

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
JANUARY 22, 2020

COMMISSIONERS IN ATTENDANCE:

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

EX OFFICIO: Planning Director Bruce Erickson; Hannah Tyler, Planner; Caitlyn Barhorst, Planner; Rebecca Ward, Planner; Mark Harrington, City Attorney

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ROLL CALL

Chair Phillips called the meeting to order at 5:35 p.m. and noted that all Commissioners were present.

APPROVAL OF MINUTES

January 8, 2020

Commissioner Sletten referred to page 5, first sentence, and changed the word removing to correctly read **removed**.

Commissioner Thimm referred to the motion he made for the LMC Amendments to MPDs. The third line of the motion states, "to consider 20% open space with 10% of that amount as defined usable open space". His intent was either for 20% open space, 10% of which is usable; or 20% open space with 50% of that amount as usable.

Director Erickson thought it was more accurate to say 50% of the total space is usable open space, since that is how the Staff presented it to the City Council. He explained that the Planning Staff recommendation that was accepted by the City Council was to remove the definition of usable open space from the Code because it was unenforceable. There was no way to define issues such as roof decks as open space.

Commissioner Thimm stated that if it had already gone to the City Council the matter was moot.

Director Erickson remarked that the Staff had presented their position as best they could, but the City Council determined that it was too difficult to define usable open space and it should be removed from the Code.

City Attorney Harrington clarified that it was the City Council's direction, but it had not yet been adopted. The Council was scheduled to adopt it at their next meeting. The Planning Commission still had the opportunity to provide additional input to the City Council before next Thursday.

MOTION: Commissioner Suesser moved to APPROVE the Minutes of January 8, 2020 as amended. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Erickson reported that the special meeting to discuss the LMC changes will be scheduled in March instead of February. The special meeting would also be the time to address affordable housing and accessory dwelling units. The Commissioners would be notified when a meeting date is determined.

Commissioner Suesser asked if the Staff would provide the Planning Commission with the proposed amendments prior to the special meeting. Director Erickson believed the Commissioners would only see the list of amendments the Staff was currently working on. He was unsure whether additional amendments would be ready for the special meeting.

Chair Phillips clarified that the special meeting will be a third meeting in March and separate from their two regular Planning Commission meetings. Director Erickson answered yes.

Commissioner Kenworthy asked for an update on the BOA meeting the previous evening. Director Erickson stated that the Board of Adjustment reviewed the appeal of the setbacks on the Woodside Park Phase II, and reversed the decision of the Planning Commission on the setbacks. He explained that the owner and the Appellant have the right to appeal that decision, or they can withdraw the project, but it would not come back to the Planning Commission in its current form.

City Attorney Harrington pointed out currently the decision could be appealed; however, any changes the City Council makes to the Code could impact the decision of whether to appeal or reapply. He clarified that the BOA had not finalized the Findings and the

Order. The Board voted on the item and directed the Staff to return with Findings to Deny. Once that occurs, the Staff will evaluate the next steps.

Commissioner Suesser asked how changes to the Code might impact the Woodside project. City Attorney Harrington remarked that setbacks are one of the changes being considered.

Chair Phillips disclosed that he typically recuses himself from any items related to Alice Claim; however, since the action this evening was only to Continue the Alice Claim item on the agenda, he would not be recusing himself.

CONTINUATIONS - (Public Hearing and Continue to date specified).

- 5.A. Alice Claim, located at the intersection of Kind Road, Ridge Avenue, and Sampson Avenue, Park City, Utah – CUP – King Development Group, LLC is requesting a CUP for a wall greater than six (6) feet in height along City Right of Way/King Road. (Application PL-19-04401)

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

MOTION: Commissioner Thimm moved to CONTINUE the proposed Conditional Use Permit for a retaining wall greater than six feet in height associated with the Alice Claim Subdivision to February 12, 2020. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

- 6.A. 182 & 184 Daly Avenue Plat Amendment - The Applicant is Requesting to Further Subdivide the Daly Delight Plat Amendment into Three (3) Lots from the Existing Two (2) Lots. Lot B is Proposed to be Subdivided into Two (2) Lots to Construct a Duplex Dwelling Consistent with the Approved Conditional Use Permit. Proposed Lot B1 Contains 2,871 sq. ft and Lot B2 Contains 2,458 sq. ft. (Application PL-19-04383)

Planner Caitlyn Barhorst reviewed the application to further subdivide the existing Lot B of the Daly Delight Plat Amendment to construct a duplex dwelling with a shared party wall. The duplex dwelling and the Steep Slope CUP had already approved. This plat amendment was the last step in the process.

Chair Phillips thought this application was different from other plat amendments. Planner Barhorst replied that there are several properties on Daly with a shared party wall. Instead of having a two-unit condo, each side of the duplex can be sold separately without having ownership issues.

Commissioner Suesser stated that he had looked at the plat amendment from 2018 to create the two lots. In that approval, she noticed findings of facts and conditions of approval that were not reiterated in this current plat amendment. Commissioner Suesser did not believe the prior plat amendment was actually platted because the applicant intended to modify it.

Planner Hannah Tyler stated that she was the planner on the 2018 application and the plat was recorded. This current request is an amendment to the lot. The 2018 plat amendment created a lot for the historic house up Daly. The current application is the property to the left.

Chair Phillips understood that without the plat amendment the duplex could still occur. Planner Barhorst answered yes. She explained that the applicant was considering a two-unit condo, but that was not favorable because of a 50/50 vote. Their attorney advised them to pursue the duplex with a shared party wall because it is allowed in the zone. Planner Barhorst recalled previous conversations with the Planning Commission about the benefits of the duplex situation versus a two-unit condominium. She noted that there are trade-offs between the two, but lenders typically prefer the duplex option.

After hearing the explanation, Chair Phillips recalled that the Planning Commission has approved this type of plat amendment in the past.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

Commissioner Hall asked if Commissioner Suesser was concerned that Conditions of Approval 5, 6 and 7 reference the previous conditions of approval, and whether she was suggesting incorporating the conditions from 2018 plat amendment so people do not need to go back and reference each of the conditions. Planner Barhorst suggested adding a simple plat note stating that the Conditions of Approval from the Daly Delight plat amendment continue to apply as well. She pulled up the conditions of approval from the previous plat amendment for the Commissioners to review.

Commissioner Thimm referred to the site plan on page 71 of the Staff report with a roof plan. He noted that on other applications and different types of structures, the Planning Commission has been concerned about overhangs at setback lines and overhangs at property lines. He assumed the property line was at the center line that runs between the two 7:12 roof pitch notes. Commissioner Thimm followed the line back and noted that the roof from the southerly unit extends past an extension of that line. He thought it appeared that the roof extends beyond the property line. Commissioner Thimm recognized that his observation was not pertinent to the plat amendment before them, but he thought the Staff should look into it to make sure it did not extend beyond the property line.

Planner Barhorst stated that not every house where this was done in the past has a perfect cut-down the middle property line. Commissioner Thimm thought the support for the roof on the southerly piece would be from the building to the south and he found that to be odd.

City Attorney Harrington stated that the Planning Commission could add a condition of approval requiring final review by the Building Department for the common wall in the proposed plat amendment prior to recordation.

Commissioner Thimm stated that he would also like the Building Department to review the composition of the common wall because it looks like a single partition rather than a double partition. City Attorney Harrington stated that it could be done with the understanding that if jogging the line was not a material change, that the City has the authority to make that change.

Commissioner Suesser read from #22 in the plat amendment that was approved on July 12, 2018. "The maximum building footprint for Lot B is 1,975 square feet". Planner Tyler explained that it was a typographical error that was corrected administratively after the approval. She could not recall the exact number. Commissioner Suesser noted that the proposed footprint was correct, however, the maximum allowed was incorrect in the current Staff report. Planner Tyler offered to follow up to make sure it is correct before going to the City Council. City Attorney Harrington noted that the signed ordinance would have the correction and recommended that the Staff include that as an Exhibit rather than the link to the proposed ordinance.

Commissioner Suesser thought Finding #11 in the current proposal needed to be corrected. Planner Barhorst believed that in the Daly Delight plat amendment, the total lot square footage for Lot B was encompassing as a single lot. However, because two lots are proposed in the current plat amendment, it was separated to 1,014 square feet. She thought there might be some overlap and would double-check all the numbers to

make sure they were correct. Commissioner Suesser pointed out that in the prior plat amendment it was split into two lots and there was a maximum building footprint for Lot B. She asked if the maximum building footprint was being increased for this plat amendment or if they were keeping the maximum building footprint that was designated in the prior plat. Planner Tyler replied that as proposed, the maximum building footprint would be increased to adjust to the two lots, which allowed within the density of the zone.

Chair Phillips understood that this plat amendment would create a larger total overall building footprint and more density. Planner Tyler answered yes. She noted that the proposed duplex building is not larger than what was presented through the Conditional Use Permit process.

Commissioner Suesser clarified that the increase in density was due to the fact that it would now be two lots. Planner Tyler replied that the LMC has the lot and site requirements for the HR-1 zone, and they are all based on lot size. As the lot gets bigger the footprint gets smaller comparative to the size of the lot. In this case, with two smaller lots, the footprint gets larger. The intent of the algorithm is to avoid huge lot combinations with giant houses. The City typically recommends smaller lots rather than larger lots.

Commissioner Suesser asked Planner Tyler to explain the error she had mentioned. Planner Tyler stated that there was an error in the maximum building footprint. It was a simple typo and it was only one number. She was not able to recall if it was for Lot B or Lot A. Planner Tyler explained that the typo was changed to the correct number through an administrative process and a memo was added to the file to reflect that the change was made. She did not believe it would have impacted a lot split of one of the lots, based on the way the algorithm is written for footprint in the HR-1.

Chair Phillips disclosed that he has worked with Horn Partners and Dave Backley in the past, but that association would have no bearing on his decision.

Chair Phillips asked for the lot size of the two proposed lots. Director Erickson stated that the size of Lot B1 is 2871 square feet and Lot B2 is 2458 square feet. The chart on page 54 of the Staff report showed the building footprint proposed compared to the maximum allowable on lot size. Chair Phillips clarified that the applicant was not maxing out the footprint per lot as is. Director Erickson replied that he was correct.

Commissioner Suesser remarked that this was the issue she raised because in the prior plat, when the parcels were combined and split into two, it was designated that Lot A would be a maximum building footprint of 1,539 square feet; and Lot B would be

1,975 square feet. In looking at the chart on page 54, she questioned why the maximum building footprint was not 1975 square feet. Chair Phillips believed that with the proposed square footage, the maximum building footprint would be less than the total that was allowed. He understood that the Staff report referenced a standard lot, not taking into account that a special condition was placed on the approval. Planner Tyler replied that it was a condition consistent with the lot that was being created under that zone. Chair Phillips stated that if the original intent was to limit the size, the Planning Commission should make sure they were still capturing those square footages with this new plat to keep someone in the future from putting on an addition and increase the size.

Commissioner Suesser suggested adding a Finding of Fact that the maximum building footprint for Lot B will be 1,975 square feet. Planner Tyler pointed out that Lot B would be split and the Planning Commission would need to determine the square footage for Lot B1 and Lot B2. Chair Phillips thought B1 should be 1,014 square feet and 950 square feet on Lot B2 as reflected in the chart on page 54. The square footage would not negatively impact the applicant but it would prevent future additions to either side of the duplex.

Commissioner Suesser commented on Findings of Fact in general. She noted that they were seeing more proposed statements in the Findings of Fact rather than specifics in terms of "shall be" versus "proposed". In her opinion, when something says "proposed" that means there is still wiggle room. She is not comfortable with a Finding of Fact that has a proposed number. She prefers Findings that make a clear statement of what is required. Chair Phillips agreed.

Commissioner Hall stated that her only concern would be that the applicant would need to come back through the process again for a minor change to what was required in the Finding of Fact. In this case, she thought the square footage was close enough to what the neighbors would be allowed and she was comfortable with it. However, she agreed with Commissioner Suesser than in general they should be more specific.

Commissioner Thimm could see no reason to even have a proposed number. He thought they should simply allow "a maximum of..." period. The wiggle room would be to go lower.

City Attorney Harrington pointed out that the Findings of Fact are only findings of fact; they are not conditions. If the Commissioners wanted to condition the approval to the prior proposed maximum, it should be moved to a Condition of Approval that the combined maximum cannot exceed a specific amount, or that the proposed square footages are the new maximums for each sub lot.

Planner Tyler noted that the applicant was not present; however, if they were, she believed they would remind the Planning Commission that they had dedicated a significant portion of their block that was underneath Ridge Avenue during this plat process. She wanted to make sure the Commissioners were aware of that before the applicant makes that argument before the City Council.

Planner Tyler emphasized that the Planning Commission has the authority to designate the footprint for this property.

Commissioner Suesser noted that the dedication was also in the prior plat. She wanted to know if it was formalized and if it should be repeated in this plat amendment. Planner Tyler did not believe it needed to be included in this plat amendment because it was already dedicated.

Chair Phillips favored keeping the square footage at a maximum of 1975 square feet rather than what was currently proposed. If the applicant needs a few extra feet, they would have it within that number. Planner Tyler clarified that the applicant had not calculated the proposed square footage. It came from the Code, based on what is allowed in the HR-1 for the lot size.

Commissioner Thimm pointed out that with 1975 square feet the applicant would have 11 additional square feet. He suggested putting a maximum of 1,020 square feet on the larger lot giving 6 additional feet and a maximum of 955 square feet on the smaller lot giving 5 additional feet. The two lots together would equal 1975 square feet as the maximum square footage. Planner Tyler stated that it would be added as a condition of approval and the finding of fact would be changed to reflect the condition of approval.

City Attorney Harrington recommended that the Finding of Fact reflect the actual number as Commissioner Suesser originally suggested, and that the Condition of Approval reflect the maximums as suggested by Commissioner Thimm.

MOTION: Commissioner Hall moved to forward a POSITIVE recommendation to the City Council for 182 and 184 Daly Avenue Plat Amendment based on the Findings of Fact, Conclusions of Law, and Conditions of Approval found in the draft ordinance and as amended per the discussion this evening. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 182 and 184 Daly Avenue

1. The property is located at 182 Daly Avenue.
2. The property consists of Lot B, Daly Delight Plat Amendment, according to the official plat thereof on file and of record in the office of the Summit County Recorder.
3. The Historic District Design Review (HDDR) application was approved on October 25, 2018 (PL-15-02961) with an extension granted on October 22, 2019.
4. The Steep Slope Conditional Use Permit was approved October 24, 2018 (PL-16-03084).
5. The Duplex Dwelling Conditional Use Permit was approved October 24, 2018 (PL17-03708)
6. The property is located within the Historic Residential (HR-1) District and meets the purpose of the zone.
7. This is an uphill lot with an average slope of approximately 44%.
8. Access to the property is from Daly Avenue, a public street.
9. Two (2) parking spaces are provided for each unit. The southerly unit provides one (1) parking space in the garage and one (1) parking space in the driveway. The northerly unit provides two (2) parking spaced in a tandem configuration in the garage. The entire site provides a total of four (4) parking spaces.
10. Minimum footprint is 1875 sq. ft, both Lots comply. Lot B1 contains 2,871 sq ft and Lot B2 contains 2,458 sq. ft.
11. Per Condition of Approval #9 the Maximum Building Footprint for Lot B1 is 1,020 square feet and the Maximum Building Footprint for Lot B2 is 955 square feet.
12. The proposed Structure complies with both Front and Rear Setbacks. The minimum front and rear yard setbacks are 12 feet, for a total of 25 feet; the applicant is proposing a 12-foot front yard and 19-foot rear yard setback, for a total of 31 feet.
13. Proposed Exterior Side Setbacks minimum of 3 feet, complies as they are proposed between 6 feet and 11 feet.
14. LMC 15-2.2-3(I) Lot and Site Requirements: A Side Setback between connected Structures is not required where Structures are designed with a common wall on a Property Line, each Structure is located on an individual Lot, the Lots are burdened with a party wall agreement in a form approved by the City Attorney and Chief Building Official, all applicable Building and Fire Code requirements are met, and the Use is an Allowed or Conditional Use in the Zoning District.
 - a. Exterior Side Setbacks shall be based on the required minimum Side Setback for each Lot; however, the Planning Commission may consider increasing exterior Side Setbacks during Conditional Use Permit review to mitigate potential impacts on adjacent Property. Side Setback exceptions continue to apply.
 - b. Building Footprint shall be based on the total lot Area of the underlying Lots. The Planning Commission may consider decreasing Building Footprint during

Conditional Use Permit review to mitigate potential impacts on adjacent Property.

- The Conditional Use Permit for the Duplex Dwelling was reviewed by the Planning Commission on October 24, 2018 and no additional setbacks or Building Footprint decreases were imposed.

15. The property was posted and notice was mailed to property owners within 300 feet on January 8, 2020. Legal notice was also published in the Park Record in accordance with requirements of the Land Management Code on January 4, 2020.

16. The Findings in the Analysis section of this report are incorporated herein.

Conclusions of Law – 182 and 184 Daly Avenue

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

Conditions of Approval – 182 and 184 Daly Avenue

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, and the Land Management Code, and the conditions of approval, prior to recordation of the Plat.
2. The applicant will record the Subdivision Plat at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the Plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. Modified 13-D fire sprinkler system is required.
4. A party wall agreement in a form approved by the City Attorney and Chief Building Official is required.
5. All Conditions of Approval from the October 24, 2018 Steep Slope Conditional Use Permit continue to apply.
6. All Conditions of Approval from the October 24, 2018 Duplex Dwelling Conditional Use Permit continue to apply.
7. All Conditions of Approval from the October 25, 2018 HDDR Action Letter continue to apply.
8. This property shall not be further subdivided.

9. The maximum building footprint for lot B1 is 1,020 square feet and the maximum building footprint for lot B2 is 955 square feet.

6.B. Land Management Code Amendment – Proposal to Repeal Land Management Code §15-3-5, Driveway Standards for Private Driveways Within Platted, Unbuilt City Streets.

Planner Rebecca Ward stated that this item was a proposal to repeal LMC Section 15-3-5, which allows the Planning Commission to grant a conditional use permit for a private driveway in a platted unbuilt City street. The proposed amendment was a result of applications that came before the Planning Commission in 2019 for a private driveway under the LMC as written. When the Planning Commission cast a split vote on an application, the City Council called up the Conditional Use Permit and denied the CUP.

Planner Ward stated that in October the Planning Commission considered a plat approval that involved encroachments in the right-of-way. They also recommended that the City Council hold a work session to discuss the broader policy of encroachments onto City property and City rights-of-way.

Planner Ward reported that the Engineering Department had put together a spread sheet of 598 encroachment agreements and the Staff was working to compile all of that information. In the meantime, what the Staff was proposing this evening was narrow in scope. They were only proposing a repeal of the conditional use permit to construct a private driveway.

Planner Ward stated that the State Code definition of right-of-way is very broad and includes any road, street, alley, or anything that is dedicated for public use. The Engineering Department has been working to create maps that show all of the existing unbuilt public right-of-way. She noted that the majority were in the Old Town area. The maps were included as exhibits in the Staff report.

Planner Ward remarked that the Staff has been looking through the Code to see how these encroachments were handled in the past. In 1992 the City Council adopted an ordinance that allowed the City Engineer to approve a portion of the length of a parking stall within the right-of-way in the Historic Residential and Historic Residential Development Low-Density Zoning Districts. In 2000, the City Council adopted an ordinance that repealed those sections of the Code and they were replaced with the current Code language. Planner Ward stated that the section that granted the City

Engineer this authority did not follow through with the Code, and the Staff was still trying to determine why it was removed.

Planner Ward reported on a 1998 memo that she found today from former City Engineer, Eric DeHaan, to the Planning Staff regarding which criteria to look through to consider a conditional use permit for private driveways. She believed this criteria could be the reason why the City Council approved an ordinance codifying some of the criteria in the LMC and gave the Planning Commission the authority to grant CUPs for these driveways.

Planner Ward stated that in their research, the Staff was only able to locate two conditional use permits that were granted since 2000. There may be more, but up to this point they found a conditional use permit that was issued in 2011 for a historic residence and a private driveway that accesses a garage underneath the Significant structure. Planner Ward reported that in 2014 a conditional use permit was granted for the construction of three homes along Ridge Avenue.

City Attorney Harrington clarified that two CUPs were approved since the ordinance was enacted. Whether any CUPS were previously approved under prior authority prior to this ordinance would be a separate matter.

Planner Ward stated that both properties mentioned have an encroachment agreement with the City; however, the City can relocate or revoke the encroachment agreement at any time. She explained that if CUP is also issued, State Code requires that the Planning Commission shall approve if the Code criteria is met or the detrimental effects can be mitigated. Planner Ward remarked that the conditional use permits that have been granted result in significant property owner investment and reliance on the CUP. If the City were to revoke the conditional use permit, it could lead to impractical results. For example, the three homes that are accessed solely over a private driveway that was built along the Ridge Avenue platted right-of-way. She stated that vacation of some of the rights-of-way might help with clarification in the future.

Planner Ward reported that in 1998 the City Council passed a resolution on the City's policy for vacating rights-of-way. This policy includes compensation to the City for the loss of the right-of-way, dedication of open space, trails, public access beyond what is required in the Code, and the dedication of any other public amenity to compensate the public for the loss of the use in that right-of-way.

Planner Ward stated that the Planning Department was proposing to repeal the conditional use permit avenue to construct a private driveway in the right-of-way. However, the City Council would still retain the authority to grant encroachments on a

case by case basis through a public process; or a property owner could petition to vacate a portion of the right-of-way for private use.

Commissioner Kenworthy asked if the City has ever revoked a CUP over these rights-of-way. Planner Ward had not found any revocations in her research.

Commissioner Sletten understood that the City Council could still approve an application to build in the right-of-way; however, if they rescind Section 15-3-2, he wanted to know how the applicant would go to the City Council without going through the Planning Commission. Planner Ward replied that it would be through the City Engineer. She noted that the Staff was preparing to have that discussion at the special work session in March.

Commissioner Sletten asked about prescriptive easements. Most were approved prior to 2002 and he assumed the owner has some type of legal right. City Attorney Harrington replied that there are no prescriptive rights against public property. He pointed out that private property can vest private easements prior to the dedication of that public right. Even if it is vacated, if someone had that underlying private easement previously, they would still retain it. Mr. Harrington explained that a vacation does not always work because the dedication fee is by the adjacent property owners. When the right-of-way is vacated it is split 50/50 down the middle to the adjoining properties. Therefore, consent of the neighbor is required in that situation.

Commissioner Sletten stated that with respect to the Old Town rights-of-way, he assumed that none of those had the condition with respect to a prior existing easement. City Attorney Harrington replied that they often get those dedications after roads are built in their currently alignment as opposed to where they were originally dedicated. Someone could have an existing private easement through an existing driveway or road that does not align with the dedicated public roadway. However, there have been very few of those.

Commissioner Hall appreciated the mapping and found it was very helpful. She was confused on how they could take away the option of the CUP, and then from a function standpoint, how the City Council would grant an encroachment agreement on a case by case basis. She thought they were abdicating the formalities and that it was counterintuitive. City Attorney Harrington replied that the problem is that the Conditional Use Permit Law in Utah evolved and has become more administrative. He noted that the Commissioners were trained on the fact that CUPs are not discretionary; they are permitted uses subject to mitigation. Because it is a dual application, the City Council currently needs to approve the encroachment agreement in addition to the CUP process. It is a hybrid application process, but it creates a due process expectation.

Mr. Harrington thought they would need to wait and see whether the proposed change would limit the City Council's authority to grant the encroachment program. If their decision is appealed, it would be an interesting argument. He would argue that if an applicant is granted a CUP, they would still need a completely discretionary encroachment agreement from the City Council.

Mr. Harrington clarified that the Staff would continue to evaluate and propose appropriate standards of process. He noted that the City Engineer's original recommendation was motivated towards additional public process and notification without binding the hands of the City Council. Mr. Harrington noted that the majority of the City Council and some of the Planning Commissioners did not want to give that expectation moving forward. At a minimum it would need to start with the City Council and go through the public process. Mr. Harrington believed the Staff would quickly propose some version of an alternative process, but not under the conditional use permit definition.

Commissioner Hall asked if State law requires the City to provide private property owners with an avenue to attain an encroachment agreement. Mr. Harrington answered no, but they cannot limit the City Council's authority to grant it. The City Council has that authority over the City rights-of-way.

Commissioner Sletten asked if would be effective to place a moratorium on these particular CUP applications while the process is being refined and defined.

Director Erickson stated that this proposed amendment was clean and well-defined as written by Planner Ward. He pointed out some flaws in the current Code language. Director Erickson noted that the recommendation to the City Council would be for the amendment as proposed; and that the Staff was still working on how to notify the neighbors beyond just a public hearing. Director Erickson remarked that there may be a notification requirement in the grant of easement application to make sure the neighbors are notified.

Director Erickson noted that John Robertson, the City Engineer, was present this evening to support this amendment and to answer questions.

Commissioner Hall understood that the proposed amendment was only for platted, unbuilt City rights-of-ways, which would give the City the ability to negotiate with a private owner in terms of selling the land or pursuing a different path. City Attorney Harrington answered yes; and explained that the process is governed by State Code currently. Anyone has a State Statutory ability to petition to vacate.

Commissioner Thimm stated that having a split vote did not mean that there was a desire to abdicate from the ability to be a part of a land use decision. It only means that the Planning Commission worked hard to reach a conclusion. He did not think they should read anything into a split vote other than the fact that it was a split vote.

City Attorney Harrington clarified that the Staff did not take that direction from the Planning Commission vote. The direction came from the City Council. Commissioner Thimm pointed out that the Staff report stated that because there was a split vote the Staff was proposing a process to take it out of the purview of the Planning Commission. Commissioner Thimm believed the Planning Commission has demonstrated the ability to come to a conclusion. He did not agree with removing it from the Planning Commission process. It is an important land use decision and the Planning Commission has value to the City in helping make the right determination. Commissioner Thimm noted that the Planning Commission reviews a CUP on a case by case basis when it comes before them.

Chair Phillips could understand what the Staff was proposing, but he also agreed with Commissioner Thimm that the Planning Commission is better equipped to address the issues. However, being a CUP, it is harder for the Planning Commission to deny it if it meets the criteria or mitigate the impacts. City Attorney Harrington was not comfortable commenting further on that issue because they were still in the appeal period for the prior applicant. If the Commissioners have that concern, they could make their opinions known on the record; or include in their recommendation to the City Council that the Planning Commission should still have some role in the process either through the CUP process or in some other way. Mr. Harrington clarified that he did not intend to suggest that the Planning Commission was being cut out of the process because of their split vote, and he apologized if the Commissioners took it that way. Commissioner Thimm recognized that he may have misunderstood, but in the conversation, he heard that the split vote was part of the reason behind the suggestion to remove Section 15-3-5.

Chair Phillips clarified that he had not taken it that way. He thought Mr. Harrington had said that half of the Planning Commission and all of the City Council shared the same opinion. Mr. Harrington stated that the City Council members were more forceful in their comments and he may have over-simplified the outcome.

Commissioner Thimm pointed out that this was one situation where the Planning Commission considered the merits. Revoking this part of the ordinance would affect every situation.

Commissioner Kenworthy stated that he did not find a good cause for leaving Section 15-3-5 in the Code. He was leaning towards the Staff recommendation to remove the

section. However, he was sensitive to Commissioner Thimm's comments and asked for an explanation on what occurred when the CUP was called up by the City Council. City Attorney Harrington recalled that due to a conflict, the Planning Commission had six members to discuss the application. The Planning Commission had considered a continuance for further discussion, but the applicant requested a vote to deny so he could appeal it to the City Council.

Mr. Harrington noted that aside from that application, the the City Council was very concerned with the progression of multiple applications. The safest step is to eliminate further applications while the City reassesses how these applications should be processed by both the Planning Commission and the City Council. Mr. Harrington stated that the Planning Commission could forward this recommendation with the suggestion that prior to hearing any such requests, they should be submitted to the Planning Commission for their recommendation. It would be an interim step to keep the Planning Commission involved, similar to the plat process. ♦The Commissioners favored that approach. It would not be reviewed as a CUP application but the Planning Commission would have the ability to provide input. Commissioner Kenworthy pointed out that it would also save the applicants time and money. Chair Phillips liked the approach of removing it from the CUP process, but they need to make sure that the Planning Commission can still be involved through a recommendation to the City Council or in some other way.

Chair Phillips commented on the importance of documenting in writing whatever is decided for future Planning Commissions and Planning Staff so the intent is never misunderstood.

Commissioner Sletten thought it was important to clearly define the application process if the CUP is eliminated. He wanted to know how someone would get a cursory review by the Planning Commission prior to submitting the application to the City Council. Director Erickson replied that the Staff was currently working on determining an appropriate process.

Commissioner Thimm stated that he was not opposed to an advisory position and, to the best of their ability, providing the City Council with a recommendation for approval or denial. Commissioner Thimm could see no reason to recommend repealing Section 15-3-5 this evening. He thought a better process would be to adopt the new language after it is written. Commissioner Hall understood from City Attorney Harrington that if the Section is not repealed, the City could receive a number of CUP applications that would be grandfathered under the current Code while they are figuring out the process. Repealing the section puts a temporary stop on those types of applications until there is a new process that complies with what the City Council has directed.

Commissioner Suesser noted that the City Council has given direction to change the policy and it was important to remove that Section from the Code to avoid having to contend with the issue.

Commissioner Thimm believed the City Council directed the Planning Commission to give their opinion. He did not think their direction was to vote a specific way. Chair Phillips concurred. His personal opinion, he was in favor of the Staff recommendation. Commissioners Hall and Suesser concurred.

Commissioner Hall agreed with Commissioner Thimm that the Commissioners should vote on their own opinion and not how they think the City Council wants them to vote. She was in favor of repealing Section 15-3-5 now while they figure out the best solution for the community.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

Commissioner Suesser recalled a provision regarding the City Engineer's involvement in granting these encroachment agreements. She asked if that provision would also be removed. Planner Ward replied that there was a provision that was enacted in 1992; however, the Code was amended in 2000 and currently there is no Code language that outlines City Engineer criteria or approval for encroachment agreements. The only criteria mentioned is the Conditional Use Permit for a private driveway. Planner Ward stated that the broader issue of encroachments and how those are approved will be discussed during the work session.

Planner Ward understood from the comments this evening that the Planning Commission wants to be involved in the review process of the encroachments, specifically the driveways in the right-of-way; and that whatever is decided that it be documented in writing so the process is very clear for future Commissioners, Staff, applicants, and the public.

Commissioner Suesser understood that all this work was done with regard to platted unbuilt public rights-of way in city street. However, there are platted public rights-of-way that are not City streets and she asked if they were looking at those as well. Director Erickson answered no. He clarified that they were only addressing platted unbuilt rights-of-way of city streets. Director Erickson stated that he was unaware that the

State law was so broad in how to define a right-of-way. He always assumed that walkway systems and trails were trail easements on a plat.

Commissioner Suesser asked Planner Ward to pull up the slide of Old Town. She explained that she lives on Lowell Avenue and the 12th Street right-of-way connects Empire and Norfolk. A house was built on Empire in the middle of the 12th Street right-of-way. She believes there is still a partial right-of-way on the Lowell Avenue side of 12th Street that is owned by the City. Commissioner Suesser pointed to the house in the middle of the 12th Street right-of-way and noted that the King's Crown project empties out right in front of that 12th Street right-of-way. Without the house it would have been perfect pedestrian access to town and the bus stop. Instead, people coming out of the King's Crown development will have to walk down to the Resort Center, which is already congested at Manor. Commissioner Suesser felt this was an example of poor planning decisions to have allowed the house to be built in the middle of 12th Street on Empire Avenue because it eliminates a perfect pedestrian access way. She emphasized that these are vital corridors in Old Town that deserve protecting.

Director Erickson offered to look at 12th Street based on Commissioner Suesser's comments.

MOTION: Commissioner Hall moved to forward a POSITIVE recommendation to the City Council to Repeal LMC Codes Section 15-3-5, Driveway Standards for Private Driveways Within Platted, Unbuilt City Street; with an additional recommendation for a mechanism that allows the Planning Commission the opportunity to review encroachment agreements; and a recommendation to carefully consider the public notice process. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed 5-1. Commissioner Thimm voted against the motion.

Commissioner Thimm clarified that his nay vote should not be construed as being opposed to the Planning Commission being an advisory to the City Council. He did agree that they should have an advisory role in reviewing future encroachments.

The Planning Commission Meeting adjourned at 6:45 p.m.

Approved by Planning Commission: _____