin to an annual rent roll of who is living in the affordable units. He has heard of the issues surrounding the management of the units and wanted to make sure that the City had learned from these mistakes. Manager Glidden stated that management is an important focus since it protects the integrity of the program.

Manager Hauser reported that they conduct an annual compliance review and use a digital online form that each of the 285 owners of the affordable units must submit. She stated that she also does a random check of a certain number of units by using BeenVerified, which is an online program that allows her to search ownership and residency.

She noted that neighbor reports are the most significant source of information regarding non-compliance. She also noted that the City instituted a criminal Code nearly 10 years ago that gives them the authority to engage the Police Department to investigate suspected non-compliance. It, therefore, becomes a criminal inquiry if someone is intentionally defrauding the Affordable Housing Program.

Manager Hauser stated that they have learned a lot over the years and the current deed restrictions are the tightest she has ever seen. The Department maintains rights to prosecute if they discover issues. She added that there is a lot of talk in the community about things that are not right. She disagreed and felt that the Program was doing quite well and that there are not many defrauders.

In response to an inquiry from Commissioner Kenworthy, Manager Hauser stated that for the 285 Affordable Housing Deed Restrictions, residents must be employed within School District boundaries. Some of the rental units require that the residents work close to their home, which typically means within City limits. When units are sold, the qualified person can work within School District boundaries. She added that they monitor that by virtue of the yearly reports.

Commissioner Suesser asked if there was a pool of potential applicants should the owner of affordable housing wish to sell. Manager Hauser explained that the City holds an option of first refusal on all units. Therefore, when a current owner wishes to sell, they must notify the City and the City manages the sale. She added that they exercise their option and assign it to the next person on the waitlist. She added that the waitlist is currently close to 200 for affordable households and approximately 35 for attainable households. As soon as a unit comes up for sale, they put notice out to whichever list is applicable and anyone who is interested submits a full application. The applications are reviewed and the unit is assigned in the order of the person's waitlist standing.

She confirmed that the City's right of first refusal is part of the deed restriction.

Manager Glidden added that one of the reasons that they update the Housing Resolution is to close the loopholes in the Program. They are also able to close the loopholes with the deed restrictions. They are proud of the deed restrictions and continue to review the language as new situations arise to ensure that they are protected. They have employed outside counsel who are experts in housing to assist as well.

Manager Hauser confirmed that when applications are sent out to those on the waitlist, they typically get 10 to 15 responses. She was surprised by how few apply for each unit when they become available. It was noted by Manager Glidden that the low response might be because it is not the right unit for the person's situation. He added that between ensuring compliance and managing resales, Manager Hauser remains busy. Before the pandemic, they were managing 15 to 20 resales per year.

Manager Hauser commented that the year of the pandemic pushed many to sell because many were making major life decisions. She stated that for the year prior to and of the pandemic, there were 10 to 15 units sold each year. This year, they are at their sixth unit which is coming up for resale. She noted that there were some years when new sales were happening at the same time and they had one year where they had well over 40 sales of deed-restricted properties.

Commissioner Kenworthy asked if first responders or teachers moved up the list in any way during the pandemic. Manager Hauser responded that these groups do not get any special treatment in the ongoing waitlist; however, in the initial lottery to establish the waitlist, first responders receive extra points.

Commissioner Hall asked what was being done for rentals versus home ownership of affordable or attainable housing. Manager Glidden stated that as a result of the information included in the Housing Needs Assessment, the City's focus has shifted toward rentals because of need. He explained the fact that there are over 200 people on the waitlist, but they only receive 10 to 15 applications when a home becomes available. This demonstrates that many of those on the waitlist are either not ready or in a position to buy and are in more of a position to rent.

Manager Glidden added that when they look at employee demographics, the average worker earns approximately \$40,000. Even with two earners, these workers cannot buy into the normal market and might face challenges in qualifying for purchase. He commented that the focus on rentals would likely be included in the next Housing Needs Assessment as there is a much larger demand. He suggested that they focus roughly 80% of the development on affordable rentals and 20% on ownership.

Manager Hauser added that looking at the household income for those on the waitlist, some would never be able to afford to buy a unit because the incomes are below \$40,000 for an entire household. These are the people that need affordable rental units and they refer many of them to Habitat, which has a financing model to accommodate low incomes. She explained that the City's program simply does not have units at those prices. Chair Phillips mentioned that he listened in on the City Council Retreat when these issues were discussed. He understood that at upcoming meetings there would be discussions on the targets and where they need to re-tool. He stated that it might be helpful to focus on what the people on the waitlist are looking for in terms of housing.

Manager Hauser explained that the persons on the waitlist fill out a pre-application, so the department already collects the data on the size of the unit and what they would be able to afford. She stated that one of the overwhelming reasons that people turn down units is because they want a single-family home, whereas the community cannot afford to build affordable single-family homes.

Manager Glidden noted that data is important to the Department and they utilize the information they obtain on a fairly regular basis. He mentioned that once a year, they send out a notice to the entire waitlist to obtain information on any changes in their situation and whether they want to remain on the waitlist. He stated that they would be participating in a Work Session with the City Council on March 17 that would include a deep dive into some of these housing issues. They hope to see an application for Homestake and the plat amendment for Woodside Phase 2.

Manager Glidden explained that the City is required to submit an annual Moderate Housing Assessment and Plan as an attachment to the Housing Element of the General Plan. This year, they would like to involve the Planning Commission in that process. They would bring the updated plan to the Commission in a few months for feedback, which can then be forwarded to the City Council. This Plan must be updated by December 1 of each year. He reiterated that they are also working on revisions to the Housing Resolution and they would like input from the Commission on that as well.

In response to an inquiry from Commissioner Suesser, Manager Hauser explained that Moderate Housing is a State term that is defined as equal to 80% of AMI, and not to exceed 30% of household income.

Commissioner Thimm asked if any strategies were being studied to get some of the housing for deeply targeted households, such as in the 40% AMI range. Manager Glidden stated that the best way to achieve that would be through government funding, which would mean larger subsidies for the City to take on. He explained that Habitat does a great job targeting the 30% in terms of home ownership, and they achieve that through a lot of donations and volunteer time, as well as through homeowner sweat equity. This allows for cheaper production costs, which translates into a lower sale cost.

Manager Glidden suggested that the City get creative and look at other tools. The Housing Department Staff are each involved in National Associations and they continue to network and talk with other communities to see what they are doing. He noted that the Light Deed Restriction Program was something that started in Vail, Colorado. The Department would like to learn more about down payment assistance, shared equity programs, and anything else that they can use to reduce the barriers for people to purchase homes in Park City.

Commissioner Thimm stated that given the base AMI for this community, it begs the question of how much real workforce housing is attainable for much of the workforce. He looked forward to creative solutions, including those with public money. Manager Glidden noted that a lot of creative ideas are starting to emerge and referenced a social good investing platform in San Francisco. He stressed that there were a lot of good tools and it was about finding the ones that work in this community.

Commissioner Kenworthy referenced the statements that a majority of those on the waitlist want a single-family home. He understood that this meant that these households want that quality of life. He suggested that if you reverse engineer what these households have in terms of debt or children, there would be no way that the quality of life would exist for those employees unless there was a transit system that allows them to move around town in a way that gives them quality of life. If there were a nice duplex or condominium on a transit line, then these owners would not have to spend the money on a car and their quality of life would improve. He stated that a 60% or 80% AMI would not have a chance of working for those who work in the community. Commissioner Kenworthy suggested that flanking the housing with transit options that actually work was the answer. He reiterated the development around the Munchkin lot and asked where the compromises or trade-offs could be achieved to make it the most efficient.

Commissioner Kenworthy urged the Department to consider the transit money that could be obtained for the housing and development along transit corridors. He stressed that if they could get the transit laid out in a way that provides quality of life for that AMI, then that could be the answer. He felt there would not be a success if transit is not included and provided for these households. Manager Glidden stated that they always look at transit as part of their evaluation of land for development. Besides housing, transit is the second biggest household cost. If transit costs are reduced, families could use those monies toward housing or childcare. He added that his Department has been working with the Transportation and Planning Departments and between the three departments they submitted a grant application to the Utah Department of Transportation ("UDOT") to fund a study to look at possible locations where transit and housing meet in Park City.

Commissioner Suesser added that if a household is looking to find housing in Park City Heights, a bus running to that neighborhood might help eliminate a car loan. She expressed frustration over the fact that they have affordable housing in that neighborhood with no transit. She also referenced construction costs that seem to have a significant impact on the inability to get more affordable housing units constructed. She wondered if the City had explored pre-fab construction.

Commissioner Suesser commented that she regretted her vote on the Founders Place decision and the fee in lieu that was recommended by Manager Glidden to Staff. She agreed that they should have built units at Founders Place. Manager Glidden stated that they would be discussing it at the March 17 City Council Work Session. He clarified that it was not a fee in lieu but a self-instituted community investment fee that was similar to a fee in lieu.

Chair Phillips feared that the economic conditions over the last two years would cause the City to lose ground on these issues. He mentioned the widening gap in the social classes, real estate prices, and building prices. He felt that rising interest rates would also make it more costly to build. He agreed with Commissioner Suesser's comment on Founders Place and expressed regret. Chair Phillips was glad to hear that the City Council would revisit that issue. He expressed appreciation to the Housing Department for their work and for including the Planning Commission in some of the future discussions.

City Attorney, Mark Harrington stated that there is pending legislation regarding inclusionary zoning. They do not have the exact language yet but expect it to surface tomorrow. They would update the Commission accordingly. He expressed hope that it would include grandfather language that would allow Park City to keep their existing inclusionary housing.

5. CONTINUATIONS

- A. 543 Park Ave - Hotel, Minor Conditional Use Permit - The Applicant Requests a Minor Hotel Conditional Use Permit to Convert the Washington School Inn, a Landmark Historic Structure on the Park City Historic Sites Inventory in the Historic Residential -- 1 Zoning District, from a Bed and Breakfast to a Minor Hotel with Accessory Facilities for Events.**

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

MOTION: Commissioner Kenworthy moved to Continue 543 Park Avenue – Hotel, Minor Conditional Use Permit to a date uncertain. Commissioner Christin Van Dine seconded the motion.

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

6. WORK SESSION

- A. 1020 - 1100 Iron Horse Drive - Master Planned Development - The Applicant Proposes 4,304 Square Feet for Retail and Office Space, 145,197 Square Feet for Residential Units, and 2,992 Square Feet for Restaurant Uses Over a 184-Stall Underground Parking Garage on a 3.05- Acre Property in the General Commercial Zoning District. PL-21-04949.**

Chair Phillips confirmed that they would not be conducting a Work Session on this agenda item.

Attorney Harrington advised that they posted notice of the continuation of this item and there was active press coverage of the continuation.

Commissioner Thimm asked for background information on why this item was withdrawn from the agenda. Director Milliken stated that the applicant felt that it warranted more time to obtain the needed information to present to the Commission.

7. REGULAR AGENDA

A. 2300 Deer Valley Drive E – St. Regis Deer Valley – Modification to a Conditional Use Permit – The Applicant Proposes to Install an Additional Temporary Tent for Winter Months. PL-21-05095.

City Planner I, Lillian Lederer, explained that the subject property is located at 2300 Deer Valley Drive East in the Deer Crest Hotel Subdivision of the Recreation Commercial Zone in Wasatch County. The applicant has proposed to construct an indoor and outdoor deck with a 40' x 40' snow load tent covering to be used for additional outdoor seating during the winter months. She noted that this item was continued from the February 9 Planning Commission Meeting and would include Commission review and possible final action.

Planner Lederer reported that the tent is located on the Grand Lawn at the St. Regis Deer Valley Hotel and would be accessed via the hotel and the surrounding ski areas. There is an existing Conditional Use Permit ("CUP") for this site that allows for 15 temporary tents per year with one tent allowed to stay up for 60 days. She explained that due to the time length of this proposal, which exceeds 60 days, the proposed temporary tent does not meet the requirements under the existing CUP. She explained that this application seeks to modify the existing CUP to include installing a temporary tent on an annual basis from December 17 to April 17. She noted that the applicant would be required to submit a building permit each year to ensure that the tent complies with the Municipal Code.

Planner Lederer presented to the Commission the design proposal and the current tent located on the Grand Lawn. She noted that it has a deck that extends out past the tent itself so that the stairs are level and it is easy to access with snow buildup. She stated that the proposal complies with the CUP criteria outlined in the LMC. It is an existing site and no changes will be made to the lot. She added that the temporary structure would not impede traffic.

The Design Review Committee reviewed the proposal and did not identify any issues.

Planner Lederer explained that the tent would not create any issues with emergency vehicle access. Parking is accounted for under the existing CUP, and therefore additional parking would not be required. She added that the tent would not impact circulation. She reported that the proposal includes signage, and the applicant would be required to apply for a sign permit, per Condition of Approval No. 5. The applicant would also be required to comply with the Noise Ordinance. Planner Lederer added that the use of this site is consistent with the Small Town and Natural Settings of the General Plan, and this tent was comparable to previously approved tents under the CUP and would not have an impact on Sensitive Lands. She further stated that the proposal met the LMC requirements in that it is a temporary tent that falls within the rear setback. Similar temporary tents have previously been approved within the setback with an existing CUP. She stated that this tent sits one foot from the property line.

In addition, she explained that the proposed deck is less than 30 inches tall and at least one foot away from the setback, rendering it compliant with the LMC. Planner Lederer added that this proposal meets the requirements for a Temporary Structure, which requires review by the Planning Commission. The temporary tent is 1,600 square feet and will require a Building Permit and Fire Permit. It will not be up for longer than 120 days.

Temporary Structures require one parking space per employee, in addition to two guest spaces; however, this is fulfilled through the existing CUP. She reported that this application was reviewed

by the Planning Department, as well as the Building Department, Engineering Department, and Fire Department. No issues were raised as a result of these reviews.

Planner Lederer summarized the publication of notice and stated that no public input was received. She explained that the Planning Commission could approve the modification to the CUP, deny the modification, and direct Staff to make findings for the denial, or request additional information and continue this matter to a date certain. She reported that Staff recommended the Planning Commission review the proposed plan to modify the existing CUP to include the construction of a temporary tent for 120 days, conduct a public hearing and consider approving a modification to the CUP based on the Findings of Fact, Conclusions of Law and Conditions of Approval.

Commissioner Hall asked Planner Lederer to explain why the parking would not be impacted. Planner Lederer explained that per the existing CUP, which accounts for tents of similar size, parking was previously accounted for in their Master Plan. This would not increase parking; rather it is simply adding another tent. Planner Lederer explained that if the applicant were to put up an additional tent for a wedding, for example, parking would already be accounted for in the existing CUP. This tent would not be consistent with the existing CUP due to the length of time that it is proposed to be up.

In response to an inquiry from Commissioner Suesser, Planner Lederer confirmed that two tents could not be erected in this same location. She explained that they could include a Condition of Approval that two tents would not be up at the same time. Commissioner Suesser stated that she did not have an objection to having two tents erected at the same time.

Commissioner Thimm asked if a second tent would require action and approval. Planner Lederer initially stated that the CUP would allow the applicant to put a tent up without Planning Department review, they would just have to obtain a Building Permit. She further noted that the CUP addressed the existence of two tents in different locations.

Commissioner Hall returned to the issue of parking and asked if there were a tent over the patio for a wedding and the proposed tent up at the same time whether there would be an impact on parking. Planner Lederer responded that all of the tent parking under the existing CUP should be covered, and this tent is proposed to be up only in the winter, so it is not likely that a second tent would be up on the patio at the same time. If both tents were up, parking should be accounted for under the existing CUP.

St. Regis Hotel General Manager, Tyler Mugford, confirmed that if the tent was at maximum capacity and everyone drove to the site, they would only be at 79% of the current CUP, which would allow for additional parking for a second tent on the terrace. He noted that he would not have the Staff to have two tents at the same time, so it would not be a plausible scenario. If it did, however, the CUP would cover the needed parking.

Commissioner Suesser noted that she was in the new tent during the Delta Convention and recalled that there was a tent on the terrace. She did not have a problem with this application as long as there was enough parking to accommodate both tents.

With respect to Condition of Approval No. 1, Commissioner Suesser did not understand the phrasing and wanted to know what was approved on December 29, 2021. She suggested that this Condition of Approval might need to be revised, as it seemed to exclude the Conditions

approved in tonight's approval. Planner Lederer explained that Condition of Approval No. 1 applied only to the winter tent. She referenced Conditions of Approval Nos. 8 through 10, which clarify that the previous Conditions of Approval also apply.

Attorney Harrington suggested referencing "the plans previously approved by the Building Department on December 29, 2021." Commissioner Suesser indicated that this additional language allayed her concerns.

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

MOTION: Commissioner Suesser moved to APPROVE the Modification to the Conditional Use Permit for the St. Regis Deer Valley pursuant to the Findings of Fact, Conclusions of Law and Conditions of Approval as modified during this meeting as follows:

Findings of Fact

1. The Site is located at 2300 Deer Valley Drive East.
2. The Applicant proposes to construct an annual temporary tent from December 17 through April 17.
3. The Site has an existing Conditional Use Permit for temporary tents that was approved on March 9, 2011, by the Planning Commission.
4. The Applicant proposes modifying the existing Conditional Use Permit to include the additional annual winter tent installation.
5. Staff reviewed the 2300 Deer Valley Drive East Conditional Use Permit Modification Application for compliance with LMC Section 15-1-10, Conditional Use Review Process, Chapter 15-2.16, Recreation Commercial (RC) District, and Section 15-4-16, Temporary Structures, Tents, And Vendors.
6. Staff posted notice to the City website, City Hall, and the property on January 26, 2022.
7. Staff mailed courtesy notices to the adjacent property owners on January 26, 2022.
8. The Analysis Section of the Staff Report is incorporated herein.

Conclusions of Law

1. The proposal complies with the Land Management Code requirements pursuant to Section 15-1-10, Conditional Use Review Process, Chapter 15- 2.16, Recreation Commercial (RC) District, and Chapter 15-4-16 Temporary Structures, Tents, And Vendors.
2. The use will be compatible with surrounding Structures in use, scale, mass, and circulation.

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

Conditions of Approval

1. Final building plans and construction details shall reflect substantial compliance with the plans previously approved by the Building Department on December 29, 2021. Any changes, modifications, or deviations from the approved design that have not been approved in advance by the Planning Department may result in a stop-work order.
2. The Applicant is responsible for notifying the Planning Department prior to making any changes to the approved plans.
3. 3. Any changes, modifications, or deviations from the approved scope of work shall be submitted in writing for review and approval/denial in accordance with the applicable standards by the Planning Director or designee prior to construction.
4. 4. The Applicant shall submit lighting plans that comply with LMC § 15-5-5 (J). Outdoor lighting must be Fully Shielded, down-directed, and no greater than 3,000 degrees Kelvin.
5. 5. The Applicant shall submit sign plans that shall comply with the Municipal Code of Park City Title 12, Sign Code.
6. The temporary tent shall comply with the City Noise Ordinance, Chapter 6-3.
7. A Fire Permit and Building Permit are required for the installation of the temporary tent.
8. All Conditions of Approval of the 1995 Deer Crest Settlement Agreement continue to apply.
9. All Conditions of Approval of the Deer Crest Hotel CUP as amended on April 22, 2009, continue to apply.
10. All Conditions of Approval for the St. Regis Resort Temporary Structure (Tent) CUP apply for this permit.
11. The temporary tent may not be installed prior to December 17, and shall be removed from the site no later than April 17, at 5:00 PM, and may not be installed for longer than 120 days.

Commissioner Hall seconded the motion.

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

After a short recess, Chair Phillips confirmed the presence of the Commissioners.

B. Land Management Code Amendments - Amendments to Land Management Code § 15-2.1-2, § 15-2.2-2, § 15-2.3-2, § 15-2.4-2, § 15-2.5-2, § 15-2.6-2, § 15-2.7-2, § 15-2.9-2, § 15-2.10-2, § 15-2.11-2, § 15-2.12-2, § 15-2.13-2, § 15-2.14-2, § 15-2.15-2, § 15-2.16-2, § 15-2.17-2, § 15-2.18-2, § 15-2.19-2, § 15-2.23-2, For Zoning District Use Tables, § 15-15-1 Definitions, and Enacting a New §15-4-22, Outdoor Pickleball Courts in Residential Areas, Are Proposed for Pickleball Court Land Use Regulation in Residential Zoning Districts To Mitigate Pickleball Court Impacts. PL-21-05062.

City Planner II, Browne Sebright, explained that pickleball is a racquet sport game similar to tennis and Ping-Pong. It is played with short wooden paddles and perforated plastic balls. He noted that while many outdoor sports courts result in noise, pickleball is unique in that the maximum volume and quality of the sound produced results in more noise complaints. Planner Sebright explained that under the current LMC, pickleball courts are considered Private Recreational Facilities, which are an allowed use in residential areas. In the past few years, pickleball has grown in popularity, and in addition to applications for public courts, Staff has been receiving a large number of inquiries from private residents who want to put these facilities on their private residential lots. The current LMC does not consider the popularity of this type of land use, and there could be clearer regulations as to where and where not these facilities can be located in residential areas. He explained that his presentation would reference decibels ("dBs") as the measurement of noise. He presented a graphic that showed that pickleball could range from the upper 30 dBs to 80 dBs. Therefore, this could exceed the maximum allowed noise level for residential areas in Park City. In response to a comment from Chair Phillips, Planner Sebright confirmed that the noise issues involving pickleball were not only the intensity of sound but also the type of sound.

Planner Sebright stated that currently Private Recreation Facilities, in which pickleball falls, are an allowed use in seven zoning districts. As a result, in these seven zones, new pickleball courts only need a building permit, with no additional requirement for Planning Commission consideration and input. In other districts, Private Recreation Facilities require a CUP. At the end of last year, Staff began working on LMC Amendments upon seeing an increase in inquiries regarding outdoor pickleball courts in residential areas. Last July, Staff put together a website for the proposed LMC amendments that included a pickleball land use survey. Planning Staff has also coordinated with the Communications Team to get the word out via social media, and City emails.

He explained that also last July, close to 9,000 postcards were mailed out to property owners in the impacted districts. In February, Staff held two open houses with special presentations by the Recreation Department on the future of public facilities. The survey closed on the 16th and they received nearly 600 completed surveys. Staff thanked the members of the public who took the time to complete this survey and attend the open houses. The feedback from the community was incorporated into the amendments.

Planner Sebright reported that approximately 75% of the survey respondents were in favor of allowing pickleball courts on private residential lots. Within that 75%, approximately two-thirds of the respondents wanted to see a minimum lot size of ½ acre or greater, followed by respondents who wanted to see a minimum lot size of one acre. The third most popular response was a minimum lot size of one-quarter acre. He added that more than 75% of respondents preferred Homeowner Association ("HOA") notification and approval prior to an application to the City to construct a pickleball court.

A slight majority of respondents were opposed to requiring notice to those beyond the immediate adjacent property owner. Planner Sebright added that 44 of the respondents who wanted notification beyond the immediate adjacent property owner, most wanted notice sent to property owners within 300 feet.

Planner Sebright explained that the Municipal Code of Park City outlines maximum permissible sound levels for residential and commercial properties, with different maximum noise levels for daytime and nighttime hours. Based on research conducted by professional acoustical engineers, pickleball play can range from 39 dBs to 80 dBs. He pointed out that this is a measure of volume, not the quality of sound. There are different measures for noise quality, however, the Noise Ordinance is specific to decibel measurements on the A curve. Based on this research, Staff determined that the Noise Ordinance requires additional mitigation for outdoor pickleball courts.

He stated that Staff also analyzed the proposed amendments against the Park City General Plan and other portions of the LMC. The General Plan contains several goals and objectives that relate to a newly popular land use such as outdoor pickleball courts. Goals 4 and 9 seek to provide a network of open space and unparalleled parks and recreation opportunities, as well as objectives that seek to locate recreation options in close vicinity to existing neighborhoods. The recreation options in existing neighborhoods are to consider the effects on neighborhoods when developing remaining undisturbed land.

Planner Sebright explained that one of the most relevant goals is Goal 14, which seeks to protect the quality of life in Park City by recognizing those limits to growth and adopting responsible policies consistent with those limits.

From a high-level perspective, he reported that Staff recommends amendments to include five requirements for new outdoor pickleball courts in residential areas as follows:

- (1) Standardize the level of review for these facilities across zoning districts. He explained that this would mean that no matter where a proposed court was to be located, it would go through the same CUP process, Planning Commission review, and notification to neighbors within 300 feet.
- (2) Minimum one-acre lot size.
- (3) Establish a baseline 600-foot minimum setback from adjacent residential lot lines.
- (4) Allow the Planning Commission discretion to reduce the setback to no less than 150 feet when the applicant can demonstrate compliance with the Noise Ordinance. As part of this, they recommend a requirement that property owners submit a site-specific noise study that can provide the Planning Commission and Staff the necessary data and context to evaluate the impact of a proposed facility.
- (5) Applicants must notify active and registered HOAs prior to submitting a CUP application.

Planner Sebright next described each of the proposed amendments in detail. With respect to standardizing the review process, he explained that this would allow the Planning Commission to

review the proposal against the CUP criteria in the Land Management Code. He added that it would also allow for a more transparent approval process for neighbors and members of the public.

With respect to setbacks, Planner Sebright stated that based on the professional acoustical studies reviewed by Staff, at 600 feet, pickleball can produce a noise of around 55 dBS, which is the maximum allowed noise level for residential areas during daytime hours. He noted, however, that Staff was recommending that the Planning Commission have the discretion to reduce the required setbacks when the applicant has demonstrated, through a professionally prepared noise study, that the outdoor pickleball court would meet the requirements of the Noise Ordinance.

Planner Sebright commented that studies have shown that when the setback distance between a court and a listener is doubled, it reduces the perceived noise level by approximately 6 dBS. He added that as part of this mitigation, applicants may consider using a noise mitigating or noise absorbing barrier, which studies have shown can reduce the sound of a pickleball game by approximately 13 dBS. That said, noise barriers are most effective when blocking noise at line-of-sight and noise might still be an issue when there are multi-story residential buildings nearby. He noted that most of these noise barriers are unsightly and should be considered as a mitigation measure on a case-by-case basis.

He continued by stating that Staff was recommending a minimum lot size of one acre, in part to ensure that applicants have enough space when considering court placement and mitigation measures. This requirement would also be useful in ensuring that outdoor courts would not be concentrated in one neighborhood. He presented a map that showed residential lots in the City that are one acre or larger, and while they only account for 10% of the total number of residential lots in the City, it still would include over 700 lots and represents a significant amount of the City's land.

Planner Sebright added that because of the proposed setbacks, outdoor pickleball courts would not work on all one-acre lots. There are many residential lots that are adjacent to non-residential land uses such as Recreation Open Space or parks.

He reported that Staff was recommending five additional regulations to mitigate the impact of outdoor pickleball courts:

- (1) Limit the hours of operation to 8:00 a.m. to 8:00 p.m.
- (2) Courts would not be allowed to be lit with artificial lighting.
- (3) All required parking for the residence and the guests of the courts be accommodated on site. In addition, the number of guests could not exceed four at a time.
- (4) Applicants would be required to notify their HOA prior to applying for a CUP. This would ensure that the neighborhoods and the immediate community would be the first to know about a proposed pickleball court project.

- (5) The Planning Commission would have discretion to add landscaping requirements that could be used both for noise mitigation and to mitigate potential visual impacts of noise-reducing barriers.

Planner Sebright explained that the proposed amendments were reviewed by the Planning Department, Engineering Department, and Legal Department. Staff noticed the proposed amendments on the City's website and by the mailing of approximately 9,000 postcards. In addition, this item was noticed on the public hearings website and in *The Park Record*. Staff recommended that the Commission review the proposed LMC Amendments, provide feedback, conduct a public hearing and consider forwarding a positive recommendation for City Council's consideration on March 3, 2022. Alternatively, the Commission could forward a negative recommendation or request additional information and continue this to a date certain.

Chair Phillips asked if the survey included a question about whether the respondent played pickleball. Planner Sebright answered in the affirmative and added that approximately 80% of the respondents were current pickleball players. Chair Phillips commented that the survey results might be slightly skewed because pickleball players might have been more engaged than the general population.

Commissioner Thimm inquired about the 150-foot setback and how the number was chosen given that an acoustical analysis could show that at 149 feet there would be compliance with the Noise Ordinance. Planner Sebright explained that they tried to pick numbers that were most reflective of the research; 150 feet was pulled directly from a Noise Study cited in the Staff Report.

City Public Improvements Engineer, Nestor Gallo, P.E., confirmed that they estimated the minimum distance based on research, but acknowledged Commissioner Thimm's inquiry that there could be many factors that could change that distance. In Park City, the most important factor is the sound waves that could bounce based on the topography. Sound waves that travel horizontally could bounce off of a steep grade and come back or be directed to another location. He explained that these studies formed the basis for the 600-foot setback as a way to dissipate the extra 40 dBs created by the high pitch of the pickleball. If a noise study were required, it would consist of having receivers and capturing the level of noise before and after.

Commissioner Thimm gave the example of a lot with a 2:1 slope that extends upwards from the grade level of the lot. He felt that a noise analysis might show that a setback could be compliant at a lesser distance. He wondered why they couldn't just let the acoustical engineer's analysis establish the requirement rather than setting it forth in the Code as an arbitrary number. Engineer Gallo agreed with Commissioner Thimm and stated that based on topography, the distance might not even apply.

Commissioner Thimm reiterated that he did not understand the need for the 150-foot setback if there were an acoustical analysis that no adjacent properties would be impacted. He stated he was not worried about the houses as much as what the impact would be at the property line since he felt a property owner should be able to enjoy a noise-compliant condition up to their property line. He did not feel that there was a need for the 150-foot limit. He added that if they were to allow some sort of noise mitigating system, a setback requirement for that scenario might be appropriate.

Engineer Gallo remarked that the topography for the one-acre parcels that would qualify for a pickleball court varies from steep slopes to almost flat. He felt that prescribing a number was a

way to bring these issues to the Planning Commission to make sure that they have transparency with the neighbors. He added that they cannot address every scenario within the Park City basin. Commissioner Thimm reiterated that if an acoustical analysis is done, an arbitrary 150-foot dimension becomes superfluous because it can be proved that at a lesser distance no one would be detrimentally impacted and the Noise Ordinance would be maintained.

Planner Sebright felt that Commissioner Thimm's statement was fair and explained that from Staff's perspective, they were trying to establish baseline numbers based on the research. He agreed that they could consider different requirements for the setbacks based on Commissioner Thimm's comments.

Chair Phillips stated that his concern in eliminating the 150-foot requirement altogether would be based not only on the noise but on the visual impacts. He would look for a setback more for the visual impacts and agreed with Commissioner Thimm on the sound impacts. Chair Phillips felt that setbacks in terms of the visual impacts should be discussed, and proffered that the discussion might also center on limits to the height of the barrier or enclosure.

Commissioner Thimm stated that the 150-foot requirement seemed arbitrary and was a very long distance where the major impacts seem to be noise. He acknowledged the visual issues and felt that a 25-foot setback to any noise-mitigating wall could be appropriate. He added that he would not be worried about paid-for reports benefitting the applicant and would hope that paid professionals would have the integrity to not lie in their analysis.

In response to a question by Commissioner Suesser, Commissioner Thimm also felt that the one-acre requirement was arbitrary. Commissioner Suesser did not know if she agreed but noted that this followed his reasoning regarding the 150-foot setback. Commissioner Thimm emphasized that they need to mitigate the noise and the impact of any sort of noise barrier.

Commissioner Hall referenced the Staff Report calculations regarding lot size with no noise mitigation. Commissioner Thimm reiterated that the issue is mitigating in some manner. Commissioner Hall agreed that the 150-foot setback was arbitrary and stressed that she had issues with the potential visual impacts. She questioned where the balance would lay between the visual impacts and the noise impacts.

Commissioner Suesser mentioned that one of the reports stated that wrapping the courts with sound barrier material makes the courts very hot for the players and are often dismantled because of this. She was not sure how likely it would be for people to wrap their courts with unsightly fences because the courts get very hot.

Commissioner Thimm commented that rather than a wrapping fence, they might want to include a condition that says the fences would be a permanent element such as a masonry or concrete wall that would mitigate noise.

Chair Phillips asked about the typical heights of these walls. Commissioner Thimm relayed that in projects that he has been involved in where they are trying to mitigate exterior noise, part of the analysis involved the height of the wall. There is not a prescriptive height; rather it depends on what is being mitigated at the property line and the volume level of the noise.

Chair Phillips expressed concern that the closer a wall gets to a neighbor's lot, the taller the wall has to be to mitigate the sound. He proposed limiting the height of enclosures and raised the

example of walls being constructed that would obstruct their neighbor's view. He felt that would be more like an accessory structure. He did not want any unintended consequences of visual impacts and wanted more information to understand the various scenarios. He offered that he would think a typical fence height of six feet for a barrier might be appropriate, and if mitigation could not be accomplished with a six-foot wall then the court must be moved further into the lot.

Chair Phillips did not know whether the Codes currently limit heights but assumed that there was not and highlighted backyard trampolines with nets.

Engineer Gallo stated that based on his research, any type of vertical barrier that could move the sound waves upward would minimize any impact on the adjacent parcels. He surmised that if the balls were being bounced at three to four feet high, a six-foot fence would likely be enough mitigation to move those sound waves vertically and minimize the impact of the noise on adjacent parcels.

Chair Phillips stated that he could be on board with a barrier height limit of a six-foot fence, or whatever might be an allowed fence height in a particular zone.

Planner Sebright believed that the maximum allowed height was 18 feet for a standardized fence as an accessory structure. He stressed that this height was not what Staff recommended however; most of the studies showed fences at between 10 to 12 feet high. He referenced Engineer Gallo's comments that they were not trying to make this a prescriptive element; rather, it would be decided on a case-by-case basis if a barrier made sense for a particular lot.

Chair Phillips suggested that part of the analysis could include whether the barrier would have a visual impact. He added that language should be included that this would be considered at that time.

Commissioner Hall asked about the height limit for the different zones and felt that information would be important. Commissioner Thimm observed that if a zone allowed an 18-foot high accessory structure, it would seem like a noise mitigating barrier should not be allowed to exceed that height. He asked Planner Sebright if there were any architectural or other guidelines for having an 18-foot high structure. Planner Sebright stated that accessory structures typically have their own setback requirements in each zoning district. Because they vary from zone to zone, Staff suggested an underlying minimum setback to provide consistency across all zones.

Commissioner Thimm observed that if a zone allowed an 18-foot accessory structure, an owner could construct an 18-foot tall enclosed pickleball court. He asked whether an enclosed pickleball court would be an allowed accessory structure. Planner Sebright answered in the affirmative and noted that these amendments were specific to outdoor pickleball courts. Commissioner Thimm stated that he was looking at the impact on the neighbor and was comparing it to something that would be allowed by right. He reiterated that, in theory, an owner could have an 18-foot high accessory structure within the prescribed setbacks and be compliant. Commissioner Hall asked if, in this situation, a CUP would even be required.

Attorney Harrington stated that whether a CUP would be required would depend on the use as well as the structure. In response to further inquiry, Attorney Harrington did not believe that an indoor pickleball court would be an allowed use for an accessory structure. He added that in zones that require a conditional use for a Private Recreation Facility, that definition would override the Accessory Structure definition. He offered the example of someone wanting to put a mill shop

in an Accessory Structure that had heavy equipment; the Planning Department would look at the use for that structure in addition to the building itself.

Commissioner Thimm observed that Accessory Structures have limited permitted uses. Attorney Harrington confirmed and stated that the use must be incidental to the primarily residential nature. There would be a level of interpretation as to what might be incidental to the base use of the parcel.

Chair Phillips referenced the tennis courts at City Park that are wrapped in see-thru fencing; it would be completely different to see those wrapped in black. He felt that more information would be needed from Staff on the parameters that could be used and whether it would be a fence or an Accessory Structure.

Engineer Gallo interpreted the proposed Code amendment as recognizing that pickleball is something new that required a conservative approach. The guidelines are set out as balancing the demand for pickleball courts with the neighbors who might be impacted. He felt that with the one-acre requirement if they approve two to three pickleball courts a year that would allow them to collect data. If the data showed that they could allow courts on smaller lots, then they could amend the Code accordingly. He emphasized that that would at least take a conservative approach until more information is learned from the field.

He referenced the setbacks and reiterated that data from actual courts would be helpful for the future, rather than relying on data from other communities like Scottsdale, Arizona. He felt that the concerns about barrier heights were valid but stressed that it would all depend on the level of noise and the consideration of the parcels. There are many variables to consider to arrive at a conservative approach to allow these uses and collect more data.

Commissioner Suesser expressed her feeling that the Site Plan item needed to be worked on to include elevations, proximity to neighbors, and the neighborhood. She wanted the required information to be more specific than what is being proposed, including whether the court would be fenced or wrapped, what materials would be used, and similar details.

Engineer Gallo stated that in terms of the Site Plan, they included specific information such as a grading and drainage plan because the court would increase the impervious area and they need to ensure that the runoff created by the court would not cross the property line and cause damage to the downhill neighbor.

Chair Phillips opened the public hearing.

Frode Jensen expressed his concern that this discussion only touched the surface of the issues. He remarked that he has written extensively on the many issues involving pickleball and would hope that the Commissioners would read his submissions. He referenced the discussions on the 150-foot setback. The Noise Reports provided by Staff show that 150 feet was a minimum distance. The sound that pickleball creates is very hard to mitigate, and in communities across the country, there has been an enormous problem mitigating the noise within 150 feet. Mr. Jensen acknowledged that sound barriers could help mitigate, but even a 12-foot sound barrier does not stop noise from the court to the second story of a nearby house, including one that is 50 yards away.

Mr. Jensen was in favor of sensible regulation of pickleball courts but felt that the major shortcoming thus far was that the City had not engaged its own noise expert. He referenced Engineer Gallo's comments that the topography and elevations in Park City would play into noise determinations and these Code Amendments do not reflect any expert opinion on the proper distances or noise. He added that another major omission in the Code Amendments is that while there is a quantitative decibel level in one section of the Noise Ordinance, there is another section related to Noise Annoyance. These Code Amendments do not touch on Noise Annoyance, and he could not see how the Commission could even begin to determine noise mitigation based on the Annoyance standard.

Mr. Jensen stated that Staff needed to engage an expert for advice on how to manage pickleball noise in all of its manifestations and what kinds of mitigations might actually work. He referenced the discussions regarding a 25-foot setback and stressed that 25 feet was not the right number; pickleball noise cannot be mitigated within 25 or even 50 feet. He emphasized that the expert opinions are in the record for the Commission's consideration. He felt the Commission could not act on the proposed Code Amendments until the City has its own expert to assist in drafting sensible regulations that understand the complex elements of noise impact that would be caused by backyard pickleball courts.

Chair Phillips assured Mr. Jensen that the Commission has seen his written submissions.

Bob Theobald commended Planning Staff for their efforts on these Code Amendments. He offered that one of the major missing pieces is the City's own noise expert to provide opinions on the distances in the various geographical or geological settings. He has reviewed the Dr. Willis Study, which he felt was the best study he has seen. Dr. Willis made recommendations and has offered to work with the City. The notion of allowing a few pickleball courts to be built and gathering data from them to make adjustments to the Code makes no sense. He stated that there would be no remedies if a mistake was made.

Mr. Theobald felt that 8:00 a.m. would be too early to allow a neighbor to start playing pickleball, and during the summer months between 5:00 p.m. and 8:00 p.m., everyone wants to be outside to enjoy their own backyard. He appreciated the effort being made, but not every land use is compatible with a neighbor. He did not understand the notion that pickleball courts must be accommodated. Mr. Theobald referenced his letter that while State law gives great deference to a landowner, there are also State statutes that do not give one person rights for noise nuisance over their neighbor. Mr. Theobald urged further review of the notion that pickleball courts should be allowed in backyards and he would suggest erring on the cautious side because mistakes could de-value someone's property. There would be no remedy once the pickleball court is installed. He reiterated that the City should hire a sound engineer to provide input and go with his or her recommendations.

Chair Phillips closed the public hearing.

Chair Phillips supported a more conservative approach and Engineer Gallo's comments that we should be careful now.

Commissioner Suesser stated that the amendments proposed by Staff were a very conservative approach. She would like Staff to address the Noise Annoyance standard in the Code and whether it was considered with respect to these Code Amendments.

Planner Sebright remarked that the aim of these proposed amendments was to drive compliance to the existing Noise Ordinance. If there was agreement that the noise standards in the Code were not sufficient, that would be a different review process outside of the LMC. He stressed that these amendments sought to have the noise quality and quantity assessed in the individual noise studies.

Commissioner Suesser recalled that “noise annoyance” was a temporary annoyance, and stated that she would re-visit that on her own.

Commissioner Thimm took a simple approach and felt that if it could be demonstrated by the analysis of a professional acoustical engineer that the noise requirements of the LMC were met at the property line, the issue of noise goes away. He added that the way the amendment was written reflects expert opinion because it requires an expert opinion to inform the Commission whether there would be compliance with the Noise Ordinance. He opined that the amendment was well written.

With regard to mitigation measures, he offered that whatever measure was used should be permanent and not removable. He next turned to the issue of the impact of a barrier to adjacent neighbors and what might be perceived as a nuisance in terms of visual impact. This would involve height and setbacks, and felt that there were likely precedents in the LMC regarding setbacks for heights of structures that could establish the standards for the mitigating fence or wall.

Engineer Gallo commented that at a City Council Meeting, it was suggested that they needed to separate regulation from process. When they were discussing these amendments with the Planning Department, the process for the Noise Study included the participation of the adjacent owner where they could evaluate the accuracy of the study and the mitigation efforts. He stressed that they were not trying to ignore the consideration of the neighbors. He stated that there are a number of variables involved, and it would be impossible to have one standard for the entire City. Engineer Gallo agreed with the public comments that the City needs an expert on a case-by-case basis given the different settings within the City. Part of the process would be an acoustical analysis with the involvement of a member of Staff that would assess the impacts on the adjacent owner.

Commissioner Thimm would be amenable to consider requiring the applicant to pay for the City's costs to hire a third-party acoustical engineer to evaluate the veracity and correctness of the report supplied by the applicant's engineer. Engineer Gallo stated that this is what they do with soils and geological hazard analyses.

Commissioner Suesser liked the suggestion that the applicant would pay for the City to hire an acoustical engineer to evaluate the noise from that property. Commissioner Thimm clarified that he suggested that the applicant would hire their own acoustical engineer to prepare a study and would also fund the City's retention of a third-party engineer to review that study. He referenced his work with other municipalities and soils reports reviewed by third-party experts.

Engineer Gallo commented that his license would not authorize him to review the work of another engineer outside his area of expertise; however, a third-party acoustical engineer could review the report of another.

Commissioner Suesser reiterated her support for an applicant paying for the City to hire an acoustical engineer to conduct the study.

With regard to specific comments on the language of the ordinance, on line 1511, Commissioner Suesser felt it should read: "The Planning Commission shall also make findings with respect to the criteria..." She felt that the general description language should be revised, the hours of operation removed, as should the "anticipated use." She would like to know the neighborhood involved and where the pickleball court would be in relation to neighboring properties.

Commissioner Suesser referenced line 1524 and suggested it be revised to read: "The Site Plan shall indicate...." The site plan should also include site elevations. With respect to the Noise Study, she suggested that language be revised along the lines of "Applicant shall provide a Noise Study" or "pay for a Noise Study to be conducted by the City."

Chair Phillips agreed with Commissioner Suesser's comments and believed that they were requiring the applicant to provide their Study and fund the City's third-party review. Commissioner Suesser expressed that a review of a Study would not be as reliable as a third-party study. Chair Phillips noted that an applicant has to work with their hired professional in the design, and placing the burden of paying for a second study might be too much.

Commissioner Suesser understood this distinction. Commissioner Thimm highlighted that design is an integrative process involving the engineer.

Commissioner Hall asked if the ordinance would outline what the study would be required to address, and specifically if it would be required to show compliance with the Noise Ordinance at the boundary. Commissioner Suesser suggested clarifying that in the language of the proposed amendments. She added that it should be from the farthest edge of the proposed court. Commissioner Thimm noted it should be from any noise produced by the court. Engineer Gallo explained that when a particular issue is outside his area of expertise, the City would have an expert on retention to review the reports of the applicant.

Commissioner Hall referenced specific language in the ordinance on page 41, line 901, and page 59, line 1365. She felt that Private Recreational Facility was unintentionally deleted. Planner Sebright explained that these deletions were intentional as it references the seven zoning districts where Private Recreational Facilities are an allowed use, and the amendments propose that they become conditional uses.

Commissioner Hall noted that recreational facilities could include more than just a pickleball court, so these changes would convert previously allowed uses to conditional uses. Planner Sebright agreed but noted that they addressed that in the revised Definitions section.

Commissioner Van Dine referenced the application that was before the Commission a couple of weeks ago that involved a sports court with a pickleball court line on it. She asked where that distinction gets drawn. Planner Sebright stated that if pickleball was going to be one of the uses of the court, then the entire facility would need to meet the higher standards. Commissioner Van Dine questioned this approach given that the sounds and function of a general sports court and a pickleball court are completely different. Planner Sebright noted that other sports facilities would still require the regular CUP review process.

Commissioner Suesser referenced Commissioner Thimm's comments regarding the 150-foot setback and one-acre requirements and expressed that she was okay with the requirements as drafted by Staff. She felt it was a conservative approach and applicants would be required to meet other mitigation requirements. She added that on line 1575 of the proposed amendment, the word "provided" should be changed to "required" with respect to guest parking.

Commissioner Thimm reiterated his disagreement with the 150-foot requirement and felt that they should consider the requirements of the Noise Ordinance and whatever setback is needed to mitigate any sort of visual issue.

Chair Phillips stated that he was undecided on the issue.

In response to a question from Commissioner Kenworthy on minimum lot size, Commissioner Thimm felt that the one-acre minimum requirement was arbitrary. He felt that if someone could comply with the Noise Ordinance and any sort of visual requirement, the lot size requirement becomes superfluous.

Commissioner Kenworthy understood this position but expressed concern about continuity between studies and application of the code. Commissioner Thimm felt that continuity would be difficult because there would be different considerations based on the configuration and shape of the lot and the topography involved. Instead, he felt the process should be site-specific to be fair.

Director Milliken added that Staff took a conservative approach with both the 150-foot requirement and one-acre requirement; these were not completely arbitrary, rather they were based on pickleball noise and distance studies. She stated that they were trying to provide minimum requirements, which could be mitigated depending on what the noise studies reveal about the applicant's proposal. She stated that they did not want pickleball courts on smaller lots.

Commissioner Thimm disagreed with the idea that some prescriptive requirement was more important than what a true engineering analysis would provide. Director Milliken felt that with respect to the requirements and studies, it should probably not be "or" but "and." Commissioner Thimm suggested that one-half of a football field was a long distance.

Chair Phillips suggested that the distance requirements could be discussed further. He stated he was undecided on the distance and lot size requirements, but he was slightly leaning towards the recommendations by Staff with possible slight adjustments to the numbers.

Commissioner Van Dine echoed the comments of Chair Phillips and stated that if the impacts could be mitigated at a smaller setback, it would be acceptable. She felt that setting the standards strict at the outset would preclude getting that data of people who live on a ½ acre lot since they would not meet the criteria to apply for a court. She suggested having the requirements more open to allowing them to collect data at different numbers.

Commissioner Kenworthy offered that he would rather go with continuity and Staff's plan at this point offered an opportunity to be more conservative. They can always lower the distance requirements. He agreed with Commissioner Thimm that 50 yards is a significant distance, but he would err on being more conservative at this stage.

Commissioner Hall stated that it seemed that it would be extremely unlikely that someone within 150 feet without an obnoxious looking structure would be able to comply, so she could see setting

the acreage and distance at a minimum to provide notice to potential applicants of the potential for them to comply. She stated that she was conflicted about having the minimums written into the Code versus only requiring a Noise Study. She added that she liked that the Staff Report was a hybrid and because they are dealing with Code, it could always be amended if they feel they needed to either relax or tighten the regulation.

Commissioner Hall asked about the height limitations for the various areas, noting that 18 feet sounded high. Planner Sebright confirmed that 18 feet was the maximum allowed height for an accessory structure and noted that a fence of that height would also involve Building Code issues and it would be unlikely that a stand-alone fence of that height would be approved without a CUP.

Chair Phillips expressed concern about the 18-foot allowable height and noted that much of it would depend on the distance.

Attorney Harrington advised that as part of the motion to continue, it should include whether they would also continue the public hearing. If so, the continuance should be to a date certain for notice purposes.

Commissioner Hall requested further information from Staff regarding the definition of Private Recreational Facilities on page 69 as it relates to allowed uses versus conditional uses. Commissioner Suesser agreed that those three items should be removed from that definition. Commissioner Hall asked whether a CUP was common for the installation of a pool.

Commissioner Thimm presumed that this discussion centered only on pickleball courts. Director Milliken agreed but acknowledged that the confusion was that prior to making these amendments, pickleball courts fell under Private Recreational Facilities. Part of the LMC Amendments would involve amending the Private Recreational Facilities so that it would be clear that pickleball courts were no longer included in that definition.

It was clarified that the only change was to remove pickleball out of that category; everything else would remain as is. Commissioner Hall disagreed and referenced the removal of playgrounds, spas, and picnic areas from the definition. She assumed that every time someone installed a hot tub, they were not getting a CUP.

Planner Sebright stated that they would clarify this in the next Staff Report. Commissioner Thimm expressed that this should only address pickleball courts, and leave everything else unchanged. He suggested a straw poll so that they could take action at the next meeting. He would not be opposed to the distance and acreage requirements if the straw poll wanted those requirements.

Chair Phillips noted that a majority of the Commission was in favor of the minimum requirements. He remained open on discussion on whether the distance would be 150 feet versus some other distance. It was suggested that Commissioner Van Dine was closer to Commissioner Thimm's position, Chair Phillips was neutral and Commissioners Suesser, Hall, and Kenworthy were agreeable with Staff's recommendations.

Commissioner Kenworthy encouraged Staff to carefully look at the numbers.

MOTION: Commissioner Suesser moved to Continue the Legislative Land Management Code Amendments with respect to Pickleball Courts proposed in the Staff Report, as well as the public hearing on this item, to March 23, 2022. Commissioner Thimm seconded the motion.

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

8. ADJOURN

MOTION: Commissioner Thimm moved to adjourn.

The meeting adjourned at approximately 9:00 p.m.

APPROVED 04.13.2022